

Chapter 21A-24
Rules and Regulations of the
Department of Development and Environmental Services

Sensitive Areas: Presumption of Salmonids, Sensitive Area and
Buffer Modifications, and Mitigation Requirements

Effective Date: May 4, 2000

Amended: July 19, 2002

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21A-24-005 Definitions.

A. Blind ditch. "Blind ditch" means a ditch that is a drainage feature with no surface water channel connection to a stream.

B. Department. "Department" means the Department of Development and Environmental Services of King County.

C. Emergency action. "Emergency action" as used in K.C.C. 21A.24.050A. means an action taken by a person in direct response to and to avoid, prevent, or protect against the risks or dangers of an emergency and which must be undertaken immediately or within a time too short to allow full compliance with the provisions of K.C.C. Title 21A.

D. Enclosed drainage system. "Enclosed drainage system" means a storm water conveyance system that receives flows from adjacent ditches, catch basins or roadway surfaces and not from

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streams or wetlands and conveys the flows by way of culverts or drain tiles or other entirely artificial structures.

E. Person. "Person" means any individual, partnership, entity, corporation, organization, or governmental agency or department.

F. Practical alternative. "Practical alternative" as used in K.C.C. 21A.24.070A.2.a (relating to public agency and utility exceptions), 21A.24.330E.1 (relating to utility alterations in wetlands and buffers), and 21A.24.370D.1 (relating to utility alterations in stream buffers) means an alternative, including non-project alternatives, that is available and capable of being carried out, taking into consideration overall project purposes and the public agency or utility applicant's programmatic needs and objectives, after evaluating: cost; all known, available, and reasonable technology; impacts to environmentally sensitive areas; and logistics. It may include an area not owned by the applicant that could reasonably be obtained, used, expanded, or managed in order to fulfill the basic purpose of the proposed activity.

G. Remediate. "Remediate" has the meaning provided for in K.C.C. 23.02.010I.

H. Used by salmonids. "Used by salmonids" as used in K.C.C. 21A.06.1045 and K.C.C. chapter 21A.24 means the presence of any salmonid species, anadromous or resident, during any life stage at any time of the year.

21A-24-010 Purpose and Authority.

These rules are adopted under the authority of K.C.C., 21A.24.040. It is the purpose of these rules to implement the provisions of K.C.C. 21A.44.030, as it relates to variances for wetland and stream buffers, 21A.24.060, 21A.24.070, 21A.24.130, 21A.24.320, 21A.24.340, 21A.24.360, and 21A.24.380.

21A-24-013 Salmonid use - Presumption and rebuttal of presumption.

For the purposes of K.C.C. chapter 21A.24 and any rules adopted by the department pursuant to K.C.C. 21A.24.040:

A.1. A stream or a portion thereof, with a defined channel, regardless of its width, within the 100 year flood plain of a

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Class 1 stream or Class 2 stream used by salmonids shall be presumed to be used by salmonids.

2. Unless the presumption is rebutted as provided in subsection C of this section, if salmonid use is unknown, a stream shall be presumed to be used by salmonids if:

a. The stream has a defined channel two feet or greater in width between the ordinary high water marks and has a gradient of 16 percent or less; or

b. The stream has a gradient of 20 percent or less, but greater than 16 percent, a defined channel two feet or greater in width, and has a contributing basin greater than 50 acres in size.

B. The department shall waive or modify the characteristics in A.2. of this section if:

1. A stream in its natural state has confirmed, long term, naturally occurring year-round water quality parameters considered incapable of supporting salmonids. The water quality parameters shall be established through a sampling protocol approved by the department;

2. Snowmelt streams that have short flow cycles that do not support successful life history phases of salmonids. These streams typically have no flow in the winter months and discontinue flow by June 1;

3. Sufficient information about a geographic region is available to support a departure from the characteristics in A.2. of this section, as determined in consultation with the Washington department of fish and wildlife, Washington department of ecology, the affected tribes, and interested parties;

4. The watercourse is a blind ditch or drains directly into an enclosed drainage system that blocks fish passage;

5. The applicant demonstrates to the satisfaction of the department that a complete fish passage barrier exists downstream in streams with intermittent or ephemeral flows; or

6. The Washington department of fish and wildlife has issued a hydraulic project permit pursuant to RCW 77.55.100 that includes a determination that the stream is not used by salmonids and the department concurs with that determination.

C. The presumption in subsection A.2. of this section that a stream is used by salmonids may be rebutted by conducting sampling in accordance with a protocol approved by the department that is designed to achieve with a confidence level established in the protocol that salmonids are not present in the stream through all life stages. The department shall consult with the Washington department of fish and wildlife and affected tribes

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before approving the sampling protocol. Sampling shall not be conducted when the stream or other water body is essentially dry or if flows are intragravel. The department may require additional sampling if it determines that conditions, such as flooding, drought, low water flows or other circumstances, impaired the accuracy of the sampling used in the surveys.

D. If sampling includes electrofishing the stream or other water body or using other capture methods, the sampling shall be conducted in compliance with the conditions of a Washington State Department of Fish and Wildlife Scientific Collector's Permit and any other required state or federal permit, including any permit required under Section 10 of the federal endangered species act. Unless a change in the survey window is approved by the department on a case by case basis because local stream conditions require a change, sampling conducted by electrofishing shall be conducted during the following periods:

1. For a stream or other water body with anadromous access, the sampling shall only be conducted between March 1 and July 15. The department may approve sampling for over-wintering salmonids between January 1 and March 1 after consultation with the Washington department of fish and wildlife and affected tribes; and

2. For a stream or other water body with no anadromous access, the sampling shall only be conducted between May 1 and July 15.

E. Fish presence surveys using visual detection methods, trapping, rod and line surveys, or netting may be used to demonstrate fish presence at any time of year, subject to conditions of a Washington State Department of Fish and Wildlife Scientific Collector's Permit and any other required state or federal permit, including any permit required under Section 10 of the federal endangered species act.

21A-24-016 Buffer width averaging for stream and wetland buffers.

A. Under K.C.C. 21A.24.320B and 21A.24.360B, the department may approve a proposal for buffer width averaging if the applicant demonstrates that the total area contained in the buffer on the site does not decrease and that the proposal will either provide additional protection to the wetland or stream, or enhance the functions of the wetland.

B. The applicant for buffer width averaging shall provide the department with an analysis acceptable to the department of existing buffer functions that addresses the following issues:

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1. The functions of the existing buffer on the parcel and adjoining parcels to the extent those parcels are accessible;
2. The stability of the stream bank, if any;
3. The risk of creating trees likely to be designated as hazardous as a result of the development;
4. The opportunity for additional protection to the stream or wetland or enhancement to the wetland;
5. The location of the floodway and the 100-year floodplain;
6. The presence of any migrating river channel;
7. The impact on functions and values of natural resources that will result from the proposal;
8. Health Department requirements for on-site sewage disposal systems; and
9. Any other information determined by the department to be reasonably necessary to analyze the proposal.

C. The department shall approve an application for buffer width averaging only if the applicant demonstrates to the department that the proposal for buffer width averaging meets the requirements of K.C.C. 21A.24.320B or 21A.24.360B. The department shall apply the following minimum standards to the proposal:

1. The minimum buffer width shall not be less than sixty-five percent of the standard buffer width, unless the applicant demonstrates that a proposal that reduces the buffer to less than sixty-five percent of the standard buffer width will result in substantial enhancement to the buffer's overall function. The buffer shall be monitored by the applicant pursuant to 21A-24-037;
2. The additional buffer shall be contiguous with the standard buffer;
3. Unless a building setback variance has been issued, the yard area between any structure and the reduced buffer shall meet minimum building setback requirements. If the buffer width averaging allows a structure or associated yard to intrude into the normal buffer area, the resulting yard shall extend no more than 15 feet from the edge of the structure's footprint toward the reduced buffer; and
4. In order to demarcate the buffer edge, permanent signs identifying the presence of a sensitive area shall be required between the edge of the yard and the buffer.

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21A-24-019 Variance of setbacks and buffers.

A. Under K.C.C. 21A.44.030, a variance cannot modify the requirements of K.C.C. chapter 21A.24, except for building setback and buffer requirements established by K.C.C. 21A.24.200, 21A.24.280, 21A.24.310, 21A.24.320, and 21A.24.360. The department shall approve an application under K.C.C. 21A.44.030 for a variance from these setback and buffer requirements only if the applicant demonstrates to the department that the proposed variance meets the requirements of K.C.C. 21A.44.030.

B. The applicant for a variance from buffer requirements shall demonstrate to the department that the proposed variance does not create health or safety hazards, is not materially detrimental to the public welfare, including natural resources, and is not injurious to property or improvements in the vicinity, as provided in K.C.C. 21A.44.030D. The applicant for the variance shall provide to the department for its review an analysis acceptable to the department that addresses:

1. A description of the areas of the lot that are sensitive areas, buffers, or within setbacks required by K.C.C. chapter 21A.24;
2. A description of the amount of the lot that is within setbacks required by other standards of the zoning code;
3. For wetland and stream buffers, the functions of the existing buffer on the parcel and adjoining parcels, to the extent those parcels are accessible;
4. The stability of the stream bank, if any;
5. The risk of creating trees likely to be designated as hazardous as a result of the development;
6. The opportunity for mitigation to address the adverse impacts of the proposed variance;
7. The location of the floodway and the 100-year floodplain;
8. The presence of any migrating river channel;
9. The impact on functions and values of natural resources that will result from the proposal;
10. Health Department requirements for on-site sewage disposal systems; and
11. Any other information determined by the department to be reasonably necessary to analyze the proposal.

C. The applicant for a variance from buffer requirements shall demonstrate to the department that the proposed variance is the minimum necessary to provide relief to the applicant, as provided in K.C.C. 21A.44.030J. The applicant for the variance

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shall provide to the department for its review an analysis acceptable to the department that addresses:

1. The date the applicant acquired the property and the applicable zoning at that time;

2. A design of the proposal demonstrating that the proposed development will have the least impact practicable on the sensitive area and buffer; and

3. Such other information as the department determines is reasonably necessary to evaluate whether the proposal is the minimum necessary to provide relief to the applicant.

D. The department shall approve a proposal for a variance from setback and buffer requirements of K.C.C. 21A.24.200, 21A.24.280, 21A.24.310, 21A.24.320, and 21A.24.360 only if it determines that the requirements of K.C.C. 21A.44.030 have been satisfied. The department shall evaluate the proposal for a variance using the following guidelines:

1. Any proposed structure requiring a variance from setback or buffer requirements is as far from the sensitive area as practical;

2. Total building coverage and all other impervious surfaces are located to limit intrusion into the buffer and limit the amount of impervious surface within the buffer;

3. If the proposal is for a single family residence for which the variance is requested for the location of any structure:

a. If the subject property is a lot of less than 30,000 gross square feet, no more than 3,000 square feet of the site may be disturbed by structure or other land alteration, including but not limited to, grading, utility installation, and landscaping, but not including an area used for an on-site sewage disposal system; and

b. If the subject property is a lot of 30,000 square feet or greater, no more than ten percent of the site may be disturbed by a structure or other land alteration, not including an area used for an on-site sewage disposal system;

4. The proposal uses to the maximum extent possible the best available construction, design, and development techniques that result in the least impact on the sensitive area and the buffer;

5. Unless a building setback variance has been issued, the yard area between any structure and the sensitive area and the reduced buffer shall meet minimum building setback requirements. If the variance allows a structure or associated yard to intrude into the normal buffer area, the resulting yard

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shall extend no more than fifteen feet from the edge of the structure's footprint toward the sensitive area and the reduced buffer;

6. In order to demarcate the buffer edge and sensitive area, permanent signs identifying the presence of a sensitive area shall be required between the edge of the yard and the sensitive area and buffer; and

7. For a variance of a wetland or stream buffer, there is no net loss of function of the stream or wetland on the site and no adverse impact to wetland or stream functions upstream or downstream from the site.

E. The director may modify the guidelines set forth in subsection D of this section, if the applicant demonstrates to the satisfaction of the director that:

1. There are unique circumstances relating to the property, including but not limited to, the need to construct a long, narrow driveway in order to obtain access to the development site; and

2. The proposed variance is the minimum necessary to provide relief to the applicant, as provided in subsection C of this section.

21A-24-022 Reasonable use exception.

A. Under K.C.C. 21A.24.070B., a reasonable use exception may be provided by the department upon request of a property owner if the application of the provisions of K.C.C. chapter 21A.24 would deny the property owner all reasonable use of his or her property.

B. An application for a reasonable use exception made pursuant to K.C.C. 21A.24.070B. shall include the following information that will be used by the department to evaluate the criteria for the reasonable use exception:

1. A description of the areas of the lot that are sensitive areas, buffers, or within setbacks required by K.C.C. chapter 21A.24;

2. A description of the amount of the lot that is within setbacks required by other standards of the zoning code;

3. An analysis of whether any other reasonable use authorized by K.C.C. chapter 21A.08 with less impact on the sensitive area and buffer is possible. This must also include an analysis of whether there is any practicable on-site alternative to the proposed development with less impact, including other allowed uses, reduction in density, phasing of project implementation, change in timing of activities, revision of lot

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layout, or related site planning considerations that would allow a reasonable use with less adverse impacts to the sensitive area and buffer;

4. A design of the proposal so that the development proposed as a reasonable use will have the least impact practicable on the sensitive area and buffer;

5. An analysis of the modifications needed to the standards of K.C.C. chapter 21A.24 to accommodate the proposed development;

6. A description of any modifications needed to the required front, side, and rear setbacks, building height, and landscape widths to provide for a reasonable use while providing protection to the sensitive area and buffer;

7. An analysis of mitigation opportunities in the manner prescribed in K.C.C. 21A.06.750 in order to evaluate whether the proposal minimizes the impact on the sensitive area and buffer; and

8. Such other information as the department determines is reasonably necessary to evaluate the issue of reasonable use as it relates to the proposed development.

C. If, in order to allow for reasonable use of property, the requirements of K.C.C. chapter 21A.24 need to be modified, the department may grant a modification to the standards of K.C.C. chapter 21A.24 in accordance with the following guidelines:

1. If a reasonable use of a parcel cannot exist without modification of the required front, side and/or rear setbacks, building height, and/or landscape widths, the department shall modify those standards only to the extent necessary to provide for a reasonable use of the parcel while providing as much protection as is possible under the circumstances to the sensitive area and while maintaining appropriate public health and safety standards, including fire flow and access;

2. If a reasonable use of a parcel cannot exist without a reduction of the buffer or the sensitive area, the department shall permit a reduction in the buffer or the sensitive area only to the extent necessary to provide for a reasonable use of the property. Adequate mitigation and monitoring shall be required for any reduction in the buffer or the sensitive area;

3. Any proposed structures requiring a reduction of sensitive area buffers in order to provide for reasonable use of the property shall be located as far from the sensitive area as practical;

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4. Total building coverage and all other impervious surfaces shall be minimized to limit intrusion into the buffer and the sensitive area and limit the amount of impervious surface within the buffer and sensitive area;

5. If the proposal is for a single family residence or for primary access to a single family residence:

a. If the subject property is a lot of less than 30,000 gross square feet, no more than 3,000 square feet of the site may be disturbed by structure or other land alteration, including but not limited to grading, utility installation, and landscaping, but not including an area used for an on-site sewage disposal system; and

b. If the subject property is a lot of 30,000 square feet or greater, no more than ten percent of the site may be disturbed by a structure or other land alteration, not including an area used for an on-site sewage disposal system;

6. The proposal uses to the maximum extent possible the best available construction, design and development techniques that result in the least impact on the sensitive area;

7. Unless a building setback variance has been issued, the yard area between the structure and the sensitive area and buffer shall meet minimum building setback requirements. If the proposal for reasonable use allows a structure or associated yard to intrude into the normal buffer area or the sensitive area, the resulting yard shall extend no more than 15 feet from the edge of the structure's footprint toward the sensitive area and the reduced buffer;

8. In order to demarcate the buffer edge and sensitive area, permanent signs identifying the presence of a sensitive area shall be required between the edge of the yard and the sensitive area and buffer; and

9. Any net loss of function of the stream or wetland on the site and adverse impacts to wetland or stream functions upstream or downstream from the site are minimized to the maximum extent practicable.

D. The director may modify the guidelines set forth in subsection C of this section, if the applicant demonstrates to the satisfaction of the director that:

1. There are unique circumstances related to the property, including but not limited to, the need to construct a long, narrow driveway in order to obtain primary access to the development site; and

2. The proposed reasonable use exception is the minimum necessary to provide relief to the applicant.

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21A-24-025 Public agency and utility exception.

A. The applicant for a public agency and utility exception under K.C.C. 21A.24.070A. shall prepare and submit to the department an evaluation of alternatives to demonstrate that there are no practical alternatives to the proposal that would minimize impacts on sensitive areas. The applicant may incorporate into the evaluation relevant documents prepared as part of an analysis or study conducted for another purpose. The applicant shall provide to the department copies of any documents incorporated into the evaluation. Taking into account the applicant's programmatic needs and objectives and the nature of the project, the evaluation shall include the following analyses:

1. An analysis of whether there are project alternatives that would satisfy the purpose and need and result in less impact to the sensitive area. The analysis of project alternatives shall evaluate at least the following factors:

- a. The extent to which the project alternative satisfies purpose and need;
- b. Cost of the project alternative;
- c. Engineering feasibility, considering all known, available, and reasonable technology; and
- d. Additional factors, such as safety and access for maintenance, determined by the department to be reasonably necessary to evaluate project alternatives. The specific criteria used will vary depending on the type of project and should be identified at the pre-application conference;

2. An analysis of whether there are alternate locations for the project that would satisfy the purpose and need for the project and that would result in less impact to sensitive areas. The analysis of alternative locations shall evaluate at least the following factors:

- a. Use areas that have been previously impacted and avoid, to the extent feasible, areas that have not been previously altered;
- b. Use existing transportation, trail, and utility corridors;
- c. Avoid sensitive areas to the maximum extent feasible;
- d. Avoid class 1 and 2 streams, class 1 and 2 wetlands, and critical wildlife habitat corridors identified by map or special study;
- e. Where avoidance is not possible, minimize impacts by crossing the least sensitive areas and reduce impacts by reducing area of direct impact;

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- f. Avoid impacts to existing land uses;
 - g. Environmental impacts of construction and operations, which may be discussed in environmental documents incorporated into the evaluation; and
 - h. Cost, including impediments to acquiring an ownership interest in alternative locations;
3. An analysis of whether there are alternative design or construction methodologies that would result in less impacts to sensitive areas; and
4. An analysis of the mitigation opportunities in the manner prescribed in K.C.C. 21A.06.750.
- B. The department shall review the applicant's evaluation of alternatives, taking into account the applicant's programmatic needs and objectives, the nature of the project, and the other factors set forth in subsection A. of this rule, to determine if there is a practical alternative that would satisfy the purpose and need for the project and result in less impacts to the sensitive area and buffer. The department shall determine that there is no practical alternative only if it concludes that the basic purpose of the project cannot practicably be accomplished using a project or non-project alternative, an alternative location, or an alternative construction technique that would avoid, or result in less adverse impacts on, a sensitive area or its buffer.

21A-24-028 Emergency actions.

Unless otherwise provided in these rules or other local, state, or federal law, an alteration of a sensitive area constituting an emergency action may be undertaken as provided in K.C.C. 21A.24.050A. only under the following circumstances:

A. The department shall be notified prior to the emergency action. If prior notification is not possible, the department shall be notified no later than 48 hours after the emergency action. Within 48 hours of receiving the emergency notification, excluding weekends and holidays, a pre-application conference shall be scheduled to occur within the following 30 days. Tribal notice, when required by K.C.C. 21A.01.025, shall be provided. The notice shall include the following information:

- 1. A description of the danger or risk to the public health, safety and welfare or to persons or property requiring immediate action;
- 2. A description of actions taken by the applicant, if any, to avoid the need to take emergency action. If no action

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was taken to avoid the need to take emergency action, an explanation of why not; and

3. A description of the emergency action taken and its relation to the dangers and risks posed by the emergency.

B. The department shall confirm in a written decision, that the alteration was an emergency action if it determines that:

1. There was imminent danger or risk to the public health, safety and welfare or to persons or property;

2. The emergency was unanticipated and not caused by the inaction or action of the applicant;

3. Immediate emergency action was necessary;

4. The emergency action was in direct response to and did not exceed the dangers and risks posed by the emergency; and

5. The action taken was the minimum necessary to address the risks and dangers associated with the emergency.

C. All decisions made pursuant to this rule shall be compiled by the department and made available for public inspection.

D. Under K.C.C 21A.24.275, effective February 16, 1995, structures are not permitted in areas subject to channel relocation or stream meander until public rules are adopted. Public rules were adopted by the department effective June 14, 1999. If the emergency action includes bank stabilization or other protective measures designed to prevent bank erosion within a channel migration area, the stabilization or other protective measures shall be allowed only to protect structures, public roadways, flood hazard reduction facilities, or sole access routes in existence prior to February 16, 1995 or that were lawfully established after June 14, 1999. As part of the mitigation required by subsection G of this section, removal of the emergency bank stabilization or other protective measures shall be evaluated.

E. At the pre-application conference, the department shall establish the date by which all required permit applications and other materials or information, including any required sensitive area report, shall be submitted.

F. If the department determines that any alterations made during the emergency are not in compliance with the requirements of K.C.C. chapter 21A.24, corrective action, as determined by the department, shall be completed in compliance with the corrective action requirements of K.C.C. chapter 23.02.

G. Mitigation, as determined by the department, shall be completed in compliance with the mitigation requirements of

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K.C.C. chapter 21A.24 and other King County, state, and federal laws.

21A-24-031 Mitigation requirement.

A. As required by K.C.C. 21A.24.130, 21A.24.340, and 21A.24.380, unless otherwise provided in these rules or pursuant to local, state or federal law, the applicant shall mitigate adverse impacts to or from sensitive areas and buffers resulting from a development proposal or alteration.

B. Mitigation applicable to wetlands and streams shall be approved according to the following sequence:

1. Avoiding the impact by not taking a certain action;
2. Minimizing the impact by limiting the degree or magnitude of the action with appropriate technology or by taking affirmative steps, such as project redesign, relocation or timing, to avoid or reduce the impact;
3. Rectifying the impact by repairing, rehabilitating or restoring the affected sensitive area or buffer;
4. Reducing or eliminating the impact over time by preservation or maintenance operations during the life of the development proposal or alteration;
5. Compensating for the impact by creating substitute sensitive areas or enhancing sensitive areas. Substitute sensitive areas shall be considered in the following order of preference: sensitive areas created on the project site; sensitive areas created in the vicinity of the project site; sensitive areas created in the same sub-basin as the project site; and

6. Monitoring the impact or other required mitigation and taking remedial action.

C. Mitigation applicable to hazard areas shall be approved according to the following sequence:

1. Avoiding the hazard by not taking a certain action;
2. Minimizing the hazard by limiting the degree or magnitude of the action with appropriate technology or by taking affirmative steps, such as project redesign, relocation or timing, to avoid or reduce the hazard;
3. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;
4. Reducing or eliminating the hazard over time by preservation or maintenance operations during the life of the development proposal or alteration; and
5. Monitoring the hazard or other required mitigation and taking remedial action.

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D. All mitigation shall be based on the best available science and shall use, as applicable, the best available currently accepted engineering, geological and biological practices.

E. Any failure to satisfy sensitive area mitigation requirements, including, but not limited to, the failure to provide a monitoring report within thirty days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default, and the department may demand payment of any financial guarantees or require other action authorized by K.C.C. Title 27A or other applicable law.

21A-24-034 Mitigation plan requirement.

A. The applicant shall submit a proposed mitigation plan to the department for approval whenever mitigation is required pursuant to K.C.C. 21A.24.130A. The department may require that the mitigation plan be prepared by or under the direction of a qualified professional. This mitigation plan requirement may be waived by the department for mitigation associated with any sensitive area except wetlands and streams and their buffers. The department shall approve the plan only if, to the satisfaction of the department, the plan:

1. Provides for mitigation of impacts in compliance with the requirements of K.C.C. chapter 21A.24;

2. Includes an appropriate schedule for completing mitigation; and

3. Includes adequate monitoring and reporting provisions.

B. The applicant shall not implement any mitigation actions until after the department approves the mitigation plan. The applicant shall complete all mitigation actions in accordance with the provisions of the approved mitigation plan.

C. The applicant shall submit a contingency plan, as required by the department, in the event of the failure of mitigation or of unforeseen impacts.

21A-24-037 Mitigation monitoring requirement.

A. Mitigation required to be monitored pursuant to K.C.C. 21A.24.130A. shall be monitored in accordance with the provisions of an approved mitigation plan for a period of up to five years. If monitoring is required as the mitigation for adverse impacts to a hazard area pursuant to 21A-24-031C.5., the period may be extended to monitor those specific hazards remaining after any mitigation measures are implemented or installed. The applicant shall notify the department when mitigation is installed and

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monitoring is commenced. This monitoring requirement may be waived by the department for mitigation associated with any sensitive area except wetlands and streams and their buffers.

B. Monitoring reports shall be provided to the department according to a schedule set forth in the approved mitigation plan. The plan's monitoring provisions shall specify the required form and contents of monitoring reports which may include written narratives, grading tickets, nursery receipts or other documentation determined by the department. Upon request of the applicant, the department may authorize the applicant to conduct monitoring with approved assistance, provided that ultimate responsibility for satisfying the requirements of K.C.C. chapter 21A.24 and rules adopted by the department, including mitigation requirements, shall remain with the applicant.

C. Where monitoring reveals a significant deviation from predicted impacts or a failure of mitigation, the applicant shall implement an approved contingency plan submitted pursuant to 21A-24-034C. The contingency plan shall constitute new mitigation and shall be subject to all mitigation and financial guarantee requirements including, but not limited to, monitoring for a period of up to five years.

D. Reasonable access to the mitigation site shall be provided to King County for the purpose of inspections during any monitoring period after completion.

21A-24-040 Sensitive areas violations - Remediation requirements.

A. Any person who alters a sensitive area or buffer in violation of law shall undertake remediation in compliance with the requirements of K.C.C. chapters 21.24 and 23.08, any rules adopted by the department, and any requirements of the director. Remediation shall include restoration of the sensitive area and buffer. Remediation shall be subject to all permits or approvals required for the type of work undertaken. In addition, the violator shall be subject to all fees associated with investigation of the violation and the need for remediation.

B. All remediation shall be completed within the time specified in the remediation plan, but in no case later than one year from the date the remediation plan is approved by the department. The violator shall notify the department when restoration measures are installed and monitoring is commenced.

C. Any failure to satisfy remediation requirements established by law or condition including, but not limited to,

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the failure to provide a monitoring report within thirty days after it is due or comply with other provisions of an approved remediation plan shall constitute a default, and the department may demand payment of any financial guarantees or require other action authorized by K.C.C. Title 27A or other applicable law.

D. Reasonable access to the remediation site shall be provided to King County for the purpose of inspections during any monitoring period.

E. Remediation to remedy a sensitive areas violation shall be monitored in accordance with the provisions of the approved remediation plan. Monitoring may be required for a period of up to five years. Monitoring pursuant to the remediation plan shall comply with the monitoring requirements set forth in 21A-24-037.

F. The violator shall submit a proposed remediation plan to the department for approval. The department may modify the plan and shall approve it only if the department determines that the plan complies with the requirements for mitigation plans set forth in 21A-24-034. All remediation shall be accomplished according to the approved remediation plan. No remediation shall be undertaken until the plan is approved by the department.

21A-24-041 Applicability. The provisions of these rules shall apply as follows:

A. For an application for a single-family residence, the provisions of these rules apply to any application for which the department mails to the applicant a notice of the need to conduct sensitive areas studies on or after the effective date of these rules; and

B. For an application other than for a single-family residence, the provisions of these rules apply to any application that is deemed complete on or after the effective date of these rules.

21A-24-042 Severability. If a provision of the rules contained herein or its applicability to any person or circumstance is held invalid, the remainder of the provisions of these rules or the application of the provision to other persons or circumstances shall not be affected.