

APPENDIX B. FLOODPLAIN MANAGEMENT REGULATIONS

Federal, state and local regulations direct how floodplain management is conducted in King County. The wide range of regulatory programs and enabling legislation require floodplain managers to balance multiple objectives, including protecting public health and safety, preserving and restoring the natural environment, maintaining economic viability of the region and respecting private property rights.

NATIONAL FLOOD INSURANCE PROGRAM (44 CFR PART 59)

The National Flood Insurance Program (NFIP) was created in 1968 to address the rising cost of taxpayer funded disaster relief. The goal of the program is to decrease the amount of money the federal government pays in post-flood disaster relief by encouraging jurisdictions to reduce the risk to property owners through floodplain mapping, regulations, education and other programs. The NFIP provides the financial backing for flood insurance policies within participating communities, making them more affordable to private property owners. There is an incentive for jurisdictions to adopt standards that exceed the minimum standards of the NFIP by reducing the cost of flood insurance premiums within jurisdictions with higher standards. While participation in the NFIP is technically not required under federal law, it is highly impractical for King County to not participate since most federally-backed mortgage loans require the purchase of flood insurance.

According to FEMA, approximately 20,000 communities across the United States participate in the NFIP. (<http://www.fema.gov/about/programs/nfip/index.shtm>) King County began participation in the NFIP on September 29, 1978 and is currently a class 2 community under the Community Rating System (CRS), which is the method for rating communities that participate in the NFIP. In addition to King County, almost all incorporated cities (35 of 39) within King County participate in the NFIP.

DISASTER MITIGATION ACT (44 CFR PARTS 201 AND 206)

The Disaster Mitigation Act (DMA) was adopted in 2000 and is designed to encourage communities to develop a comprehensive disaster mitigation plan that incorporates all hazards, including both natural and human-created disasters, such as terrorism. The incentive to encourage communities to take on this planning effort is that only those communities that have an adopted Hazard Mitigation Plan are eligible for participation in the Hazard Mitigation Grant Program (HMPG). State Emergency Management Agencies are responsible for reviewing and approving local jurisdictions Hazard Mitigation Plans. Final approval must be granted by the Federal Emergency Management Agency (FEMA). The King County Office of Emergency Management developed the King County Regional Hazard Mitigation Plan in 2004 and completed the five-year update in 2009. The King County Flood Hazard Management Plan is considered to be the flood hazard component of the King County Regional Hazard Mitigation Plan, and must be consistent with DMA to assure that King County is eligible for participation in the Hazard Mitigation Grant Program. In 2010 the King County Flood Control District prepared a multi-hazard mitigation plan consistent with the DMA for the Flood District. The King County Flood Control District Hazard Mitigation Plan included an update to the risk assessment and vulnerability analysis for flooding countywide. The other hazards, dam failure, earthquake, landslide, severe weather, volcano, and wildland fire were assessed only to the extent of their impact on flood protection infrastructure under the authority of the King County Flood Control District.

NATIONAL ENVIRONMENTAL POLICY ACT (42 CFR 4321 ET SEQ.)

The National Environmental Policy Act (NEPA) requires that all federally sponsored actions, and all privately sponsored actions using federal funds, must evaluate the action to determine if it will have a

significant adverse environmental impact on the environment. In addition, federal agencies that issue permits or give approval for actions, must also evaluate the action for significant adverse environmental impacts. A full disclosure of all impacts is required and regulatory agencies, both federal and local, with decision authority over the action must consider the impacts prior to an agency decision. Many of King County's flood hazard management projects and programs utilize federal funding or require permits from federal agencies and must, therefore, conform with the NEPA regulations.

ENDANGERED SPECIES ACT (50 CFR PART 17)

The Endangered Species Act (50 CFR Part 17) prohibits any actions that may result in a "take" of any species listed as threatened or endangered under the Act, including the prohibition against impacts to these species' habitats. "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. With the listing of Puget Sound Chinook salmon, Puget Sound steelhead trout and Puget Sound bull trout as threatened, and the potential for listing of other riverine and marine species, the policies, programs and projects established in this Plan take into consideration what these actions may have on listed species and their habitats to assure that King County is not subject to legal challenges under the Endangered Species Act.

MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT (PUBLIC LAW 94-265)

The Magnuson-Stevens Fishery Conservation Act is the primary federal law governing fisheries management in the United States. The law was passed to regulate fishing within 200 nautical miles of United States waters to prevent over fishing. The law was also adopted in order to allow over-fished stocks to recover and to conserve and manage fishery resources. National Marine Fisheries Service is responsible for implementing the Act. There are eight regional fishery management councils that oversee the fishery resources in their respective regions. The Act includes national standards for management and outlines the contents of fishery management plans. In addition, it gives the Secretary of Commerce power to review, approve, and implement fishery management plans and other recommendations developed by the councils. Within Washington state, there are three federal fishery management plans that protect associated essential fish habitat for:

- Pacific coast ground fish fishery—83 species
- Coastal pelagic species fishery—market squid and four fin fishes (Pacific sardine, Pacific [chub] mackerel, northern anchovy, and jack mackerel
- Pacific coast salmon fishery—chinook, coho, and Puget Sound pink salmon.

NATIONAL HISTORIC PRESERVATION ACT (36 CFR 800)

Section 106 of the National Historic Preservation Act requires that all federal undertakings including permits, licenses and privately sponsored actions using federal funds must be analyzed to determine if they will have an adverse effect on historic properties, including ,but not limited to historic buildings, structures, sites, districts and objects, including traditional cultural properties and archaeological resources that are listed or eligible for listing in the National Register of Historic Places. The analysis requires surveys to identify any historic properties that may be affected; consultation with state cultural resource officers, federally-recognized tribes, local government cultural resource agencies, and other interested parties regarding the properties and effects, and consideration of measures to avoid or mitigate effects to an acceptable level. Many of King County's flood hazard management projects utilize federal funding or require permits from federal agencies and must, therefore, comply with the National Historic Preservation Act regulations. Cultural resource requirements under National Environmental Protection Agency are typically satisfied through the National Historic Presentation Act Section 106 process.

WASHINGTON STATE FLOODPLAIN MANAGEMENT (CHAPTER 86.16 RCW)

The Washington state flood control regulations are contained primarily within chapter 86.16 of the Revised Code of Washington (RCW). The state has adopted higher standards than the minimum requirements for participation under the National Flood Insurance Program. All local floodplain management regulations must be reviewed and approved by the Washington State Department of Ecology before a community is eligible for participation in the National Flood Insurance Program. The state law establishes the duties of the Department of Ecology for floodplain management and assistance to local jurisdictions.

WASHINGTON STATE GROWTH MANAGEMENT - PLANNING BY SELECTED COUNTIES AND CITIES (CHAPTER 36.70A RCW)

The Washington State Growth Management Act (GMA) was passed by the Washington State Legislature in 1990 and seeks to further protect the quality of life in the Pacific Northwest. The GMA requires that the state's most populous and fastest growing counties and their cities prepare comprehensive land use plans that anticipate growth for a 20-year horizon. Smaller communities and those communities that are experiencing a slow rate of growth may choose to plan under the GMA, but are not required to do so. Comprehensive plans adopted in accordance with GMA must manage growth so that development is directed to designated urban areas and away from rural areas. The GMA also requires jurisdictions to designate and protect critical areas, including frequently flooded areas. Comprehensive Plans must identify and protect natural resource lands, which include commercially significant forestry, agriculture, and mining areas.

WASHINGTON STATE ENVIRONMENTAL POLICY ACT (CHAPTER 43.21C RCW)

The Washington State Environmental Policy Act (SEPA) was established in 1969 for the purpose of considering the impacts of actions on the environment. "Actions" are either project actions or nonproject actions and include a wide variety of activities that may impact the environment, such as new construction, developing comprehensive plans or establishing zoning. The Act also identifies a number of actions that are categorically exempt from SEPA review. The development of this Plan required review under SEPA. Construction projects conducted under the policies and programs established in this plan will require SEPA review on a case by case basis. The Washington State Environmental Policy Act is implemented in King County through K.C.C. chapter 20.44, which establishes categorical exemptions, guidelines for lead agency, use of actions in King County.

WASHINGTON STATE SHORELINE MANAGEMENT ACT (CHAPTER 90.58 RCW AND CHAPTER 173-26 WAC)

The Washington State Shoreline Management Act (Chapter 90.58 RCW) was first adopted in 1971 to address development along designated shorelines in the state. Under the Act, local governments have the responsibility to initiate the development of a Shoreline Management Master Program and to regulate development within those areas identified as "shorelines of the state." The Shoreline Management Act Guidelines are codified in Chapter 173-26 (WAC) and were updated in 2003. King County updated the Shoreline Management Program in 2010, along with implementing regulations. All construction projects that are located within a shoreline of the state are subject to the requirements of the King County Shoreline Management Program and regulations.

WASHINGTON STATE CODE: INDIAN GRAVES AND RECORDS (27.44 RCW)

Chapter 27.44 RCW describes the procedures that must be followed upon discovery of human skeletal remains and states that “Any person who knowingly removes, mutilates, defaces, injures, or destroys any cairn or grave of any native Indian, or any glyphic or painted record of any tribe or peoples is guilty of a class C felony.”

WASHINGTON STATE CODE: ARCHAEOLOGICAL SITES AND RESOURCES (27.53 RCW)

Chapter 43.21C RCW defines archaeological sites, states that it is a class C felony to knowingly disturb an archaeological site, and discusses procedures for obtaining a permit for excavation of an archaeological site. Archaeological Excavation and Removal Permit (WAC 25-48) specifies the requirements for obtaining an excavation permit.

GROWTH MANAGEMENT PLANNING COUNCIL AND COUNTY-WIDE PLANNING POLICIES

King County, along with the City of Seattle and Suburban cities established the Growth Management Planning Council (GMPC), as required by RCW 36.70A.210 to prepare a coordinated policy framework for future development in King County. In July 1992, the GMPC adopted Phase 1 of the County-Wide Planning Policies. Phase 2 was adopted in 1994 and updated in September 2011. The King County Countywide Planning Policies have been ratified by a majority of the jurisdictions in King County. One of the elements addressed by the County-Wide Planning Policies is the protection of critical areas, as required under the Growth Management Act (GMA). “Frequently flooded areas” are critical areas under the GMA. The updated Countywide Planning Policies include three policies to guide floodplain management in King County:

- **EN-10** Coordinate and fund flood hazard management efforts through the King County Flood Control District.
- **EN-11** Work cooperatively to meet regulatory standards for floodplain development as these standards are updated for consistency with relevant federal requirements including those related to the Endangered Species Act.
- **EN-12** Work cooperatively with the federal, state, and regional agencies and forums to develop regional levee maintenance standards that ensure public safety and protect habitat.

KING COUNTY COMPREHENSIVE PLAN

King County’s first comprehensive plan dates to 1964 and has been revised many times in subsequent years. Following the 1990 passage of the Washington State Growth Management Act (GMA), King County revised its comprehensive plan for consistency with GMA in 1994. The GMA requires specific elements for inclusion in comprehensive plans and established a menu of optional elements that a local jurisdiction can choose to address. One key element of the GMA is to identify and protect critical areas. Frequently flooded areas are critical areas under GMA, and the comprehensive plan must establish policies on how they will be protected. King County also chose to address significant cultural resources, an optional element of comprehensive plans. The Flood Hazard Management Plan augments the Comprehensive Plan polices for the protection of frequently flooded areas and floodplain management. The *2012 King County Comprehensive Plan* includes the following policies to guide floodplain management in King County:

- **E-499r** King County’s floodplain land use and floodplain management activities shall be carried out in accordance with the King County Flood Hazard Management Plan.
- **E-499s** The existing flood storage and conveyance functions and ecological values of floodplains, wetlands, and riparian corridors shall be protected, and should, where possible, be enhanced or restored.
- **F-286** King County shall participate with cities to prepare, update and implement comprehensive flood hazard management plans that meet or exceed standards established by the National Flood Insurance Program and Washington State Flood Control statutes.
- **F-287** King County shall consider equity and social justice in implementing the King County Flood Hazard Management Plan to assure floodplain property owners and residents are given equal access to flood risk reduction services. Outreach should consider vulnerable populations that may face barriers based on age, income, language, race or other factors.
- **F-288** King County shall maintain a regional flood warning program in King County.
- **F-289** King County should continue to assess and revise current flood warning phases based on the most current data on hydrology and climate change predictions and modify the King County Flood Warning Program, as needed, to reflect these revised flood phases.
- **F-290** King County should assess the most appropriate level of service for flood risk reduction along river segments based on existing and predicted development density, land use, and hydrologic conditions.
- **F-291** King County will review available information on the potential impacts of climate change on winter floods, and consider those potential impacts when updating the flood risk reduction policies and capital improvement projects for the King County Flood Hazard Management Plan.
- **F-293** King County shall continue to work with the U.S. Army Corps of Engineers, the Puget Sound Partnership, and other regional partners to develop a science-based vegetation management framework that provides for safe and effective levees, functional riparian habitat, and cost-effective use of limited resources.
- **F-294** King County will assess participation in the U.S. Army Corps of Engineers P.L. 84-99 Program to ensure compliance with the National Marine Fisheries Services Biological Opinion on the Federal Emergency Management Agency (FEMA) National Flood Insurance Program standards for levee vegetation, as well as cost-effective maintenance and repair of levees.
- **F-295** King County will maintain compliance with the National Flood Insurance Program by:
 - a. Assessing the projects and programmatic actions recommended in the King County Flood Hazard Management Plan for compliance with the Biological Opinion prepared for the Program; and
 - b. Making necessary amendments to the Plan and its implementing development regulations.
- **F-296** King County will work cooperatively with the King County Flood Control District, cities and other stakeholders to implement the Flood Hazard Management Plan to protect public safety, prevent property damage, and help protect the greater King County economy.

- **F-297** Consistent with guidance from FEMA and the USACOE, King County’s risk reduction strategies should focus first on risk avoidance, followed by actions intended to reduce vulnerability in at risk areas. New levees and other flood facilities should be the last rather than the first line-of-defense.
- **F-298** King County shall continue to promote the purchase of flood insurance to businesses located within the floodplain, including those businesses located behind accredited levees, to protect the economic value of the business and reduce the vulnerability to the region’s economic activity from a larger but less frequent flood event.
- **F-299** King County should continue to discourage new, at-risk development in mapped flood hazard areas.
- **F-299a** King County should seek to site new critical public facilities outside of the 500-year floodplain.
- **F-299b** The county should work with cities, businesses, and landowners to evaluate the alternatives for levee setbacks that would provide a higher level of risk reduction, reduce long-term maintenance costs, and enhance habitat while promoting long-term economic resilience and vitality.
- **S-406** The King County Shoreline Master Program will rely on the policies and programs established in the King County Flood Hazard Management Plan and flood hazard regulations to meet the requirements of the Shoreline Management Act and the Department of Ecology’s guidelines for flood hazard reduction.

KING COUNTY CODE (K.C.C.)

Title 9 (Surface Water Management)

K.C.C. Title 9 is the County’s Surface Water Management code and supplements the *King County Surface Water Design Manual* and basin plans, which are adopted in K.C.C. Title 20. Title 9 is divided into five primary sections: Surface Water Runoff Policy; the Surface Water Management Program; Water Quality; Groundwater Protection; and Fertilizers. Title 9 has been adopted to be consistent with and implement Comprehensive Plan policies, which have been adopted in accordance with Chapter 36.70A RCW, Growth Management.

Title 16 (Building and Construction Standards)

K.C.C. Title 16 is the County’s building and construction standards code. King County has adopted the International Building Code, the International Residential Code, the International Property Maintenance Code, the International Mechanical Code and the International Security Code. These International codes have all been amended by the State of Washington for application in the state, including amendments to assure compliance with the Washington State floodplain management regulations. King County has made additional amendments to these codes for application within the County to assure that the County’s higher regulatory floodplain standards are maintained. Those sections of the International Codes that are inconsistent with state or local regulations have either not been adopted or have been amended.

Title 20 (Planning)

K.C.C. Title 20 is the County’s planning code and is the title that adopts the county’s Comprehensive Plan for compliance with the Growth Management Act. K.C.C. 20.12.480 adopts the King County Flood

Hazard Management Plan as a functional plan to guide flood hazard management in King County. Other relevant sections of Title 20 include Chapter 20.62, Protection and Preservation of Landmarks, Landmark Sites and Districts, established a system for designation of significant cultural resources as County landmarks to be protected through a special design review and approval process. K.C.C. 20.62.150 requires review of private and public projects that may affect cultural resources. K.C.C. chapter 20.44 is the county's environmental procedures and establishes regulations for implementing the Washington State Environmental Policy Act (Chapter 43.21C RCW) in King County.

Title 21A (Zoning and Shoreline Management)

K.C.C. Title 21A is the County's zoning code and contains the majority of the development regulations for construction within floodplains. K.C.C. chapter 21A.06 contains definitions of terms used in the zoning code. The floodplain development regulations are located within K.C.C. chapter 21A.24, Critical Areas. King County's Shoreline Management Master Program, adopted in 1975 and updated in 2011, inventoried and designated shoreline environments based on natural characteristics, developed policies for activities and uses within each designation. Regulations implementing the shoreline policies are codified in K.C.C. chapter 21A.25. All activities implementing the River and Floodplain Management Program must be in compliance with the Shoreline Master Program and shoreline regulations in K.C.C. chapter 21A.25. The zoning code is enacted to be consistent with and implement the Comprehensive Plan in accordance with chapter 36.70A RCW, Growth Management.

Title 23 (Code Compliance)

The purpose of this Title 23 is to identify processes and methods to encourage compliance with county laws and regulations that King County has adopted pursuant to the Washington Constitution and other state laws to promote and protect the general public health, safety and environment of county residents. This title declares certain acts to be civil violations and establishes non-penal enforcement procedures and civil penalties. This title also declares certain acts to be misdemeanors. The regulations adopted by the County for development within floodplain are enforced by this Title.