CITY OF EDGEWOOD
COUNCIL STUDY SESSION AGENDA
Tues., February 7, 2017 – 7:00 PM ♦ City Hall – 2224 104th Avenue East ♦ Edgewood, WA

1. **CALL TO ORDER**
   Pledge of Allegiance & Roll Call

2. **COUNCIL BUSINESS**
   - ***A. Discussion*** *(pg. 2)* - Traffic Impact Fees
   - ***B. Review/Discussion*** *(pg. 34)* - School Impact Fees
   - ***C. Discussion/Review*** *(pg. 46)* - Flood Code Update
   - ***D. Discussion/Review*** *(pg. 88)* - ROW Regulations for Telecommunications and Cable Television Providers
   - ***E. Review/Discussion*** *(pg. 103)* - City of Milton Franchise Agreement
   - ***F. Review/Discussion*** *(pg. 115)* - Placement of Edgemont Jr. High School-Phase 1 Sewer Service

3. **OTHER COUNCIL ITEMS**

4. **ADJOURN**

This meeting is accessible to persons with disabilities. For individuals who may require special accommodations, please contact City Hall at (253) 952.3299, 24 hours in advance.

CITY OF EDGEWOOD
STAFF REPORT
STUDY SESSION AGENDA ITEM: TIF Report/Code Modifications

Date: February 7, 2017

Title: Transportation Impact Fee (TIF) Study and Proposed Code Modifications to EMC 4.30

Attachments: Draft TIF Program Report, Draft TIF Project Map, Draft TIF Schedule, Draft TIF Project List and Proposed EMC 4.30 Code Modifications

Submitted By: Kevin Stender, Community Development Director
Aaron C. Nix, ACA Municipal Services

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: City presented the DRAFT TIF program prepared by Transpo at the January 17, 2017 Council Study Session. That document evaluated the City's current roadway infrastructure, and addressed the Level of Service (LOS) standards set by the City Council with the intent to ensure that these LOS standards are maintained as development continues within the City of Edgewood.

State law allows for Cities to collect funds from developers, based on the impacts to the Cities transportation system directly attributed to increased roadway trips from new development. These funds are identified as Traffic Impact Fees and are collected at during the development process, based on EMC language outlined in Chapter 4.30, TIF. As part of the process for determining the impacts of new development, the City's Transportation Consultant keeps a complex transportation modeling programs that account for increased traffic flows, as build-out and other factors occur and evaluates the system for future projects that will increase transportation efficiency and capacity in order to meet the increased demand, while maintaining the LOS that the City Council established. This model is run at the time of every development application proposed within the City that has potential to impact the LOS. The funds acquired from new development applications help the City better handle the impact associated with new development and allows us to have some resources in helping maintain and expand the transportation system to mitigate for the additional traffic associated with that development

Recommendation: Move to First Reading, Public Hearing and Second Reading the DRAFT TIF program, map, schedule and revised Chapter 4.30, accordingly.

Fiscal Impact: This is a non-project item that provides recommendations for future projects as it relates to the City's transportation infrastructure, based on projected future growth.

Chapter 4.30
TRAFFIC IMPACT FEES

Sections:

4.30.010 Purpose.

4.30.020 Authority.

4.30.030 Definitions.

4.30.040 Applicability.

4.30.050 Exemptions.

4.30.055 Additional exemptions.

4.30.060 Service area.

4.30.070 Use of funds.

4.30.080 Impact fee determination and collection.

4.30.090 Impact fee adjustments, independent calculations.

4.30.100 Impact fee credits.

4.30.110 Impact fee refunds.

4.30.120 Appeals and payments under protest.

4.30.130 Council review of impact fees.

4.30.140 Administrative fees.

4.30.150 Impact fee calculations.

4.30.160 Schedule of fees.

4.30.170 Existing authority unimpaired.

4.30.180 Severability.

4.30.190 Effective date.

4.30.010 Purpose.

This chapter is intended to:

A. Assist in the implementation of the comprehensive plan for the city of Edgewood.

B. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use, or shortly thereafter, without decreasing current service levels below established minimum standards for the city.

C. Establish standards and procedures so that new development pays a proportionate share of costs for new facilities and services and does not pay arbitrary or duplicative fees for the same impact. (Ord. 07-282 § 1).

4.30.020 Authority.

A. This chapter is enacted pursuant to the Washington State Growth Management Act codified at Chapter 36.70A RCW and RCW 82.02.050 through 82.02.100.

B. The city has conducted studies documenting cost and demand for new facilities and services. (Ord. 07-282 § 1).

4.30.030 Definitions.

A. “Dwelling unit” means one or more rooms designed for or occupied by one family for living or sleeping purposes and containing kitchen, sleeping, and sanitary facilities for use solely by one family.

B. “Encumber” means to transfer impact fee dollars from the traffic mitigation impact fee fund to a fund for a particular system improvement that is fully in the current year’s budget. Funds may only be encumbered by an action of the city council.

C. “Project improvements” means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. No improvement or facility included in the city’s capital improvement plan or transportation improvement program approved by the city council shall be considered a project improvement.

D. “System improvements” means transportation facilities that are included in the city’s six-year capital improvement plan and are designed to provide service to the community at large, in contrast to project improvements.

E. “Applicant” means a person, individual, or organization seeking permission to develop land within the city of Edgewood by applying for a building permit.

F. “Interest” means the interest earned by the account during the period the fees were retained.

G. “Traffic mitigation impact fee” means payment of money imposed by the city of Edgewood upon development activity pursuant to this chapter as a condition of granting development approval and/or a building permit in order to pay for the public facilities needed to serve new growth and development. Traffic mitigation impact fees do not include permit fees, an application fee, the administrative fee for collecting and handling impact fees, the cost of reviewing independent fee calculations or the administrative fee required for an appeal.

H. “Peak hour” means the consecutive 60-minute period during the 4:00 p.m. to 6:00 p.m. peak period during which the highest volume occurs.

I. “Traffic mitigation impact fee fund” means the fund established by the adoption of Ordinance 05-253 on August 23, 2005, for the public facilities for which traffic impact fees are collected, in compliance with the requirements of RCW 82.02.060.

J. “Traffic impact fee study” means the study which determined the traffic mitigation impact fee dated OctoberFebruary 201607. (Ord. 07-282 § 1).

4.30.040 Applicability.

All persons receiving building permits, including remodels or expansions, within the city of Edgewood after the effective date of the ordinance codified in this chapter shall be required to pay traffic mitigation impact fees in an amount and manner set forth in this chapter. (Ord. 07-282 § 1).

4.30.050 Exemptions.

The following development activities are exempt from paying traffic mitigation impact fees because they do not have a measurable impact on the city’s transportation facilities, or because the city has chosen to exempt them, pursuant to RCW 82.02.060(2), as development with broad public purposes:

A. Existing Dwelling Unit. Any alteration, expansion, reconstruction, remodeling, replacement, or demolition/removal of an existing single-family or multifamily dwelling unit that does not result in the generation of additional peak hour trips with the exception that any building permit for replacement must be approved within 12 months of removal of the previous structure.

B. Existing Nonresidential Building. Any alteration, reconstruction, remodeling, replacement, or demolition/removal of an existing nonresidential building that does not result in the generation of any new peak hour trips with the exception that any building permit for replacement must be approved within 12 months of removal of the previous structure.

C. The mayor or designee shall be authorized to determine whether a particular development activity falls within an exemption from traffic mitigation impact fees identified in this section or under other applicable law. Determinations of the mayor or designee shall be in writing and shall be subject to appeal to the hearing examiner as provided in Chapter 2.40 EMC. (Ord. 15-447 § 1 (Exh. A); Ord. 07-282 § 1).

4.30.055 Additional exemptions.

Reserved. (Ord. 07-282 § 1).

4.30.060 Service area.

This section establishes one service area which shall be consistent with the city limits of the city of Edgewood. (Ord. 07-282 § 1).

4.30.070 Use of funds.

A. Impact fees shall:

1. Be used for system improvements; and

2. Not be imposed to make up for deficiencies in the facilities serving existing development; and

3. Not be used for maintenance or operation.

B. Impact fees may be spent for improvements listed in the six-year transportation improvement program and identified as being funded in part by impact fees. Expenditures may include, but are not limited to, facility planning, land acquisition, site improvements, necessary off-site improvements, construction, engineering, permitting, financing, grant match funds and administrative expenses, applicable impact fees or mitigation costs, capital equipment pertaining to public facilities, and any other capital cost related to a particular system improvement.

C. Impact fees may also be used to recoup transportation facility improvement costs previously incurred by the city to the extent that new growth and development will be served by the previously acquired or constructed improvements resulting in such costs.

D. In the event that bonds or similar debt instruments are or have been issued for the construction of a public facility or system improvement for which impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities or improvements provided are consistent with the requirements of this chapter and are used to serve new development. The transportation improvement program should distinguish between facilities and funds needed to serve new development and those facilities and funds needed to correct existing deficiencies. (Ord. 07-282 § 1).

4.30.080 Impact fee determination and collection.

A. At the time of building permit issuance, city staff shall determine the total impact fee owed based on the current p.m. peak hour rate~~fee schedule~~ in effect at the time of such issuance. Total impact fees will be calculated by multiplying the p.m. peak hour volume times the transportation impact fee cost per trip.

B. Impact fee collection shall also occur at the time of building permit issuance unless payment has been properly deferred in accordance with Chapter 4.05 EMC.

C. An applicant may request that the impact fee be calculated in advance of building permit issuance, but any such advance calculation shall not be binding upon the city and should only be used as guidance by the applicant. If the city council revises the impact fee formula or the impact fees prior to the time that a

building permit is issued for a particular development, the formula or fee amount in effect at the time of building permit issuance shall apply to the development. (Ord. 16-475 § 5; Ord. 07-282 § 1).

4.30.090 Impact fee adjustments, independent calculations.

An applicant may request an adjustment to the impact fees determined according to the fee ~~schedule~~ adopted by the ordinance codified in this chapter by preparing and submitting to the mayor or designee an independent fee calculation for the development activity for which a building permit is sought. The documentation submitted shall show the basis upon which the independent fee calculation was made. Independent fee calculations for traffic impact fees shall use the same formulas and methodology used to establish the impact fees in this chapter and shall be limited to adjustments in trip generation rates used in the traffic impact fee study, and shall not include travel demand forecasts, trip distribution, traffic assignment, transportation service areas, costs of road projects, or cost allocation procedures.

A. If the mayor or designee agrees with the independent fee calculation, a written agreement to accept such amount shall be transmitted to the applicant who shall, in turn, present it to the city upon impact fee collection.

B. If the mayor or designee does not agree with the independent fee calculation, the fee payer may appeal this decision to the hearing examiner through procedures outlined in Chapter 2.40 EMC. (Ord. 15-447 § 1 (Exh. A); Ord. 07-282 § 1).

4.30.100 Impact fee credits.

A. An applicant shall be entitled to a credit against the applicable traffic impact fee collected under the fee schedule adopted by the ordinance codified in this chapter for the value of any dedication of land for, improvement to, or new construction of, any system improvements provided by the applicant, to facilities that are:

1. Included within the six-year transportation improvement program/long term project list (2015-2035) and identified as system improvements that are to be funded in part by traffic impact fees; and

2. At suitable sites and constructed at an acceptable quality as determined by the city; and

3. Completed, dedicated, or otherwise transferred to the city prior to the determination and award of a credit as set forth in this section.

B. No credit shall be given for project improvements.

C. The value of a credit for improvements shall be established by original receipts provided by the applicant for one or more of the same system improvements for which the impact fee is charged.

D. The value of a credit for land shall be established on a case-by-case basis by an appraiser selected by, or acceptable to, the city. The appraiser must be licensed and in good standing with the state of Washington for the category of the property appraised. The appraisal shall be in accordance with the most recent version of the Uniform Standards of Professional Appraisal Practice and shall be subject to review and acceptance by the city. The appraisal and review shall be at the expense of the applicant.

E. Whenever a development is granted approval subject to a condition the system improvements that are identified in the six-year transportation improvement program/long term project list (2015-2035) be constructed or provided, or whenever the applicant has agreed, pursuant to the terms of a voluntary agreement with the city of Edgewood, to donate or dedicate land for road facilities that are identified in the six-year transportation improvement program, and which are included in the list of road projects that are used to determine the traffic impact fee, as listed in the traffic impact fee study, the applicant shall be entitled to a credit for the value of the land or actual costs of capital facility construction against the fee that would be chargeable under the formula provided. The land value or costs of construction shall be determined pursuant to this section.

F. This subsection applies only to residential developments and the residential portion of a mixed use development. In cases where a developer would be entitled to a credit under this section, but the amount of the credit has yet to be determined on a per dwelling unit basis, the city shall take the total credit amount available to the entire plat or project, calculated by applying subsections (A) through (E) of this section, and divide that amount by the number of dwelling units approved for that plat or project. The impact fee and credit may then be calculated and collected on a per dwelling unit basis as building permits are issued for those dwelling units. Where building permits for some, but not all, of the dwelling units within a plat or project have already been obtained at the time the ordinance codified in this chapter becomes effective, the credit for the unpermitted dwelling units will be calculated to arrive at a per dwelling unit amount in the same manner. For example, if a plat has been approved for 20 dwelling units, and building permits have only been issued for 10 of those units, the per dwelling unit credit for the remaining 10 units will equal the total credit amount divided by 20 dwelling units.

G. This subsection applies to nonresidential developments, or the nonresidential portion of a mixed use development. In cases where a developer would be entitled to a credit under this section, but the amount of the credit has yet to be determined on a per square foot basis, the city shall take the total credit amount available to the entire plat or project, calculated by applying subsections (A) through (C) of this section, and divide that amount by the number of square feet approved for that plat or project. The impact fee and

credit may then be calculated and collected on a per square foot basis as building permits are issued for that square footage. Where building permits for some, but not all, of the dwelling units within a plat or project have already been obtained at the time the ordinance codified in this chapter becomes effective, the credit for the unpermitted square footage will be calculated to arrive at a per square footage amount in the same manner. For example, if a 20,000 square foot commercial project has been approved, and building permits have only been issued for 10,000 square feet of the project, the per square foot credit for the remaining 10,000 square feet will equal the total credit amount divided by 20,000 square feet.

H. Pursuant to and consistent with the requirements of RCW 82.02.060, impact fee schedules have been adjusted for future taxes and other revenue sources to be paid by the new development which are earmarked or pro-ratable to the same new public facilities which will serve the new development.

I. After receiving the receipts for improvements, the appraisal of land value, the receipts and calculations of prior payments earmarked or pro-ratable to the same system improvements for which the impact fee is imposed, the mayor or designee shall provide the applicant with a letter setting forth the dollar amount of the credit, the reason for the credit, the legal description of the site donated where applicable, and the legal description or other adequate description of the project or development to which the credit may be applied. The applicant must sign and date a duplicate copy of such letter indicating their agreement to the terms of the letter and return such signed document to the city before the impact fee credit will be awarded. The failures of the applicant to sign, date, and return such document within 60 calendar days shall nullify the credit.

J. If the amount of the credit is less than the calculated fee amount, the difference remaining shall be chargeable as an impact fee and paid at the time of application for the building permit. In the event the amount of the credit is calculated to be greater than the amount of the impact fee due, no further sums shall be due from the applicant.

K. A claim for credit will be processed by the city using whichever of the following options is selected by the applicant:

1. Claims for credits that are submitted prior to, or with, an application for a building permit for which an impact fee will be due will be processed by the city before payment of the impact fee is due in order to allow any credit authorized by the city to reduce the amount of the impact fee; or

2. Claims for credits that are submitted no later than 30 days after the issuance of a building permit for which an impact fee is due shall be processed by the city after the impact fee is paid in full, and any credit authorized by the city will be refunded to the applicant within 90 days of receipt of the claim for credit.

L. Claims for credits that are submitted more than six months after the issuance of a building permit for which an impact fee is due are deemed to be waived and shall be denied.

M. Determinations made by the mayor or designee pursuant to this section shall be subject to appeal to the examiner subject to the procedures set forth in Chapter 2.40 EMC. (Ord. 15-447 § 1 (Exh. A); Ord. 07-282 § 1).

4.30.110 Impact fee refunds.

A. The current owner of property on which impact fees have been paid may receive a refund of such fees if the impact fees have not been expended or encumbered within 10 years of their receipt by the city. In determining whether impact fees have been expended or encumbered, impact fees shall be considered expended or encumbered on a first in, first out basis.

B. The city shall provide for the refund of fees according to the requirements of this section and RCW 82.02.080. An owner's request for a refund must be submitted to the mayor or designee in writing within one year of the date the right to claim the refund arises or the date that notice is given, whichever date is later.

C. Any impact fees that are not expended or encumbered within 10 years of their receipt by the city, and for which no application for a refund has been made within this one-year period, shall be retained by the city and expended consistent with the provisions of this chapter.

D. Refunds of impact fees shall include any interest earned on the impact fees.

E. Should the city seek to terminate all impact fee requirements, all unexpended or unencumbered funds, including interest earned, shall be refunded to the current owner of the property for which an impact fee was paid. Upon the finding that all fee requirements are to be terminated, the city shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first-class mail addressed to the owner of the property as shown in the Pierce County tax records. All funds available for refund shall be retained for a period of one year. At the end of the one-year period, any remaining funds shall be retained by the city, but must be expended for the original purposes, consistent with the provisions of this section. The notice requirement set forth above shall not apply if there are no unexpended or unencumbered balances within the account or accounts being terminated.

F. An applicant may request and receive a refund, including interest earned on the impact fee, when:

1. The applicant does not proceed to finalize the development activity as required by statute or city code or the International Building Code; and

2. The city has not expended or encumbered the impact fees prior to the application for a refund. In the event that the city has expended or encumbered the fees in good faith, no refund shall be forthcoming. However, if, within a period of three years, the same or subsequent owner of the property proceeds with the same or substantially similar development activity, the owner shall be eligible for a credit against any then-existing traffic impact fee requirement. The owner must petition the city in writing and provide receipts of impact fees paid by the owner for a development of the same or substantially similar nature on the same property or some portion thereof. The city shall determine whether to grant a credit and such determinations may be appealed by following the procedures set forth in this chapter. (Ord. 15-447 § 1 (Exh. A); Ord. 11-365 § 3; Ord. 07-282 § 1).

4.30.120 Appeals and payments under protest.

A. This subsection applies when an applicant seeks a building permit to construct a portion of a development that has already been reviewed and approved, in other respects, pursuant to procedures that comply with Chapter 2.40 EMC. An example of this circumstance would be an application for a permit to build one house in a large subdivision that was previously approved. In this case, any appeal of the decision of the city with regard to the imposition of an impact fee or the amount of any impact fees, impact fee credit, or impact fee refund may be taken before the hearing examiner pursuant to Chapter 2.40 EMC in conjunction with an appeal of the underlying building permit.

B. This subsection applies when an applicant seeks a building permit in conjunction with other development approvals that may be subject to an open record hearing and closed record appeal pursuant to procedures that comply with Chapter 2.40 EMC. An example of this circumstance would be an application for a short plat and building permit to build a new office park. In this case, any appeal of the decision of the city with regard to the imposition of an impact fee or the amount of any impact fees, impact fee credit, or impact fee refund must be made according to the process outlined for and in conjunction with the underlying development approval.

C. Any applicant may pay the impact fees imposed by this chapter under protest in order to obtain a building permit.

D. Only the applicant has standing to appeal impact fee matters. (Ord. 07-282 § 1).

4.30.130 Council review of impact fees.

The impact fee ~~schedule~~ adopted by the ordinance codified in this chapter shall be reviewed by the city council, as it deems necessary and appropriate in conjunction with the update of the city's transportation improvement program. (Ord. 07-282 § 1).

4.30.140 Administrative fees.

A. The cost of administering the traffic impact fee program shall also include an amount equal to five percent of the amount of the total traffic impact fee determined from the fee schedules. The administrative fee shall be deposited into an administrative fee account within the traffic mitigation impact fee fund. Administrative fees shall be used to defray the cost incurred by the city in the administration and update of the traffic impact fee program, including, but not limited to, review of independent fee calculations and the value of credits. The administrative fee is not creditable or refundable.

B. The administrative fee, in addition to the actual impact fees, shall be paid by the applicant to the city at the same time as the impact fee. (Ord. 07-282 § 1).

4.30.150 Impact fee calculations.

The traffic impact fee shall be calculated ~~using~~ based on the City's established Peak Hour Trip rate of $4,413 per trip consistent with the adopted Traffic Impact Fee Study, dated October 2016. ~~a schedule that identifies a particular fee amount for a particular type of development, as supported by and consistent with the City of Edgewood Transportation Impact Fee Program Report dated October~~December 2016~~2, attached hereto and incorporated herein by this reference as if set forth in full. Accessory dwelling units shall be calculated using ITE number 220, Apartment customer type. (Ord. 16-469 § 2 (Exh. A); Ord. 13-391 § 3; Ord. 07-282 § 1).~~

~~**4.30.160 Schedule of fees.***~~

~~A traffic impact fee shall be assessed against all new development as set forth in Exhibit A – Transportation Impact Fee Schedule, attached to the ordinance codified in this chapter and incorporated herein by reference as if set forth in full. This fee schedule represents the city's determination of the appropriate share of system improvement costs to be paid by new growth and development. (Ord. 07-282 § 1).~~

~~*Code reviser's note: Section 2 of Ordinance No. 15-438 provides, "The Fee Schedule attached to Ordinance No. 07-0282 and incorporated by reference into Chapter 4.30 EMC pursuant to EMC 4.30.160 is hereby amended to provide in its entirety as set forth in Exhibit A to this ordinance, attached hereto and incorporated herein by this reference as if set forth in full. The provisions of this section shall take effect at~~

~~the close of business on April 30, 2015, simultaneously with the expiration of the temporary Fee Schedule set forth in Section 5."~~

~~Section 3 of Ordinance No. 15-438 provides, "The Fee Schedule attached to Ordinance No. 07-0282 and incorporated by reference into Chapter 4.30 EMC pursuant to EMC 4.30.160 is hereby amended to provide in its entirety as set forth in Exhibit B to this ordinance, attached hereto and incorporated herein by this reference as if set forth in full. The provisions of this section shall sunset automatically at the close of business on April 30, 2015, simultaneously with the effective date of the permanent Fee Schedule set forth in Section 2."~~

4.30.170 Existing authority unimpaired.

Nothing in this chapter shall preclude the city from requiring the applicant to mitigate adverse environmental impacts of a specific development pursuant to the State Environmental Policy Act, Chapter 43.21C RCW, based on the environmental documents accompanying the underlying development approval process, and/or Chapter 58.17 RCW governing plats and subdivisions; provided, that the exercise of this authority is consistent with the provisions of Chapters 43.21C and 82.02 RCW. (Ord. 07-282 § 1).

4.30.180 Severability.

If any section, sentence, clause or phrase of this chapter should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this chapter. (Ord. 07-282 § 1).

4.30.190 Effective date.

The ordinance codified in this chapter or a summary thereof consisting of the title shall be published in the official newspaper of the city, and shall take effect and be in full force five days after publication. (Ord. 07-282 § 1).

CITY OF EDGEWOOD TRANSPORTATION IMPACT FEE PROGRAM REPORT

Prepared for:
City of Edgewood

October 2016

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Appendix A: TIF Schedule

Introduction

Edgewood, like many local government agencies in Washington State, has implemented transportation impact fees (TIF) to help fund improvements to its transportation system. The Growth Management Act (GMA) allows agencies to develop and implement a TIF program to help fund some of the costs of transportation facilities needed to accommodate growth. State law (Chapter 82.02 RCW) requires that TIFs are:

- Related to improvements serving new developments and not existing deficiencies;
- Assessed proportional to the impacts of new developments;
- Allocated for improvements that reasonably benefit new development; and
- Spent on facilities identified in the Capital Facilities Plan

The City first implemented and adopted a TIF program in 2007 (Ordinance No. 07-0282). The program is defined in Title 4.30 of the Edgewood Municipal Code. In 2015, the City updated its Comprehensive Plan to plan and support the growth expected to occur between 2015 and 2035. The analysis from the adopted Comprehensive Plan forms the basis for the 2016 TIF program update.

The TIF program builds from the long-term transportation project list contained in the Transportation and Capital Facilities Elements of the Comprehensive Plan. The project list was prepared by utilizing the City's travel demand model to evaluate future transportation system needs. The travel demand model is a tool for forecasting traffic volumes based on the projected growth in housing and employment identified in the Land Use Element. The travel demand model was utilized to provide the technical basis for the TIF program.

This report documents the update of the City of Edgewood's TIF program. The report also highlights what transportation impact fees are and how they relate to other development regulations. An overview of the TIF program is provided to summarize how the program was set-up and how the fees were established. It also highlights how the program will be implemented by Edgewood.

What are Transportation Impact Fees?

Transportation impact fees are allowed under the GMA to help fund growth-related capital facility improvements to public streets and roads. Impact fees are also allowed under GMA to fund other public capital facilities such as parks, open space, recreation facilities, schools, and fire protection. The following summarizes the GMA definition of an impact fee:

"Impact fee" means a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit the new development. (source: RCW 82.02.090[3])

Impact fees are an optional element under GMA; agencies are not required to implement them. They are used to help mitigate some of the transportation impacts due to new development or redevelopment.

TIFs cannot be the only funding for the growth-related transportation improvement projects. The project cost allocations must account for other public funding which would be generated by development in forms of taxes or user fees.

Transportation impact fees help mitigate development impacts for system wide traffic impacts. The following summarizes the key points:

- Supports “growth pays for growth” principal
- Funds must be spent on roadway improvement projects that are designed to serve new growth and not fix existing deficiencies
- Funds must be spent on improvements that generally benefit the developments paying the fee
- Impact fee projects are to address “system” improvements, not “project” improvements
- Must be generally proportional to impacts of development
- Helps provide funding for the agency’s six-year Capital Improvement Program
- Funds assessed for several improvement needs can be “pooled” to address agency’s priority projects

How do Transportation Impact Fees Relate to Other Development Regulations?

As noted above, TIFs are an optional element allowed under GMA. They are used to help mitigate some of a development’s potential transportation impacts. TIFs are used in conjunction with three other development review regulations as shown in Figure 1:

- Frontage Improvements/Development Regulations
- State Environmental Policy Act (SEPA)
- Transportation Concurrency

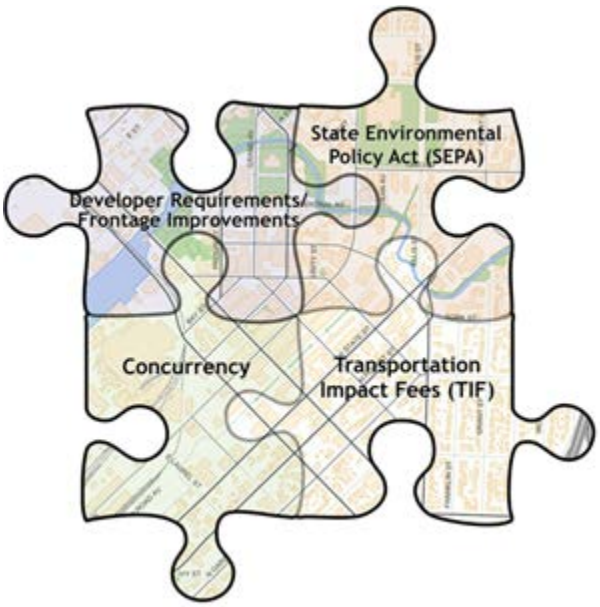


Figure 1. Elements of the Development Review Process

These other requirements basically cover transportation impacts directly resulting from development. They do not specifically address the long-term transportation system needs resulting from forecast growth. While transportation impact fees can change how agencies apply some of these other regulations, the other requirements do not go away with adoption

of a TIF. The following summarizes the basic roles of the other transportation review and mitigation programs.

Development Regulations/Frontage Improvements

When properties are subdivided or otherwise developed, the permitting agency can require transportation and other improvements needed to promote the public health, safety, and general welfare (RCW 58.17). Frontage improvements and site development regulations help ensure that the City's road standards are met and that ultimately, new development is served by transportation facilities in a safe and efficient manner. Developers can be required to construct the site's frontage and on-site roadways based on the City's Road Standards (EMC 12.05). Frontage improvements apply to both vehicular and non-motorized facilities. Key elements related to addressing impacts to the transportation system include:

- Addresses on-site impacts and access onto public rights-of-way
- Helps to insure that new development is served by adequate roadways
- Developer can be responsible for frontage along public and private roads
- Can be used to address potential vehicular, transit, and non-motorized transportation needs serving the development

State Environmental Policy Act (SEPA)

Washington's State Environmental Policy Act (SEPA), adopted in 1971 (RCW 43.21C), directs State and local decision-makers to consider the environmental consequences of their actions. "SEPA gives agencies the tools to both consider and mitigate for environmental impacts of proposals." (*Washington State Department of Ecology, SEPA Handbook, 2003*) Implementing regulations, in the form of the SEPA Rules (WAC 197-11) establish uniform requirements for agencies to use in evaluating the potential environmental impacts of a proposal. The process also allows review of possible project alternatives or mitigation measures that will reduce the environmental impacts of a project. For transportation, SEPA is typically used to review impacts within the immediate and nearby vicinity, such as vehicular access points, and operations and safety at nearby intersections or roadways. Depending on the potential for impacts, SEPA review can extend beyond the immediate vicinity of the development based on an assessment of the impacts of the proposed development. SEPA uses the "significant adverse environmental impact" standard as the threshold for triggering mitigation. The intention of SEPA, as applied for transportation, is to mitigate a development's significant adverse impact on the transportation system in terms of capacity, operations, and safety, including access, circulation, pedestrian connections and safety, bicycle system needs, and transit facilities and services.

The following summarizes key items of SEPA in the review of specific development projects:

- Uses "significant adverse impact" standard (not just level of service)
- Broad scope can be used to address impacts on capacity, safety, operations, non-motorized travel, and transit
- Typically reviewed on a development by development basis, or as part of a Planned Action Ordinance
- Can be used to mitigate both on- and off-site impacts
- Mitigation can be in the form of constructing improvements or payment of proportionate share of improvement costs
- Pooling of mitigation funds from one impact location to another location is generally not allowed
- Does not require denial of developments if standards are not met

Concurrency

The GMA requires that infrastructure improvements or strategies to accommodate development be available when the impacts of development occur. For transportation facilities, concurrency is defined in the GMA and the Washington Administrative Code (WAC) to mean that any needed transportation improvements or programs be in place at the time of development or that a financial commitment exists to complete the improvements or strategies within six years. Local governments have flexibility regarding how to set level of service standards and how to apply transportation concurrency within their plans, regulations, and permit systems.

As part of the requirement to develop a comprehensive plan, jurisdictions are required to establish level-of-service standards for arterials, transit service, and other facilities, such as water and sewer. Once a jurisdiction adopts a standard, it is used to determine whether the impacts of a proposed development can be accommodated with the existing transportation system. If a "development causes the level of service on a locally owned transportation facility to decline below the standards adopted in its transportation element", jurisdictions are required to prohibit development approval unless transportation improvements or strategies to accommodate the impacts of development are made ***concurrent*** with the development. Transportation is the only area of concurrency that specifies denial of development if the standards are not met within six years. The Growth Management Hearings Boards reiterated the role of a concurrency program, finding that "the concept of concurrency is not an end in of itself but a foundation for local governments to achieve the coordinated, consistent, sustainable growth called for by the Act" *(source: Puget Sound Regional Council, Assessing the Effectiveness of Concurrency, 2002).*

Concurrency provides a link between land use, transportation, and public investments. The following identifies key requirements for concurrency programs.

- Compliance with the GMA
- Local governments have flexibility in applying concurrency
- Measured with level of service standards as defined by the City's Comprehensive Plan
- Addresses system wide impacts
- Developments shall not be approved if development causes the level of service to decline below identified standards and the standards cannot be met within six years.

Development of the City of Edgewood's Transportation Impact Fee Program

The revised Transportation Impact Fee (TIF) program for the City of Edgewood is based on technical analyses and policy direction. Key elements of the program are presented in this section, including:

- What improvement projects and costs are included?
- What share of the TIF Costs are allocated to growth in Edgewood?
- What is the service area for the TIF Program?
- What are the service areas for the TIF program?
- What are the resulting impact fee rates and schedules?
- How are TIF rates determined for uses not specifically included in the rate schedule?
- How are the transportation impact fees collected and spent?
- Are any developments exempt from the fees?
- How will the impact fees be kept up to date?

What Improvement Projects and Costs are Included?

As noted above, the GMA specifies that Transportation Impact Fees shall only be used for system improvements that are reasonably related to new development. As defined by GMA (RCW 82.02.090), *"system improvements mean public facilities that are included in the capital facilities plan and are designed to provide service to service areas within the community at large, in contrast to project improvements."*

The initial task of 2016 TIF update was a review of the improvement projects included in the 2015 Transportation Element (TE), a number of which are projects that were also contained in the City's currently adopted TIF program. In addition, the evaluation included an assessment of potential additional projects for inclusion in the Transportation Element and TIF.

Review of 2015 Transportation Element Projects and Costs

The 2015 TE included four groups of projects and associated costs that contain TIF eligible projects:

- Roadway and Traffic Projects
- Meridian Parallel Road System
- Studies
- Non-Motorized Projects

Projects and costs included in each group were reviewed to determine whether to include a portion of the project costs in the updated 2016 TIF program. The review addressed existing and forecast traffic volumes and levels of service. The primary focus of the technical analysis was to determine if the improvement was needed to serve growth. The evaluation also assessed each improvement in resolving existing deficiencies - which cannot be covered by impact fees. These analyses were based on travel demand model analysis. In addition, project descriptions from the 2015 TE were used to determine TIF eligibility.

The following summarizes the review and results for the four project groups identified in the 2015 Transportation Element project list.

Roadway and Traffic Projects

Roadway and traffic projects provide intersection improvements such as signal installation and upgrades, upgrading pedestrian facilities to be compliant with Americans with Disabilities Act (ADA) requirements, construction of new intersection traffic control, safety projects, and other intersection and roadway improvements.

The City's 2015 TE project list identifies ten projects, nine of which are identified as being TIF eligible with a total project cost of $26.1 million in the roadway and traffic project group. New to the TIF program include 8th Street E Safety Improvements (R-1), 122nd Avenue E Safety Improvements (R-2), and Edgewood Drive Safety Improvements (R-4), which all improve shoulders and construct separated pedestrian walkways, along with other facility enhancements. The shoulder improvements combined with separated pedestrian facilities add to the overall mobility and capacity of the roadway.

Meridian Avenue Safety Improvements (R-3) constructs a 3-lane cross-section with sidewalks and bicycle facilities adding additional roadway capacity for turning vehicles and non-motorized users. Project R-9 constructs a roundabout at Meridian Avenue/36th Street E. The Chrisella Road E Safety Improvements (R-10) adds to the overall mobility and capacity of corridor by improving shoulders, sight distances, and intersections. Of the nine projects identified as being TIF eligible, 7 are identified as being partially eligible and 2 are fully eligible. The full list of projects can be found in Table 1 and Figure 2.

Meridian Parallel Road System

The TIF program includes a portion of the City's proposed plan to construct a parallel road network on both the east and west sides of Meridian Avenue. The parallel network and additional east-west connecting streets were identified to support local property access, neighborhood circulation, and provide capacity for north-south travel in lieu of additional widening of Meridian Avenue. These roadways will help serve the forecasted growth in the City which is planned for in the Town Center and the rest of the Meridian Avenue corridor.

The City's travel demand model provided the basis for assessing roadway operations for the Meridian Parallel Road System. The travel forecasts and resulting volume-to-capacity (v/c) ratios were used to identify which of the parallel roads system and connecting roads should be considered for inclusion in the TIF program. The segments of Meridian Avenue which had a forecast v/c ratio greater than 0.80 without construction of the parallel road network were identified as potential candidates for the TIF program. These projects are primarily located south of 24th Street. These segments of the parallel road system provide additional capacity for the Meridian Avenue corridor, as well as serving local property access and circulation.

Of the 25 projects in this group, 15 are identified as either fully TIF eligible or partially eligible.

Studies

The 2015 project list includes a project grouping for studies. The Meridian Avenue E Preliminary Design (S-1) project is identified as being fully TIF eligible. This project completes a corridor study and preliminary design of a 3-lane cross-section and supporting intersection treatments. The project is a component of project R-3 in the Roadway and Traffic Projects group. In addition, the Multimodal Network Implementation Plan (S-4) is identified as being partially TIF eligible. The project prepares a plan to complete an interconnected network of multimodal connections around the Meridian Avenue corridor, which involves preliminary design of several TIF eligible projects identified as part of the Meridian Parallel Road System.

Non-Motorized Projects

The City's 2015 TE project list includes 11 projects, with 3 identified as being partially TIF eligible. The projects have a total cost of $12.8 million. As described previously, only projects

that add travel capacity to facilitate future growth can be identified as TIF eligible. Projects in this group include roadway improvements such as separated pedestrian facilities to increase overall mobility for roadway users and bus turnouts which allow roadway users to experience less delay due to school bus and transit stops. Only a small fraction of the total projects costs are included in the TIF program.

Additional TIF Improvement Projects

As part of the 2016 TIF program update, evaluation of the Meridian Avenue corridor was conducted to identify additional projects that could improve the capacity and efficiency of the corridor. Once the projects were identified, they were each reviewed to confirm TIF eligibility. All but one of the identified projects were assumed to be TIF eligible as they each increase corridor capacity and mitigate future operational deficiencies caused by new growth. The Meridian Avenue Signal Interconnect (NP-1) and Meridian Avenue Signal Coordination (NP-2) installs signal interconnect technology to improve corridor travel flow. Project NP-5 calls for the use of permitted left-turns to reduce delay experienced by users making left-turns onto the corridor. NP-6 adds a right-turn lane at Meridian Avenue/Emerald Street intersection to reduce queuing on the southbound approach.

Summary of TIF Program Project Costs

Table 1 summarizes the improvements projects and costs included in the 2016 TIF program. The project locations are shown on Figure 2. A project identification number was assigned to support discussion of the TIF program. The project identifiers do not represent the City's priorities or project references used in the Capital Improvement Program.

As shown on Table 1, the total cost of projects included in the TIF program is about $39.6 million (2015 dollars). After applying the adjustments for existing deficiencies and capacity to serve external growth, the TIF related portion of the costs is reduced to $17.3 million. This represents approximately 44 percent of the total project costs included in the TIF analysis.

Table 1. Transportation Impact Fee Program Project Costs

Project ID	Project Name	Project Limits	Total Cost Estimate	Impact Fee Share Cost
R-1	8th Street E Safety Improvements (Multi-modal Loop)	114th Avenue E to 122nd Avenue E	$1,290,000	$258,000
R-2	122nd Avenue E Safety Improvements	8th Street E to 48th Street E	$1,305,200	$261,040
R-3	Meridian Avenue Safety Improvements	36th Street E to 24th Street E	$9,910,000	$3,964,000
R-4	Edgewood Drive Safety Improvements	48th Street E to Sumner Heights Drive	$1,668,050	$333,610
R-6	Meridian Avenue / 12th Street E	Intersection	$320,000	$320,000
R-7	Meridian Avenue / 20th Street E	Intersection	$320,000	$320,000
R-8	Meridian Avenue / 32nd Street E	Intersection	$320,000	$160,000
R-9	Meridian Avenue / 36th Street E	Intersection	$1,430,000	$715,000
R-10	Chrisella Rd E Safety Improvements	36th St E to City limits	$870,000	$174,000
NP-1	Meridian Avenue Signal Interconnect	Emerald St to 36th St	$680,000	$680,000
NP-2	Meridian Ave Signal Coordination	Emerald St to 36th St	$30,000	$30,000
NP-3	Intersection Improvements at Emerald Street	Emerald St & Meridian Ave	$220,000	$220,000
NP-5	Permitted left turn phasing	Emerald St to 36th St	$20,000	$10,000
NP-6	Add SB right turn pocket at Meridian Ave & Emerald St	Emerald St & Meridian Ave	$190,000	$190,000
MCE-5	104th Avenue E/ 13th Street E/ 103rd Avenue E	12th Street E to 16th Street E	$1,290,000	$1,290,000
MCE-6	16th Street E	Meridian to 104th Avenue E	$1,360,000	$680,000
MCE-11	24th Street E	Meridian to 104th Avenue E	$1,360,000	$408,000
MCE-12	104th Avenue E	24th Street E to 103rd Ct Avenue E	$940,000	$282,000
MCE-13	29th Street E	Meridian to 103rd Avenue Ct E	$740,000	$370,000
MCE-14	103rd Avenue E	29th Street E to 32nd Street E	$1,290,000	$645,000
MCE-15	32nd Street E	Meridian to 103rd Avenue E	$740,000	$370,000

Transportation Impact Fee Program Project Costs (continued)

MCE-16	103rd Avenue E	32nd Street E to 36th Street E	$1,640,000	$820,000
MCE-17	36th Street E	Meridian to 103rd Avenue E	$740,000	$222,000
MCW-1	16th Street E	101st Avenue E to Meridian	$1,080,000	$540,000
MCW-5	24th Street E	101st Avenue E to Meridian	$1,080,000	$324,000
MCW-6	101st Avenue E	24th Street E to 29th Street E	$2,310,000	$1,155,000
MCW-7	29th Street E	101st Avenue E to Meridian	$1,080,000	$540,000
MCW-8	101st Avenue E	29th Street E to 32nd Street E	$1,290,000	$645,000
MCW-9	32nd Street E	101st Avenue E to Meridian	$1,080,000	$540,000
S-1	Meridian Avenue E Preliminary Design	24th Street E to 36th Street E	$250,000	$250,000
S-4	Multimodal Network Implementation Plan	Meridian Avenue Corridor Area	$125,000	$62,500
N-2	Pedestrian Safety (Highest Priority) Low Cost Improvements	Various (8th St from 114th to Meridian); (32nd St from 110th to 122nd)	$328,905	$65,781
N-5	24th Street E Walkway Extension (Multi-modal Loop)	110th Avenue E to 122nd Avenue E	$1,180,000	$236,000
N-10	24th Street E Walkway	94th Avenue E to Meridian Avenue E	$1,150,000	$230,000
	TOTAL Project Costs (only projects in the TIF)		**$39,627,155**	**$17,310,931**

Figure 2. Transportation Impact Fee Program Projects

What Share of the TIF Costs Are Allocated to Growth in Edgewood

Increases in traffic in Edgewood will come from growth within the City as well as increased travel from outside of the City. Without specific Interlocal Agreements, the City can only apply its TIF to growth within its boundaries. The TIF share for growth in the City is based on the proportional share of the growth share of the forecast travel demands on the City roadways.

The travel demand model was adjusted to separate out the growth-related travel demands from the existing travel demands. The growth travel demands were then divided into City generated travel and non-City generated growth travel demands. Growth trips that had an origin or destination within the City were counted, as well as trips that occurred only within the city (internal trips). This resulted in 91 percent growth in trips over the 20-year horizon.

What is the Service Area for the TIF Program?

GMA requires an agency implementing impact fees to establish one or more service areas (RCW 82.02.060) for assessing the fees. In updating its impact fee program in 2012, the City evaluated various service area concepts. Based on that review, a single, citywide service area for its Transportation Impact Fee program has been maintained.

What are the Resulting Transportation Impact Fees and Schedule?

The City share of the impact fee program project costs were converted to a base cost per new PM peak hour trip. The base cost per new PM peak hour trip was then used to develop the TIF rate schedule for a wide range of land uses. The rate schedule takes into account the relative net new trip generation of the various land uses.

Base Transportation Impact Fee Rate

Based on the existing and forecast land uses used in developing the travel demand model, growth in the City will generate 3,922 additional PM peak hour trips ends (either origins or destinations). To calculate a base transportation impact fee rate, the City growth share of the TIF project costs for the citywide service area were divided by the increase in trip ends forecast within the City. As shown in Table 2, this results in a base TIF rate of $4,413 per new PM peak hour trip end for the citywide service area.

Table 2. Calculating the Citywide Base Transportation Impact Fee Rate

A. Growth Share of TIF Cost[1]	**$17,310,931**
B. Growth in Trip Ends[1]	3,922
C. Base TIF Rate for Service Area[2]	$4,413

1. Based on model analysis of growth in travel based on land use assumptions.
2. Values in line A divided by values in line B, rounded to nearest dollar.

Development of the TIF Rate Schedules

The base transportation impact fee rate per new PM peak hour trip end is converted to a schedule of fees by land use category. This makes it simpler for staff and applicants to calculate the TIF for a specific development project. *Trip Generation*, Institute of

Transportation Engineers (ITE), 9th Edition, 2012 provides data on the average PM peak hour trips generated for a wide range of land uses. The weekday PM peak hour trip rate is used because it is consistent with the modeling analysis of growth trips and was the basis for defining the improvement projects. The ITE rates are based on studies from around the United States using standardized sampling and reporting methods. The trip rates are defined based on units of development. Typically, trip rates for residential land uses are based on the number of dwelling units. Trip rates for employment land uses can be reported for several different variables, with the most typical being trips per 1,000 square feet of building area.

The base trip rates are adjusted to reflect the impacts of "new" trips, consistent with methodologies identified in *Trip Generation*.

Pass-by Trip Adjustment

The base PM peak hour trip rate reported by *Trip Generation* reflects the number of trips entering and exiting the site access driveways or roadways during the weekday afternoon time period. *Trip Generation* notes that for some retail and other commercial land uses, not all of the driveway trips are "new" to the road system, but are "pass-by" trips. Pass-by trips reflect traffic that would otherwise be traveling on the adjacent street system but makes an intermediate stop at the new development. A person making a trip between work and home but stops at a gas station along the route is an example of a pass-by trip. The inbound and outbound trips at the gas station would not be new trips to the system and should not be charged in the TIF. Therefore, the rate schedule applies an adjustment to account for the reduction of traffic impacts to account for pass-by trips.

Trip Generation provides guidance on adjustments for pass-by trips. In addition to using ITE data, data on pass-by trip rates applied in TIF programs by other agencies were reviewed in developing the proposed adjustment for Edgewood. The base trip generation rate for residential and many other land use categories are not affected by pass-by trips and therefore, the full base trip rate is applied in the rate schedule.

TIF Rate Schedules

A revised transportation impact fee schedule was prepared for the citywide service area for a wide range of typical land uses. The rate schedule was calculated as follows:

Transportation Impact Fee Rate per Unit = Base Cost per New PM Peak Hour Trip x Base Trip Generation Rate per Unit of Development x Pass-by Trip Adjustment Factor

Appendix A includes the resulting rate schedule. The base trip rate and adjustments for pass-by trips are incorporated in the rate schedules. The impact fee assessed for a specific development would simply be calculated by multiplying the number of units by the rate per unit for the corresponding district.

Total Transportation Impact Fee = Number of Units x Transportation Impact Fee per Unit

How are TIF Rates Determined for Uses Not Specifically Included in the Rate Schedule?

The impact fee rate schedule included in Appendix A includes impact fee rates for a wide range of typical land uses. There will, however, be development applications for land uses not included in the rate schedule. GMA requires that the TIF ordinance allow applicants to submit their own independent studies to reflect unique characteristics that may not be accurately reflected by the average trip rates reported in *Trip Generation*.

For applications where the land use category is not included in the rate schedule, the City Manager (or designee), would review the schedule and base the rate on the most comparable type of land use in the schedule. The City Manager could review definitions in *Trip Generation* or other available studies. The City Manager would consider the type of activity, size of development, and other information provided by the applicant in selecting the comparable land use for use in establishing the fee. Such additional information may include the hours of operations; number of employees, staff, or visitors; parking requirements; potential market area; and proximity to other land uses. The City Manager should document the rationale for selecting a comparable land use in order to provide background for the project file.

If the City Manager determines that none of the categories in the rate schedule provides a suitable comparable land use, the City Manager could then request the applicant provide an independent fee calculation. An applicant can also choose to submit their own independent fee study for their development if they believe that the characteristics of their project are not accurately reflected by the rate schedule for one or more land uses. The independent fee calculation would provide data and/or analyses on trip generation characteristics including trip rates, mode share, pass-by trips, or other similar types of data. After reviewing the independent calculation, the City Manager may accept the calculation and impose the fee based on the independent fee analysis. If the City Manager does not accept the independent fee calculation, the applicant can appeal the decision to the hearing examiner consistent with City code.

How are the Transportation Impact Fees Collected and Spent?

The City of Edgewood requires that transportation impact fees be paid prior to the issuance a building permit. If a building permit is not required, the fees would be payable at the time of issuance of an applicable construction permit. The required fees would be those in effect at that time. Under GMA, the City is required to maintain a separate account in its accounting processes for the collected impact fees. The City will use the account to track collection of the TIF and where the funds are spent. The City would encumber the fees as part of its annual budgeting process to assure the funds are properly spent. Collected fees must be encumbered or spent within 10 years of receipt, unless an extraordinary reason is identified in written findings by the City Council. (The requirement to encumber or spend the fees within 10 years was adopted by the Washington State Legislative as part of ESHB 1478 in April 2011 and was signed by the Governor in May 2011.)

The City may only spend the collected fees on improvement projects identified in the TIF program (Figure 2). The fees may be spent on planning, engineering design, acquisition of right-of-way (for those projects where right-of way was included in the TIF cost), or construction of any of the TIF improvement projects.

GMA requires that the City provide a credit against the TIF for applicants that are required to construct all or a portion of a TIF project or for dedication of land that was *included in the costs of the TIF project*. This eliminates the potential for double charging a development applicant for the same improvement. Since the costs of rights-of-way and frontage improvements for the parallel road system projects were not included in the TIF cost share, credits would not be required for those project elements.

Are any Developments Exempt from the Fees?

GMA allows jurisdictions to exempt low-income housing or other developments that serve broad public purposes. In addition to low-income housing, developments serving a broad

public purpose could include parks, schools, City facilities, fire stations, water or sewer district facilities, or other similar developments.

Fees that would otherwise be collected from exempt developments would be the responsibility of the City. These could be paid through property taxes, general funds, grants, or other applicable funding source but cannot be paid with other TIF fees. The total amount of the potential revenues generated by the program would be directly reduced by any exemptions.

The City of Edgewood has previously chosen to only exempt new developments that do not result in an increase in PM peak hour traffic. However, the City may choose to review this in the future.

How Will the Impact Fees be Kept Up to Date?

Many communities with adopted impact fee programs incorporate an annual cost escalation to help keep fees more current. The cost escalator is based on an index that reflects changes in improvement costs for the area. The City's TIF program and ordinance does not include a cost escalation factor. If the City decides to incorporate a cost escalation factor in the future, it could be based on the WSDOT Construction Cost Index (CCI) which reflects changes in the cost of transportation improvement projects.

The City also should plan to update the base TIF rates as new growth-related transportation improvement projects are defined as part of the update of its Comprehensive Plan. Significant changes in forecast residential or employment growth from those in the current Land Use Element and travel forecasting model also would result in a need to update the TIF program and base rate schedule. Significant annexations to the City also could trigger a need to update the base TIF rates. Changes in land use and growth-related transportation improvement projects would likely be identified as part of the future updates of the City's Comprehensive Plan.

Appendix A: TIF Schedule

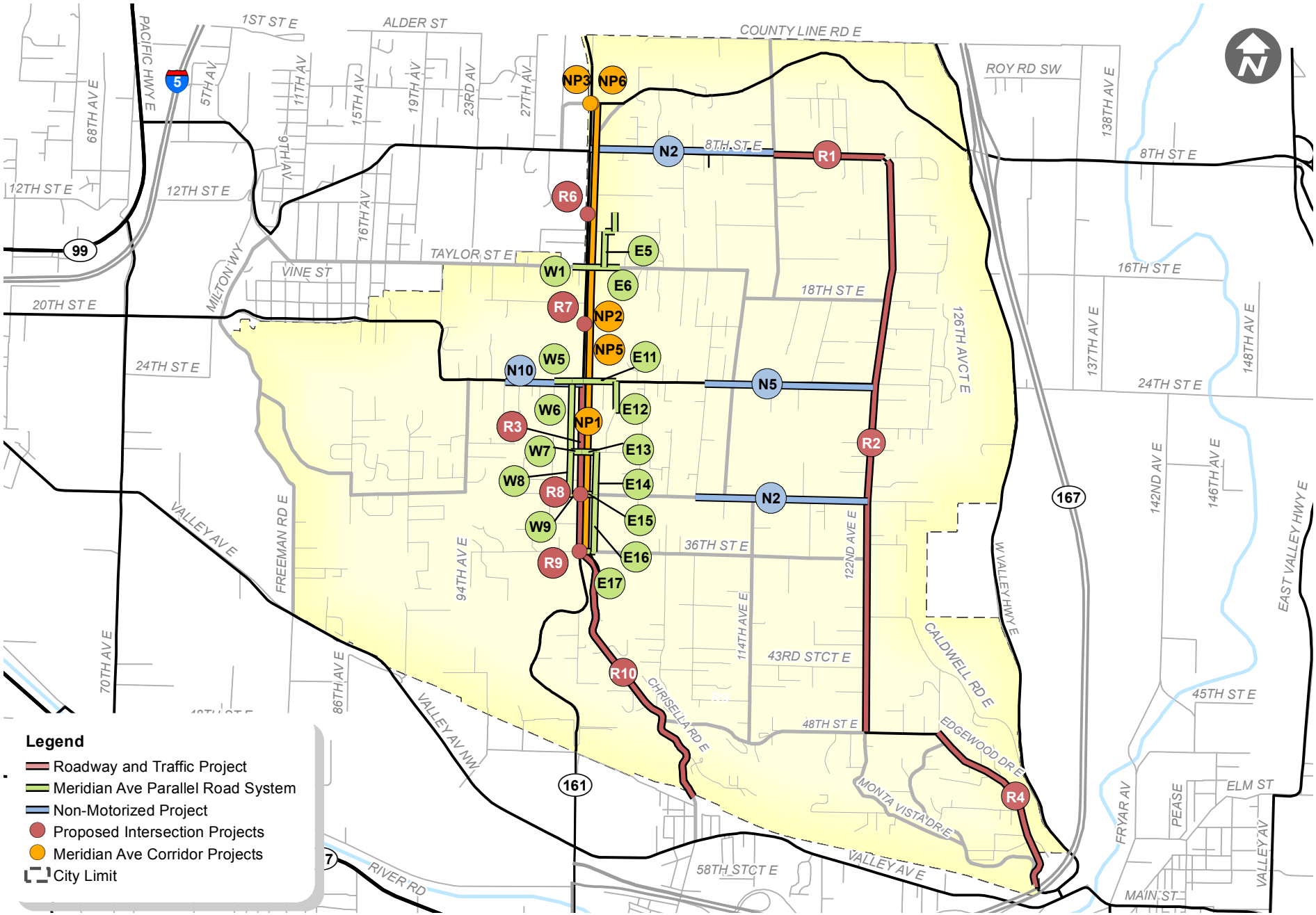
City of Edgewood - Transportation Long-term Project List (2015 to 2035)

Project Group	Project ID	Project Name	Project Limits	Project Description	Project Type	In 2017 CIP/TIP?	Total Cost Estimate	Cost Estimate Source	TIF Project (2012)	TIF % (2012)	TIF Eligibility	TIF Comment	TIF %	Proposed TIF Share	Remaining Costs [1]
ROADWAY AND TRAFFIC PROJECTS	R-1	8th Street E Safety Improvements (Multi-modal Loop)	114th Avenue E to 122nd Avenue E	Separated pedestrian walkway, illumination at 8th/114th intersection; shoulder improvements, crosswalks, a flashing beacon and reconstruction of the 8th/114th intersection.	Reconstruction; Non-motorized; Safety	No	$1,290,000	2015 Tran Element	No		Partial	Shoulder improvements combined with separated pedestrian facilities adds to overall mobility and capacity of roadways and intersections.	20%	$ 258,000	$ 1,032,000
	R-2	122nd Avenue E Safety Improvements	8th Street E to 48th Street E	Road overlay, shoulder improvements, school bus stop waiting areas, signage, and pavement markings.	Reconstruction; Non-motorized; Safety	No	$1,305,200	2015 CIP	No		Partial	Construction of bus pull-outs allows roadway traffic to flow with less impedence, adding roadway capaicty.	20%	$ 261,040	$ 1,044,160
	R-3	Meridian Avenue Safety Improvements	36th Street E to 24th Street E	Construct 3-lane cross-section with curb/gutter, sidewalks, storm drainage, and bicycle facilities.	Reconstruction; Non-motorized; Safety	No	$9,910,000	2015 Tran Element	No		Partial	Project adds to overall roadway capacity by including turn lane, intersection improvements, and non-motorized facilities.	40%	$ 3,964,000	$ 5,946,000
	R-4	Edgewood Drive Safety Improvements	48th Street E to Sumner Heights Drive	Roadway widening, curb, gutter, storm water system, and pedestrian walkway.	Reconstruction; Non-motorized	T-5 TIP-3	$1,668,050	2015 CIP	No		Partial	Pedestrian walkways and roadway widening contribute to overall increase in roadway capacity.	20%	$ 333,610	$ 1,334,440
	R-5	Railroad Frontage Road	86th Avenue E to Chrisella Road	Construct new roadway parallel to railroad tracks to eliminate need for several at-grade crossings.	New construction; Capacity	No	$8,715,700	2015 CIP	No		No	Project does not serve new growth. A good candidate for mitigation as part of any future development activity in the area.	0%	$ -	$ 8,715,700
	R-6	Meridian Avenue / 12th Street E	Intersection	Install signal and make ADA upgrades	Signal Systems; Capacity	No	$320,000	2012 TIF	Yes	100%	Full	Signal would be needed to resolve existing LOS F; assume widening of Meridian to five lanes covers existing deficiency; assign 100% to TIF. Signal and ADA upgrades address facilities accomodating future growth.	100%	$ 320,000	$ -
	R-7	Meridian Avenue / 20th Street E	Intersection	Install signal and make ADA upgrades	Signal Systems; Capacity	No	$320,000	2012 TIF	Yes	100%	Full	Signal would be needed to resolve existing LOS F; assume widening of Meridian to five lanes covers existing deficiency; assign 100% to TIF. Signal and ADA upgrades address facilities accomodating future growth.	100%	$ 320,000	$ -
	R-8	Meridian Avenue / 32nd Street E	Intersection	Install signal and make ADA upgrades	Signal Systems; Capacity	TIP-10	$320,000	2012 TIF	Yes	40%	Partial	Signal would be needed to resolve existing LOS F; no widening planned/funded for Meridian - allocate 50% for existing deficiency. Signal and ADA upgrades would assist in supporting future growth.	50%	$ 160,000	$ 160,000
	R-9	Meridian Avenue / 36th Street E	Intersection	Construct roundabout	Signal Systems; Capacity	TIP-8	$1,430,000	2015 Tran Element	Yes		Partial	Roundabouts decrease delay experienced by roadway users, accomodating growth in future traffic. Costs included in the TIF assume improvements could inlcude a signal. The additional costs for the roundabout are included outside the TIF.	50%	$ 715,000	$ 715,000
	R-10	Chrisella Rd E Safety Improvements	36th St E to City limits	Improve shoulders, pavement markings, signage, lighting, and sight distance; improve intersection with 48th Ave E and consider installation of traffic calming measures.	Reconstruction; Non-motorized; Safety	T-4 TIP-6	$870,000	2015 Tran Element	No		Partial	Shoulder improvements combined with sight distance and intersection improvements adds to overall mobility and capacity of corridor.	20%	$ 174,000	$ 696,000
	TOTAL Roadway and Traffic Projects						**$26,148,950**							$ 6,505,650	$ 19,643,300
MERIDIAN AVENEUE CORRIDOR PROJECTS	NP-1	Meridian Avenue Signal Interconnect	Emerald St to 36th St	Install signal interconnect along Meridian Avenue so signals can be coordinated, or tap into existing fiber if possible	Signal Systems	TIP-5	$680,000	Transpo 2016	No		Full	Signal interconnect and coordination addresses roadway efficiency and increases capacity.	100%	$ 680,000	$ -
	NP-2	Meridian Ave Signal Coordination	Emerald St to 36th St	Coordinate all signals along Meridian Avenue to improve corridor travel flow	Signal Systems	No	$30,000	Transpo 2016	No		Full	Signal interconnect and coordination addresses roadway efficiency and increases capacity.	100%	$ 30,000	$ -
	NP-3	Intersection Improvements at Emerald Street	Emerald St & Meridian Ave	Add mast arms & detection at minor approach on Emerald St & Merdian Ave to allow non-split phasing	Signal Systems; Capacity	No	$220,000	Transpo 2016	No		Full	Signals addresses roadway efficiency and increases capacity.	100%	$ 220,000	$ -
	NP-4	Mid-block Pedestrian Crossing Improvements	Emerald St to 36th St	Install pedestrian signals at two locations along Meridian Ave to allow pedestrians to safely cross E/W	Non-motorized	No	$220,000	Transpo 2016	No		No	Does not improve capacity.	0%	$ -	$ 220,000
	NP-5	Permitted left turn phasing	Emerald St to 36th St	Use permitted left turn phasing on minor approaches to allow more green time to be dedicated to major movements	Signal Systems	No	$20,000	Transpo 2016	No		Partial	Signals improve roadway efficiency and increases capacity, however a good portion of the benefits are outside peak hours.	50%	$ 10,000	$ 10,000
	NP-6	Add SB right turn pocket at Meridian Ave & Emerald St	Emerald St & Meridian Ave	Add a SB right turn pocket to dedicate to SBT lanes of traffic to reduce queuing at SB approach.	Intersection; Capacity	No	$190,000	Transpo 2016	No		Full	Dedicated turning lanes add to roadway capacity.	100%	$ 190,000	$ -
	TOTAL Meridian Avenue Corridor Projects						**$1,360,000**							$ 1,130,000	$ 230,000
MERIDIAN PARALLEL ROAD SYSTEM	MCE-1	8th Street E	Meridian to 105th Avenue	Build or improve corridor to collector arterial standard	Circulation / access	No	TBD		No		No	No deficiency with Meridian widening from 8th to 24th	0%	$ -	$ -
	MCE-2	105th Avenue E	8th Street E to 11th Street E	Build or improve corridor to collector arterial standard	Circulation / access	No	TBD		No		No	No deficiency with Meridian widening from 8th to 24th	0%	$ -	$ -
	MCE-3	11th Street E/ 104th Avenue E	105th Avenue E to 12th Street E	Build or improve corridor to collector arterial standard	Circulation / access	No	TBD		No		No	No deficiency with Meridian widening from 8th to 24th	0%	$ -	$ -
	MCE-4	12th Street E	Meridian to 104th Avenue	Build or improve corridor to collector arterial standard	Circulation / access	No	TBD		No		No	Section complete	0%	$ -	$ -
	MCE-5	104th Avenue E/ 13th Street E/ 103rd Avenue E	12th Street E to 16th Street E	Build or improve corridor to collector arterial standard	Circulation / access	No	$1,290,000	TIF - exclusive of ROW and frontage	Yes	100%	Full	Deficiency in accessing Meridian caused by future growth	100%	$ 1,290,000	$ -
	MCE-6	16th Street E	Meridian to 104th Avenue E	Build or improve corridor to collector arterial standard	Circulation / access	No	$1,360,000	TIF - exclusive of ROW and frontage	Yes	50%	Partial	No deficiency south of 16th, therefore 50% eligible	50%	$ 680,000	$ 680,000
	MCE-7	104th Avenue E	16th Street E to 20th Street E	Build or improve corridor to collector arterial standard	Circulation / access	No	$1,760,000	2015 Tran Element - exclusive of ROW and frontage	No		No	No deficiency with Meridian widening from 8th to 24th	0%	$ -	$ 1,760,000
	MCE-8	20th Street E	Meridian to 104th Avenue E	Build or improve corridor to collector arterial standard	Circulation / access	No	TBD		No		No	No deficiency with Meridian widening from 8th to 24th	0%	$ -	$ -
	MCE-9	104th Avenue E	20th Street E to 24th Street E	Build or improve corridor to collector arterial standard	Circulation / access	No	TBD		No		No	No deficiency with Meridian widening from 8th to 24th	0%	$ -	$ -
	MCE-10	22nd Street E	Meridian to 104th Avenue E	Build or improve corridor to collector arterial standard	Circulation / access	No	TBD		No		No	No deficiency with Meridian widening from 8th to 24th	0%	$ -	$ -
	MCE-11	24th Street E	Meridian to 104th Avenue E	Build or improve corridor to collector arterial standard	Circulation / access	No	$1,360,000	TIF - exclusive of ROW and frontage	Yes	31%	Partial	Partial existing deficiency, deficiency south of 24th	30%	$ 408,000	$ 952,000
	MCE-12	104th Avenue E	24th Street E to 103rd Ct Avenue E	Build or improve corridor to collector arterial standard	Circulation / access	No	$940,000	TIF - exclusive of ROW and frontage	Yes	61%	Partial	Partial existing deficiency, north and south of 24th	30%	$ 282,000	$ 658,000
	MCE-13	29th Street E	Meridian to 103rd Avenue Ct E	Build or improve corridor to collector arterial standard	Circulation / access	No	$740,000	TIF - exclusive of ROW and frontage	Yes	54%	Partial	Partial funding to account for existing deficiency on this segment of Meridian	50%	$ 370,000	$ 370,000
	MCE-14	103rd Avenue E	29th Street E to 32nd Street E	Build or improve corridor to collector arterial standard	Circulation / access	No	$1,290,000	TIF - exclusive of ROW and frontage	Yes	47%	Partial	Partial funding to account for existing deficiency on this segment of Meridian	50%	$ 645,000	$ 645,000
	MCE-15	32nd Street E	Meridian to 103rd Avenue E	Build or improve corridor to collector arterial standard	Circulation / access	No	$740,000	TIF - exclusive of ROW and frontage	Yes	40%	Partial	Partial funding to account for existing deficiency on this segment of Meridian	50%	$ 370,000	$ 370,000
	MCE-16	103rd Avenue E	32nd Street E to 36th Street E	Build or improve corridor to collector arterial standard	Circulation / access	No	$1,640,000	TIF - exclusive of ROW and frontage	Yes	33%	Partial	Partial funding to account for existing deficiency on this segment of Meridian	50%	$ 820,000	$ 820,000
	MCE-17	36th Street E	Meridian to 103rd Avenue E	Build or improve corridor to collector arterial standard	Circulation / access	No	$740,000	TIF - exclusive of ROW and frontage	Yes	16%	Partial	Partial funding to account for existing deficiency on this segment of Meridian, and along 36th	30%	$ 222,000	$ 518,000
	MCW-1	16th Street E	101st Avenue E to Meridian	Build or improve corridor to collector arterial standard	Circulation / access	No	$1,080,000	TIF - exclusive of ROW and frontage	Yes	50%	Partial	No deficiency south of 16th, therefore 50% eligible	50%	$ 540,000	$ 540,000

City of Edgewood - Transportation Long-term Project List (2015 to 2035)

Project Group	Project ID	Project Name	Project Limits	Project Description	Project Type	In 2017 CIP/TIP?	Total Cost Estimate	Cost Estimate Source	TIF Project (2012)	TIF % (2012)	TIF Eligibility	TIF Comment	TIF %	Proposed TIF Share	Remaining Costs [1]
	MCW-2	101st Avenue E	16th Street E to 20th Street E	Build or improve corridor to collector arterial standard	Circulation / access	No	TBD		No		No	No deficiency with Meridian widening from 8th to 24th	0%	$ -	$ -
	MCW-3	20th Street E	101st Avenue E to Meridian	Build or improve corridor to collector arterial standard	Circulation / access	No	TBD		No		No	No deficiency with Meridian widening from 8th to 24th	0%	$ -	$ -
	MCW-4	20th Street E/ 100th Avenue E/ 24th Street E	20th Street E to 24th Street E	Build or improve corridor to collector arterial standard	Circulation / access	No	TBD		No		No	No deficiency with Meridian widening from 8th to 24th	0%	$ -	$ -
	MCW-5	24th Street E	101st Avenue E to Meridian	Build or improve corridor to collector arterial standard	Circulation / access	No	$1,080,000	TIF - exclusive of ROW and frontage	Yes	31%	Partial	Partial existing deficiency, deficiency south of 24th	30%	$ 324,000	$ 756,000
	MCW-6	101st Avenue E	24th Street E to 29th Street E	Build or improve corridor to collector arterial standard	Circulation / access	No	$2,310,000	TIF - exclusive of ROW and frontage	Yes	61%	Partial	Partial funding to account for existing deficiency on this segment of Meridian	50%	$ 1,155,000	$ 1,155,000
	MCW-7	29th Street E	101st Avenue E to Meridian	Build or improve corridor to collector arterial standard	Circulation / access	No	$1,080,000	TIF - exclusive of ROW and frontage	Yes	54%	Partial	Partial funding to account for existing deficiency on this segment of Meridian	50%	$ 540,000	$ 540,000
	MCW-8	101st Avenue E	29th Street E to 32nd Street E	Build or improve corridor to collector arterial standard	Circulation / access	No	$1,290,000	TIF - exclusive of ROW and frontage	Yes	47%	Partial	Partial funding to account for existing deficiency on this segment of Meridian	50%	$ 645,000	$ 645,000
	MCW-9	32nd Street E	101st Avenue E to Meridian	Build or improve corridor to collector arterial standard	Circulation / access	No	$1,080,000	TIF - exclusive of ROW and frontage	Yes	40%	Partial	Partial funding to account for existing deficiency on this segment of Meridian	50%	$ 540,000	$ 540,000
TOTAL Meridian Parallel Road System Projects							**$19,780,000**							$ 8,831,000	$ 10,949,000
ANNUAL PROGRAMS	A-1	Transportation Engineering/Planning Support	Citywide	Annual program to maintain/update pavement management system, road standards, and traffic model.	Program	T-6	$15,000	2015 Tran Element	No		No	Programs are not TIF eligible	0%	$ -	$ 15,000
	A-2	Chip Seal Program	Citywide	Paving and sealing Asphalt overlays and surface chip seals.	Program	T-1	$300,000	2015 CIP	No		No	Programs are not TIF eligible	0%	$ -	$ 300,000
	A-3	Pedestrian Safety Program	Citywide	Perform safety assessments and install miscellaneous signage, crosswalks, lighting and pavement marking improvements.	Program	T-2	$20,000	2015 Tran Element	No		No	Programs are not TIF eligible	0%	$ -	$ 20,000
TOTAL Annual Programs							**$335,000**							$ -	$ 335,000
STUDIES	S-1	Meridian Avenue E Preliminary Design	24th Street E to 36th Street E	Complete corridor study and preliminary design of 3-lane cross-section and supporting intersection treatments.	Study	TIP-9	$250,000	2017-2022 TIP	No		Full	Design of a roadway capacity project directly supports supporting future growth	100%	$ 250,000	$ -
	S-2	36th Street E Walkway Extension Feasibility Study	Meridian Avenue to 110th Avenue E	Conduct a study to determine project scope and costs due to surface water and environmental challenges.	Study	No	$25,000	2015 CIP	No		No	Feasibility study not TIF eligible as it does not directly support future growth	0%	$ -	$ 25,000
	S-3	Interurban Trail Phase III Connection Feasibility Study	114th Avenue E to West Valley Hwy	Topographic survey to enable design of the easiest most affordable portion of corridor, tunnel design, and geotech.	Study	T-3 TIP-7	$75,000	2017-2022 TIP	No		No	Feasibility study not TIF eligible as it does not directly support future growth, project is part of Parks plan	0%	$ -	$ 75,000
	S-4	Multimodal Network Implementation Plan	Meridian Avenue Corridor Area	Prepare an implementation plan to complete an interconnected network of multimodal connections, including pathways, in and around the Meridian Avenue corridor. The plan will prepare the preliminary groundwork for the Meridian Corridor projects, walkways, and trails identified in the Transportation Element, and include the preparation of updated design standards and identification of right-of-way acquisition needs. The goal of the plan will be to reduce the reliance on the automobile, improve accessibility to transit, and better connect people to businesses, services, housing, and recreation all within biking, running, and walking distances.			$125,000	NA	No		Partial	Addresses adding capacity via multimodal facilities	50%	$ 62,500	$ 62,500
TOTAL Studies							**$475,000**							$ 312,500	$ 162,500
NON-MOTORIZED PROJECTS	N-1	Interurban Trail Phase III	114th Avenue E to West Valley Hwy	Construct multi-use pathway.	Non-motorized	TIP-4	$6,770,000	2015 Parks CIP	No		No	Project is on Parks plan - not TIF eligible	0%	$ -	$ 6,770,000
	N-2	Pedestrian Safety (Highest Priority) Low Cost Improvements	Various (8th St from 114th to Meridian); (32nd St from 110th to 122nd)	Pedestrian landing pads for school bus stops, traffic signs, bus shelters, flashing beacons, crosswalks, pavement markings, and bus turnouts.	Non-motorized; Safety	No	$328,905	2015 CIP	No		Partial	Bus turnouts provide additional roadway capacity	20%	$ 65,781	$ 263,124
	N-3	Pedestrian Safety (High Priority) Low Cost Improvements	Various (24th St, 114th Ave, 110th Ave, 18th St); near several elementary school and junior high	Pedestrian landing pads for school bus stops, traffic signs, bus shelters, pavement markings, and on-road walkways.	Non-motorized; Safety	No	$95,200	2015 CIP	No		No	Project does not directly include roadway or shoulder imporvements, or address additional capacity to serve future growth	0%	$ -	$ 95,200
	N-4	8th Street E Walkway Extension (Multi-modal Loop)	Meridian Avenue to 110th Avenue E	Separated pedestrian walkway.	Non-motorized; Safety	No	$740,000	2015 Tran Element	No		No	Project does not directly include roadway or shoulder imporvements, or address additional capacity to serve future growth	0%	$ -	$ 740,000
	N-5	24th Street E Walkway Extension (Multi-modal Loop)	110th Avenue E to 122nd Avenue E	Separated pedestrian walkway and shoulder improvements.	Non-motorized; Safety	No	$1,180,000	2015 Tran Element	No		Partial	Shoulder improvements combined with separated pedestrian facilities add to overal mobility and capacity of	20%	$ 236,000	$ 944,000
	N-6	114th Avenue E Walkway	8th Street E to 18th Street E	Separated pedestrian walkway.	Non-motorized; Safety	No	$730,000	2015 Tran Element	No		No	Project adds to overall roadway capacity by adding dedicated pedestrian facilities.	0%	$ -	$ 730,000
	N-7	110th Avenue E; 20th Street E; 112th Avenue E; 18th Avenue E Walkway	24th Street E to 114th Avenue E	Separated pedestrian walkway.	Non-motorized; Safety	No	$490,000	2015 Tran Element	No		No	Project adds to overall roadway capacity by adding dedicated pedestrian facilities.	0%	$ -	$ 490,000
	N-8	32nd Street E Walkway	110th Avenue E to 114th Avenue E	Separated pedestrian walkway.	Non-motorized; Safety	No	$150,000	2015 Tran Element	No		No	Project adds to overall roadway capacity by adding dedicated pedestrian facilities.	0%	$ -	$ 150,000
	N-9	36th Street E Walkway Extension	Meridian Avenue E to 110th Avenue E	Extension of existing walkway.	Non-motorized; Safety	No	$370,000	2015 Tran Element	No		No	Project adds to overall roadway capacity by adding dedicated pedestrian facilities.	0%	$ -	$ 370,000
	N-10	24th Street E Walkway	94th Avenue E to Meridian Avenue E	Extension of existing walkway; shoulder improvements, planted buffer where feasible, signage, and pavement markings	Non-motorized; Safety	No	$1,150,000	2015 Tran Element	No		Partial	Shoulder improvements combined with separated pedestrian facilities add to overal mobility and capacity of roadway and intersections	20%	$ 230,000	$ 920,000
	N-11	122nd Avenue E Walkway	8th Street E to 24th Street E	Separated pedestrian walkway.	Non-motorized; Safety	No	$810,000	2015 Tran Element	No		No	Project adds to overall roadway capacity by adding dedicated pedestrian facilities.	0%	$ -	$ 810,000
TOTAL Non-motorized Projects							**$12,814,105**							$ 531,781	$ 12,282,324
							Total							TIF	Total

[1] Remaining Costs includes the portion of the Total Cost Estimate not covered by Proposed TIF Share, and does not include costs potentially covered by grant, developer, or other sources.



Transportation Impact Fee Program Projects

FIGURE **2**

City of Edgewood Traffic Impact Fee Update

Q:\Projects\15\15395.00 - City of Edgewood 2016 On-Call\GIS\MXD\TIF Project Map v2.mxd

CITY OF EDGEWOOD
STAFF REPORT
STUDY SESSION AGENDA ITEM: School Impact Fees

Date: February 7, 2017

Title: School Impact Fee Recommendations

Attachments: DRAFT School Impact Fee Ordinance, Study Session Staff Report dated January 17, 2017, Pierce County Ordinance No. 2016-79

Submitted By: Kevin Stender, Community Development Director
Aaron Nix, ACA – Municipal Services

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: As previously discussed at the January 17, 2017 Study Session, our three School Districts submitted their respective Capital Facilities plans to the City. To recap that discussion, Staff presented the School District's impact fee request and provided a comparison to surrounding school districts in the general vicinity of Edgewood. After much discussion the Council gave direction to make adjustments to the School Impact Fee consistent with the staff direction and bring the item forward in Ordinance format.

Recommendation:

1. Keep the single family residential fee at the current MFO rate of **$3,500 per unit**, which is consistent with surrounding jurisdictions set fee and the County's CPI determination.

2. Raise the multifamily residential MFO to **$2,000 per unit**, which is consistent with the request of the various jurisdictions from their Capital Facilities Plans.

Fiscal Impact: This fee is not collected by the City of Edgewood but applicants are required to pay this fee directly to the School Districts and provide proof of payment at the time of permit issuance or if the fee is deferred, in accordance with the new regulations on impact fee deferral. The only other impact is associated with setting the rate beyond other jurisdictions which could possibly impact the interest in developing within the City of Edgewood. There are plans underway in Pierce County to re-evaluate the School Impact Fee process through the formation of a working group to help make recommendations on school impact fees in future. This process is outlined in Pierce County Ordinance No. 2016-79.

ORDINANCE NO. 17-XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, AMENDING CHAPTER 4.10 EMC SCHOOL IMPACT FEES; AMENDING SECTION 4.10.110 – IMPOSITION OF IMPACT FEES; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, pursuant to Chapter 82.02 RCW, the City of Edgewood has adopted a school impact fee program and has codified regulations governing the calculation, assessment, collection, refund and administration of such fees at Chapter 4.10 EMC; and

WHEREAS, Section 4.10.070, EMC requires that the City of Edgewood Council review each school district's updates to their respective Capital Facilities Plans (CFPs) in conjunction with the annual Comprehensive Plan updates; and

WHEREAS, the Sumner, Fife and Puyallup School Districts' annual CFPs respectively provide an accounting of the recommended maximum School Impact Fee that should be assessed for each District for new residential development; and

WHEREAS, the City has adopted the Sumner, Fife and Puyallup School Districts' most current year's Capital Facilities Plans by reference; and

WHEREAS, the City Council has previously set the maximum allowable fee collected for single family units (SFU) at $3,500 per unit and multi-family units (MFUs) at $1,120 per unit; and

WHEREAS, the City desires to amend the existing fee schedule and increase the multi-family school impact fee rate to a maximum of $2,000 per MFU and maintain the existing rate of $3,500 per single family unit; and

WHEREAS, the Fife and Sumner School Districts' adopted fee calculations include a recommended impact fee collection that is below the maximum amount allowed by the City of Edgewood; and

WHEREAS, the City Council reviewed the recommendations within the Staff Memorandum at the January 17, 2017; reviewed the DRAFT Ordinance at the February 7, 2016 Study Session, and requested staff to forward an ordinance incorporating the changes as recommended; and

WHEREAS, the City desires to amend Chapter 4.10 EMC to reflect these annual changes and confirm the schedule of School Impact Fees imposed under said chapter;

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

Section 1. Findings. The above recitals, together with the content of Agenda Bill No. 17-XXXX are hereby adopted as legislative findings in support of this ordinance.

Section 2. Amendment of EMC 4.10.110. Section 4.10.110 of the Edgewood Municipal Code is hereby amended to provide in its entirety as follows:

4.10.110 Imposition of impact fees

A. Impact fees shall be imposed upon development activity in the city as follows:

SCHOOL DISTRICT	PER SINGLE-FAMILY DWELLING UNIT		PER MULTI-FAMILY DWELLING UNIT	
	School District Need Fee Calculation for 2016-2017	2016-2017 Impact Fee (Maximum Fee Obligation Allowed by Edgewood)	School District Need Fee Calculation for 2016-2017	2016-2017 Impact Fee (Maximum Fee Obligation Allowed by Edgewood)
Fife	$6,670	**$3,500.00**	$1772.00	**$1,772.00**
Puyallup	$8,918.87	**$3,500.00**	$2,202.48	**$2,000.00**
Sumner	$11,851.30	**$3,500.00**	$1,946.16	**$1,946.16**

1. Fees are established based on the annual calculation of impact fee need as documented in each school district's adopted Capital Facilities Plan annually.
2. The Maximum school impact fee authorized by the City of Edgewood is $3,500 per single family unit, and $2,000 per multi-family unit.
3. The Impact Fee adopted represents the fee calculations as presented by the Fife, Puyallup and Sumner School Districts in their adopted Capital Facilities Plans updated annually. Where recommended fees exceed the maximum amount authorized for collection by the City of Edgewood they are shown at the maximum amount allowed.

B. At the time of application for development activity, an applicant will be notified of the requirement to pay school impact fees to each district based on the fee schedule adopted by the city as a part of the impact fee program. Upon receipt of the impact fee payments, each district shall issue a certificate or identifying receipt to the applicant indicating that the school impact fee has been paid. Prior to approving or permitting any development activities subject to the impact fees adopted pursuant to this chapter, the city shall require that the applicant provide to the city the original of the certificate or receipt issued by the school district. Each

school district shall develop standardized forms for this purpose, showing that impact fees have been paid to the district, and that the city may proceed to issue the permit or grant the necessary approval. Impact fees may be paid to the districts under protest pursuant to the procedures set forth in EMC 4.10.120(I).

C. The city shall not issue a required building permit for any development subject to the imposition of impact fees under this chapter until the impact fees set forth in the impact fee schedule have been paid or payment has been properly deferred in accordance with Chapter 4.05 EMC. (Ord. 16-475 § 3; Ord. 15-458 § 2; Ord. 13-403 § 3; Ord. 07-280 § 2; Ord. 06-264 § 2; Ord. 04-231 § 2; Ord. 02-187 § 12).

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 4. Effective Date. A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

Presented to Council for first reading and adoption on February XX, 2017

ADOPTED BY THE CITY COUNCIL ON February XX, 2017

_____
Daryl Eidinger, Mayor

ATTEST/AUTHENTICATED:

_____
City Clerk, Rachel Pitzel

APPROVED AS TO FORM:

_____
Carol Morris, City Attorney

Date of Publication: February XX, 2017
Effective Date: February XX, 2017

CITY OF EDGEWOOD
STAFF REPORT
STUDY SESSION AGENDA ITEM: School Impact Fees

Date: January 17, 2017

Title: School Impact Fee Recommendations

Attachments: Puyallup, Sumner and Fife's 2016-2021 Capital Facilities Plans. Edgewood Code Section 4.10. Pierce County Ordinance No. 2016-79.

Submitted By: Kevin Stender, Community Development Director
Aaron Nix, ACA – Municipal Services

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: The three school districts within the City of Edgewood have submitted their respective Capital Facilities plans to the City. These plans primarily show future capital projects (construction) within the Districts. In past discussion with the school district's at a study session each district presented their respective Capital Facilities plan to the City Council. Each district shared their upcoming work plans and how that relates to their financial need to determine a proposed impact fee. Below is a breakdown of the current and proposed fees for single family and multifamily development:

SCHOOL DISTRICT	PER SINGLE-FAMILY DWELLING UNIT		PER MULTIFAMILY DWELLING UNIT	
	School District Need Fee Calculation for 2016-2017	2016-2017 Impact Fee (Maximum Fee Obligation Allowed by Edgewood)	School District Need Fee Calculation for 2016-2017	2016-2017 Impact Fee (Maximum Fee Obligation Allowed by Edgewood)
Fife Fife	$3,216.00 (current) **$6,670** (proposed) Approx. 48% Increase	$3,216.00 (current) $ .00(proposed)	$6,875.00 (current) **$1,772.00** (proposed) Approx. 75% Decrease	$1,755.00 (current) $ .00(proposed)
Puyallup	$8,144.16	$3,500.00(current)	$2,202.48	$1,755.00 (current)

01/17/17 Study Session (For Reference Only)

SCHOOL DISTRICT	PER SINGLE-FAMILY DWELLING UNIT		PER MULTIFAMILY DWELLING UNIT	
	School District Need Fee Calculation for 2016-2017	2016-2017 Impact Fee (Maximum Fee Obligation Allowed by Edgewood)	School District Need Fee Calculation for 2016-2017	2016-2017 Impact Fee (Maximum Fee Obligation Allowed by Edgewood)
	(current) **$8,918.87** (proposed) Approx. 9% increase	$ .00(proposed)	(current) **$2,010.57** (proposed) Approx. 2% decrease	$ .00 (proposed)
Sumner	$12,749.74 (current) **$11,851.30** (proposed) Approx. 6.5% decrease	$3,500.00(current) $ .00(proposed)	$4,301.51 (current) **$1,946.16** (proposed) Approx. 56% decrease	$1,755.00(current) $ .00(proposed)

As you can see from the above table (**bolded text**) the school districts are seeking both increases and reductions to the proposed collected fee. In all cases the desired fee from the school districts is considerably more than the City of Edgewood currently collects. Some are seeking considerably more and some are seeking considerably less but in all cases the requested fee is far less than the fee that the City has established of no more than $3,500 for Single Family and $1755 for Multifamily.

As part of the preparation for this discussion we gathered information from the City of Puyallup, City of Sumner, City of Fife, City of Milton and Pierce County in regard to what they each are charging for impact fees in 2016-2017. A breakdown of each jurisdictions fee(s) is found in the table below.

Jurisdiction	PER SINGLE-FAMILY DWELLING UNIT	PER MULTIFAMILY DWELLING UNIT
	2016-2017	2016-2017
Fife	**PSD=$3,588** **FSD=$2,640**	**PSD=$2,839** **FSD =$5,664**
Puyallup	**$3,353**	**$3,353**
Pierce County	**PSD =$3,400** **FSD =$3,400** **SSD =$3,400**	**PSD=$1,795** **FSD=$1,772** **SSD=$1,795**

01/17/17 Study Session (For Reference Only)

Jurisdiction	PER SINGLE-FAMILY DWELLING UNIT	PER MULTIFAMILY DWELLING UNIT
	2016-2017	2016-2017
Sumner	SSD=$3,330 Deiringer SD=$3,215	SSD=$1,755 Deiringer SD=$830
Milton	$3,216	$1,755

In all cases accept the City of Fife, the school districts are charging less for new single family units than Edgewood. Fife, Puyallup and Pierce County are charging more for multifamily units.

Traditionally, Edgewood has taken recommendations from Pierce County to help set our School Impact Fee based on the ever-changing Consumer Price Index (CPI). The Maximum Fee Obligation was originally set by the County with the adoption of Ordinance 2004-94s in the year 2004 at around $2675 per single family unit and $1,410 per multi family unit. In 2006 the CPI for the Seattle-Tacoma-Bremerton area was 202.25. In 2016 CPI was found to have increased 27.02% to 256.91. The County's fee has accordingly increased over the years as has Edgewood's.

Recommendation:

1. Keep the single family residential fee at the current MFO rate of **$3,500 per unit**, which is consistent with surrounding jurisdictions set fee and the County's CPI determination.

2. Raise the multifamily residential MFO to **$2,000 per unit**, which is consistent with the request of the various jurisdictions from their Capital Facilities Plans.

Fiscal Impact: This fee is not collected by the City of Edgewood but applicants are required to pay this fee directly to the school districts and provide proof of payment at the time of permit issuance or if the fee is deferred, in accordance with the new regulations on impact fee deferral. The only other impact is associated with setting the rate beyond other jurisdictions which could possibly impact the interest in developing within the City of Edgewood. There are plans underway in Pierce County to re-evaluate the School Impact Fee process through the formation of a working group to help make recommendations on school impact fees in future. This process is outlined in Pierce County Ordinance No. 2016-79.

02/7/17 Study Session (For Reference Only)

Sponsored by: Councilmembers Derek Young
Requested by: Pierce County Council

ORDINANCE NO. 2016-79

An Ordinance of the Pierce County Council Amending Section 4A.30.030 of the Pierce County Code (PCC), "School Impact Fee Schedule," to Adjust School Impact Fees for 2017 Based Upon Changes in the Consumer Price Index; Creating a Working Group to Review the School Impact Fee Methodology Set Forth in Title 4A PCC; Appointing Members; Requesting that the Working Group Report Back to the Council with its Findings and Recommendations by a Date Certain; and Setting an Effective Date.

Whereas, school impact fees in Pierce County are calculated according to the formulas in Section 4A.30.020 of the Pierce County Code (PCC), then the fee is "capped" by a "Maximum Fee Obligation" (MFO) which increases annually according to the Consumer Price Index for the Seattle/Tacoma/Bremerton Standard Metropolitan Statistical Area (PCC 4A.30.020 D.); and

Whereas, the annual adjustment must be adopted by Ordinance following the adoption of the Capital Facilities Plan and any review of impact fees; and

Whereas, it has been the practice of the Pierce County Council (Council) to only adjust impact fees in increments of five dollars, rounding up to the nearest five dollar increment; and

Whereas, the Council temporarily suspended inflationary adjustments to park and school impact fees for the years 2012 and 2013 for economic reasons through the adoption of Ordinance Nos. 2011-81s and 2012-71; and

Whereas, school impact fees are collected for residential development in the unincorporated County for school districts that meet the requirements in Title 4A PCC; and

Whereas, the Consumer Price Index for all urban customers for the Seattle-Tacoma-Bremerton area for January 2006 was calculated to be 202.25 (the base index for school impact fees); for August 2016 it was 256.91 which is an increase of 27.02 percent; and

Whereas, the MFO for school districts effective in January 2006 and adopted in Ordinance No. 2004-94s was $2,675.00 for single-family dwelling units, and $1,410.00 for each multi-family dwelling unit; and

Whereas, as a result of inflationary adjustments from prior years, the current MFO for schools is $3,330.00 for single-family dwelling units, and $1,755.00 for multi-family dwelling units; and

Whereas, after adjusting for changes to the Consumer Price Index through August 2016 and rounding up to the nearest five dollar increment, the adjusted school MFOs are $3,400.00 for single-family dwelling units, and $1,795.00 for multi-family dwelling units, an increase of $70.00 and $40.00, respectively; and

Whereas, pursuant to PCC 4A.10.130 and 4A.30.010 C., the County has reviewed the relevant School Districts' Capital Facilities Plans, County Comprehensive Plan Amendments, and Title 4A PCC; and

Whereas, the White River and Carbonado School Districts have requested that no impact fees be collected by Pierce County within their respective districts; and

Whereas, the Council is reviewing the school impact fee changes in conjunction with the annual review and update of the Capital Facilities Plan element of the Comprehensive Plan as required by PCC 4A.10.030 A.; and

Whereas, school impact fee policies and associated methodology have not been reviewed since inception; and

Whereas, the Council desires to convene a working group to conduct such a review and to provide findings and recommendations back to the Council; and

Whereas, the Council desires that the working group be convened in 2017 and to provide a report back to the Council no later than May 1, 2017; **Now Therefore,**

BE IT ORDAINED by the Council of Pierce County:

Section 1. Section 4A.30.030 of the Pierce County Code, "School Impact Fee Schedule," is hereby amended as shown in Exhibit A, which is attached hereto and incorporated herein by reference.

Section 2. A Working Group is hereby created to review Pierce County's school impact fee policies and methodology and is requested to provide findings and recommendations on the following:

- The Maximum Fee Obligation (MFO) policy, comparison of this policy to other jurisdictions in Washington which collect school impact fees, and modifications, if any, that should be made to the MFO policy.

- The school impact fee methodology set forth in Chapter 4A.30 PCC, consistency in the application of the methodology across school districts, comparison of the methodology to the methodology used by other jurisdictions in Washington which collect school impact fees, and modifications, if any, that should be made to the methodology.

- Other school impact fee policy, methodology, or regulatory issues as appropriate.

Section 3. The Working Group shall consist of the following ten members:

- The Chair of the Council;
- The Chair of the Community Development Committee;
- One representative from the Peninsula School District;
- One representative from the Bethel School District;
- One representative from the Puyallup School District;
- One representative from the Sumner School District;
- The County Executive or designee;
- Two representatives of the Master Builders Association; and
- One representative from the Tacoma Pierce County Association of Realtors.

Section 4. The Working Group shall report back to the Council on or before May 1, 2017, with its findings and recommendations.

Section 5. This Ordinance shall become effective on January 1, 2017.

PASSED this 15th **day of** November**, 2016.**

ATTEST:

Denise D. Johnson

Denise D. Johnson
Clerk of the Council

PIERCE COUNTY COUNCIL
Pierce County, Washington

Douglas G. Richardson

Douglas G. Richardson
Council Chair

Pat McCarthy

Pat McCarthy
Pierce County Executive
Approved ✓ Vetoed _____, this
18 day of November,
2016.

Date of Publication of
Notice of Public Hearing: October 26, 2016

Effective Date of Ordinance: January 1, 2017

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Only those portions of Section 4A.30.030 that are proposed to be amended are shown. Remainder of text, tables and/or figures is unchanged.

4A.30.030 School Impact Fee Schedule.

	PER SINGLE-FAMILY DWELLING UNIT		PER MULTI-FAMILY DWELLING UNIT	
SCHOOL DISTRICT	**School District Fee Calculation for ~~2016~~ 2017**	**~~2016~~ 2017 Impact Fee (Maximum Fee Obligation Effective 1/01/~~16~~17 is $~~3,330~~ 3,400)**	**School District Fee Calculation for ~~2016~~ 2017**	**~~2016~~ 2017 Impact Fee (Maximum Fee Obligation Effective 1/01/~~16~~17 is $~~1,755~~ 1,795)**
Bethel	~~$10,608~~ $13,797	~~$3,330~~ $3,400	~~$7,514~~ $10,369	~~$1,755~~ $1,795
Carbonado	0	0	0	0
Dieringer	~~$4,672~~ $5,053	~~$3,330~~ $3,400	~~$1,518~~ $1,759	~~$1,518~~ $1,759
Eatonville	0	0	0	0
Fife	~~$3,216~~ $6,670	~~$3,216~~ $3,400	~~$6,875~~ $1,772	~~$1,755~~ $1,772
Franklin Pierce	$10,032	~~$3,330~~ $3,400	$4,530	~~$1,755~~ $1,795
Orting	$4,841	~~$3,330~~ $3,400	$163	$163
Peninsula	$5,296	~~$3,330~~ $3,400	$3,085	~~$1,755~~ $1,795
Puyallup	$8,144	~~$3,330~~ $3,400	$2,202	~~$1,755~~ $1,795
Steilacoom	$6,184	~~$3,330~~ $3,400	0	0
Sumner	$12,750	~~$3,330~~ $3,400	$4,302	~~$1,755~~ $1,795
White River	0	0	0	0
Yelm	$4,450	~~$3,330~~ $3,400	$1,812	~~$1,755~~ $1,795

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CITY OF EDGEWOOD
STAFF REPORT
STUDY SESSION AGENDA ITEM: Flood Code Update

Date: February 7, 2017

Title: Ordinance 17-0xxx – Flood Code Update

Attachment: Redline Version of EMC Title 14

Submitted By: Jeremy Metzler, P.E., Senior Stormwater Engineer

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: FEMA has been in the process of updating the Flood Insurance Study (FIS) and Flood Insurance Rate Maps (FIRMs) for Pierce County for the last several years. The City was recently provided with copies of the final product, which is set to become effective on March 7, 2017. In order to maintain eligibility in the FEMA National Flood Insurance Program (NFIP), we must do one of the following prior to the effective date:

1. Amend existing regulations to incorporate any additional requirements of the NFIP regulations,
2. Adopt all the NFIP regulations in one new, comprehensive set of regulations, or
3. Provide evidence that City regulations already meet or exceed the NFIP regulations.

City staff has been reviewing the existing City regulations and coordinating with FEMA staff to confirm whether or not the current NFIP regulations are being met. While the currently adopted code contains many development restrictions and protections that are above the federal minimum standards, there are several definitions that are either out-of-date or missing, and there are some missing regulations specific to flood plain management. Attached are the proposed revisions (in redline format) to ensure maintained eligibility, as reviewed and agreed with FEMA staff and the Planning Commission.

Project Schedule
1/6/17 – SEPA Non-Project Determination / Notice to Commerce
1/9/17 – First Review with Planning Commission
1/23/17 – Expedited Review Granted by Commerce
2/6/17 – Planning Commission Public Hearing
2/7/17 – Council Study Session Review / Comments
2/14/17 – Council First Reading

2/28/17 – **TBD** Council Public Hearing
2/28/17 – Council Second Reading, Adoption
3/7/17 – Proposed Effective Date (*Required for continued NFIP eligibility*)

Recommendation: This is a study session item to discuss proposed modifications to EMC with the Council, as it relates to the adoption of the new FEMA FIRMs and updating our floodplain management regulations to be consistent with federal requirements. Staff is looking to the City Council for their feedback, recommendations and suggestions prior to moving forward with the formal ordinance reading and adoption process.

Fiscal Impact: None directly to the City's budget resulting from the proposed amendments, but there may be impacts to future development in meeting these updated code requirements. It is Staff's intent to meet these requirements, as imposed by these federally-mandated amendments, with the least amount of fiscal impact and greatest benefit to the residents of Edgewood.

Chapter 14.10
GENERAL PROVISIONS

Sections:

14.10.010 Authority.
14.10.020 Repeal.
14.10.025 Title.
14.10.030 Purpose.
14.10.040 Interpretation.
14.10.050 Applicability.
14.10.060 Definitions.
14.10.070 Administration.
14.10.080 Critical area protective measures.
14.10.085 Variances to critical areas.
14.10.090 Reconsideration and appeal procedures.
14.10.100 Fees.
14.10.110 Compliance.
14.10.120 Warning and disclaimer of liability.
14.10.130 Severability.
14.10.135 Violation – Civil infraction.
14.10.140 Appendices.
14.10.150 Figures.

14.10.010 Authority.
This title is established and adopted pursuant to:

A. Environmental policies and procedures for this title are established pursuant to Chapter 43.21C RCW, as amended and entitled the "State Environmental Policy Act" (SEPA), and Chapter 197-11 WAC, as amended and entitled "State Environmental Policy Act Rules"; and

B. The city adopts by reference WAC 197-11-300 through 197-11-800; and

C. Chapter 173-22 WAC; and

D. Chapter 86.16 RCW; and

E. The Growth Management Act (RCW 36.70A.060); and

F. The Tri-County Response to the 4(D) Rule-Land Management Development Regulations; and

G. RCW 36.70A.172, Critical areas – Designation and protection. (Ord. 02-200 § 2).

14.10.020 Repeal.
The current EMC Title 19, Shoreline Management, and EMC Title 20, Critical Areas, are hereby repealed in their entirety and EMC Title 20 is replaced with this title (effective December 24, 2002). Repeal of EMC Title 20 does not affect any existing permits, land use applications or requirements, or existing enforcement actions. (Ord. 02-200 § 2).

14.10.025 Title.
The current EMC Title 14, Environment, is hereby renamed EMC Title 20, SEPA, and the new EMC Title 14 shall be known as EMC Title 14, Critical Areas (effective December 24, 2002). (Ord. 02-200 § 2).

14.10.030 Purpose.
The purpose of this title is to protect environmentally sensitive critical areas of Edgewood from the impacts of development and protect development from the impacts of hazard areas by establishing minimum standards for development of sites which contain or are adjacent to identified critical areas and thus promote the public health, safety, and welfare by:

A. Avoiding impacts to critical areas;

B. Mitigating unavoidable impacts by regulating development;

C. Protecting critical areas from impacts of development;

D. Protecting the public against losses from:

1. Costs of public emergency rescue and relief operations where the causes are avoidable; and

2. Degradation of the natural environment and the expense associated with repair or replacement;

E. Preventing adverse impacts on water availability, water quality, wetlands, and streams;

F. Protecting unique, fragile, and valuable elements of the environment, including critical fish and wildlife habitat;

G. Providing department staff with sufficient information to adequately protect critical areas and proposed development when approving, conditioning, or denying public or private development proposals;

H. Providing the public with sufficient information and notice of potential risks associated with development in natural hazard critical areas; and

I. Implementing the goals and requirements of the Growth Management Act of 1990, the State Environmental Policy Act, the Puget Sound Water Quality Management Plan, the Pierce County Charter, the Pierce County Interim Growth Management Policies, the city of Edgewood comprehensive plan, and all updates and amendments, functional plans, and other land use policies formally adopted or accepted by the city of Edgewood.

J. This title also consolidates procedures and regulations that shall promote compatibility between the natural and built environment within the city of Edgewood. Chapters within this title detail the procedures for activities related to critical areas and natural resource lands. (Ord. 02-200 § 2).

14.10.040 Interpretation.
In the interpretation and application of this title, all provisions shall be:

A. Considered the minimum necessary;

B. Liberally construed to serve the purposes of this title; and

C. Deemed neither to limit nor repeal any other powers under state statute. (Ord. 02-200 § 2).

14.10.050 Applicability.
A. This title shall apply to all lands and waters within Edgewood that are designated as critical areas.

B. No development (see "development" definition) shall hereafter be affected without full compliance with the terms of this title.

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C. When the requirements of this title are more stringent than those of other Edgewood codes and regulations, including the International Building Code, the requirements of this title shall apply.

D. Compliance with these regulations does not remove an applicant's obligation to comply with applicable provisions of any other federal, state, or local law or regulation.

E. Criteria for determining critical areas is contained within each chapter of this title.

F. When a site contains two or more critical areas, the site shall meet the minimum standards and requirements for each identified critical area as set forth in this title.

G. Critical areas, as defined and regulated by this title, are identified, but not limited to the following Edgewood critical areas atlas maps:

1. Wetland inventory maps; and

2. Landslide hazard area maps; and

3. Erosion hazard area maps; and

4. Seismic hazard area maps; and

5. Volcanic hazard area maps; and

6. Aquifer recharge and wellhead protection areas maps; and

7. Fish and wildlife habitat, and stream typing area maps; and

8. Flood hazard area maps; and

9. Resource lands maps; and

10. Soils maps; and

11. FIRM (flood insurance rate maps) maps.

H. The exact boundary of each critical area depicted on the critical areas atlas maps is approximate and is only intended to provide an indication of the presence of a critical area on a particular site. Additional critical areas that have not been mapped may be present on a site. The actual presence of a critical area, or areas and the applicability of these regulations shall be determined based upon the classification or categorization criteria and review procedures established for each critical area. City staff and/or consultant(s) may conduct on-site inspections to assess the site in order to determine if additional studies or reports identified in this title are necessary. An inspection report of findings shall be written after the on-site inspection and will become a part of any site development application as a future reference.

I. The Edgewood critical areas atlas maps shall be updated and maintained by the city's department of community development geospatial information system (GIS) division.

J. Development of the city's critical areas atlas maps were derived from the sources listed in EMC 14.10.140, Appendix A. These sources may be updated from time to time and will result in a correlating update to the applicable critical areas atlas maps. (Ord. 02-200 § 2).

14.10.060 Definitions.

A. This title shall rely on the definitions contained in Chapter 18.20 EMC, Definitions. The city also adopts by reference the definitions stated in WAC 197-11-700 through 197-11-799 as now or hereafter amended. In addition, the definitions in subsection (B) of this section shall also apply:

B. Additional definitions that apply to this title are:

"Abutting" means bordering upon, to touch upon, in physical contact with. Sites are considered abutting even though the area of contact may be only a point.

Act. See "State Environmental Policy Act (SEPA)."

"Actions" include, as further specified below:

1. New and continuing activities (including projects and programs) entirely or partly financed, assisted, conducted, regulated, licensed, or approved by agencies;

2. New or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals. Actions fall within one of two categories:

a. Project Actions. Involves a decision on a specific project, such as a construction or management activity located in a defined geographic area. Projects include and are limited to agency decisions to:

i. License, fund, or undertake any activity that will directly modify the environment, whether the activity will be conducted by the agency, an applicant, or under contract;

ii. Purchase, sell, lease, transfer, or exchange natural resources, including publicly owned land, whether or not the environment is directly modified.

b. Nonproject Actions. Involve decisions on policies, plans, or programs.

i. The adoption or amendment of legislation, ordinances, rules, or regulations that contain standards controlling use or modification of the environment;

ii. The adoption or amendment of comprehensive land use plans or zoning ordinances;

iii. The adoption of any policy, plan, or program that will govern the development of a series of connected actions (WAC 197-11-060), but not including any policy, plan, or program for which approval must be obtained from any federal agency prior to implementation;

iv. Creation of a district or annexations to any city, town or district;

v. Capital budgets; and

vi. Road, street, and highway plans.

"Actions" do not include the activities listed above when an agency is not involved, or include bringing judicial or administrative civil or criminal enforcement actions (categorical exemptions in WAC 197-11-800 identify in more detail governmental activities that would not have any environmental impacts and for which SEPA review is not required).

"Activity" means any use conducted on a site.

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"Addition" means an alteration to an existing structure that increases the floor area. There are two types of additions: additions affixed to the side of an existing structure and an upper story addition.

"Adjacent" means within 500 feet from the exterior boundaries of designated resource lands pursuant to RCW 36.70A.060.

"Addendum" means an environmental document used to provide additional information or analysis that does not substantially change the analysis of significant impacts and alternatives in the existing environmental document. The term does not include supplemental EISs. An addendum may be used at any time during the SEPA process.

"Aggrieved person" means the project sponsor, or any person affected by the proposal.

"Agricultural activities" means the production of crops and/or raising or keeping livestock, including operation and maintenance of farm and stock ponds, drainage ditches, irrigation systems, and normal operation, maintenance, and repair of existing serviceable agricultural structures, facilities, or improved areas, and the practice of aquaculture. Forest practices regulated under Chapter 76.09 RCW and WAC Title 222 are not included in this definition.

"Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

"Alluvial geologic unit" means geologically recent stream, lake, swamp, and beach deposits of gravel, sand, silt, and peat.

"Animal containment area" means a site where two or more animal units of large animals per acre or 0.75 of an animal unit of small animals per acre are kept, and where a high volume of waste material is deposited in quantities capable of impacting groundwater resources.

"Animal unit" means the equivalent of 1,000 pounds of animal.

"Appeal" means a request for a review of the interpretation of any provision of this ordinance, per EMC 14.10.090.

"Applicant" means any person or entity, including an agency, applying for a license from an agency.

"Application" means a request for a license.

"Aquifer" means a saturated geologic formation, which will yield a sufficient quantity of water to serve as a private or public water supply.

"Aquifer recharge area" means areas that have a critical recharging effect on groundwater used for potable water supplies and/or that demonstrate a high level of susceptibility or vulnerability to groundwater contamination from land use activities. Examples of aquifer recharge areas include:

1. Wellhead protection areas delineated pursuant to the Federal Safe Drinking Water Act; and

2. Other areas with a high level of susceptibility or vulnerability to contamination as demonstrated through the use of the DRASTIC (see DRASTIC) model.

"Area of Shallow Flooding" means areas designated as AO or AH zones on the FIRM(s). AO zones are characterized as sheet flows, having base flood depths that range from one to three feet above the natural ground, where a clearly defined channel does not exist, the path of flooding is unpredictable and

indeterminate, and velocity flow may be evident. AH zones indicate similar depth ponding, shown with standard base flood elevations on the FIRM(s).

"Area of Special Flood Hazard" means land in the flood plain within a community subject to a one percent (1%) or greater chance of flooding in any given year. Designation on FIRM(s) always includes the letters A or V.

"Base flood" means the flood having a one percent (1%) chance of being equaled or exceeded in any given year, also referred to as the "100-year flood." and is designated on FIRM(s) by the letters A or V.

"Basement" means any area of the building having its floor sub-grade (below ground level) on all sides, for the purposes of this title.

"Best available science" means as defined by WAC 365-195-905, Criteria for determining which information is the "best available science."

"Best available technology" means the technology that provides the greatest degree of protection to the natural resource, taking into consideration processes that are developed, or could feasibly be developed given overall reasonable expenditures on research and development, and processes that are currently in use. In determining what is best available technology, the local government shall consider the effectiveness, engineering feasibility and commercial availability of the technology.

"Best management plan" means a plan developed for a property, which specifies best management practices for the control of animal wastes, stormwater runoff, and erosion.

"Breakaway Wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

"Buffer" means an area contiguous with a critical area that is required for the integrity, maintenance, function, and structural stability of the critical area.

"Building footprint" means the horizontal area measured within the outside of the exterior walls of the ground floor of all principal and accessory buildings on a lot.

"Cave" means a natural subterranean chamber greater than one foot in diameter and greater than three feet deep.

"City" means the city of Edgewood.

"Class" means one of the wetland classes in the United States Fish and Wildlife Service (USFWS) December 1979 publication, Classification of Wetlands and Deep Water Habitats of the United States.

"Classification" means defining value and hazard categories to which critical areas and land resource lands will be assigned.

"Clearing" means the removal of timber, brush, grass, ground cover, or other vegetative matter from a site, which exposes the earth's surface on the site.

"Cliff" means a steep vertical or overhanging face of rock or earth greater than 25 feet in height.

"Colluvium" means materials deposited by gravity at the foot of a slope (e.g., talus, soil creep, etc.).

"Compensatory mitigation" means mitigation to compensate for loss of wetland habitat due to filling of wetlands or other regulated activities in wetlands.

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"Conservation easement" means a recorded deed restriction or covenant that runs in perpetuity on a parcel of land restricting the use of the property by preventing future real estate development such as residential, industrial, or commercial use. Conservation easements may allow for continued current uses (e.g., residential, recreational, agriculture, forestry, or ranching); however, conservation easements most often restrict both the current use as well as future uses of the land to some important conservation quality such as habitat preservation, open space, or scenic views. A land trust or governmental entity that manages properties for long-term goals typically holds conservation easements.

"Contaminant" means any chemical, physical, biological, or radiological substance that does not occur naturally or occurs at concentrations and duration as to be injurious to human health or welfare or shown to be ecologically damaging.

"Council" means the Edgewood city council.

"County" means Pierce County.

"Crawl space" means the shallow space beneath the bottom floor of a house with no basement; used for access and inspection of framing, electrical, plumbing, insulation, vapor barriers, or duct work. For purposes of the National Flood Insurance Program Elevation Certificate, a crawl space that has subgrade around all sides shall be considered a basement.

"Creation" means producing or forming a wetland through artificial means from an upland (nonwetland) site.

"Critical areas" means erosion, landslide, seismic, volcanic, and flood hazard areas; streams; wetlands; fish and wildlife habitat; and aquifer recharge and (depressional) pothole areas as defined by RCW 36.70A.030. All of these areas are of special concern to the people of Edgewood and the state of Washington.

"Critical facilities" means those facilities occupied by populations or which handle dangerous substances including but not limited to hospitals, medical facilities, nursing homes; structures housing, supporting, or containing toxic or explosive substances; covered public assembly structures; school buildings through secondary, including daycare centers; buildings for colleges or adult education; police, fire, and emergency response installations; jails and detention facilities; and all structures with occupancy of greater than 5,000 people. These facilities are such that even a slight chance of flooding might be too great.

"Debris flow" means the rapid downslope movement of a viscous mass of water-saturated regolith.

"Degraded" means to have suffered a decrease in naturally occurring functions and values due to activities undertaken or managed by persons on or off a site.

"Delineation" means a wetland study conducted in accordance with the Corps of Engineers Wetlands Delineation Manual 1987 edition and corresponding guidance letters and the Washington State Wetlands Identification and Delineation Manual.

"Delineation report" means a written document prepared by a wetland specialist, which includes data sheets, findings of the delineation, and a site plan, which identifies the wetland boundaries.

"Department" means any division, subdivision, or organizational unit of the city, established by regulations, resolution or order.

"Depressional pothole" means a relatively sunken or low-lying area of the earth's surface, especially one having no natural outlet for surface drainage.

"Designation" means taking formal legislative action to adopt classifications, inventories, and regulations.

"Determination of":

1. Nonsignificance (DNS).
2. Significance (DS).
3. Mitigated determination of nonsignificance (MDNS).

"Development" means any human-induced change to improved or unimproved real property, including, but not limited to, : the construction of buildings or other structures, placement of a manufactured home / mobile, mining, dredging, clearing, filling, grading, paving, excavation, drilling operations, storage of equipment or materials located within an Area of Special Flood Hazard, or activities otherwise governed by EMC Title 16, Subdivisions.

"Development activity" means any construction, development, earth movement, clearing, or other site disturbance of the land, except as listed under exemptions.

"Director" means the mayor or designee.

"Downed logs" means trees that have fallen or toppled which are dead or in the process of dying, and exhibit sufficient decay characteristics to enable use by fish or wildlife species as habitat. Also referred to as "large woody debris (LWD)."

"DRASTIC" is an acronym for a computer model developed by the National Water Well Association and Environmental Protection Agency used to measure aquifer susceptibility.

"Drift" means a nearly horizontal mine passageway driven on or parallel to the course of a vein or rock stratum.

"Dwelling unit" means one or more rooms designed for or occupied by one family for living or sleeping purposes and containing kitchen facilities for use solely by one family.

"Earth/earth material" means naturally occurring rock, soil, stone, sediment, or combination thereof.

"Earthflow" means a slow downslope movement in which saturated regolith sags downward in a series of irregular terraces.

"Ecotone" means a transition area between two adjacent vegetation communities.

"Elevation Certificate" means the official form (FEMA Form 81-31) used to track development, provide elevation information necessary to ensure compliance with community floodplain management ordinances, and determine the proper insurance premium rate with Section B completed by Community Officials.

"Elevated Building" means for insurance purposes, a non-basement building that has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

"Encroachment" means any development or regulated activity conducted inside the boundaries of a designated critical area and/or its associated buffer.

"Engineer" as defined by Chapter 18.43 RCW.

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"Engineering geologist" means a geologist who, by reason of his or her knowledge of engineering geology, acquired by education and practical experience, is qualified to engage in the practice of engineering geology, has met the qualifications in engineering geology established under Chapter 18.220 RCW, and has been issued a license in engineering geology by the Washington State Geologist Licensing Board.

"Engineering geology" means a specialty of geology affecting the planning, design, operation, and maintenance of engineering works and other human activities where geological factors and conditions impact the public welfare or the safeguarding of life, health, property, and the environment.

"Enhancement" means actions performed to improve the condition of existing degraded wetlands and/or buffers so that the quality of wetland functions increases (e.g., increasing plant diversity, increasing wildlife habitat, installing environmentally compatible erosion controls, removing nonindigenous plant or animal species, removing fill material or solid waste).

"Environmental determination" means that the responsible official or proponent has determined whether or not there are significant adverse effects on quality of the environment and if so, can they be mitigated.

"Environmental Impact Statements (EISs) – Types." See Chapter 197-11 WAC, SEPA Rules.

"Environmental Review." See Chapter 197-11 WAC, SEPA Rules.

"Erosion" means the wearing away of the earth's surface as a result of the movement of wind, water, or ice.

"Erosion hazard areas" means those areas that because of natural characteristics, including vegetative cover, soil texture, slope, gradient, and rainfall patterns, or human-induced changes to such characteristics, are vulnerable to erosion.

"Excavation" means the mechanical removal of earth material.

"Existing Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the adopted floodplain management regulations.

"Expansion to an Existing Manufactured Home Park or Subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Extirpation" means the elimination of a species from a portion of its original geographic range.

"Facility" means all structures, contiguous land, appurtenances, and other improvements on the land used for recycling, reusing, reclaiming, transferring, storing, treating, disposing, or otherwise handling a hazardous substance. Use of the term "facility" includes underground and aboveground tanks and operations, which handle, use, dispose of, or store hazardous substances.

"Fill/fill material" means a deposit of earth material placed by human or mechanical means.

"Filling" means the act of placing fill/fill material on any surface, including temporary stockpiling of fill material.

"Finished floor" means the top of the next higher floor above the lowest floor. For purposes of the National Flood Insurance Program Elevation Certificate, the finished floor referenced in this regulation shall equal the top of the next higher floor.

"Fish and wildlife habitat areas" means those areas identified as being of critical importance to maintenance of fish, wildlife, and plant species, including areas with which endangered, threatened, and sensitive species have a primary association; habitats and species of local importance; naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat; waters of the state; lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity, or private organization; state natural area preserves and natural resource conservation areas. This does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

"Fisheries biologist" means a professional with a degree in fisheries or certification by the American Fisheries Society, or with five years' professional experience as a fisheries biologist.

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters; and/or

2. The unusual and rapid accumulation of runoff of surface waters from any source.

"Flood hazard areas" means areas of flooding identified by verifiable flooded areas using:

1. Aerial photographs of the city, especially those taken in wintertime 1996 and 1997; or

2. Relevant and verifiable information from the city's capacity analysis technical review adhoc committee (CATRAC) draft report, 2000; or

3. Relevant and verifiable government and citizen photographs, notes, observations, etc. regarding historic ponding/flooding levels; or

4. Relevant and verifiable information available through Pierce County; or

5. Relevant and verifiable information available through the Federal Emergency Management Agency (FEMA); or

6. Areas of land located in floodplains, which are subject to a one percent or greater chance of flooding in any given year, including, but not limited to, streams, rivers, lakes, ponds, wetlands, depressional potholes and the like.

"Flood Insurance Rate Map (FIRM)" means the official map ~~of a community~~ on which the Federal Insurance Administration (FIA) ~~administrator~~ has delineated both the areas of special flood hazard ~~areas~~ and the risk premium zones applicable to the community.

"Flood Insurance Study (FIS)" means the official report provided by the Federal Insurance Administration (FIA) that includes flood profiles, FIRM(s), and the water surface elevation of the base flood.

"Floodfringe" means the area subject to inundation by the base flood, but outside the limits of the floodway, and which may provide needed temporary storage capacity for floodwaters.

"Floodplain" means the total area subject to inundation by the base flood, including the floodfringe and the floodway areas.

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"Floodway" means the channel of a river or other watercourse~~,~~ and the adjacent land areas that must be reserved in order to convey and discharge the base flood without cumulatively increasing the water surface elevation by more than one foot, and those areas designated as deep and/or fast-flowing water.

"Foundation footing setback" means a typical geotechnical recommendation intended to assure that a proposed structure is protected in the event of a slope failure or sloughage. A foundation footing setback is measured horizontally from the face of the foundation footing to the face of the slope. A foundation footing setback for this purpose should not be confused with a building or construction setback from a landslide hazard area buffer. A foundation footing setback is also not a buffer (see Figure 14.10-1 in EMC 14.10.150).

"Geological assessment" means an assessment prepared by a professional engineer licensed by the state of Washington with expertise in geotechnical engineering or prepared by a licensed professional geologist, hydrologist, or soils scientist, as specified later in this section, who has earned the related bachelor's degree from an accredited college or university, or equivalent educational training, and has five years' experience assessing the relevant geologic hazard. A geological assessment must detail the surface and subsurface conditions of a site and delineate the areas of a property that might be subject to specified geologic hazards.

"Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

"Geologist" means engineering geologist, or hydrogeologist, registered in the state of Washington.

"Geotechnical professional" means a person with experience and training in analyzing, evaluating, and mitigating landslide, erosion, and/or seismic hazards. A geotechnical professional shall be licensed in the state of Washington as a geologist or professional engineer, and must have five or more years experience specializing in landslide, erosion, or seismic hazards, as applicable.

"Geotechnical report" means a report prepared by a professional engineer licensed by the state of Washington with expertise in geotechnical engineering, evaluating the site conditions and mitigating measures necessary to reduce the risks associated with development in geologically hazardous areas.

"Grading" means any excavating, filling, clearing, or creating of impervious surfaces or combination thereof.

"Ground amplification" means an increase in the intensity of earthquake-induced ground shaking which occurs at a site whereby thick deposits of unconsolidated soil or surficial geologic materials are present.

"Groundwater" means all water found beneath the ground surface, including slowly moving subsurface water present in aquifers and recharge areas.

"Group A water system" means a water system:

1. With 15 or more service connections; or

2. A system that services an average of 25 or more people per day for 60 or more days within a calendar year.

"Habitat assessment" means a report prepared by a professional wildlife biologist or fisheries biologist, which identifies the presence of fish and wildlife habitat conservation areas near the proposed development site.

"Habitat evaluation" means a procedure for determining the abundance and quality of habitat features for a species or other taxonomic group (in this case, salmonid fishes) at or on a particular site or property.

"Habitat evaluation report package" means the combined materials that compose a report on a habitat evaluation (see definition in this section), including narrative on methods and findings, as well as maps and data in tabular and graphic form.

"Habitat management plan" means a report prepared by a professional wildlife biologist or fisheries biologist, which discusses and evaluates the measures necessary to maintain fish and wildlife habitat conservation areas on a proposed development site.

"Habitat of local importance" means an area, range, or habitat within which a species has a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. Examples include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These areas may also include habitats that are of limited availability or high vulnerability to alteration.

"Hard armoring" means the use of large rock and/or human-made materials to protect property from shoreline erosion. Such techniques include cement/concrete bulkheads, steel structures, rock wall revetments, and rock gabion structures. Hard armoring typically does not utilize or integrate any of soft armoring or soil bioengineering techniques.

"Hazardous substance(s)" means any liquid, solid, gas, or sludge, including any materials, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste; and including waste oil and petroleum products.

"Hazardous substance processing or handling" means the use, storage, manufacture, or other land use activity involving hazardous substances, but does not include individually packaged household consumer products or quantities of hazardous substances of less than five gallons in volume per container. Hazardous substances shall not be disposed on-site unless in compliance with Dangerous Waste Regulations, Chapter 173-303 WAC, and any pertinent local ordinances such as sewer discharge standards.

"Hazardous waste" means and includes all dangerous waste and extremely hazardous waste as designated pursuant to Chapter 70.105 RCW and Chapter 173-303 WAC.

1. "Dangerous waste" means any discarded, useless, unwanted, or abandoned substances including but not limited to certain pesticides or any residues or containers of such substances which are disposed of in such quantity or concentrations as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:

   a. Have short-lived, toxic properties that may cause death, injury, or illness, or have mutagenic, teratogenic, or carcinogenic properties; or

   b. Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

2. "Extremely hazardous waste" means any waste which:

   a. Will persist in a hazardous form for several years or more at a disposal site and which in its persistent form presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of humans or wildlife; and

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b. Is disposed of at a disposal site in such quantities as would present an extreme hazard to humans or the environment.

"Hazardous waste treatment and storage facility" means a facility that treats and stores hazardous waste and is authorized pursuant to Chapter 70.105 RCW and Chapter 173-303 WAC. It includes all contiguous land and structures used for recycling, reusing, reclaiming, transferring, storing, treating, or disposing of hazardous waste. Treatment includes using physical, chemical, or biological processing of hazardous wastes to make such waste nondangerous or less dangerous and safer for transport, amenable for energy or material resource recovery. Storage includes the holding of waste for a temporary period, but not the accumulation of waste on the site of generation as long as the storage complies with applicable requirements of Chapter 173-303 WAC.

1. "On-site treatment and storage facility" means a facility that treats or stores hazardous wastes generated on the same geographically contiguous property.

2. "Off-site treatment and storage facility" means a facility that treats or stores hazardous wastes generated on property other than those on which the off-site facility is located.

Hearing Examiner or Examiner. See EMC 18.20.110, "H" definitions.

"Holocene epoch" means that part of the geologic record that post-dates the youngest deposits associated with the late Pleistocene Age Fraser Glaciation.

"Hydrogeologic assessment" means a report detailing the subsurface conditions, the design of a proposed land use action, and the facilities operation which indicates the susceptibility and potential for contamination of groundwater supplies.

"Hydrologically connected" means a connection between two or more surface water bodies including, but not limited to, wetlands, streams or lakes as evidenced by:

1. The presence of surface water in a perennial or intermittent stream, through a culvert or otherwise above ground;

2. The presence of contiguous hydric soil; or

3. The location of a water body within or contiguous to a 100-year floodplain of a wetland, stream or lake.

"Hydrologically isolated wetland" means a wetland which:

1. Is not contiguous to any 100-year floodplain of a lake, river, or stream; and

2. Has no contiguous surface hydrology, hydric soil, or hydrophytic vegetation between the wetland and any other wetland or stream system.

"Impervious surface" means a hard surface, which prevents or retards the entry of water into the soil mantle as under natural conditions prior to development, and/or a hard surface area, which causes water to run off the surface in greater quantities or at an increased rate of flow than the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, gravel parking lots, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces.

"Increased Cost of Compliance (ICC)" means a flood insurance claim payment up to $30,000 directly to a property owner for the cost to comply with floodplain management regulations after a direct physical loss caused by a flood. Eligibility for an ICC claim can be through a single instance of "substantial damage" or as a result of a "cumulative substantial damage." (more information can be found in FEMA ICC Manual 301)

"In-kind mitigation" means to replace wetlands with substitute wetlands whose characteristics and functions and values are intended to replicate those destroyed or degraded by a regulated activity.

"Interspersion between wetland classes" means the degree to which different wetland classes are scattered among each other.

"Lahar" means a mudflow or debris flow mobilized by water, which originates on the slopes of a volcano.

"Lakes" means impoundments of open water 20 acres or larger.

Landfill. See EMC 18.20.150, "L" definitions.

"Landslide" means the abrupt downslope movement of soil, rocks, or other surface matter on a site. Landslides may include but are not limited to slumps, mudflows, earthflows, rockfalls, and snow avalanches.

"Landslide hazard areas" means areas which are potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.

"Large animal" means an animal with an average weight of 100 pounds or more.

"License" means any form of written permission given to any person, organization, or agency to engage in any activity, as required by law or agency rule. A license includes all or part of a city permit, certificate, approval, registration, charter, or plat approvals or rezones to facilitate a particular proposal. The term does not include a license required solely for revenue purposes.

"Liquefaction" means a process by which a water-saturated granular (sandy) soil layer loses strength because of ground shaking commonly caused by an earthquake.

"Long-term commercial significance" means the growing capacity, productivity, and soil composition of land, which makes it suitable for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of land.

"Lowest floor" means the lowest floor of the lowest enclosed area (including basement and crawl space). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this title. ~~For purposes of the National Flood Insurance Program Elevation Certificate, the lowest floor referenced in this regulation shall equal the top of the bottom floor.~~

"Maintenance" means those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition without any expansion of or significant change from that originally established condition. For the purposes of this document, activities within landscaped areas within areas subject to native vegetation retention requirements may be considered maintenance only if they maintain or enhance the canopy and understory cover.

"Manufactured home/mobile home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured

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home/mobile home" also includes park trailers, travel trailers, and other similar recreational vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home/mobile home" does not include park trailers, travel trailers, recreational vehicles, or other similar vehicles.

"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Minerals" include gravel, sand, or other resources that are extracted from the ground, and valuable metallic substances.

"Mineral resource lands" means lands primarily devoted to the extraction of minerals or which have known or potential long-term commercial significance for the extraction of minerals.

"Mitigation" means:

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 taking appropriate corrective measures; and

7. Measures used in sequential order to eliminate, reduce, or compensate for adverse impacts to habitat resulting from a development proposal or alteration.

"Mudflow" means a debris flow containing an abundance of fine particles.

"Native vegetation" means a mix of plant species comprising herbs, grasses, grass-like plants, shrubs and trees indigenous to the Puget Sound region that reasonably could be expected to naturally occur on the site.

"Natural resource lands" means agricultural and mineral resource lands, which have long-term commercial significance.

"New Construction" means structures for which the "start of construction" commenced on or after the following:

1. for the purposes of determining flood insurance rates, the effective date of an initial FIRM (i.e. August 19, 1987, or August 4, 1988 for Panel 350 only), and includes any subsequent improvements to such structures.
2. for floodplain management purposes, the effective date of this floodplain management ordinance and includes any subsequent improvements to such structures.
3. for all other cases, the effective date of the applicable critical areas ordinance.

"New Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be

affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the adopted floodplain management regulations.

"Oak woodlands" means those areas where Oregon white oak comprises more than 20 percent of the trees in a stand, and where the stand size is one acre or greater; provided, that stand size may be smaller where white oak serves as linkages between larger stands. Trees should be greater than 15 inches in diameter at breast height and greater than 16 feet tall.

"Old growth forests" means a stand of trees generally containing mature and overmature trees in the overstory, a multi-layered canopy and trees of several age classes, and standing dead trees and down material.

"Ordinance" means the ordinance, resolution, or other procedure used by the city to adopt regulatory requirements.

"Ordinary high water mark (OHWM)" means the mark on all lakes, streams and tidal waters that will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland and vegetation, as that condition exists on the effective date of the ordinance codified in this title, or as it may naturally change thereafter. In any area where the ordinary high water mark cannot be found, the ordinary high water mark shall be the line of mean higher high tide in areas adjoining saltwater, and the line of mean high water in areas adjoining freshwater.

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

"Parties of record" are those persons with legal standing with respect to an application including the applicant, property owner as identified by the records available from the Pierce County assessor's office, or any person who testified at the open record public hearing on the application; and/or any person who submitted written comments during administrative review or has submitted written comments concerning the application at the open record public hearing, excluding persons who have only signed petitions or mechanically produced form letters.

"Permanent erosion control" means continuous on-site and off-site control measures that are needed to control conveyance and/or deposition of earth, turbidity, or pollutants after development, construction, or restoration.

Person. See EMC 18.20.190, "P" definitions.

"Plat" means:

1. "Short subdivision" or "short plat" means the division or redivision of land into ~~four~~ six or fewer lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership.

2. "Subdivision" or "formal subdivision" means the division or redivision of land into ~~five~~ seven or more lots, tracts, parcels, sites, or division for the purpose of sale, lease, or transfer of ownership. For floodplain management regulation purposes, this includes land over 5 acres in area situated within a flood hazard area.

"Ponds" means naturally occurring impoundments of open water less than 20 acres in size and larger than 2,500 square feet, which maintain standing water throughout the year. Also see "depressional pothole."

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"Private organization" means a nonprofit corporation organized pursuant to Chapter 24.03 RCW, which includes the planting of game fish among its purposes for organizing as a nonprofit corporation.

"Project permit" means any land use or environmental permit or license required from the city for a project action, including but not limited to building permits, site development permits, land use preparation permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, development plan review, site specific rezones authorized by the comprehensive plan; but excluding adoption or amendment of the comprehensive plan and development regulations, zoning of newly annexed land, area-wide rezones, and zoning map amendments except as otherwise specifically included in this subsection.

"Professional engineer" means an engineer currently licensed and registered in the state of Washington.

"Public services" means fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

"Recessional outwash geologic unit" means sand and gravel materials deposited by melt-water streams from receding glaciers.

"Reconstruction" means the rebuilding of an existing structure which has been partially or completely destroyed by any cause, such as but not limited to fire, wind, landslides, and water, without increasing the original floor area or square footage area.

"Recreational Vehicle (RV)" means a vehicle built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light duty truck, and designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

"Rectification" means an action which repairs an alteration to habitat and its functions.

"Regolith" means any body of loose, noncemented particles overlying and usually covering the bedrock.

"Regulated activities" means, but is not limited to, any of the following activities which are directly undertaken or originate in a regulated critical area or its buffer: building permit, commercial or residential; binding site plan; franchise right-of-way construction permit; site development permit; right-of-way permit; shoreline permits; short subdivision; use permits; subdivision; utility permits; or any subsequently adopted permit or required approval not expressly exempted by this title.

"Rehabilitation" means any improvements and repairs which are made to the interior and exterior of an existing structure, but which do not result in any increase in the floor area of the structure. This is also commonly referred to as a "remodel" of an existing structure.

"Restoration" means an action which returns habitat to a state in which its stability and functions approach its unaltered state as closely as possible.

"Revised Code of Washington (RCW)" means all laws of a general and permanent nature heretofore or hereafter enacted by the legislature, and assign permanent numbers as provided by law to all new titles, chapters, and sections thereof.

"Riparian" means the area adjacent to aquatic systems with flowing water that contains elements of both aquatic and terrestrial ecosystems which mutually influence each other. Riparian habitat begins at the ordinary high water mark and includes the entire extent of the floodplain and riparian areas of wetlands that are directly connected to the stream course.

"Seismic hazard areas" means areas subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.

"Sensitive areas" mean agricultural lands and mineral resource lands and all associated buffers.

"Shoreline" for this title means the line where a body of water and the shore meet or the strip of land along the shoreline. There are no waters within the city of Edgewood meeting the criteria of shorelines of statewide significance as defined by RCW 90.58.030.

"Single-family dwelling" means a detached building designed exclusively for occupancy by one family and containing one dwelling unit.

"Site" means a lot, parcel, tract, or combination of lots, parcels, or tracts on which a regulated activity is proposed.

"Slope" means an inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance.

"Sludge" means a semisolid substance consisting of settled solids combined with varying amounts of water and dissolved materials generated from a wastewater treatment plant or system or other sources, including septage sludge, sewage sludge, and industrial sludge.

"Sludge land application site" means a site where stabilized sludge, septage, and other organic wastes are applied to the surface of the land in accordance with established agronomic rates for fertilization or soil conditioning.

"Slump" means the downward and outward movement of a mass of bedrock, colluvium, or regolith along a distinct surface of failure.

"Small animal" means an animal with an average weight of less than 100 pounds.

"Snag-rich areas" means forested areas which contain concentrations of standing dead trees, averaging 10 snags or greater per acre, and averaging greater than 15 inches in diameter at breast height.

"Special occupancy structures" means those structures that have the potential to provide capacity for large numbers of people or special groups of people or assemblies such as but not limited to schools, jails and detention facilities, and resident incapacitated patients.

"Species of local importance" means species that are of local concern due to their population status or their sensitivity to habitat manipulation.

"Soft armoring techniques" means the use of woody plants and limited structural-mechanical systems that are integrated in a structurally and environmentally sound manner to repair and protect slopes and shorelines against shallow mass wasting and surface erosion. Measures such as live stake, live fascine, brushlayer, live cribwall, vegetated geogrid, branchpacking, live slope grading, beach berms, or earthen berms are examples of soft armoring techniques. Soft armoring techniques may also be referred to as soil bioengineering methods.

"Start of Construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include

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excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"State Environmental Policy Act (SEPA)" means RCW 43.21C.010, to declare a state policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere; stimulate the health and welfare of man; and to enrich the understanding of the ecological systems and natural resources important to the state and nation.

"State Environmental Policy Act (SEPA) Rules" means Chapter 197-11 WAC adopted by Washington State Department of Ecology as now, or hereafter, amended.

"Stockpiling" means the placement of material with the intent to remove it later.

"Structure" means a walled and roofed building, including a gas or liquid storage tank that is principally above ground.

"Subbasin" means a drainage area which drains to marine water, lakes or the mainstem of a watershed water resource inventory area.

"Subclass" means one of the subclasses identified in the United States Fish and Wildlife Service (USFWS) December 1979 publication, Classification of Wetlands and Deep Water Habitats of the United States.

"Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial improvement" means any repair, reconstruction, addition, rehabilitation, or other improvement of a structure, whereby the cost ~~current permit valuation~~ for the work exceeds 50 percent of the market value ~~current permit valuation~~ of the existing structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed.

~~The building official shall determine the current permit valuation based on the cost per square foot values in effect at the time of permit application. Substantial improvement shall be accumulative from the effective date of the ordinance codified in this chapter. For purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.~~ The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

2. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places, provided that the alteration will not preclude the structure's continued designation as a "historic structure".

Except for floodplain management regulation, the "cost" and "market value" may be determined using the current permit valuation. The building official shall determine the current permit valuation based on the

cost per square foot values in effect at the time of permit application. Substantial improvement shall be accumulative from the effective date of the ordinance codified in this chapter.

"Substrate" means the soil, sediment, decomposing organic matter, or combination of those located on the bottom surface of a wetland.

"Talus" means a homogenous area of rock rubble ranging in average size 0.15 to 2.0 meters (0.5 to 6.5 feet) composed of basalt, andesite, and/or sedimentary rock, including riprap slides and mine tailings. Talus areas may be associated with cliffs.

"Ten-year time travel zone boundary" means the maximum distance around a pumping well from which a contaminant hypothetically present in groundwater could travel to the well within a 10-year time period.

"Temporary erosion control" means on-site and off-site control measures that are needed to control conveyance or deposition of earth, turbidity, or pollutants during development, construction, or restoration.

"Toe of slope" means a distinct topographic break in slope at the lowermost limit of the landslide or erosion hazard area.

"Top of slope" means a distinct topographic break in slope at the uppermost limit of the landslide or erosion hazard area.

"TPCHD" means the Tacoma-Pierce County Health Department.

"Underground storage tank" means any one or a combination of tanks (including underground pipes connected thereto) which are used to contain or dispense an accumulation of hazardous substances or hazardous wastes, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.

"Urban governmental services" means those governmental services historically and typically delivered by cities, and includes storm and sanitary sewer systems, domestic water systems, street cleaning services, and other public utilities associated with urban areas and normally not associated with nonurban areas.

"Urban growth" means growth that makes intensive use of the land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services. 'Characterized by urban growth' refers to land having urban growth located on it or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

"Utility line" means pipe, conduit, cable, or other similar facility by which services are conveyed to the public or individual recipients. Such services shall include, but are not limited to, water supply, electric power, gas, communications, and sanitary sewers.

"Variance" means a grant of relief from the requirements of this ordinance that permits construction in a manner that would otherwise be prohibited by this ordinance, per EMC 14.10.085.

"Violation" means the failure of a structure or other development activity to be fully compliant with the provisions of this title. With regard to the floodplain management regulations, projects without the elevation certificate, other certifications, or other evidence of compliance required in EMC 14.70 is presumed to be in violation until such time as that documentation is provided. See EMC 14.10.135 for violation procedures.

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"View corridor" means an area, which affords views of lakes, mountains, or other scenic amenities normally enjoyed by residential property owners.

"Volcanic hazard areas" means those areas subject to pyroclastic flows, lava flows, and inundation by debris flows, mudflows, or related flooding resulting from geologic or volcanic events on Mount Rainier.

"Washington Administrative Code (WAC)" means state of Washington Administrative Code.

"Water Dependent" means a structure for commerce or industry that cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

"Wellhead protection area" means the area within the 10-year time-of-travel zone boundary of a group A public water system well, as delineated by the water system purveyor or its designee, pursuant to WAC 246-290-135.

"Wetland" means any area which is inundated or saturated by ground or surface water at a frequency and duration sufficient to support, and under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. For the purpose of this definition:

1. Where the vegetation has been removed or substantially altered, the presence of a wetland is determined by the presence or evidence of hydric soil, by other documentation such as aerial photographs of the previous existence of wetland vegetation or by any other manner authorized in the "Washington State Wetlands Identification and Delineation Manual," 1997, Department of Ecology;

2. A wetland may occur along the shoreline of tidal water, a lake, a stream or in a depression in the landscape. For any wetland occurring along a shoreline, the wetland's waterward boundary is where the water's depth exceeds six and six-tenths feet below low water or, if low water cannot be determined, six and six-tenths feet below the outlet's invert elevation;

3. Except for artificial features intentionally made for the purpose of mitigation, a wetland does not include an artificial feature made from a nonwetland area which may include, but is not limited to, a surface water conveyance for drainage or irrigation, a grass-lined swale, a canal, a flow control facility, a wastewater treatment facility, a farm pond, a wetpond, landscape amenities or a wetland made after July 1, 1990, which was unintentionally made as a result of the construction of a road, street, or highway; and

4. Wetlands shall include those wetlands intentionally created from nonwetland areas, formed to mitigate conversion of wetlands.

"Wetland, isolated" means a wetland, which is not hydrologically connected, does not have permanent open water and is often of low function.

"Wetland specialist" means a person with experience and training in wetlands issues and with experience in performing a wetland delineation, analyzing wetland functions and values, analyzing wetland impacts, and recommending wetland mitigation and restoration.

Qualifications include:

1. Bachelor of Science or Bachelor of Arts or equivalent degree in biology, botany, environmental studies, fisheries, soil science, wildlife, agriculture, or related field, and two years of related work experience, including a minimum of one year experience delineating wetlands using the Unified Federal Manual and preparing wetland reports and mitigation plans. Additional education may substitute for one year of related work experience; or

2. Four years of related work experience and training, with a minimum of two years experience delineating wetlands using the Unified Federal Manual and preparing wetland reports and mitigation plans. The person should be familiar with the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, Corps of Engineers Wetlands Delineation Manual 1987 edition and corresponding guidance letters, Washington State Wetlands Identification and Delineation Manual, the city site development regulations, and the requirements of this title.

"Wildlife biologist" means a professional with a degree in wildlife, or certification by the Wildlife Society, or with five years' professional experience as a wildlife biologist. (Ord. 16-461 § 2; Ord. 15-447 § 1 (Exh. A); Ord. 02-200 § 2).

14.10.070 Administration.

A. Approvals Required. An approval must be obtained from the city when the department determines that the site or project area is or may be located within a critical area, as set forth in each chapter.

B. Application Requirements.

1. Preliminary Review. The provisions for conducting a preliminary review of an application is set forth in EMC 18.40.070, Process types.

2. Application Filing.

a. Applications shall be reviewed for completeness in accordance with department submittal standards checklists and pursuant to EMC 18.40.150, Determination of completeness.

b. Applications and associated reports shall not be submitted without an accompanying permit application for an underlying action (parent application) such as, but not limited to, a building permit, subdivision or boundary alteration action, site development application, TPCHD permit, or use permit, with the exception of applications required by the department as a result of an enforcement action.

3. Modifications. The department may request an update of any required assessment, report, delineation, etc., due to the potential for change in the existing environment that may have been caused by a natural event (e.g., seismic event, landslides, flooding, etc.) or human induced activity that degraded the existing conditions that occurred after the original document was initially submitted.

C. Public Notice. Public notice provisions for notice of application; public hearing, if applicable; and final decision pursuant to this title are outlined in EMC 18.40.190, Notice of public hearing.

D. Review.

1. Initial Review. The department shall conduct an initial review of any application in accordance with the provisions outlined in EMC 18.40.150, Determination of completeness.

2. Review Responsibilities.

a. The department is responsible for administration, circulation, and review of any applications and approvals required by this title.

b. The examiner shall be the decision authority for reasonable use applications.

c. Other city or county departments and state agencies, as determined by the department, may review an application and forward their respective recommendations to the director or examiner, as appropriate.

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3. Review Process.

a. The department shall perform a critical area review for any building or land use application submitted for a regulated activity, including, but not limited to, those set forth in EMC 14.20.020. Reviews for multiple critical areas shall occur concurrently.

b. The department shall, to the extent reasonable, consolidate the processing of related aspects of other Edgewood regulatory programs which affect activities in regulated critical areas, such as subdivision or site development, with the approval process established herein so as to provide a timely and coordinated review process.

c. As part of the initial review of all development or building-related approvals or permit applications, the department shall review the information submitted by the applicant to:

i. Confirm the nature and type of the critical area and evaluate any required assessments, reports, or studies;

ii. Determine whether the development proposal is consistent with this title;

iii. Determine whether any proposed alterations to the site containing critical areas are necessary; and

iv. Determine if the mitigation and monitoring plans proposed by the applicant are sufficient to protect the public health, safety, and welfare consistent with the goals, purposes, objectives, and requirements of this title.

d. Regulated activities subject to SEPA shall also be reviewed with consideration for impacts on critical areas as identified in this title. Regulated activities that pose a significant adverse impact which are not addressed by the standards and criteria established in this title (gaps), may be subject to additional mitigation measures as determined through the SEPA process. A threshold determination issued pursuant to EMC Title 20, SEPA, may not be made prior to departmental review of any special studies or technical reports required by this title, except where the applicant requests a declaration of significance so that environmental review is required.

e. Critical area applications required under this title shall be approved prior to approval of any related action (parent application) such as, but not limited to, a building permit, subdivision action, site development action, forest practice application, or use permit.

f. The requirement to submit a critical area assessment, report, etc., required under this title, may be waived at the department's discretion when the proposed project area for a regulated activity is located in an area that has been the subject of a previously submitted and approved assessment, report, etc., if all of the following conditions have been met:

i. The provisions of this title have been previously addressed as part of another approval.

ii. There has been no material change in the potential impact to the critical area or required buffer since the prior review.

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

iv. The permit or approval has not expired or, if there is no expiration date, no more than five years have elapsed since the issuance of that permit or approval.

v. Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured.

4. Burden of Proof. The applicant has the burden of proving that a proposed application complies with the standards set forth in this title.

5. Approval.

a. The department may approve, approve with conditions, or deny any development proposal in order to comply with the requirements and carry out the goals, purposes, objectives, and requirements of this title based on the department's or examiner's, as applicable, evaluation of the ability of any proposed mitigation measures to reduce risks associated with the critical area and compliance with required standards. Approval of a development proposal does not discharge the obligation of the applicant to comply with the provisions of this title.

b. Applicants shall comply with the recommendations and/or mitigation measures contained in final approved assessments or reports and any department or examiner conditions of approval.

c. Approval of an application required under this title must be given prior to the start of any development activity on a site.

6. Denial. The department or examiner, as applicable, shall have the authority to deny any application for development or building-related approvals or permits when the criteria established in this title have not been met.

7. Time Period for Final Decision. The provisions for issuing a notice of final decision on any application filed pursuant to this title is set forth in EMC 18.40.040, Coordination of development permit procedures.

E. Time Limitations.

1. Expiration of Approval.

a. Approvals granted under this title shall be valid for the same time period as the underlying permit (e.g., preliminary plat, site development, building permit). If the underlying permit does not contain a specified expiration date then approvals granted under this title shall be valid for a period of three years from the date of issue, unless a longer or shorter period is specified by the department.

b. The approval shall be considered null and void upon expiration, unless a time extension is requested and granted as set forth in subsection (E)(2) of this section.

2. Time Extensions.

a. The applicant or owner(s) may request in writing a one-time, one-year extension of the original approval.

b. Knowledge of the expiration date and initiation of a request for a time extension is the responsibility of the applicant or owner(s).

c. A written request for a time extension shall be filed with the department at least 60 days prior to the expiration of the approval.

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d. Upon filing of a written request for a time extension, a copy shall be sent to each party of record together with governmental departments or agencies that were involved in the original approval process. By letter, the department shall request written comments be delivered to the department within 30 days of the date of the letter.

e. Prior to the granting of a time extension, the department may require a new application(s), updated study(ies), and fee(s) if:

i. The original intent of the approval is altered or enlarged by the renewal;

ii. The circumstances relevant to the review and issuance of the original approval have changed substantially; or

iii. The applicant failed to abide by the terms of the original approval.

f. If approved, the one-year time extension shall be calculated from the date of granting said approval.

F. Recording.

1. Approvals.

a. Critical area regulation approvals are to be recorded on the title of the project parcel(s) at the Pierce County auditor's office within six months of issuance. Failure to record an approval in this timeframe may result in the project being placed into inactive status. A new application(s) and fee(s) may be required to remove the project from inactive status. Also refer to EMC 14.10.080(C), Title and Land Division Notification, for additional recording requirements.

b. Recording of a wetland approval for work completed within utility line easements on lands not owned by the jurisdiction conducting the regulated activity shall be required.

2. Right of Entry Agreement. The city may require the applicant to record a right of entry agreement, which shall be consistent with a format approved by the department. The right of entry agreement shall:

a. Allow director or agent to access the site for purposes of inspection during the course of application review, construction, and post-construction monitoring.

b. Allow the director or agent to enter a property to construct required improvements, mitigation measures, or monitoring that have been financially guaranteed.

c. Run with the land, and be binding on all parities having or acquiring any right, title, interest, or any part thereof of the site, including the grantor, heirs, successors, and assigns. (Ord. 02-200 § 2).

14.10.080 Critical area protective measures.

A. General. All critical area tracts, conservation easements, land trust dedications, and other similarly preserved areas shall remain undeveloped in perpetuity, except as they may be allowed to be altered pursuant to each chapter.

B. Financial Guarantees.

1. The city may require an applicant to submit one or more financial guarantees to the city, as set forth in each chapter of this title (and other titles of Edgewood's Municipal Code as required), to

guarantee any performance, mitigation, maintenance, or monitoring required as a condition of permit approval. The approval for the project will not be granted until the financial guarantee is received by the department. Projects where the city or one of its departments is the applicant shall not be required to post a financial guarantee.

2. Financial guarantees required under this title shall be:

a. In addition to any other site development guarantees required for project approval.

b. Submitted on financial guarantee forms approved by the city.

c. In the amount of 125 percent of the estimate of the cost of mitigation or monitoring to allow for inflation and administration should the city have to complete the mitigation or monitoring, unless the provisions set forth in subsection (B)(2)(D) of this section are applicable.

d. Released by the city only when the applicant's appropriate technical professional has provided written confirmation that the performance, mitigation, or monitoring requirements have been met and department staff, or agent, inspected the site(s) for compliance.

3. Failure to complete any performance, mitigation, or monitoring may result in the forfeiture of the guarantee. Applicants who have previously defaulted will no longer be allowed to post a guarantee for improvements necessary for approval of a land use application. Applicants who have previously defaulted will be allowed to post guarantees for subsequent critical area mitigation work needed for approval of a land use application or permit, but the guarantee must be by bond and must be for two times the required amount.

C. Title and Land Division Notification.

1. General.

a. Title and/or land division notice shall be required to be recorded with the Pierce County auditor on each site that contains a critical area, prior to approval of any regulated activity on a site.

b. If more than one critical area subject to the provisions of this title exists on the site, then one notice which addresses all of the critical areas shall be sufficient.

c. Title and land division notifications and notes shall be approved by the department and shall be consistent with Appendix B in EMC 14.10.140.

2. Title Notification.

a. When the city determines that activities not exempt from this title are proposed, the property owner shall file a notice with the Pierce County auditor. The notice shall provide a public record of the presence of a critical area and associated buffer, if applicable; the application of this title to the property; and that limitations on actions in or affecting such critical area and associated buffer, if applicable, may exist.

b. The notice shall be notarized and shall be recorded with the Pierce County auditor prior to approval of any regulated use or activity for the site.

c. Notice on title is not required for utility line easements on lands not owned by the jurisdiction conducting the regulated activity (e.g., gas pipelines).

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3. Land Division Notification and Notes. The applicant shall include notes, as referenced in EMC 14.10.140, Appendix B, on the face of any proposed activity as defined in EMC Title 16, Subdivisions (i.e., final plat, binding site plan, large lot, short subdivision, boundary line adjustment, or lot combination), for projects that contain critical areas or critical area buffers. The applicant shall also clearly identify the critical area boundaries and the boundary of any associated buffers on the face of these documents.

D. Conservation Easements. Prior to any final critical area approval, the part of the critical area and required buffer which is located on the site shall be protected with a conservation easement or other similar permanent deed restriction. The conservation easement shall indicate allowable and prohibited uses within the critical area and required buffer.

E. Tracts. Prior to final approval of any subdivisions, short subdivisions, large lot divisions, or binding site plans, the part of the critical area and required buffer which is located on the site, shall be placed in a separate tract or tracts (see Figure 14.10-2 in EMC 14.10.150). In lieu of a separate tract, an applicant may propose to establish an alternative permanent protective mechanism; however, approval of such is based upon the department's or hearing examiner's, as applicable, determination that such alternative mechanism provides the same level of permanent protection as designation of a separate tract or tracts.

F. Homeowner's Covenants. A description of the critical area and required buffer shall be placed in any required homeowner's covenants. Such covenants shall contain a detailed description of the allowable uses within the critical area and, if applicable, associated buffer and long-term management and maintenance requirements of that critical area.

G. Identification of Critical Areas and Required Buffers on Construction Plans. Critical areas and required buffers shall be clearly identified on all construction plans such as, but not limited to, site development plans, residential building plans, commercial building plans, forest harvest plans, etc.

H. Markers, Fencing, and Signage.

1. Markers. Prior to final approval of any critical area application, the outer edge of the critical area boundaries or, if applicable, required buffer boundaries on the site shall be flagged by the qualified professional, as outlined in each chapter. These boundaries shall then be identified with permanent markers (rebar and cap) and flagged by a licensed surveyor, unless otherwise stated in this title. The permanent markers shall be clearly visible, durable, and permanently affixed to the ground.

2. Fencing.

a. Temporary Construction Fencing. Temporary fencing is required when vegetation is to be retained in an undisturbed condition within the critical area and required buffer. In such cases, the applicant will be required to construct silt fencing, construction fencing, or other city-approved method of temporary fencing at the edge of the critical area or, if applicable, the edge of the required buffer prior to beginning construction on the site.

b. Permanent Fencing. Where deemed necessary by the department to provide protection to the critical area, the applicant will be required to construct permanent fencing along the buffer boundary.

3. Signage.

a. The department shall require permanent signage to be installed at the edge of the critical area or, if applicable, the edge of the required buffer.

b. The sign shall indicate the type of critical area and if the area is to remain in a natural condition as permanent open space.

c. Exact sign locations, wording, size, and design specifications shall be established by the department. Required signage shall be clearly visible, durable, and permanently affixed to the ground.

d. Prior to final approval of any critical area application, the applicant shall submit an affidavit of posting to the department as proof that the required signs were posted on the site.

I. Building Setbacks.

1. Unless otherwise provided in this title, buildings and other structures shall be set back a distance of 15 feet from the edge of all critical area buffers or, where no buffers are required, the edge of the critical area.

2. The following uses and activities may be allowed in the building setback area:

a. Landscaping;

b. Uncovered decks;

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

d. Impervious ground surfaces, such as driveways, parking lots, roads, and patios; provided, that such improvements conform to the water quality standards set forth in the city's adopted stormwater management manual and that construction equipment does not enter the buffer during the construction process; and

e. Clearing and grading. (Ord. 02-200 § 2).

14.10.085 Variances to critical areas.

A. General. Variances are reviewed pursuant to EMC 18.50.080, Variances. Conditions may be attached to a critical area(s) variance, which will serve to meet the goals, objectives, and policies of this title.

B. Criteria for Priority Habitat Buffer Variances. In order to grant a priority habitat buffer variance, requirements pursuant to EMC 18.50.080, Variances, shall apply. In addition, the applicant must also demonstrate, and the examiner must find, that the requested buffer width modification preserves adequate vegetation to:

1. Maintain proper water temperature;

2. Minimize sedimentation; and

3. Provide food and cover for listed species.

C. Criteria for Flood Hazard Area Variances. In order to grant a flood hazard area variance, requirements pursuant to EMC 18.50.080, Variances, shall apply. In addition, the applicant must also demonstrate, and the examiner must find, that the proposal satisfies the following:

1) Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a small or irregularly shaped lot contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases the technical justification required for issuing the variance increases.

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2) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.

3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

4) Variances shall only be issued upon:

i) A showing of good and sufficient cause;

ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant;

iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

5) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from flood elevations should be quite rare.

6) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except 4.4 1), and otherwise complies with Sections 5.1-1, 5.1-3, and 5.1-4 of the GENERAL STANDARDS.

7) Any applicant to whom a variance is granted shall be given written notice that the permitted structure will be built with its lowest floor below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk.

D. Should a variance be denied, the application will be reviewed as a reasonable use exception pursuant to EMC 14.20.050. (Ord. 02-200 § 2).

14.10.090 Reconsideration and appeal procedures.
Procedures for appeal of an administrative decision and procedures for reconsideration or appeal of a hearing examiner decision issued pursuant to this title are set forth in EMC 18.40.090, Process II – Administrative action. (Ord. 02-200 § 2).

14.10.100 Fees.
Fees for applications and/or review of reports, studies, or plans filed pursuant to this title are set forth in the adopted fee schedule and as stipulated below:

A. Fee Establishment. The city, by resolution, shall establish fees for filing of critical area review processing and other services provided by the city as required by this title. These fees shall be based on the anticipated sum of direct costs incurred by the city for any individual development or action and may be established as a sliding scale that will recover all of the city costs. Basis for these fees shall include, but not be limited to, the cost of engineering and planning review time, cost of inspection time, costs for administration, and any other special costs attributable to the critical area review process.

B. Applicant Responsibilities. Unless otherwise indicated in this title, the applicant shall be responsible for the initiation, preparation, submission, and expense of all required reports, assessment(s), studies, plans,

reconnaissance(s), peer review(s) by qualified consultants, and other work prepared in support of or necessary to review the application.

C. Fee Schedule. The director is charged with the responsibility of collecting appropriate fees charged to applicants for any permits or discretionary approval processes provided for in this title. The amount of the fees charged shall be as established by resolution or ordinance of the city council filed in the office of the city clerk and may be, from time to time, changed without amendment to this title.

D. Payment. Fees established in accordance with this title shall be paid upon submission of a signed application or petition for appeal, or as otherwise provided by any fee ordinance or resolution adopted by the city council. A department of the city shall not be required to pay application fees when applying for a permit regulated under this title. Where such an application will require substantial review time or expenditures, the city manager may, at his/her sole discretion, direct that the department initiating the permit request to reimburse the community development department for some or all of costs expended for the application review.

E. Investigation Fee. To investigate violations of this title, all city fees associated with investigation of violations of this title may be assessed at the adopted billable staff hour rate in addition to any required consultant costs, legal costs, and other expenses necessary to complete the investigation of the violation. The payment of such investigation fees shall not exempt any person from compliance with all other provisions of this title, nor from penalties prescribed by law.

F. Fees for Environmental Assessments and EISs. Environmental assessment/checklist fees for the construction, alteration, or repair of single- or two-family dwellings may be waived when the application provides sufficient documentation showing, to the satisfaction of the city, who shall make written findings, that all of the following conditions exist:

1. The single- or two-family dwelling is intended for low-income families. Low-income families are those families who meet the low-income guidelines as set forth by the city of Edgewood community development department; Department of Housing and Urban Development (HUD) annual guidelines, Section 8;

2. The construction, alteration, or repair of the single- or two-family dwelling involves some volunteer labor; and

3. The construction, alteration, or repair is being undertaken by an organization classified as a 501(c)(3) nonprofit organization by the Internal Revenue Service; or

4. The construction, alteration, or repair is being undertaken by Pierce County department of community services housing rehabilitation or authorized agent. (Ord. 02-200 § 2).

14.10.110 Compliance.
A. The regulations for compliance with the provisions of this title are set forth in EMC 18.30.040, Scope and compliance.

B. When a critical area or its required buffer has been altered in violation of this title, the department shall require the property owner to bring the site into compliance. The property owner shall be required to submit the appropriate critical area application and commence a departmental review, as applicable for each chapter of this title. In addition to any required site investigation, delineations, assessments, reports, etc., the property owner shall be required to submit a restoration plan that identifies the proposed mitigation to bring the subject property into compliance with the requirements of this title. (Ord. 02-200 § 2).

14.10.120 Warning and disclaimer of liability.

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The degree of protection required through application of this title is deemed to be reasonable for regulatory purposes and is based on scientific and engineering considerations; however, natural events that may exceed the geographic boundaries regulated under this title can and will occur (e.g., flood heights that are higher that anticipated). This title does not mean to imply that land outside designated hazard areas or uses permitted within such areas will be free from damages. Application of this title shall not create liability on the part of the city, any officer or employee thereof, or the Federal Insurance Administration for any damages that may result from the administration of this title or any administrative decision lawfully made hereunder. (Ord. 02-200 § 2).

14.10.130 Severability.

If any provision of this title or its application to any person or circumstance is held to be invalid or unconstitutional, then said holding shall in no way affect the validity or application of the remainder of this regulation ~~or the application of the provision~~ to other persons or circumstances ~~shall not be affected. (Ord. 02-200 § 2)~~.

14.10.135 Violation – Civil infraction.

A. In addition to any other sanction or penalty, or any remedial, judicial or administrative procedure available under city code or state law, violation of any provision of this title or failure to comply with a decision of the responsible official, hearing examiner, or city council issued pursuant to this title constitutes a civil infraction.

B. Each day or portion thereof during which a violation occurs or exists shall be deemed a separate civil infraction. A person found to have committed a civil infraction shall be assessed a monetary penalty. The maximum penalty and the default amount for a civil infraction shall be $250.00, not including statutory assessments. In addition:

1. The court may consider dismissing with costs only upon a showing that the violation was corrected within 30 days.

2. Whenever a monetary penalty is imposed by a court under this title, it is immediately payable. If the person is unable to pay at that time, the court may grant an extension. If the penalty is not paid on or before the time established for payment, the court may proceed to collect the penalty in the same manner as other civil judgments and may notify the prosecuting attorney of the failure to pay.

3. Payment of a monetary penalty or performance of the required community service shall not relieve a person of the duty to correct the violation.

4. The court may also order a person found to have committed a civil infraction to make restitution. (Ord. 02-200 § 2).

14.10.140 Appendices.

A. Mapping Sources.

B. Title and Plat Notification Forms.

APPENDIX A

MAPPING SOURCES

The following sources of information and/or best available science may be used to indicate the presence of critical areas within Edgewood and provide data used in the development of the city of Edgewood critical areas atlas maps:

A. The following sources identify wetlands that are depicted in the Edgewood wetland inventory map and/or used as indicators of wetland presence:

1. Soil Survey of Pierce County Area, Washington, 1979, Soil Conservation Service, United States Department of Agriculture (USDA);

2. National Wetland Inventory Maps, U.S. Department of Interior, Fish and Wildlife Service, 1973;

3. ~~FEMA FIRM Maps and flood insurance study maps~~Potential flood hazard areas as identified under subsection G.;

4. Aerial photographs, Department of Natural Resources, 1985 (Assessor's Office aerials) or city-acquired aerial photographs;

5. Applicant supplied and verified data;

6. Ongoing field investigation to categorize and delineate wetlands; and

7. Buildable Lands Wetland Inventory, 2001.

B. The following sources identify landslide and erosion hazard areas that are depicted in the critical areas landslide hazard area map and erosion hazard areas map and/or used as indicators of landslide and erosion hazard area presence:

1. Soil Survey of Pierce County Area, Washington, 1979, Soil Conservation Service, United States Department of Agriculture (USDA);

2. Areas designated as slumps, earthflows, mudflows, lahars, or landslides on maps published by the United States Geological Survey or Washington Department of Natural Resources Division of Geology and Earth Resources;

3. The city of Edgewood topographic data;

4. United States Geologic Survey Quadrangle maps;

5. Applicant supplied and verified data of active landslide areas and potentially unstable areas; and

6. Buildable Lands Slope Data, 2001.

C. The following sources identify seismic hazard areas which are depicted in the critical areas seismic hazard areas map and/or used as indicators of seismic hazard areas presence:

1. Washington State Department of Natural Resources Division of Geology and Earth Resources 1-100,000 Scale Digital Geology of Washington State; and

2. Areas designated as faults or subject to liquefaction or dynamic settlement on maps or data published by the United States Geological Survey or Washington Department of Natural Resources Division of Geology and Earth Resources.

D. The following sources identify volcanic hazard areas that are depicted in the Critical Areas Atlas – Volcanic Hazard Areas Map:

1. "Map Showing Debris Flows and Debris Avalanches at Mount Rainier, Washington – Historical and Potential Future Inundation Areas," Hydrogeologic Investigations Atlas HA-729, U.S. Department of Interior, Geologic Survey, 1995, as amended by Kevin Scott, USGS, on November 10, 1997, to be consistent with the reports listed in subsections (D)(1) and (2) of this section;

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2. Volcano Hazards from Mount Rainier, Washington by Hoblitt, Walder, Driedger, Scott, Pringle, and Valance, U.S. Geological Survey Open File Report 95-273, 1995;

3. Sedimentology, Behavior, and Hazards of Debris Flows at Mount Rainier, Washington, U.S. Geological Survey Professional Paper 1547, 1995; and

4. Table of Estimated Lahar Travel Times for Lahars 107 to 108 Cubic Meters in Volume (Approaching a "Case I" Lahar in Magnitude) in the Puyallup River Valley, Mount Rainier, Pierson, T.C., 1998, An empirical method for estimating travel times for wet volcanic mass flows; Bulletin of Volcanology, v. 60, p. 98-109.

E. The following sources identify fish and wildlife habitats or presence and/or are used as indicators of critical fish or wildlife presence:

1. Water Type Reference Maps, Washington Department of Natural Resources, were used as sources to identify fish and wildlife habitat areas that are depicted in the Critical Areas Fish and Wildlife Habitat Areas – Stream Typing Map;

2. Priority Habitats and Species Program and Priority Habitat Species Maps, Washington Department of Fish and Wildlife (WDFW);

3. Water Resource Index Areas (WRIA), Washington Department of Fish and Wildlife; and

4. Salmon Distribution Maps, WDFW and Washington State Conservation Commission Data, January 2000.

F. The following sources identify the aquifer recharge, pothole and wellhead protection areas that are depicted in the Critical Areas Aquifer Recharge Area – DRASTIC Zones Map and Aquifer Recharge Area:

1. The boundaries of the two highest DRASTIC zones which are rated 180 and above on the DRASTIC index range, as identified in Map of Groundwater Pollution Potential, Edgewood, Washington, National Water Well Association, U.S. Environmental Protection Agency;

2. Wellhead protection areas as identified by the Mountain-View/Edgewood Water Company.

G. The following sources identify flood hazard areas:

1. The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Pierce County, Washington and Incorporated Areas" dated March 7, 2017~~August 19, 1987~~, with accompanying FIRMs ~~and floodway maps~~ and any map amendments or corrections are hereby adopted by reference and declared to be a part of this title. The Flood Insurance Study and FIRMs are on file at Edgewood City Hall, 2224 104th Avenue East, Edgewood, Washington, 98371. The city may add or delete land from areas of special flood hazard or revise base flood elevations, utilizing best-available information for flood hazard identification in accordance with federal regulations.

2. The city's Surface Water Management Plan, 1997, or as amended thereafter.

3. Aerial photographs of the city, especially those taken in wintertime 1996 and 1997.

4. The city's two-foot elevation contour mapping performed by Nies Mapping Group Inc., 1999, or as subsequently updated.

5. Relevant and verifiable information from the City's Capacity Analysis Technical Review AdHoc Committee draft report, 2000.

6. Relevant and verifiable government and citizen photographs, notes, observations, etc., regarding historic ponding/flooding levels.

7. Relevant and verifiable information available through Pierce County.

8. Relevant and verifiable information available through FEMA.

~~9. The flood insurance study and maps provide the base information used in the administration of this title. The flood insurance study is on file at the Pierce County Public Works and Utilities Department, 2401 South 35th Street, Tacoma, Washington.~~

~~10~~9. Where the flood insurance study, FIRM, and floodway maps do not provide adequate, best, or most recent information, the city may utilize flood information that is more restrictive or detailed than the FEMA data which can be used for identifying flood hazard areas. This information may include, but is not limited to, new and more accurate mapping or data on: channel migration, high water elevations from flood events, base flood elevations, groundwater flooding areas, potholes, maps showing increased flood inundation based on future build-out or changed hydrologic conditions, specific maps from watershed basin plans or related studies, studies by federal or state agencies, or other information deemed appropriate by the city.

APPENDIX B

TITLE AND PLAT NOTIFICATION FORMS

A. Notice for Title Notification.

1. (Example: Appropriate Critical Area from EMC 14.10.030)

Tax Parcel Number:

Address:

Legal Description:

Present Owner:

NOTICE: This property contains (e.g., wetlands or wetland buffers) as defined by EMC 14.10.030. The site was the subject of a development proposal for _____ application number filed on _____ (date). Restrictions on use or alteration of the site may exist due to natural conditions of the property and resulting regulations. Review of such application has provided information on the location of the (e.g., wetland or wetland buffers) and any restriction on use.

_____ _____
Date Signature of owner

Notary acknowledgment and notary seal

B. Additional Title Notification Statements.

1. Title notification for liquefaction and dynamic settlement hazard areas shall include a statement of the performance criteria (i.e., protection of life safety only, provision for minimal structural damage so that post-earthquake functionality is substantially unchanged, no structural damage for the design earthquake).

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2. Title notification for fault rupture hazard areas shall include a statement that a fault rupture hazard area or associated buffer exists on the site. The title notification shall include a site plan of the subject property with the fault rupture hazard area and associated buffer identified.

3. Properties that contain flood hazard areas pursuant to Chapter 14.70 EMC shall include the following statement:

Flood Elevation Certificates are kept on file by the Department.

C. Notice for Plat Notification/Plat Notes.

1. General. The following notice shall be placed on the face of the final plat, short plat, large lot, or binding site plan documents when said subdivision contains critical areas or critical area buffers:

Notice: This site lies within a (e.g., landslide hazard area) as defined in EMC Title 14. Restrictions on use or alteration of the site may exist due to natural conditions of the site and resulting regulation.

2. Native/Natural Vegetation Preservation Areas. The following notice shall be placed on the face of the final plat, short plat, large lot, or binding site plan documents when said subdivision contains critical areas or critical area buffers and when said critical areas or critical area buffers have been identified as native/natural vegetation preservation areas.

Notice: The Critical Areas (e.g., Oregon White Oak Preservation Areas) appearing on this (final site plan/preliminary plat/final plat/short plat/large lot/engineering drawing) contain areas of natural/native vegetation intended to buffer the Critical Area from the adverse effects of development. These Critical Areas (e.g., Oregon White Oak Preservation Areas) shall remain and be maintained in a natural, undeveloped, open space state. There shall be no clearing, grading, filling, or construction within the Critical Areas (e.g., Oregon White Oak Preservation Areas), except as shown on plans or documents approved by the City of Edgewood and contained in the official files for this development. Each Critical Area (e.g., Oregon White Oak Preservation Area) shall remain undisturbed except for periodic watering and hand weeding of plants designated as noxious by the State of Washington.

3. Plat Notes for Flood Hazard Areas. The following notes shall be placed on the face of any of final plat, short plat, large lot, or binding site plan documents which lie within a flood hazard area.

a. Grading, clearing, and/or filling within the limits of the 100-year floodplain is prohibited except for watercourse related construction, repair, and/or maintenance work that is done by the city for management operations.

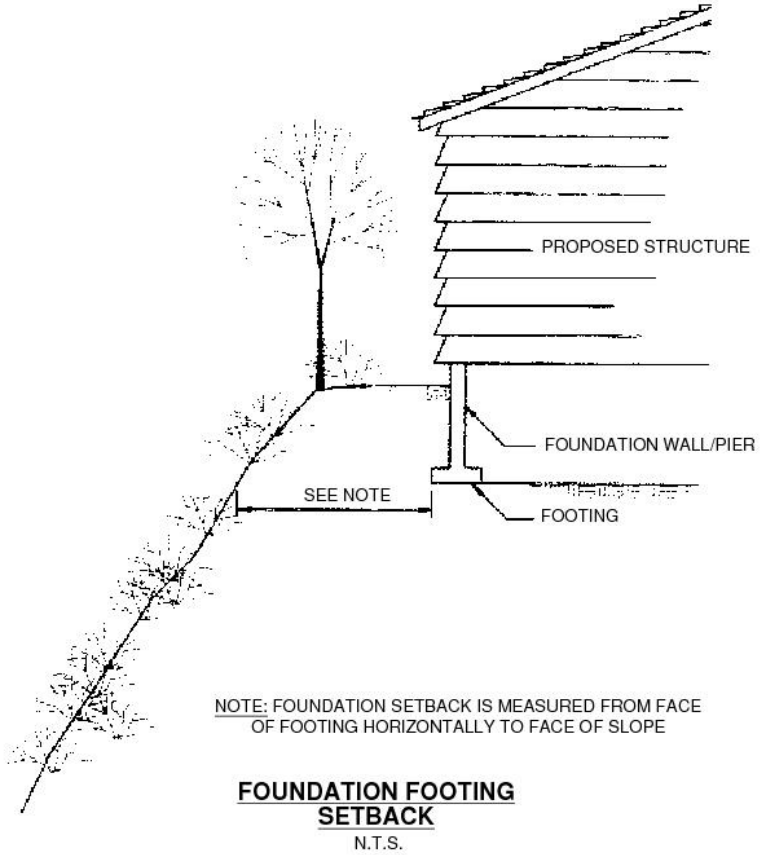
b. If a higher frequency event occurs or if existing conditions upon which the flood hazard area boundaries were based were to change or occur differently than depicted, then the level of protection afforded by the existing levee, if applicable, and flood hazard area standards may not be adequate to prevent the subject site from flooding.

c. All purchasers and developers (and/or their agents) of property within the subject development area and/or parcel shall take notice of the above conditions and hereby agree to defend, indemnify, and hold harmless Edgewood from any and all claims, losses, costs, liabilities, or damages of any nature imposed upon or asserted against Edgewood uprising out of or caused by the city's issuance of approval or by issuance of any other permits arising out of this approval.

d. All occupants and/or owners of property in the subject area assume the risk of flooding which may occur and waive any claims against Edgewood arising out of damage or injury to person or property resulting therefrom. (Ord. 16-461 § 3; Ord. 02-200 § 2).

14.10.150 Figures.

A. Figure 14.10-1, Foundation Footing Setback.



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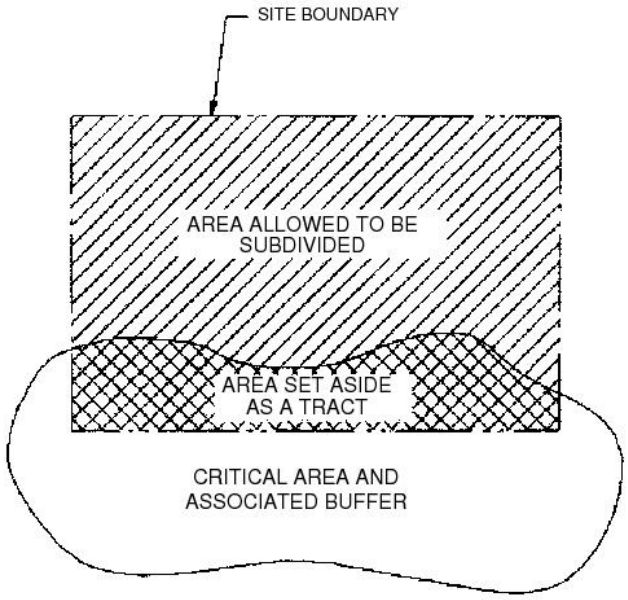
B. Figure 14.10-2, Critical Area Protective Measures – Tracts.



CRITICAL AREA PROTECTIVE MEASURES – TRACTS
N.T.S.

(Ord. 02-200 § 2).

Chapter 14.20
USE AND ACTIVITY REGULATIONS

Sections:

14.20.010 Permitted uses.
14.20.020 Regulated uses and activities.
14.20.030 Exemptions.
14.20.040 Nonconforming uses and structures.
14.20.050 Reasonable use exceptions.
14.20.060 Current use assessment program.

14.20.010 Permitted uses.
Uses permitted on properties designated as critical areas shall be the same as those permitted in the zone classification shown in the city's zoning atlas unless specifically prohibited by this title. (Ord. 02-200 § 2).

14.20.020 Regulated uses and activities.
A. Unless the requirements of this title are met, the department shall not grant any approval or permission to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement regulated through the following: building permit, commercial or residential; binding site plan; franchise right-of-way construction permit; site development permit; right-of-way permit; short subdivision; large lots; use permits; subdivision; utility permits; or any subsequently adopted permit or required approval not expressly exempted by this chapter.

B. The following activities are regulated within a critical fish and wildlife habitat area, wetland, aquifer recharge area, landslide or erosion hazard area, flood hazard area, and/or their buffers unless exempted by EMC 14.20.030:

1. Removing, excavating, disturbing, or dredging soil, sand, gravel, minerals, organic matter, or materials of any kind;

2. Dumping, discharging, or filling;

3. Draining, flooding, or disturbing the water level or water table. In addition, an activity which involves intentional draining, flooding, or disturbing the water level or water table in a wetland or stream in which the activity itself occurs outside the regulated area shall be considered a regulated activity;

4. Driving, piling or placing obstructions, including placement of utilities;

5. Constructing, reconstructing, installing, demolishing, or altering the size of any structure or infrastructure, including manufactured and/or mobile homes;

6. Altering the character of a regulated area by destroying or altering vegetation through clearing, harvesting, cutting, intentional burning, shading, or planting;

7. Activities which result in significant changes in water temperature or physical or chemical characteristics of wetland or stream water sources, including changes in quantity of water and pollutant level;

8. Application of pesticides, fertilizers, and/or other chemicals unless demonstrated not to be harmful to the regulated area;

9. The division or redivision of land;

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10. The creation of ~~impervious~~ hard surfaces.

11. The city adopts the Forest Practice Act (Chapter 76.09 RCW) by reference. (Ord. 02-200 § 2).

14.20.030 Exemptions.
The following activities are exempt from the provisions of this title:

A. Existing agricultural activities established prior to February 2, 1992; that after that date, do not cause permanent conversion of a critical area through actions such as filling, ditching, draining, clearing, grading, etc.; provided, that:

1. Existing agricultural activities and structures shall comply with the provisions of Chapter 14.70 EMC, Flood Hazard Areas; and

2. Determination of an agricultural exemption status is limited to the specific area(s) upon which lawfully established agricultural activities are being conducted. A determination that an activity is exempt within one portion of a property does not necessarily extend to other portions of the property.

B. Maintenance or reconstruction of existing, lawfully established public facilities; provided, that reconstruction does not involve expansion of the facility:

1. Roads, paths, bicycle ways, trails, bridges, and associated storm drainage facilities or other public rights-of-way;

2. Flood control improvements such as, but not limited to, levees, revetments, floodwalls, regional storm drainage facilities, drainage structures, or channel capacity projects to protect public infrastructure and/or existing development, when administered by Edgewood public works and utilities; provided, that the work shall:

a. Not increase the height of the facility or linear length of the affected stream edge;

b. Not expand the footprint of the facility waterward or into any landward aquatic habitat; and

c. Use approved fish-friendly bioengineering techniques to the extent feasible.

C. Maintenance or reconstruction of existing private roads, driveways, on-site septic systems, and wells; provided, that reconstruction does not involve expansion of facilities, widening, or relocation.

D. For the following utility activities, when undertaken pursuant to best management practices to avoid impacts to critical areas:

1. Normal and routine maintenance or repair of existing utilities that does not include any expansion.

2. Installation, replacement, operation, repair, alteration, extension, or construction of all utility lines, equipment, or appurtenances in improved city road rights-of-way.

E. Reconstruction, remodeling, or maintenance of existing single-family residential structures and accessory structures that are located outside a flood hazard area and active landslide hazard area; provided, that a one-time only expansion of the building footprint does not increase by more than 25 percent and that the new construction or related activity does not further intrude into the critical area or related buffer. The exemption shall not apply to reconstruction which is proposed as a result of structural damage associated with a critical area, such as slope failure in a landslide hazard area or flooding in a flood hazard area.

F. Reconstruction, remodeling, or maintenance of structures, other than single-family structures and accessory structures that are located outside a flood hazard area or active landslide hazard area; provided, that such reconstruction, remodeling, or maintenance does not increase the floor area nor extend beyond the existing ground coverage. The exemption shall not apply to reconstruction which is proposed as a result of site or structural damage associated with a critical area, such as slope failure in a landslide hazard area or flooding in a flood hazard area.

G. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests, and other related activities. Critical area impacts shall be minimized and disturbed areas shall be immediately restored.

H. Emergency action necessary to prevent imminent threat or danger to public health or safety, or to public or private property, or serious environmental degradation.

1. The department shall review all proposed emergency actions to determine the existence of the emergency and reasonableness of the proposed actions taken; however, post-emergency actions, such as submittal of permits, completion of city review, modification or removal of the emergency repair work, or mitigation shall be required by the department.

2. Shoreline erosion protection measures shall only be allowed as an emergency action when the owner can demonstrate that there is an imminent threat to an existing residential, commercial, industrial, or agricultural structure. The owner shall retain either city staff or an engineering geologist to conduct a site investigation and provide adequate documentation that the situation is actually an emergency. An emergency action is not warranted when the structure is located outside the active landslide or shoreline erosion hazard area.

I. Activities in artificial wetlands, except 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; or, those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas, created to mitigate conversion of wetlands, if permitted by the department.

J. Activities affecting:

1. Category III wetlands less than 2,500 square feet in size which fail to meet the definition of an associated wetland, and which are not part of a mosaic wetland system as set forth in EMC 14.30.020(E)(2).

2. Category IV wetlands less than 10,000 square feet in size and which fail to meet the definition of an associated wetland, and which are not part of a mosaic wetland system as set forth in EMC 14.30.020(E)(2).

3. Category III and IV wetlands exempted under this section may still be regulated under the provisions of the city's adopted stormwater management manual.

K. Placement of access roads, utility lines, and utility poles across a Category IV wetland and/or a buffer for a Category IV wetland if there is no reasonable alternative.

L. Activities on improved portions of roads, rights-of-way, or easements; provided, there is no expansion of ground coverage.

M. Activities in wetlands in areas managed according to a special area management plan or other plan adopted by the department and specifically designed to protect wetland resources.

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N. Removal by hand of manmade litter and control of noxious weeds that are included on the state noxious weed list (Chapter 16-750 WAC) or invasive plant species as identified by the city. Control may be conducted by clipping, pulling, or digging, or by an alternative nonmechanical method upon approval of a plan by the department.

O. Activities undertaken to comply with a United States Environmental Protection Agency superfund order, or a Washington Department of Ecology order, pursuant to the Model Toxics Control Act, including the following activities:

1. Remediation or removal of hazardous or toxic substances;

2. Source control; and

3. Natural resource damage restoration.

P. Maintenance activities of landscaping and gardens in a required buffer, including but not limited to, mowing lawns, weeding, harvesting, and replanting of garden crops, pruning and planting of vegetation to maintain the condition and appearance of the site existing on February 1, 1992.

Q. Activities designed for previously approved maintenance and enhancement of critical areas and/or their associated buffers.

R. Activities undertaken on the site of an existing holding pond where the water flow and/or water table is controlled by a previously approved pump system.

S. A residential building permit for a lot which was created through a land division action subject to previous reports and assessments as required under this title; provided, that the previous reports and assessments adequately identified the impacts associated with the current development proposal.

T. Maintenance of individual cemetery plots in established and approved cemeteries.

U. Activities within a portion of a wetland buffer or fish and wildlife habitat area buffer located landward of an existing, substantially developed area, such as a paved area, dike, levee, or permanent structure which eliminates or greatly reduces the impact of the proposed activities on the wetland or fish and wildlife habitat area. The department shall review the proposal to determine the likelihood of associated impacts.

V. Passive recreation such as hunting, hiking, fishing, and wildlife viewing that does not involve the construction of trails.

W. Enhancement actions that do not involve clearing, grading, or construction activities (e.g., revegetation with native plants and installation of nest boxes). Enhancement activity proposals shall be reviewed by the department.

X. Maintenance or repair of existing shoreline erosion protection measures or structures; provided, that the repair shall not serve to expand any existing structures or increase the impacts of such structure on critical fish or wildlife habitat.

Y. In addition to the general exemptions listed in this section, the following uses or activities are exempt from the provisions of Chapter 14.50 EMC, Aquifer Recharge and Wellhead Protection Areas:

1. Sewer lines and appurtenances;

2. Biosolids and sludge land application sites; provided, that these activities comply with the requirements established in Chapters 173-200, 173-216, and 173-304 WAC; and

3. Single-family and two-family dwellings and associated accessory structures. (Ord. 02-200 § 2).

14.20.040 Nonconforming uses and structures.

An established use or existing structure located in a wetland, critical fish and wildlife habitat area, landslide or erosion hazard area, flood hazard area, and their associated buffers that was lawfully permitted prior to February 1, 1992, but which is not currently in compliance with this title, may continue subject to the following:

A. Nonconforming Use Expansion. Nonconforming uses shall not be expanded or changed in any way that increases the nonconformity without a permit issued pursuant to the provisions of this title.

B. Nonconforming Structure Expansion. Existing structures shall not be expanded or altered in any manner that will increase the nonconformity without a permit issued pursuant to the provisions of this title, except as provided in EMC 14.20.030(F) and (G).

C. Discontinued Uses. Activities or uses which are discontinued for 12 consecutive months shall be allowed to resume only if they are in compliance with this title.

D. Substantial Damage. Nonconforming structures, except for structures located in a flood hazard area or active landslide hazard area which are damaged or destroyed by fire, explosion, flood, or other casualty, may be restored or replaced if reconstruction is commenced within one year of such damage and is substantially completed within 18 months of the date such damage occurred. The reconstruction or restoration shall not serve to expand, enlarge, or increase the nonconformity except as allowed through the provisions in EMC 14.20.030(F) and (G). Structures in a floodway or active landslide hazard area may be allowed to be restored only up to the limits of substantial improvement, as set forth in each chapter. (Ord. 02-200 § 2).

14.20.050 Reasonable use exceptions.

A. General Requirements.

1. If the application of this title would deny all reasonable use of a site, development may be allowed which is consistent with the general purposes of this title and the public interest. Nothing in this title is intended to preclude all reasonable use of property.
2. The provisions outlined in this section shall only be used when application of this title would deny all reasonable use of a site.
3. Reasonable use provisions shall apply to new construction, expansions, additions, replacements, and redevelopment projects.
4. Applications for a reasonable use shall automatically constitute an application for a variance to reduce front, side, or rear yard setback requirements. The hearing examiner shall examine the feasibility of reducing setbacks as a method of locating a structure outside a critical area or its associated buffer prior to granting a reasonable use exception for allowing construction to occur within a critical area or its associated buffer. Reductions in setback requirements shall be given preference over granting of a reasonable use exception.
5. The creation of new lots within critical areas and their associated buffers is prohibited.
6. The proposal must comply with all provisions in Chapter 14.70 EMC, Flood Hazard Areas, and Chapter 14.80 EMC, Landslide Hazard Areas.

B. Application Requirements. An application for a reasonable use exception shall include the following information:

1. A description of the areas of the site that contains a critical area, buffers, or within setbacks required under this title;
2. A description of the amount of the site that is within setbacks required by other standards of the zoning code;
3. A description of the proposed development, including a site plan;
4. An analysis of the impact that the amount of development described in subsection (B)(3) of this section would have on the critical area(s);
5. An analysis of whether any other reasonable use with less impact on the critical area(s) and associated buffer(s) is possible;

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6. A design of the proposal so that the amount of development proposed as reasonable use will have the least impact practicable on the critical area(s);
7. An analysis of the modifications needed to the standards of this title to accommodate the proposed development;
8. A description of any modifications needed to the required front, side, and rear setbacks; building height; and buffer widths to provide for a reasonable use while providing greater protection to the critical area(s);
9. Such other information as the department determines is reasonably necessary to evaluate the issue of reasonable use as it relates to the proposed development, such as but not limited to a wetland analysis report, mitigation plan, habitat evaluation study, and/or a buffer enhancement plan.

C. Review.

1. Public Hearing Required. The department shall set a date for a public hearing before the hearing examiner after all requests for additional information or plan correction, as set forth in EMC 18.40.150, have been satisfied. The public hearing shall follow the procedures set forth in EMC 18.40.190, Notice of public hearing.
2. Decision Criteria. The hearing examiner may approve a reasonable use exception if the examiner determines the following criteria are met:
   a. The proposed development is located on an existing lot of record that was created prior to the effective date of the ordinance codified in this title and there is no other reasonable use or feasible alternative to the proposed development with less impact on the critical area(s) and/or associated buffers including phasing or project implementation, change in timing of activities, buffer averaging or reduction, setback variance, relocation of driveway, or placement of structure.
   b. The development cannot be located outside the critical area and/or its associated buffer due to topographic constraints of the parcel or size and/or location of the parcel in relation to the limits of the critical area and/or its associated buffer and a building setback variance or road variance has been reviewed, analyzed, and rejected as a feasible alternative.
   c. The proposed development does not pose a threat to the public health, safety, or welfare on or off the site, nor shall it damage nearby public or private property.
   d. Any alteration of the critical area(s) shall be the minimum necessary to allow for reasonable use of the property.
   e. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line thereby creating the undevelopable condition after February 1, 1992.
   f. The proposal mitigates the impacts on the critical area(s) to the maximum extent possible, while still allowing reasonable use of the site.
   g. The proposed activities will not jeopardize the continued existence of species listed by the state or federal government as endangered, threatened, sensitive, or documented priority species or priority habitats.
   h. The proposed activities will not cause significant degradation of groundwater or surface water quality.
3. Additional Decision Criteria for Wetlands and Associated Buffers. In addition to the decision criteria listed in subsection (C)(2) of this section, a reasonable use exception for wetlands and associated buffers shall also demonstrate that the proposed activity will result in minimum feasible alteration or impairment to the wetland's functional characteristics and existing contours, vegetation, fish and wildlife resources, and hydrological conditions.
4. Additional Decision Criteria for Critical Fish and Wildlife Habitat Areas and Associated Buffers. In addition to the decision criteria listed in subsection (C)(2) of this section, the hearing examiner may approve a reasonable use exception for critical fish and wildlife habitat areas and associated buffers if the examiner determines that the proposal complies with the mitigation measures as set forth in EMC 14.40.050.
5. Examiner's Authority. The examiner has the authority to approve an application for a reasonable use exception, approve with additional requirements above those specified in this title, require modification of the proposal to comply with specified requirements or local conditions, or deny the application if it fails to comply with the requirements of this title.

6. Required Written Findings and Determinations. A reasonable use exception may be approved by the examiner only if all of the following findings can be made regarding the proposal and are supported by the record:
   a. The granting of the proposal will not be detrimental to the public health, safety, and general welfare.
   b. The granting of the proposal will not be injurious to the property, regulated critical area(s), or improvements adjacent to and in the vicinity of the proposal.
   c. The proposal minimizes adverse environmental impacts to the maximum practicable extent and provides mitigation to offset any impacts.
   d. The granting of the proposal is consistent and compatible with the goals, objectives, and policies of the comprehensive plan; community plan, if applicable; and the provisions of this title. (Ord. 02-200 § 2).

14.20.060 Current use assessment program.

A. An owner of agricultural land, timberland, or open space desiring current use classification under Chapter 84.34 RCW may file for such current use classification with the Pierce County assessor-treasurer's office.
B. The department shall notify the assessor-treasurer's office when restrictions on development occur on a particular site.
C. The assessor-treasurer's office shall consider the critical areas and buffering requirements of this title in determining the fair market value of land. Any owner of an undeveloped buffer which has been placed in a separate tract or tracts, protective easement, public or private land trust dedication, or other similarly preserved area shall have that portion of land assessed consistent with those restrictions. (Ord. 02-200 § 2).

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Chapter 14.70
FLOOD HAZARD AREAS

Sections:

14.70.010 Purpose.
14.70.020 Flood hazard areas.
14.70.030 Flood hazard area review procedures.
14.70.040 Flood hazard area standards.
14.70.050 Appendices.
14.70.060 Figures

14.70.010 Purpose.

The purpose of this chapter is to promote the public health, safety, and general welfare of the citizens of Edgewood. The standards contained in this chapter are intended to minimize public and private losses due to flood conditions in flood hazard areas and provide special criteria necessary for regulated activities located within flood hazard areas of the city. The following statements describe the purpose of this chapter:

A. Protect human life and health;

B. Minimize expenditure of public money and costly flood control projects;

C. Minimize the need for rescue and relief efforts associated with flooding;

D. Minimize prolonged business interruptions;

E. Minimize damage to public infrastructure, facilities and utilities;

F. Minimize damage to critical fish and wildlife habitat areas;

G. Minimize net loss of ecological functions of floodplains;

H. Ensure that potential buyers are notified that property is in a flood hazard area;

I. Ensure that those who occupy flood hazard areas assume responsibility for their actions; and

J. Qualify Edgewood for participation in the National Flood Insurance Program, thereby giving the citizens of Edgewood the opportunity to purchase flood insurance with particular emphasis to those in flood hazard areas. (Ord. 02-200 § 2).

14.70.020 Flood hazard areas.

Edgewood regulates the following flood hazard areas:

A. Potential Flood Hazard Areas.

1. Potential flood hazard areas, as depicted on the Critical Areas Atlas – Flood Hazard Area Map, include:

a. Detailed Study Areas.

i. FEMA Flood Insurance Rate Map and Floodway Map AE and AH zones.

ii. Areas within 300 feet horizontal distance from the base flood elevation established for the mapped AE and AH zones (see EMC 14.70.060(A), Figure 14.70-1).

iii. Areas within five feet of vertical height from the base flood elevation established for the mapped AE and AH zones.

b. Unstudied Areas. FEMA Flood Insurance Rate Map ~~unnumbered~~ A zones and ~~B~~ shaded X zones, and areas within 300 feet horizontal distance from ~~the~~ said mapped areas ~~of the mapped A zones~~ (see EMC 14.70.060(B), Figure 14.70-2).

c. Natural Waters/Watercourse. Areas within five feet of vertical height above the ordinary high water mark of an identified natural watercourse (see EMC 14.70.060(C), Figure 14.70-3).

d. Groundwater Flooding Areas. Areas within 300 feet horizontal distance from a mapped groundwater flooding area (see EMC 14.70.060(D), Figure 14.70-4).

e. Potholes. Areas not identified as a mapped flood hazard area as described above, but within 10 feet of vertical relief from the bottom of an identified pothole or within two feet of vertical relief of a potential surface water spillway or other type of outlet (see EMC 14.70.060(E) and (F), Figure 14.70-5 and Figure 14.70-6). Potholes may be identified by city topographic mapping, field survey, or site inspections.

f. Channel Migration Zones (CMZs). Channel migration zones shall apply only to those watercourses specifically identified by the city or listed in subsection (B)(4) of this section. In those areas where detailed CMZ studies have been completed and accepted by the department, additional horizontal and vertical review threshold criteria (i.e., 300 feet horizontal and five feet vertical) shall not apply (see EMC 14.70.060(G), Figure 14.70-7).

2. The Critical Areas Atlas – Flood Hazard Areas Map may not show all potential flood hazard areas that may be necessary for a specific site analysis. The department may make interpretations, where needed, as to the approximate location of the boundaries of potential flood hazard areas. When there is a conflict between the elevations and the mapped potential flood hazard area boundaries, the elevations shall govern.

3. Where there is insufficient information shown on the potential flood hazard area maps, the department may require the applicant to verify that the site is out of the flood hazard area using the flood hazard area review procedures set forth in EMC 14.70.030.

B. Floodway. A floodway is an extremely hazardous area due to the depth and/or velocity of floodwaters, which carry debris, potential projectiles, and have erosion potential (see Figure EMC 14.70.060(H), 14.70-8). The following areas are regulated by the city as floodways:

1. Regulatory Floodway. Regulatory floodway designated by flood hazard area maps.

2. Deep and/or Fast Flowing Water Areas. Areas of deep and/or fast flowing water shall be regulated as a floodway. Based on the criteria set forth in EMC 14.70.030(E), the department shall make the determination after review and approval of applicant's analysis of whether the project site falls within the floodway area based on deep and/or fast flowing waters (see EMC 14.70.060(I), Figure 14.70-9).

3. Potholes and ~~B~~ shaded X Zones. That portion of a pothole and B zone area that is three feet or greater in depth shall be regulated as a floodway (see EMC 14.70.060(J), Figure 14.70-10).

4. Channel Migration Zones (CMZs).

a. Channel migration zones shall be regulated as a floodway.

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b. Channel migration zones are equivalent to the base flood elevation limits (i.e., 100-year floodplain limits).

C. Flood Fringe. All areas subject to inundation by the base flood, but outside the limits of the floodway as set forth in subsection (B) of this section. Those portions of the A, AE, AH, and ~~B~~ shaded X zones not defined as floodway, and that portion of a pothole and FEMA ~~B~~ shaded X zone area that is between zero feet (base flood elevation) and three feet in depth shall be regulated as a flood fringe.

D. Other Areas of Special Flood Hazard.

1. Groundwater Flooding Areas. Groundwater flooding areas are those areas identified by Edgewood and shown on flood hazard maps and are subject to flood inundation from subsurface waters that result from a fluctuation of the groundwater table. Groundwater flooding areas shall be regulated as a floodway or flood fringe pothole.

2. Natural Waters/Watercourse. Natural waters/watercourse as identified on city topographic, planimetric or orthophoto maps, WDNR stream classification maps, USGS quadrangle maps, or other source maps that are not identified as a flood hazard area on the FEMA maps. That portion of the natural watercourse located between the ordinary high water mark and a topographic elevation five feet above the ordinary high water mark shall be regulated as a floodway or flood fringe. If the applicant chooses to accept the five-foot topographic elevation line above the ordinary high water mark as the base flood elevation (i.e., floodplain elevation limits), a flood study shall not be required for a natural water/watercourse.

3. Frequently Flooded Areas. See EMC 14.70.030(A)(9) as the areas defined by this section. ~~(Ord. 02-200 § 2).~~

14.70.030 Flood hazard area review procedures.
A. General Requirements.

1. The city's Critical Areas Atlas – Flood Hazard Area Map provides an indication of where potential flood hazard areas are located within the city. The actual presence or location of a flood hazard area shall be determined using the procedures and criteria contained in this chapter.
2. The department will complete a review of the flood hazard area maps, and other source documents, for any development proposal to determine whether the proposed project area for a regulated activity falls within a potential flood hazard area. When there is a conflict between the elevations and the mapped 100- or 500-year floodplain or floodway boundaries, the elevations shall govern. In the instance where base flood elevation data has not been provided within a mapped A zone, the department shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source to complete their review.
3. When the department's maps or sources indicate that the proposed project area for a regulated activity is or may be located within a potential flood hazard area (except for coastal flood hazard areas), the department shall require a flood boundary verification survey as outlined in subsection (C) of this section, and may require a flood study as outlined in subsection (D) of this section, a deep and/or fast flowing water analysis as outlined in subsection (E) of this section, and/or a zero-rise analysis as outlined in subsection (F) of this section.~~, except for coastal flood hazard areas which shall not be required to submit a flood study, deep and/or fast flowing water analysis, or a zero-rise analysis.~~
4. Any proposed development located within a flood hazard area shall comply with the flood hazard area standards set forth in EMC 14.70.040.
~~4.~~5. Prior to approval of any proposed flood hazard area development, all necessary permits from those governmental agencies from which prior approval is required by Federal or State law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334, must be provided to the City by the applicant.

~~5.~~6. A FEMA letter of map amendment (LOMA) or letter of map revision (LOMR) shall not be submitted to FEMA until review and approval has been granted by the department. The city shall not recognize any LOMA or LOMR as an amendment to the department's flood hazard area maps unless the department has granted prior approval.
~~6.~~7. Unless otherwise stated in this chapter, the critical area protective measure provisions contained in EMC 14.10.080 shall apply.
~~7.~~8. The Federal Emergency Management Agency (FEMA) administers the nation's floodplain management program. FEMA has identified some of the flood prone areas in the city; however, it is generally recognized that FEMA's Flood Insurance Rate Maps (FIRMs) ~~do~~ may not accurately reflect the degree or frequency of flooding within all areas of the city ~~and do not accurately show 100-year base flood elevations or 500-year flood boundaries~~. Therefore, ~~existing city-specific~~ information available through FEMA ~~does~~ may not meet best available science criteria and cannot be used exclusively to address frequently flooded areas.
~~8.~~9. The city has determined that the following documents and sources are the most current and accurate information concerning frequently flooded areas within the city, and therefore represent best available science:

a. The City's Surface Water Management Plan, 1997, or as amended thereafter.

b. Aerial photographs of the city, especially those taken in wintertime 1996 and 1997.

c. The city's two-foot elevation contour mapping performed by Nies Mapping Group, Inc., 1999, or as subsequently updated.

d. Relevant and verifiable information from the City's Capacity Analysis Technical Review AdHoc Committee draft report, 2000.

e. Relevant and verifiable government and citizen photographs, notes, observations, etc., regarding historic ponding/flooding levels, including but not limited to the City of Edgewood Potholes Water Level Monitoring 2006-2007 report prepared by Robinson Engineers, LLC.

f. Relevant and verifiable information available through Pierce County.

g. Relevant and verifiable information available through FEMA.

~~9.~~10. Flooding conditions within the city generally falls into three distinct hydrologic settings: (1) upland areas within enclosed depressions, (2) streams that flow off the upland areas, and (3) valley lowlands. Accordingly, the city manages frequently flooded areas within these three zones, as described below:

a. Upland Areas Within Enclosed Depressions. From the above list use the historic ponding elevation ~~experienced during the 1996 and 1997 flood events~~, determined by subsection~~s~~ (A)(~~8~~9)~~(a), (b), (c), (d) and/or (e)~~ of this section, or the ~~accurate and yet to be determined~~ FEMA 100-year base flood elevation, whichever is highest.

b. Streams Which Flow Off the Upland Areas. From the above list use the historic flood elevation ~~experienced during the 1996 and 1997 flood events~~, determined by subsection~~s~~ (A)(~~8~~9)~~(a), (b), (c) and/or (e)~~ of this section, or the ~~accurate and yet to be determined~~ FEMA 100-year base flood elevation, whichever is highest.

c. Valley Lowlands. From the above list use the historic flood elevation ~~experienced during the 1996 and 1997 flood events,~~ determined by subsection~~s~~ (A)(~~8~~9)~~(a), (b), (c), (d), (e) and/or (f)~~ of this section, or the ~~accurate and yet to be determined~~ FEMA 100-year base flood elevation, whichever is highest.

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~~10.~~11. The city will provide local flood information to FEMA, and request FEMA's assistance in accurately mapping and evaluating frequently flooded areas.

~~11.~~12. Warning and Disclaimer of Liability. The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside frequently flooded areas or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of city, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

B. Channel Migration Zone Study.

1. In areas where Edgewood has not conducted a detailed channel migration zone study, an applicant may submit an independent channel migration zone study to demonstrate that the channel migration zone limits for those watercourses listed in EMC 14.70.020(B)(4) are located inside the 100-year floodplain limits.

2. The channel migration zone study shall be prepared, signed, and dated by a professional engineer or professional geologist with at least five years of experience in fluvial geomorphology, river dynamics, or geotechnical engineering.

3. The channel migration zone study shall, at a minimum, contain the information set forth in EMC 14.70.050, Appendix B.

4. The department shall review the channel migration zone study and either accept the new channel migration zone limits or reject the study and require the use of the 100-year floodplain limits. Once the department has reviewed and approved the channel migration zone study, the applicant shall be required to provide a flood boundary verification survey, as outlined in subsection (C) of this section, utilizing the newly established channel migration zone limits as the floodway limits.

C. Flood Boundary Verification Survey.

1. A flood boundary verification survey that delineates the horizontal and vertical limits of the base flood elevation shall be submitted to the department when the department's maps or sources indicate that the proposed project area for a regulated activity is located within a potential flood hazard area.

a. Where a base flood elevation has not been determined, a flood study shall be required pursuant to subsection (D) of this section.

b. A base flood elevation that has been established through a detailed flood study accepted by the department may be used in lieu of conducting a flood study.

c. The base flood elevation for a natural watercourse as set forth in EMC 14.70.020(D)(2) shall be established at the five-foot topographic elevation line above the ordinary high water mark.

2. The requirement to submit a flood boundary verification survey may be waived at the department's discretion, when the department can determine, using contour elevations, base flood data, orthophotos, and parcel data, that the extent of the regulated activity is clearly above the base flood elevation.

3. The flood boundary verification survey shall be prepared, signed, and dated by a registered land surveyor ~~or professional engineer~~.

4. The department shall review the flood boundary verification survey to determine if the proposed development is located within a flood hazard area.

5. If the proposed development lies within the flood hazard area, the limits of the floodway, as well as the base flood elevation shall be shown on the flood boundary verification survey.

D. Flood Study.

1. A flood study shall be conducted when the department's maps or sources indicate that the proposed project area for a regulated activity is, or may be located within, a potential flood hazard area where base flood elevation data is not available through the flood insurance study or other authoritative sources, or when an established base flood elevation is contested. A full engineering analysis to determine the base flood elevation shall be required by the department. Base flood elevations shall be determined using the detailed methods established in EMC 14.70.050, Appendix A. The department may approve alternative methods.

2. The flood study shall be prepared, signed, and dated by a professional engineer.

3. Once the department has reviewed and approved the flood study, the applicant shall be required to provide a flood boundary verification survey, utilizing the newly established base flood elevation, as outlined in subsection (C) of this section.

4. Flood studies shall not be required for coastal flood hazard areas.

E. Deep and/or Fast Flowing Water Analysis.

1. When the department determines that a proposed project area for a regulated activity is located within a flood hazard area, a deep and/or fast flowing water analysis based on EMC 14.70.060(I), Figure 14.70-9 and EMC 14.70.050, Appendix A, shall be required to determine the floodway limits.

2. The floodway limits and flood fringe limits identified in the deep and/or fast flowing water analysis shall be depicted on the flood boundary verification survey, as outlined in subsection (C) of this section.

3. The deep and/or fast flowing water analysis shall be prepared, signed, and dated by a professional engineer.

4. Deep and/or fast flowing water analysis shall not be required for coastal flood hazard areas.

F. Zero-Rise Analysis.

1. When the department determines that a proposed project area for a regulated activity is located within a flood hazard area, a zero-rise analysis shall be required to determine that no increase in base flood elevation, displacement of flood volume, or flow conveyance reduction will occur as a result of the development.

2. The zero-rise analysis shall be conducted utilizing HEC-RAS (Hydrologic Engineering Center – River Analysis System)~~,~~ modeling methodology (for stream / channel floodways), the Western Washington Hydrology Model (i.e. WWHM, for pothole / closed depression floodways), or by other alternative methodologies approved by the city (see EMC 14.70.050, Appendix A). ~~which~~ HEC-RAS can be found at the following web site: http://www.hec.usace.army.mil/software/hec-ras/. WWHM can be found here: http://www.ecy.wa.gov/programs/wq/stormwater/wwhmtraining/index.html. The

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analysis shall show that no rise (0.01 foot or less) has occurred as a result of the proposed development. The proposed development may need to be reduced or specially engineered (such as utilizing piers or pilings) to achieve zero-rise.

~~http://www.hec.usace.army.mil/software/software_distrib/hec-ras/hecrasprogram.html~~

~~modeling methodology or by other alternative methodologies approved by the city (see EMC 14.70.050, Appendix A). The analysis shall show that no rise (0.01 foot or less) has occurred as a result of the proposed development. The proposed development may need to be reduced or specially engineered (such as utilizing piers or pilings) to achieve zero-rise.~~

3. The zero-rise analysis shall be prepared, signed, and dated by a professional engineer.

4. The zero-rise analysis shall be documented on the zero-rise analysis form, as set forth in EMC 14.70.050, Appendix A, and shall be attached to the flood hazard area permit.

5. Zero-rise analysis shall not be required for coastal flood hazard areas.

6. When structures are elevated by pier or pilings and no fill is placed in the flood hazard area, the requirement to submit a zero rise analysis may be waived at the department's discretion. ~~(Ord. 02-200 § 2).~~

14.70.040 Flood hazard area standards.

A. General.

1. New construction done by or for the city, such as bridges, roads, flood control works, revetments, retaining walls, drainage structures, sewer or water lines, parks, or other structures necessary to promote the public's health, safety, and welfare shall be allowed in a flood hazard area when:

a. The project is prepared, dated, and stamped by a registered professional engineer in the state of Washington and is designed so the project does not result in any increase in flood levels during the occurrence of the base flood discharge (zero-rise) and shall not obstruct the floodway or cause an adverse impact to critical fish or wildlife habitat or adjacent, cross-channel, or upstream or downstream properties; and

b. The improvements utilize appropriate flood hazard protection standards.

2. Elevation Certificate. A Federal Emergency Management Agency (FEMA) elevation certificate shall be required for new construction, additions affixed to the side of a structure, and substantial improvements located within flood hazard areas. The most current version of the FEMA elevation certificate must be completed and certified by ~~an engineer or~~a professional land surveyor, currently licensed in the state of Washington, ~~and~~ kept on file by the city for public inspection, recording the actual (as-built) elevation (in relation to mean sea level) of:

a. the lowest floor (including basement) of all new or substantially improved structures, whether or not the structure contains a basement,
~~a.~~b. (for floodproofed nonresidential structures) where the structure was floodproofed (including floodproofing certifications).

B. Floodways. Any development, encroachments, filling, clearing or grading, new construction, and substantial improvements shall be prohibited within the floodway (including structures that do not require a building permit), except as allowed in the following standards:

~~1. Structures that do not require a building permit and that do not have any associated fill.~~

~~2~~1. Agricultural activities that do not require the installation of structures and that do not have any associated fill.

~~3~~2. Park and recreational uses and facilities that do not require the installation of structures and that do not have any associated fill.

~~4~~3. Individual recreational vehicles, not located in an RV park, that are licensed and ready for highway use, on its wheels or jacking system, and are not permanently attached to the site (attached only by quick disconnect type utilities and security devices, with no permanently attached additions).

~~5~~4. Habitat enhancement/stream restoration activities are permitted subject to the provisions outlined in subsection (D) of this section.

~~6~~5. Rehabilitation, reconstruction, or an upper story addition to an existing structure that does not exceed the limits for a substantial improvement.

~~7~~6. Private bridges may be allowed to cross the floodway; provided, that the structure meets the requirements contained in EMC 14.70.030 and the following:

a. The lowest structural member of a private bridge proposed to cross ~~the floodway portion of any of the rivers listed in EMC 14.70.020(B)(4)~~ a Channel Migration Zone shall be a minimum of six feet above the base flood elevation.

b. The lowest structural member of a private bridge proposed to cross the floodway portion of any other watercourse shall be a minimum of one foot above the base flood elevation.

C. Flood Fringe Areas. All activities allowed in subsection (B) of this section shall be permitted in a flood fringe area. Any other proposed development, encroachments, filling, clearing or grading, new construction, and substantial improvements are prohibited in a flood fringe area except as permitted under the following standards:

1. Structures that do not require a building permit and that do not have any associated fill are ~~permitted~~allowed, subject to flood hazard area review and permitting.

2. All other regulated activities shall only be allowed when the proposed development is located on an existing lot of record that was created prior to the effective date of the ordinance codified in this chapter. Applicants shall demonstrate there are no other feasible alternatives that would allow the proposed development to occur completely outside the flood hazard area. At a minimum, the following shall be demonstrated:

a. The development cannot be located outside the flood hazard area due to topographic constraints of the parcel or size and/or location of the parcel in relation to the limits of the flood hazard area and a building setback variance has been reviewed, analyzed, and rejected as a feasible alternative to encroachment into the flood hazard area; and

b. The proposed development shall not cause an adverse impact to adjacent, cross-channel, or upstream or downstream properties.

3. Roads, Bridges, Trails, and Parking Lots.

a. Roads, bridges, driveways, trails, emergency vehicle access, and access routes and easements, where allowed, shall be constructed and armored based on the standards in subsection (C)(4) of this section and elevated a minimum of one foot above the base flood elevation.

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b. Parking lots shall be elevated to a minimum of one-half foot below the base flood elevation.

4. Grading and Filling. When development is permitted under this subsection, it shall be designed to a zero-rise standard as set forth in EMC 14.70.030(F) and 14.70.050, Appendix A. Any filling, grading, or clearing associated with the permitted development shall not increase flood hazards, water velocities, or flood elevations. In addition to meeting the requirements for zero-rise, all permitted development must also meet the following requirements:

a. Compensatory Storage. New excavated storage volume shall be equivalent to the flood storage capacity eliminated by filling or grading within the flood fringe. Equivalent shall mean that the storage removed shall be replaced by equal live storage volume between corresponding one-foot contour intervals that are hydraulically connected to the floodplain through their entire depth (refer to EMC 14.70.060(K), Figure 14.70-11).

b. Flow Conveyance. New excavated conveyance areas shall be equivalent to existing conveyance within the flood fringe. Equivalent shall mean a mechanism for transporting water from one point to another using an open channel system.

c. Erosion Protection. Development shall be protected from flow velocities greater than two feet per second through the use of bio-engineering methods or, when bioengineering methods have been deemed insufficient to protect development, then hard armoring may be utilized. All erosion protection shall extend one to three feet, depending on development requirements, above the base flood elevation and shall be covered with topsoil and planted with native vegetation (see EMC 14.70.060(L), Figure 14.70-12).

5. Critical Facilities.

a. New construction, additions affixed to the side of an existing structure, and substantial improvement of hazardous facilities, and special occupancy structures are prohibited.

b. New construction of an essential facility, reconstruction of an existing essential facility, or additions to an existing essential facility that exceed the threshold for substantial improvement shall be permitted when no feasible alternative site is available outside the flood hazard area. Such regulated activities are subject to the following:

i. Essential facilities with a crawlspace elevated by fill shall have the lowest floor and any utilities and ductwork elevated a minimum of three feet above base flood elevation (see Figure 14.70-12), or to the height of the 500-year flood, whichever is higher.

ii. Essential facilities elevated by piers or pilings shall have the finished floor and any utilities and ductwork elevated a minimum of three feet above the base flood elevation (or to the height of the 500-year flood, whichever is higher) and must be designed by a professional structural engineer (see Figure 14.70-13).

iii. Access to and from the critical facility shall be protected to the height utilized under i and/or ii, above. Access routes shall be elevated to or above the same elevation to the maximum extent possible.

iv. Essential facilities shall be armored based on the standards in subsection (C)(4) of this section.

iv. Flood proofing and sealing measures must be taken to ensure that toxic or explosive substances will not be displaced or released into floodwaters.

6. Structures. Single-family, two-family, multifamily, mobile/manufactured homes, commercial, industrial, etc., except for critical facilities as set forth in subsection (C)(5) of this section, shall be allowed subject to the following standards:

a. New construction, additions affixed to the side of an existing structure, and substantial improvement of any structure with a crawlspace shall have the lowest floor elevated a minimum of two feet above base flood elevation (see EMC 14.70.060(L), Figure 14.70-12).

b. New construction, additions affixed to the side of an existing structure, and substantial improvement of any structure elevated by piers or pilings shall have the bottom of the lowest horizontal structural member elevated a minimum of two feet above the base flood elevation and must be designed by a professional structural engineer. Electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities and associated ductwork shall be elevated a minimum of two feet above base flood elevation; however, the department may approve a lesser minimum distance above base flood elevation; provided, that the systems are designed to prevent floodwater from entering or accumulating within the components (see EMC 14.70.060(M), Figure 14.70-13). Areas below the lowest horizontal structural member shall not be enclosed and shall remain free of obstructions.

c. Mobile / manufactured homes shall be anchored to prevent floatation, collapse, or lateral movement, and shall be installed using methods and practices to minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This is in addition to applicable State and local anchoring requirements for resisting wind forces.

7. Agricultural Accessory Structures. The lowest floor in an agricultural accessory structure shall be located at the base flood elevation or higher; provided, that the structure be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a professional engineer in the state of Washington or must meet or exceed the following minimum criteria:

a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;

b. The bottom of all openings shall be no higher than one foot above grade; and

c. Openings may be equipped with screens, louvers, or other covering or devices; provided, that they permit the automatic entry and exit of floodwaters.

8. Construction Standards.

a. Construction of a basement is prohibited.

b. Crawl spaces shall be backfilled with clean earth material and shall meet International Building Code requirements. Finished grade within the crawlspace shall be at least two feet above the base flood elevation.

c. Flood proofing in lieu of elevating the structure is prohibited.

d. All single-family, two-family, multifamily, mobile/manufactured homes, commercial, and industrial structures shall be placed on standard concrete stemwall/footing foundations or piles, piers, or column foundations and engineered pursuant to International Building Code requirements.

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9. Sewage Disposal and Potable Water Installation.

a. New and replacement public water sources (i.e., wells and water supply lines) and public sanitary sewage conveyance systems are allowed. These systems shall be designed to withstand scour resulting from flow velocity, minimize or eliminate infiltration of floodwaters into the systems, and minimize or eliminate discharge from the systems into floodwaters

b. All replacement wells and replacement on-site sewage system (OSS) shall be designed to minimize or eliminate impairment to them or contamination from/to them during flooding (i.e., infiltration of floodwaters into or discharge out of the systems). They shall not be located in pothole or no-outlet floodplains.

c. All new individual wells and new on-site sewage system (OSS) shall be prohibited. Conveyance systems from a structure to a well or OSS located outside of the flood hazard area shall be allowed provided these systems are designed to meet the standards in subsection (C)(4) of this section.

D. Alteration of Watercourses. Any alteration of a watercourse shall comply with the following standards:

1. The city will notify adjacent communities and the Washington State Department of Ecology prior to any alteration or relocation of a watercourse proposed by the applicant and submit evidence of such notification to the Federal Insurance Administration.

2. The city shall require that maintenance be provided within the altered or relocated portion of said watercourse, so that the flood-carrying capacity is not diminished. Therefore, if the maintenance program calls for future cutting of planted native vegetation used in performing the alteration, the system shall be oversized at the time of construction to compensate for said vegetation growth or any other natural factor that may need future maintenance.

3. Alterations and relocations, including stabilization projects, shall not degrade fish habitat and shall be subject to the following provisions:

a. Structures that cross all watercourses and water bodies shall meet fish habitat requirements of WDFW.

b. Any culverts that are used on fish-bearing watercourses shall be arch/bottomless culverts or equivalent that provide comparable fish protection, and must meet fish habitat requirements of the latest edition of WDFW's Design Manual for Culverts.

c. Bridges or other crossings shall allow for uninterrupted downstream movement of wood and gravel, be as close to perpendicular to the watercourse as possible, and be designed to minimize fill and to pass the base flood flows.

d. Watercourse alterations shall maintain natural meander patterns, channel complexity, and floodplain connectivity. Where feasible, such characteristics shall be restored as part of the watercourse alteration.

e. The applicant shall identify the channel migration zone for the watercourse at the project site and for a reasonable reach upstream and downstream of the site, and shall not undertake actions as part of the alteration that would in any way inhibit movement of the channel.

f. Existing culverts that do not meet fish habitat requirements shall be removed or replaced as part of the approved watercourse alteration project.

g. Watercourse alteration projects shall not result in a fish blockage of side channels. Known fish barriers into side channels shall be removed as part of the approved watercourse alteration project.

h. For any watercourse alteration of a Type S or F water (pursuant to EMC 14.40.060(B)) whose channel is subject to migration, bioengineered (soft) armoring of streambanks is required to allow for woody debris recruitment, gravels for spawning, and creation of side channels. The bioengineering technique used must be designed in accordance with the latest edition of WDFW's Integrated Streambank Protection Guidelines.

4. The project engineer shall design the watercourse alteration so the activity does not increase the water surface elevation (zero-rise); decrease the capacity, storage, and conveyance of the watercourse; or cause an adverse impact to adjacent, cross-channel, or upstream or downstream properties. ~~(Ord. 02-200 § 2).~~

14.70.050 Appendices.
A. Floodplain/Floodway Analysis.
B. Channel Migration Zone Study.

APPENDIX A

FLOODPLAIN/FLOODWAY ANALYSIS

This Appendix describes the flood hazard analyses and studies as required by Chapter 14.70 EMC, Flood Hazard Areas. Flood hazard studies establish the base flood elevation and delineate floodplain and/or floodway(s) when a proposed project contains or is adjacent to a river, stream, lake, or closed depression.

Flood hazard studies must conform to FEMA regulations described in Part 65 of 44 Code of Federal Regulations (CFR). In addition, the following information must be provided and procedures performed for flood hazard studies used under Chapter 14.70 EMC to examine development proposals or improvements within a floodplain.

Article I. Floodway Determination

The city recognizes two distinct floodways. The FEMA floodway describes the limit to which encroachment into the natural conveyance channel can cause one foot or less rise in water surface elevation. The deep and/or fast flowing (DFF) water floodways are hazardous areas and conditions of the floodplain for both people and habitable structures. Life safety and protection to improved properties are compromised if encroached upon. Encroachment cannot occur within these areas.

A. FEMA Floodways.

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1. FEMA floodways are determined through the procedures outlined in the FEMA publication Guidelines and Specifications for Study Contractors using the one-foot maximum allowable rise criteria.

2. Transitions shall take into account obstructions to flow such as road approach grades, bridges, piers, culverts, or other restrictions. General guidelines for transitions may be found in HEC-RAS, Water Surface Profiles – Users Manual, Appendix IV, Application of HEC-RAS Bridge Routines, published by the Hydrologic Engineering Center, Davis, California.

B. Deep and/or Fast Flowing (DFF) Floodways.

1. DFF floodways are generally assumed to include the entire 100-year floodplain until the department approves a detailed floodway analysis that defines areas of DFF within the entire floodplain area based on the criteria.

2. The hydraulic model must adequately be calibrated to known or recorded stage elevations of past flood events with computed recurrence frequency intervals for the 100-year flood recurrence interval. This is to ensure model accuracy.

Article II. Flood Study Content and Required Information

Three copies of the completed floodplain/floodway analysis study report and the modeling digital files shall be submitted. The report submittal must be stamped by a licensed professional civil engineer and include the following information in addition to that required for the drainage plan of a proposed project:

A. Floodplain/Floodway Map.

1. A scaled survey base map stamped by a licensed professional land surveyor registered in the state of Washington. The map must accurately locate the proposed development with respect to the floodplain and floodway, the channel of the subject stream, river, and/or pothole location, and the existing improvements within the subject study area. It must also supply all pertinent information such as the nature of the proposed project, legal description of the property on which the project would be located, fill quantity, limits and elevation, the building floor elevations, and use of compensatory storage.

2. The map must show elevation contours at a minimum of two-foot vertical intervals and shall comply with survey and map guidelines published in the FEMA publication Guidelines and Specifications for Study Contractors. The map must show the following:

a. Elevations and ground contours, spot elevations, and vertical datum NAVD 88 (North American Vertical Datum of 1988) (or most recent vertical datum accepted by the department).

b. Elevations and dimensions of existing structures, fill, and compensatory storage areas.

c. Size, location, elevation and spatial arrangement of all proposed structures on the site.

d. Location and elevations of roadways, drainage facilities, water supply lines, and sanitary sewer facilities.

e. Areas of DFF must clearly be shown and plotted on the map sheet depicting the bounded area of the floodway on both sides of the study channel through the subject site. DFF floodway studies must reflect all transitions as referenced above as well.

f. The base maps must also be accompanied by all field survey notes/computations, drawings, etc., for each cross-section with water surface elevation at the time the cross-section field survey was done.

B. Study Report.

1. Soil maps, groundcover maps, and photographs.

2. A narrative report containing the purpose of the study and description of the study area, data collection, methodology for both the hydrology and hydraulics, detailed discussion on the input parameters used, modeling results, and conclusions.

3. A floodplain/floodway analysis must include calculations and all computer analysis input and output information, supporting graphical illustrations, as well as the following additional information:

a. Scaled cross-sections showing the current/existing conditions of the river/stream channel, the floodplain adjoining each side of the channel, the computed floodway, the cross-sectional area to be occupied by any proposed development and all historic high water information.

b. Profiles showing the bottom of the channel, the top of both left and right banks and computed base flood water surface elevations for the 10-, 25-, 50- and 100-year events.

c. Plans and specifications of any flood protection for structures, construction areas, filling, dredging, channel improvements, storage of materials, water supply, and sanitary facilities within the floodplain.

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d. Complete printout of input and output data of the model that was used for the analysis. Liberal use of comments and written discussion will assist considerably in understanding the model logic and minimize misinterpretations and/or questions.

e. A map, showing the graphical/plotted location and limits of the computed floodway and/or floodplain.

f. Three copies of ready-to-run digital files of both the hydrologic and hydraulic model and its input and output files used in the study. Data shall be submitted on a disk in standard ASCII format, ready to use on an IBM-compatible personal computer and in the applicable software application (i.e., HEC-RAS, HSPF – Hydrological Simulation Program – Fortran, SBUH, etc.).

g. A section on the flood flow including computer modeling and/or calculations (see below for additional requirements on flood flow determinations).

h. Aerial photographs of the site including pre-February 1996 and post-February 1996 photos of the site.

i. All field survey notes/computations, maps, and drawings for each cross-section with water surface elevation at the time of the cross-section field survey.

C. Computer Modeling Information. Floodway/floodplain studies submitted to the city for review must include output summary tables and include the following (but not limited to) items:

1. Cross-section(s) identification number.

2. Range of flows being examined.

3. Computed water surface elevation at each cross-section.

4. Energy grade line at each cross-section.

5. Graphical plots of the channel cross-sections with computed water surface elevations for all model runs including calibrated model runs.

6. All model input and output printouts.

7. Graphical plots of the model output data that show the points and segments along each cross-section where deep and/or fast flowing water occurs. This shall include cross-section plots of depth and velocity in one-unit increments. The plots shall also be accompanied with a table listing the

station distance (right and left bank), flow rate, area, hydraulic depth, velocity, and whether each point is a floodway.

8. A plan sheet clearly showing the graphical representation of the bounded area of the floodway based on DFF criteria through the entire study site and reach. Note that identified islands or pockets within the middle of the bounded floodway area are generally considered as part of the floodway, unless otherwise approved by the department.

9. Discussion on the starting water surface elevation for the hydraulic model.

Article III. Determining Flood Flows

The three techniques used to determine the flows used in a flood study depend on whether gauge data is available, whether a basin plan has been adopted, or a detailed flood study has been done and approved for use by the Department. The first technique is for basins with adopted basin plan areas. The second technique is used if a gauging station exists on the stream. The third technique is used on ungauged catchments or those with an insufficient length of record. In all cases, the engineer shall be responsible for assuring that the hydrologic methods used are technically reasonable, conservative, conform the to the FEMA publication, Guidelines and Specifications for Study Contractors, and are acceptable by FEMA and the department.

A. Flood Flows from Adopted Basin Plan Information. Flood flows may be determined using information from the city's basin plan. The hydrologic model used in the basin plan shall be updated to include the latest changes in zoning or any additional information regarding the basin which has been acquired since the adoption of the basin plan.

B. Flood Flows from Stream Gauge Data. Determining flood flows from stream gauge data uses the Log-Pearson Type III distribution method as described in the Guidelines for Determining Flood Flow Frequency, Bulletin 17B of the Hydrology Committee, United States Water Resources Council (revised October 1981).

1. This technique may be used only if data from a gauging station in the basin is available for a period of at least 10 years.

2. If the difference in the drainage area on the stream at the study site and the drainage area to a gauging station on the stream at a different location in the same basin is less than or equal to 50 percent, the flow at the study site shall be determined by transferring the calculated flow at the

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gauge to the study site using a drainage area ratio raised to the 0.86 power, as in the following equation:

$$Q_{SS} = Q_S(A_{SS}/A_G)^{0.86}$$

where

Q_{SS}	=	estimated flow for the given returnfrequency on the stream at the study site.
Q_G	=	flow for the given return frequency on the stream at the gauge site.
A_{SS}	=	drainage area tributary to the stream at the study site.
A_G	=	drainage area tributary to the stream at the gauge site.

3. If the difference in the drainage area at the study site and the drainage area at a gauging station in the basin is more than 50 percent and a basin plan has not been prepared, a continuous model shall be used as described below to determine the flood flows at the study site.

4. In all cases where dams or reservoirs, floodplain development, or land use upstream may have altered the storage capacity or runoff characteristics of the basin so as to affect the validity of this technique, a continuous model shall be used to determine flood flows at the study site.

C. Flood Flows from a Calibrated Continuous Model. Flood flows may be determined by utilizing a continuous flow simulation model such as HSPF or other equivalent continuous flow simulation model, as approved by the city. Where flood elevation or stream gauging data are available, the model shall be calibrated to the known data. Otherwise, regional parameters may be used.

Article IV. Determining Flood Elevations, Profiles and Floodways (Hydraulic Model)

A. Reconnaissance. The applicant's project engineer is responsible for the collection of all existing data with regard to flooding in the study area. This shall include a literature search of all published reports in the study area and adjacent communities and an information search to obtain all unpublished information on flooding in the immediate and adjacent areas from federal, state, and local units of government. This search shall include specific information on past flooding in the area, drainage structures such as bridges and culverts that affect flooding in the area, available topographic maps, available community maps,

photographs of past flood events, and general flooding problems within the community. Documented discussions with nearby property owners should also be done to obtain a witness account of the flooding extent. A field reconnaissance shall be made by the applicant's project engineer to determine hydraulic conditions of the study area, including type and number of structures, locations of cross-sections, and other parameters including the roughness values necessary for the hydraulic analysis.

B. Base Data. Channel cross-sections used in the hydraulic analysis shall be current/existing at the time the study is performed and shall be obtained by field survey. Topographic information obtained from aerial photographs/mapping may be used in combination with surveyed channel cross-sections in the hydraulic analysis. The elevation datum of all information used in the hydraulic analysis shall be verified. All information shall be referenced directly to NAVD 1988 (and include local correlation to NGVD) unless otherwise approved by the city.

C. Methodology. Flood studies and analysis (including deep and/or fast flowing floodways and zero-rise analysis) shall be calculated using the U.S. Army Corps of Engineers HEC-RAS computer model (or subsequent revision) unless otherwise approved by the city.

D. Adequacy of the Hydraulic Model. Edgewood considers the following (but not limited to) factors when determining the adequacy of the hydraulic model for use in the floodway/floodplain model:

1. Cross-section of a downstream starting location and spacing.

2. Differences in energy grade line (significant differences in the energy grade line from cross-section to cross-section are an indication that cross-sections should be more closely spaced or that other inaccuracies exist in the hydraulic model).

3. Methods and results for analyzing the hydraulics of structures such as bridges and culverts.

4. Lack of flow continuity.

5. Use of a gradually varied flow model. In certain cases, rapidly varied flow techniques may need to be used in combination with a gradually varied flow model such as weir flow over a levee, flow through a spillway of a dam, or special application of bridge flow (pressure flow if bridge superstructure is shown to be submerged for the study event).

6. Mannings “n” value.

7. Calibration of hydraulic model to known and/or observed flow stage elevations including past flood events.

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8. Special applications. In some cases, steady state one-dimensional hydraulic models may not be sufficient for preparing the floodplain/floodway analysis. This may occur where sediment transport, two-dimensional flow, or other unique hydraulic circumstances affect the accuracy of the model. In these cases, the project engineer must propose and obtain department approval of alternative models for establishing the water surface elevations.

9. All reported error and/or warning messages by the model must be properly and adequately addressed and/or resolved and included in the report for review verification.

Article V. Zero-Rise Analysis (ZRA)

A. Zero-rise analysis (ZRA) is required where encroachment within the flood fringe area is allowed and approved by the department. The ZRA must show that the proposed development encroachment in the flood fringe area will not show a measurable rise in the base flood elevation (i.e., less than 0.01 foot), resulting from a comparison of existing conditions and proposed conditions. This is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, coefficients, discharge, and other hydraulic parameters.

B. In addition to those items listed in subsection (A) of this article, the following shall be included in a ZRA:

1. Floodway boundaries (based on zero-rise) are to follow the stream lines and reasonably balance the rights of property owners on either side of the floodway. Use of the automatic equal conveyance encroachment option in the model will be considered equitable.

2. The ZRA must include a sufficient number of cross-sections in order to accurately model the subject fill and compensatory storage areas of the site. In all cases, cross-sections shall be located downstream, through the subject site and upstream of the site at a very minimum. They shall also be located where changes in channel and the fill material characteristics occur, such as slope, shape, and roughness. The sections shall also be located perpendicular to the flow path in the channel and the outside overbank areas. The department shall review and approve the proposed number and location of cross-sections. All cross-sections and surveys shall be prepared and certified by a professional land surveyor or registered professional engineer in the state of Washington.

3. The difference between two profiles of water surface elevation at the cross-section (e.g., difference between existing and encroached water surface). The model must report 0.01 feet or less an allowable change in the water surface elevation. This must be shown in the profile graphical plot as well.

4. The difference between profiles of the energy grade line at the cross-section. The model must report 0.01 feet or less. This is the allowable change in the energy grade line. This must be shown in the profile graphical plot as well.

C. Conveyance Capacity.

1. The ZRA must also show that the proposed development encroachment in the flood fringe area will not show a measurable decrease (less than 0.01 CFS) in the conveyance capacity of the channel, resulting from a comparison of existing conditions and proposed conditions, for each of the cross-sections. This is also directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, coefficients, discharge, and other hydraulic parameters.

2. The analysis must provide calculations of the reduction in conveyance caused by the proposed development encroachment, assuming no change in the water surface elevation, and using the roughness coefficient value(s) appropriate for the proposed development.

3. The analysis must then provide calculations for the increase in conveyance of the proposed compensatory measure, using the roughness coefficient value(s) appropriate for the proposed development.

4. Include a comparison analysis and discussion from subsections (C)(2) and (3) of this article. The comparison must adequately show that the conveyance capacity has not measurably decreased between the existing condition and proposed development condition.

Floodplain/Floodway Zero-Rise Certification

This is to certify that I am a duly qualified professional engineer licensed to practice in the state of Washington.

This is to further certify that the attached floodplain/floodway zero-rise analysis conclusively shows that the proposed development of:

_____ _____

(Name of Development) Parcel Number

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will not increase the 100-year base flood elevation(s) and widths nor reduce the conveyance capacity of the floodplain/floodway and its associated channel to the

_____

(Name of River, Stream, Pothole or other Watercourse)

Supporting Data

Base Flood Elevation (Pre-Development) = _____ FT (NAVD 88)

Base Flood Elevation (Post-Development) = _____ FT (NAVD 88)

Conveyance Capacity (Pre-Development) = _____ CFS

Conveyance Capacity (Post-Development = _____ CFS

with compensatory storage)

_____ _____

Signature Date

_____ _____

Title Firm Name

_____

Seal, Signature, and Date

Address

_____

City

_____ _____

State Zip Code

APPENDIX B

CHANNEL MIGRATION ZONE STUDY REQUIREMENTS

The channel migration zone (CMZ) is the area within the lateral extent of likely stream channel movement due to stream bank destabilization and erosion, rapid stream incision, and shifts in location of stream channels. The CMZ will define areas in which, to the best information available, development should be regulated due to the dangers expected from erosion.

Article I. Determining Channel Migration Zone Limits

A. The CMZ shall be based on available historic records of channel migration, or 100 years of calculated channel migration whichever is greater, and will generally include those areas that encompass:

1. The limit of geologic controls, such as hill slope, bedrock outcrop, or abandoned floodplain terrace;

2. Side channels, abandoned channels, and oxbows; and

3. Outside edges of progressive bank erosion at meander bends.

B. Channel migration over the 100-year time frame can be estimated and predicted from geomorphic analysis of annual bank erosion rates, historic meander belt width, and measured meander bend amplitudes, potential avulsion sites, and previous river channel locations as depicted on historic aerial photographs and maps. The 100-year time span represents the time required to grow mature trees that can provide functional large woody debris to streams.

C. The CMZ boundaries will be determined using the following specific criteria:

1. The representative average annual rate of channel migration in the affected river reach is calculated by dividing the lateral distance eroded with the corresponding elapsed time shown in sequential aerial photographs or historic maps (distance/time equals channel movement). Measurements from reaches that have had some form of bank armoring shall not be included. Historical records will need to be checked closely for this information.

2. Identify the width of the channel migration zone by multiplying the representative average annual erosion rate by 100 years.

D. Areas separated from the active channel by legally existing artificial channel constraints (levees, roads, driveways, etc.) that limit bank erosion and channel avulsion to the 100-year recurrence interval flood elevation plus three feet of freeboard shall serve as a boundary for the outer limit of the CMZ.

Article II. Channel Migration Zone Study Content and Required Information

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Three copies of the completed channel migration zone study shall be submitted. The study submittal must be stamped by a licensed professional engineer or professional geologist with five years experience in fluvial geomorphology, river dynamics, or geotechnical engineering. The CMZ study shall include the following information in addition to that required for the drainage plan of a proposed project. The CMZ study will consist of a written technical report including:

A. Detailed methods, techniques, and assumptions used in determining the location of the CMZ.

B. A vicinity map and site with scale, north arrow, and parcel number(s) or specific site being studied.

C. A clear statement of the requested revision to the county's determination of the 100-year floodplain limits as the CMZ.

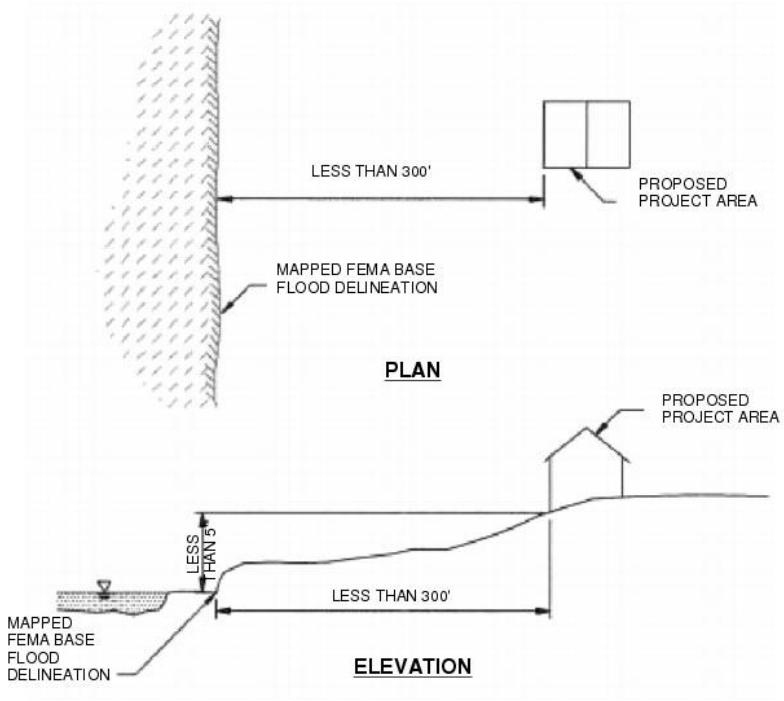
D. A clearly stated conclusion of the study results that support the requested revision. The conclusion needs to document the basis for the revision, show how the data presented refutes the 100-year floodplain limits as the CMZ, and calculates the new results using the new information.

E. A map clearly delineating the subject property and the CMZ of the adjacent watercourse. In addition to providing a hard copy of the CMZ map, the CMZ map shall also be provided in ARC-View shapefile format. Contact the city GIS department for mapping and aerial imaging standards. ~~(Ord. 02-200 § 2).~~

14.70.060 Figures.

DRAFT

A. Figure 14.70-1, Potential Flood Hazard Areas – Detailed Study Areas.



NOTE: AS SHOWN ABOVE, AREAS LESS THAN 300' HORIZONTAL DISTANCE FROM THE MAPPED FEMA BASE FLOOD DELINEATION, AND AREAS LESS THAN 5' VERTICAL HEIGHT ABOVE THE ESTABLISHED BASE FLOOD ELEVATION, ARE WITHIN THE POTENTIAL FLOOD HAZARD AREA.

POTENTIAL FLOOD HAZARD AREAS
DETAILED STUDY AREAS
N.T.S.

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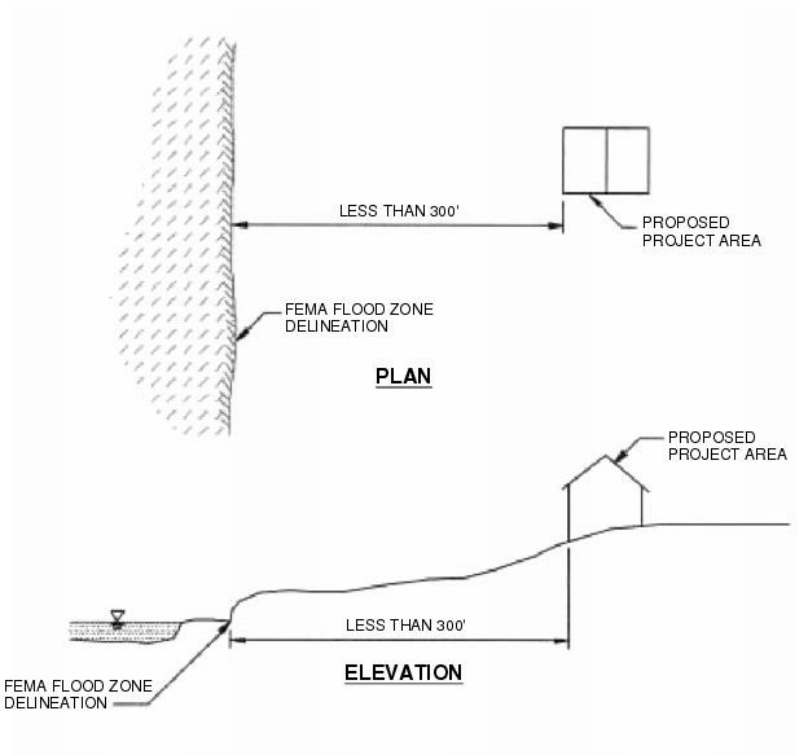
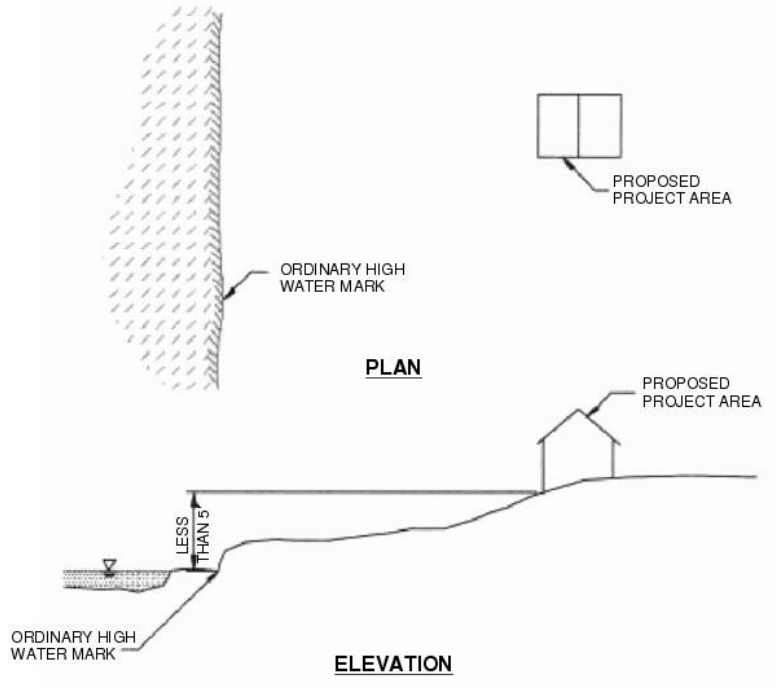
B. Figure 14.70-2, Potential Flood Hazard Areas – Unstudied Areas.



NOTE: AS SHOWN ABOVE, AREAS LESS THAN 300' HORIZONTAL DISTANCE FROM THE MAPPED DELINEATION OF THE FEMA FLOOD ZONE ARE WITHIN THE POTENTIAL FLOOD HAZARD AREA.

POTENTIAL FLOOD HAZARD AREAS
UNSTUDIED AREAS
N.T.S.

C. Figure 14.70-3, Potential Flood Hazard Areas – Natural Watercourse.



NOTE: AS SHOWN ABOVE, AREAS LESS THAN 5' VERTICAL HEIGHT ABOVE THE ORDINARY HIGH WATER MARK OF AN IDENTIFIED NATURAL WATER ARE WITHIN THE POTENTIAL FLOOD HAZARD AREA.

POTENTIAL FLOOD HAZARD AREAS
NATURAL WATERCOURSE
N.T.S.

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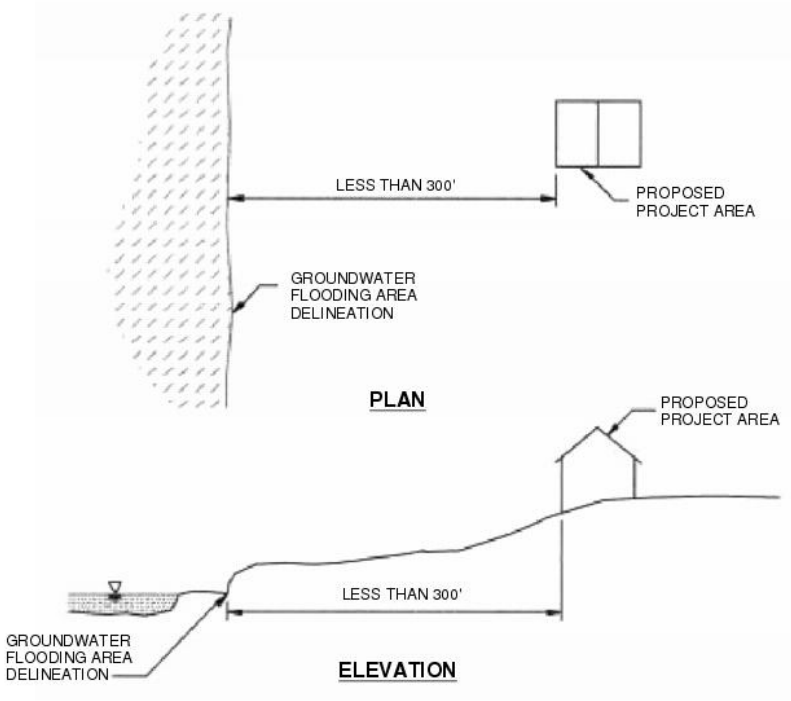
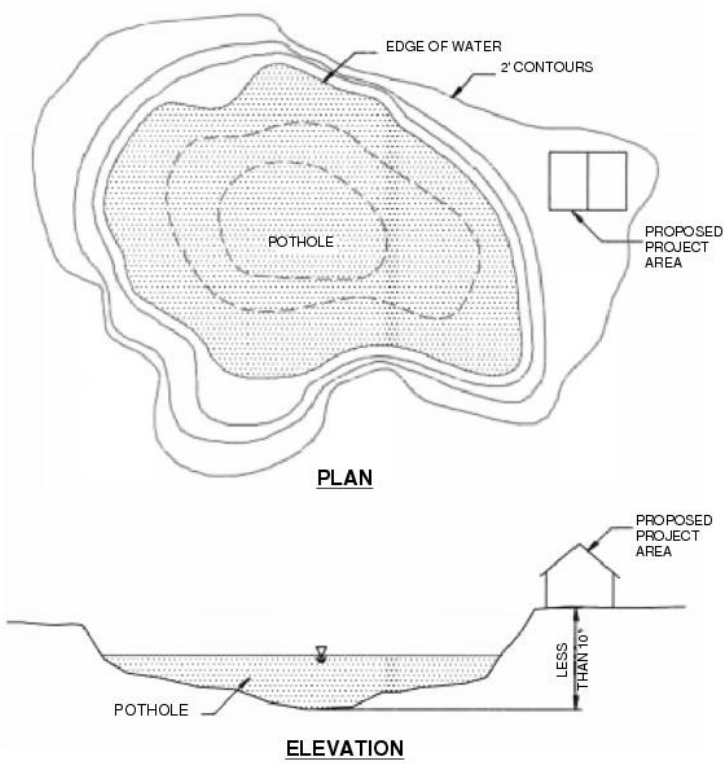
D. Figure 14.70-4, Potential Flood Hazard Areas – Groundwater Flooding Areas.



NOTE: AS SHOWN ABOVE, AREAS LESS THAN 300' HORIZONTAL DISTANCE FROM THE MAPPED DELINEATION OF A GROUNDWATER FLOODING AREA ARE WITHIN THE POTENTIAL FLOOD HAZARD AREA.

POTENTIAL FLOOD HAZARD AREAS
GROUNDWATER FLOODING AREAS
N.T.S.

E. Figure 14.70-5, Potential Flood Hazard Areas – Potholes.



NOTE: AS SHOWN ABOVE, AREAS LOCATED WITHIN 10' OF VERTICAL HEIGHT FROM THE BOTTOM ELEVATION OF AN IDENTIFIED POTHOLE ARE WITHIN THE POTENTIAL FLOOD HAZARD AREA.

POTENTIAL FLOOD HAZARD AREAS
POTHOLES
N.T.S.

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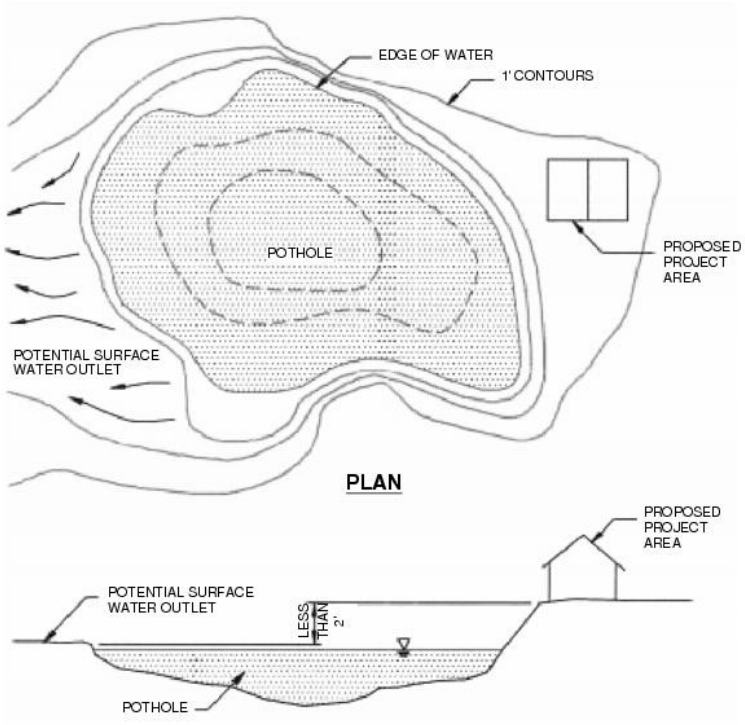
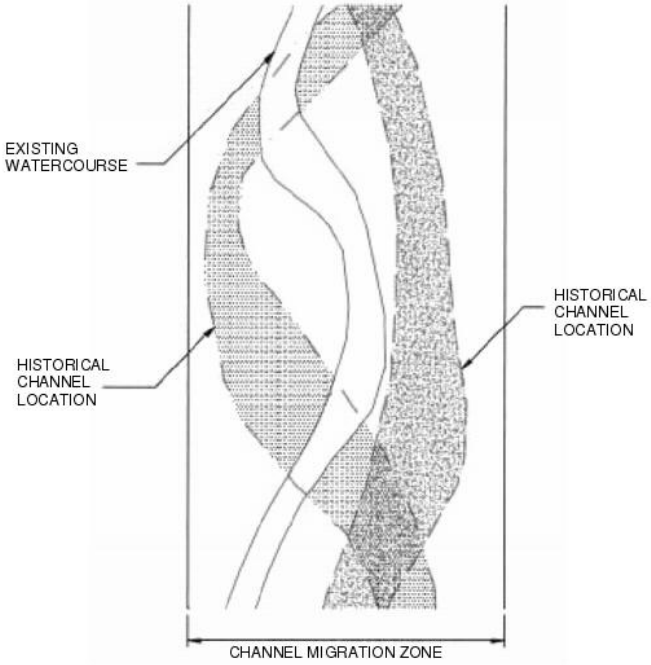
F. Figure 14.70-6, Potential Flood Hazard Areas – Potholes.



NOTE: AS SHOWN ABOVE, AREAS LOCATED WITHIN 2' OF VERTICAL HEIGHT OF A POTENTIAL SURFACE WATER SPILLWAY FROM THE POTHOLE ARE WITHIN THE POTENTIAL FLOOD HAZARD AREA.

POTENTIAL FLOOD HAZARD AREAS
POTHOLES
N.T.S.

G. Figure 14.70-7, Potential Flood Hazard Areas – Channel Migration Zone.



NOTE: THE LOCATION OF MANY RIVER CHANNELS CHANGE OVER TIME. THE CHANNEL MIGRATION ZONE (CMZ) IS THAT AREA THAT CAN BE IDENTIFIED BY EVIDENCE OF PAST CHANNEL MOVEMENTS, INCLUDING THE PRESENT CHANNEL LOCATION. THE CMZ AREA IS CONSIDERED TO BE AT RISK FROM EROSION AND FLOODING, AND HAS SIMILAR TOPOGRAPHIC CHARACTERISTICS TO PRESENT AND HISTORIC STREAM CHANNELS.

POTENTIAL FLOOD HAZARD AREAS
CHANNEL MIGRATION ZONES
N.T.S.

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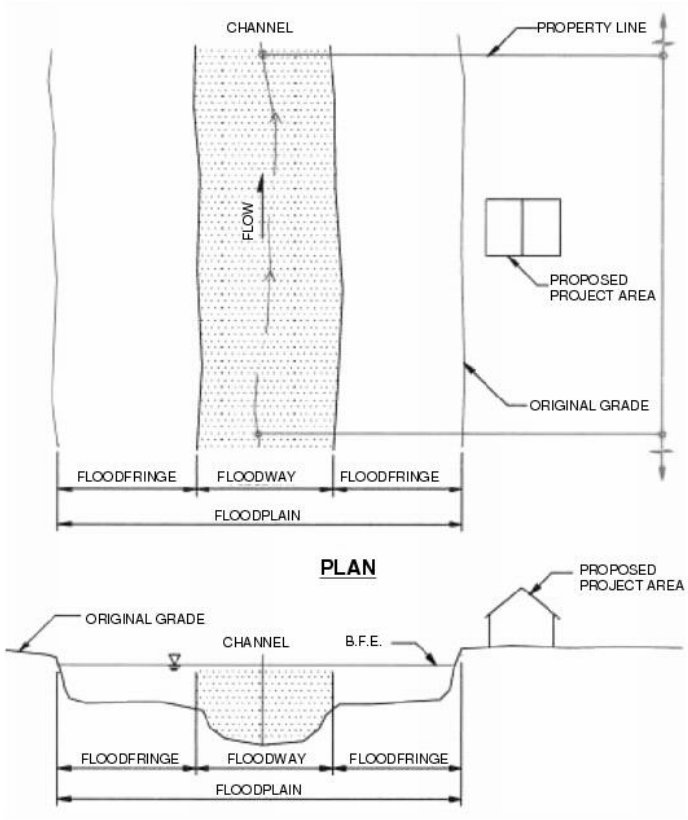
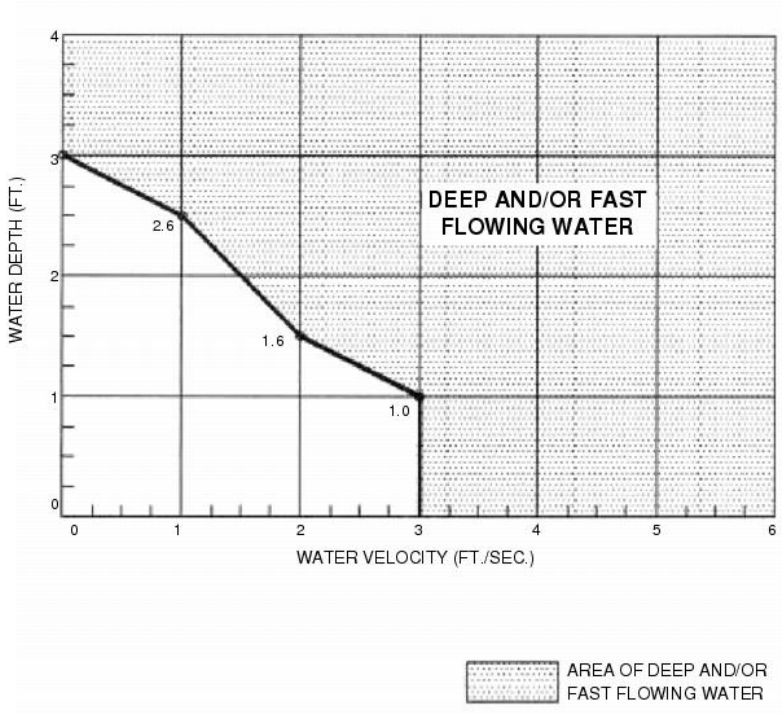
H. Figure 14.70-8, Floodway – Flood Hazard Area.



FLOODWAY
FLOOD HAZARD AREA
N.T.S.

I. Figure 14.70-9, Deep and/or Fast Flowing Water Graph.



DEEP AND/OR FAST FLOWING WATER GRAPH

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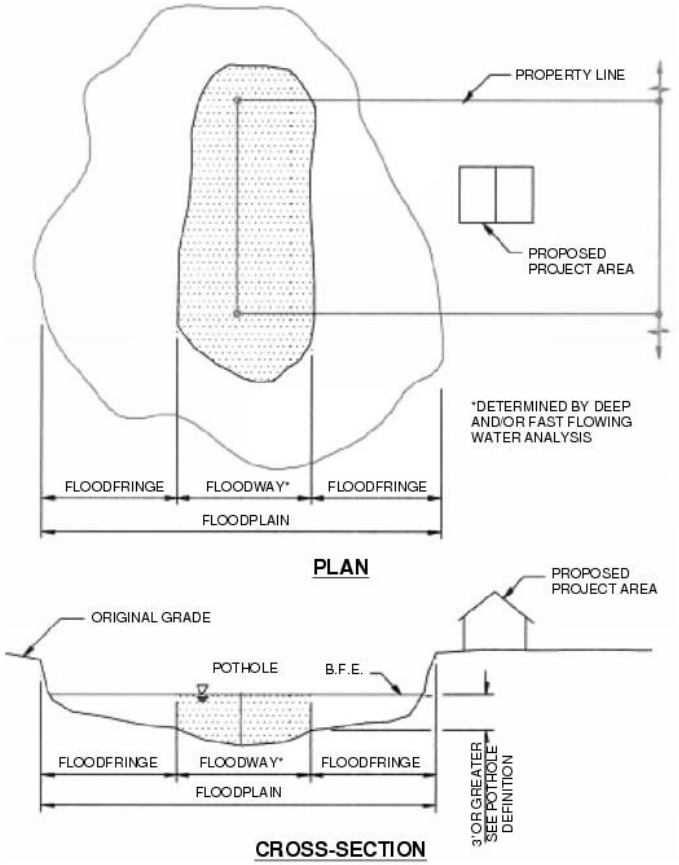
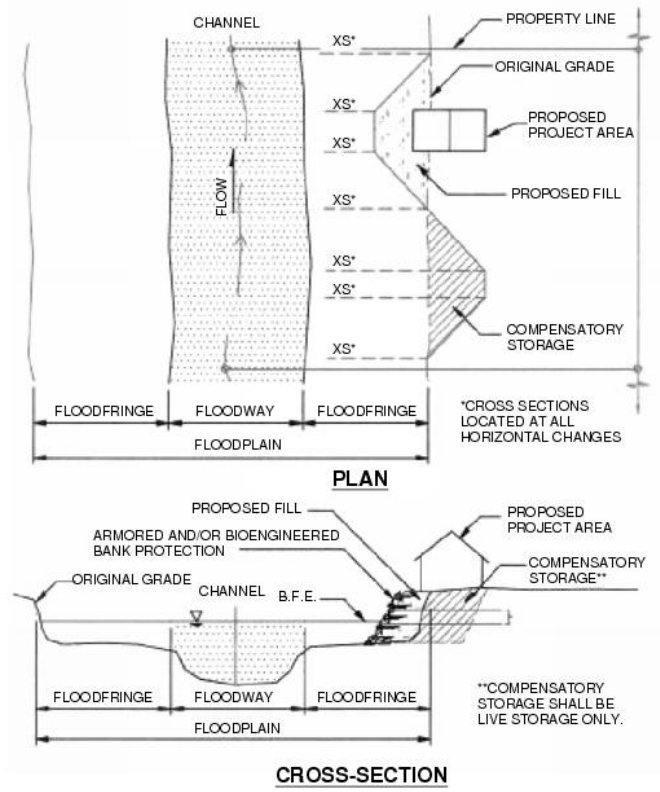
J. Figure 14.70-10, Pothole and B Zone Flood Hazard Area.



POTHOLE and B ZONE FLOOD HAZARD AREA
N.T.S.

K. Figure 14.70-11, Compensatory Storage.



NOTE: EXAMPLE PURPOSES ONLY, ACTUAL DESIGNS MAY/WILL VARY DEPENDING UPON POTENTIAL IMPACTS TO FLOW REGIME. COMPENSATORY STORAGE MUST NOT IMPACT FLOW CONVEYANCE.

COMPENSATORY STORAGE
N.T.S.

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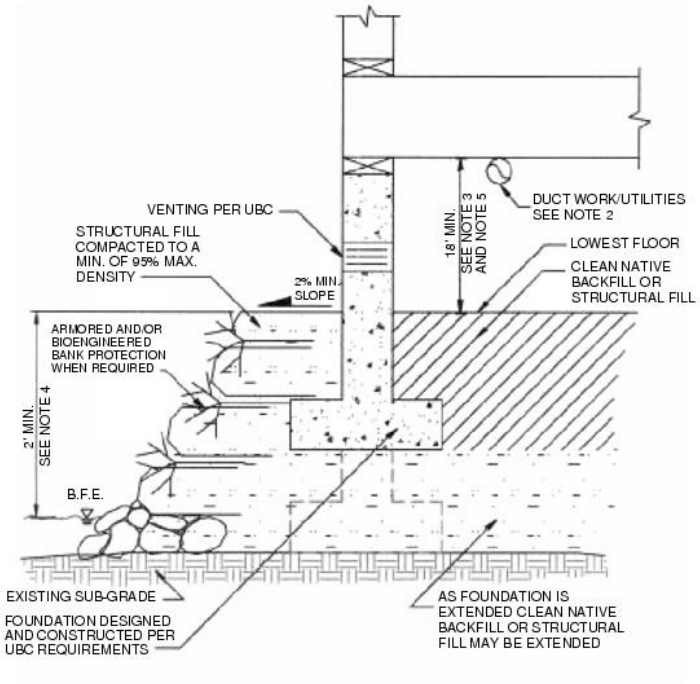
L. Figure 14.70-12, Structure with Crawlspace Elevation by Fill.



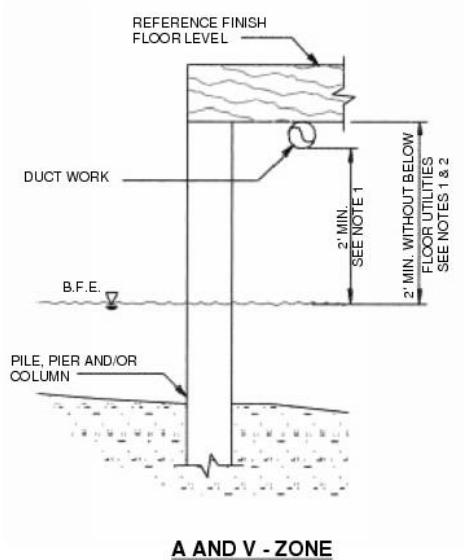
NOTES:

1. FILL MATERIAL SHALL MEET THE NO-RISE CRITERIA WITH SUPPORTING ANALYSIS.
2. ALL BUILDING CONSTRUCTION MATERIALS (I.E., DUCT WORK, UTILITIES, SIDING, ETC.) SHALL HAVE 2' MIN VERTICAL SEPARATION FROM THE B.F.E.
3. APPLIES TO NON-PRESSURE TREATED FLOOR JOISTS.
4. VERTICAL SEPARATION SHALL BE 3' MIN. FOR CRITICAL FACILITIES.
5. LOWEST FLOOR ELEVATION WILL AFFECT FLOOD INSURANCE PREMIUMS.

STRUCTURE WITH CRAWLSPACE ELEVATION BY FILL

N.T.S.

M. Figure 14.70-13, Building on Piles, Piers or Columns.



A AND V - ZONE

NOTES:

1. BOTTOM OF LOWEST HORIZONTAL STRUCTURAL MEMBER ELEVATION AND ALL BUILDING CONSTRUCTION MATERIALS (I.E., DUCT WORK, UTILITIES, SIDING, FLOOR JOISTS, ETC.) SHALL HAVE 2' MIN. VERTICAL SEPARATION FROM THE B.F.E.
2. BOTTOM OF LOWEST HORIZONTAL STRUCTURAL MEMBER SHALL HAVE 3' MIN. VERTICAL SEPARATION FROM THE B.F.E. FOR CRITICAL FACILITIES IN A AND V ZONES.

BUILDING ON PILES, PIERS OR COLUMNS

N.T.S.

(Ord. 02-200 § 2).

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CITY OF EDGEWOOD
STAFF REPORT
STUDY SESSION AGENDA ITEM: Telecommunications & Cable TV Permitting Process Ordinance

Date: February 7, 2017

Title: Telecommunications and Cable TV Permitting Process Ordinance

Attachments: Draft Ordinance 17-0489, Telecommunications-Cable Television Permitting

Submitted By: Aaron C. Nix, Assistant City Administrator – Municipal Services

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: As discussed with the Mayor and Council at their January 30 Study Session, the City's current code as it relates to permit processing for Telecommunications and Cable TV does not meet recent changes in federal law as it pertains to permit processing and timing requirements. Staff's intent is to create this section within Edgewood's code in order to meet these federal mandates in order to ensure that the City is compliant with these requirements and can avoid future, potential legal liability as it pertains to these issues.

Recommendation: N/A

Fiscal Impact: Like all permitting processes, this proposed structure will attempt to utilize current staffing levels in order to meet the requirements outlined in the proposed code and provide cost recovery for any new proposed processes.

ORDINANCE NO. 17-0489

AN ORDINANCE OF THE CITY OF EDGEWOOD, WASHINGTON, RELATING TO THE REGULATION OF RIGHT-OF-WAY USE BY TELECOMMUNICATIONS AND CABLE TELEVISION PROVIDERS, DESCRIBING THE SITUATIONS IN WHICH LEASES, FRANCHISES AND MASTER USE PERMITS ARE REQUIRED FOR THE USE OF CITY RIGHT-OF-WAY, LISTING THE ELEMENTS OF A COMPLETE APPLICATION FOR A MASTER USE PERMIT, THE PROCEDURE FOR APPROVAL, RIGHTS GRANTED, THE PROCESS FOR RENEWAL AND AMENDMENT OF A MASTER USE PERMIT, EXPLAINING THE PROCEDURE FOR NOTIFICATION OF SERVICE PROVIDERS OF THE CITY'S PLANS FOR STREET IMPROVEMENT PROJECTS, INCLUDING THOSE REQUIRING RELOCATION OF FACILITIES, DESCRIBING THE PROCEDURES FOR RELOCATION AND COST RECOVERY, EMERGENCY RELOCATION AND WHEN THE CITY MAY REQUIRE A SERVICE PROVIDER TO INSTALL ADDITIONAL DUCTS OR CONDUITS; ADDING A NEW CHAPTER 12.08 TO THE EDGEWOOD MUNICIPAL CODE.

WHEREAS, the State of Washington adopted chapter 35.99, which addresses the manner in which cities may allow use of rights-of-way for installation of telecommunications facilities in light of recent federal law; and

WHEREAS, the SEPA Responsible Official has determined that this Ordinance is exempt from SEPA under WAC 197-11-800(19); and

WHEREAS, the City Council considered this Ordinance during a regular City Council meeting on January 31, 2017; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON ORDAINS AS FOLLOWS:

Section 1. Chapter 12.08 of the Edgewood Municipal Code is hereby repealed.

Section 2. A new chapter 12.08 is hereby added to the Edgewood Municipal Code, which shall read as follows:

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CHAPTER 12.08
RIGHT-OF-WAY USE – MASTER USE PERMIT AND
UTITLITY RELOCATION (TELECOMMUNICATIONS AND CABLE TELEVISION)

Sections:

12.08.010 Purpose.
12.08.020 Definitions.
12.08.030 Applicability of Chapter.
12.08.040 Requirements for the provision of services within the City.
12.08.050 Facilities lease required.
12.08.060 Use of right-of-way prohibited.
12.08.070 Master use permit authorization, when required, fees.
12.08.080 Master use permit application.
~~**12.08.090 Issuance/denial of master use permit application.**~~
12.08.090~~100~~ Effective date of master use permit.
12.08.100~~110~~ Rights granted under master use permit.
12.08.110~~120~~ Amendment of master use permit.
12.08.120~~130~~ Renewal of master use permit.
12.08.130 Standards for renewal of Master Use Permits.
12.08.140~~140~~ Obligation to cure as a condition of renewal.
12.08.150~~150~~ Notification – TIP element of comprehensive plan.
12.08.160~~160~~ Notice and Liability.
12.08.170~~170~~ Location within open right-of-way.
12.08.180~~180~~ Relocation of facilities.
12.08.190 Relocation for private benefit.
12.08.200~~200~~ Emergency relocation.
12.08.210~~210~~ Additional ducts or conduits – City may require.

12.08.010 Purpose. The purpose and intent of this chapter is to:

A. Provide for the orderly use of public rights-of-way by establishing clear guidelines, standards and timeframes for the exercise of local authority with respect to the regulation of right-of-way use by telecommunications and cable television providers and services.

B. Implement regulations that are consistent with the requirements of state law (chapter 35.99 RCW), as the same exists or is hereafter amended.

C. Conserve the limited physical capacity of the public ways held in public trust by the City.

D. Assure that the City's current and ongoing costs of granting an regulating private access to and use of the public ways are fully paid by the persons seeking such access and causing such costs to be incurred by the City, to the full extent permitted by state and federal law.

E. Secure fair and reasonable compensation to the City and the residents of the City for permitting the private use of public rights-of-way while assuring that the City can continue to fairly and reasonably protect the public health, safety and welfare.

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F. Enable the City to discharge its public trust consistent with the rapidly evolving state and federal regulatory policies, industry competition and technological development.

12.08.020 Definitions. For the purpose of this chapter and the interpretation/enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which it is used shall indicate otherwise. These definitions and all provisions of this chapter shall be interpreted in a manner consistent with the provisions of state and federal law, including but not limited to chapter 35.99 RCW:

A. "Applicant" means any person or entity that applies for any permit under this chapter.

B. "Cable television service" means the one-way transmission to subscribers of video programing and other programing service and subscriber interaction, if any that is required for the selection or use of the video programming or other programming service.

C. "City" means the City of Edgewood, Washington.

D. "City property" means and includes all real property owned by the City, other than rights-of-way as that term is defined herein, and all property held in proprietary capacity by the City. Such City property is not subject to the right-of-way master use permits as provided for by this Chapter.

E. "Construction standard" means a construction standard applicable to the right-of-way or utility easement and adopted by the owner of the easement. The term shall typically refer to construction standards adopted by the City. Rights-of-way in the jurisdiction under the control of the State pursuant to RCW 47.24.020 shall be subject to state-adopted construction standards, if such standards are more restrictive or intensive than those of the City.

F. "Council" means the City Council of the City of Edgewood, Washington.

G. "Right-of-Way Use Permit" means a permit issued pursuant to chapter 12.06 EMC.

H. "Facilities" means all of the plant, equipment, fixtures, antennas and other facilities necessary to furnish and deliver telecommunications services and cable television services, including, but not limited to, poles with cross-arms, poles without cross arms, wires, lines, conduits, cables, communication and signal lines and equipment, braces, guys, anchors, vaults and all attachments, appurtenances and appliances necessary or incidental to the distribution and use of telecommunications services and cable television services.

I. "Franchise" means the initial authorization or a renewal thereof issued by the City, whether such authorization is designated as a franchise, permit, ordinance, resolution, contract, certificate, right-of-way use authorization, or otherwise, which authorizes construction and operation of facilities within the City's rights-

of-way for the purpose of offering cable service, utility or other service to subscribers or patrons.

J. "Franchisee" means the person to whom or which a franchise is granted by the Council and the lawful successor, transferee or assignee of said person subject to such conditions as may be defined in the franchise or by the ordinances of the City, including but not limited to the provisions of this Chapter.

K. "Master use permit" means the permit whereby the City may grant general permission to a service provider to enter, use and occupy the right-of-way for the purpose of locating facilities. This definition is not intended to limit, alter or change the extent of the existing authority of the City to require a franchise nor does it change the status of a service provider asserting an existing state-wide grant based on a predecessor telephone or telegraph company's existence at the time of the adoption of the Washington State Constitution to occupy the right-of-way.

L. "Other ways" means the highways, streets, alleys, utility easements or other rights-of-way within the City which are under the jurisdiction and control of a governmental entity or private party other than the City.

M. "Overhead facilities" means utility poles, utility franchises and cable and television facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

N. "Person" means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals, including their lessors, trustees and receivers.

O. "Personal wireless service" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

P. "Right-of-way" means land or an easement acquired or dedicated for public roads and streets, but does not include:

1. State highways and other ways;
2. Land dedicated for roads, streets and highways not opened and not improved for motor vehicle use by the public;
3. Structures, including poles and conduits, located within the right-of-way;
4. Federally granted trust lands or forest board trust lands;
5. Lands owned or managed by the State Parks and Recreation Commission;
6. Federally granted railroad rights-of-way acquired under 43 U.S.C. Section 912 and related provisions of federal law that are not open for motor vehicle use.

Q. "Right-of-Way Use Permit" means the authorization in whatever form whereby a city may grant permission to a service provider to enter and use the specified right-of-way for the purpose of installing, maintaining, repairing or removing

identified facilities. As used herein, the term shall be synonymous for the term "right-of-way permit" as used in chapter 12.06 EMC.

R. "Service provider" means every corporation, company, association, joint stock association, firm, partnership, person, city or town owning, operating or managing any facilities used to provide and providing telecommunications or cable television services for hire, sale or resale to the general public. "Service provider" includes the legal successor to any such corporation, company, association, joint stock association, firm, partnership, person, city or town.

S. "State" means the State of Washington.

T. "Subscriber" means any person, entity or users of a cable system who lawfully receives cable services or other service therefrom with the franchisee's express permission.

U. "Telecommunications service" means the transmission of information by wire, radio, optical cable, electromagnetic or other similar means for hire, sale or resale to the general public. For the purpose of this subsection, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds or any other symbols. For the purpose of this chapter, telecommunications service excludes the over-the-air transmission of broadcast television or broadcast radio signals.

V. "Transportation improvement plan" or "TIP" means the six-year element of the City's comprehensive plan as amended annually by adoption by the City Council.

12.08.030 Applicability of Chapter. This chapter shall be applicable to all franchises approved before or after the effective date of the ordinance codified in this chapter, and other persons seeking to utilize the right-of-way on or after the effective date of the ordinance codified in this chapter.

12.08.040 Requirements for the provision of services within the City. Except as expressly provided herein, all providers of cable television service and telecommunications service to citizens of the City through facilities located in the right-of-way shall, prior to commencing operations:

A. Obtain and maintain a franchise from the City unless expressly exempted by the provisions of State or federal law; and

B. Obtain and maintain a business license as provided in chapter 5.05 of the EMC;

C. Either:

1. Obtain a master use permit to obtain general provision to enter, use and occupy the right-of-way for the purpose of locating telecommunications facilities; and

2. Once a master use permit has issued, obtain and maintain a right-of-way permit for specific construction activities.

12.08.050 Facilities Lease required. No provider of cable television or telecommunications services or any other entity who desires to locate equipment on City property shall locate such facilities or equipment on City property unless and until a facilities lease is approved by the City Council. The Council reserves unto itself the sole discretion in its legislative capacity to lease City property for telecommunications, cable television or other facilities, and no vested right or other right shall be created by this section or any other provision of this chapter with respect to such facilities leases.

12.08.060 Use of Right-of-Way Prohibited.

A. Except as provided below, no person shall break, cut or otherwise compromise the surface and/or integrity of any street or sidewalk within the first two years after its construction and installation. For the period commencing with the third year through the seventh year, any person proposing to break, cut or otherwise compromise the integrity of the surface of any street or sidewalk shall conduct operations only in accordance with a master use permit and right-of-way use permit.

B. If the service provider submits a complete application for a right-of-way use permit under chapter 12.06 EMC, the final decision must be made within thirty (30) days thereafter, unless the applicant agrees to a different time period or the service provider has not obtained a Master Use Permit. As provided in Section 12.06.217 the service provider shall provide a City performance bond sufficient to replace the street or sidewalk surface to its original condition. Such bond shall be provided in accordance with the provisions of any franchise, master use permit or right-of-way permit, when in the discretion of the Public Works Director a particular project poses a significant risk of the impairment of the normal useful life of the street surface. Insurance and indemnity shall be provided in accordance with the requirements of Section 12.06.215 and 12.06.216 or the applicable franchise. The City, at its sole discretion, may permit installation of facilities underneath a street or sidewalk during the initial two years after construction and acceptance by the City, when a performance, maintenance and restoration bond is provided.

12.08.070 Master use permit authorization, when required, fees.

A. *When required.* All providers of cable television service and telecommunications service who desire to construct, install, operate, maintain or otherwise locate or remove facilities in, under over or across any right-of-way of the City for the sole purpose of providing telecommunications or cable television service to persons and areas outside of the City shall first obtain a Master Use Permit pursuant to the provisions of this Chapter.

B. *When MUP is optional:* Master use permits may be requested by the City in the following situations:

1. By a franchisee who seeks authorization to construct continuing, extensive construction activities over a period estimated to be in excess of six months. A master use permit may be obtained in this situation as an alternative to a right-of-way permit for individual segments of the construction activities.

2. Holders of state-wide franchises, which may not be required to obtain a master use permit are requested to do so in accordance with RCW 35.99.030(1).

C. *Fees*. Each master use permit granted under this Chapter is subject to the City's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the right to occupy and use the public ways of the City granted under such permits; provided, nothing in this Chapter shall prohibit the City and a permittee from agreeing to the compensation to be paid. State and federal prohibitions and preemptions may apply, and this provision shall be interpreted to conform to such state or federal restrictions.

12.08.080 Master Use Permit Application. A complete master use permit application shall be submitted to the City under the circumstances described in Section 12.08.070, which shall include the following information:

A. The identity of the applicant, including all affiliates of the applicant;

B. Identification of the franchise that the applicant has with the City;

C. A description of the services that are or will be offered or provided by the applicant through its facilities;

D. A description of the transmission medium that will be used by the applicant to offer or provide such services;

E. Preliminary engineering plans, specifications and a network map of the facilities to be located within the City, depicted on a 22 by 34 inch sheet format in sufficient detail to identify:

1. The horizontal and vertical location and proposed route requested for applicant's proposed facilities;

2. The location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route;

3. The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate;

4. Depiction of existing utilities and other public and/or private facilities including but not limited to cross streets, permanent landmarks or other points of reference;

5. Existing right-of-way boundaries;

6. Cross-section(s) of existing roadway(s) with proposed facilities, including offsets and depth;

7. Proposed construction notes stating compaction and testing requirements;

8. Restoration details conforming to adopted City standards;

9. All maps, including a required area map, shall have centerline stations and a north arrow orienting the map;

10. Temporary erosion and sedimentary control plan utilizing best management practices.

E. If applicant is proposing to install overhead facilities, evidence that it has obtained the permission of the owner of existing poles or, in the alternative that surplus space is available for locating its telecommunication facilities on existing poles along the proposed route.

F. If applicant is proposing an underground installation in existing public ducts or conduits within the right-of-way, information in sufficient detail to identify:

1. The excess capacity currently available in such public ducts or conduits before installation of applicant's facilities;

2. The excess capacity, if any, that will exist in such public ducts or conduits after installation of applicant's facilities.

G. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the right-of-way:

1. The location proposed for the new ducts or conduits;

2. The excess capacity that will exist in such public ducts or conduits after installation of applicant's telecommunications facilities;

3. Provision to be made for the installation of public conduit pursuant to Section 12.08.220.

H. A preliminary construction schedule and completion date;

I. A preliminary traffic control plan in accordance with the City's adopted street standards and the Manual of Uniform Traffic Control Devices (MUTCD) and current City and State standards;

J. Financial statements prepared in accordance with general accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities;

K. Information in sufficient detail to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services;

M. An application fee which shall be set by the City Council by resolution and any deposits or charges established by resolution.

N. Requirements in Subsections J through L of this section may be satisfied pursuant to the relevant requirement of a valid franchise issued to the applicant by the City.

~~**12.08.090 Issuance/denial of a Master Use Permit.** The City Council shall hold a public hearing and receive testimony and other evidence regarding the issuance of a Master Use Permit.~~

~~What does the City want to do? If the City staff act on the master use permit without a public hearing, the final decision must be made in 120 days after the complete application is submitted. RCW 35.99.030(1)(b). If the City Council holds a public hearing, the City Council can make findings that it couldn't make a final decision in 120 days *if this is true*. RCW 35.99.030(1)(b)(ii).~~

~~The City Council's decision shall be confirmed in writing, shall be based on the record of the proceeding and shall consider/apply the factors set forth below:~~

~~A. The financial and technical ability of the applicant;~~

~~B. The capacity of the right-of-way to accommodate the applicant's proposed facilities;~~

~~C. The capacity of the right-of-way to accommodate additional utility, cable and telecommunications facilities if the Master Use Permit is granted;~~

~~D. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the Master Use Permit is granted;~~

~~E. The public interest in minimizing the cost of the disruption of construction within the right-of-way;~~

~~F. The effect, if any, on public health, safety and welfare if the master use permit is granted;~~

~~G. The availability of alternate routes and/or locations for the proposed facilities;~~

~~H. Applicable federal and state laws, regulations and policies;~~

~~I. Such other factors as may demonstrate that the grant to use the right-of-way will serve the community interest.~~

12.08.090~~100~~ Time Period for Action on Master Use Permit.

The City shall act on a Master Use Permit application in 120 days after submission of the complete application. "Act" means to grant without conditions, grant with conditions or deny the Permit. No Master Use Permit shall be deemed to have been granted until the City has issued a written permit setting forth the particular terms and provisions under which the permittee has been granted the right to occupy and use the right-of-way of the City and all preconditions thereto, such as bonding, have been satisfied.

12.08.110 Non-Exclusive Permit. No Master Use Permit granted under this Chapter shall confer any **exclusive** right, privilege, license or franchise to occupy or use the right-of-way of the City for delivery of telecommunications, cable television services, or any other services or purposes.

12.08.100~~20~~ Rights Granted under Master Use Permit.

A. No master use permit granted under this Chapter shall convey any right, title or interest in the right-of-way, but shall be deemed a permit only to use and occupy the right-of-way for the limited purposes and term stated in the permit. Further, no master use permit shall be construed as any warranty of title.

B. A master use permit granted under this Chapter shall be limited to a grant affecting specific rights-of-way and defined portions thereof for the period specified therein.

12.08.110~~30~~ Amendment of Master Use Permit. A new master use permit application shall be required of any service provider that desires to extend or locate its facilities in rights-of-way of the City which are not included in a use permit previously granted under this Chapter or in a franchise. If ordered by the City to locate or relocate its telecommunications facilities in public ways not included in a previously granted use permit, the City shall grant a master use or encroachment permit amendment without further application.

12.08.120~~40~~ Renewal of Master Use Permit. A permittee that desires to renew its master use permit under this Chapter shall, not more than 180 days nor less than 90 days before expiration of the current permit, file an application with the City for renewal of its master use permit, which shall include the following:

A. The information required in Section 12.08.080;

B. Any information required pursuant to the prior master use agreement between the City and the permittee. (This requirement may be satisfied through information previously required of a franchisee;

C. All deposits or charges required pursuant to this Chapter;

D. An application fee which shall be set by the City Council by resolution and any deposits or charges established by resolution, ordinance or franchise.

12.08.130~~50~~ Standards for renewal of Master Use Permits. Within 90 days after receiving a complete application for master use permit renewal, the City shall issue a written determination granting or denying the renewal application in whole or in part. Prior to granting or denying the renewal of a permit under this Chapter, the City Council shall make a decision based upon the following standards. If the renewal application is denied, the written determination shall include the reasons for nonrenewal:

A. The financial and technical ability of the applicant;

B. The continuing capacity of the rights-of-way to accommodate the applicant's existing facilities;

C. The applicant's compliance with the requirements of this Chapter and the expired master use permit;

D. Such other factors as may demonstrate that the continued grant to use the right-of-way will serve the community interest.

12.08.14~~060~~ Obligation to cure as a condition of renewal. No master use permit shall be renewed until any ongoing violations or defaults in the permittee's performance of the master use permit, or of the requirements of this chapter, have been cured, or a plan detailing the corrective action to be taken by the permittee has been approved by the City.

12.08.15~~070~~ Notification – Transportation improvement plan element of the comprehensive plan. The City maintains a transportation improvement element as a part of its comprehensive plan addressing a six-year planning horizon. All franchisees and applicants for master use permits are notified that the plan contains a list of city street improvements, sidewalks and other utility projects in the rights-of-way. Franchisees and holders of master use permits as well as any service provider who files notice with the City Clerk of their intent to place facilities in the City are hereby placed on notice with respect to the existence of the transportation improvement plan (TIP).

A. Annually, the City Clerk shall provide notice regarding the hearing on the transportation improvement plan to telecommunications and cable television service providers as well as all service providers who have provided written notice of intent to the clerk within the past twelve (12) months of their intent to place facilities with the City.

B. Cable television and telecommunications service providers and those wishing to place facilities in the City's rights-of-way shall then be on notice of the City's intent and may participate in any public hearing regarding the City's transportation improvement plan. Upon publication of notice of the adoption of an ordinance regarding the transportation improvement plan, cable television and telecommunications service providers and others desiring to establish facilities within the City's rights-of-way shall commence the process of consultation with the City regarding such placement.

C. Upon adoption of the transportation improvement plan, the City, through the City engineer or his/her designee, shall notify service providers as soon as practicable thereafter of the need for relocation of service provider's facilities, specifying the date by which relocation shall be completed. The City shall consult with the affected service providers regarding the date the relocation must be completed. When a project is listed on the City's TIP, such notice is secondary. Service providers are placed on inquiry and record notice through the adoption of the City's annual update to the six-year TIP regarding the nature and extent of facilities to be constructed by the City. The service provider shall, at its earliest convenience, provide information to the City in appropriate written format, outlining the extent of facilities to be relocated, the service requirements and the construction sequence for the relocation. The City shall utilize this information through a consulting process to establish the City's overall construction sequence and constraints, and the construction sequence shall be designed to safely complete the relocation. After the consultation, the City Public Works Director shall establish a final relocation date.

D. Service providers shall complete the relocation by the date specified by the City Public Works Director unless a reviewing court establishes a later date for completion. The

standard for review by the Public Works Director and by any reviewing court shall be based upon a showing of substantial and competent evidence by the services provider, that the relocation cannot be completed by the date specified, using best efforts in meeting safety and service requirements.

12.08.160~~80~~ Notice and Liability. The City is not liable for damages for failure to provide individual notice to any permittee or franchisee under Section 12.08.170 (above). Where the City has failed to provide notice of plans to open a right-of-way consistent with Section 12.08.170 (above), the City may not deny a use permit to a service provider on the basis that the service provider failed to coordinate with another City project. No service provider may claim a lack of notice where a project has been included on the City's annually amended transportation improvement plan and notice of the transportation improvement plan element of the comprehensive plan has been published in accordance with the provisions of state law.

12.08.170~~90~~ Location within an open right-of-way. In order to locate facilities within a right-of-way opened by a public or private construction project, a service provider shall:

A. Obtain either all use permits and City-required bonds, including, but not limited to, a right-of-way use permit under chapter 12.06 EMC or master use permit for the installation, maintenance, repair, or removal of facilities in the designated right-of-way;

B. Comply with applicable ordinances, construction codes, regulations and standards applicable to the installation of facilities and the restoration of the right-of-way, subject to verification by the City of compliance with such standards, regulations and ordinances;

C. Cooperate with the City by complying with all traffic control measures and other requirements designed to ensure that facilities are installed, maintained, repaired and removed within the right-of-way in such a manner and at such points as not to inconvenience the public use of the right-of-way or to adversely affect the public health, safety and welfare;

D. Provide information and plans reasonably necessary following notification of projects through publication of the City's transportation improvement plan. The provision of advance planning information shall conform to requirements established by the Public Works Director.

E. Obtain the written approval of the facility or structure owner, if the service provider does not own it, prior to attaching to or otherwise using a facility or structure in the right-of-way;

F. Construction, install, operate and maintain its facilities solely at its own expense;

G. Comply with applicable federal and state safety laws and standards;

H. Nothing herein shall be deemed to create, expand or extend any liability of the City to a third-party user of the facilities or a third-party beneficiary. The City Engineer shall require provision of an indemnity agreement and certifications of insurance as conditions of a service provider's right for a facility to occupy the City's right-of-way; provided, however, that these requirements shall be met by holders of franchises and encroachment permits or master use permits if they provide the indemnity and insurance required by such use permits and franchises.

12.08.180~~200~~ Relocation of facilities – Cost. Service providers may not seek reimbursement for relocation expenses from the City following the City's request to relocate under Section 12.06.150, except in the following circumstances:

A. Where the service provider paid for the relocation costs of the same facilities at the request of the City within the past five years. In this case, the service provider's share of the cost of relocation shall be paid by the City;

B. Where the aerial to underground relocation of authorized facilities is required by the City, service providers with an ownership share of the aerial supporting structures, the additional incremental cost of underground compared to aerial relocation, or as provided for in an approved tariff if less, will be paid by the City;

C. Where the City requests relocation solely for aesthetic purposes, unless otherwise agreed to by the parties.

12.08.190~~210~~ Relocation for private benefit. Where the City has requested a service provider to relocate a project primarily for private benefit, the private party or parties shall reimburse the cost of relocation to the service provider or providers. Service providers shall not be precluded from recovering their costs associated with relocation; provided, that the recovery is consistent with this Chapter and other applicable laws and ordinances.

12.08.200~~220~~ Emergency relocation. The City may require relocation facilities at the service provider's expense in the event of an unforeseen emergency that creates an immediate threat to the public safety or welfare.

12.08.210~~30~~ Additional ducts or conduits – City may require. The City may require that a service provider that is constructing, relocating or placing ducts or conduits in public rights-of-way provide the City with additional duct or conduit and related structures necessary to access the conduit, provided that:

A. The City enters into a contract with the service provider consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental cost to the service provider. If the City makes the additional duct or conduit and related access structures available to any other entity for the purposes of providing telecommunications or cable television service for hire, sale or resale to the general public, the rates to be charged, as set forth in the contract with the entity that constructed the conduit or duct, shall recover at least the fully allocated cost of the service provider. The service provider shall state both contract rates in the contract. The City shall inform the service provider of the use, and any changes in use of the requested duct or conduit and related access structures in order to determine the applicable rate to be paid by the City.

B. Except as otherwise agreed by the service provider and the City, the City agrees that the requested additional duct or conduit space and related access structures shall not be used by the City to provide telecommunications or cable television service for hire, sale or resale to the general public.

C. The City shall not require that the additional duct or conduit space be connected to the access structures and vaults of the service provider.

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D. The value of the additional duct or conduit requested by the City shall not be considered a public works construction contract.

E. This section shall not affect the provision of an institutional network by a cable television provider under federal law.

Section 3. Severability. If any portion of this ordinance or its application to any person or circumstances is held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the remainder of the ordinance or the application of the remainder to other persons or circumstances.

Section 4. Effective Date. This ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of ___, this day of , 2017

CITY OF EDGEWOOD

_____
Daryl Eidinger, Mayor

ATTEST/AUTHENTICATED:

_____
Rachel Pitzel, City Clerk

APPROVED AS TO FORM:

_____
Carol A. Morris, City Attorney

PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:

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CITY OF EDGEWOOD
STAFF REPORT
STUDY SESSION AGENDA ITEM: DRAFT Milton Franchise Agreement Ordinance

Date: February 7, 2017

Title: Milton Franchise Agreement Ordinance

Attachments: DRAFT Milton Franchise Agreement Ordinance

Submitted By: Aaron C. Nix, Assistant City Administrator – Municipal Services

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: Late last year Staff made contact with Public Works Staff with the City of Milton in order to begin discussions as it pertained to working on coming to an agreement on language pertaining to a franchise agreement, as outlined within Edgewood Municipal Code. The City of Milton maintains and provides water services to a small section of Edgewood, near Northwood Elementary on the Westside of Meridian and small section at the north end of town near Jovita Boulevard. As the City of Milton maintains this infrastructure within Edgewood's right of way, the establishment of an agreeable franchise is appropriate and overdue. Staff is bringing this forward to the Council for their review and eventual adoption, with subsequent adoption by the Milton City Council. Although requested, Edgewood Staff have not received comments from the City of Milton in regard to the language within the proposed franchise agreement, but understand that their review in underway from the City's Engineer.

Recommendation: This is a study session item with the intention of introducing this issue to the City Council. Staff does not have a current opinion as it relates to the current Ordinance.

Fiscal Impact: Under the current Draft of this franchise agreement, right of way permit fees would be collected at the time of permitting.

ORDINANCE NO. 17-XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, GRANTING UNTO THE CITY OF MILTON, A MUNICIPAL CORPORATION OF THE STATE OF WASHINGTON, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR WATER SYSTEM INFRASTRUCTURE, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF EDGEWOOD, WASHINGTON; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, The City of Milton, WA, (hereinafter referred to as "Milton") has requested that the City Council grant it a nonexclusive franchise; and

WHEREAS, Milton has authority to contract with municipal corporations, and to construct, add to, maintain and supply water works; and

WHEREAS, the City Council has the authority to grant franchises for the use of its streets and other public properties pursuant to RCW 35A.47.040; and

WHEREAS, Milton provides public drinking water to portions of citizens within the City of Edgewood, as a privately owned nonprofit municipal water corporation regulated by the Washington State Department of Health; and

WHEREAS, Milton's public water system infrastructure and facilities are identified as critical infrastructure and its staff is classified as first responders by the Federal Government.

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

Section 1. Franchise Granted; Term. Pursuant to RCW 35A.47.040, the City of Edgewood, a Washington municipal corporation (hereinafter the "City"), hereby grants to Milton, a Municipal public utility owned by City taxpayers and organized under the laws of the state of Washington, its heirs, successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth and all applicable City codes and regulations, a nonexclusive franchise beginning on the effective date set forth in Section 23 herein. The term of the franchise shall be five (5) years.

This franchise shall grant Milton the right, privilege and authority to construct, operate, maintain, replace, and repair all necessary facilities for water delivery, in, under, on, across, over, through, along or below the public rights-of-way located in the City of Edgewood ("the Franchise Area"), as approved under City permits issued pursuant to this franchise. "Rights-of-way" as used herein means all public streets, roads, alleys and highways of the City as now or hereafter laid out, platted, dedicated or improved.

Section 2. Non-Exclusive Franchise Grant. This franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises

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in, along, over, through, under, below or across any of said rights-of-way. Such franchise shall in no way prevent or prohibit the City and/or the public from using any of said roads, streets or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, vacation, establishment, maintenance, and improvement of all new rights-of-way, thoroughfares and other public properties of every type and description.

Section 3. Relocation of Water System Facilities.

3.1 MILTON agrees and covenants to, at MILTON's sole expense, protect, support, temporarily disconnect, relocate or remove from any rights-of-way any of MILTON's facilities when so required by the City by reason of traffic conditions, public safety, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, road and walkway construction, change or establishment of street grade, and/or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity (a "governmental project").

3.2 Any condition or requirement imposed by the City upon any person or entity (including without limitation any condition or requirement imposed pursuant to any contract or in conjunction with approvals for permit for zoning, land use, construction or development) which reasonably necessitates the relocation of MILTON's Facilities within the franchise area shall be a required relocation for purposes of subsection 3.1 above.

3.3 If the City determines that a government project or other event or condition, as defined in subsections 3.1 and 3.2, necessitates the relocation of MILTON's Facilities, the City shall, to the extent reasonably practicable:

A. Notify MILTON during the planning phase to ensure collaborative effort is made to reduce project expense (to the City and MILTON), allow budgeting for the project and facilitate joint applications for grants and low-interest funding by the parties. The City will provide written notification requiring relocation of MILTON's Facilities at least ninety (90) days or additional days, approved by the Mayor or his/her designee prior to the commencement of the government project or other event or condition necessitating the relocation.
B. Provide MILTON with copies of pertinent portions of the plans and specifications for such project and where possible propose an alternative location for MILTON's Facilities so that MILTON may relocate its facilities within the current right-of-way or to other rights-of-way.
C. After receipt of such notice and such plans and specifications, MILTON shall complete relocation of its facilities at least ten (10) days prior to commencement of the project at no charge or expense to the City. Relocation shall be accomplished in such a manner as to accommodate the project, event or condition necessitating the relocation.

3.4 Without limitation of the foregoing, MILTON shall specifically indemnify the City, its officers, employees, agents and representatives, for any damages, claims, additional costs or expenses assessed against, or payable by, the City related to, arising out of, or resulting,

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directly or indirectly, from MILTON's failure to timely remove, adjust or relocate any of its facilities in accordance with any requirement hereunder. The provisions of this subsection shall survive the expiration or termination of this franchise.

3.5 MILTON may, after receipt of written notice requesting relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives in good faith and advise MILTON in writing if one or more of the alternatives are suitable to accommodate the work which would otherwise necessitate relocation of MILTON's Facilities. If so requested by the City, MILTON shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by MILTON full and fair consideration. In the event the City in its sole discretion ultimately determines that there is no other reasonable or feasible alternative, MILTON shall relocate its facilities as otherwise provided in this Section.

3.6 The provisions of this Section shall in no manner preclude or restrict MILTON from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City or another governmental entity, where the facilities to be constructed by said person or entity are not or will not become governmentally-owned, operated or maintained facilities, provided that such arrangements do not unduly delay a governmental project.

Section 4. Maps and Records. After construction of any new facilities in the City rights-of-way, and as a condition of this franchise, MILTON shall make available to the City upon request and at no cost, a copy of all as-built plans, maps and records revealing the final location and condition of MILTON's facilities within the public rights-of-way. Said plans will be maintained at MILTON per Department of Homeland Security measures.

Section 5. Excavations. All construction work performed by MILTON or its contractors under or in relation to this franchise, specifically including without limitation any relocation, construction or maintenance of MILTON's facilities, shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private, and shall comply with all applicable laws and regulations. MILTON shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the state of Washington, including RCW 39.04.180 for the construction of trench safety systems.

Excavation in City-owned rights-of-way shall be governed by the provisions of the Edgewood Municipal Code (EMC) Chapter 12.06 - "Right-of-Way Franchises and Permits for Public and Private Utilities". MILTON, at its own expense, shall secure any applicable permits required for excavating in any public right-of-way and shall give the City at least five (5) working days notice of its intent to commence work in the public right-of-way. In no case shall any work commence on City-owned and maintained public road surfaces, without the required permit(s).

If either the City or MILTON shall at any time plan to make excavations in any area covered by this franchise and as described in this Section, the party planning such excavation shall afford the other, upon receipt of a written request to do so, a reasonable opportunity to share such excavation, PROVIDED THAT:

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A. Such joint use shall not unreasonably delay the work of the party causing the excavation to be made; and
B. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and
C. Either party may deny such request for safety reasons. The provisions of this Section shall survive the expiration or termination of this franchise.

Section 6. Restoration after Construction. MILTON shall, after abandonment, installation, construction, relocation, maintenance or repair of its facilities within the Franchise Area, restore the surface of the right-of-way to at least the same condition in which the property existed immediately prior to any such installation, construction, relocation, maintenance or repair. The City's Public Works Director shall have final approval of the condition of such rights-of-way after restoration. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local standards and specifications. MILTON agrees to promptly complete all such restoration work and to promptly repair any damage caused by such work at its sole cost and expense. The provisions of this Section shall survive the expiration, revocation or termination by other means of this franchise.

Section 7. WSDOT Standards. The parties expressly acknowledge that some rights-of-way within the franchise area, specifically including without limitation the Meridian Avenue / State Route 161 corridor, are part of the state highway system ("State Highways") and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) requirements in addition to local ordinances and other regulations. Without limitation of any other provision of this franchise, MILTON agrees that:

(1) any pavement trenching and restoration performed by MILTON within State Highways shall meet or exceed applicable WSDOT requirements;

(2) any portion of a State Highway damaged or injured by MILTON shall be restored, repaired and/or replaced by MILTON to a condition that meets or exceeds applicable WSDOT requirements; and

(3) without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this franchise with respect to any portion of a State Highway.

Section 8. Emergency Work. Permit Waiver. In the event of any emergency in which any of MILTON's Facilities located in or under any right-of-way breaks, becomes damaged, or if MILTON's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, MILTON shall immediately take the proper emergency measures to repair its facilities, and to cure or remedy the dangerous condition(s) for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this franchise. However, this shall not relieve MILTON from the requirement of obtaining any permits necessary for this purpose, and MILTON shall apply for all such permits not later than the next succeeding day during which the Edgewood City Hall is open for business.

Section 9. Dangerous Conditions. Authority for City to Abate. Whenever the construction, installation or excavation of facilities authorized by this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining

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street or public place, or otherwise endangers the public, an adjoining public place, street utilities or City property, the Mayor may direct MILTON, at MILTON's own expense, to take actions to protect the public, adjacent public places, City property or street utilities, and such action may include compliance within a prescribed time.

In the event that MILTON fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact MILTON to request MILTON affect the immediate repair, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or actions regarded as necessary safety precautions. The provisions of this Section shall survive the expiration, revocation or termination of this franchise.

Section 10. Indemnification. MILTON hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including attorneys' fees and including claims by MILTON's own employees for which MILTON might otherwise be immune under Title 51 RCW, for injury or death of any person or damage to property caused by or arising, in whole or in part, out of the acts or omissions of MILTON, its agents, contractors, subcontractors, servants, officers or employees in the performance of this franchise, and any rights granted hereunder. The above waiver of immunity under Title 51 RCW has been mutually negotiated by the parties.

Inspection or acceptance by the City of any work performed by MILTON at the time of completion of construction shall not be grounds for avoidance by MILTON of any of its obligations under this Section. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of MILTON and the City, MILTON's liability hereunder shall be only to the extent of MILTON's negligence. The provisions of this Section shall survive the expiration or termination of this franchise.

Section 11. Insurance. MILTON shall procure and maintain for the duration of the franchise the following liability insurance policies, insuring both MILTON and naming the City, and its elected and appointed officers, officials, agents, representatives, and employees as additional insureds:

A. Comprehensive general liability insurance with limits not less than:
   1. $2,000,000 for bodily injury or death to each person;
   2. $2,000,000 for property damage resulting per occurrence; and
   3. $2,000,000 for all other types of liability.
B. Automobile liability for owned, non-owned and hired vehicles with a limit of $1,000,000 for each person and $3,000,000 for each accident.
C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than $1,000,000.
D. Comprehensive form premises-operations, explosions and collapse hazard, underground

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hazard and products completed operation hazard policies with limits of not less than $2,000,000.

E. The liability insurance policies required by this Section shall be maintained at all times by the MILTON. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the City Risk Manager of such intent to cancel or not to renew."

MILTON may satisfy the requirements of this section by a self-insurance program or membership in an insurance pool providing substantially the same coverage as set forth above and approved by the City.

Section 12. Restoration Bond. In lieu of a restoration bond pursuant to EMC 12.06.218, MILTON hereby warrants all work performed under this franchise and further specifically represents and warrants that all required restoration of the right-of-way shall be performed timely, in a workmanlike manner, and in full compliance with all applicable regulatory standards.

Section 13. Modification. The City and MILTON hereby reserve the right to mutually alter, amend or modify the terms and conditions of this franchise upon written agreement of both parties to such alteration, amendment or modification. No such alteration, amendment or modification shall be effective without a writing signed by both parties.

Section 14. Forfeiture and Revocation. If MILTON willfully violates or fails to comply with any of the provisions of this franchise, or through willful misconduct or negligence fails to heed or comply with any notice given by the City under the provisions of this franchise, then MILTON shall forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Edgewood City Council after a hearing held upon notice to MILTON.

Section 15. Remedies to Enforce Compliance. The City may elect, in lieu of revocation and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling MILTON to comply with the provisions of this franchise. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force MILTON and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

Section 16. Legal Compliance. City Ordinances and Regulations. MILTON shall comply with applicable federal, state and local laws, rules and regulations, unless otherwise modified as part of this franchise, at all times relevant to this franchise. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. In the event of a conflict between the provisions of this franchise and any other ordinance(s) enacted under the City's police power authority, such other ordinance(s) shall take precedence over the provisions set forth herein.

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Section 17. Planning Coordination.

17.1 Growth Management, The parties agree, as follows, to participate in the development of, and reasonable updates to, the each other's planning documents:

17.1.1 For MILTON's service within the City limits, the District will participate in a cooperative effort with the City of Edgewood to develop a Comprehensive Plan Utilities Element that meets the requirements described in RCW 36.70A.070(4).

17.1.2 MILTON will participate in a cooperative effort with the City to ensure that the Utilities Element of Edgewood's Comprehensive plan is accurate as it relates to the MILTON's operations and is updated to ensure continued relevance at reasonable intervals.

17.1.3 MILTON shall submit information relates to the general location, proposed location, and capacity of all existing and proposed facilities within the City as requested by the Public Works Director within a reasonable time frame, not exceeding sixty (60) days from receipt of a written request for such information, provided that such information is in the MILTON's possession, or can be reasonably developed from the information in MILTON's possession.

17.1.4 MILTON will update information provided to the City under Section 17 – Planning Coordination, whenever there are major changes in MILTON's system plans for the City of Edgewood.

17.1.5 The City will provide information relevant to MILTON's operations within a reasonable period of written request to assist MILTON in the development or update of its Comprehensive Water System Plan, provided that such information is in the City's possession, or can be reasonably developed from the information in the City's possession.

17.2 System Development Information. MILTON and the City will each assign a representative whose responsibility shall be to coordinate planning for CIP projects including those that involve undergrounding. At a minimum, such coordination shall include the following:

17.2.1 By February 1st of each year, MILTON shall provide the City with a schedule of its planned capital improvements, which may affect the right of way for that year.

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17.2.2 By February 1st of each year, the City shall provide MILTON with a schedule of its planned capital improvements which may affect the right of way for that year including, but not limited to street overlays and repairs, storm drainage improvements and construction, and all other right of way activities that could affect MILTON's capital improvements and infrastructure.

17.2.3 MILTON shall meet with the City, other franchises and users of the right of way, as necessary, to schedule and coordinate construction activities.

17.2.4 MILTON shall ensure that all MILTON's construction locations, activities, and schedules shall be coordinated, to minimize public inconvenience, disruption, or damages.

17.3 Emergency Management. The City and MILTON agree to cooperate in emergency management planning, emergency operations response procedures, and recover activity strategies, including identifying potential hazards and risks in the MILTON's facilities so that they can be either mitigated or minimized. Provided, that nothing herein shall be construed as altering or otherwise reducing MILTON's obligations under this franchise, specifically including without limitation MILTON's obligations under Section 10.

Section 18. Acceptance. Within sixty (60) days after the passage and approval of this Ordinance, this franchise may be accepted by MILTON by its filing with the City Clerk an unconditional written acceptance thereof. Failure of MILTON to so accept this franchise within said period of time shall be deemed a rejection thereof by MILTON, and the rights and privileges herein granted shall be of no effect whatsoever, unless extended by Ordinance.

Section 19. Survival. All of the provisions, conditions and requirements of Sections 3 (Relocation of Water Facilities); Section 5 (Excavation); Section 6 (Restoration after Construction); Section 8 (Dangerous Conditions); and Section 9 (Indemnification); of this franchise shall be in addition to any and all other obligations and liabilities MILTON may have to the City at common law, by statute, or by contract, and shall survive the expiration or termination of this franchise. All of the provisions, conditions, regulations and requirements contained in this franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of MILTON and all privileges, as well as all obligations and liabilities of MILTON shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever MILTON is named herein.

Section 20. Assignment. This franchise may not be assigned or transferred without the written approval of the City, except MILTON may freely assign this franchise in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization or refinancing. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. MILTON shall provide prompt, written notice to the City of any such assignment.

Section 21. Notice. Any notice or information required or permitted to be given to the parties under this franchise may be sent to the following addresses unless otherwise specified:

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CITY OF EDGEWOOD	**CITY OF MILTON**
Mayor	Mayor
2224 104th Avenue East	1000 Laurel Street
Edgewood, Washington 98372	Milton, Washington 98354

Section 22. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this franchise materially affected by such court's ruling.

Section 23. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title. Provided, that the franchise granted by this ordinance shall not take effect until the City's receipt of MILTON's signed acceptance of the terms set forth herein in accordance with Section 16.

Section 24. Regulatory Authority Reserved; Water Utility Service. The parties mutually acknowledge that the City is a municipal corporation organized under the Optional Municipal Code of Title 35A RCW. Nothing herein shall be construed as a waiver, abridgement or other limitation of the City's regulatory authority and/or police power, which the City hereby expressly reserves in full. Without limitation of the forgoing, MILTON shall be required to apply for and obtain all applicable City permits, licenses and/or approvals and otherwise operate in full compliance with the requirements there of . Any water utility service provided by MILTON to City-owned properties shall be governed by a separate contract between the parties.

Section 25. Nonwaiver of Breach. The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right of the other party hereafter to enforce the same. Nor shall the waiver by either party of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

Section 26. Entire Agreement. This franchise represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and shall supersede all prior oral negotiations and written agreements between the parties.

Section 27. No Third Party Beneficiary. This franchise has been negotiated and executed for the exclusive benefit of the signatory parties and is enforceable only by the same. Nothing herein shall be construed as creating any rights in or for any third parties.

Section 28. Governing Law. Venue. This franchise shall be governed in all respects by the laws of the state of Washington. The exclusive venue for any dispute related to this franchise shall be the Pierce County Superior Court. The substantially prevailing party in any such dispute shall be entitled to an award of its reasonable attorney fees.

Section 29. Abandonment. If MILTON abandons any or all of its facilities during the

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franchise term, the City, at its option, may operate said facilities or designate another entity to operate the same temporarily until MILTON restores service under conditions acceptable to the City, or until the franchise is revoked and a new franchisee is selected by the City. If the City designates another entity to operate the water utility system, MILTON shall reimburse the City for all reasonable costs, expenses and damages incurred, including reasonable attorney fees, court expenses and attributed expenses for work conducted by the City's staff or agents.

Section 30. Taxes and Fees. Nothing contained in this franchise shall exempt MILTON from MILTON's obligation to pay any applicable utility tax, business tax, or ad valorem property tax, now or hereafter levied against real or personal property within the City, or against any local improvement assessment imposed on MILTON. Any fees, charges and/or fines provided for in the Edgewood Municipal Code or any other City ordinance, and any compensation charged and paid for the Public Rights-of-Way, whether pecuniary or in-kind, are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed or due from MILTON .

Presented to Council for first reading on, XXX 2017
Presented to Council for second reading on, XXXXX 2017

ADOPTED BY THE CITY COUNCIL ON XXXXX , 2017

_____
Daryl Eidinger, Mayor

ATTEST/AUTHENTICATED:

_____
Rachel Pitzel, City Clerk

APPROVED AS TO FORM:

_____
Carol Morris, City Attorney

Published: xxxx , 2017
Effective: xxxxx 2017

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ACCEPTANCE OF FRANCHISE

The undersigned authorized representative of Milton, WA hereby declares on behalf of Milton, WA, the acceptance of the nonexclusive franchise to Milton, WA approved by the Edgewood City Council on the day of , 2017, by the adoption of Edgewood City Ordinance No. -.

DATED this day of, 2017

Milton, WA

By: _____
Its: _____

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CITY OF EDGEWOOD
STAFF REPORT
STUDY SESSION AGENDA ITEM: PSD Sewer Connection LUD #1

Date: February 7, 2017

Title: Edgemont Junior High School Sewer Connection under Phase I of the LUD

Attachments: Interlocal Agreement with Puyallup School District November of 2008 and Map identifying areas of service outlined under Phase I of the City of Edgewood Sewer LUD.

Submitted By: Aaron C. Nix, Assistant City Administrator – Municipal Services

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: Staff have been approached from representatives of the Puyallup School District expressing interest in moving forward with the option outlined with the Interlocal Agreement reached between PSD and the City of Edgewood in November of 2008, establishing the option of allowing PSD to connect their Edgemont Junior High School facility to the City's sanitary sewer system within the Phase I area of the City's LUD. The Interlocal establishes criteria in which both the School District and the City must follow in which to allow the School District to gain access to the City's system, including the payment of associated fees, construction of the needed infrastructure and in turn, the City must complete some pre-defined tasks, including amending its agreement with its service provider. Once these tasks are completed and fees are made current, the school district will have the ability to tie into the City's sewer infrastructure within Phase I of the LUD.

Recommendation: Staff's initial review of the proposed connection under Phase I of the Sewer LUD appears to be in accordance with a majority of the requirements spelled out in the Interlocal Agreement reached between the Puyallup School District and the City of Edgewood. Staff recommends that research continues in regard to this issue and Staff proceed with the processes outlined within the Interlocal Agreement in order to pursue accommodating the goals outlined within the agreement.

Fiscal Impact: N/A

INTERLOCAL AGREEMENT BETWEEN CITY OF EDGEWOOD AND PUYALLUP SCHOOL DISTRICT NO. 3 RELATING TO EDGEWOOD LID NO. 1

This INTERLOCAL AGREEMENT BETWEEN CITY OF EDGEWOOD AND PUYALLUP SCHOOL DISTRICT NO. 3 (the "Interlocal Agreement") is entered into this 26th of November, 2008 by and between the CITY OF EDGEWOOD, a Washington municipal corporation (the "City") and PUYALLUP SCHOOL DISTRICT NO. 3, a Washington municipal corporation (the "District").

I. RECITALS

A. RCW ch. 39.34, the Interlocal Cooperation Act, authorizes local municipal corporations to enter into agreements to assist and cooperate with each other to better serve the needs of the local community.

B. The District is the owner of certain real property located at 9805 24th Street East, Edgewood, Washington and commonly known as Northwood Elementary School. The District is also the owner of certain real property located at 2300 110th Avenue East, Edgewood, Washington ("Edgemont Junior High School") and 2110 110th Avenue East, Edgewood, Washington ("Hilltop Elementary School") collectively commonly known as the Edgemont/Hilltop Campus.

C. The City is in the process of forming a Local Improvement District ("LID No. 1") for the purpose of providing sanitary sewer service to a portion of the City known as the Phase I Sanitary Sewer Service Area (hereinafter "the Phase I Area").

D. Northwood Elementary School lies within the Phase I Area; however, Northwood Elementary School is currently served with sanitary sewer service by Pierce County under an Interlocal Agreement between the City, the District and Pierce County wherein the District was granted the right to connect to Pierce County's sanitary sewer system provided the District installed, at the District's sole expense, certain sanitary sewer system improvements.

E. The Edgemont/Hilltop Campus is currently served by an on-site sewage disposal system and lies within the City's Phase II Sanitary Sewer Service Area (hereinafter "the Phase II Area"). The Phase II Area is not included within the City's LID No. 1. The District has requested that the Edgemont/Hilltop Campus be included within the City's LID No. 1 in order to provide the District with the ability to discontinue use of its existing on-site sewage disposal system serving the Edgemont/Hilltop Campus.

F. The City and the District recognize that there are substantial mutual benefits to the Edgewood Community and the District Schools by addressing the service issues at Northwood and the Edgemont/Hilltop Campus.

G. Consistent with the Interlocal Cooperation Act, the City and the District recognize and acknowledge that mutual assistance and cooperation is in the best interests of the City and the District to better serve the needs of the City and the District. The terms and conditions under which the City and the District intend to implement such mutual assistance are set forth under this Interlocal Agreement.

II. AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits herein, the City and the District agree as follows:

1. Interlocal Cooperation Act.

1.1 RCW ch. 39.34 authorizes the execution of an Interlocal Agreement for the purpose of providing mutual assistance and cooperation between municipal corporations.

1.2 The City and the District recognize that certain adjustments to the City's General Sewer Plan to allow sanitary sewer service to the Edgemont/Hilltop Campus and certain assessment adjustments to the Northwood Elementary School Property would assist the long-term needs of the Edgemont/Hilltop Campus and Northwood Elementary School and would facilitate the continued use by the Edgewood Community of the recreational fields and facilities of both the Edgemont/Hilltop Campus and Northwood Elementary School.

1.3 The City and the District acknowledge that the cooperation and mutual assistance provided hereinbelow is in the best interests of the City and the District.

2. Northwood Elementary School.

2.1 Interlocal Agreement between the City, Pierce County, and the District/Existing Sanitary Sewer Connection to Northwood Elementary.

2.1.1 The City and the District acknowledge and recognize that Northwood Elementary School is currently served by sanitary sewer service by Pierce County under that certain Interlocal Agreement between the Puyallup School District, Pierce County, and the City of Edgewood for the Provision of Sanitary Sewer Service to Northwood Elementary School, executed as of December 9, 1997, and attached hereto as Exhibit 1 and incorporated herein by this reference (the "Sanitary Sewer Interlocal Agreement").

2.1.2 The City and the District acknowledge and recognize that the Sanitary Sewer Interlocal Agreement provided the mechanism for the District to obtain sanitary sewer service to Northwood Elementary School; provided the District, at the District's sole expense, installed a certain public sanitary sewer line extension from Northwood Elementary School to a point of connection to an existing sanitary sewer line owned and operated by Pierce County. In conjunction with the Sanitary Sewer Interlocal

Agreement granted the District the right to reimbursement for certain sanitary sewer system improvements under a certain Reimbursement Agreement between Pierce County and Puyallup School District No. 3 for Installation of a Public Sanitary Sewer System at Northwood Elementary – Contract No. 98-9611, executed as of September 11, 1998, a copy of which is attached hereto as Exhibit 2 and incorporated herein by this reference (the "District Sanitary Sewer Reimbursement Agreement").

2.1.3 The City and the District reiterate their collective intent to maintain in existence and effect the Sanitary Sewer Interlocal Agreement.

2.1.4 The City has informed the District that it currently has an informal understanding with Pierce County which is intended to be memorialized by written agreement under which the City will assume authority and jurisdiction over certain sanitary sewer areas which includes Northwood Elementary School (the "Sanitary Sewer Service Area Transfer Agreement").

2.1.5 Upon delivery of a fully executed copy of the Sanitary Sewer Service Area Transfer Agreement to the District and upon the effective date of such agreement:

2.1.5(a) the District shall thereafter be obligated to pay City sewer service fees and other sewer utility charges, without limitation, which are uniformly charged to similarly situated customers, as may be lawfully established by the City. By virtue of the connection fees and charges previously paid by the District as part of the District Sanitary Sewer Reimbursement Agreement, no connection fees or similar one-time charges will be paid by the District for the Northwood Elementary School existing sewer connection.

2.1.5(b) the City shall assume the obligations of Pierce County for the administration of the District Sanitary Sewer Reimbursement Agreement and thereafter the City shall be responsible for providing notice of any right to reimbursement and such reimbursement to which the District is entitled under the District Sanitary Sewer Reimbursement Agreement. The parties acknowledge that the District Sanitary Sewer Reimbursement Agreement expires September 11, 2013; and

2.1.5(c) subject to satisfaction of the conditions set forth in Section 5.2.1, the Northwood Elementary School Property shall be deemed to be connected to the City's Phase I Sanitary Sewer System within the meaning of Title 11 EMC.

2.2 Northwood Replacement Elementary School.

2.2.1 At the time the District submits a building permit application to the City for replacement of Northwood Elementary School with a new, replacement school (the "Northwood Replacement Elementary School"):

2.2.1(a) the District shall thereafter be obligated to pay to the City all such applicable fees and charges, including without limitation any application and

inspection fees and Connection Fees for sanitary sewer treatment capacity, as may be lawfully established by the City.

2.2.1(b) the District, at the District's sole expense, shall be responsible for installation and future maintenance of such necessary on-site sanitary side sewer line(s) and appurtenances to connect, in the exercise of the City's reasonable engineering discretion, to that portion of the City's Phase I Sanitary Sewer System which may be located along the eastern boundary of the Northwood Elementary School Property or located within 24th Street East.

2.2.2 At the time of the District's connection to the City's Phase I Sanitary Sewer System in accordance with Section 2.2.1(b) above,the District shall take such necessary steps, in coordination with the City, to disconnect the Northwood Elementary School Property to that certain sanitary sewer line existing, as of the Effective Date of this Interlocal Agreement; provided, however, the District shall have no responsibility whatsoever for ensuring that service is maintained to any other properties which may be served by that certain public sewer line extending north of the Northwood Elementary School Property (the "Northwood Elementary School Sewer Line"). The parties acknowledge that there are other properties that are connected or that may be able to connect to the Northwood Elementary Sewer Line. The District shall not be responsible in any manner, including any associated costs and expenses, for providing continued sanitary sewer service to those properties within the Tributary Area of the Northwood Elementary Sewer Line as shown on Exhibit 3, attached hereto and incorporated herein by this reference.

2.3 LID No. 1 Assessment for Northwood Elementary School.

2.3.1 In recognition of the District's substantial existing sanitary sewer system improvements as part of the Northwood Elementary School Sewer Line, as of the Effective Date of this Interlocal Agreement, and in consideration of the benefits to the Edgewood Community, the City shall be responsible for the payment of the District's LID No. 1 Final Assessment for Pierce County Parcel Nos. 0420091011 and 0420091014 (Northwood Elementary School) in an amount not to exceed $44,232.40 (which sum represents the total connection charges previously paid by the District to Pierce County for the Northwood Elementary School Sewer Line).

3. Edgemont/Hilltop Campus.

3.1 Inclusion of the Edgemont/Hilltop Campus in the City's Phase I Sanitary Sewer Service Area.

3.1.1 The parties acknowledge that, as of the Effective Date of this Interlocal Agreement, the Edgemont/Hilltop Campus is within the City's Phase II Sanitary Sewer Service Area.

3.1.2 In consideration of the substantial benefits to the Edgewood Community in the nature of recreational amenities and use of the facilities at Edgemont Junior

High School and benefits to the District Schools and in consideration of the District's obligation to pay the LID No. 1 Final Assessment in accordance with Section 3.3.1 below, the City, subject to satisfaction of the conditions under Sections 5.1, 5.2.2 and 5.2.3 below, shall:

3.1.2(a) adopt a Resolution authorizing the inclusion of the Edgemont/Hilltop Campus (Pierce County Parcel Nos. 0420102018, 0420102037, and 0420103132) in the City's Phase I Sanitary Sewer Service Area;

3.1.2(b) take such steps as are necessary, including seeking approval of the Department of Ecology if required, to amend the City's General Sewer Plan to include the Edgemont/Hilltop Campus (Pierce County Parcel Nos. 0420102018, 0420102037, and 0420103132) in the City's Phase I Sanitary Sewer Service Area; and

3.1.2(c) take such steps as are necessary in good faith to work with Lakehaven Utility District to amend that certain Agreement between the City of Edgewood and Lakehaven Utility District, executed as of January 23, 2007, to include the Edgemont/Hilltop Campus (Pierce County Parcel Nos. 0420102018, 0420102037, and 0420103132) in the City's Phase I Sanitary Sewer Service Area in order to ensure service to the Edgemont/Hilltop Campus.

3.1.3 By execution of this Interlocal Agreement, the District hereby elects to be included within the City's Phase I Sanitary Sewer Service Area.

3.2 Edgemont/Hilltop Campus Connection to the Phase I Sanitary Sewer System.

3.2.1 The District acknowledges its intent, but not a contractual obligation, to construct and install a sewer line fronting the Edgemont/Hilltop campus at some currently undetermined future time. Upon the construction, installation and operation of any such line, the Edgemont/Hilltop Campus shall be deemed to be connected to the City's Phase I Sanitary Sewer System within the meaning of Title 11 EMC.

3.2.2 Upon such connection, the District shall be responsible, at the District's sole expense, for the installation of a connection sewer from the Edgemont/Hilltop Campus along 24th Street East to the terminus of the City's Phase I Sanitary Sewer System to be installed by the City in 24th Street East (the "Edgemont/Hilltop Campus Sanitary Sewer Tightline Connection").

3.2.3 At the time of connection to the City's Phase I Sanitary Sewer System, the District shall be obligated to pay the City all applicable fees and charges, including without limitation any application and inspections fees, and Connection Fees for sewage treatment capacity relating to Edgemont Junior High School and Hilltop Elementary School, as may be lawfully established by the City.

3.2.4 The Edgemont/Hilltop Campus Sanitary Sewer Connection shall be a tightline and shall not allow any connections by properties within the City's Phase II Sanitary Sewer Service Area between the Edgemont/Hilltop Campus and the Phase I Area.

3.2.5 The District and the City generally agree that the Edgemont/Hilltop Campus Sanitary Sewer Tightline Connection shall generally consist of an on-site sewer grinder pump system located near the Edgemont Junior High School's existing on-site sewage disposal system and installation of a three (3) inch diameter force main to a point of connection in 24th Street East, then west within 24th Street East to a point of connection at the terminus of the City's Phase I Sanitary Sewer Line to be installed by the City in 24th Street East. The District shall bear the entire expense of installing and constructing said sewer grinder pump system and force main extension, and shall be solely responsible for obtaining any necessary approvals and/or permits from the City for construction of the Edgemont/Hilltop Campus Sanitary Sewer Tightline Connection.

3.2.6 The District shall deliver to the City by Bill of Sale the Edgemont/Hilltop Campus Sanitary Sewer Connection generally described under Paragraph 3.2.5 above and constructed by the District subject to agreement between the District and the City for the City's maintenance of the Edgemont/Hilltop Campus Sanitary Sewer Tightline Connection, together with all necessary and appropriate easement rights pertaining thereto. Such maintenance agreement shall be consistent with recognized engineering standards based upon the nature, length and appurtenances of the Edgemont/Hilltop Campus Sanitary Sewer Tightline Connection.

3.2.7 The District and the City recognize and acknowledge that because the planned Phase II Sanitary Sewer System will employ a gravity-based conveyance mechanism, the Edgemont/Hilltop Sanitary Sewer Tightline Connection will likely not be useable as part of the City's Phase II Sanitary Sewer System when the City's Phase II Sanitary Sewer System is constructed and operational.

3.3 LID No. 1 Assessment for Edgemont/Hilltop Campus. The District shall be obligated to pay the LID No. 1 Final Assessment for the Edgemont/Hilltop Campus when due and owing even in the event the District has elected to not connect to the City's Phase I Sanitary System.

3.4 Phase II Sanitary Sewer System.

3.4.1 The District acknowledges and recognizes that the City may, in the City's discretion at some time in the future, construct the City's Phase II Sanitary Sewer System under an LID (the "LID Method"). The District also acknowledges and recognizes that all or a portion of the City's Phase II Sanitary Sewer System may be constructed by others through a developer's extension agreement (the "Developer's Extension Method") or other lawful means ("Other Method").

3.4.2 In the event that the City's Phase II Sanitary Sewer System is constructed by the LID Method, the Developer's Extension Method, or Other Method, the

District shall be obligated to disconnect from the Edgemont/Hilltop Campus Sanitary Sewer Tightline Connection and to connect, at the District's sole expense and consistent with applicable City regulations, to the nearest portion of a public sanitary sewer line under the City's Phase II Sanitary Sewer System; provided, however, the Edgemont/Hilltop Campus shall not be subject to and the District shall not be obligated to pay any LID Assessments, Latecomer Charges, Connection Fees or any such other Assessments or Extension Charges for connection to the City's Phase II Sanitary Sewer System. Provided, that the District shall be fully subject to and shall be obligated to pay all other applicable fees and charges, including without limitation any application fees and inspections fees.

4. Additional Consideration. As additional consideration for the terms and conditions of this Interlocal Agreement, the District agrees, consistent with its history of cooperation with the City on school property within the City, to provide notice to the City, in the event at some time in future, the District elects to surplus, by Board Resolution, that certain Pierce County Parcel No. 0420103132.

5. Conditions Precedent under this Interlocal Agreement.

5.1 The District and the City recognize that the rights and duties under this Interlocal Agreement are expressly contingent upon the City's successful formation and funding of LID No. 1.

5.2 The District acknowledges that certain conditions precedent must occur prior to performance of certain obligations of the City under this Interlocal Agreement. Therefore, the District agrees that:

5.2.1 In recognition of the Northwood Elementary School's existing sewer service and the potential construction of new sewer lines within LID No. 1, the City concludes that upon the City accepting ownership of the sewer line constructed and installed by the District under the District Sanitary Sewer Reimbursement Agreement as a result of the consummation of the Sanitary Sewer Service Area Transfer Agreement with Pierce County, the Northwood Elementary School shall be deemed connected with the City's Phase I Sanitary Sewer System within the meaning of Title 11 EMC.

5.2.2 the obligations under Section 3.1.2 are expressly contingent upon approval, in the City's discretion, of the Edgewood City Council; and

5.2.3 the inclusion of the Edgemont/Hilltop Campus within the City's Phase I Area is subject to the approval of the Department of Ecology; and

5.3 The City shall have the discretion to determine compliance with the City's Municipal Code for the existing sewer line on the Northwood Elementary School Property which may include revisions to the City's Sanitary Sewer Utility Ordinance; provided, however, nothing herein shall alter, modify or change the District's financial obligations under this Interlocal Agreement; and

5.4 In the event the City Council fails to approve any of the obligations set forth under Section 3.1.2:

5.4.1 the District shall have no right to connect the Edgemont/Hilltop Campus to the Phase I Sanitary Sewer System; and

5.4.2 the City shall have no right to collect any LID Assessment from the District pursuant to Section 3.3 and the rights and obligations under Section 4 above shall be null and void.

6. Miscellaneous.

6.1 Effective Date. This Interlocal Agreement shall be effective upon the date (the "Effective Date") of the last signature of a party.

6.2 Notices. All notices provided for herein may be telecopied (with machine verification of receipt), sent by Federal Express or other overnight courier service or delivered or mailed registered or certified mail, return receipt requested. If a notice is mailed, it shall be considered delivered three (3) days after deposit in such mail. If a notice is sent via telecopy, it shall be deemed received upon receipt of verification of transmission. If a notice is sent via overnight courier, it shall be deemed received upon the next business day. The addresses to be used in connection with such correspondence and notices are the following, or such other address as a party shall from time to time direct:

District: Puyallup School District No. 3
323 - 12th Street Northwest
Puyallup, WA 98371
Telephone: 253-841-8772
Facsimile: 253-841-8640
Attention: Rudolph J.K. Fyles,
Executive Director of Facilities

City: City of Edgewood
2221 Meridian Avenue East
Edgewood, WA 98371-1010
Telephone: 253-952-3299
Facsimile: 253-952-3537
Attention: Kim Wilde, City Manager

6.3 No Third Party Beneficiary. This Interlocal Agreement is intended for the exclusive benefit of the signatory parties, and shall not be construed as vesting any rights, privileges or benefits in or for any third parties.

6.4 Construction. This Memorandum shall not be construed more favorably to one party over another, notwithstanding the fact one party, or its attorney, may have been more responsible for the preparation of the document.

6.5 Amendment. This Interlocal Agreement constitutes the entire agreement between the parties and no modification, amendment, addition to or changes to this Interlocal Agreement shall be valid unless in writing and signed by all parties.

6.6 Regulatory, Legislative and Administrative Authority Preserved. Nothing in this Interlocal Agreement shall be construed as waiving, abridging or otherwise limiting the legislative, administrative or regulatory power and discretion of the Edgewood City Council, which the City hereby expressly reserves in full.

IN WITNESS WHEREOF, the parties have executed this Interlocal Agreement on the date and year set forth above.

CITY OF EDGEWOOD, a Washington corporation

By: _____
Kim Wilde
Its: City Manager
Date: 11/26/08

Approved as to form:

_____
Joseph Zachary Lell
City Attorney
Date: 11/25/08

PUYALLUP SCHOOL DISTRICT NO. 3, a Washington municipal corporation

By: _____
Dr. Tony Apostle
Its: Superintendent
Date: November 26, 2008

Approved as to form:

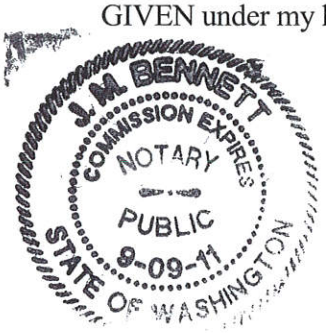
_____
Mary J. Urback
District Attorney
Date: December 1, 2008

[acknowledgements continued on next page]

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this day personally appeared before me Kim Wilde to me known to be the City Manager of the City of Edgewood, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said municipal corporation.

GIVEN under my hand and official seal this 26 day of NOVEMBER, 2008.

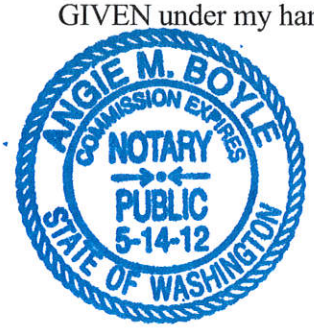


J M Bennett
JMBENNETT
[printed name of notary]
NOTARY PUBLIC in and for the State
of Washington, residing at Puyallup WA
My Commission Expires: 9-9-11

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this day personally appeared before me Dr. Tony Apostle to me known to be the Superintendent of the Puyallup School District No. 3, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said municipal corporation.

GIVEN under my hand and official seal this 26th day of November, 2008.



Angie M. Boyle
Angie M. Boyle
[printed name of notary]
NOTARY PUBLIC in and for the State
of Washington, residing at Bonney Lake
My Commission Expires: 5-14-12

EXHIBIT 1
SANITARY SEWER INTERLOCAL AGREEMENT BETWEEN THE CITY, PIERCE COUNTY AND THE DISTRICT

INTERLOCAL AGREEMENT BETWEEN THE PUYALLUP SCHOOL DISTRICT, PIERCE COUNTY AND THE CITY OF EDGEWOOD FOR THE PROVISION OF SANITARY SEWER SERVICE TO NORTHWOOD ELEMENTARY SCHOOL

THIS AGREEMENT is entered into this day by and between the Puyallup School District (herein known as the "District"), Pierce County (herein known as the "County"), and The City of Edgewood (herein known as the "City").

WHEREAS, the City incorporated on February 28, 1996; and

WHEREAS, the City is in the process of preparing its first comprehensive plan; and

WHEREAS, through the comprehensive planning process, the City will determine where it is appropriate for growth and development to occur within its boundaries; and

WHEREAS, the City Council of the City of Edgewood desires that sewer service not be extended or installed until such time as the City has completed its comprehensive planning process; and

WHEREAS, Pierce County operates a sanitary sewer utility which includes a sanitary sewer line located within Taylor Way East (also known as 16th Street East); and

WHEREAS, the Puyallup School District owns and operates the Northwood Elementary School located within the City at 9805 24th Street East, which disposes of its waste by directing its effluent unto a large holding tank which is pumped and trucked for disposal on a regular basis; and

WHEREAS, the Puyallup School District desires to connect its Northwood Elementary School to a permanent sanitary sewer system to alleviate the need to regularly pump the holding tanks serving the school; and

WHEREAS, connection of Northwood Elementary would require the installation of a sewer line that would traverse over private property and within the City's right-of-way to a connection point in Taylor Way East; and

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

SECTION 1. The district shall design and construct, at its own cost, an 8" sanitary sewer line to serve its Northwood Elementary School property. The City hereby authorizes the District and the County to utilize a portion of the City right-of-way within which to locate the sewer line. The routing of the sewer line, including that portion of right-of-way to be utilized, based on preliminary engineering drawings is shown in Exhibit "A" attached hereto and incorporated herein by this reference. This authorization is further conditioned by the terms outlined below:

A. The District shall be responsible for obtaining all plan and permit approval from the County in order to connect to the County's sanitary sewer line in Taylor Way East.

1. All plans must be reviewed and approved by the City prior to submittal to the County for approval.

2. The County shall consult with the City on all matters pertaining to the placement of lines within the City right-of-way and road restoration.

B. This agreement shall apply to the provision of sanitary sewer service to Northwood Elementary School property only, and shall in no way be construed to apply to any other property near or adjacent to Northwood, except as provided for in this agreement.

1. Provided that the district shall not permit any other property owners to hookup to their private side sewer.

2. Provided that nothing in this agreement shall prevent the School District from hooking up the new Edgemont Junior High to their private side sewer.

C. Sanitary sewer service shall be provided only in accordance with plans developed by a licensed engineer and approved by the County and after payment of all relevant fees and connection charges to the County.

D. The Puyallup School District shall assume responsibility for all costs associated with the connection of sewer service to Northwood Elementary School property, including all County permit fees, connection charges, and construction and engineering costs associated with installing the pipeline, and pretreatment facilities such as a grease interceptor or acid neutralizers; provided that

1. Nothing shall preclude the District from executing a latecomers' agr[illegible]nent in accordance with the prov[illegible]ons of this agreement in order to recoup a portion of the expenses associated with installing the line from subsequent property owners who may utilize the sanitary sewer main;

2. The City shall incur no expense associated with this agreement.

E. As the area within which the District property is located may fall within the sanitary sewer service area of the City of Puyallup and the City of Puyallup has no sewer facilities within this area, the District will assist the County in obtaining the written consent of the City of Puyallup for the County to provide sanitary sewer service to the District property.

SECTION 2. Nothing in this agreement shall preclude the County from approving requests from individual property owners to connect to the sanitary sewer line installed by the District, PROVIDED that all of the following conditions have been met:

A. Any associated land use or right-of-way use permit application request has been reviewed and approved by the City.

B. The request is to serve an existing single family residence whose septic system has failed and cannot be repaired or replaced in accordance with Tacoma-Pierce County Health Department standards, or the request is for side sewer service to serve a newly constructed single family residence located on property within 300' from the sanitary sewer line as depicted in exhibit A.

1. Provided that nothing in this agreement shall be construed to permit the extension of sanitary sewer service to new construction beyond this 300' limitation.

C. The request to connect to sewers is entirely voluntary. No involuntary connections, other than those mandated by the Health Department due to health risks associated with failed systems, shall be required.

D. All engineering and construction costs and connection charges associated with connecting the property to sewers will be borne by the party seeking connection.

SECTION 3. CITY WILL GRANT A LIMITED FRANCHISE. The City of Edgewood hereby confers to Pierce County a franchise to use City right-of-way for

purposes of maintaining and operating the sewer line to be installed by the District within the City right-of-way and for other purposes as outlined in this agreement.

SECTION 4. TERM OF THE AGREEMENT. This agreement shall become effective upon signature by all parties, and shall remain in effect as along as Northwood Elementary School remains in service, provided that this agreement shall become null and void if construction has not commenced by January 1, 1999. This agreement may be modified by mutual agreement of all parties.

SECTION 5. INDEMNIFICATION AND DEFENSE. The City shall defend, indemnify and save harmless the County, its officers, employees and agents from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of the City, its officers, employees or agents associated with this Agreement. In executing this Agreement, the City does not assume liability or responsibility for or in any way release the County from any liability or responsibility which arises in whole or in part from the existence or effect of County ordinances, rules, regulations, resolutions, customs, policies or practices. If any cause, claim, suite, action, or administrative proceeding is commenced in which the enforceability and/or validity of any such County ordinance, rule, regulation, resolution, custom, policy, or practice is at issue, the County shall defend the same at its sole expense, and if judgment is entered or damages are awarded against the County, the City or both, the County shall satisfy the same including all chargeable costs and attorney's service charges.

The County shall defend, indemnify and save harmless the City, its officers, employees and agents from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of the County, its officers, employees, or agents associated with this agreement. In executing this agreement, the County does not assume liability or responsibility for, or release the City from, any liability or responsibility to the extent that such liability or responsibility arises from the existence or effect of City ordinances, rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, rule, regulation, resolution, custom, policy or practice is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and attorney's fees.

SECTION 6. NO REAL PROPERTY ACQUISITION OR JOINT FINANCING. This Interlocal Agreement doe not provide for the acquisition, holding or disposal of real property. Nor does this Agreement contemplate the financing of any joint or cooperative undertaking. There shall be no budget maintained for any joint or cooperative undertaking pursuant to this Interlocal Agreement.

SECTION 7. NO THIRD PARTY BENEFICIARY. The County does not intend by this agreement to assume any contractual obligations to anyone other than the City, and the City does not intend by this agreement to assume any contractual obligations to anyone other than the County. The County and the City do not intend that there be any third-party beneficiary to this agreement.

SECTION 8. SEVERABILITY. If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on this 9 day of December, 1997.

EDGEWOOD

T.D. Faherty, Mayor

Stephen L. Anderson, City Manager

APPROVED AS TO FORM:

Lisa Marshall, City Attorney

Nacelle Heuslein, City Clerk

PIERCE COUNTY

Department Director — Date 11/14/97

Dep. Prosecuting Attorney (As to form only) — Date 11/18/97

Budget and Finance — Date 12-8

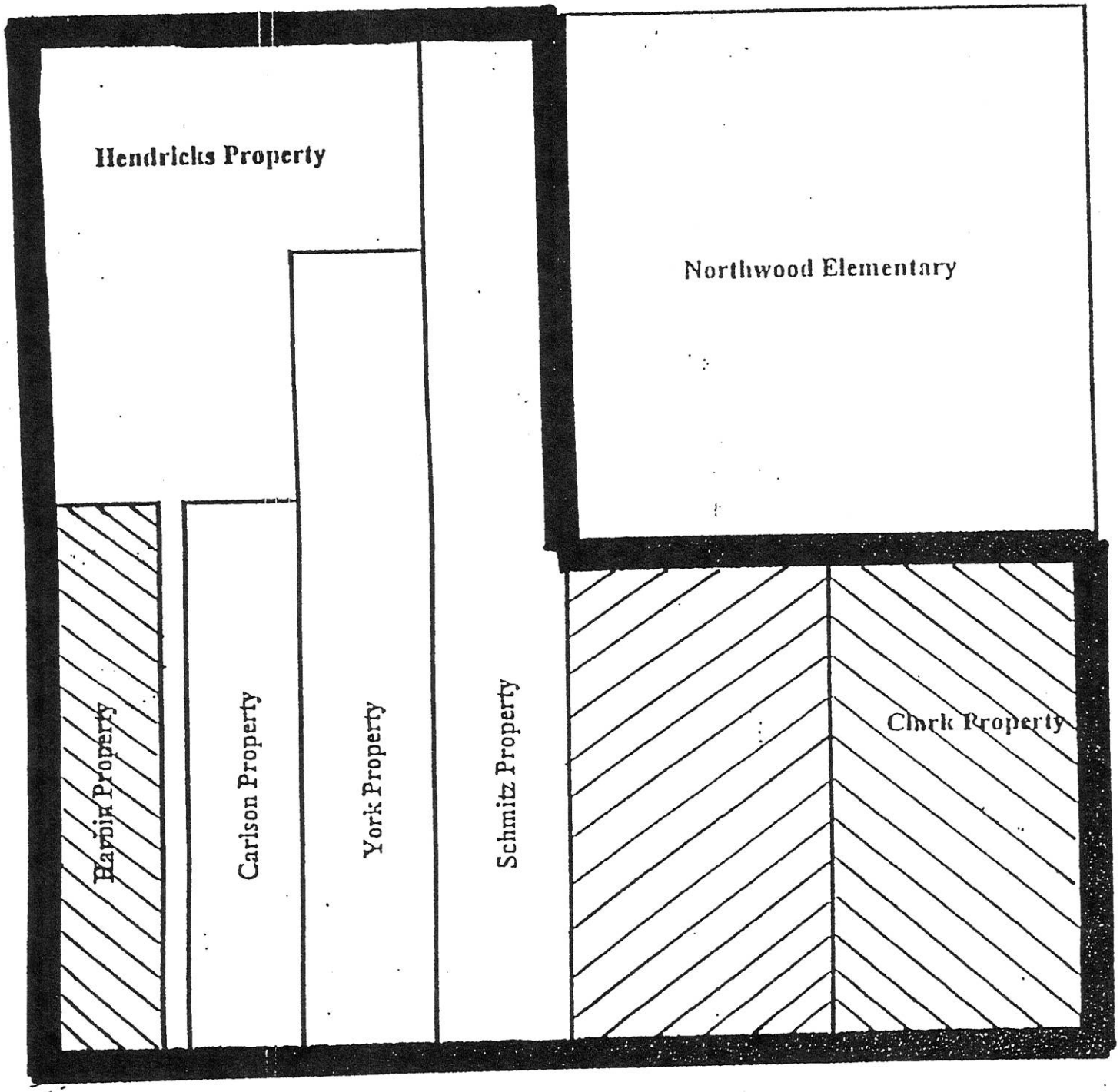
Executive Director — Date 12/7/97

County Executive (if over $50,000) — Date

PUYALLUP SCHOOL DISTRICT

By: Mindy Thompson

Its: President of the Board



7/14/97

North Hill
Property Acquisition

= Purchased by the District

= Already owned the District

EXHIBIT 2
DISTRICT SANITARY SEWER REIMBURSEMENT AGREEMENT

REIMBURSEMENT AGREEMENT BETWEEN PIERCE COUNTY AND PUYALLUP SCHOOL DISTRICT NO. 3 FOR INSTALLATION OF A PUBLIC SANITARY SEWER SYSTEM AT NORTHWOOD ELEMENTARY - CONTRACT NO. 98-9611

THIS REIMBURSEMENT AGREEMENT is made and entered into this day by and between **PIERCE COUNTY**, a political subdivision of the State of Washington, herein known as "County", and **PUYALLUP SCHOOL DISTRICT NO. 3**, a public school district, herein known as "Owner".

W I T N E S S E T H

WHEREAS, County operates a sanitary sewer utility that maintains and operates a public sanitary sewer system that collects, conveys, treats and disposes of wastewater and services portions of both incorporated and unincorporated Pierce County; and

WHEREAS, Owner owns certain real property in Pierce County, Washington, that was not served by the County's sewer system and is legally described in Exhibit "A" attached hereto and incorporated herein by this reference (herein known as the "Property"); and

WHEREAS, Owner requested that the Property be served by the County's sanitary sewer system and submitted plans to the County to connect to public sanitary sewer facilities adjacent to or near the property; and

WHEREAS, County has approved and has on file, the plans, specifications and estimated costs for construction of the public sanitary sewer facilities (herein known as the "Improvements") connecting the Property to the County sewer system; and

WHEREAS, County determined that, in addition to the Owner's Property, there are other properties located in the vicinity of the Improvements which could be provided sewer service at some time in the future due to the installation of the Improvements and those other properties (herein known as the "Tributary Service Area") are defined in Exhibit "B", attached hereto and incorporated by this reference; and

WHEREAS, Owner will construct the Improvements in accordance with the approved plans and specifications; and

WHEREAS, in exchange for the construction and dedication of the Improvements to the County, the County is willing to reimburse the Owner for certain costs associated with construction of the Improvements by reimbursing a portion of the connection charges collected from property owners who subsequently connect their properties to the Improvement after its conveyance to the County; and

WHEREAS, County will allow only those connections agreed to under the terms of the Interlocal Agreement Between the Puyallup School District And The City Of Edgewood For The Provision Of

Sanitary Sewer Service To Northwood Elementary School as described in Exhibit "C" attached hereto and incorporated by this reference; and

WHEREAS, County has the authority pursuant to Pierce County Code Chapter 13.05 to enter into this Agreement to reimburse the Owner for all or a portion of the cost of constructing the Improvements;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL BENEFITS AND COVENANTS DESCRIBED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Purpose. The purpose of this Agreement is to provide the legal framework and establish the procedures for reimbursing the Owner some portion of the cost of constructing a public sanitary sewer facility to serve the Owner's Property and the Tributary Service Area from the connection charges received within the following fifteen (15) years from the property owners within the Tributary Service Area.

2. Construction of Improvements By Owner. Owner will construct at its own expense, all Improvements necessary to provide sewer service to the Property and to the Tributary Service Area. All construction will be in accordance with the County approved engineering plan and all other applicable County, State, and Federal ordinances, statutes, or regulations. Owner will construct the Improvements and upon final acceptance of the Improvements by the County, transfer the Improvements to the County free and clear of all liens and debts, for inclusion into the sewer system as a public facility, including any right, title and interest in any property upon which the Improvements are located.

3. Owner Connection Charges and Other Fees. In consideration of County's permission to allow Owner to connect to existing County sewer facilities, Owner agrees to pay in full all applicable connection charges due the County prior to approval of the sewer plans. The connection charge shall be calculated in accordance with the Pierce County Administrative Code Chapter 13.04 (or that section of the Pierce County Code governing the calculation of connection charges), with the exception that no front footage charge shall be collected due to Owner being responsible for the cost of installing the Improvements to serve the Property. In addition to the connection charge, Owner shall pay all other fees required by law, including but not limited to plan review fees, inspection fees, contract administration fees, side sewer stub charges, treatment plant capacity charges, and other administrative fees.

4. Eligible Construction Costs. The County and Owner agree that the estimated Total Eligible Construction Cost for the Improvements to be constructed is $232,379.00. Within 15 days of completion of construction of the Improvements and acceptance by the County, Owner shall provide the competitive bid information submitted to construct the Improvements along with complete and itemized copies of all invoices for costs related to construction of the Improvements. In order for bid information to be considered competitive, a minimum of three qualified construction contractors must be afforded the opportunity to bid for the job under the same competitive conditions.

The cost information provided by Owner shall be reviewed by the County to determine the Total Eligible Construction Cost. Certification of the costs and authentication of the copies shall be made by

the party providing the construction service and the Owner. Costs not evidenced by an invoice shall not be considered Eligible Construction Costs. Any costs not previously identified in the approved cost estimate submitted with the sewer plans and specifications shall not be considered an Eligible Construction Cost unless written authorization is received from the County. Construction costs which exceed the approved construction cost estimate shall not be considered eligible construction costs unless written authorization is received from the County.

5. County Agrees to Reimburse. The County agrees to reimburse the Owner for the Total Eligible Construction Costs of constructing the Improvements from a portion of the connection charges paid by property owners within the Tributary Service Area who subsequently connect their properties to the Improvement until the Total Eligible Construction Cost has been paid in full or until the term of the Agreement expires. As the Eligible Construction Cost to serve the tributary area is $232,379.00 as stated in Section 4, the Owner's Net Reimbursable Amount shall be up to $232,379.00.

Reimbursement payments made from the eligible portion of the connection charges collected from Tributary Properties shall be made to the Owner within sixty (60) days following collection of the connection charge by the County.

No interest shall be paid on any unpaid balances related to any amount in this Agreement for the term of the Agreement.

6. Tributary Service Area. The County, pursuant to applicable Administrative Code provisions, will collect connection charges and other applicable fees from property owners within the Tributary Service Area who subsequently connect their properties to the Improvement after its conveyance to the County (herein known as "Tributary Properties"). Those charges and fees shall include, but not be limited to, area charges, capital facility charges, treatment plant capacity charges, plan review fees, inspection fees, contract administration fees, and side sewer stub charges. Only the Area Charges or portions of the Capital Facility Charges calculated pursuant to section 13.04.100 and collected by the County from the Tributary Properties shall be used to reimburse the Owner. No other charges or fees collected from the Tributary Properties shall be utilized to reimburse the Owner.

Connections by properties within the Tributary Service Area are limited to only those connections allowed under the terms of the Interlocal Agreement Between the Puyallup School District And The City Of Edgewood For The Provision Of Sanitary Sewer Service To Northwood Elementary School.

7. Term of Agreement. This Agreement and all obligations contained herein, shall terminate upon final payment of the Net Reimbursement Amount to the Owner pursuant to this Agreement, or at the end of fifteen (15) years from the effective date of this Agreement, whichever occurs first. The effective date of this agreement shall be the date the agreement is fully executed by the Owner and Pierce County as evidenced on the signature page of the agreement.

8. Termination of Agreement Due to Expired Sanitary Sewer Plans. Upon execution of this Agreement, the Owner must proceed with construction of the Improvements prior to the expiration of

his/her approved sanitary sewer plans. Unless extended by mutual agreement between the County and the Owner, should the Owner's approved sanitary sewer plans expire prior to the initiation of construction of the Improvements, then the reimbursement agreement shall be null and void.

9. Owner's Warranty of Improvements. Owner agrees and expressly warrants to the County that the Improvement will be installed pursuant to the approved design plans at the Owner's expense, will function in a satisfactory manner and be in compliance with recognized engineering and construction standards. Owner agrees to indemnify the County against any losses caused by faulty materials and/or poor workmanship incorporated in or relating to the improvements. Such warranty and indemnification shall be in effect for one year commencing on the date of the County's acceptance of the Improvements as constructed. Any maintenance bond requirements shall be accordance with then current County ordinances and regulations. Owner will assign to County all rights Owner possesses, as against the contractor, subcontractors or any other person, firm, or corporation, contractual or otherwise, whether based on an express or implied warranty to recover damages relating to the Improvements.

10. Limitation of Assignment. This Agreement shall not be assignable by Owner without the prior written approval of Pierce County.

11. Notice. Owner shall be responsible for providing the County with its current address at all times during the term of this Agreement. All payments under this agreement shall be mailed to the Owner using the most current address on file with the Pierce County Public Works and Utilities Department. Any change of address notice submitted by the Owner shall be sent by means of Certified Mail, return receipt request, and shall be addressed as follows:

OWNER(S)
Puyallup School District No. 3
109 East Pioneer
Puyallup, WA 98372

PIERCE COUNTY
Pierce County Public Works and Utilities
9116 Gravelly Lake Drive Southwest
Tacoma, Washington 98499

12. No Waiver of Permits. Nothing in this Agreement shall be construed to waive any permitting or approval process otherwise required by any Federal, State or County agency in conjunction with development on the Property.

13. Indemnification. Owner agrees to save harmless and indemnify the County, its appointed and elected officials and employees from and against all claims of loss and expense, including, but not limited to, damage to wastewater facilities, economic loss, environmental remediation, or claims by third

parties for personal injury, death, or property damages arising from performance of the Owner's obligations under this Agreement.

14. Entire Agreement. This Agreement constitutes the entire agreement between the Owner and the County with respect to the subject matter hereof and supersedes any and all prior agreements and understandings, oral or written, with respect to such subject matter. Any alteration or amendment or modification of this Agreement shall be valid only if set forth in writing and signed by both parties hereto.

15. Governing Law. In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action shall be in the courts of the State of Washington in and for the County of Pierce. This Agreement shall be governed by laws of the State of Washington and the ordinances and codes of the County of Pierce.

16. Severability. In the event any portion of this Agreement is determined to be void or unenforceable, such provision shall be severable and will not affect the validity of the remaining portion of this Agreement.

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Executed this 11 day of September, 1998.

PIERCE COUNTY
Pierce County Executive

By: _____ 9/11/98
Date

Its: County Executive

OWNER(S)
Puyallup School District No. 3

By: _____
Ray Graham Date

Its: _____
(Title)

_____ 8/31/98
Department Director Date

_____ 8/25/98
Deputy Prosecuting Attorney Date
(as to form only)

_____ 9-9
Budget and Finance Date

_____ 9/10/98
Executive Director Date

109 East Pioneer
Puyallup, WA 98372
(253) 841-1301
Address and Phone Number

Tax Identification Number

91-6001545

Document\Agree\puy9611.agr
August 25, 1998

EXHIBIT "A"

LEGAL DESCRIPTION

THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 20 NORTH, RANGE 2 EAST, OF THE WILLAMETTE MERIDIAN.

EXCEPT THE SOUTH 30 FEET OF SAID WEST HALF FOR MICKELSON COUNTY ROAD.

SITUATED IN PIERCE COUNTY, STATE OF WASHINGTON.

EXHIBIT "B"

TRIBUTARY SERVICE AREA

See attached Tributary Service Area Map

SECTION 9, TOWNSHIP 20 N., RANGE 4 E., W.M.
PUBLIC SANITARY SEWER

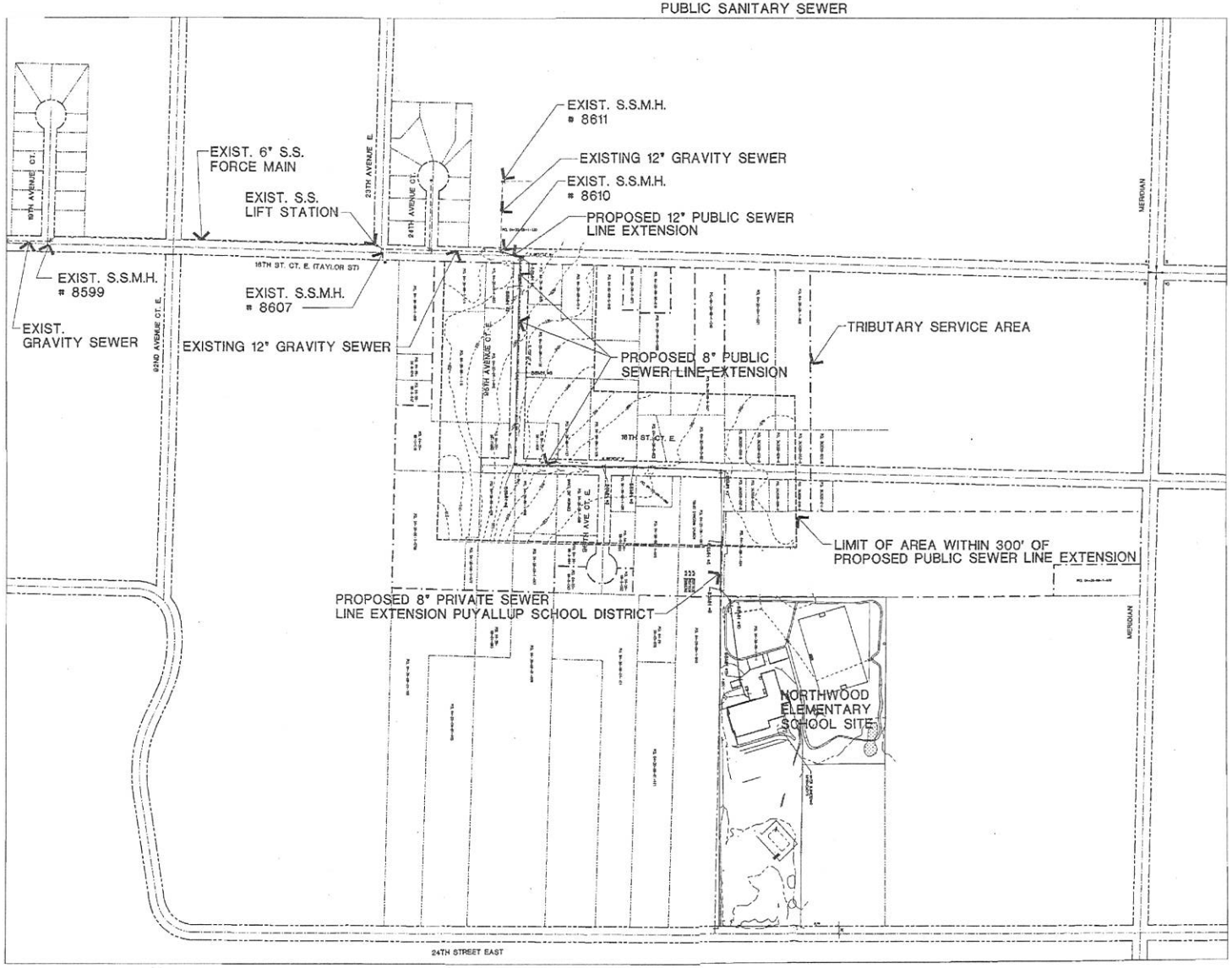
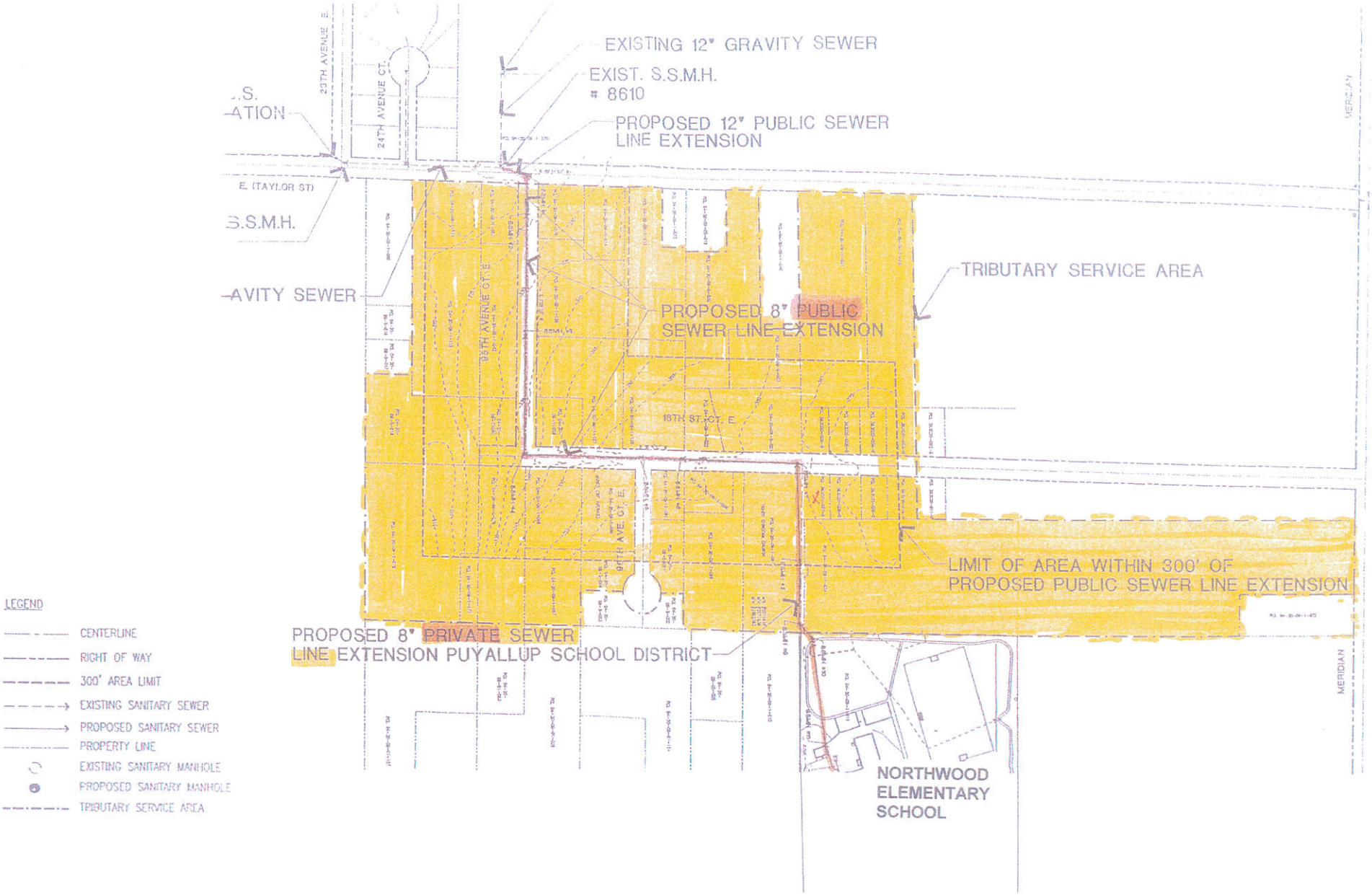


EXHIBIT "C"

INTERLOCAL AGREEMENT BETWEEN THE PUYALLUP SCHOOL DISTRICT, PIERCE COUNTY, AND THE CITY OF EDGEWOOD FOR THE PROVISION OF SANITARY SEWER SERVICE TO NORTHWOOD ELEMENTARY SCHOOL

See attached copy of Interlocal Agreement

EXHIBIT 3
TRIBUTARY SERVICE AREA


EXISTING 12" GRAVITY SEWER
EXIST. S.S.M.H.
8610
PROPOSED 12" PUBLIC SEWER
LINE EXTENSION
23TH AVENUE E.
24TH AVENUE CT.
E. (TAYLOR ST)
S.S.M.H.
TRIBUTARY SERVICE AREA
PROPOSED 8" PUBLIC
SEWER LINE EXTENSION
18TH ST CT. E
LIMIT OF AREA WITHIN 300' OF
PROPOSED PUBLIC SEWER LINE EXTENSION
PROPOSED 8" PRIVATE SEWER
LINE EXTENSION PUYALLUP SCHOOL DISTRICT
NORTHWOOD
ELEMENTARY
SCHOOL
MERIDIAN
LEGEND
CENTERLINE
RIGHT OF WAY
300' AREA LIMIT
EXISTING SANITARY SEWER
PROPOSED SANITARY SEWER
PROPERTY LINE
EXISTING SANITARY MANHOLE
PROPOSED SANITARY MANHOLE
TRIBUTARY SERVICE AREA

KING COUNTY

PIERCE COUNTY

CITY OF MILTON

CITY OF EDGEWOOD

CITY OF EDGEWOOD

PS 1

PS 2

PS 3

Lake Surprise

Lake Chalet

Simons Creek

Simons Creek

City of Edgewood - Meridian Avenue Sewer Project LID No. 1 Project Map January 2009

Presented by:

BHC CONSULTANTS

TETRA TECH

Legend

- LID Boundary
- Core I Boundary
- Core II Boundary
- City Limits
- Parcels
- Water Bodies
- Water Courses
- Pump Station
- Gravity Sewer Manholes
- Gravity Sewer Mains
- Force Mains

N W E S

0 500 1,000 Feet

P:\Mapping\Maps_Generated\Edgewood\08-10125.00\Task011\maps\LID Map 36x48.mxd