City of Cle Elum

Chapter 18.01

CRITICAL AREAS PROTECTION

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. 1653 § 1 (Exh. A), 2023; 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 365-195-925. Sources of best available science are included in “Best Available Science For the City of Cle Elum, Washington” dated October 28, 2020, or as amended.

“Buffer” means an area contiguous to and protecting a critical area that is required for the continued maintenance, functioning, and/or structural stability of a critical area.

“Channel migration zone (CMZ)” means the area along a river 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 and its surroundings.

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"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 groundwater 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 nonindigenous 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.

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“Floodplain” means 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.

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

“Frequently flooded areas” means lands in the floodplain subject to a one percent 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, and Crystal Creek and ephemeral drainages identified by DNR and the Washington Department of Fish and Wildlife (WDFW).

“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;

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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 water mark (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 Ecology.

“Priority habitat” means a habitat type with a unique or significant value to one or more species. An area classified and mapped as priority habitat must have one 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

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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 nonpriority fish and wildlife (WAC 173-26-020(28)).

“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).

“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.

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.
2. A qualified professional for habitat must have a degree in biology or a related degree and professional experience related to the subject species.
3. A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.
4. A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

"Reasonable use" means the process identified in CEMC 18.01.090 that establishes the minimum use a property owner is entitled to by virtue of the due process and takings clauses of the state and federal constitutions.

“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 reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a

DRAFT

requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

"Riparian" means alongside a water body: 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 chapter, RMZ is defined as the area that has the potential to provide full riparian functions. In many forested regions of the state this area occurs within one two-hundred-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 nonforest zones the RMZ is defined by; the greater of the outermost point of the riparian vegetative community, ~~or~~ the pollution removal function (filter strips), at one hundred feet, or Site Potential Tree Height at 200 years ($SPTH_{200}$).

"Site-potential tree height" means the average maximum height of the tallest dominant trees for a given age and site class.

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

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

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

"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 one-half 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 ten residential or camping units or by a public accommodation facility licensed to serve more than ten persons, where such diversion is determined by the department 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

DRAFT

diversion for one thousand five hundred feet or until the drainage area is reduced by fifty 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 one thousand five hundred feet, including tributaries if highly significant for protection of downstream water quality. The department may allow additional harvest beyond the requirements of Type F water designation provided the department 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 ten 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 one hundred 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.

Crystal Creek is a Type F stream throughout its length in the city of Cle Elum.

“Type Np water” mean all segments of natural waters within the bankfull width of defined channels that are perennial non-fish 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, non-fish habitat streams in which surface flow is not present for a least some portion of a year of normal rainfall and are not located downstream from any 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.

DRAFT

"Type S waters" means all waters, within their bankfull width, 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.

"Waters of the state" include lakes, rivers, ponds, streams, inland waters, undergroundwaters, 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-year time of groundwater travel, or boundaries established using alternate criteria approved by the Department of Health in those settings where groundwater 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 groundwater 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 nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate the conversion of wetlands.

(Ord. 1653 § 1 (Exh. A), 2023; 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.
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.
C. *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 Ecology wetland rating system found in the Washington State Wetland Rating System documents (Eastern Washington, Ecology Publication No. 04-06-030) 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 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.
2. The exact location of a wetland's boundary shall be determined through the performance of a field investigation by a qualified professional.

D. 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 groundwater resources or contribute significantly to the replenishment of groundwater. 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 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. The CARAs are depicted in the most recent updated CARA map developed by using the Kittitas County "Critical Area Aquifer Recharge" dataset through a geographic information system (GIS) analysis using the methodology outline in the Washington Department of Ecology "Critical Aquifer Recharge Area Guidance Document" (Publication No. 05-10-028, or as revised). This is a

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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. 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 groundwater. These areas include:
   1. Waterways (streams, rivers, lakes, coastal areas, wetlands, and areas where high groundwater forms ponds on the ground surface). This includes Crystal Creek and ephemeral drainages identified by DNR and the Washington Department of Fish and Wildlife (WDFW).
   2. Floodways and floodplains identified in the most recent FEMA flood insurance rate map, and as subsequently revised and amended.
   ~~2. Areas with increased impervious surfaces which increase surface runoff.~~

F. Geologically hazardous areas are areas susceptible to erosion, ~~sliding~~mass wasting, debris flows, earthquake, avalanche, oversteepened slopes, rockfalls, 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 reference from the United States Department of Agriculture Natural Resources Conservation Service, and Department of Natural Resources Geologic Information Portal, in accordance with WAC 365-190-120 or ~~365-190-080~~ RCW 36.70A.030 include the following areas:
   1. *Erosion Hazard Areas*. Erosion hazard areas are at least those areas identified by the U.S. Department of Agriculture 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. *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 U.S. 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 thirty-five percent.
l. Known mass wasting areas identified in the 2005 Landslide Hazard Zonation Project – Mass Wasting Assessment prepared by Powell, L.

3. *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

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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 or thickness of geologic materials at the surface; and
d. The type of subsurface geologic structure.
e. The Washington Department of Natural Resources Seismic Scenario Catalog, liquefaction 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.

4. *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 in accordance with BAS include: proximity to development, depth from ground surface to the mine working, and geologic material.
5. *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. *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 thirty-five percent.
7. *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. Fish and wildlife habitat conservation areas include the following:

1. *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.

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2. *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. *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 of functions and values due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance in accordance with WAC 365-190-130. PHS habitats are those habitat types or elements with unique or significant functions and values 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, area where endangered, threated and sensitive species have a primary association, ~~or~~ a specific structural element, or as part of an indicated PHS future recovery area. Priority habitats and species are identified by the Washington S~~s~~tate Department of Fish and Wildlife or listed PHS described by the Washington State Department of Ecology following BAS designation as described in chapter WAC 365-195.
4. *Habitats and Species of Local Importance.* Habitats and species of local importance are those identified by the 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 described in RCW 90.48.020 are designated fish and wildlife habitat conservation areas as recommended within WAC 365-190-130(2)(f).
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

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Section 18.01.020. Official water type reference maps maintained by the Department of Ecology's Washington State Hydrography Dataset (WASHD)~~Natural Resources~~ should be consulted at the time they exist and are adopted by the City. These maps are a reference and do not provide a conclusive or final critical area designation.

7. Naturally occurring and manmade ponds under twenty acres in size.

(Ord. 1653 § 1 (Exh. A), 2023; Ord. 1335 § 1, 2010)

18.01.040 Construction with other laws.

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

(Ord. 1653 § 1 (Exh. A), 2023; 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~~ critical area detailed within RCW 365-196-830, 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, or reduce the functions and values of the natural environment. The city of Cle Elum may, however, grant permits which include contiguous adaptive 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. 1653 § 1 (Exh. A), 2023; 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.

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B. *Wetlands.* A wetland assessment with the developer, City, and WDFW is required for forested projects situated within two hundred feet and urban projects situated within 100 feet of a known or suspected wetland. ~~A~~ The wetland assessment (critical areas report) shall be prepared by a qualified wetlands specialist ~~is required for projects situated within two hundred feet of a known or suspected wetland~~ and shall include the following:
   1. The category and precise location of the boundary of the wetland(s); and
   2. Delineated wetlands and required buffers within two hundred feet of the project area shall be depicted on the site plan. Best available information includes, but is not to be limited to, aerial photos, soils maps, and/or topographic maps; and
   3. An analysis of the on-site 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 the vegetative, faunal, and hydrologic characteristics of the wetland.

C. *Critical Aquifer Recharge Area*.
   1. As stated in CEMC Section 18.01.030(C), the entire city limits are presumed to be located within a 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

DRAFT

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 Area*.

1. A stream area assessment with the developer, City, and WDFW is required for forested projects situated within two hundred feet and urban projects situated within 100 feet of a known or suspected stream (fish and wildlife habitat conservation area). The stream assessment~~A~~ (critical areas report) shall be prepared by a qualified biologist ~~is required if a proposed use or development is located within two hundred feet of a designated fish and wildlife habitat conservation area~~ and shall include the following:
   a. Identify all streams as classified according to WAC 222-16-030.
   b. If located within two hundred feet of 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. All fish and wildlife habitat conservation areas and required buffers within ~~two hundred feet~~said proximity 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~~ adaptive management practices that will protect habitat and species functions and values after the project site has been developed.
2. A habitat management plan prepared by a qualified biologist is required for projects situated within the initially assessed buffer~~two hundred feet~~ of a known or suspected fish and wildlife habitat conservation area. 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

DRAFT

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 area on the subject property, as well as the approximate location of any potential fish and wildlife habitat conservation area within ~~two hundred feet~~said proximity of the subject property;
b. A description of the methodologies used to classify the water type and the associated fish;
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 area;
    ii. Establishment of a buffer around the fish and wildlife habitat conservation area;
    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 (i.e., fish passage barrier removal);
    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:

DRAFT

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 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 the following:

1. ~~a~~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;
2. Aan assessment of what potential impact the geologic hazard may have on the project;
3. A~~a~~ppropriate 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 who 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.

~~F.~~G. *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;

DRAFT

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.

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.

(Ord. 1653 § 1 (Exh. A), 2023; 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 connectivity, water temperature, the physical or chemical characteristics of the wetland water sources, including quantity and accessible 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, nonbuildable lots and buffer areas or common areas.

(Ord. 1653 § 1 (Exh. A), 2023; Ord. 1335 § 1, 2010)

18.01.070 Performance standards.

The following general performance standards shall apply to activities permitted within critical areas or critical area buffers. Additional standards may be necessary based on site specific considerations or proposed development impacts to meet or exceed adaptive management regulations described in WAC 365-195.

A. *Wetland Performance Standards.*

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. New improvements shall be designed to direct any ~~T~~toxic runoff from new impervious surfaces ~~area shall be directed~~ away from wetlands. Improvements that do not generate toxic runoff may be permitted, subject to other applicable requirements.
    d. Treated stormwater 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 one hundred fifty feet of wetland boundary shall be limited and follow best management practices (BMPs) in Table 18.02-2.
2. Buffer Widths
    a. The following buffer widths have been established in accordance with the best available science. They are based on the category of wetland and the

DRAFT

habitat score as determined by a qualified wetland professional using the Washington State Wetland Rating System for Eastern Washington: 2014 Update (Ecology Publication No. 14-06-030, or as revised and approved by Ecology). The adjacent land use intensity is assumed to be high. For wetlands that score six points or more for habitat function, the buffers in Table 18.01-1 can be used.

b. For wetlands that score three to five habitat points, only the measures in Table 18.01-2 are required for the use of Table 18.01-1.
c. If an applicant chooses not to apply the mitigation measures in Table 18.01-2, or chooses not to provide a protected corridor where available, then Table 18.01-3 must be used.
d. The buffer widths in Tables 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

In feet, if Table 18.01-2 is implemented and a habitat corridor is provided

Category of Wetland	**Habitat Score 3 – 5 Points (Corridor Not Required)**	**Habitat Score 6 – 7 Points**	**Habitat Score 8 – 9 Points**	**Buffer Width Based on Special Characteristics**
Category I and II: Based on rating of wetland functions (and not listed below)	75	110	150	NA
Category I and II: Forested	75	110	150	NA
Category I: Bogs,	NA	NA	NA	190

DRAFT

calcareous fens, and wetlands of high conservation value				
Category I: Alkali	NA	NA	NA	150
Category II: Vernal pool	NA	NA	NA	150
Category III	60	110	150	NA
Category IV	40	40	40	NA

Impact Minimization Measures. Developments that produce the listed disturbances and are requesting a buffer reduction are required to address the disturbance through the use of applicable minimization measures.

This is not a complete list of measures, nor is every example measure required. Though not every measure is required, all effort should be made to implement as many measures as possible. Regulatory staff should determine, in coordination with the applicant, which measures are applicable and practicable.

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

Examples of Disturbance	Activities and Uses That Cause Disturbances	Examples of Measures to Minimize Impacts
Lights	• Parking lots • Commercial/industrial • Residential • Recreation (e.g., athletic fields) • Agricultural buildings	• Direct lights away from wetland • Only use lighting where necessary for public safety and keep lights off when not needed • Use motion-activated lights • Use full cut-off filters to cover light bulbs and direct light only where needed • Limit use of blue-white colored lights in favor of red-amber hues

		• Use lower-intensity LED lighting • Dim light to lowest acceptable intensity
Noise	• Commercial • Industrial • Recreation (e.g., athletic fields) • Residential agriculture	• Locate activity that generates noise away from wetland • Construct a fence to reduce noise impacts on adjacent wetland and buffer • Plant a strip of dense shrub vegetation adjacent to wetland buffer
Toxic Runoff	• Parking lots • Roads • Commercial/industrial • Residential areas • Application of pesticides • Landscaping • Agriculture	• 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 (Note: These examples are not necessarily adequate for minimizing toxic runoff if threatened or endangered species are present at the site.)
Stormwater runoff	• Parking lots • Roads • Residential areas • Commercial/industrial • Recreation landscaping/lawns • Other impermeable surfaces, compacted soil, etc.	• Retrofit stormwater detention and treatment for roads existing adjacent development • Prevent channelized or sheet flow from lawns that directly enters the buffer • Infiltrate or treat, detain, and disperse new runoff from impervious surfaces and lawns
Pets and human disturbance	• Residential areas • Recreation	• Use privacy fencing

		• Plant dense native vegetation to delinate buffer edge and to discourage disturbance • Place wetland and its buffer in a separate tract • Place signs around the wetland buffer every 50 – 200 ft., and for subdivisions place signs at the back of each residential lot • When platting new subdivisions, locate greenbelts, stormwater facilities, or other lower-intensity land uses adjacent to wetland buffers
Dust	• Tilled fields • Roads	• 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)		
Category II:	100	150	200

Based on total score			
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		

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 wetland critical area report to describe the potential impacts. In determining whether a 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 thirty percent.

DRAFT

6. *Firewise Standards*. Where feasible, buffer enhancement, development and maintenance shall incorporate Firewise standards.

~~6.~~7. *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 Section 18.01.080 shall be prohibited.

~~7.~~8. *Building Setback*. A fifteen-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.~~9. *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 of the standard width unless the applicant demonstrates an acceptable reasonable use as described in CEMC Section 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.

DRAFT

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 No. 06-06-011b, Olympia, WA, March 2006 or as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington) (Publication No. 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 predevelopment or near predevelopment 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

DRAFT

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 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 18.01-4. 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

DRAFT

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 at both 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 impacted; 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

DRAFT

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:

l. 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.

B. *Critical Aquifer Recharge Areas (CARA).*

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 stormwater management standards.

d. Impervious coverage of the lot shall be minimized.

DRAFT

3. 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 Chapter 173-303 WAC, 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 stored 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 173-303 and 173-360 WAC as well as International Building Code requirements.
3. The city may grant a waiver from one or more of the above requirements (in subsections (B)(2)(a) through (g) of this section) 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 chemicals 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 or more acres, a mitigation plan shall be required pursuant to 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

DRAFT

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 cubic yards, and inert and demolition waste landfills.
e. *Underground Injection Wells.* Class I, III, and IV wells and subclasses 5D03, 5F01, 5F04, 5N24, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, and 5X28 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	WAC 173-303-640
Animal Feedlots	Chapters 173-216 and 173-220 WAC

DRAFT

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	WAC 173-303-282
Hazardous Waste Generator (Boat Repair Shops, Biological Research Facility, Dry Cleaners, Furniture Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, etc.)	WAC 173-303-170
Injection Wells	40 CFR Parts 144 and 146, Chapter 173-218 WAC
Spills and Discharges into the Environment	WAC 173-303-145
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 173-218 WAC, WAC 332-12-450
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	Chapters 15.54 and 17.21 RCW
Sawmills	Chapters 173-303 and 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	WAC 332-18-015
Waste Water Application to Land Surface	Chapters 173-200 and 173-216 WAC, WDOE Washington State Department of Ecology Land Application Guidelines, Best Management Practices for Irrigated Agriculture

C. *Fish and Wildlife Habitat Conservation Areas Performance Standards.*

1. *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 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~~.~~ as designated under RCW 90.58 in accordance with rules promulgated pursuant to WAC 222-16-031.
      ii. Crystal Creek buffer width is the width of the riparian management zone (RMZ) based on the site-potential tree height at two hundred 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 best available science in accordance with RCW 43.21C or rules promulgated pursuant to WAC 365-190-130 as defined by stream typing as detailed in Table 18.01-5, and measured horizontally from the ordinary high water mark.

Table 18.01-5. Stream Buffer Requirements

Stream Type Standard Buffer Width

Type F	$SPTH_{200}$ or ~~100~~75~~50~~ ft, whichever is larger
Type Np	~~25~~ $SPTH_{200}$ or ~~100~~50 ft, whichever is larger

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Stream Type Standard Buffer Width

Type Ns	~~25~~ $SPTH_{200}$ or ~~100~~50 ft, whichever is larger
Type S	See the SMP

b. Fish and ~~W~~wildlife buffer widths are established to protect the integrity, functions, and values of all listed ~~and/or~~ priority habitat and wildlife species and species of local importance. Buffer widths have been determined in accordance with the best available science. The city shall require a one-hundred-foot buffer from the documented present list~~ed~~ of ~~and/or~~ priority habitat and wildlife species or areas designated as a future critical area mitigation in accordance with WAC 365-190 or Site Potential Tree Height at 200 years ($SPTH_{200}$), whichever is greater. RMZs could be reduced by 25~~to 75~~-feet of the RMZ widths without the need for a reasonable use permit if the remaining ~~75-feet~~buffer is restored to a heavily vegetated state where at least 80% of the ground is covered by native riparian trees or shrubs. The 80% coverage would be measured at the end of restoration monitoring, to qualify the applicant must demonstrate that the current RMZ is less than 25% vegetated with native trees or shrubs.

~~b.~~i. The Washington State Site Potential Tree Height (SPTH) Mapping Tool shall be utilized to determine if the SPTH buffers are applicable.

c. *Multiple Buffers*. In the event that buffers for any fish and wildlife habitat conservation areas or other critical areas are contiguous or overlapping, the landward-most edge of all such buffers shall apply.

d. Stream buffers in adherence to best available science shall not be altered except as authorized by this section.

e. No clearing of vegetation or land disturbances shall be allowed within the wildlife habitat conservation area, priority habitat and species (PHS) area, designated as future PHS recovery areas, or associated terrestrial buffer area without an approved mitigation plan and written authorization from the city pursuant to no-net-loss compensatory mitigation management practices identified in WAC 365-196-830. Compensatory mitigation management practices determinations shall incorporate cumulative effects described in RCW 43.21C in consideration of impacts on the functions and values of priority habitat and species as identified in fish and wildlife habitat conservation areas (FWHCA) minimum protections guidelines designated within WAC 360-190-130.

~~e.~~f. Areas where endangered, threated, and sensitive species have a primary association must be identified and considered within

DRAFT

~~f.~~g. *Increased Buffers.* The city has the authority to increase the stream and wildlife buffer widths when such buffers protect priority PHS species utilizing the fish and wildlife habitat conservation areas. This determination shall be supported by appropriate documentation from the Department of Ecology and Fish and Wildlife, showing that the increased buffer width is reasonably related to the protection of the fish and/or wildlife in accordance with BAS identified in WAC 365-195. The increased buffer distance may be limited to those areas that provide connectivity or are necessary to protect habitat functions and values. Increasing the buffer widths will only be done where necessary to preserve the structure, functions and values of habitat.

~~g.~~h. *Buffer Condition.* Fish and wildlife habitat conservation area buffers shall be maintained in a predominantly well vegetated and undisturbed condition. No alterations which impact reduce the functions or values shall occur without written authorization from the city.

i. *Interrupted Buffer.* When a fish and wildlife habitat conservation area buffer is impacted by an existing legally established public road or private access road, and/or buildings which does not support potential for water crossing design improvements, the city may determine that the fish and wildlife habitat conservation area buffer does not extend landward of the existing improvements; provided, that the proposed use and/or development will not have a detrimental impact to the stream or ecological functions it provides.

1. The applicant may be required to provide a critical areas report to ensure that there is no detrimental impact to the stream or a loss of ecological quality or 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.

~~h.~~j.

i. *Buffer Averaging.* The city may allow modification of standard fish and wildlife habitat conservation area buffer in accordance with an approved critical area 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 functions or values 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 lots;

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

DRAFT

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 salmon or trout habitat;

v. The minimum width of the Crystal Creek stream buffer, if applicable, is not less than one hundred 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 of the standard width, or twenty-five feet, whichever is greater, unless the applicant demonstrates an acceptable reasonable use as described in CEMC Section 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 to meet no-net-loss mitigation requirements described in WAC 220-110. (e.g., orient buildings to screen parking lots and store entrances from critical areas).

k. *Building Setback*. A fifteen-foot building setback 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 and wildlife 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 area report.

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 with 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 functions and values 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.

iii. Mitigation shall be implemented before or concurrent with start of construction to avoid additional temporal loss of a lag between the impact and implementation of mitigation.

iv. Any area functioning as mitigation should have permanent protection through deed restrictions or conservation easements as necessary to maintain the functions and values of the mitigation area.

~~ii.~~v. Fencing placed within a fish and wildlife habitat conservations area shall be a wildlife friendly design to ensure safe passage of wildlife through the habitat area.

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:

DRAFT

i. A map or maps indicating the ordinary high water mark; the boundary of the habitat conservation areas; associated 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

DRAFT

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

D. *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. Utilities shall either be located three or more feet above the base flood elevation (BFE), or be engineered to the city of Cle Elum engineer's requirements appropriate for the conditions.
   c. All new construction and substantial improvements shall be constructed using flood resistant materials and using methods and practices that minimize flood damage.
   d. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
   e. 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. 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 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 Section 18.01.080, Exemptions, 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.

DRAFT

3. All developments shall be subject to provisions of CEMC Chapter 15.24, Flood Hazard Prevention. If CEMC Chapter 15.24, Flood Hazard Prevention, standards conflict 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.
    a. Within compensatory mitigation plans which effect have significant impacts on the human health and safety, public facilities and services, priority habitat and species (PHS), or as part of a PHS indicated future recover area; plans shall adhere to no-net-loss measures outlined in Washington State Department of Ecology guidelines pursuant to WAC 365-196-830 during the development of an adaptive management program.

E. *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 predevelopment 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:

DRAFT

a. The minimum buffer shall be equal to the height of the slope or fifty feet, whichever is greater;
b. The buffer may be reduced to a minimum of ten 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 twenty 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 predevelopment 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.
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.

DRAFT

(Ord. 1653 § 1 (Exh. A), 2023; Ord. 1335 § 1, 2010; Ord. 1039, 1996)

18.01.080 Exemptions.

The following developments, activities and associated uses may be determined by the city to 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 time frame 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 are 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~~minor vegetation removal activities such as limbing or those covered under a habitat management plan (HMP) 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.
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 the forest practices regulations in WAC Title 222 are exempt except for conversions to forestry uses.

(Ord. 1653 § 1 (Exh. A), 2023; Ord. 1335 § 1, 2010)

18.01.085 Notice and financial securities.

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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 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 thirty days after the approval of a development permit. The notice shall run with the land, and failure to provide such notice to any purchaser 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 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 twenty-five percent 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.

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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 thirty 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.

(Ord. 1653 § 1 (Exh. A), 2023)

18.01.090 Reasonable use.

A. Where the provisions of this chapter would prevent all reasonable use (as defined in CEMC 18.01.020) 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 four conditions exist:
   1. No reasonable use of the property is possible without some impact to the critical area.
   2. No feasible and reasonable on-site 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 3 application according to the provisions in CEMC Section 14.30.070, "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

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other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act. The city planner shall prepare a recommendation to the city's hearing examinerplanning 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 hearing examinerplanning 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.

E. Consideration shall be given to alternative method(s) of protection or enhancement of functions and values of impacted critical areas including but not limited to:

a. Public education;

b. Stewardship programs;

c. Stream and wetland restoration activities;

D.d. Transfer of development right.

(Ord. 1653 § 1 (Exh. A), 2023; Ord. 1335 § 1, 2010)

18.01.100 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

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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, is in violation of Chapter 90.58 RCW or this chapter.
   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 ten 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 one thousand dollars 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.

(Ord. 1653 § 1 (Exh. A), 2023; Ord. 1335 § 1, 2010)

18.01.110 Administrative appeals.

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Any aggrieved person dissatisfied with a permitting decision may appeal the decision in accordance with the procedures identified in CEMC Section 14.30.230, Appeals.

(Ord. 1653 § 1 (Exh. A), 2023)

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. 1653 § 1 (Exh. A), 2023; 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. 1653 § 1 (Exh. A), 2023; Ord. 1335 § 1, 2010)

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