

# ENVIRONMENT COMMITTEE AGENDA

November 6, 2014 – Council Chambers

21630 11<sup>th</sup> Avenue South – Des Moines 98198

5:45P – 6:30P

1. Approve minutes of 9-18-2014 meeting

2. Tree Ordinance

*Staff will provide a discussion of the Substitute Draft Ordinance, and address questions resulting from the public hearing, including the following general topics:*

- *Critical Areas*
- *Views*
- *Potential Amendments*
- *Fee's*

## Attachments

- 1) *City Attorney Memos to Councilmembers*
- 2) *Staff PowerPoint Presentation*
- 3) *Coppicing Information*
- 4) *Relevant City Goals, Policies, and Strategies*
- 5) *Substitute Draft Ordinance 14-043-A*
- 6) *Potential Amendments*
- 7) *Fee Table showing range of potential fees*

## Draft MINUTES - ENVIRONMENTAL COUNCIL COMMITTEE MEETING 9.18.2014

The meeting was called to order @ 5:59 PM, Thursday, September 18, 2014, in the North Conference Room @ 21630 11<sup>th</sup> Avenue South, Des Moines with the following in attendance:

### Council Members

Dave Kaplan, Chair  
Melissa Musser  
Vic Pennington

### City Staff

Michael Matthias, Assistant City Manager  
Dan Brewer, Planning, Building & PW Director  
Loren Reinhold, SWM Utility Manager  
Denise Lathrop, Comm Dev Manager  
Nikole Coleman-Porter, Planner II  
Peggy Volin, Admin Asst II

### Citizens:

Nadya Curtis  
Jill Tinker  
Bud Bohlor

### **AGENDA:**

1. Approve minutes of 8.21.2014 meeting
2. Project Updates
3. SWM Capital Improvement Budget
4. Budget Discussions
5. City Comp Plan Update – Conservation Element
6. Review Final Draft Tree Trim Ordinance

### **MEETING:**

1. Approve minutes of the August 21, 2014 meeting: Unanimously passed.
2. Project Updates: Loren Reinhold, SWM Utility Manager, gave a brief overview of all the SWM projects that have been completed so far in 2014 which included the pond fencing, 216<sup>th</sup> Place and DMMD Pipe Projects, and the status of the Lower Massey Creek Channel and Barnes Creek Culvert Replacement projects.
3. SWM Capital Improvement Budget: Loren went through the proposed 2015 SWM CIP Budget. He gave the beginning fund balance and listed local fund revenues which include interest income, hook-up fees and a transfer from SWM Operations. He gave a brief overview of project expenditures per project. He explained about the fund transfer to arterial streets to pay for the S 251<sup>st</sup> Street Slide repair being done in 2014.
4. Budget Discussions: Loren went over the Surface Water Management Utility Budget Narrative for 2015 that was provided in the agenda packets. It listed the beginning fund balance, went through revenues, operating expenses, transfers and the ending fund balance for 2014 and projected for 2015. Wrapped up discussions with the problems the

flush truck has been encountering and the need to increase both the replacement fund to purchase a new truck within 4 years as well as an increase to the vehicle maintenance fund to cover probable higher maintenance costs on the flush truck due to its age. He also explained the need for a pipe scoping camera for our crews to begin pipe condition assessment in 2015.

5. City Comp Plan Update – Conservation Element: Denise Lathrop briefed the Committee by explaining the purpose of the Comprehensive Plan; the Community Outreach the City provides with open houses, staffing a booth at the Farmer’s Market and providing information on our website; then followed up with staff recommended updates and additions.
6. Review of Final Draft of Tree Trimming Ordinance: Denise Lathrop presented Substitute Draft Ordinance No. 14-043-A which was included in the agenda packets. This final draft of the Tree Trimming Ordinance includes all the edits and changes made from previous reviews. A Public Hearing for this ordinance will be held on October 2, 2014.

Meeting Adjourned @ 7:20 pm  
Submitted by: Peggy Volin, Admin Asst II

## ATTACHMENT 1

Pat Bosmans, City Attorney  
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Des Moines, WA 98198  
206.870.6553  
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OFFICE OF THE  
DES MOINES  
CITY ATTORNEY

# Memo

Date: October 30, 2014  
To: Mayor and Councilmembers  
From: Pat Bosmans, City Attorney  
Re: Tree Cutting and Pruning and the City's Draft Ordinance

The intent of this memo is to answer the following questions:

*What is a critical area in the City and do I live in one?*

*What is the authority for the City to regulate trees, tree pruning and views in critical areas?*

*Why do we need to protect critical areas?*

*What do I have to do if I want to cut or prune trees on my property or to cut or prune trees on my neighboring property owner/s's property that are located in a critical area?*

*Can I disturb critical areas?*

*What does the ordinance intend to regulate?*

*What if my neighboring property owner/s's won't let me cut trees on their property?*

*What if my neighboring property owner/s won't agree to allow tree cutting or pruning on their property?*

*Will the City protect my view?*

- ***What is a critical area in the City and do I live in one?***

Critical areas are wetlands, aquifer recharge areas, fish and wildlife habitat, frequently flooded areas, and geologically hazardous areas. Regulations and procedures related to critical areas are intended to protect the environment, human life, and property from harm

and degradation. Critical areas are best described by viewing the critical area maps for the City. There are seven kinds of critical areas:

- [Critical Aquifer Recharge Areas](#)
- [Drainage Basins](#)
- [Frequently Flooded Areas](#)
- [Geologically Hazardous Areas](#)
- [Slope and Topography](#)
- [Wetlands and Surface Water](#)
- [Fish and Wildlife Conservation Areas](#)

This inventory is based on City, other agency, or property owners initiated inventories as well as an accumulation of existing information collected from other local, state, and federal agencies. On a citywide scale, it is not possible to identify all critical areas. Therefore, not all critical areas are included in this inventory. The map inventory is provided to the community as the best available information.

Careful site-specific investigation will also be required in conjunction with specific proposals for work within a critical area.

#### Visual Inspection

A second source of information involves a visual inspection of property. In some instances, conditions within critical areas such as surface water, geological, and topographic conditions are easily identified. However, conditions in other critical areas, such as special wildlife habitat or subsurface geological conditions, may not be so straight forward. In those cases, research of other information sources such as conservation maps or wildlife habitat inventories may be beneficial.

#### Experts

A third source of information involves the use of experts hired to investigate site conditions. In most cases, City codes require that expert analysis be provided in conjunction with proposals when critical area conditions are encountered. Therefore, it is important to bring experts into the process as early as possible.

#### • **What is the authority for the City to regulate trees, tree pruning and views in critical areas?**

Critical areas are regulated by federal, state and local laws. Understanding the laws and the interplay between these laws is not easy to simplify but essentially the important federal laws are the Environmental Protection Act, and the Clean Water Act which establishes the National Pollution Discharge Elimination permit requirements for storm water), state laws are the State Environment Policy Act, Growth Management Act, and the Shoreline Management Act, the City's regulations that are required by the federal and state laws. To comply with the federal and state laws the City, like all other cities has

adopted local ordinances to protect critical areas. An important component of protecting critical areas is the protection of trees and other vegetation within those areas. (For more information on the applicable federal, state and local laws see the attached Environmental Laws and Authorities memorandum.)

- **Why do we need to protect critical areas?**

Des Moines has adopted and administers regulations related to work in and around each of the critical areas mentioned above. To protect the environment, human life, and property from degradation, critical area regulations: preclude, regulate, or limit development activity, including removal of trees and other vegetation, in areas where such activities pose serious threat to the resource or result in potential hazards; preserve and protect the quality of drinking water; and preserve important ecological areas such as steep slopes, streams, lakes, and wetlands. Benefits of these regulations include protection of water quality (including drinking water), groundwater recharge, shoreline stabilization, stream flow maintenance, stability of slopes, wildlife and fisheries habitat, protection of human life and property, and maintenance of natural stormwater storage systems.

- **What do I have to do if I want to cut or prune trees on my property or to cut or prune trees on my neighboring property owner/s' property that are located in a critical area?**

Projects involving work proposed within critical areas often require expert technical assistance to provide information, mapping, studies, materials, inspections, and/or reviews that are reasonably necessary to determine the effects of a proposed activity on the subject critical area(s). Necessary maps, studies, materials, inspections and/or review are an expense borne by the applicant. The City requires that such work be provided or performed by a qualified professional acceptable to the City. You will be advised at the earliest possible point if your project will be subject to these types of reviews.

**Can I disturb critical areas?**

Des Moines Municipal Code does not allow use or disturbance of critical areas without prior City approval. Critical area regulations outline specific setbacks within which work may not occur, or is subject to special

approval. Minor activities such as maintenance, landscaping, and passive recreation improvements may be considered through an administrative review process. Projects involving construction, clearing, and grading within critical areas requires more extensive review, and in most cases allows public review and comment through the SEPA process, and potentially a public hearing.

- **What does the proposed ordinance intend to regulate?**

The intent of the draft ordinance is to clarify the City's existing tree regulations and to provide clarity. The draft ordinance limits regulation for the cutting or pruning of trees to critical areas and/or land clearing in excess of 2000 square feet. If you do not live in a critical area as shown on the maps above and/or you do not intend to clear more than 2000 square feet of property the draft ordinance does not control or regulate tree cutting or pruning on your private property.

- **What if my neighboring property owner/s won't let me cut trees on their property?**

Part of the process for doing work in the critical area may require that some of the work be done on neighboring property owner/s's property. The City will require the same expert reports for the work but will also require proof that the neighboring property owner/s agree and understand the nature of the work to be done on their property. The City will require that both you and neighboring property owner/s sign an agreement as to liability regarding you and your neighboring property owner/s's property and indemnify, i.e., protect the neighboring property owner/s and/or the City for the work to be done. In addition, if a permit is required to complete the work, your neighboring property owner/s will need to be a co-signatory on the permit application.

- **What if my neighboring property owner/s won't agree to allow tree cutting or pruning on their property?**

If your neighboring property owner/s won't allow you to do work on their property, and remember the City is also a neighboring property owner/s, then the work will not be permitted. The City will not interfere or intervene to compel the cutting or pruning of trees absent proof that the affected property owner(s) is(are) willing to allow the work.

- **Will the City protect my view?**

The City does not have the authority to order, compel or otherwise require property owners to cut or prune trees on the real property of others. Other than the limited exceptions provided under the Shoreline Management Act, and absent permission from neighboring property owner/s whose trees are blocking your view the City cannot compel tree cutting or pruning. See the discussion in the attached Environmental Laws and Authorities.



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**OFFICE OF THE  
DES MOINES  
CITY ATTORNEY**

# Memo

Date: October 30, 2014  
To: Des Moines City Council  
From: Pat Bosmans, City Attorney  
Re: Environmental Laws and Authorities

This memo provides an overview of the various federal and state statutes and local ordinances that regulate the environmental critical areas and tree removal and pruning. Specifically, this memo discusses the Growth Management Act and its environmentally critical areas requirements, the State Environmental Policy Act (SEPA), the Shoreline Management Act, the National Pollution Discharge Elimination System (NPDES), and View Preservation Ordinances. A brief introduction is given to each topic followed by relevant statutes, surrounding City's ordinances, and finally Des Moines' current applicable codes. Additional information can be found by following the links embedded in this memo.

## **I. ENVIRONMENTALLY CRITICAL AREAS**

### **Introduction**

All cities and counties in Washington are required to adopt critical areas regulations by the Growth Management Act (GMA) ([RCW 36.70A.060](#)). As defined by the GMA:

"Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. [[RCW 36.70A.030\(5\)](#)]

Counties and cities are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas ([RCW 36.70A.172](#)). All jurisdictions are required to review, evaluate, and, if necessary, revise their critical areas ordinances according to an update schedule. MRSC's page on

[GMA Plan/Development Regulations Updates](#) provides additional information on the schedule and required updates.

### **General Critical Areas Information**

Some of the handbooks and guidance materials are older; however, they provide useful general information for updating critical areas ordinances.

- [Critical Areas Ordinance Implementation Guidebook for Small Cities](#), Washington State Department of Community, Trade and Economic Development (now Department of Commerce), Growth Management Services, 06/2007 - Links to guidebook, appendices, and other useful information on critical areas and best available science
- [Critical Areas Assistance Handbook: Protecting Critical Areas Within the Framework of the Washington Growth Management Act](#), Washington State Department of Community, Trade and Economic Development (now Department of Commerce), Growth Management Services, 01/2007.

### **Legal References - Statutes and Administrative Regulations**

- [Ch. 36.70A RCW](#) - Growth Management Act (see [RCW 36.70A.060](#), [RCW 36.70A.172](#), and [RCW 36.70A.710](#))
- [Ch. 365-190 WAC](#) - Minimum guidelines to classify agriculture, forest, mineral lands and critical areas
- [Ch. 365-195 WAC](#) - Growth Management Act - Best Available Science
- [WAC 365-196-485](#) - Critical areas (relationship to the comprehensive plan)
- [WAC 365-196-830](#) - Protection of critical areas

### **Best Available Science (BAS)**

Under the state GMA, local governments are required to use the best available science when reviewing and revising their policies and regulations on critical areas. The Department of Commerce, Growth Management Services, and the state Department of Ecology have provided helpful guidance on addressing the GMA's best available science requirements.

- [Critical Areas and Best Available Science](#), Washington State Department of Commerce, Growth Management Services - Includes handbook, appendices, findings of fact, and local examples.
- [Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas](#), Washington State Office of Community Development (now Department of Commerce), Growth Management Services, 03/2002.
- [Best Available Science for Wetlands](#), Department of Ecology

- Local Government BAS Documents.

### **Surrounding City Ordinances**

- Federal Way Municipal Code Critical Areas [Chapter 14.30](#)
- Burien Municipal Code [Chapter 19.40](#)
- SeaTac Municipal Code Environmentally Sensitive Areas [Chapter 15.30](#)
- Kent Municipal Code Critical Areas [Chapter 11.06](#)
- Normandy Park Municipal Code Critical Areas Development Regulations [Chapter 18.36](#)

### **Handouts and Application Forms**

A few examples of critical areas handouts and application forms are presented here:

- • Burien [Critical Area Review Application and Informational Handout](#).
- Federal Way [Land Use Applications and Informational Handouts](#) - See multiple forms and handouts for various critical areas.
- Normandy Park [Critical Areas Ordinance Citizens Guide](#), 2010 - Development tool for residents and property owners.

### **To that end the City of Des Moines has adopted:**

[Title 16 DMMC](#) (Environment) which contains regulations related to SEPA, Environmentally Critical Areas, Flood Hazard Areas, and the Shoreline Master Program.

Trees specifically are also addressed in chapter [18.195](#) DMMC Landscaping and Screening, chapter [14.20](#) DMMC, Land Filling, Clearing and Grading, chapter [17.35](#) DMMC, Layout and Design of Subdivisions and Similar Requirements, and also in individual zones including the Business Park and Institutional Campus.

## **II. SHORELINE MANAGEMENT ACT**

### **Introduction**

The Shoreline Management Act, like the State Environmental Policy Act (SEPA), was enacted in 1971, and its purpose is to manage and protect the shorelines of the state by regulating development in the shoreline area. A major goal of the Act is "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." Its jurisdiction includes the Pacific Ocean shoreline and the shorelines of Puget Sound, the Strait of Juan de Fuca, rivers, and streams and lakes above a certain size. It also regulates "wetlands" associated with these shorelines. The Shoreline Management Act is found in [Ch. 90.58 RCW](#). For an overview of this legislation, see the Department of Ecology's [Shoreline Management home page](#). Legislative establishment is cited below:

This chapter establishes a cooperative program of shoreline management between local government and the state. *Local government shall have the primary responsibility for initiating the planning required by this chapter and administering the regulatory program consistent with the policy and provisions of this chapter.* The department shall act primarily in a supportive and review capacity with an emphasis on providing assistance to local government and on insuring compliance with the policy and provisions of this chapter. RCW 90.58.050 (emphasis added).

The primary responsibility for administering this regulatory program is assigned to local governments. Local governments have done so through the mechanism of shoreline master programs, adopted under rules established by the Department of Ecology (DOE), that establish goals and policies that are implemented through use regulations. No substantial development is permitted on the state's shoreline unless a permit is obtained from the local jurisdiction. DOE has adopted shoreline master program guidelines, [Ch. 173-26 WAC](#), effective January 17, 2004. For background regarding the adoption of these new guidelines, see DOE's [Shoreline Master Program Guidelines Home](#). Cities and counties are required to update their shoreline master programs to be consistent with the new guidelines according to a schedule adopted under 2003 legislation ([SSB 6012](#)). See also DOE's [Shoreline Master Program Update Schedule](#) page.

#### **Legal References - Statutes and Administrative Regulations**

- [Ch. 90.58 RCW](#) - Shoreline Management Act.
- [Ch. 173-26 WAC](#) - Shoreline master program guidelines.
- [Ch. 173-27 WAC](#) - Shoreline management permit and enforcement procedures.
- [Pres. Our Islands v. Shorelines Hearings Bd.](#), 133 Wn. App. 503 (2006), review denied, 162 Wn.2d 1008 (2008) - GMA/SMA priority;

*RCW 36.70A.480 does not mandate that the policies and regulations of the SMA take priority over policies and regulations adopted under the GMA. On the contrary, the statute requires that regulations implementing the two acts be harmonized in the process of overall land use planning and regulation and specifically states that a county's shoreline master program goals and policies are part of its growth management comprehensive plan.*

## Surrounding City Ordinances and Guidelines

- Kent Municipal Code Chapter 11.04 Shoreline Master Program  
<http://www.codepublishing.com/WA/Kent/?Kent11/Kent1104.html#11.04.010>
- Burien Municipal Code Title 20 BMC, [Shoreline Master Program](#)
- Sea Tac Municipal Code Title 18 SMC, [Shoreline Management Code](#)
- Normandy Park Municipal Code Chapter 16.16 Shoreline Management, [Master Program Policy Elements](#)
- Federal Way Municipal Code Chapter 15.05, [Shoreline Management](#)

## Additional References:

- [Shoreline Management](#), Washington State Department of Ecology
  - [Citizen Guide to Shoreline Master Programs](#)
  - [Introduction to the Shoreline Management Act](#)
  - [Recent Amendments to the SMA and GMA](#)

## To that end the City of Des Moines has adopted:

Shoreline Master Program [chapter 16.20](#) DMMC and Shoreline Master Program [Ordinance No. 1502](#)

The Shoreline Master Program addresses vegetation conservation in the following section:

### 6.1.2 Vegetation Conservation

1. Land within shoreline and critical buffer areas extending from marine ordinary high water mark, as described in Section 6.1.1(2), shall be considered vegetation conservation areas. Native shoreline vegetation that has not been otherwise disturbed by legal means shall be preserved to the maximum extent feasible within the vegetation conservation area consistent with safe construction practices, and other provisions of this chapter. Native trees and shrubs shall be preserved to maintain and provide shoreline ecological functions such as habitat, shade, and slope stabilization.
2. **The following minimum standards for shoreline and critical area vegetation conservation shall apply:**
  - a. **In the event buffers for more than one designated critical area per DMMC 18.86 are applicable, the most protective standards for vegetation conservation shall apply;**

b. No more than 15 percent of the area with native shoreline vegetation shall be cleared within the vegetation conservation area;

c. All native trees in the vegetation conservation area over 20 inches in diameter at breast height shall be retained. Trees determined by the City to be hazardous or diseased may be removed. Replacement of non-native vegetation with native species shall be done in a manner that will not leave soil bare or vulnerable to erosion.

d. The Shoreline Administrator may allow removal of vegetation exceeding that described above where an applicant agrees to replacement plantings that are demonstrated to provide greater benefit to shoreline ecological functions than would be provided by strict application of this section, based upon the findings from the 2005 Shoreline Inventory and Characterization. (emphasis added).

### III. State Environmental Policy Act (SEPA)

#### Introduction

[Chapter 43.21C RCW](#), State environmental policy, sets forth its purpose in RCW 43.21C.010, and provides a more specific listing of the Act's intent and purposes in RCW 43.21C.020, all focused on ". . . the critical importance of restoring and maintaining environmental quality to the overall welfare and development of human beings . . ." (RCW 43.21C.020(1)). SEPA's basic policy of maintaining and improving environmental quality is implemented primarily through extensive procedural requirements designed to insure that governmental agencies give proper consideration of environmental matters in making decisions on actions, whether proposed by private parties or the governmental entities themselves that may impact the environment.

If initial governmental review of a proposed action indicates that the action will have probable and significant adverse environmental impacts, preparation of a detailed environmental impact statement (EIS) will be required. The procedural requirements governing this environmental review process are contained in detailed regulations enacted by the Department of Ecology (DOE) in [Chapter 197-11 WAC](#).

The specific mandate for municipal corporations such as the City is found in RCW 43.21C.030 which states in pertinent part as follows:

- (2) all branches of government of this state, including state agencies, municipal and public corporations, and counties shall:
  - (a) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and

the environmental design arts in planning and in decision making which may have an impact on man's environment;" (Emphasis added.)

### Legal References - Statutes and Case Law

SEPA mandates that environmental values be taken into account in governmental decision making. See *Norway Hill Preservation and Protection Ass'n v. King County*, 87 Wn.2d 267, 277-278 (1976) wherein the court stated:

. . . it is clear that the legislature intended that environmental values be given full consideration in government decision making, and it implemented this policy through the procedural provisions of SEPA which specify the nature and extent of the information that must be provided, and which requires its consideration, before a decision is made.

The linking of a governmental action with the application of SEPA is also identified in the statutory provisions concerning Appeals.<sup>1</sup>

See also RCW 43.21C.240, Project review under the growth management act (environmental review as applied to "project actions").

The "decision making" or "governmental action" subject to the act is not, however, specifically defined by SEPA, but is specifically addressed in the applicable WAC provision. By statutory mandate these provisions are accorded "substantial deference." (RCW 43.21C.095).

Specifically, action sufficient to trigger environmental review is defined in WAC 197-11-704(1)(a), which states in pertinent part as follows:

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

WAC 197-11-704(2)(a)(i) further defines "project action" as an agency decision to:

License . . . any activity that will directly modify the environment.

WAC 197-11-704(3) concludes:

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<sup>1</sup> RCW 43.21C.075 Appeals. Because a major purpose of this chapter is to combine environmental considerations with public decisions, any appeal brought under this chapter shall be linked to a specific governmental action. The State Environmental Policy Act provides a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of this chapter. The State Environmental Policy Act is not intended to create a cause of action unrelated to a specific governmental action. (Emphasis added).

"Actions" do not include the activities listed above when an agency is not involved. . . .

WAC 197-11-760 defines license as follows:

"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 an agency 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.

See also WAC 197-11-055(2)(a), which states "A proposal exists when an agency is presented with an application . . ."

### **Surrounding City Ordinances and Information**

- Federal Way Municipal Code [Title 14](#) - Environmental Policy
- Kent Municipal Code [Ch. 11.03](#) - Environmental Policy
- Burien Municipal Code [Title 14](#) - State Environmental Policy Act Procedures
- SeaTac Municipal Code Chapter 16A.23 - Environmental Rules/Procedures  
<http://www.codepublishing.com/WA/SeaTac/?Seatac16A/Seatac16A23.html#16A.23.010>
- Normandy Park Municipal Code Chapter 13.12 – SEPA Rules  
<http://www.codepublishing.com/wa/normandypark/?NormandyPark13/NormandyPark1312.html#13.12.010>

**To that end the City has adopted:**

[Chapter 16.05 DMMC - SEPA](#)

## **IV. NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES)**

### **Introduction**

Under the federal [Clean Water Act](#) regulations, local governments in the Puget Sound Basin and those subject to the federal National Pollutant Discharge Elimination System (NPDES) Storm Water Program are required to have stormwater management programs. As authorized by the Clean Water Act, the U.S. Environmental Protection Agency's [NPDES permit program](#) controls water pollution by regulating point sources that discharge pollutants into waters of the United States. The Washington State Department of Ecology (DOE) administers the federal NPDES program in the state. See DOE's [Municipal Stormwater Permits](#) page.



The listing of salmon under the Endangered Species Act (ESA) requires that streams and wetlands be protected (see MRSC pages on [ESA Salmon/Bull Trout](#)). All local governments with salmon habitats are encouraged to develop storm water management plans. Those seeking [4\(d\) rule](#) exemptions will be required to meet National Marine Fisheries Service (NMFS) stormwater requirements.

### **General NPDES Information**

- [The Need for Storm and Surface Water Management](#)
- [Federal and State Storm and Surface Water Regulations](#)
- [Best Management Practices \(BMPs\) for Storm and Surface Water Management](#)
- [Erosion and Sediment Control: Land Clearing and Grading](#)

### **Surrounding City Ordinances and Information**

- Federal Way – Stormwater Management Program – 2014 Update  
<http://www.cityoffederalway.com/documentcenter/view/4789>
- Kent – NPDES information and Links <http://kentwa.gov/npdes/?terms=stormwater>
- SeaTac - Stormwater Management Program Plan – 2014 Update  
<http://www.ci.seatac.wa.us/Modules/ShowDocument.aspx?documentid=8728>
- Burien - 2014 Stormwater Management Program Plan (SWMP)  
<http://www.burienwa.gov/documentcenter/view/859>
- Normandy Park – Stormwater Management Plan – 2013 Update  
[http://www.ci.normandy-park.wa.us/vertical/sites/%7BD313ED69-120E-439F-83D7-8BBE7447C948%7D/uploads/Normandy\\_Park\\_SWMP\\_2013\\_Update\\_pl.pdf](http://www.ci.normandy-park.wa.us/vertical/sites/%7BD313ED69-120E-439F-83D7-8BBE7447C948%7D/uploads/Normandy_Park_SWMP_2013_Update_pl.pdf)

### **To that end the City has adopted:**

[Chapters 11.08 DMMC](#), Surface Water Management Program, and [chapter 11.20 DMMC](#), National Pollution Discharge Elimination System Program (NPDES)

## **V. VIEW PRESERVATION**

Cities may consider aesthetics in regulating the use of land. The legal basis for aesthetic zoning has been established in case law for many years – but there's not much case law on the subject. The court of appeals affirmed this by stating that "aesthetic standards are an appropriate component of land use governance." *Anderson v. Issaquah*, 70 Wn. App. 64, 82 (1993). Zoning for aesthetics includes view protection regulations, historic preservation ordinances, design review standards, sign controls, and tree protection measures.

Zoning laws based primarily on aesthetic considerations must be, like all exercise of the police power, reasonably related to the ends sought to be achieved. Such laws and ordinances will be closely considered to determine their reasonableness in achieving their goals. Further, zoning laws based upon aesthetics must provide clear standards for their application to limit the enforcing authorities, exercise of discretion. Since aesthetics is generally a subjective matter, this is particularly important. (See *Anderson v. City of Issaquah*, 70 Wn. App. 64, 82-83 (1993) (ordinance was too vague); *Duckworth v. City of Bonney Lake*, 91 Wn.2d 19, 30 (1978) (aesthetic considerations alone may not support invocation of the police power).

Property owners are not “entitled” to view protection. Views are protected only to the extent that local ordinances provide for such protection.

In determining that there was no common law right to a view, the *Collinson* court relied on a 1908 Washington State Supreme Court case that held that a person may build a structure as high as he wants on his own property without liability for nuisance to a neighbor even if the structure completely blocked the neighbor's light and air. *Karasek v. Peier*, 22 Wash. 419, 427, 61 P. 33 (1900). But where the neighbor had rights conferred by statute, a neighbor could enforce those rights in a nuisance action. *Karasek*, 22 Wash. at 428. And a zoning ordinance can create a property right. *Asche v. Bloomquist*, 132 Wn. App. 784, 797-98 (2006). A recent view protection situation in Clyde Hill garnered a lot of attention because it involved a former Major League baseball player; see *Tree battle in Clyde Hill ends; Olerud to pay for view*, *Seattle Times*, 1/7/2013.

View protection is given some statutory recognition in the SMA, which provides at RCW 90.58.320:

No permit shall be issued pursuant to this chapter for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

See *State v. Pacesetter Constr. Co.*, 89 Wn.2d 203, 211-12 (1989) (the loss of view substantially reduces the values of the shoreline properties, thus entitling them to protection against that economic loss without payment by the state of just compensation.)

### **Surrounding City Ordinances and Information**

- Federal Way Municipal Code 18.55.080 – View Considerations  
<http://www.codepublishing.com/WA/FederalWay/>:

(1) Design of new land divisions adjacent to existing development should assess the potential blockage of existing views and utilize methods such as staggered or offset lot lines and building areas so as to reduce horizontal view blockage.

- (2) Where feasible, land division design shall recognize and preserve important view corridors by proper location of street rights-of-way, view conservation easements or other means.
- Kent Municipal Code 15.080.060 - View Corridor Protection  
<http://www.codepublishing.com/WA/Kent/?Kent15/Kent1508.html#15.08.060>  
 The visual environment of the city of Kent is strongly characterized by scenic vistas to the Green River valley from the slopes of the East and West Hills which frame the valley. The purpose of the view regulations set out in this section is to regulate the height and location of buildings on hillsides in order to protect view corridors to and from these hillsides which are on the visual forefront of the city and encourage placement of residences in ways which are compatible with the preservation of such public vistas.
  - SeaTac Municipal Code 15.13.110 – **Only applicable in specific zones.**  
<http://www.codepublishing.com/WA/SeaTac/?Seatac15/Seatac1513.html#15.13.110>  
 Buildings shall accentuate the natural topography and preserve important view corridors where appropriate.
  - Burien Municipal Code 12.38.040 – Tree Protection, Maintenance and Permits  
<http://www.codepublishing.com/WA/Burien/?Burien12/Burien1238.html#12.38.040>  
 (c) A tree permit shall not be granted if the sole purpose of the proposed action is the removal of a tree for view enhancement.
  - Normandy Park Municipal Code 18.36.100  
<http://www.codepublishing.com/wa/normandypark/?NormandyPark18/NormandyPark1836.html#18.36.100>  
 (b) Tree Maintenance and Approval. The following tree and shrub maintenance and removal is permitted with approval of the city:
    - (i) Removal and/or maintenance of hazardous trees.
    - (ii) Preventative and view enhancing measures that are not injurious to the tree.***
    - (iii) All work done under the supervision of a qualified arborist or a professional horticulturist.
    - (iv) The city is notified before all work is commenced.
    - (v) Part of an approved development permit or voluntary correction agreement as allowed by NPMC 18.36.240(4).
    - (vi) Topping of trees is not permitted. (emphasis added).***

**To that end the City has adopted:**

In the City of Des Moines, view preservation (other than walls, hedges, fences, etc.) is addressed in the Landscaping and Screening Code, chapter 18.195 DMMC:

**Scenic view preservation [DMMC 18.195.130](#).**

Landscaping shall be designed, installed, and thereafter maintained in such a manner which preserves scenic views and vistas of neighborhood and upland properties. Under no circumstances shall species of trees be planted which by virtue of their height and/or breadth at maturity impinge upon the views of other properties.

This chapter regulates construction in building sites in accordance with an approved site plan and specifically provides as an exception construction of single-family residential development activities:

(2) Exceptions. The provisions of this chapter shall not apply in the following circumstances:

(a) Single-family residential development activities shall not be subject to the provisions of this chapter except as may be specifically required by any section. [DMMC 18.195.020](#).

## ATTACHMENT 2

DES MOINES CITY COUNCIL  
ENVIRONMENT COMMITTEE MEETING  
SUBSTITUTE DRAFT ORDINANCE NO. 14-043-A

Denise Lathrop, Community Development Manager  
Dan Brewer, PBPW Director  
Pat Bosmans, City Attorney

November 6, 2014

# Agenda Overview

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## Key Issues for Committee Consideration:

- Critical Areas
  - Authority to Protect
  - Coppicing versus Best Management Practices
- Scenic View Preservation
- Potential Amendments to Substitute Draft Ordinance
  - Council Amendment/s
  - Liability Waiver
  - Best Pruning Practices
  - Scenic View Preservation
- Fees

## Areas of Consensus:

- Cutting trees on developed sites
- Increasing clearing limits

# What are critical areas?

Critical areas include the following areas and ecosystems:

- Wetlands;
- Areas with a critical recharging effect on aquifers used for potable water;
- Fish and wildlife habitat conservation areas;
- Frequently flooded areas; and
- Geologically hazardous areas.

Critical areas occur throughout the state, in locations that are both known and unknown:

- Locally adopted criteria are used to determine the presence or absence of critical areas during land development permit application reviews.
- Many jurisdictions map known critical areas.



# Obligation to Protect Critical Areas

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- Under the Growth Management Act (GMA), a first step in establishing comprehensive plans and development regulations includes designating and protecting critical areas.
- In addition to the GMA, protecting critical areas also has a nexus in several federal and state laws:
  - Federal Clean Water Act
  - Safe Drinking Water Act
  - Endangered Species Act,
  - National Environmental Policy Act
  - National Floodplain Insurance Program (administered by FEMA)
  - Washington State Environmental Policy Act (SEPA)
  - Shoreline Management Act
  - Watershed Planning Act
  - Salmon Recovery Act
  - Municipal Water Law

# City Goals, Policies, Strategies and Regulations Related to Critical Areas & Trees/Vegetation Mgmt.

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- City Council:
  - Goal 11: Protect the natural environment.
  - Resolution No. 1199: *Environmental Stewardship Policies for the City of Des Moines*
  - Ordinance No. 1400: Environmentally Critical Area Ordinance
  - Ordinance No. 1502: City of Des Moines Shoreline Master Program
- Comprehensive Plan policies that reference trees/environmental/critical area protection:
  - Land Use Element: Goal 2-01-01, Policy 2-03-03(1)-(4).
  - Transportation Element: Strategy 3-05-08(1).
  - Conservation Element: All goals, policies and strategies.
  - Parks, Recreation and Open Space Element: Finding 6-02-02, Policy 6-03-01, and Strategy 6-04-05.
  - Marina District Element: Strategy 10-04-08.
  - Pacific Ridge Element: Strategy 11-04-08.
  - Appendix B: Buildable Lands Report

# City's Obligation to Protect Critical Areas

## Washington State Growth Management Act (RCW 36.70A)

- RCW 36.70A.172, critical areas — Designation and protection — Best available science to be used.
  - (1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.
  - (2) If it determines that advice from scientific or other experts is necessary or will be of substantial assistance in reaching its decision, the growth management hearings board may retain scientific or other expert advice to assist in reviewing a petition under RCW [36.70A.290](#) that involves critical areas. [2010 c 211 § 3; 1995 c 347 § 105.]

## Des Moines Critical Area Ordinance (Chapter 16.10 DMMC)

- Environmentally Critical Areas – geologically hazardous areas, hillsides, wetlands, areas of special flood hazard, fish and wildlife habitat conservation areas, aquifer recharge areas and streams, and the buffers of these areas.
- Purpose - protect the public health, safety, and welfare by preventing the adverse environmental impacts of development.
- “Development Activity” defined as “Any work, condition, or activity which requires a permit or approval under Title 11, 12, 14, 16, 17 or this Title (DMMC18.01.050 Definitions).
- Best Management Practices shall be used.

# Best Management Practices

(DMMC 16.10.090)

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- Best management practices shall be used:
  - For tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications.
  - The City shall observe the use of best management practices to ensure that the activity does not result in degradation to the critical area.
  - Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense.

Mitigate potential impacts to critical areas in the following order (DMMC 16.10.030(11)):

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- a) **Avoid** the impact altogether by not taking a certain action or parts of an action;
- b) **Minimize** impact 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 impact;
- c) **Rectify** the impact by repairing, rehabilitating, or restoring the affected environmentally critical areas;
- d) **Reduce or eliminate** the impact over time by prevention and maintenance operations during the life of the actions;
- e) **Compensate** for the impact by replacing, enhancing, or providing substitute environmentally critical areas and environments; and
- f) **Monitor** the impact and take appropriate corrective measures.

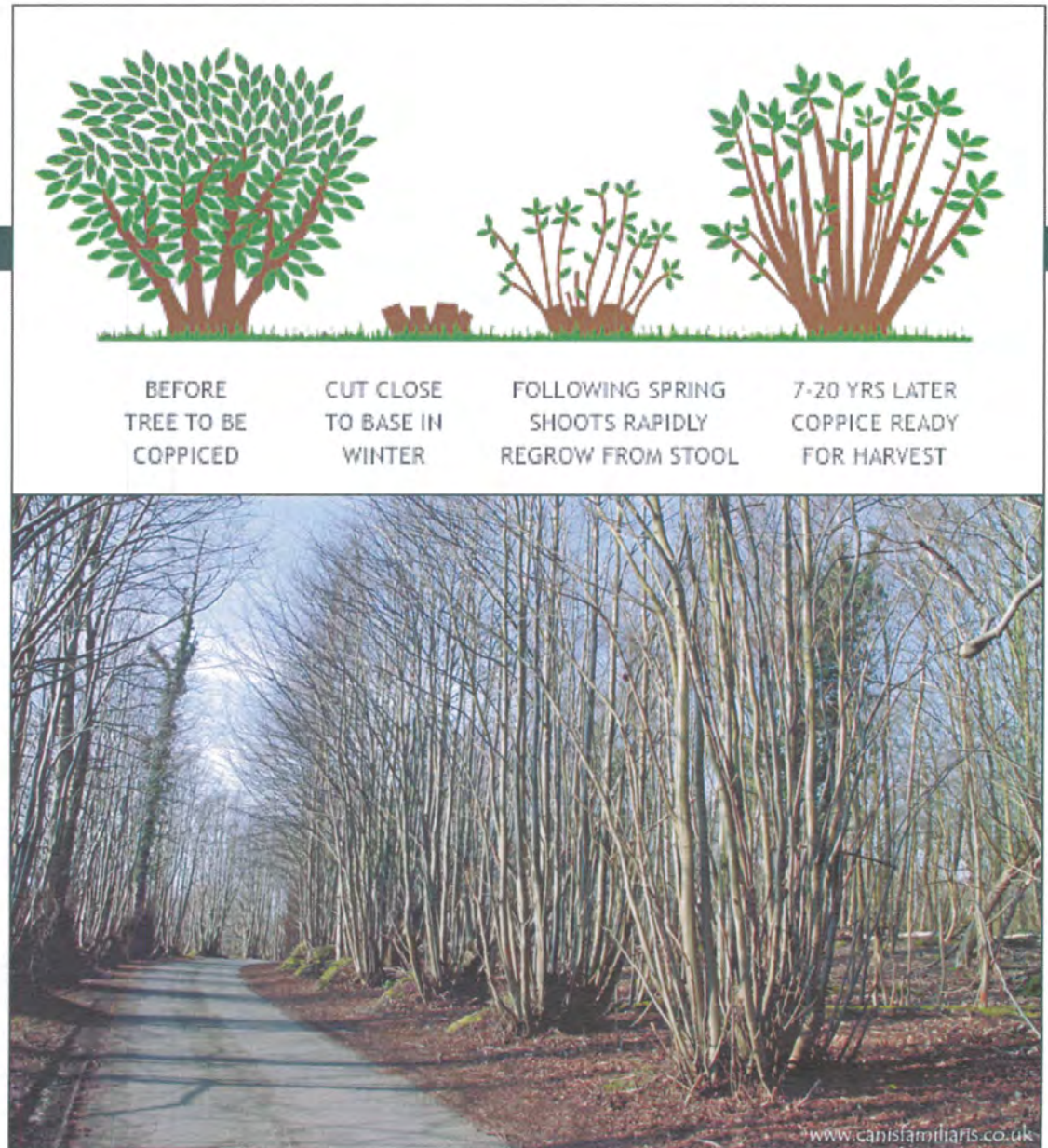
# How do we compare with our neighbors?

<p><b>Burien</b></p> <ul style="list-style-type: none"><li>- Chapter 19.25 Tree Retention and Landscaping</li><li>- Chapter 19.40 Critical Areas</li><li>- Tree Cutting/Pruning Application: <a href="http://www.burienwa.gov/documentcenter/view/158">http://www.burienwa.gov/documentcenter/view/158</a></li><li>- Tree Owners Manual: <a href="http://www.burienwa.gov/documentcenter/view/4799">http://www.burienwa.gov/documentcenter/view/4799</a></li></ul>	<p><b>Des Moines</b></p> <ul style="list-style-type: none"><li>- Chapter 14.20 Land Filling, Clearing &amp; Grading Code</li><li>- Chapter 16.05 SEPA</li><li>- Chapter 16.10 Environmentally Critical Areas</li><li>- Chapter 16.20 Shoreline Master Program</li></ul>	<p><b>SeaTac</b></p> <ul style="list-style-type: none"><li>- Chapter 2.46 Advisory Tree Board</li><li>- Chapter 13.190 Clearing and Grading Code</li><li>- Chapter 15.14 Tree Retention and Landscaping</li><li>- Chapter 15.30 Environmentally Sensitive Areas</li></ul>
<p><b>Normandy Park</b></p> <ul style="list-style-type: none"><li>- Chapter 13.20 Land Clearing, Grading and Filling</li><li>- Chapter 18.36 Critical Areas Development Rags.</li><li>- Hazard Tree Removal Permit</li></ul>	<p><b>City of Kent</b></p> <ul style="list-style-type: none"><li>- Chapter 11.03 Environmental Policy</li><li>- Chapter 11.04 Shoreline Management</li><li>- Chapter 11.06 Critical Areas</li><li>- Hazard Tree Removal/Pruning in Critical Area Request</li><li>- Cite ISA standards</li></ul>	<p><b>Federal Way</b></p> <ul style="list-style-type: none"><li>- Chapter 15.05 Shoreline Management</li><li>- Chapter 15.10 Critical Areas</li><li>- Chapter 19.120 Clearing, Grading and Tree and Vegetation Retention</li><li>- Chapter 19.160 Geologically Hazardous Areas</li><li>- Administrative Review</li></ul>

Environmental Protection?

# Coppicing

A forestry practice in which trees are cut at the ground and allowed to re-sprout from the stumps. Used to produce biomass, fuel wood, or poles of a particular specification. While sometimes described as basal pollarding, it is not a pruning technique.



**Document Sources:** <http://www.isa-arbor.com/education/onlineresources/dictionary.aspx>  
<http://www.arbortectreecare.co.uk/tree-pruning-and-trimming>  
<http://vergepermaculture.ca/wp-content/uploads/Coppice-trees-blog-front-photo1.jpg>

# Forestry Practice in Washington

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- Relates to the growing, harvesting, or processing of timber for commerce.
- Regulated by Forest Practices Act (Chapter 76.09 RCW).
- Rules established by Washington Forest Practices Board.
- Administered by Department of Natural Resources
- Best Management Practices:
  - Tree Protection on Construction and Development Sites:  
[http://www.dnr.wa.gov/Publications/rp\\_urban\\_treeprtctnguidbk.pdf](http://www.dnr.wa.gov/Publications/rp_urban_treeprtctnguidbk.pdf)
  - Tree Coppicing is not addressed.



# View Preservation

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- Legal Basis:
  - The court of appeals affirmed this by stating that "aesthetic standards are an appropriate component of land use governance."
  - Property owners are not "entitled" to view protection.
  - Views are protected only to the extent that local ordinances provide for such protection.
  - Zoning for aesthetics includes view protection regulations, historic preservation ordinances, design review standards, sign controls, and tree protection measures.
- Des Moines does not have any view protection ordinances.
- Some properties may have view covenants recorded on their property title.

# Potential Amendments to Substitute Draft Ordinance No. 14-043-A

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- Amendment 1 - Council Amendment
- Amendment 2 – Liability Waiver
- Amendment 3 – Best Pruning Practices
- Amendment 4 – DMMC 18.195.130 Scenic View Preservation

# Permit Application and Fee Scenarios

Examples of Fee's for permits associated with trees and vegetation

	Exempt Tree ①	Tree Permit ⑦	Area			
			0 - 1,999 SF	2,000 - 6,999 SF	7,000 - 1 A.C.	> 1 AC
Non-Critical Area	N/A ②	\$150	N/A ②	\$300	\$1,500	\$1,500 ③
Critical Area (without SEPA)	N/A ②	N/A	\$225	\$525	N/A	N/A
Critical Area (with SEPA) ④	N/A ②	N/A	\$525	\$825	\$2,850	\$2,850 ③

## NOTES

- ① Dead, Diseased, or Hazard Tree.
- ② No permit required.
- ③ Plus \$114/AC (1-5 acres) and \$83/AC (>5 acres)
- ④ SEPA fee = \$300.
- ⑤ Additional fees may be required if expert reports are required.
- ⑥ Regulations for work within a 200 feet of a shoreline are subject to SMP. SMP reviews range from \$175 - \$5,550
- ⑦ Basic Tree Permit of \$150 is required only for the following circumstances:
  - 1) Removal of significant trees on undeveloped lot.
  - 2) Removal of tree within required landscape areas.
  - 3) Other unique situations.

**ATTACHMENT 3**

# Coppicing Information:

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A search of the word “coppicing” was conducted on the Washington State, Department of Natural Resources and Ecology websites and revealed the following documents/citations. Based on a brief review of each of these documents, staff has copied all text where the term coppicing was referenced and identified the context under which the term was used.

## Washington State and Ecology websites:

[PDF] [WRITTEN FINDINGS OF THE - Washington](#)

[www.nwcb.wa.gov/siteFiles/Lamiastrum\\_galeobdolon.pdf](http://www.nwcb.wa.gov/siteFiles/Lamiastrum_galeobdolon.pdf)

Lamiastrum galeobdolon is native to temperate regions of ... The plant grows back heavily and can become dominant after coppicing (cutting . 3 back to ...

Coppicing is used in the context of Russian forests and the spread of *L. galeobdolon*:

“In Russian forests, spread of *L. galeobdolon* has been estimated at one m<sup>2</sup> per year (Smirnova and Toropova, 1972, in Packham, 1983), although the spread rate was lower in an English beechwood forest, where the patch radius increased between 50-156 cm per year (Packham, 1983). The plant grows back heavily and can become dominant after coppicing (cutting 3 back to base) (Plants for a Future, 2004). Although Packham (1983) does not consider *L. galeobdolon* as “aggressive” in Great Britain, the author notes that the plant spreads extensively in woodland areas and that a clonal patch can persist for decades if environmental conditions are ideal.”

[PDF] [G0300216 Salmon Creek Corridor Restoration](#)

[www.ecy.wa.gov/programs/wq/tmdl/SalmonCr/SalmonCrSC03FinalRptV2Cpu0706.pdf](http://www.ecy.wa.gov/programs/wq/tmdl/SalmonCr/SalmonCrSC03FinalRptV2Cpu0706.pdf)

excellent riparian habitat the normal **coppicing** and regeneration process has been truncated by Reed canary grass. Normally established trees will ...

[PDF] [G0500036 Middle Salmon Creek Restoration II](#)

[www.ecy.wa.gov/programs/wq/tmdl/SalmonCr/ClarkPUtlMidSalmonCrRestorationIIgrantfinalrpt.pdf](http://www.ecy.wa.gov/programs/wq/tmdl/SalmonCr/ClarkPUtlMidSalmonCrRestorationIIgrantfinalrpt.pdf)

evolved and been a part of providing excellent riparian habitat the normal **coppicing** and regeneration process has been truncated by Reed canary grass.

[PDF] [G0500035 Lockwood Creek Restoration I](#)

[www.ecy.wa.gov/programs/wq/tmdl/EForkLewis/ClarkPUtl-LockwoodCrGrantFinalRpt.pdf](http://www.ecy.wa.gov/programs/wq/tmdl/EForkLewis/ClarkPUtl-LockwoodCrGrantFinalRpt.pdf)

Lockwood Creek Restoration I (LC 04) Clark Public Utilities G0500035 At total of 1,200 feet of eroding streambank was stabilized exceeding the grant

[XLS] [www.ecy.wa.gov](http://www.ecy.wa.gov)

[www.ecy.wa.gov/programs/wq/funding/Projects/WQGrantsAndLoans02-03.xls](http://www.ecy.wa.gov/programs/wq/funding/Projects/WQGrantsAndLoans02-03.xls)

... the normal **coppicing** and reg

The four reference documents above (Salmon Creek Corridor Restoration, Middle Salmon Creek Restoration II, Lockwood Creek Restoration I and the funding table) use the term coppicing as it relates to beaver predation on riparian plantings (trees):

“...once trees/shrubs are coppiced by beaver will rebound once. The next time they are coppiced the plant is stressed and is out competed by Reed canary grass.”

<http://www.ecy.wa.gov/programs/wq/tmdl/SalmonCr/SalmonCrSC03FinalRptV2Cpu0706.pdf>

## Department of Natural Resources website:

### FSC – Forest Management Certification Public Summary Report (2012)

FSC CERTIFICATION SYSTEM Recertification PUBLIC REPORT FOREST MANAGEMENT CERTIFICATION Last report update: 02 December 2013 Washington State Department of ...  
[http://www.dnr.wa.gov/Publications/frc\\_fsc\\_certificate2012.pdf](http://www.dnr.wa.gov/Publications/frc_fsc_certificate2012.pdf) - 1MB - 12/10/2013

### Forest Stewardship Council (FSC) Certification System Public Summary Report

FSC CERTIFICATION SYSTEM PUBLIC SUMMARY REPORT FOREST MANAGEMENT CERTIFICATION Last update date: 28 th February 2012 Washington State Department of Natural ...  
[http://www.dnr.wa.gov/Publications/frc\\_fsc\\_certificate.pdf](http://www.dnr.wa.gov/Publications/frc_fsc_certificate.pdf) - 1MB - 3/12/2012

In the above two documents (FSC and Forest Stewardship Council), coppicing is referenced with regard to forest regeneration:

“timber production forest: 64,676 ha (159,820 ac)

- classified as "**plantation**": 0 ha
- regenerated primarily by **replanting** or by a combination of replanting and coppicing of the planted stems: 753 ha (1,861ac) /year
- regenerated primarily by **natural regeneration**, or by a combination of natural regeneration and coppicing of the naturally regenerated stems: 0 ha”

### Harvest impacts on soil carbon storage in temperate forests

Review Harvest impacts on soil carbon storage in temperate forests Lucas E. Nave a,b, \*, Eric D. Vance c, Christopher W. Swanston d, Peter S. Curtis a a Ohio State University, Department of ...  
[http://www.dnr.wa.gov/Publications/em\\_fp\\_biomass\\_sq7.pdf](http://www.dnr.wa.gov/Publications/em_fp_biomass_sq7.pdf) - 1MB - 9/8/2011

Coppicing is used in a source reference:

*\*Holscher, D., Schade, E., Leuschner, C., 2001. Effects of coppicing in temperate deciduous forests on ecosystem nutrient pools and soil fertility. Basic and Applied Ecology 2, 155–164.*

### Accounting for Carbon in Soils

Accounting for Carbon in Soils Prepared by Alexander Gershenson, Ph.D. James Barsimantov, Ph.D. and EcoShift Consulting, LLC  
[http://www.dnr.wa.gov/Publications/em\\_fp\\_biomass\\_sq13.pdf](http://www.dnr.wa.gov/Publications/em_fp_biomass_sq13.pdf) - 1MB - 9/8/2011  
[\[View duplicates\]](#)

Coppicing is referenced as it relates to the effects of carbon uptake in Turkish oak and how harvest methods play a role in soil carbon retention:

*“Hyvönen et al. (2007) report that 1 year after coppicing total photosynthetic uptake of the regrowing shoots of a Turkish oak counterbalances ecosystem respiration (which is dominated by soil respiration and therefore soil carbon losses), while a clear-cut of Scots pine takes 20 years to regain its carbon sink status. This result implies that, depending on tree species, the amount of carbon available for belowground deposition differs drastically, and soil carbon may take a long time to recover from a disturbance depending on the overall ecosystem characteristics. Although results will vary depending on the ecosystem and harvested species, harvest methods appear to play a major role in soil carbon retention. There are some studies from different systems that illustrate the heterogeneity of these overall effects.”*

San Juan County Community Wildfire Protection Plan

This plan was developed by the San Juan County Community Wildfire Protection Plan steering committee. Adopted by the San Juan County Council August 2012 2010 ...

[http://www.dnr.wa.gov/Publications/rp\\_burn\\_cwpp\\_sanjuanco.pdf](http://www.dnr.wa.gov/Publications/rp_burn_cwpp_sanjuanco.pdf) - 4MB - 11/13/2012

**Coppicing is used in the context of propagating Gorse:**

*"Gorse produces deep and extensive roots and huge numbers of brown to black seeds in grey pods. The seeds have a hard, water-resistant coating which allows them to remain dormant in the soil for up to 30 years. In addition to dispersing a large number of seeds, gorse can spread by coppicing from stumps. As with many fire-adapted species, fire helps propagate new gorse seedlings by cracking the impermeable seed coat as well as clearing the heavy litter associated with mature plants. Post fire regeneration of gorse can be prolific and rapid."*

NMFS FP HCP Biological Opinion & Findings

Endangered Species Act Section 7 Consultation Biological Opinion and Section 10 Statement of Findings And Magnuson-Stevens Fishery Conservation and Management Act Essential Fish ...

[http://www.dnr.wa.gov/Publications/fp\\_hcp\\_nmfs\\_bo\\_findings.pdf](http://www.dnr.wa.gov/Publications/fp_hcp_nmfs_bo_findings.pdf) - 1MB - 9/29/2008

USFWS FPHCP Biological Opinion Part 1

United States Department of the Interior FISH AND WILDLIFE SERVICE Western Washington Fish and Wildlife Office 510 Desmond Drive SE, Suite 102 Lacey, Washington 98503 Memorandum To: ...

[http://www.dnr.wa.gov/Publications/fp\\_hcp\\_usfws\\_bo\\_pt\\_1.pdf](http://www.dnr.wa.gov/Publications/fp_hcp_usfws_bo_pt_1.pdf) - 2MB - 9/29/2008

**In the above two documents (NMFS and USFWS) coppicing is used in the context of controlling deciduous tree species as it related to competition with conifer seedlings:**

*"Young alder competing with conifer seedlings are often hand-slashed, while big-leaf maple coppicing (production of new shoots from stumps or roots) is usually controlled by fine stem spraying or injection with herbicides. Control of broadleaf plants often involves the use of a variety of chemicals."*

## ATTACHMENT 4



## Relevant City Goals, Policies and Strategies

### City Council

The following goals, resolutions and ordinances related to environmental, critical area, shoreline and environmental protection were adopted by the Des Moines City Council:

**Council Goal 11:** Protect the natural environment.

**Resolution No. 1199:** *Environmental Stewardship Policies for the City of Des Moines*

**Ordinance No. 1400:** Environmentally Critical Area Ordinance

**Ordinance No. 1502:** City of Des Moines Shoreline Master Program

### Comprehensive Plan Goals, Policies and Strategies

The following are excerpted Comprehensive Plan Goals, Policies and Strategies related to environmental, critical area, shoreline and tree/vegetation protection:

#### Land Use Element:

**Goal 2-01-01.** Preserve and enhance the diverse residential neighborhoods of the community and serve them with vibrant business districts, open space, recreational facilities, affordable housing, and other supportive land uses; protect environmentally critical areas, and promote economic development.

**Policy 2-03-02.** Preserve open spaces where appropriate to:

- (1) Protect environmentally critical areas;
- (2) Protect endangered and threatened species;
- (3) Provide visual separation between land use, neighborhood and city boundaries; and
- (4) Moderate the environmental and visual impacts of new development.

#### Transportation Element:

**Strategy 3-05-08. Environmental.**

- (1) Construct roads and other transportation facilities to minimize adverse impacts upon surface water runoff, drainage patterns, and environmentally critical areas

#### Conservation Element:

All goals, policies and strategies relate to protection of environmentally critical areas. The following policy and strategy excerpts specifically relate to the preservation and management of trees and vegetation. The Conservation Element is included in its entirety at the end of this section:

**Policy 4-03-01.** Plan and encourage sound management of natural resources--land, air, water, vegetation, fish, wildlife, and energy--considering entire watersheds and regional influences.

**Policy 4-03-04.** Provide protections for critical areas within shorelines, as designated by the City's Shoreline Management Program. Review and revise the City's Shoreline Management Program, at least every five years to ensure protection of the ecological functions and values of shorelines from cumulative adverse environmental impacts, and to ensure compliance with the requirements of the Growth Management Act.

**Policy 4-03-05.** Explore approaches to regulations and procedures that streamline the permit review process for development in or near shorelines and critical areas.

**Policy 4-03-08.** Promote the preservation of native vegetation and mature trees; revegetation; and appropriate landscaping to improve air and water quality and fish and wildlife habitat.

**Strategy 4-04-01, Conservation Planning:**

- (5) Regulate and plan land use and condition development proposals in ways that protect mature trees, native vegetation, stream flow, fish and wildlife habitat, groundwater recharge, and air quality, as well as natural topographic, geologic, and hydrologic features.
- (7) Maintain and monitor the Shoreline Master Program to control and regulate development in the shoreline area.

**Strategy 4-04-02, Environmentally Critical Areas:**

- (2) Plan and encourage sound management of natural resources--land, air, water, vegetation, fish, wildlife, and energy--considering entire watersheds and regional influences.
- (3) The City of Des Moines shall evaluate programs and regulations to determine their effectiveness in contributing to ESA listed species conservation and recovery, and shall update and enhance programs and plans where appropriate including evaluation of the Zoning Code, the Critical Areas Ordinance, the Shoreline Master Program, the clearing and grading regulations, the landscaping regulations, best management practices for vegetation management and use of insecticides, herbicides and fungicides. The City of Des Moines shall amend these regulations, plans and best management practices to enhance their effectiveness in protecting and restoring salmonid habitat, taking into consideration the model program developed by the Tri-County Salmon Conservation Coalition and the recommendations of shared strategy.
- (4) Require that development proposals contain measures to stabilize soils, hillsides, bluffs and ravine sidewalls and promote wildlife habitat by retaining critical areas of existing native vegetation.
- (5) Regulate development on bluffs and ravine sidewalls, and require a buffer of undisturbed native vegetation adjacent to them that is adequate in size to insure human safety, health and welfare and to restore and preserve other functions served by bluffs and ravines.

**Strategy 4-04-06, Air:**

- (2) When other trees are not available or do not provide the needed screening, require that planting and maintenance of trees be an integral part of City street development standards. Require all developments to include landscaping improvements using trees, shrubs, and ground covers. Undertake measures to ensure the survival and good health of trees and plants.

**Parks, Recreation and Open Space Element:**

**Findings 6-02-02.** Parks and conservancy areas can preserve and protect critical areas and wildlife habitat, provide natural areas in urban areas, and allow for certain low impact recreational opportunities.

**Policy 6-03-01, Acquisition:**

- (5) Parks and conservancy areas can preserve and protect critical areas and wildlife habitat, provide natural areas in urban areas, and allow for certain low impact recreational opportunities.

**Strategy 6-04-05.** Parks and conservancy areas can preserve and protect critical areas and wildlife habitat, provide natural areas in urban areas, and allow for certain low impact recreational opportunities.

- The park or recreation area contains critical areas as defined in the Zoning Code that serves a significant role or provides a significant function in the natural systems within Des Moines.

**Marina District Element:**

**Strategy 10-04-01.** Ensure that street trees are planted throughout downtown.

**Pacific Ridge Element:**

**Strategy 11-04-08.** Ensure that street trees are planted throughout the Pacific Ridge.

**Appendix B: City of Des Moines Buildable Lands Report and Household Growth Targets:**

The City's Buildable Lands Report considered environmentally critical areas to determine the amount of land suitable for urban development, and to evaluate its capacity for growth.



## **CHAPTER 4 : CONSERVATION ELEMENT**

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### **4-01        GOALS**

4-01-01        To protect, improve, and sustain environmental quality through best management practices and the use of best available science.

4-01-02        To protect environmentally critical areas from damage caused by encroachment and development.

4-01-03        To prevent flooding, erosion, sedimentation, water quality, and habitat degradation, and to protect, restore, and enhance all surface waters.

4-01-04        To conserve and replenish fish and wildlife resources.

4-01-05        To protect, improve, and sustain ground water quality and quantity through best management practices, and sound and innovative environmental management.

4-01-06        To protect critical areas from noise impacts.

4-01-07        To protect all streams and wetlands that are in the public interest.

4-01-08        To protect species and their habitats that have been identified as endangered, threatened, or sensitive by the State and Federal governments.

### **4-02        BACKGROUND AND CONTEXT**

4-02-01        The City of Des Moines has a natural resource base of land, air, water, vegetation, fish, wildlife, and energy.

4-02-02        Development and urbanization have resulted in serious environmental problems, including but not limited to, flooding; elimination of fish and wildlife habitat; pollution of land, water and air; inefficient energy use; noise; and soil and geologic instability.

4-02-03        Sound planning, best management practices, , best available science (BAS), wise purchases, and application of technology can assist in protecting the remaining natural resource base from further loss or degradation, and can restore or improve the previously lost or degraded natural resource base.

4-02-04        Both individually and interacting as a whole, natural resources provide the essential elements for human life. Moreover, they provide valuable functions to the City of Des Moines, including: control of flooding, surface water runoff, erosion, and sedimentation; groundwater and aquifer recharge; soil and geologic stability; air and water cleansing; and habitat for flora and fauna.

**4-02-05** The uplands and lowlands of the City of Des Moines are linked through the hydrologic cycle. Many of the impacts of urbanization are related to changes in hydrologic processes. Therefore, by focusing planning efforts on watersheds, impacts of development can be better estimated and understood, and solutions better implemented.

**4-02-06** The natural resources of the City of Des Moines are affected by regional influences. Environmental processes and problems do not obey jurisdictional boundaries. Cooperative environmental management among neighboring jurisdictions, tribes, and state and federal agencies can prevent or overcome regionally influenced problems.

**4-02-07** Pollution prevention and environmental improvements require an ongoing commitment from an informed, involved public.

**4-02-08** The natural landscape of the City of Des Moines is made up of various streams, wetlands, shorelines, hillsides, forests and fields. Development has significantly disturbed the natural environment. However, the remaining environmentally critical areas, also referred to as sensitive areas, are important contributors to the City of Des Moines natural resource base and high quality of life.

**4-02-09** The GMA requires that the City of Des Moines designate its critical areas and develop policies and development regulations to protect the functions and values of critical areas using “best available science” (BAS).

**4-02-10** Critical areas within the City of Des Moines include wetlands, streams, areas with a critical recharging effect on aquifers, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas. The locations of critical areas within the City of Des Moines are shown in figures 4-1 through 4-7.

**4-02-11** Critical areas are unique resources, which if preserved and protected, can protect public and private resources from damage or loss due to flooding, erosion, landslides, seismic and volcanic events, soil subsidence, or steep slope failures. Environmentally critical areas also protect ground and surface water quality and quantity. Critical areas are also part of the aesthetic resources in the City and form distinctive features of natural lands and wooded hillsides.

**4-02-12** Surface water management becomes more critical with urbanization as natural areas are covered with impervious surfaces such as buildings, streets, and parking lots. The City of Des Moines’ surface water management program includes prevention and mitigation of problems due to flooding, erosion, and sedimentation.

**4-02-13** State Law (RCW 35. 27.370) grants the City of Des Moines specific authority to prevent and abate the pollution of surface water inside and outside the City and to enact ordinances that contain enforcement provisions.

**4-02-14** The City of Des Moines’s adopted surface water management program contains policies, and programmatic recommendations that enhance the City of Des Moines’ ability to effectively manage surface waters. The surface water management plan and individual basin plans are developed with the cooperation of other affected jurisdictions. The City of Des Moines

also operates a number of capital facilities that reduce flooding, erosion, and sedimentation; mitigate habitat loss; enhance ground water recharge; and prevent water quality degradation.

**4-02-15** The Growth Management Act requires that cities give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. The City must also include best available science when developing protection policies.

**4-02-16** Open spaces, critical areas and public watersheds provide benefits to wildlife. Preserving these resources also serves to protect wildlife.

**4-02-17** The goal of conserving fish and wildlife habitat can be achieved through the implementation of several strategies, including: a) identification and protection, or purchase, of critical fish and wildlife habitat conservation areas; b) linking those critical habitat areas with other protected lands, and c) integrating fish and wildlife habitat and conservation goals into new and existing developments.

**4-02-18** Since fish and wildlife and their habitats do not respect political boundaries, linkages of critical habitat areas should be made across boundaries.

**4-02-19** Buffer requirements for streams and wetlands intended to protect wildlife resources in those critical areas were established using "best available science." Development regulations have also been established to protect areas with critical fish and wildlife habitat.

**4-02-20** The most effective way to protect and enhance native fish populations is through protection of river, stream, and creek channels, riparian corridors, lakes, wetlands, and watersheds that provide or impact spawning and rearing habitat, food resources, and fish passage. Intermittent streams can also be critical to native fish populations. Presently, fish enhancement facilities and programs are critical to the maintenance of salmon stocks and the fisheries industry.

**4-02-21** Protection of isolated blocks of habitat may not adequately protect wildlife in the City of Des Moines -- critical fish and wildlife habitats and refuges may need to be connected across the landscape through a system of habitat corridors. Some areas may be important because they serve as vital linkages among habitat areas.

**4-02-22** A key element in a comprehensive wildlife protection program is to encourage integration of wildlife habitat into new developments when possible. Protection of wildlife does not need to be at odds with land development.

**4-02-23** Consideration of fish and wildlife during site design and construction can help to protect and preserve habitat areas.

**4-02-24** Benefits to wildlife are enhanced when on-site landscaping includes native vegetation. Retention of natural vegetation can often provide similar aesthetic benefits as areas landscaped with non-indigenous plant materials.

**4-02-25** Policies in other elements that recognize the value of natural amenities and wildlife habitat also serve to meet the goal of integrating wildlife habitat and new development.

**4-02-26** Integrating wildlife goals with public land uses, such as parks, landscaping along roadways, stormwater control facilities, and landscaping around government buildings can help provide important habitat areas.

**4-02-27** Ground water is an important source of water used in the City. In the future, ground water may provide a greater percentage of our water supply needs.

**4-02-28** Rainfall that enters the ground replenishes ground water and provides base flow for streams, wetlands and rivers during periods of limited rainfall. This base flow sustains fish, wildlife, their habitats, and recreational values.

**4-02-29** The natural hydrologic cycle can be altered by development practices and overuse of the aquifer. The result may be depletion of aquifers.

**4-02-30** Groundwater is subject to contamination from human activity. The cost of protection is considerably less than the cost of remediation and replacement.

**4-02-31** The Growth Management Act requires the designation of “areas with a critical recharging effect on aquifers used for potable water.” The procedural criteria to classify critical areas (chapter 365-190 WAC) further defines these areas as areas where an aquifer is a source of drinking water and is vulnerable to contamination that would affect the potability of the water. It is difficult to define and map ground water recharge areas because ground water systems are hydrologically and geologically complex.

**4-02-32** Wellhead protection studies are required by the 1986 amendments to the Federal Safe Drinking Water Act. The three water districts that provide the City’s water; King County Water District 54, Highline Water District, and Lakehaven Utility District, have completed such studies. The studies provide additional information about contamination susceptibility of aquifers and also increase understanding of where aquifer recharge areas are located.

**4-02-33** The functions and values of environmentally critical areas can be severely damaged by improper clearing, grading, filling, refuse dumping, and construction. Such actions need to be reviewed for significant adverse environmental impacts before approval.

**4-02-34** Scientific research has determined that wetlands are best protected by undisturbed buffer areas. Undisturbed buffers are vegetated areas in which no development occurs. The wetland buffer provides food, cover, travel routes, and roosting and nesting sites for many wildlife species. Wetland buffers are also critical to wetland ecology. Construction near or within a wetland or its buffer area can reduce or eliminate these habitat functions. Construction can lead to erosion and increased surface runoff that can cause silt and contaminants to enter the wetland. When upland buffers are present between the development and the wetland, the buffer receives the majority of the impact, thereby protecting the wetland.



**4-02-35** Scientific research has determined that watercourses are best protected by undisturbed buffer areas. In addition to protecting the watercourse, the buffer protects adjacent upland areas from flooding while also providing wildlife habitat. The critical functions of the buffer include shading, input of organic debris, nutrient uptake, bank stabilization, and the interception of sediment.

**4-02-36** Scientific research has determined that unstable slopes are best protected by undisturbed buffer areas. Certain hillsides in the City of Des Moines are either unstable or susceptible to instability when disturbed. These hillsides are underlain by permeable soils, and are subject to seepage. They also include areas that have experienced landslides in the past and have slopes that are being undermined by stream or beach erosion. Construction in these areas is expensive and difficult. Landslides on such slopes can result in enormous public and private costs, and severe threats to public safety and natural resources.

### **4-03**        **POLICIES**

**4-03-01** Plan and encourage sound management of natural resources--land, air, water, vegetation, fish, wildlife, and energy--considering entire watersheds and regional influences.

**4-03-02** Review and revise the City's Critical Areas Ordinance, at least every five years, to ensure protection of the ecological functions and values of critical areas from cumulative adverse environmental impacts; and to ensure compliance with the requirements of the Growth Management Act.

**4-03-03** Include "best available science" when reviewing, revising, or developing policies and development regulations to protect the functions and values of critical areas, giving special consideration to the protection of anadromous fisheries.

**4-03-04** Provide protections for critical areas within shorelines, as designated by the City's Shoreline Management Program. Review and revise the City's Shoreline Management Program, at least every five years to ensure protection of the ecological functions and values of shorelines from cumulative adverse environmental impacts, and to ensure compliance with the requirements of the Growth Management Act.

**4-03-05** Explore approaches to regulations and procedures that streamline the permit review process for development in or near shorelines and critical areas.

**4-03-06** Balance social, economic, and environmental goals to land use planning activities.

**4-03-07** Work with citizens, land owners, businesses, neighboring cities, King County, special purpose districts, and private and public agencies to protect and improve environmental quality, seeking shared responsibility and uniform environmental management.

**4-03-08** Promote the preservation of native vegetation and mature trees; revegetation; and appropriate landscaping to improve air and water quality and fish and wildlife habitat.

4-03-09 Regulate significant land clearing, grading, and filling to minimize the area, time, and slope length of exposed soils, and to reduce on-site erosion and off-site sediment transport.

Prohibit any significant clearing, grading, or filling operations prior to drainage and erosion/sedimentation plan approval and implementation.

4-03-10 Regulate public and private development proposals in ways to insure that the valuable functions of natural resources are preserved, restored, or improved.

4-03-11 Analyze the chain of environmental impacts from public and private development proposals in context of the whole watershed. Approve, condition, restrict, or deny development proposals based upon accurate and well-documented environmental information.

4-03-12 Manage solid and hazardous wastes in a manner that results in waste reduction, prevents land, air, and water pollution, and conserves natural resources.

4-03-13 Take measures to control noise pollution and reduce noise impacts.

4-03-14 Regulate land uses to conserve all forms of energy.

4-03-15 Encourage and support education and public involvement programs aimed at protecting environmental quality. These programs should: (1) inform, educate, and involve individuals, groups, businesses, industry, and government; (2) increase understanding; and (3) encourage commitment.

4-03-16 Require review and permit approval before construction activity is allowed to occur within, adjacent to, or likely would affect an environmentally critical area.

4-03-17 Undertake all necessary actions to protect the quality of surface water bodies located in the city.

4-03-18 Reduce flooding, erosion, and sedimentation; prevent and mitigate habitat loss; enhance ground water recharge; and prevent water quality degradation. The surface waters of the City of Des Moines should be managed through plans, programs and regulations developed by the City of Des Moines in cooperation with affected jurisdictions.

4-03-19 Manage surface water using a watershed approach, with responsibility shared among the City of Des Moines and affected jurisdictions. Emphasize educational programs and implementation of Best Management Practices to reduce pollution entering surface waters.

4-03-20 Consistent with land use density objectives, strive to maintain the existing diversity of species and habitat in the City and maintain a quality environment that includes fish and wildlife habitats that support the greatest diversity of native species.

4-03-21 Protect and preserve habitat for species that have been identified as endangered, threatened, or sensitive by the state or federal government, or as priority species or priority habitats by the County.

- 4-03-22 Designate and protect fish and wildlife habitat conservation areas including:
- (1) Priority species of local importance and their habitat as listed by the most current King County Comprehensive Plan and/or the Washington Department of Fish and Wildlife;
  - (2) Commercial and recreational shellfish areas;
  - (3) Kelp and eel grass beds;
  - (4) Herring and smelt spawning areas, and
  - (5) Wildlife habitat networks designated by the City of Des Moines.

4-03-23 Ensure that stream and wetland buffers be of adequate size to protect critical wildlife species and habitat.

4-03-24 Protect salmonid habitat by ensuring that land use and facility plans (transportation, water, sewer, power, gas) include riparian habitat conservation measures. Ensure that development within basins that contain fish enhancement facilities consider impacts to those facilities.

4-03-25 Work with adjacent jurisdictions and state federal and tribal governments during land use plan development review to identify and protect habitat networks at jurisdictional boundaries.

4-03-26 Be a good steward of public lands and integrate fish and wildlife habitat into capital improvement projects when practicable.

## **4-04 STRATEGIES**

### **4-04-01 Conservation Planning**

- (1) Prepare studies of Des Moines area watersheds, identifying environmental problems and short-term and long-term means for solving the problems.
- (2) Identify and rank capital improvement and land acquisition projects that can prevent flooding, protect surface and ground water quality, stabilize hillsides, and protect, restore, and enhance fish and wildlife habitat.
- (3) Require that development proposals provide measures for restoring or enhancing any lost or degraded functions provided by the environment.
- (4) Grading and construction activities shall implement erosion control Best Management Practices and other development controls as necessary to reduce sediment and pollution discharge from construction sites to minimal levels.

- (5) Regulate and plan land use and condition development proposals in ways that protect mature trees, native vegetation, stream flow, fish and wildlife habitat, groundwater recharge, and air quality, as well as natural topographic, geologic, and hydrologic features.
- (6) Promote public involvement in restoring, protecting, and enhancing natural resources through such programs as Adopt-A-Stream and the Backyard Wildlife Sanctuary Program, by working with local educational institutions, and by integrally involving citizens in developing, implementing, and monitoring environmental programs.
- (7) Maintain and monitor the Shoreline Master Program to control and regulate development in the shoreline area.
- (8) Maintain development regulations and a permitting system to prevent the destruction of critical areas including wetlands, areas with a critical recharging affect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.
- (9) Designate, map, and protect habitat networks throughout the City of Des Moines from significant adverse environmental impacts.
- (10) In compliance with RCW 36.70A.172, the City should include a record of evidence that it has given “special consideration” to conservation or protection measures necessary to preserve or enhance anadromous fisheries. The record should be developed using the criteria set out in WAC 365-195-900 through 365-195-925 to insure that conservation or protection measures necessary to preserve or enhance anadromous fisheries are grounded in BAS.
- (11) Conservation or protection measures necessary to preserve or enhance anadromous fisheries include measures that protect habitat important for all life stages of anadromous fish, including, but not limited to, spawning and incubation, juvenile rearing and adult residence, juvenile migration downstream to the sea, and adult migration upstream to spawning areas. Special consideration should be given to habitat protection measures based on the best available science relevant to stream flows, water quality and temperature, spawning substrates, instream structural diversity, migratory access, estuary and nearshore marine habitat quality, and the maintenance of salmon prey species. Conservation or protection measures can include the adoption of interim actions and long-term strategies to protect and enhance fisheries resources.
- (12) Encourage the integration of native plant communities and wildlife habitats with other land uses where possible. Encourage or require that development protect wildlife habitat through site design and landscaping. Encourage or require that new development within or adjacent to wildlife habitat networks incorporate design techniques that protect and enhance wildlife habitat values.

- (13) Provide technical assistance, education, and information to citizens and groups wishing to install wildlife enhancement projects. Encourage public demonstration projects that show the range of possibilities for integration of wildlife into a variety of land uses. Consider demonstration projects done jointly by the City and a private landowner or organization.
- (14) To the extent permitted by state and federal law, in order to minimize adverse impacts related to noise, protect fish and wildlife habitat conservation areas from environmental noise levels that exceed 55 Ldn (dBA), or the Ldn in existence on the effective date of this element, whichever is higher. To the extent permitted by state and federal law, a reduction in the exterior noise level shall become the new maximum exterior noise level.

**4-04-02**      **Environmentally Critical Areas**

- (1) Identify environmentally critical areas and promulgate performance standards and development regulations for any proposed developments within or adjacent to them.
- (2) Develop and update regulations on development in wetlands and streams, and require an undevelopable buffer of preferably native vegetation adjacent to them that is adequate in size to preserve the natural and beneficial values served by wetlands and streams.
- (3) The City of Des Moines shall evaluate programs and regulations to determine their effectiveness in contributing to ESA listed species conservation and recovery, and shall update and enhance programs and plans where appropriate including evaluation of the Zoning Code, the Critical Areas Ordinance, the Shoreline Master Program, the clearing and grading regulations, the landscaping regulations, best management practices for vegetation management and use of insecticides, herbicides and fungicides. The City of Des Moines shall amend these regulations, plans and best management practices to enhance their effectiveness in protecting and restoring salmonid habitat, taking into consideration the model program developed by the Tri-County Salmon Conservation Coalition and the recommendations of shared strategy.
- (4) Require that development proposals contain measures to stabilize soils, hillsides, bluffs and ravine sidewalls and promote wildlife habitat by retaining critical areas of existing native vegetation.
- (5) Regulate development on bluffs and ravine sidewalls, and require a buffer of undisturbed native vegetation adjacent to them that is adequate in size to insure human safety, health and welfare and to restore and preserve other functions served by bluffs and ravines.

- (6) Restrict development proposals on potentially unstable land, such as areas with erosion, landslide, and seismic hazards, to insure safety and conformity with existing natural constraints.
- (7) Seek public acquisition of environmentally critical areas that have outstanding valuable natural functions and aesthetic assets.
- (8) Administer and enforce adopted land use regulations that protect environmentally critical areas from the impacts of adjacent land uses.
- (9) Require the issuance of a permit and review by the City prior to any construction activity that would occur in, be adjacent to, or would likely affect a critical area. A permit would be required because the functions and values of unique critical areas can be severely damaged by improper refuse dumping, clearing, grading, filling, and construction.
- (10) Using "best available science" (BAS), review and update development regulations pertaining to development in and protection of critical areas (the Critical Areas Ordinance), particularly those which directly or indirectly effect the health of the regions' anadromous fisheries, in the City of Des Moines, between five and ten years of the adopted ordinance date.
- (11) In designating and protecting critical areas the City shall include BAS, consistent with criteria set out in WAC 365-195-900 through 365-195-925.
- (12) BAS is information that (1) state or federal natural resource agencies have determined represents the best available science, (2) was derived from consultation with qualified scientific expert(s), as defined in WAC 365-195-905, or (3) was produced through a valid scientific process. A valid scientific process should have the following characteristics, as defined in WAC 365-195-905: peer review, methods, logical conclusions and reasonable inferences, quantitative analysis, context, and references.
- (13) Where valid or complete scientific information is not available, the City shall take a precautionary or no risk approach, in which development and land use activities are strictly limited until the uncertainty is sufficiently resolved (as stated in WAC 365-195-920). As an interim approach the City should take an effective adaptive management approach, where the results of land use decisions are scientifically evaluated as to their impacts on critical areas.
- (14) Strive to balance the City's goals of protecting environmentally critical areas with the other social, cultural, and economic goals of the City of Des Moines Comprehensive Plan.
- (15) Document, on the record, the use of BAS and instances when non-scientific information was used in-lieu-of BAS during the process of developing policies and regulations to protect critical areas and anadromous fisheries. Documentation

should include the relevant sources of BAS. Documentation should also include information that departs from BAS and was used as a basis for critical areas policies and regulations.

- (16) The City should identify and document any non-scientific information (including legal, social, cultural, economic, and political), used as a basis for critical areas ordinance policies and regulations, that departs from recommendations derived from BAS. In these cases the City should provide a rationale for use of such information. The City should also identify potential risks to the functions and values of the critical areas at issue and any additional measures chosen to limit such risk.

#### **4-04-03 Shoreline Master Program**

- (1) **The *Des Moines Shoreline Master Program***(SMP) update was provisionally passed by the City Council Resolution No. 1122 on April 8, 2011. As provided by Chapter 18.90 DMMC, the SMP is incorporated as one chapter of the Des Moines Zoning Code (Title 18 DMMC).

#### **4-04-04 Solid and Hazardous Waste Management**

- (1) Prepare, implement, and monitor a waste reduction and recycling plan consistent with State of Washington law and the King County Comprehensive Solid Waste Management Plan.
- (2) Prepare, implement, and monitor a hazardous waste management plan consistent with State of Washington law and the Local Hazardous Waste Management Plan for Seattle-King County.

#### **4-04-05 Water Management**

- (1) Develop a surface water management program that will:
  - (a) Enhance water quality and control flooding;
  - (b) Effectively use and maintain existing drainage facilities that provide fish and wildlife habitat;
  - (c) Satisfy all regulatory requirements and compliance schedules; and
  - (d) Identify and fund capital improvements.
- (2) Require that development proposals maintain surface water runoff rate, volume, and quality at pre-development levels. Where watershed studies show that the impacts of urbanization are significant, additional measures should be implemented to attenuate drainage problems posed by these impacts.
- (3) Protect and improve surface and ground water quality by requiring development proposals to implement best management practices and other available technology for controlling point and non-point sources of pollution.



- (4) Promote ground water infiltration and minimize surface water runoff by requiring development proposals to limit impervious surfaces.
- (5) Require that development proposals contain measures to control on-site soil erosion and off-site sediment transport during and after construction through the use of best management practices and other available erosion and sedimentation control technology.
- (6) Take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains.
- (7) Work with the Washington State Department of Ecology to implement the programs of the Puget Sound Water Quality Management Plan.
- (8) As authorized by the laws of State of Washington (such as RCW 35.24.280), act to prevent and fine any person or private or public entity causing pollution of surface waters flowing through or into the City of Des Moines from up to five miles from its corporate limits.
- (9) Establish and/or maintain enforcement mechanisms that may be used to prevent or stop contamination to surface water quality.
- (10) If surface water contamination is found in the City of Des Moines, consider requesting state or federal investigations or enforcement actions. Consider pursuing all appropriate civil actions under state and federal law to abate the pollution problem, including a citizen suit under the federal Clean Water Act.
- (11) The City of Des Moines shall maintain a map of Critical Areas.
- (12) Protect the quality and quantity of groundwater by:
  - (a) Assisting during implementation of the South King County Groundwater Management Plan.
  - (b) Implement, as appropriate, Wellhead Protection Programs in conjunction with adjacent jurisdictions and ground water purveyors.
  - (c) Encourage or require use of Best Management Practices for new development recommended by the South King County Groundwater Management Plan.
  - (d) Refine land use and critical areas regulations, as appropriate, to protect critical aquifer recharge areas.

- (13) In order to ensure the quality of surface water and protect the health and welfare of its citizens, the City of Des Moines will:
- (a) Establish a program to monitor surface water quality within its boundaries and encourage neighboring jurisdictions to implement similar monitoring programs.
  - (b) Develop plans, programs and regulations, in cooperation with other jurisdictions, to manage the surface waters of the City.
  - (c) Work with other jurisdictions to develop a watershed approach to surface water management that includes implementation of Best Management Practices and public education initiatives.

**4-04-06**      **Air**

- (1) Require that air pollution generated from all land uses be restricted to federal and state ambient air pollution standards. Restrict air pollution generated from solid fuel burning devices and open burning to state emission standards, curtailment rules, and fuel restrictions.
- (2) When other trees are not available or do not provide the needed screening, require that planting and maintenance of trees be an integral part of City street development standards. Require all developments to include landscaping improvements using trees, shrubs, and ground covers. Undertake measures to ensure the survival and good health of trees and plants.

**4-04-07**      **Energy**

- (1) Establish construction and site planning standards that result in energy conservation or utilize alternative energy sources.
- (2) Seek to stimulate a land use pattern that encourages an efficient transportation system.
- (3) Implement measures to improve bicycle and pedestrian circulation systems.

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## ATTACHMENT 5

PLANNING, BUILDING AND PUBLIC WORKS SUBSTITUTE DRAFT 09/12/2014

SUBSTITUTE DRAFT ORDINANCE NO. 14-043-A

**AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON** revising and updating City of Des Moines development regulations relating to the cutting and removal of trees on private developed sites, private undeveloped sites, public properties, City-owned property and right-of-way, and environmentally critical areas; adding and codifying a new chapter entitled "Trees" to Title 16, amending chapters 14.20, 16.01, and 18.195 of the Des Moines Municipal Code (DMMC) to add new definitions and development regulations, and repealing DMMC 18.195.130 and section 424 of Ordinance No. 1591, and finding that the revised development regulations meet the statutory requirements of RCW 36.70A.106.

**WHEREAS**, tree cutting, tree removal and tree retention are regulated pursuant to the Use and Maintenance of Public Rights-of-Way (chapter 12.05), Land Filling, Clearing and Grading Code (chapter 14.20 DMMC), Environmentally Critical Areas Code (chapter 16.10), Shoreline Master Program (chapter 16.20 DMMC), Layout and Design of Subdivisions and Similar Requirements (chapter 17.35), and Landscaping and Screening Requirements (chapter 18.195 DMMC), and

**WHEREAS**, there is no clear policy or development criteria in the DMMC regarding "best management practices" for the cutting of trees, and

**WHEREAS**, the City researched and assessed the experience of other jurisdictions in regard to standards and requirements for regulating the cutting of trees, and

**WHEREAS**, the City Council Environment Committee held three meetings to consider the matter and provided guidance on the development of Draft Ordinance No. 14-043, and

**WHEREAS**, the changes proposed by this Ordinance have been processed in accordance with the requirements of the State Environmental Policy Act (SEPA), a final determination of non-significance was issued by the SEPA responsible official, and published on April 28, 2014, in the *Seattle Times*, and the appropriate comment period expired on May 12, 2014, and the appeal period concluded on May 22, 2014, and

**WHEREAS**, a notice of intent to adopt the proposed code amendments was sent to the Washington State Department of Commerce for a 15-day expedited review and comment period in accordance with State law, and

**WHEREAS**, notice of the public hearing was given to the public in accordance with the law, and

**WHEREAS**, a public hearing was held on the 22nd day of May, 2014, and the City Council sent the Draft Ordinance back to the Environment Committee for further review, and

**WHEREAS**, a City Council Environment Committee met on July 17, 2014 to review and discuss the substitute Draft Ordinance and directed staff to bring the substitute Draft Ordinance back to the full Council, and

**WHEREAS**, notice of the public hearing was given to the public in accordance with the law, and

**WHEREAS**, a public hearing was held on the 2nd day of October, 2014, and all persons wishing to be heard were heard, and

**WHEREAS**, the City Council finds that the amendments contained in this Ordinance are appropriate and necessary for the protection of sensitive, unique, fragile and valuable features of the City's environment and protecting the public health, safety and welfare against loss or damage from the indiscriminant cutting of trees in the City; now therefore,

**THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:**

A new chapter shall be added to Title 16 DMMC to read as follows in sections 1 through 12 of this Ordinance:

**NEW SECTION.**           **Sec. 1. Title.** This chapter shall be entitled "Trees".

**NEW SECTION.**           **Sec. 2. Application.** This chapter shall apply to the removal, cutting, and pruning of trees within the City of Des Moines.

**NEW SECTION.**      **Sec. 3. Purpose.**      These regulations are adopted to promote the public health, safety and general welfare of the citizens of Des Moines, including minimizing erosion, siltation and water pollution, surface water and ground water runoff, risks of landslides, and the need for additional storm drainage facilities; preserving trees for the reduction of noise, wind protection, slope stabilization, animal habitat, and reduction in air pollution; removing dead, diseased, or hazardous trees; implementing the City's comprehensive plan; providing for the delivery of reliable utility service; and reasonable development of property.

**NEW SECTION.**      **Sec. 4. Authority.**      This chapter is adopted pursuant to the authority set forth in chapters 36.70A, 36.70B and 36.70C RCW and other applicable laws.

**NEW SECTION.**      **Sec. 5. Permit - Requirements.**

(1) No tree permit required. Except as otherwise provided in subsection (2) of this section, no tree permit is required to remove, cut, or prune trees on private developed or partially developed lots as follows:

(a) Trees located outside of environmentally critical areas, shoreline areas, and associated buffer areas as verified by the City or qualified professional;

(b) Trees that are not part of a required landscaping area;

(c) The total area to be cleared is less than 2,000 square feet; and

(d) An exemption from a tree permit does not exempt a property owner from complying with policies, criteria and standards contained in this chapter or other applicable local, state or federal regulations or permit requirements.

(2) Tree permit required. Except as exempted in subsection (3) of this section, a tree permit is required to remove, cut, or prune trees as follows:

(a) Trees located within a critical area or shoreline area, or associated buffers.

(b) Trees located within a required landscaping area.

(c) Trees located on a private developed or partially developed lot where the total area to be cleared is 2,000 square feet or greater.

(d) Trees located on private undeveloped lots.

(e) Trees located on City-owned property.

(f) Trees located on City right-of-way.

(3) Exemptions. The following situations are exempt from obtaining a tree permit that would otherwise be required under this section:

(a) Dead, diseased or hazard trees, as determined and/or verified by the City or as determined by a certified arborist, that are located outside of critical areas, shoreline areas and associated buffers.

(b) Emergency. A tree may be removed without first obtaining a tree permit in an emergency situation involving immediate danger to life or property provided the City is notified within seven days of the tree being cut, is provided such additional information as the City requests in order to verify the emergency, and an-after-the-fact tree permit is obtained within twenty days following the cutting of the tree, if required.

(c) Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this Code or any other laws or ordinances of the City.

(4) Other permits required. Other permits may be required as follows:

(a) Removing, cutting, or pruning of trees located within environmentally critical areas or the associated buffer



shall be reviewed in accordance with the environmentally critical areas regulations codified in chapter 16.10 DMMC.

(b) Removing, cutting, or pruning of trees located within shoreline environments or the associated buffer shall be reviewed in accordance with the shoreline master program codified in chapter 16.20 DMMC.

(c) Removing, cutting, or pruning of trees in a required landscaping area are subject to the Landscaping and Screening provisions codified in chapter 18.195 DMMC, and/or the requirements identified on the Final Plat.

(d) Removing, cutting, or pruning of trees located within the City right-of-way shall be reviewed in accordance the Use and Maintenance of Public Rights-of-Way provisions codified in chapter 12.05 DMMC.

(e) Removal, cutting, or pruning of trees that results in a total area of disturbance greater than 2,000 square feet shall be reviewed in accordance with the land clearing, grading, and filling provisions codified in chapter 14.20 DMMC.

**NEW SECTION.**      **Sec. 6. Tree removal, cutting, and pruning limitations.** In addition to the Best Pruning Practices provisions codified in section 7 of this Ordinance, the following limitations shall apply to removing, cutting, and pruning of trees:

(1) Trees on private developed or partially developed lots. No limitations other than a tree permit is required where the total area to be cleared is 2,000 square feet or greater.

(2) Trees on private undeveloped lots.

(a) Removal of dead, diseased or hazard trees as determined and/or verified by the City or as determined by a certified arborist;

(b) Removal of small trees;

(c) Tree pruning that does not remove more than 25 percent of a tree's total leaf area;

(d) Removal of significant trees, subject to the Tree Replacement provisions codified in section (8) of this Ordinance, except that removal of significant trees shall be permitted without replacement if done so in conjunction with issuance of a Building Permit.

(3) Trees on City-owned property.

(a) Removal of dead, diseased or hazard trees as determined and/or verified by the City or as determined by a certified arborist;

(b) Removal of small trees;

(c) Tree pruning that does not remove more than 25 percent of a tree's total leaf area;

(d) Removal of significant trees, provided that the removal of significant trees is subject to tree replacement ratio of 3:1.

(4) Trees on City right-of-way.

(a) Tree pruning does not remove more than 25 percent of a tree's total leaf area.

**NEW SECTION.**      **Sec. 7. Best pruning practices.** Tree pruning shall conform to the International Society of Arboriculture standards, to maintain a tree in a healthy and safe condition.

**NEW SECTION.**      **Sec. 8. Tree replacement.**

(1) Replacement trees - Number. Any tree identified to be retained that is removed, destroyed or damaged shall be replaced by the applicant on the subject property at a ratio of 3:1:

(a) Replacement trees shall be a minimum size of eight feet in height for evergreen trees, and two inches in caliper for deciduous, and shall be approved by the Planning, Building and Public Works Department. The Planning, Building and

Public Works Department may approve smaller trees if it determines they are of specimen quality.

(b) Trees shall be provided in addition to any street trees required under chapter 12.15 DMMC. The exact type and location of street trees shall be determined by the Planning, Building and Public Works Department.

(2) Maintenance of replacement trees. The applicant shall maintain all replacement trees in a healthy condition. The applicant shall be obligated to replant any replacement tree that dies, becomes diseased.

**NEW SECTION.**            **Sec. 9. Tree permit - Application.** An application for a tree permit shall be submitted on a form provided by the City and shall include the following information:

(1) General information.

(a) The applicant shall give the name, address and telephone number of the applicant and owner of the property and the street address;

(b) The applicant must provide information on the proposed location, species, diameter and number of trees proposed to be cut or pruned; and

(c) The applicant must agree to pay all costs of cutting, pruning, removing debris, cleaning, and any traffic control needed.

(d) If the applicant is not the owner of the property, a notarized authorization by the property owner consenting to the tree cutting activity shall be provided.

(2) Plan sheet specifications. All plan sheets will contain the following information:

(a) The date, basis, and datum of the contours, which shall be referenced to the City's network of benchmarks, if applicable;

(b) Date, north arrow, and adequate scale (1:10, 1:20, or 1:40) on all maps and plans;

(c) Contours will be at two-foot contour intervals;

(d) Contact information for the applicant and the property owner, and legal description of the property;

(3) Temporary Erosion and Sedimentation Control Plan.

(a) Sequence for tree removal and other land-disturbing activities;

(b) Schedule for installation and removal of all temporary erosion and sediment control measures, including vegetative measures;

(c) An outline of the methods to be used in clearing vegetation and disposing of the cleared vegetative matter; and

(4) Other information as deemed necessary by the code official.

**NEW SECTION.            Sec. 10.    Permit - Expiration - Extension.**

(1) Except when specific time limits are set by the City Manager or the City Manager's designee, any permit granted under this chapter shall expire one year from the date of issuance.

(2) The City Manager or the City Manager's designee may set specific limits to the project commencement and/or completion for any reasonable purpose, including but not limited to environmental reasons or for coordination with other permitted site work.

(3) Upon a showing of good cause, a permit may be extended for six months. Approved plans shall not be amended without authorization of the City Manager or the City Manager's designee.

**NEW SECTION.            Sec. 11.    Tree permit to be posted.** No work shall commence until a permit notice has been posted on the subject site at a conspicuous location. The notice shall remain posted until the project has been completed.

**NEW SECTION.            Sec. 12.    Fees.** There shall be a fee assessed to compensate the City for the expense of reviewing and processing plans, conducting inspections, providing for outside

consulting services, and the like. The fee shall be set by written administrative directive and shall be related to the amount of anticipated service for the particular application. Fees for permits authorized under this chapter that are reviewed after the proposed site work has started will be assessed at twice the normal rate, except for emergency exemption established in section 5 of this Ordinance.

**Sec. 13.** DMMC 16.01.050 and section (5) of Ordinance No. 1583 are amended to add the following definitions:

"Certified arborist" means an individual who has achieved a level of knowledge in the art and science of tree care through experience and by passing a comprehensive examination administered by the International Society of Arboriculture or urban forestry program.

"Developed or partially developed lot" means a lot or parcel of land upon which a usable structure is located.

"Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, clearing, grading, paving, excavation, drilling operations or storage of equipment or materials located within the area of special flood hazard.

"Development activity" means any work, condition, or activity which requires a permit or approval under ~~chapter 2.22~~ or Titles 11, 12, 14, 16, 17 or 18 DMMC.

"Environmentally Critical Areas". See "Critical areas."

"Land clearing" means the act of removing, topping or destroying trees, topsoil, or ground cover from any undeveloped or partially developed lot, environmentally critical areas, shoreline environments, public lands, or public right-of-way.

"Significant trees" means healthy evergreen trees six inches (6") in diameter or greater as measured at fifty-four inches (54") above the ground, and healthy deciduous trees (excluding alders, European ashes, cottonwoods and willows) eight inches (8") in diameter or greater as measured at fifty-four inches (54") above the ground.

"Small trees" means evergreen trees that are less than six inches (6") in diameter as measured at fifty-four inches (54") above the ground and deciduous trees that are less than eight inches (8") in diameter as measured at fifty-four inches (54") above the ground.

"Tree" means a living woody plant characterized by one main stem or trunk and many branches, and having a diameter of four inches or more measured at 24 inches above ground level.

"Tree pruning" means to cut branches from a tree using practices approved by the International Society of Arboriculture to maintain a tree in a healthy and safe condition.

"Tree topping" means the indiscriminate cutting of tree branches to stubs or lateral branches that are not large enough to assume the terminal role. Other names for topping include but are not limited to "heading," "tipping," "hat-racking," and "rounding over."

"Undeveloped lot" means a lot or parcel of land upon which no usable structure exists.

"Vegetation" means the general plant life and the groundcover provided by plants, including trees.

**Sec. 14.** DMMC 14.20.180 and section 70 of Ordinance No. 1581 are amended to read as follows:

**14.20.180 Exemptions.** Applicants must receive a written letter of exemption from the City Manager or the City Manager's designee before commencing with the exempted work. Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction.

(1) A grading or land clearing permit shall not be required for any of the following activities: ~~provided,~~ provided that the land clearing activity shall not exceed 2,000 square feet; the grading and filling activity shall not exceed 50 cubic yards; and that the clearing, and grading, and filling activity shall be subject to the minimum requirements specified in this chapter:

(a) The installation and maintenance of fire hydrants, water meters, and pumping stations, and street furniture by the City or its contractors;

(b) Removal of trees and ground cover in emergency situations involving immediate danger to life or property or substantial fire hazards;

(c) Removal of trees or ground cover or dumping of fill on partially developed lots for the purpose of general property and utility maintenance, landscaping, or gardening; provided, that this exemption shall not apply to land clearing, grading, or filling for the purpose of developing the property with substantial permanent improvements such as roads, driveways, utilities, or buildings;

(d) Removal of dead or diseased ground cover or trees;

(e) A grading and filling activity ~~less than a total of 50 cubic yards which~~ does not obstruct a drainage course;

(f) Grading and filling activity to place a building foundation approved under a City building permit and involves less than 120 cubic yards of grading and filling;

~~(g) Clearing less than 200 square feet;~~

(~~h~~g) Cemetery graves;

(~~h~~i) Refuse disposal sites controlled by other regulations;

(~~i~~j) Exploratory excavations performed under the direction of a registered design professional. Exploratory excavation is not to begin construction of a building prior to receiving a permit (the sole purpose for preparing a soils report).

(2) Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of the City.

**Sec. 15.** DMMC 18.195.020(4) and section (4) of section 413 of Ordinance No. 1591 are amended as follows:

(4) Plan requirements. The Planning, Building and Public Works Department shall review and may approve, approve with modifications, or disapprove site landscape development plans for all development activities subject to the provisions of this chapter. A landscaping plan shall be submitted to the Planning, Building and Public Works Department accurately drawn using an appropriate



engineering or architectural scale which shows the following:

- (a) Boundaries and dimensions of the site;
- (b) Location and identification of all streets, alleys, sidewalks, and easements abutting the site, including dimensions;
- (c) Proposed topography at a maximum of five-foot contours;
- (d) Proposed location and dimensions of all on-site buildings including height of structures and distance between buildings;
- (e) Details of any proposed architectural barriers;
- (f) Dimensions and location of storage and trash areas, loading docks, exterior utility installations, and mechanical equipment;
- (g) Layout and dimensions of all parking stalls, easements, access ways, turnaround areas, driveways, and sidewalks on-site;
- (h) Percentage of landscaping for total site and net square footage of parcel;
- (i) Proposed landscaping including location, species, and size at time of planting;
- (j) Existing vegetation in general, and identifying all evergreen trees six inches in diameter DBH (diameter at breast height) or greater as measured at fifty-four inches (54") above the ground and all deciduous trees eight inches in diameter DBH or greater as measured at fifty-four inches (54") above the ground;
- (k) Irrigation plan, indicating the location of pipes, sprinkler heads and pumps, pipe

size, head capacity, water pressure in pounds per square inch at the pump and sprinkler heads, and timer system.

**Sec. 16.** DMMC 18.195.110(1) and section (1) of section 422 of Ordinance No. 1591 are amended as follows:

(1) All existing healthy evergreen trees six inches DBH (diameter at breast height) or greater and all existing healthy deciduous trees (excluding alders, European ashes, cottonwoods and willows) eight inches in diameter DBH or greater as measured at fifty-four inches (54") above the ground, shall be retained to the extent feasible within landscape areas. The Planning, Building and Public Works Department shall designate trees to be retained prior to issuance of a land clearing, grading, and filling permit.

**Sec. 17.** DMMC 18.195.130 and section 424 of Ordinance No. 1591 are repealed.

~~18.195.130 Scenic view preservation. Landscaping shall be designed, installed, and thereafter maintained in such a manner which preserves scenic views and vistas of neighborhood and upland properties. Under no circumstances shall species of trees be planted which by virtue of their height and/or breadth at maturity impinge upon the views of other properties.~~

**NEW SECTION.**      **Sec. 18. Codification.**      Sections 1 through 12 of this Ordinance shall be codified as a new chapter entitled "Trees", in Title 16 DMMC.

**NEW SECTION.**      **Sec. 19. Severability - Construction.**

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

**NEW SECTION.**            **Sec. 20. Effective**            **date.**            This Ordinance shall take effect and be in full force thirty (30) days after its passage and approval in accordance with law.

**PASSED BY** the City Council of the City of Des Moines this \_\_\_\_ day of \_\_\_\_\_, 2014 and signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
M A Y O R

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

Published: \_\_\_\_\_

Effective Date: \_\_\_\_\_

**ATTACHMENT 6**

## REQUESTED AMENDMENT 1

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### **PURPOSE:**

The purpose of this amendment is to allow cutting of trees on private undeveloped lots consistent with Section 5 (1) of Substitute Draft Ordinance No. 14-043-A (see Amendment 1A).

### **DISCUSSION:**

Currently we do not allow removal of significant trees on undeveloped lots without a development application. The code is silent on mitigation of unpermitted tree removal on an undeveloped lot. As it relates to civil improvements of a subdivision, when significant trees are removed, we require a replacement ratio of 5:1. As currently proposed, Substitute Draft Ordinance No. 14-043-A would establish a 3:1 replacement ratio.

The proposed amendment would be a shift in policy direction for the City and may necessitate additional amendments to DMMC 14.20.030 Purpose of Chapter 14.20 Land Filling, Clearing and Grading Code by either amending or deleting DMMC 14.20.030 (1)(b) and (1)(f)-(h). Amendment 1B is intended to address this concern.

### **14.20.030 Purpose.**

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(1) These regulations are adopted for the following purposes:

- (a) To promote the public health, safety, and general welfare of the citizens;
- (b) To preserve and enhance the City's physical and aesthetic character by preventing indiscriminate removal or destruction of trees, soils, or ground cover on undeveloped and partially developed property;
- (c) To promote land development practices that result in a minimal disturbance to the City's vegetation and soils;
- (d) To minimize surface and subsurface water runoff volumes and to prevent erosion-sedimentation and reduce the risk of slides and other unstable conditions;
- (e) To minimize the need for additional storm drainage facilities;
- (f) To retain clusters of trees for the abatement of noise and wind protection as well as site stability maintenance;
- (g) To acknowledge that trees and ground cover reduce air pollution by producing pure oxygen from carbon dioxide;
- (h) To minimize devaluation of property values due to unnecessary destruction of trees and ground cover;
- (i) To promote building and site planning practices that are consistent with the City's natural topographical and vegetational features while at the same time recognizing that certain factors such as condition (e.g., disease, danger of falling, etc.), proximity to existing and proposed structures and improvements, interference with utility services, and the realization of a reasonable enjoyment of property may require the removal of certain trees and ground cover;
- (j) To ensure prompt development, restoration and replanting, and effective erosion and sedimentation control of property during and after land clearing, grading, or filling through the use of phase development, performance bonds, and other reasonable controls;
- (k) To reduce degradation of streams and other water bodies located in and adjacent to the City via scouring, siltation, and water pollution;
- (l) To implement the goals and objectives of the State Environmental Policy Act and the water quality standards set forth by the State Department of Ecology; and

(m) To implement and further the City's Comprehensive Plan.

(2) It is not the intent or purpose of this chapter to prevent the reasonable development of land in the City. [Ord. 1581 § 55, 2013.]

In addition, Council may want to consider amending the following Comprehensive Plan policies that relate to the preservation of trees (see Amendment 1C):

Conservation Element

*Policy 4-03-08: Promote the preservation of native vegetation and mature trees; revegetation; and appropriate landscaping to improve air and water quality and fish and wildlife habitat.*

*Strategy 4-04-01(5): Regulate and plan land use and condition development proposals in ways that protect mature trees, native vegetation, stream flow, fish and wildlife habitat, groundwater recharge, and air quality, as well as natural topographic, geologic, and hydrologic features.*

**MOTION 1A:**

"I move Amendment 1A"

**Motion 1B:**

"I move Amendment 1B"

**Motion 1C:**

"I move Amendment 1C"

## AMENDMENT 1A :

### NEW SECTION.    **Sec. 5. Permit - Requirements**

(1) No tree permit required. Except as otherwise provided in subsection (2) of this section, no tree permit is required to remove, cut, or prune trees on private developed, ~~or~~ partially developed, or undeveloped lots as follows:

(a) Trees located outside of environmentally critical areas, shoreline areas, and associated buffer areas as verified by the City or qualified professional;

(b) Trees that are not part of a required landscaping area;

(c) The total area to be cleared is less than 2,000 square feet; and

(d) An exemption from a tree permit does not exempt a property owner from complying with policies, criteria and standards contained in this chapter or other applicable local, state or federal regulations or permit requirements.

(2) Tree permit required. Except as exempted in subsection (3) of this section, a tree permit is required to remove, cut, or prune trees as follows:

(a) Trees located within a critical area or shoreline area, or associated buffers.

(b) Trees located within a required landscaping area.

(c) Trees located on a private developed, ~~or~~ partially developed, or undeveloped lot where the total area to be cleared is 2,000 square feet or greater.

~~(c) Trees located on private undeveloped lots.~~

(de) Trees located on City-owned property.

(ef) Trees located on City right-of-way.

(3) Exemptions. The following situations are exempt from obtaining a tree permit that would otherwise be required under this section:

(a) Dead, diseased or hazard trees, as determined and/or verified by the City or as determined by a certified arborist, that are located outside of critical areas, shoreline areas and associated buffers.

(b) Emergency. A tree may be removed without first obtaining a tree permit in an emergency situation involving immediate danger to life or property provided the City is notified within seven days of the tree being cut, is provided such additional information as the City requests in order to verify the emergency, and an-after-the-fact tree permit is obtained within twenty days following the cutting of the tree, if required.

(c) Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this Code or any other laws or ordinances of the City.

(4) Other permits required. Other permits may be required as follows:

(a) Removing, cutting, or pruning of trees located within environmentally critical areas or the associated buffer shall be reviewed in accordance with the environmentally critical areas regulations codified in chapter 16.10 DMMC.

(b) Removing, cutting, or pruning of trees located within shoreline environments or the associated buffer shall be reviewed in accordance with the shoreline master program codified in chapter 16.20 DMMC.

(c) Removing, cutting, or pruning of trees in a required landscaping area are subject to the Landscaping and Screening provisions codified in chapter 18.195 DMMC, and/or the requirements identified on the Final Plat.

(d) Removing, cutting, or pruning of trees located within the City right-of-way shall be reviewed in accordance the Use and Maintenance of Public Rights-of-Way provisions codified in chapter 12.05 DMMC.

(e) Removal, cutting, or pruning of trees that results in a total area of disturbance greater than 2,000 square feet shall be reviewed in accordance with the land clearing, grading, and filling provisions codified in chapter 14.20 DMMC.



**NEW SECTION. Sec. 6. Tree removal, cutting, and pruning limitations.** In addition to the Best Pruning Practices provisions codified in section 7 of this Ordinance, the following limitations shall apply to removing, cutting, and pruning of trees:

(1) Trees on private developed, ~~or~~ partially developed, or undeveloped lots. No limitations other than a tree permit is required where the total area to be cleared is 2,000 square feet or greater.

~~(2) Trees on private undeveloped lots.~~

~~(a) Removal of dead, diseased or hazard trees as determined and/or verified by the City or as determined by a certified arborist;~~

~~(b) Removal of small trees;~~

~~(c) Tree pruning that does not remove more than 25 percent of a tree's total leaf area;~~

~~(d) Removal of significant trees, subject to the Tree Replacement provisions codified in section (8) of this Ordinance, except that removal of significant trees shall be permitted without replacement if done so in conjunction with issuance of a Building Permit.~~

(23) Trees on City-owned property.

(a) Removal of dead, diseased or hazard trees as determined and/or verified by the City or as determined by a certified arborist;

(b) Removal of small trees;

(c) Tree pruning that does not remove more than 25 percent of a tree's total leaf area;

(d) Removal of significant trees, provided that the removal of significant trees is subject to tree replacement ratio of 3:1.

(34) Trees on City right-of-way.

(a) Tree pruning does not remove more than 25 percent of a tree's total leaf area.

## AMENDMENT 1B

(Inserted as Sec. 14 and the following sections renumbered):

**Sec. 14.** DMMC 14.20.030 and section 55 of Ordinance No. 1581 are amended to read as follows:

### 14.20.030 Purpose.

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- (1) These regulations are adopted for the following purposes:
  - (a) To promote the public health, safety, and general welfare of the citizens;
  - (b) To preserve and enhance the City's physical and aesthetic character by preventing indiscriminate removal or destruction of trees, soils, or ground cover within designated environmentally critical areas and shoreline areas. ~~on undeveloped and partially developed property;~~
  - (c) To promote land development practices that result in a minimal disturbance to the City's vegetation and soils;
  - (d) To minimize surface and subsurface water runoff volumes and to prevent erosion-sedimentation and reduce the risk of slides and other unstable conditions;
  - (e) To minimize the need for additional storm drainage facilities;
  - (f) To promote the retention of ~~retain~~ clusters of trees for the abatement of noise and wind protection as well as site stability maintenance;
  - (g) To acknowledge that trees and ground cover reduce air pollution by producing pure oxygen from carbon dioxide;
  - ~~(h) To minimize devaluation of property values due to unnecessary destruction of trees and ground cover;~~
  - (h±) To promote building and site planning practices that are consistent with the City's natural topographical and vegetational features while at the same time recognizing that certain factors such as condition (e.g., disease, danger of falling, etc.), proximity to existing and proposed structures and improvements, interference with utility services, and the realization of a reasonable enjoyment of property may require the removal of certain trees and ground cover;

(j) To ensure prompt development, restoration and replanting, and effective erosion and sedimentation control of property during and after land clearing, grading, or filling through the use of phase development, performance bonds, and other reasonable controls;

(k) To reduce degradation of streams and other water bodies located in and adjacent to the City via scouring, siltation, and water pollution;

(l) To implement the goals and objectives of the State Environmental Policy Act and the water quality standards set forth by the State Department of Ecology; and

(m) To implement and further the City's Comprehensive Plan.

(2) It is not the intent or purpose of this chapter to prevent the reasonable development of land in the City. [Ord. 1581 § 55, 2013.]

**AMENDMENT 1C:**

"I move to direct staff to address Council policy related to the protection of mature trees as part of the 2015 Comprehensive Plan update process."

**Amendment 2:**

**PURPOSE:**

The purpose of this amendment is to include language in the Draft Ordinance to indemnify the City, its officials, officers, and agents from potential liability resulting in work within a critical area.

**NEW SECTION.**           **Sec. 9. Tree permit - Application.** An application for a tree permit shall be submitted on a form provided by the City and shall include the following information:

(1) General information.

(a) The applicant shall give the name, address and telephone number of the applicant and owner of the property and the street address;

(b) The applicant must provide information on the proposed location, species, diameter and number of trees proposed to be cut or pruned; and

(c) The applicant must agree to pay all costs of cutting, pruning, removing debris, cleaning, and any traffic control needed.

(d) If the applicant is not the owner of the property, a notarized authorization by the property owner consenting to the tree cutting activity shall be provided.

(2) Plan sheet specifications. All plan sheets will contain the following information:

(a) The date, basis, and datum of the contours, which shall be referenced to the City's network of benchmarks, if applicable;

(b) Date, north arrow, and adequate scale (1:10, 1:20, or 1:40) on all maps and plans;

(c) Contours will be at two-foot contour intervals;

(d) Contact information for the applicant and the property owner, and legal description of the property;

(3) Temporary Erosion and Sedimentation Control Plan.

(a) Sequence for tree removal and other land-disturbing activities;

(b) Schedule for installation and removal of all temporary erosion and sediment control measures, including vegetative measures;

(c) An outline of the methods to be used in clearing vegetation and disposing of the cleared vegetative matter; and

(4) The applicant shall have an executed hold harmless and release agreement on a form approved by the City, indemnifying and releasing the City, its officials, officers, and agents from liability.

(45) Other information as deemed necessary by the code official.

**Motion 2:**

"I move Amendment 2"

Amendment 3:

PURPOSE:

The purpose of this amendment is to provide flexibility in the standards used for best pruning practices.

NEW SECTION. Sec. 7. Best pruning practices. Tree pruning shall conform to the International Society of Arboriculture standards, or other standards approved by the Department of Natural Resources (DNR) and/or the Department of Ecology, to maintain a—tree trees within environmentally critical areas and shoreline areas in a healthy and safe condition.

Motion 3:

"I move Amendment 3"

Amendment 4:

PURPOSE:

This amendment is not recommended by staff. The purpose of this amendment is to provide some clarity to the code section should the City Council decide not to repeal it as proposed by staff.

**Sec. 17.** DMMC 18.195.130 and section 424 of Ordinance No. 1591 are amended to read as follows:

18.195.130 ~~Scenic view preservation~~Landscape Design.

Landscaping required by this chapter shall should be designed, installed, and thereafter maintained in such a manner which ~~preserves~~ minimizes impacts to scenic views and vistas of neighborhood and upland properties. Under no circumstances shall species of trees be planted which by virtue of their height and/or breadth at maturity impinge upon the views of other properties

The City, by this section, does not warrant or guarantee views other than as required for compliance with the Shoreline Management Act and the City's Shoreline Master Program but rather allows for the voluntary agreements between property owners for view preservation generally and for authority through the environmentally critical areas and shoreline permitting processes to allow for tree cutting and pruning to aid in the preservation of views. The City does not warrant or guarantee that trees may be cut or pruned on any parcel/s other than the parcel owned by the applicant upon compliance with the City's environmentally critical areas and shoreline permitting processes if required.

Motion 4:

"I move Amendment 4"



## ATTACHMENT 7

**Examples of Fee's for permits associated with trees and vegetation**

	Exempt Tree ①	Tree Permit ⑦	Area			
			0 - 1,999 SF	2,000 - 6,999 SF	7,000 - 1 A.C.	> 1 AC
Non-Critical Area	N/A ②	\$150	N/A ②	\$300	\$1,500	\$1,500 ③
Critical Area (without SEPA)	N/A ②	N/A	\$225	\$525	N/A	N/A
Critical Area (with SEPA) ④	N/A ②	N/A	\$525	\$825	\$2,850	\$2,850 ③

**NOTES**

- ① Dead, Diseased, or Hazard Tree.
- ② No permit required.
- ③ Plus \$114/AC (1-5 acres) and \$83/AC (>5 acres)
- ④ SEPA fee = \$300.
- ⑤ Additional fees may be required if expert reports are required.
- ⑥ Regulations for work within a 200 feet of a shoreline are subject to SMP. SMP reviews range from \$175 - \$5,550
- ⑦ Basic Tree Permit of \$150 is required only for the following circumstances:
  - 1) Removal of significant trees on undeveloped lot.
  - 2) Removal of tree within required landscape areas.
  - 3) Other unique situations.