Chapter 18.01
CRITICAL AREAS PROTECTION*

Sections:

* Editor's note: Ord. No. 1335, § 1, adopted Nov. 9, 2010, amended Ch. 18.01 in its entirety to read as herein set out. Former ch. 18.01, §§ 18.01.010 – 18.01.520, pertained to maintenance, enhancement and preservation of critical areas, and derived from Ord. 1039, adopted 1996.

18.01.010 Purpose.

The purpose of this chapter is to protect the functions and values of critical areas, and to protect the public health, safety, and welfare of the citizens of Cle Elum. Additionally, this chapter is intended to protect public and private property and natural ecosystems found within city limits. The City of Cle Elum shall regulate all uses, activities and developments within, adjacent to, or likely to affect, one or more critical areas, consistent with the best available science and the provisions herein. The City of Cle Elum finds that development in and/or near critical areas may pose a threat to public and private property, to natural ecosystems and to the public health, safety and welfare. This chapter aims to protect critical areas and to channel development to less ecologically sensitive areas.

(Ord. 1335 § 1, 2010)

18.01.020 Definitions.

[The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

"Anadromous fish" means fish that spawn and rear in freshwater and mature in the marine environment.

"Best available science" means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 925. Sources of best available science are included in "Best Available Science For the City of Cle Elum, Washington" prepared dated October 28, 2020 or amended.~~,~~

"Buffer" means an area contiguous to and protects a critical area that is required for the continued maintenance, functioning, and/or structural stability of a critical area. ~~"Buffer" or "wetland buffer" shall mean those standard buffer widths as shown on attachedin CEMC 18.01.070 Table 18.01-12.~~

~~Table 18.01-1. Table Wetland Buffer Requirements~~

~~Wetland Category~~	~~Standard Buffer Width~~
~~Category I: Based on total score~~	~~75 ft~~
~~Category I: Forested~~	~~75 ft~~
~~Category I: Bogs~~	~~190 ft~~
~~Category I: Alkali~~	~~150 ft~~
~~Category I: Natural Heritage Wetlands~~	~~190 ft~~
~~Category II: Based on total score~~	~~75 ft~~
~~Category II: Vernal Pool~~	~~150 ft~~
~~Category II: Forested~~	~~75 ft~~
~~Category III: (all)~~	~~60 ft~~
~~Category IV: (all)~~	~~40 ft~~

~~"Critical areas" include the following areas and ecosystems:"~~

~~1. Wetlands;~~

~~2. Areas with a critical recharging effect on aquifers used for potable water;~~

~~3. Fish and wildlife habitat conservation areas;~~

~~4. Frequently flooded areas; and~~

~~5. Geologically hazardous areas.~~

"Channel migration zone (CMZ)" means the area along a river or stream within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river or stream and its surroundings. ~~"Fish and wildlife habitat conservation areas"~~

Commented [JK1]: New WDFW

"Compensatory mitigation" means replacing project-induced critical areas losses or impacts, and includes, but is not limited to restoration, creation, enhancement, and/or preservation.

"Creation" means actions performed to intentionally establish a critical area at a site where it did not formerly exist.

"Critical aquifer recharge area (CARA)" means an area designated by WAC 365-190-100 that is determined to have a critical recharging effect on aquifers (i.e., maintain the quality and quantity of water) used for potable water as defined by WAC 365-190-030(3). These areas include the following:

1. Wellhead Protection Areas;
2. Sole Source Aquifers;
3. Susceptible Ground Water Management Areas;
4. Special Protection Areas;
5. Moderately or Highly Vulnerable Aquifer Recharge Areas; and
6. Moderately or Highly Susceptible Aquifer Recharge Areas.

"Enhancement" means actions performed within an existing degraded shoreline, critical area, and/or buffer to intentionally increase or augment one or more ecological functions or values of the existing area. Enhancement actions include, but are not limited to, increasing plant diversity and cover; increasing wildlife habitat and structural complexity (snags, woody debris); installing environmentally compatible erosion controls; or removing non-indigenous plant or animal species.

"Fish and wildlife habitat conservation areas" are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat,

winter range, and movement corridors, and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species.

1. "Habitats of local importance" designated as fish and wildlife habitat conservation areas include those areas found to be locally important by counties and cities.

2. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company. ~~include:~~

~~1. Areas with which endangered, threatened, and sensitive species have primary association;~~

~~2. Habitats and species of local importance;~~

~~3. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish and wildlife habitat;~~

~~4. Waters of the state;~~

~~5. State natural area preserves and natural resource conservation areas.~~

"Frequently flooded areas" means lands in the floodplain subject to a one percent (1%) or greater chance of flooding in any given year, or within areas subject to flooding due to high groundwater and those lands that provide important flood storage, conveyance, and attenuation functions. These areas include, but are not limited to, streams, rivers, lakes, wetlands, and areas where high groundwater forms ponds on the ground surface ~~include those flooded areas in the 100-year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program~~, and Crystal Creek and ephemeral drainages identified by DNR and the Washington Department of Fish and Wildlife (WDFW) ~~and other frequently flooded areas.~~

"Floodway" are all areas designated as regulatory floodways, potholes and shaded X zones that are three feet or greater in depth, and active stream channels.

"Floodplain" are all areas subject to inundation by the base flood, but outside the limits of the floodway. Those portions of the A, AE, AH, and shaded X zones not defined as floodway, and that portion of a pothole and FEMA shaded X zone area that is between zero feet (base flood elevation) and three feet in depth.

"Geologically hazardous area" means an area that is not suited to commercial, residential, or industrial development because of its susceptibility to erosion, sliding, earthquakes, or other geological events hazardous to public health or safety.

"In-kind compensation" means to replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity. The determination of in-

kind versus out-of-kind compensation for wetlands is dependent upon equivalency in wetland functions, not wetland categories.

"Mitigation" -means avoiding, minimizing or compensating for adverse critical areas impacts. Mitigation, in the following order of preference, is:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
3. Rectifying the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project;
4. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;
5. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
6. Compensating for the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
7. Monitoring the hazard or other required mitigation and taking remedial action when necessary.

Mitigation for individual actions may include a combination of the above measures.

"Moderately or highly susceptible aquifer recharge areas" means aquifer recharge areas moderately or highly susceptible to degradation or depletion because of hydrogeologic characteristics are those areas meeting the criteria established by the Washington State Department of Ecology (Ecology).

"Moderately or highly vulnerable aquifer recharge areas" means aquifer recharge areas that are moderately or highly vulnerable to degradation or depletion because of hydrogeologic characteristics are those areas delineated by a hydrogeologic study prepared in accordance with Ecology guidelines.

"Monitoring" means evaluating the impacts of development proposals on the biological, hydrological, and geological elements of such systems and assessing the performance of required mitigation measures throughout the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features~~,~~ and includes gathering baseline data.

"Ordinary high watermark (OHWM)" on all lakes, rivers, and streams means that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the

abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or ~~the Washington State Department of~~ Ecology~~; provided that in any area where the OHWM cannot be found, the OHWM salt water shall be the line of mean higher high tide and the OHWM adjoining freshwater shall be the line of mean high water~~.

"Priority habitat" means a habitat type with a unique or significant value to one (1) or more species as identified by Priority Habitats and Species (PHS) maintained by Washington Department of Fish and Wildlife (WDFW). An area classified and mapped as priority habitat must have one (1) or more of the following attributes: comparatively high fish or wildlife densities; comparatively high fish or wildlife species diversity; fish spawning habitat; important wildlife habitat; important fish or wildlife seasonal range; important fish or wildlife movement corridors; rearing and foraging habitat; refuge; limited availability; high vulnerability to habitat alteration; unique or dependent species; or shellfish beds. A priority habitat may be described by its unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be described by a successional stage (such as old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or non-priority fish and wildlife (WAC 173-26-020(30)).

"Priority species" means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed in WAC 173-26-020(29).

"Rehabilitation" means a type of restoration action intended to repair natural or historic functions and processes. Activities could involve breaching a dike to reconnect wetlands to a floodplain or other activities that restore the natural water regime.

“Restore," "restoration" or "ecological restoration" means the re-establishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, re-vegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

“Riparian” means alongside a waterbody: stream, river, lake, pond, bay, sea, and ocean. Riparian areas are sometimes referred to by different names: riparian ecosystems, riparian habitats, riparian corridors, or riparian zones.

Riparian Management Zone (RMZ) means a delineable area defined in a land use regulation; often synonymous with riparian buffer. For the purposes of this document, we define the RMZ as the area that has the potential to provide full riparian functions. In many forested regions of the state this area occurs within one 200-year site-potential tree height (SPTH) measured from the edge of the stream channel. In situations where a channel migration zone is present, this occurs within one site-potential tree height measured from the edges of

the channel migration zone. In non-forest zones the RMZ is defined by the greater of the outermost point of the riparian vegetative community or the pollution removal function, at 100-feet.

Site-Potential Tree Height means the average maximum height of the tallest dominant trees for a given age and site class

Commented [JK2]: New WDFW

"Sole source aquifers" means areas that have been designated by the U.S. Environmental Protection Agency pursuant to the Federal Safe Water Drinking Act.

"Special protection areas" means those areas defined by WAC 173-200-090.

"Susceptible ground water management areas" means areas that have been designated as moderately or highly vulnerable or susceptible in an adopted ground water management program developed pursuant to WAC 173-100.

"Type F waters" means segments of natural waters other than Type S Waters, which are within the bankfull widths of defined channels and periodically inundated areas of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low water and which in any case contain fish habitat or are described by one of the following categories"

1. Waters, which are diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the city to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type F Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

2. Waters, which are diverted for use by federal, state, tribal or private fish hatcheries. Such waters shall be considered Type F Water upstream from the point of diversion for 1,500 feet, including tributaries if highly significant for protection of downstream water quality. The city may allow additional harvest beyond the requirements of Type F Water designation provided the city determines after a landowner-requested on-site assessment by the department of fish and wildlife, Ecology, the affected tribes and interested parties that:

    a. The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and

    b. Such additional harvest meets the requirements of the water type designation that would apply in the absence of the hatchery;

3. Waters, which are within a federal, state, local, or private campground having more than 10 camping units: Provided, That the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within 100 feet of a camping unit, trail or other park improvement;

4. Riverine ponds, wall-based channels, and other channel features that are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria:

   a. The site must be connected to a fish habitat stream and accessible during some period of the year; and

   b. The off-channel water must be accessible to fish.

~~its~~"Type Np Water" mean all segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial steams are flowing waters that do not go dry any time of a year of normal rainfall and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.

"Type Ns Water" means all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in whish surface flow is not present for a least some portion of a year of normal rainfall and are not located downstream from and stream reach that is a Type Np Water. Ns Waters must be physically connected by an above-ground channel system to Type S, F, or Np Waters.

"Type S Waters" means all waters, within their bankfull width, as inventoried as "shorelines of the state" under chapter 90.58 RCW and the rules promulgated pursuant to chapter 90.58 RCW including periodically inundated areas of their associated wetlands. As of August 2020, the only known Type S waters in Cle Elum are the Yakima and Cle Elum rivers.

"Qualified professional" means a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and have at least five years related work experience.

~~a~~1. A qualified professional for wetlands must be a professional wetland scientist with at least two years of full time work experience as a wetlands professional, including delineating wetlands using the state or federal manuals, preparing wetlands reports, conducting function assessments, and developing and implementing mitigation plans.

~~b~~2. A qualified professional for habitat must have a degree in biology or a related degree and professional experience related to the subject species.

~~c~~3. A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the State of Washington.

~~d~~4. A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

~~"Qualified scientific expert" has the expertise appropriate to the relevant critical areas and is determined by the person's professional credentials and/or certification, any advanced degrees earned in the pertinent scientific discipline from a recognized university, the number of years experience in the pertinent scientific discipline, formal training in the specific area of expertise, and field and/or laboratory experience with evidence of the ability to produce peer-reviewed publications or other professional literature. No one factor is determinative in deciding whether a person is a qualified scientific expert.~~

"Waters of the state" include lakes, rivers, ponds, streams, inland waters, underground waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in RCW 90.48.020.

"Wellhead protection areas" are areas defined by the boundaries of the ten (10) year time of ground water travel, or boundaries established using alternate criteria approved by the Department of Health in those settings where ground water time of travel is not a reasonable delineation criterion, in accordance with WAC 246-290-135.

"Wetland or wetlands" means an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and other similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas created to mitigate the conversion of wetlands.

(Ord. 1335 § 1, 2010)

18.01.030 Designation and Mapping of critical areas.

A. All areas within the city meeting the definition of one or more critical areas defined above are hereby designated critical areas and are subject to the provisions of this chapter except for critical areas within the City of Cle Elum shorelines. The City of Cle Elum Shoreline Master Program supersedes this chapter for only those critical areas within shoreline designations.

~~A~~B. The City of Cle Elum shall regulate all uses, activities and developments within, adjacent to, or likely to affect, one or more critical areas, consistent with the best available science and the provisions herein.

~~B. Critical areas regulated by this chapter include:~~

C~~1~~. Wetlands Designation:

Wetlands are those areas, designated in accordance with the procedures outlined in WAC 173-22-035. All areas within the city meeting the wetland designation criteria as outlined in WAC 173-22-035 are hereby designated critical areas and are subject to the provisions of this chapter. Wetlands shall be rated according to the ~~Washington State Department of~~ Ecology wetland rating system found in the Washington State Wetland Rating System documents (Eastern Washington, Ecology Publication #04-06-~~15~~030) or as revised by Ecology. Wetland delineations are valid for five years; after such date the City shall determine whether a revision or additional assessment is necessary.

1. The approximate location and extent of known wetlands are shown on the adopted critical area map, or the latest revision of this map, as derived from the National Wetlands Inventory. The City's critical area mapping,, National Wetland Inventory Map, Soil Surveys, and any Washington Department of Natural Resource wetland ~~is map is~~ mapping are to be used as a guide for the City, project applicants, and/or property owners to identify potential wetland areas, but do not provide a conclusive or definitive indication of wetland presence or extent. Other wetlands may exist that do not appear on the maps and some wetlands that appear on these maps may not meet all of the wetland designation criteria.~~, and may be continuously updated as new critical areas are identified~~. ~~It is a reference and does not provide a final critical area designation.~~ .

2. The exact location of a wetland's boundary shall be determined through the performance of a field investigation by a qualified professional

D~~2~~. Critical aquifer recharge areas (CARAs) are those areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2). CARAs have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water. Aquifer recharge areas shall be rated as having high, moderate, or low susceptibility based on soil permeability, geologic matrix, infiltration, and depth to water as determined by the criteria established by ~~the state Department of~~ Ecology. ~~These areas include the following:~~

~~1. a. Wellhead Protection Areas. Wellhead protection areas may be~~are ~~defined by the boundaries of the ten year time of ground water travel or boundaries established using alternate criteria approved by the Washington State Department of Health in those settings where ground water time of travel is not a reasonable delineation criterion, in accordance with WAC 246-290-135.~~

~~2. Sole Source Aquifers. Sole source aquifers are areas that have been designated by the U.S. Environmental Protection Agency pursuant to the Federal Safe Water Drinking Act.~~

~~3. Susceptible Ground Water Management Areas. Susceptible ground water management areas are areas that have been designated as moderately or highly vulnerable or susceptible in an adopted ground water management program developed pursuant to WAC 173-100.~~

~~4. Special Protection Areas. Special protection areas are those areas defined by WAC 173-200-090.~~

~~5. Moderately or Highly Vulnerable Aquifer Recharge Areas. Aquifer recharge areas that are moderately or highly vulnerable to degradation or depletion because of hydrogeologic characteristics are those areas delineated by a hydrogeologic study prepared in accordance with the state Department of Ecology guidelines.~~

~~Moderately or Highly Susceptible Aquifer Recharge Areas. Aquifer recharge areas moderately or highly susceptible to degradation or depletion because of hydrogeologic characteristics are those areas meeting the criteria established by the state Department of Ecology.~~The city lies over alluvial soil deposits. There are unconsolidated materials composed of silt, sand and gravel, which in places are several hundred feet in depth. This deposit material is important as a water conveying unit and supplies the groundwater of stream flow (recharge). In general, areas of permeable soils in combination with geological transfer structure may be aquifer recharge areas. Based on the information and maps contained in hydrology of the Upper Yakima River Basin and landscape planning, environmental applications, the city is an aquifer recharge area. This is a preliminary determination until further studies of geology and hydrology are conducted on an overall or individual property specific basis to either include or exclude them as an aquifer recharge area

E~~3~~. Frequently flooded areas are those areas subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high ground water. These areas include:~~that have a one percent or greater chance of flooding in any given year. These areas may include, but are not limited to,~~

1. Water-ways~~. Including~~ (streams, rivers, lakes, coastal areas, wetlands, and areas where high ground water forms ponds on the ground surface) ad associated channel migration zones. ~~streams (including intermittent ones), draws/ravines, rivers, wetlands, draws and the like~~. This includes Crystal Creek. Crystal Creek and ephemeral drainages identified by DNR and the Washington Department of Fish and Wildlife (WDFW).

2. ~~b. Floodways~~Floodways and Floodplains . ~~I~~identified in ~~the most recent~~ the May 5, 1981 FEMA Flood Insurance Rate Map, and as subsequently revised and amended.~~.c. Crystal Creek. Crystal Creek and ephemeral drainages identified by DNR and the Washington State Department of Fish and Wildlife (DFW).~~

3. The City may use additional flood information that is more restrictive or detailed than that provided in the flood insurance study conducted by the Federal Emergency Management Agency (FEMA) to designate frequently flooded areas, including data on channel migration, historical data, high water marks, photographs of past flooding, location of restrictive floodways, maps showing future build-out conditions, maps that show riparian habitat areas, or similar information.

F~~F~~4. Geologically hazardous areas are areas susceptible to erosion, sliding, earthquake, or other geological events, that are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns. Geological hazardous areas as designated by WAC 365-190-080 include ~~those with~~ the following~~ areas~~~~characteristics~~:

1. ~~a.~~ Erosion Hazard Areas. Erosion hazard areas are at least those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "moderate to

severe," "severe," or "very severe" rill and inter-rill erosion hazard. Erosion hazard areas are also those areas impacted by shore land and/or stream bank erosion and those areas within a river's channel migration zone.

2. ~~b.~~ Landslide Hazard Areas. Landslide hazard areas are areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors, and include, at a minimum, the following (per WAC 365-190-120(6)): ~~.~~

   a. Areas of historic failures, such as:

      i. Those areas delineated by the United States Department of Agriculture Natural Resources Conservation Service as having a significant limitation for building site development;

      ii. Those coastal areas mapped as class u (unstable), uos (unstable old slides), and urs (unstable recent slides) in the Ecology coastal atlas; or

      iii. Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the United States Geological Survey or Washington department of natural resources.

   b. Areas with all three of the following characteristics:

      i. Slopes steeper than fifteen percent;

      ii. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

      iii. Springs or groundwater seepage.

   c. Areas that have shown movement during the holocene epoch (from ten thousand years ago to the present) or which are underlain or covered by mass wastage debris of this epoch;

   d. Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

   e. Slopes having gradients steeper than eighty percent subject to rockfall during seismic shaking;

   f. Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action, including stream channel migration zones;

   g. Areas that show evidence of, or are at risk from snow avalanches;

   h. Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and

i. Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of bedrock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief.

j. Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of bedrock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief.

k. Known landslide areas documented by the Washington State Department of Natural Resources (DNR)(2020) and those areas with slopes greater than 35%.

l. Known mass wasting areas identified in the 2005 Landslide Hazard Zonation Project – Mass Wasting Assessment prepared by Powell, L.

3. ~~c.~~ Seismic Hazard Areas. Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, lateral spreading, or surface faulting. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils of low density, typically in association with a shallow groundwater table. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington, and ground settlement may occur with shaking. As specified in WAC 365-190-120(7), The strength of ground shaking is primarily affected by:

a. The magnitude of an earthquake;

b. The distance from the source of an earthquake;

c. The type of thickness of geologic materials at the surface; and

d. The type of subsurface geologic structure.

The Washington Department of Natural Resources Seismic scenario catalog, liquification susceptibility, and U.S. Department of Agriculture Natural Resource Conservation Service soil surveys should be consulted. These maps are a reference and do not provide a conclusive or final critical area designation.~~Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, or surface faulting. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless, loose, or soft-saturated soils of low density, typically in association with a shallow ground water table~~.

4. ~~d.~~ Mine Hazard Areas Mine hazard areas are those areas underlain by, adjacent to, or affected by mine workings such as adits, gangways, tunnels, drifts, or air shafts. Factors which should be considered include: Proximity to development, depth from ground surface to the mine working, and geologic material. ~~. Mine hazard areas are those areas underlain by or affected by mine workings such as adits, gangways, tunnels, drifts, or airshafts, and those areas of probable sink holes, gas releases, or~~

~~subsidence due to mine workings. Coal mining activities during the early part of this century left some areas in the Upper Kittitas County honeycombed with abandoned mine workings. Many of these abandoned workings pose a danger to collapse or sinking, especially during a seismic event. Factors that should be considered include: proximity to development, depth from ground surface to the mine working, and geologic material.~~

5. ~~e.~~ Volcanic Hazard Areas. Volcanic hazard areas are areas subject to pyroclastic flows, lava flows, debris avalanche, and inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

6. ~~f.~~ Steep Slopes: Known landslide areas documented by the Washington State Department of Natural Resources (DNR)(2020) and are those areas with steep slopes greater than 35%.

7. ~~fg.~~ Other Hazard Areas. Geologically hazardous areas shall also include areas determined by the ~~[~~director~~]~~ to be susceptible to other geological events including mass wasting, debris flows, rock falls, and differential settlement.

G~~5~~. Fish and wildlife habitat conservation areas include ~~those with~~ the following ~~characteristics~~:

1. ~~a.~~ Federally Designated Endangered, Threatened and Sensitive Species. Areas with which federally designated endangered, threatened and sensitive species have a primary association. Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted for current listing status.

2. ~~b.~~ State Designated Endangered, Threatened and Sensitive Species. Areas with which state designated endangered, threatened and sensitive species have a primary association. State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington identified by the Washington Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC 232-12-014 (state endangered species) and WAC 232-12-011 (state threatened and sensitive species). The state Department of Fish and Wildlife maintains the most current listing and should be consulted for current listing status.

3. ~~c.~~ State Priority Habitats and Areas Associated with State Priority Species. Priority Habitats and Species (PHS) are considered to be priorities for conservation and management. PHS require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. PHS habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority PHS habitat

may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority Habitats and Species are identified by the state Department of Fish and Wildlife.~~State Priority Habitats and Areas Associated With State Priority Species. Priority habitats and species are considered to be priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the state Department of Fish and Wildlife.~~

4. ~~d.~~ Habitats and Species of Local Importance. Habitats and species of local importance are those identified by the ~~[city/county]~~City of Cle Elum, including but not limited to those habitats and species that, due to their population status or sensitivity to habitat manipulation, warrant protection. Habitats may include a seasonal range or habitat element with which a species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

5. Waters of the State.

6. Streams. All streams that meet the criteria for Type S, F or N (Np and Ns) waters as set forth in WAC 222-16-030 and provided in definitions in CEMC 18.01.020. Official Water Type Reference Maps maintained by the Department of Natural Resources should be consulted. These maps are a reference and do not provide a conclusive or final critical area designation.

7. Naturally occurring and man-made ponds under twenty (20) acres in size.

~~G~~C. ~~All areas within the city meeting the definition of one or more critical areas defined above are hereby designated critical areas and are subject to the provisions of this chapter.~~

(Ord. 1335 § 1, 2010)

18.01.040 Construction with other laws.

~~A. *Abrogation and Greater Restrictions.* It is not intended that this chapter repeals, abrogates, or impairs any existing regulations, easements, covenants, or deed restrictions. However, when this chapter imposes greater restrictions, the provisions of this chapter shall prevail.~~

~~B~~A. *Interpretation.* The provisions of this chapter shall be liberally construed to serve the purposes of this chapter.

(Ord. 1335 § 1, 2010)

18.01.050 Permitting.

All applications for permits to conduct activities having a possible ~~significant~~ impact on critical areas that are located on or near a project site must identify the areas affected and make an estimate of the probable impact. The city of Cle Elum shall deny all requests for permits which would result in activities degrading a wetland or fish and/or wildlife habitat conservation area, which would put people or property in a position of unacceptable risk with respect to floods or geologic hazards, which would tend to aggravate geologic hazards, or which would harm critical recharging areas for aquifers not otherwise in accordance with this Chapter. The city of Cle Elum may, however, grant permits which include mitigation measures if the mitigation measures adequately protect the critical area and people involved. In granting a permit that includes mitigation measures, best available science, which shall be determined utilizing the criteria set out in WAC 365-195-900 through 365-195-925, shall be used to develop and approve the mitigation measures. Applicable permit fees, as set forth by resolution of the city council, are due at the time of application. The applicant shall be responsible for the initiation, preparation, submission, and expense of all required reports, assessment(s), studies, plans, reconnaissance(s), peer review(s) by qualified consultants, and other work prepared in support of or necessary to review the application.

(Ord. 1543 § 1, 2019; Ord. 1335 § 1, 2010)

18.01.055 Determination.

A. Each development permit shall be reviewed to determine if the proposal is within a critical area or critical area buffer. ~~City staff shall use maps and data maintained by the city and a site inspection if appropriate.~~

~~B. If it is determined that a critical area(s) is present additional assessments prepared by a qualified professional best suited for the type of identified critical area(s) may be required.~~

B. Wetlands. A ~~wetland assessment~~Critical Areas Report prepared by a qualified wetlands specialist is required for projects situated within 200 feet of a known or suspected wetland and shall include the following:~~of a critical area, and or its buffers. The wetland assessment should provide results of a preliminary environmental agency data resources review applicable to the site, field investigation data forms and site photographs, and a map of the delineated critical area and associated buffer areas as it relates to the property's extent and the proposed project footprint.~~

1. The category and precise location of the boundary of the wetland(s); and

2. Delineated wetlands and required buffers within 200 feet of the project area shall be depicted on the site plan. Best available information includes, but is not be limited to, aerial photos, soils maps, and/or topographic maps; and

3. An analysis of the onsite wetland(s) including the following site- and proposal-related information:

   a. Documentation of any fieldwork performed on the site, including but not limited to field delineation data sheets for delineations, the wetland rating forms, and baseline hydrologic data;

   b. A description of the methodologies used to conduct the wetland delineations; and ~~T~~the vegetative, faunal, and hydrologic characteristics of the wetland.

C. Critical Aquifer Recharge Area.

1. As stated in CEMC 18.01.030.C, the entire city limits is presumed to be located within in critical aquifer recharge area unless a hydrogeologic study demonstrates otherwise. This is a preliminary determination until further studies of geology and hydrology are conducted on an overall or individual property specific basis to either include or exclude them as an aquifer recharge area.

2. All critical aquifer recharge areas shall be classified as having either a high, medium, or low aquifer recharge potential. At a minimum, classification shall be based on soil permeability and recharge potential as described within the Soil Survey of Kittitas County. Where adequate information is available, aquifer recharge potential shall be further classified based on the recharge potential of surficial geologic materials, presence or absence of restrictive layers, surface and groundwater monitoring data, wellhead protection areas, depth to groundwater, topography (i.e., slopes), and locally adopted groundwater protection plans and studies. Land classified as having a high, medium, or low aquifer recharge potential shall also be classified as having a high, medium, or low susceptibility to contamination of an underlying aquifer, respectively. Based on these criteria, the potential for recharging aquifers or transmitting contaminants to the underlying aquifer is greatest where the aquifer is close to the ground surface, where ground surface slopes are minimal, and where the recharge potential of the soils and/or surficial geologic material is greatest. All wellhead protection areas shall be designated as highly susceptible critical aquifer recharge areas. This can be provided in the hydrogeologic study or separate memo prepared by a qualified professional.

D. Fish and Wildlife Habitat Conservation Areas.

1. A Critical Areas Report prepared by a qualified biologist is required if a proposed use or development is located within two hundred (200) feet of a known or suspected Waters of the State, and/or streams as classified according to WAC 222-16-030. The critical areas report shall include the following:

   a. Identify all streams as classified according to WAC 222-16-030.

b. If located within 200 feet from Crystal Creek, identify the Riparian Management Zone, per Chapter 2 of the Washington Department of Fish and Wildlife Riparian Ecosystems, Volume 2: Management Recommendations. This includes identifying and denoting the Channel Migration Zone and the Site-Potential Tree Height.

c. If located within 200 feet from all other streams as classified according to WAC 222-16-030 and Waters of the State, identify the location of the ordinary high watermark and the water type as classified according to WAC 222-16-030.

c. All Fish and Wildlife Habitat Conservation Areas and required buffers within two hundred (200) feet of the project area shall be depicted on the site plan;

d. The vegetative, faunal, topographic, and hydrologic characteristics of the Fish and Wildlife Habitat Conservation Areas; and

e. A detailed discussion of the direct and indirect potential impacts on Fish and Wildlife Habitat Conservation Areas by the project. Such discussion shall include a discussion of the ongoing management practices that will protect habitat after the project site has been developed.

Commented [JK3]: updated

~~f~~2. A habitat management plan prepared by a qualified biologist is required for projects situated within 200 feet of a known or suspected Priority Habitat Species or associated habitat. The habitat management plan shall include a discussion of the potential direct and indirect impacts, as well as a discussion of the ongoing management practices that will protect habitat after the project site has been developed. The habitat management plan will include any relevant information and recommendations from the Washington Department of Fish and Wildlife habitat guidelines for the affected species and/or habitat. Based on the characteristics of the site, the City may require that all or a portion of the following be included in a habitat management plan:

a. A map drawn to scale or survey showing the location of the Fish and Wildlife Habitat Conservation Areas on the subject property, as well as the approximate location of any potential Fish and Wildlife Habitat Conservation Areas within two hundred (200) feet of the subject property;

b. A description of the methodologies used to classify the water type (per CEMC18.01.055.D(1)(c)) and/or Riparian Management Zone (CEMC18.01.055.D(1)(b));

c. Detailed description of vegetation and habitat characteristics within and adjacent to the site;

d. Identification of any endangered, threatened, sensitive, or candidate species that have a primary association with habitat on the project area, and assessment of potential project impacts to use of the buffer and critical area on the site by the species;

e. Methods and measures to avoid, minimize and/or compensate for adverse impacts associated with the proposed development, including but not limited to:

i. Prohibition or limitation of development activities within the Fish and Wildlife Habitat Conservation Areas;

ii. Establishment of a buffer around the Fish and Wildlife Habitat Conservation Areas;

iii. Retention of vegetation and/or revegetation of areas / habitats critically important to species;

iv. Special construction techniques;

v. Implementation of erosion and sediment control measures;

vi. Habitat enhancement (ex. fish passage barrier removal, vegetation plantings, large wood placement, etc.);

vii. Seasonal restrictions on construction activities on the subject property;

viii. Clustering of development on the subject property; and

ix. Any other requirements and/or recommendations from WDFW's habitat management guidelines.

E. Frequently Flooded Areas. A Federal Emergency Management Agency (FEMA) elevation certificate shall be required for new construction, any addition affixed to the side of a structure, and substantial improvements located within flood hazard areas. The most current version of the FEMA elevation certificate must be completed and certified by a professional land surveyor, currently licensed in the state of Washington, kept on file by the city for public inspection, recording the actual (as-built) elevation (in relation to mean sea level) of:

1. The lowest floor, including basement, of all new or substantially improved structures, whether or not the structure contains a basement;

2. For floodproofed nonresidential structures, where the structure was floodproofed (including floodproofing certifications).

F. Geological Hazard Areas.

1. Geological Hazard Areas Risk Assessment. If it is determined that a landslide, erosion, mine, volcanic and seismic hazard area hazard may be present on or adjacent to a proposed development site, the applicant shall submit a geologic hazard area risk assessment prepared by a professional engineer, engineering geologist, or geologist. The geologic hazard area risk assessment shall include a description of the geology of the site and the proposed development; an assessment of the potential impact the project may have on the geologic hazard; an assessment of what potential impact the geologic hazard may have on the project; appropriate mitigation measures, if any; and a conclusion as to whether further analysis is necessary. The assessment shall be signed by and bear the seal of the

engineer or geologist that prepared it. No further analysis shall be required if the geologic hazard area risk assessment concludes that there is no geologic hazard present on the site, nor will the project affect or be affected by any potential geologic hazards that may be nearby. If the professional preparing the geologic hazard area risk assessment concludes that further analysis is necessary, the applicant shall submit a geotechnical report.

2. Geological Hazard Areas Geotechnical Report. If the geological hazard areas risk assessment requires further analysis, a geotechnical report is required. The geotechnical report shall include a certification from the professional preparing the report, including the professional's stamp and signature. The geotechnical report shall include the following:

1. A detailed description of the geology and soil conditions of the site;

2. Evaluation of the geologic conditions giving rise to the geologic hazard;

3. An evaluation of the safety of the proposed project;

4. Conclusions and recommendations regarding the effect of geologic conditions on the proposed development;

5. Conclusions and recommendations on the suitability of the site to be developed;

6. A statement regarding the risk of damage from the project, both on- and off-site; and whether or not the project will materially increase the risk of occurrence of the hazard;

7. The report shall make a recommendation for the minimum no-disturbance buffer and minimum building setback from any geologic hazard based upon the geotechnical analysis.

8. Recommendations concerning drainage practices, vegetation retention and other mitigation and monitoring measures which may be needed to ensure slope stability;

9. Recommended erosion and sediment control measures;

10. A bibliography of scientific citations; and

11. Any other specific measures which must be incorporated into the design and operational plan of the project to eliminate or reduce the risk of damage due to the hazard. This shall include a recommendation on the required buffer or setback distance that must be maintained between the proposed development and the hazard to ensure the safety of the development.~~In cases related to geohazards, the assessment shall include a description of the geology of the site and the proposed development; and assessment of the potential impact the project may have on the geologic hazard; an assessment of what potential impact the geologic hazard may have on the project; appropriate mitigation measures, if any; a conclusion as to whether further analysis is necessary; and be signed by and bear the seal of the engineer or geologist that prepared it.~~DE. ~~When a geotechnical report is required it shall include a certification from the engineer preparing the report, including the engineer's~~

~~professional stamp and signature, stating all of the following:1. The risk of damage from the project, both on – and off – site;2. The project will not materially increase the risk of occurrence of the hazard; and3. The specific measures incorporated into the design and operational plan of the project to eliminate or reduce the risk of damage due to the hazar~~

~~E~~H. All mitigation measures, construction techniques, recommendations and technical specifications provided in the geotechnical report shall be applied during the implementation of the proposal. The engineer of record shall submit sealed verification at the conclusion of construction that development occurred in conformance with the approved plans.

~~F~~G. ~~A proposed development cannot be approved if it is determined by the geotechnical report that either the proposed development or adjacent properties will be at risk of damage from the geologic hazard, or that the project will increase the risk of occurrence of the hazard, and there are no adequate mitigation measures to alleviate the risks.~~(Ord. 1335 § 1, 2010)

18.01.060 New permits required for activities in critical areas.

The following activities shall require a critical areas permit if they are not already reviewed through a more general permit in which the applicant has reported a possible impact on a critical area:

A. In Wetlands: The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter or material of any kind; dumping, discharging, or filling with any material; the draining, flooding, or disturbing of the water level or water table; the driving of piling; the placing of obstructions; the construction, reconstruction, or demolition or expansion of any structure; the destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland, or activities that result in a significant change of water temperature, a physical or chemical characteristics ~~or~~ of the wetland water sources, including quantity, or the introduction of pollutants.

B. In Critical Aquifer Recharge Areas: Any land use, agricultural activity, or other activity having significant potential to contaminate the water.

C. In Fish and Wildlife Habitat Conservation Areas: Any land use or other activity having the potential to significantly degrade the habitat or harm wildlife.

D. In Frequently Flooded Areas: Any land use or other activity likely to contribute to a significant increase in flood hazards or to place a significant number of people in danger.

E. In Geologically Hazardous Areas: Any land use or other activity likely to contribute to a significant increase in geological hazards or to place people in danger.

F. Designated critical areas and any associated buffers shall be designated and disclosed on the final plats, maps, documents, etc., as critical area tracts, non-buildable lots and buffer areas or common areas.

(Ord. 1335 § 1, 2010)

18.01.070 Performance standards.

The following general performance standards shall apply to activities permitted with in critical areas or critical area buffers. Additional standards may be necessary based on site specific considerations or proposed development impacts.

~~A. *General Performance Standards.*~~

~~1. Areas of new permanent disturbance and all areas of temporary disturbance shall be mitigated and/or restored pursuant to a mitigation and restoration plan based off of Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance (Version 1, Publication #06-06-011a, March 2006, or as amended) and Wetland Mitigation in Washington State, Part 2: Developing Mitigation Plans (Version 1, Publication #06-06-011b, March 2006, or as amended).~~

~~2. Mitigation plans shall include a discussion of mitigation alternatives (sequencing) as they relate to:~~

~~a. Avoiding the impact altogether by not taking a certain action or parts of an action;~~

~~b. Minimizing impacts by limiting the degree or magnitude of the actions and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;~~

~~c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;~~

~~d. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;~~

~~e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or~~

~~f. Monitoring the impact and taking appropriate corrective measures.~~

~~3. All boundaries of critical areas or any associated buffers shall be delineated prior to development activity on site.~~

~~4. Mitigation Ratios shall mean those wetland mitigation ratios as shown on attached Table 18.01-2.~~

~~Table 18.01-21. Table Wetland Mitigation Ratios~~

~~Category and Type of Wetland~~	~~Creation or Re-establishment~~	~~Rehabilitation~~	~~Enhancement~~	~~Preservation~~
~~Category I: Bog, Natural Heritage Site~~	~~Not considered possible~~	~~6:1~~	~~Case-by-case~~	~~10:1~~
~~Category I: Mature Forested~~	~~6:1~~	~~12:1~~	~~24:1~~	~~24:1~~
~~Category I: Based on functions~~	~~4:1~~	~~8:1~~	~~16:1~~	~~20:1~~
~~Category II~~	~~3:1~~	~~6:1~~	~~12:1~~	~~20:1~~
~~Category III~~	~~2:1~~	~~4:1~~	~~8:1~~	~~15:1~~
~~Category IV~~	~~1.5:1~~	~~3:1~~	~~6:1~~	~~10:1~~

A~~B~~. Wetland ~~Area~~ Performance Standards~~s~~.

1. General measures to minimize impacts to wetlands:

   a. Lights shall be directed away from the wetland.

   b. Activities that generate noise shall be located away from the wetland, or noise impacts shall be minimized through design or insulation techniques.

   c. Toxic runoff from new impervious surface area shall be directed away from wetlands.

   d. Treated storm water runoff may be allowed into vegetated wetland buffers in accordance with provisions of the Eastern Washington Stormwater Manual. Channelized flow shall be prohibited.

   e. Use of pesticides, insecticides and fertilizers within 150 feet of wetland boundary shall be limited and follow Best Management Practices (BMPs) in Table18.02-2.

~~6. The outer edge of the wetland buffer shall be marked, identified, planted with dense native vegetation and/or fenced with wildlife permeable fencing for the purposes of identifying the wetland buffer area and to discourage human disturbance.~~

2. The following buffer widths have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington State Wetland Rating System for Eastern Washington: 2014 Update (Ecology Publication #14-06-030, or as revised and approved by Ecology). The adjacent land use intensity is assumed to be high. ~~Buffer widths are1 established to protect the integrity, functions and values of all regulated wetlands and are measured horizontally in all directions from the regulated~~

~~wetland edge as marked in the field. The prescribed buffer widths are based on the wetland category and the expected level of impact of the proposed adjacent land use.~~

a. For wetlands that score 6 points or more for habitat function, the buffers in Table 18.01-1 can be used. ~~if both of the following criteria are met: High impact land use: Commercial, urban, industrial, institutional, retail sales, residential (more than 1 unit/acre), hobby farms, and high intensity recreation (golf course, ball fields, etc.) and conversion to high-intensity agricultural (dairies, nurseries, greenhouses, growing and harvesting crops requiring annual tilling and raising and maintaining animals, etc).~~

b. ~~Moderate~~ For wetlands that score 3-5 habitat points, only the measures in Table 18.01-2 are required for the use of Table 18.01-1.~~impact land use: Residential development (1 unit/acre or less), parks with biking, jogging, etc., paved trails, building of logging roads, conversion or agriculture related to orchards, hay fields, etc., and utility corridor or right-of-way shared by several utilities.~~

~~b~~c. ~~Low~~ If an applicant chooses not to apply the mitigation measures in Table 18.01-2, or is chooses not to provide a protected corridor where available, then Table 18.01-3 must be used.~~impact land use includes forestry (cutting of trees only), open space (hiking, bird-watching, preservation of natural resources, etc.), unpaved trails, and utility corridors without a maintenance road and little or no vegetation management.~~

d. The buffer widths in Table 18.01-1 and 18.01-3 assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

Table 18.01-1 Standard Wetland Buffer Requirements if Table 18.01-2 is Implemented

	Buffer Width (in feet) Based on Habitat Score		
Wetland Category	**3-5**	**6-7**	**8-9**
Category I: Based on total score	75	110	150
Category I: Forested	75	110	150
Category I: Bogs and Wetlands of High Conservation Value	190 (buffer width not based on habitat score)		
Category I: Alkali	150 (buffer width not based on habitat scores)		
Category II: Based on total score	75	110	150
Category II: Vernal Pool	150 (buffer width not based on habitat scores)		
Category II: Forested	75	110	150
Category III (all)	60	110	150
Category IV (all)	40		

Table 18.01-2. Required Measures to Minimum Impacts to Wetlands

Disturbance	**Required Measures to minimize Impacts**
Lights	• Direct lights away from wetland
Noise	• Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer

Toxic Runoff	• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 ft of wetland • Apply integrated pest management
Stormwater Runoff	• Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use Low Intensity Development techniques (for more information refer to the drainage ordinance and manual)
Changes in water regime	• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	• Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance • Using vegetation appropriate for the ecoregion; • Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	• Use best management practices to control dust

Table 18.01-3. Standard Wetland Buffer Requirements if Table 18.01-2 is NOT Implemented

	Buffer width (in feet) based on habitat score		
Wetland Category	**3-5**	**6-7**	**8-9**
Category I: Based on total score	100	150	200
Category 1: Forested	100	150	200
Category I: Bogs and Wetlands of High Conservation Value	250 (buffer width not based on habitat scores)		
Category I: Alkali	200 (buffer width not based on habitat scores)		

Formatted Table

Category II: Based on total score	100	150	200
Category II: Vernal Pool	200 (buffer width not based on habitat scores)		
Category II: Forested	100	150	200
Category III (all)	80	150	200
Category IV (all)	50		

Formatted Table

3. All wetland buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Buffers must be fully vegetated in order to be included in buffer area calculations.

4. Interrupted buffer: When a wetland buffer contains an existing legally established public road or private access road, the City may allow development on the landward side of the road provided that the development will not have a detrimental impact to the wetland. The applicant may be required to provide a Critical Areas Report to describe the potential impacts. In determining whether a wetland critical areas report is necessary, the City shall consider the hydrologic, geologic, and/or biological habitat connection potential and the extent and permanence of the buffer interruption.

5. Increased wetland buffers: The City shall increase wetland buffer zone widths for a development project on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values. Such determination shall be based on site-specific and project-related conditions which include, but are not limited to, the following circumstances:

   a. Wetland sites with known locations of state priority or federally listed endangered, threatened, or sensitive species for which a habitat management plan indicates a larger buffer is necessary to protect habitat values for such species; or

   b. The adjacent land is susceptible to severe erosion, and erosion control best management practices will not effectively prevent adverse wetland impacts

   c. Wetland sites in geologically hazardous areas or where adjacent land has slopes greater than 30%.

6. Wetland buffer condition: Wetland buffer areas shall be retained in a natural condition or may be improved to enhance buffer functions and values. Where buffer disturbance is allowed pursuant to this section, revegetation with native vegetation shall be required. Alterations of the buffer that are not associated with a development or listed as an exemption under CEMC 18.01.080 shall be prohibited.

7. Building setback: A 15-foot building setback is required from the landward edge of any wetland buffer. Minor intrusions into the area of the building setback may be allowed if the City determines

that such intrusions will not negatively impact the wetland. The setbacks shall be shown on all site plans submitted with the application.

8. Buffer Averaging: The City may allow, at its sole discretion, modification of standard wetland buffer width in accordance with the report and the best available science on a case-by-case basis by averaging buffer widths. Where the City allows modification of standard wetland buffer width this modification may only be allowed where a qualified wetlands professional demonstrates that:

   a. It will not reduce wetland functions or values;

   b. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;

   c. The total area contained in the buffer area after averaging is equal to the area required without averaging; and

   d. The minimum width of the buffer at any given point is at least seventy-five percent (75%) of the standards width unless the applicant demonstrates an acceptable reasonable use as described in CEMC 18.01.090. Total buffer area after averaging must equal the area required without averaging.

9. Before impacting any wetland or its buffer, an applicant shall demonstrate that the following actions have been taken. Mitigation plans shall include a discussion of mitigation alternatives (sequencing) as they relate to:

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

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

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

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

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

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

10. Wetland Compensatory Mitigation: Compensatory mitigation is required for all alterations to wetlands or their buffers, except for City approved buffer averaging.

11. Requirements for Compensatory Mitigation:

a. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions.

b. Compensatory mitigation plans shall be consistent with Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans--Version 1, (Ecology Publication #06-06- 011b, Olympia, WA, March 2006 or as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington) (Publication #10-06-07, November 2010 or as revised).

c. Mitigation ratios shall be consistent with Table 18.01-2.

d. Preference of mitigation actions: Mitigation actions that require compensation by replacing, enhancing, or substitution shall occur in the following order of preference:

i. Restoring and/or rehabilitating filled or altered wetlands to their pre-development or near pre-development condition.

ii. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of nonnative introduced species. This should only be attempted when there is a consistent source of hydrology and it can be shown that the surface and subsurface hydrologic regime is conductive for the wetland community that is being designed.

iii. Enhancing significantly degraded wetlands in combination with restoration or creation.

e. Mitigation for lost or affected functions: Compensatory mitigation actions shall replace functions affected by the alteration and shall provide equal or greater functions compared to the impacted wetland.

f. Mitigation timing: Mitigation projects shall be completed prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

g. Delay in mitigation: The City may authorize a one-time temporary delay, up to one hundred twenty (120) days, in completing minor construction and landscaping when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, and general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints which preclude implementation of the mitigation plan. The justification must be verified and approved by the City and include a financial guarantee.

h. Mitigation ratios for wetland impacts: Mitigation ratios shall be used when impacts to wetlands cannot be avoided, as specified in Table 4.2-2. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered. -Compensatory

mitigation shall restore, create, rehabilitate or enhance equivalent or greater wetland functions. The ratios shall apply to mitigation that is in-kind, is on-site, is the same category, is timed prior to or concurrent with alteration, and has a high probability of success. If available, these ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply in those cases. These ratios do not apply to the use of credits from a certified wetland mitigation bank or in-lieu fee program. When credits from a certified bank or in-lieu fee program are used, replacement ratios should be consistent with the requirements of the bank's/program's certification.

Table 18.01-4. Wetland Mitigation Ratios for Unavoidable Wetland Impacts:

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

Table Footnotes:

[1] Natural heritage sites, alkali wetlands, and bogs are considered irreplaceable wetlands because they perform special functions that cannot be replaced through compensatory mitigation. Impact to such wetlands would therefore result in a net loss of some functions no matter what kind of mitigation is provided.

[2] Provides gains in a whole suite of functions both at the site and landscape scale. Rehabilitation actions often focus on restoring environmental processes that have been disturbed or altered by previous ongoing human activity.

[3] Actions which provide gains in only a few functions. Enhancement actions often focus on structural or superficial improvements to a site and generally do not address larger scale environmental processes.

[4] Compensatory mitigation for vernal pool impacts must be seasonally ponded wetland area(s).

i. Increased replacement ratios: The City shall increase the wetland mitigation ratios under the following circumstances:

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

ii. A significant period of time will elapse between impact and replication of wetland functions;

iii. Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacts; or

iv. The impact was an unauthorized impact.

j. Alternative mitigation ratios: The City may approve different mitigation ratios when the applicant proposes a combination of wetland creation, restoration, rehabilitation, and/or enhancement, provided that federal and state resource agencies approve the mitigation plan.

k. Mitigation ratios for wetland buffer impacts: To mitigate impacts to functions and values of buffers, a minimum buffer ratio of 1:1 (alteration area: mitigation area) is required. This ratio assumes that creation/ restoration of wetland buffer with appropriate native vegetation is sufficient to compensate for the wetland buffer functions and values affected by alteration of existing wetland buffer. -If enhancement of an existing wetland buffer is proposed as mitigation, a higher mitigation ratio may be required. -For any proposed wetland buffer activities, the applicant must show that the functions and values of the altered wetland buffer will be fully replaced by the proposed mitigation. The City may increase the buffer mitigation ratios under the following circumstances:

i. The replacement ratio needed to recover the lost functions and values of buffer area is greater than 1:1 based upon the existing type of vegetative cover of either the impact site or the proposed mitigation site;

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

iii. A significant period of time will elapse between impact and replication of wetland functions;

iv. The impact was an unauthorized impact.

l. Mitigation banking and in-lieu fee (ILF) mitigation: The City may establish a mitigation bank and ILF program as a form of compensatory mitigation for wetland and habitat conservation area impacts. If established, the bank and ILF program shall be certified in accordance with applicable federal and state mitigation rules.

m. Monitoring: Mitigation monitoring shall be required for a period necessary to establish that performance standards have been met, but not for a period less than five years. This period may be longer for more fragile mitigation proposals such as those containing woody vegetation. The project mitigation plan shall include monitoring elements that ensure certainty of success for the

project's natural resource values and functions. If the mitigation goals are not obtained within the initial five-year period, the applicant remains responsible for restoration of the natural resource values and functions until the mitigation goals agreed to in the mitigation plan are achieved.

C. Critical Aquifer Recharge Areas (CARA).

~~1. The city lies over alluvial soil deposits. There are unconsolidated materials composed of silt, sand and gravel, which in places are several hundred feet in depth. This deposit material is important as a water conveying unit and supplies the groundwater of stream flow (recharge). In general, areas of permeable soils in combination with geological transfer structure may be aquifer recharge areas. Based on the information and maps contained in hydrology of the Upper Yakima River Basin and landscape planning, environmental applications, the city is as an aquifer recharge area. This is a preliminary determination until further studies of geology and hydrology are conducted on an overall or individual property specific basis to either include or exclude them as an aquifer recharge area~~

~~2. All structures shall be placed to provide a maximum buffer to known specific CARA.~~

~~3. Impervious coverage of the lot shall be minimized.~~

~~4. Best Management Practices shall be used during construction.~~

1. New development in a critical aquifer recharge area shall meet the following standards:

   a. The proposed development will not cause contaminants to enter the aquifer and will not significantly adversely affect the recharging of the aquifer.

   b. The proposed development must comply with applicable water source protection requirements and recommendations of the Federal Environmental Protection Agency, Washington State Department of Health, and the Kittitas County health department.

   c. The proposed development must be designed and constructed in accordance with applicable storm water management standards.

   d. Impervious coverage of the lot shall be minimized.

2. When located within an area of medium or high aquifer susceptibility, aboveground/underground storage tanks or vaults for the storage of hazardous substances, animals wastes, sewage sludge, fertilizers, or other chemical or biological hazards or dangerous wastes as defined in Chapter 173-303 WAC, or any other substances, solids, or liquids in quantities identified by Kittitas County Public Health, consistent with WAC 173-303, as a risk to groundwater quality, shall be designated and constructed so as to:

   a) Prevent the release of such substances to the ground, groundwaters, or surface waters;

b) Be contained or enclosed by an impervious containment area with a volume greater than the volume of the storage tank or vault to avoid an overflow of the containment area;

c) Provide for release detection;

d) Provide written spill response and spill notification procedures to the local fire district;

e) Use material in the construction or lining of the storage containment area which is compatible with the substance to be storage to protect against corrosion or leakage, or otherwise designed in a manner to prevent the release or threatened release of any storage substance; and

f) Comply with Chapters 173-303 and 173-360 WAC.

g) The tanks must comply with Ecology regulations contained in Chapters 173-360 and 173-303 WAC as well as International Building Code requirements.

Formatted: Level3, Indent: Left: 0", Space After: 0 pt, Add space between paragraphs of the same style, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

3. The City may grant a waiver from one or more of the above requirements (in 3 a through g) upon a finding that the aboveground storage activity would not create a significant risk to groundwater quality. Aboveground or underground storage facilities designed and maintained according to an approved plan from the Natural Resources Conservation Service or Kittitas County Conservation District are exempt from these requirements but remain under the jurisdiction of the City to ensure compliance with the protective features of this Section and for enforcement purposes.

4. The use of fertilizers, herbicides, pesticides, or other chemical for vegetation management within critical aquifer recharge areas shall adhere to the best management practices to prevent impacts to water quality and water supply. Where the application of such chemicals covers five (5) or more acres, a mitigation plan shall be required pursuant the regulations listed below.

5. The following development activities, when proposed in medium or high susceptibility critical aquifer recharge areas, have the potential to adversely affect groundwater quality and/or quantity and may only be allowed subject to the City's review and approval of a special hydrogeological assessment prepared by a qualified professional:

a) Vehicle repair, servicing and salvaging facilities; provided that the facility must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur. Dry wells shall not be allowed on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by Ecology prior to commencement of the proposed activity.

b) Use of reclaimed wastewater must be in accordance with adopted water or sewer comprehensive plans that have been approved by Ecology.

c) Any other development activity that the City determines is likely to have a significant adverse impact on groundwater quality or quantity, or on the recharge of the aquifer. The determination must be made based on credible scientific information.

d) New landfills, including hazardous or dangerous waste, municipal solid waste, special waste, wood waste of more than two thousand (2,000) cubic yards, and inert and demolition waste landfills.

e) Underground injection wells. Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells.

f) Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade).

g) Facilities that store, process, or dispose of chemicals containing perchloroethylene (PCE) or methyl tertiary butyl ether (MTBE).

6. State and Federal Regulations. The uses listed below shall be conditioned as necessary to protect critical aquifer recharge areas in accordance with the applicable state and federal regulations.

Activity	**Statute - Regulation - Guidance**
Above Ground Storage Tanks	Chapter 173-303 -640 WAC
Animal Feedlots	Chapter 173-216 WAC, Chapter 173-220 WAC
Automobile Washers	Chapter 173-216 WAC, Best Management Practices for Vehicle and Equipment Discharges (Ecology WQ-R-95-56)
Below Ground Storage Tanks	Chapter 173-360 WAC
Chemical Treatment Storage and Disposal Facilities	Chapter 173-303-182 282 WAC
Hazardous Waste Generator (*Boat Repair Shops, Biological Research Facility, Dry Cleaners, Furniture Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, etc.)*	Chapter 173-303-170 WAC

Activity	Statute - Regulation - Guidance
Injection Wells	Federal 40 CFR Parts 144 and 146, Chapter 173-218 WAC
Spills and Discharges into the Environment	Chapter Section 173-303-145 WAC
Junk Yards and Salvage Yards	Chapter 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Vehicles Recycler Facilities (Washington State Department of Ecology WDOE 94-146)
Oil and Gas Drilling	Chapter Section 332-12-450 WAC, WAC, Chapter 173-218 WAC
On-Site Sewage Systems (Large Scale)	Chapter 173-240 WAC
On-Site Sewage Systems (< 14,500 gal/day)	Chapter 246-272 WAC, Local Health Ordinances
Pesticide Storage and Use	Chapter 15.54 RCW, Chapter 17.21 RCW
Sawmills	Chapter 173-303 WAC, 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Log Yards (Washington State Department of Ecology WDOE 95-53)
Solid Waste Handling and Recycling Facilities	Chapter 173-304 WAC
Surface Mining	Chapter Section 332-18-015 WAC
Waste Water Application to Land Surface	Chapter 173-216 WAC, Chapter 173-200 WAC, WDOE Washington State Department of Ecology Land Application Guidelines, Best Management Practices for Irrigated Agriculture

~~5. Activities involving fertilizers, herbicides, and pesticides will require a hydrogeological study prepared by a qualified professional for critical aquifer recharge areas and in accordance with the state Department of Ecology guidelines.~~

D. Fish and Wildlife Habitat Conservation Areas Performance Standards.

~~1. Flora (plant life) and Fauna (animal life) identified as protected, shall be sheltered from construction activities using Best Management Practices.~~

~~2. Replacement of any flora shall be maintained by the applicant for three years to establish viable plant life.~~

13. Fish and Wildlife Habitat Conservation Areas Regulations:

a. Stream buffer widths are established to protect the integrity, functions and values of all streams as classified according to WAC 222-16-030 ~~all streams that meet the criteria for Type S, F or N (Np and Ns) waters~~based on best available science. The City's stream buffer widths are based on the specific Fish and Wildlife Conservation Areas as follows:

i. Type S streams are Shorelines of the State that are regulated by the City's Shoreline Master Program (SMP). The buffer widths for these streams are provided within the City's SMP.

ii. Crystal Creek buffer width is the width of the Riparian Management Zone (RMZ) based on the Site-Potential Tree Height at 200 years (SPTH) measured horizontally from the Channel Migration Zone.

iii. All other WAC 222-16-030 classified streams, not located within the Shoreline Master Program Shoreline Jurisdiction, shall have stream buffers based on Stream Typing as detailed in Table 18.01-5, and measured horizontally from the ordinary high-water mark.

~~Buffer widths have been determined in accordance with the best available science and are measured horizontally from the ordinary mark.~~

Table 18.01-5.A. Stream Buffer Requirements

Stream Type	Standard Buffer Width
~~Type S~~	~~200 ft~~
Type F	50 ft
Type Np	25 ft
Type Ns	25 ft

b. Wildlife buffer widths are established to protect the integrity, functions, and values of all listed and/or priority wildlife species. Buffer widths have been determined in accordance with the best available science. The city shall require a 100-foot buffer from the documented present listed and or priority wildlife species.

Commented [JK4]: Updated for SPTH

Formatted: Indent: Left: 0.75", Hanging: 0.25"

Formatted: Indent: Left: 0.75"

c. Multiple buffers: In the event that buffers for any Fish and Wildlife Habitat Conservation Areas ~~fish habitat conservation areas~~ or other critical areas are contiguous or overlapping, the landward-most edge of all such buffers shall apply.

d. Stream buffers shall not be altered except as authorized by this section.

e. No clearing of vegetation or land disturbances shall be allowed within the Fish and Wildlife Habitat Conservation Areas without an approved mitigation plan and written authorization from the City.

f. Increased buffers: The City has the authority to increase the stream and wildlife buffer widths when such buffers to protect priority PHS species utilizing the Fish and Wildlife Habitat Conservation Areas. This determination shall be supported by appropriate documentation from the Departments of Ecology and Fish and Wildlife, showing that the increased buffer width is reasonably related to the protection of the fish and/or wildlife. The increased buffer distance may be limited to those areas that provide connectivity or are necessary to protect habitat functions. Increasing the buffer widths will only be done where necessary to preserve the structure, function and value of the habitat.

Commented [JK5]: Revised to remove shoreline discussion and to provide clear guidance for the City

~~City~~ g. Buffer condition: Fish and Wildlife Habitat Conservation Area buffers shall be maintained in a predominantly well-vegetated and undisturbed condition. No alterations shall occur without written authorization from the City-

h. Interrupted buffer: When a~~n~~ Fish and Wildlife Habitat Conservation Areas buffer is impacted by an existing legally established public road, private access road, and / or buildings, the City may determine that the Fish and Wildlife Habitat Conservation Areas buffer does not extend landward of the existing improvements, provided that the proposed ~~City~~ use and/or development will not have a detrimental impact to the stream. The applicant may be required to provide a Critical Areas Report to ensure that there is no detrimental impact to the stream of a loss of ecological function. In determining whether a Fish and Wildlife Habitat Conservation Area critical areas report is necessary, the City shall consider the hydrologic, geologic, and/or biological habitat connection potential and the extent and permanence of the buffer interruption.

Commented [JK6]: Updated this section to make it clear

i. Buffer averaging: The City may allow modification of standard Fish and Wildlife Habitat Conservation Area buffer in accordance with an approved Critical Areas Report on a case-by-case basis. With buffer averaging, the buffer width may be reduced in one location and increased in another location to maintain the same overall buffer area provided there is no net loss in the function or value of the buffer. Proposals for buffer averaging shall not require compensatory mitigation if the following conditions are met:

i. The development is not a residential subdivision of more than four (4) lots;

ii. The buffer has not been averaged or reduced by any prior actions administered by the City;

iii. No feasible site design could be accomplished without buffer averaging;

iv. The buffer averaging will not reduce stream or habitat functions or adversely affect fish and wildlife habitat;

v. The minimum width of the Crystal Creek stream buffer, if applicable, is not less than 100 feet. All other WAC 222-16-030 classified streams shall have a minimum buffer width at any given point of at least seventy-five percent (75%) of the standards width, or twenty-five (25) feet, whichever is greater. The minimum buffer width shall not apply if the applicant demonstrates an acceptable reasonable use as described in CEMC 18.01.090; and

vi. The area that is added to the buffer to offset the reduction is well-vegetated. The City may require vegetation enhancement if needed to ensure this criterion is met.

j) Prior to approving a request for buffer averaging, the City shall ensure the development is designed to separate and screen the stream from impacts such as noise, glare, and vegetation trampling. The site design shall consider the varying degrees of impacts of different land uses. For example, parking lots, store entrances, and roads generally have higher noise and glare impacts than the rear of the store. Site screening should take advantage of natural topography or existing vegetation, wherever possible. Where natural screening is not available, berms, landscaping, and structural screens should be implemented (e.g., orient buildings to screen parking lots and store entrances from critical areas).

k) Building setback: A 15-foot building setback is required from the landward edge of any stream buffer. Minor intrusions into the area of the building setback may be allowed if the City determines that such intrusions will not negatively impact the stream. The setbacks shall be shown on all site plans submitted with the application.

l) Anadromous Fish Habitat Standards.

i. All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall adhere to the following standards:

(a) Activities shall be timed to occur only during the allowable work window as designated by the Department of Fish and Wildlife for the applicable species;

(b) An alternative alignment or location for the activity is not feasible;

(c) The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas; and

(d) Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved Critical Areas Report and Habitat Management Plan.

Commented [JK7]: Updated to set the minimum as wanted by WFDW

Commented [JK8]: Updated to match other parts of Code. Previously it stated "side yard" but we removed this reference for other sections.

(e) A Hydraulic Project Approval (HPA) permit from the Department of Fish and Wildlife is required before any work is performed which affects waters of the state and fish or fish habitat.

ii. Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.

iii. Fills shall not adversely impact anadromous fish or their habitat or shall mitigate any unavoidable impacts, and shall only be allowed for a water-dependent use.

m. Fish and wildlife habitat compensatory mitigation is required for all alterations to fish and wildlife habitat or their buffers, except for buffer averaging.

n. Applicants shall demonstrate that all reasonable efforts have been examined within the intent to avoid and minimize impacts to critical areas through mitigation sequencing.

o. Fish and wildlife habitat management and mitigation plan: For unavoidable impacts to wildlife habitat conservation areas, a wildlife habitat management and mitigation plan shall be prepared by a wildlife biologist who is knowledgeable of fish and wildlife habitat within Kittitas County. The wildlife habitat management and mitigation plan shall:

i. Demonstrate, when implemented, that there shall be no net loss of ecological function of habitat.

ii. Identify how impacts from the proposed project shall be mitigated, as well as the necessary monitoring and contingency actions for the continued maintenance of the wildlife habitat conservation area and its associated buffer.

p. In addition to the general mitigation plan requirements described above, the fish and wildlife habitat management and mitigation plan shall contain a report containing, but not limited to, the following information:

i. A map or maps indicating the Ordinary High Water Mark and Channel Migration Zone boundaries; the boundary of the habitat conservation areas; stream and wildlife habitat buffers; the width and length of all existing and reposed structures, utilities, roads, easements; wastewater and stormwater facilities; adjacent land uses, zoning districts and comprehensive plan designations;

ii. A description of the proposed project including the nature, density and intensity of the proposed development and the associated grading, structures, roads, easements, wastewater facilities, stormwater facilities, utilities, etc., in sufficient detail to allow analysis of such land use change upon the habitat conservation area;

iii. A description of the vegetation in the habitat conservation area, on the overall project site and adjacent to the site;

iv. A detailed description of the proposed project's effect on the habitat conservation area, and a discussion of any federal, state or local management recommendations which have been developed for the species or habitats in the area;

v. An explanation of how any adverse impacts created by the proposed development will be mitigated, including the following techniques:

(a) Establishment of buffer zones;

(b) Preservation of critically important plants and trees;

(c) Special construction techniques;

(d) Implementation of erosion and sediment control measures;

(e) Limitation of access to the habitat conservation area;

(f) Seasonal restriction of construction activities;

(g) Habitat enhancement (i.e., fish passage barrier removal);

(h) Any other requirements and/or recommendations from WDFW's habitat management guidelines

(i) Establishment of a timetable for periodic review of the plan. This includes a program for monitoring construction of the compensation project, and for assessing a completed project. The project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five years; and

(j) Contingency plan if monitoring and evaluation indicates project performance standards are not being met.

Formatted: Level5, Space After: 0 pt, Line spacing: single, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

E. Frequently Flooded Areas Performance Standards.

1. General Standards. The following standards apply to all frequently flood areas:

a. All structures and other improvements shall be located on the buildable portion of the site out of the area of flood hazard. Where necessary residential buildings may be elevated.

b. ~~2.~~ Utilities shall either be located three or more feet above the base flood elevation (BFE), or be engineered to the City of Cle Elum Engineers requirements appropriate for the conditions.

c. ~~3.~~ All new construction and substantial improvements shall be constructed using flood resistant materials and using methods and practices that minimize flood damage.

d. ~~4.~~ All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

e. ~~5.~~ No rise in the BFE shall be allowed. Post and piling techniques are preferred and are presumed to produce no increase in the BFE.

~~f. 6. Modification of stream channels shall be avoided.~~

f. In areas within base flood elevations (but a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

2. Floodways. Any development, encroachment, clearing and grading, new construction, or substantial improvements, including structures that do not require a building permit, shall be prohibited within the floodway, except as allowed in CEMC 18.01.080 Exceptions and the following:

a. Agricultural activities that do not require the installation of structures and that do not have any associated fill.

b. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications, which are solely necessary to assure safe living conditions.

c. Prior to the repair or replacement of a substantially damaged residential structure located within a floodway, a recommendation shall be obtained from the Washington Department of Ecology in accordance with WAC 173-158-076.

3. All developments shall be subject to provisions of Chapter 15.24, Flood Hazard Prevention CEMC. If Chapter 15.24, Flood Hazard Prevention CEMC standards conflicts with the Frequently Flood Area Performance Standards provided above, the later shall supersede.

4. When compensatory mitigation is required, the flooded areas mitigation plans shall be prepared by a civil engineer licensed in the State of Washington and familiar with hydrology, hydraulics, and fluvial geomorphology.

F. Geologically Hazardous Areas Performance Standards.

1. The following general standards apply to proposed development activities within or near geologically hazardous areas:

a. Will not increase the threat of the geological hazard to adjacent properties beyond pre-development conditions;

b. Will not adversely impact other critical areas;

c. Are designed so that the hazard to the project is eliminated or mitigated;

d. Structures and improvements should be located to preserve the most critical portion of the site and its natural landforms and vegetation;

e. Structures and improvements shall minimize alterations to the natural contour of the slope, and foundations shall be tiered where possible to conform to existing topography; and

f. Development shall be designed to minimize impervious surfaces within the critical area and critical area buffer.

g. A proposed development cannot be approved if it is determined by the City, following review of the geotechnical report, that either the proposed development or adjacent properties will be at risk of damage from the geologic hazard, or that the project will increase the risk of occurrence of the hazard, and there are no adequate mitigation measures to alleviate the risks.

2. A buffer shall be established from all edges of erosion and landslide hazard areas. The size of the buffer shall be determined by the Planning Director to eliminate or minimize the risk of property damage, death, or injury resulting from landslides caused in whole or part by the development, based upon review of, and concurrence with, a geotechnical report prepared by a qualified professional;

a. The minimum buffer shall be equal to the height of the slope or 50 feet, whichever is greater;

b. The buffer may be reduced to a minimum of 10 feet based on a finding by the City following review of the geotechnical report recommendations that the reduction will adequately protect the proposed development, adjacent developments and uses, and the subject critical area;

c. The buffer may be increased where based on a finding by the City following review of the geotechnical report determines a larger buffer is necessary to prevent risk of damage to proposed and existing development;

3. A building setback of 20-feet shall be provided from all edges of the geological hazard area buffers. The building setback may be reduced based on a finding by the City following review of the geotechnical report recommendations that the reduction will adequately protect the proposed development, adjacent developments and uses, and the subject critical area

4. Alterations of an erosion or landslide hazard area and/or buffer may only occur for activities for which a hazards analysis is submitted and based on findings by the City following review of the geotechnical report that:

a. The development will not increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions;

b. The development will not decrease slope stability on adjacent properties; and

c. Such alterations will not adversely impact other critical areas and~~.~~ are certified as safe as designed and under anticipated conditions by a qualified professional, licensed in the state of Washington.

5. Unless otherwise provided or as part of an approved alteration, removal of vegetation from an erosion or landslide hazard area or related buffer shall be prohibited.

6. On-site sewage disposal systems, including drain fields, shall be prohibited within erosion and landslide hazard areas and related buffers.

7. Critical facilities, such as hospitals and emergency response centers, shall not be sited within geologically hazardous areas unless there is no other practical alternative.

~~Seasonal Restriction. Clearing shall be allowed only from May 1st to October 1st of each year; provided, that the city may extend or shorten the dry season on a case-by-case basis depending on actual weather conditions, except that timber harvest, not including brush clearing or stump removal, may be allowed pursuant to an approved forest practice permit issued by the city or the Department of Natural Resources;~~

8. When compensatory mitigation is required, the geologically hazardous areas mitigation plan shall be prepared by a qualified professional who is either a geologist or a geotechnical engineer, or a civil engineer licensed in the State of Washington, who is knowledgeable of regional geologic conditions and who has professional experience in landslide and erosion hazard evaluation, mitigation plan design, implementation, and monitoring.~~1. Structures and improvements shall minimize alterations to the natural contour of the slope, and foundations shall be tiered where possible to conform to existing topography.~~

~~2. Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation.~~

~~3. The proposed development shall not result in greater risk or a need for increased buffers on neighboring properties.~~

~~4. Development shall be designed to minimize impervious surfaces within the critical area and critical area buffer.~~

~~G. *Additional Considerations.*~~

~~1. Site specific considerations may warrant additional performance standards, to be determined during the permit process, to ensure the protection of critical areas.~~

~~2. Development specific considerations may warrant additional performance standards based on level of impact to critical areas.~~

(Ord. 1335 § 1, 2010; Ord. 1039 (part), 1996)

18.01.080 Exemptions.

The following developments, activities and associated uses may be determined by the City to~~shall~~ be exempt from the provisions of this chapter, provided that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements:

A. Emergencies. Those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of this chapter. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. Once the immediate threat has been addressed, any adverse impacts on critical areas as subject to the provisions of this chapter, including but not limited to, minimizing and mitigating any impacts to critical areas.

B. Operation, Maintenance, or Repair. Operation, maintenance, or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems, that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair. Operation and maintenance includes vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities, including those vegetation removal activities as necessary for fire reduction, provided that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species; and

C. Passive Outdoor Activities. Recreation, education and scientific research activities that do not degrade the critical area, including fishing, hiking, and bird watching.

D. Forest Practices Regulated by the State. Forest practices regulated and conducted in accordance with provisions of Chapter 76.09 RCW and forest practices regulations, title 222 WAC, are exempt, except for conversions to forestry uses.

E. Habitat restoration and enhancement. Low risk activities including vegetation planting, wood material placement, and other actions which benefit wildlife and Fish and Wildlife Habitat Conservation Areas are exempt.

(Ord. 1335 § 1, 2010)

18.01.085 Notice and Financial securities.

A. Notice. The owner of any property containing critical areas or buffers on which a development project is submitted shall record with Kittitas County notice of said critical areas or buffers in a format approved by the City. Such notice shall ~~provide notice in the public record of~~ identify or provide notice of the presence of any critical areas or buffers on the property. The owner shall submit proof to the city that the notice has been filed for record within 30 days after the approval of a development permit. The notice shall run with the land, and failure to provide such notice to any purchase prior to transferring any interest in the property shall be a violation of this chapter. Development proposals which are defined as normal repair and maintenance of existing structures or development, including but not limited to roof repair, interior remodeling, wood stove permits, and on-site sewage disposal systems repairs, are exempt from this requirement

B. When mitigation is required pursuant to a development proposal is not completed prior to the city final permit approval, such as final plat approval or final building inspection, the city shall require of the applicant an assignment of funds or post a performance bond or other security in a form and amount deemed acceptable by the city. If the development proposal is subject to mitigation, the applicant shall post mitigation security in a form and amount deemed acceptable by the city to ensure mitigation is fully functional.

C. The performance security shall be in the amount of one hundred and twenty-five percent (125 %) of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater, and the cost of maintenance and monitoring for a five-year period.

D. The security shall be in the form of assignment of funds, a surety bond, performance bond, assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the city attorney.

E. The security authorized by this section shall remain in effect until the city determines, in writing, that the standards bonded for have been met. Security shall be held by the city for a minimum of five years to

ensure that the required mitigation has been fully implemented and demonstrated to function and may be held for longer periods when necessary.

F. Depletion, failure, or collection of security funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.

G. Public development proposals shall be relieved from having to comply with the security requirements of this section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.

H. Any failure to satisfy critical areas requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within 30 days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default, and the city may demand payment of any financial guarantees or require other action authorized by the city code or any other law.

I. Any funds recovered pursuant to this section shall be used to complete the required mitigation.

18.01.090 Reasonable use.

A. Where the provisions of this chapter would prevent all reasonable use of those properties completely encumbered by critical areas, the property owner may apply for a reasonable use exception if it is demonstrated that all of the following five conditions exist:

1. No reasonable use of the property is possible without some impact to the critical area.

2. No feasible and reasonable onsite alternative to the proposed activities is possible, including possible changes in site layout, reductions in density, and similar factors that would allow a reasonable economic use with fewer adverse impacts.

3. The proposed activities, as conditioned, will result in the minimum possible impacts to affected critical areas, considering their functions and values and/or the risks associated with proposed development. The inability to derive reasonable economic use is not the result of the applicant's actions or that of a previous property owner, such as by segregating or dividing the property and creating an undevelopable condition.

4. Any alteration of a critical area approved under this section shall be subject to appropriate conditions and will require mitigation under an approved mitigation plan.

B. The responsibility of proving the presence of the above criteria shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

C. A request for a reasonable use exception shall be made to the City of Cle Elum and shall be processed as a Type III application according to the provisions in CEMC 17.100 "quasi-judicial review of applications." The request shall include a critical areas report, including a habitat management plan and a mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy. the city planner shall prepare a recommendation to the city's planning commission based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria identified above.

D. The Planning Commission shall review and decide upon the request for reasonable use, and shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with the reasonable use exception criteria identified above.

(Ord. 1335 § 1, 2010)

18.01.100 ~~Penalties~~Enforcement.

A. Applicability: Enforcement action by the department or local government may be taken whenever a person has violated this chapter. The choice of enforcement action and the severity of any penalty should be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the existence or degree of bad faith of the persons subject to the enforcement action.

B. Site Inspections. The City is authorized to make site inspections and take such actions as necessary to enforce this chapter. The City shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.

C. Unauthorized Alterations.

1. The city shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation or replacement measures at the responsible party's expense to compensate for violation of provisions of this chapter. At a minimum, the structural and functional values of the critical area shall be restored and any hazard shall be reduced to a level equal to, or less than, the predevelopment conditions.

2. All development work shall remain stopped until a restoration plan has been approved by the city. Such a plan shall be prepared by a qualified professional. The city may, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

D. Order to cease and desist.

1. Authority. The City shall have the authority to serve upon a person a cease and desist order if an activity being undertaken in critical areas, upon a reasonable belief, in violation of RCW 90.58 or this ~~master program~~critical areas ordinance.

2. Contents. The order shall set forth:

a. A description of the specific nature, extent, and time of violation and the damage or potential damage;

b. A notice that the violation or the potential violation cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time;

c. The amount of the civil penalty;

d. A statement that the person to whom the order is directed may request an administrative appeal hearing to review the violation and/or imposed penalty. Such request must be in writing, accompanied by applicable fees, and received by the City within 10 working days after the Order has been served.

3. Effective date. The cease and desist order shall become effective immediately upon receipt by the person to whom the order is directed.

4. Compliance. Failure to comply with the terms of a cease and desist order can result in enforcement actions including, but not limited to, the issuance of a civil penalty.

E. Penalties. Any person, party, firm, corporation, or other legal entity convicted of violating any of the provisions of this chapter shall be guilty of a misdemeanor. Each day or portion of a day during which a violation of this chapter is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of this chapter shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington. The city may levy civil penalties against any person, party, firm, corporation, or other legal entity for violation of any of the provisions of this chapter. The civil penalty shall be assessed at a maximum rate of $1,000 per day per violation. Daily fines shall not be levied until after a violator has received a notice of violation and shall not be levied while the violator is making a good faith and diligent effort to correct the violation in cooperation with City enforcement personnel nor while a notice of violation is under appeal through the applicable appeal process.~~The city~~

~~shall process violations of this chapter in accordance with the procedures identified in Chapter 8.60 Code Enforcement, of the Cle Elum Municipal Code.~~

(Ord. 1335 § 1, 2010)

18.01.110 Administrative appeals.

Any aggrieved person dissatisfied with a permitting decision may appeal the decision in accordance with the procedures identified in Chapter 17.100.130 Appeals, of the Cle Elum Municipal Code.

(Ord. 1335 § 1, 2010)

18.01.120 Nonconforming activities.

A regulated activity that was approved prior to the passage of this chapter and to which significant economic resources have been committed pursuant to such approval but which does not conform to this chapter may be continued subject to the following:

A. No such activity shall be expanded, changed, enlarged, or altered in any way that increases the extent of its nonconformity without a permit issued pursuant to the provisions of this chapter.

B. Except for cases of discontinuance as part of a normal agricultural activity, if a nonconforming activity is discontinued for twelve consecutive months, any resumption of the activity shall conform to this chapter.

C. If a nonconforming use or activity is destroyed by human activities or an act of God, it shall not be resumed except in conformity with the provisions of this chapter.

D. Activities or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming activities.

(Ord. 1335 § 1, 2010)

18.01.130 Severability.

If any clause, sentence, paragraph, section or part of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate

the remainder of any part thereof to any other person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable.

(Ord. 1335 § 1, 2010)

The Cle Elum Municipal Code is current through Ordinance 1588, passed June 8, 2020.

Disclaimer: The city clerk's office has the official version of the Cle Elum Municipal Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited here.

Note: This site does not support Internet Explorer. To view this site, Code Publishing Company recommends using one of the following browsers: Google Chrome, Firefox, or Safari.

City Website: cityofcleelum.com
City Telephone: (509) 674-2262
Code Publishing Company