

ORDINANCE NO. 959

AN ORDINANCE OF THE CITY OF CHEWELAH AMENDING AND ADDING DEFINITIONS TO SECTION 18.04.040 (DEFINITIONS), REVISING SECTION 18.08.140 (CRITICAL RESOURCE AREA OVERLAY ZONES), AND AMENDING REFERENCE IN SECTION 18.08.150 (FLOODPLAIN MANAGEMENT OVERLAY ZONE) OF THE CHEWELAH MUNICIPAL CODE AS PART OF THE COMPREHENSIVE PLAN UPDATE PROCESS.

WHEREAS, the City Planner initiated an application for the periodic update of the City's Comprehensive Plan, Development Regulations and Critical Areas Ordinance; and

WHEREAS, proposed updates to the Critical Areas Ordinance were referred to and a Public Hearing was held by the Hearing Examiner on February 9, 2021; and

WHEREAS, the Hearing Examiner after review and consideration of public comment and testimony, staff reports, and other relevant information, recommended that the City Council adopt the proposed updates to the Critical Areas Ordinance with minor corrections/suggestions; and

WHEREAS, the City Planner reviewed the minor corrections/suggestions of the Hearing Examiner and made revisions as determined appropriate; and

WHEREAS, a Public Hearing was held by City Council on June 2, 2021.

NOW THEREFORE, the City Council of the City of Chewelah finds as follows:

THAT the facts stated in the above recitals are true; and

THAT all procedural requirements for a Comprehensive Plan Amendment (CPA) in accordance with Chewelah Municipal Code Title 18 regarding the present CPA have been properly complied with; and

THAT the City Council of the City of Chewelah adopts the findings and conditions of the Hearing Examiner with regard to proposed update of its Critical Areas Ordinance as presented in the "Findings, Conclusions, and Decision – File No. CPA-09-2020" dated February 24, 2021 as the basis for this ordinance.

NOW THEREFORE, the City Council of the City of Chewelah ordains as follows:

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SECTION 1: The following existing definitions in CMC Section 18.04.040 are amended to read as follows (~~Deletions are denoted by strikeout; Additions are denoted by underline~~; remaining text is unchanged):

"Administrator" means the City Administrator or his/her designee. In the event there is no City Administrator then "Administrator" means the Mayor or his/her designee. The Administrator shall adopt and revise, as required, such forms and instructions as are necessary or appropriate to serve the public and carry out provisions of this title.

~~"Critical areas" means and includes the following areas and ecosystems: (a) wetlands, (b) areas with a critical recharging effect on aquifers used for potable water, (c) habitat conservation areas, (d) frequently flooded areas, or (e) geologically hazardous areas.~~ include wetlands, areas with a critical recharging effect on aquifers used for potable water (referred to in this title as critical aquifer recharge areas), fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.

~~"Geologically hazardous areas" means an area that is not suited for development because of its areas susceptibility to erosion, sliding, earthquakes, or other geological events hazardous to public health and safety~~ means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

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"Wellhead protection area" means the surface and subsurface area surrounding a well or wellfield that supplies a public water system and through which contaminants are likely to pass and eventually reach the water well or wellfield, as has been designated pursuant to WAC 246-290.

"Wetland" or "Wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that which under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and 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.~~ Wetlands include artificial wetlands intentionally created from nonwetland areas to mitigate conversion of wetland 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. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate conversion of wetlands, if permitted by the county or City.

SECTION 2: The following definitions are added to CMC Section 18.04.40:

"Allowed activity" is a use that due to other regulations or previous reviews is unlikely to result in a critical areas impact. These activities are subject to review by the Administrator, but do not require a separate critical areas review or report. Since these activities are not "exempt," the critical areas standards continue to apply, and the underlying permit could be conditioned to ensure that the activities comply with critical areas protection.

"Applicant" means a person who files an application for permit under this title and who is either the owner of the land on which that proposed activity would be located, a lessee of the land, the person who would actually control and direct the proposed activity or the authorized agent of such a person.

"Buffer zone" means an area required by this title that provides a natural vegetated zone surrounding a natural, restored or newly created critical area which serves as a buffer between the critical area and its associated upland areas and as an integral part of the habitat ecosystem.

"Critical aquifer recharge areas" are areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge.

"Erosion hazard areas" are those areas containing soils which, according to the United States Department of Agriculture Natural Resources Conservation Service Soil Survey Program, may experience significant erosion. Erosion hazard areas also include coastal erosion-prone areas and channel migration zones.

"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,

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breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. The Administrator may also designate locally important habitats and species. These areas do 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. See also "Habitats of local importance."

"Frequently flooded areas" are lands in the floodplain 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, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and areas where high groundwater forms ponds on the ground surface.

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

"Landslide hazard areas" are areas at risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.

"Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of land. Long-term commercial significance means the land is capable of producing the specified natural resources at commercially sustainable levels for at least the twenty-year planning period, if adequately conserved. Designated mineral resource lands of long-term commercial significance may have alternative post-mining land uses, as provided by the Surface Mining Reclamation Act, City of Chewelah Comprehensive Plan and development regulations, or other laws.

"Low Impact Development (LID)" is a stormwater and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design.

"Mine hazard areas" are those areas directly underlain by, adjacent to, or affected by mine workings such as adits, tunnels, drifts, or air shafts.

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"Mineral resource lands" means lands primarily devoted to the extraction of minerals or that have known or potential long-term commercial significance for the extraction of minerals.

"Minerals" include gravel, sand, and valuable metallic substances.

"Natural resource lands" means agricultural, forest, and mineral resource lands which have long-term commercial significance.

"Non-federally regulated wetlands" means wetlands that are hydrologically isolated from other aquatic resources, as determined by the United States Army Corps of Engineers. Isolated wetlands may perform important functions and are protected by state law (RCW 90.48) whether or not they are protected by federal law.

"Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, park and recreational facilities, and schools.

"Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

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"Seismic hazard areas" are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, debris flows, lahars, or tsunamis.

"Species of local importance" are those species that are of local concern due to their population status or their sensitivity to habitat alteration or that are game species.

"Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. Urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

"Volcanic hazard areas" include areas subject to pyroclastic flows, lava flows, and inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

SECTION 3: Section 18.08.140 Critical Resource Area Overlay Zone is amended in its entirety as follows:

18.08.140 Critical Resource Area Overlay (CRA) Zone

A. Intent.

The intent of this section is to promote the general health, safety and welfare of city residents by conserving and protecting critical areas. The critical resource area overlay (CRA) zone is designed to protect and preserve critical environmental resources while allowing appropriate development activities when carried out in a responsible manner with minimal impacts on the environmental resources using best available science and in consistency with the requirements of the Growth Management Act. In addition, the intent is to protect the public health, welfare and safety of residents of Chewelah.

B. Purpose.

1. The purpose of this section is to:
 - a. Maintain the character of the city and to safeguard the public interest in the preservation and conservation of natural areas.
 - b. Designate and classify ecologically sensitive and hazardous areas and to protect these areas and their functions and values, while also allowing for reasonable use of private property.
 - c. Implement the goals, policies, guidelines, and requirements of the City of Chewelah Comprehensive Plan and the Growth Management Act.
2. Compliance with the provisions of this section does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Shoreline Substantial Development Permits, Hydraulic Project Approval Permits, Army Corps of Engineers Section 404 Permits, National Pollutant Discharge Elimination System Permits). The applicant is responsible for complying with these requirements, apart from the process established in this section. Where applicable, the Administrator will encourage use of information such as permit applications to other agencies or special studies prepared in response to other regulatory requirements to support required documentation submitted for critical areas review.

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C. General Provisions.

1. The city's critical resource area maps in the City of Chewelah Comprehensive Plan provide generalized information on the location of critical areas. A site-specific analysis which indicates that any critical area regulated by this section or **CMC 18.08.150** Floodplain Management Overlay (FM) Zone exists on a lot will result in that portion of the lot being classified as a critical area or floodplain area.
2. The following features shall not be altered or developed except as permitted by this section:
 - a. Water features, including rivers, streams, creeks, lakes, ponds and wetlands.
 - b. Areas that provide habitat to priority species.
 - c. Geologically hazardous areas, including landslides and slopes of forty percent or greater.

3. The City requires applicants to demonstrate that development on a site determined to have critical areas will protect the resource by taking one of the following steps (listed in order of preference):
 - a. Avoiding impacts to the resource altogether.
 - b. Minimizing the impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
 - c. Rectifying the impact by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project.
 - d. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
 - e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments.
 - f. Monitoring the impact and taking appropriate corrective measures.
4. If a critical resource area on the property that is being developed in the city crosses a jurisdictional line, the Administrator shall coordinate with Stevens County in the review of the project.

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D. Best Available Science.

1. Critical areas reports and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas and must give special consideration to conservational and protective measures necessary to preserve or enhance their functions and values.
2. The best available science is that scientific information applicable to the critical area. This data must be prepared by local, state, or federal natural resource agencies, a qualified scientific professional or team of qualified scientific professionals that is consistent with criteria established in WAC 365-195.
3. In the context of critical area protection, a valid scientific process is one that produces reliable information useful in understanding the consequences of a local government's regulatory decisions, and in developing critical area policies and development regulations that will be effective in protecting the functions and values of critical areas. To determine whether information received during the permit review process is reliable scientific information, the Administrator shall determine whether the source of the information displays the characteristics of a valid scientific process. Such characteristics are as follows:
 - a. "Peer review." The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The proponents of the information have addressed the criticism of the peer reviewers. Publication in a referred scientific journal usually indicates that the information has been appropriately peer reviewed.
 - b. "Methods." The methods used to obtain the information are clearly stated and reproducible. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer reviewed to ensure their reliability and validity.
 - c. "Logical conclusions and reasonable inferences." The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the

general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained.

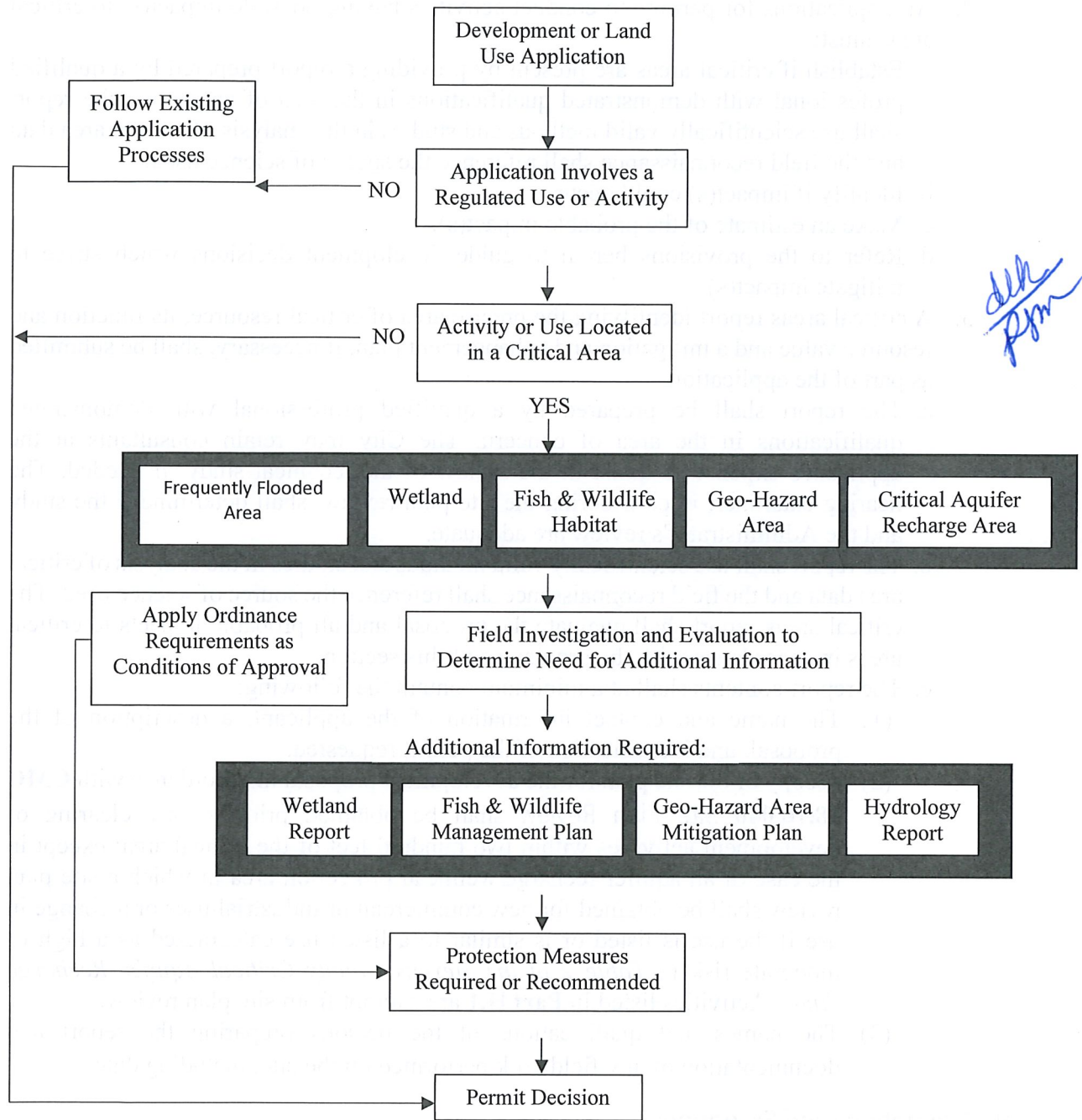
- d. "Quantitative analysis." The data has been analyzed using appropriate statistical or quantitative methods.
- e. "Context." The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent existing information.
- f. "References." The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other pertinent existing information.

E. Uses.

1. Uses allowed on a lot containing or located within two hundred feet of a critical area shall be the same as those allowed in the zone in which the lot is located. Each use shall be evaluated using the review process required for the use in the zone in conjunction with the requirements of this section and applicable state and federal regulations. Nothing in this section is intended to preclude the reasonable use of property.
2. Coordination with Other Permit Processes.
 - a. This section may require review and/or permit in addition to those otherwise required by other sections of the Chewelah Municipal Code or other city rules and regulations.
 - b. Uses and activities in a critical area or buffer for which no permit or approval is required remain subject to the performance standards and other sections of the Chewelah Municipal Code or other city rules and regulations.
 - c. The Administrator may approve, approve with conditions, or deny any permit application for a use or activity in order to comply with the requirements of this section.
 - d. This section may be used in conjunction with **CMC 18.08.150** Floodplain Management Overlay (FM) Zone and the City of Chewelah Shoreline Master Program.

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F. Permit Application Process for Frequently Flooded Areas, Wetlands, Fish and Wildlife Habitats, Geo-Hazard Areas, and Critical Aquifer Recharge Areas.



G. Review.

1. All uses proposed within the critical resource overlay zone shall be subject to a site plan review process.
2. All applications for permits to conduct activities having possible impact(s) to critical areas must:
 - a. Establish if critical areas are present by providing a report prepared by a qualified professional with demonstrated qualifications in the area of concern. The report shall use scientifically valid methods and studies in the analysis of critical area data and the field reconnaissance shall reference the source of science used.
 - b. Identify if impact(s) could occur.
 - c. Make an estimate of the probable impact(s).
 - d. Refer to the provisions herein to guide development decisions which strive to mitigate impact(s).
3. A critical areas report identifying the precise area of critical resource, its function and resource value and a mitigation and enhancement plan, if necessary, shall be submitted as part of the application.
 - a. The report shall be prepared by a qualified professional with demonstrated qualifications in the area of concern. The City may retain consultants at the applicant's expense to assist in the review of the technical study, if needed. The hearing examiner, in considering the site plan review, shall determine if the study and the Administrator's review are adequate.
 - b. The report shall use scientifically valid methods and studies in the analysis of critical area data and the field reconnaissance shall reference the source of science used. The critical areas report shall evaluate the proposal and all probable impacts to critical areas in accordance with the provisions of this section.
 - c. The report contents shall at a minimum contain the following:
 - (1) The name and contact information of the applicant, a description of the proposal, and identification of the permit requested.
 - (2) A copy of the site plan for the development proposal in accordance with **CMC 18.16.040** Site Plan Review shall be obtained prior to any clearing or development activities within two hundred feet of the critical area; except in the case of an aquifer recharge/wellhead protection area in which a site plan review shall be obtained for new commercial or industrial uses or a change in use if the use is listed or is similar to a listed use categorized as a high or moderate risk in *Table 2 of the Stevens County Critical Aquifer Recharge Study*. Activities listed in **Part H,1** are exempt from site plan review.
 - (3) The names and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site, including dates.

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H. Exemptions and Exceptions.

1. The following activities shall be allowed in critical areas without site plan review provided they are not prohibited by any other chapter of the Chewelah Municipal Code or other city rules and regulations or other law, provided a site plan describing the proposal has been reviewed and approved by the building official and provided they are conducted using best management practices and at a time designed to minimize adverse effects to the critical resource:

- a. Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife.
- b. Outdoor recreational activities which do not involve disturbance of the resource or site area, including fishing, hunting, bird watching, hiking, boating, horseback riding, swimming, canoeing, and bicycling.
- c. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the resource by changing existing topography, vegetation, water conditions or water sources.
- d. Education, scientific research, and use of nature trails.
- e. Existing and ongoing agricultural activities, including farming, horticulture, aquaculture, irrigation, ranching or grazing of animals. Activities on areas lying fallow as part of a conventional rotational cycle are part of an ongoing operation. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it was conducted has been converted to another use or has lain idle for more than twelve consecutive months.
- f. Normal and routine maintenance of legally constructed irrigation and drainage ditches, provided that this exemption shall not apply to any ditches used by salmonids.
- g. Normal and routine maintenance, repair or operation of existing serviceable structures, facilities, or improved areas. Maintenance and repair do not include any modification that changes the character, scope, or size of the original structure, facility, or improved area and does not include the construction of a maintenance road.
- h. Minor modification of existing serviceable structures provided such minor modifications are located wholly outside the designated buffer zone and where modification or construction does not adversely impact functions of the critical areas. The buffer zones are:
 - (1) Chewelah Creek: fifty feet as measured from the ordinary high water mark.
 - (2) Thomason and Paye Creeks: twenty-five feet as measured from the ordinary high water mark.

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I. Emergency Activities.

- 1. **Criteria for Granting a Temporary Emergency Permit.** Notwithstanding the provisions of this section or any other laws to the contrary, the Administrator may issue a temporary emergency wetland permit or allow regulated uses or activities in a Fish and Wildlife Habitat Conservation Area or Geologically Hazardous Area if:
 - a. The Administrator determines that an imminent threat to public health, safety, or the environment will occur if an emergency permit is not granted; and
 - b. The threat or loss may occur before a wetland permit or Fish and Wildlife Habitat Conservation Area review can be issued or conditioned under the procedures otherwise required by this section.
- 2. **Conditions of an Emergency Permit.** Any emergency permit granted shall:

- a. Incorporate to the greatest extent practicable the standards and criteria required for non-emergency activities.
 - b. Be limited in duration to the time required to complete the authorized emergency activities, not to exceed ninety days without reapplication.
 - c. Require contact of the Washington Department of Fish and Wildlife for an emergency Hydraulic Project Approval if necessary.
3. **Reasonable Use Exception.** If the applicant for a development proposal demonstrates to the satisfaction of the Administrator that application of the standards of this section would deny all reasonable use of the property, development satisfying the project conditions imposed by the Administrator and fulfilling the criteria below shall be allowed. The applicant shall pay fees as determined by the City which may include mailing and processing costs and shall submit documentation on forms provided by the City demonstrating that all of the following are met to the satisfaction of the Administrator:
- a. Reasonable intent to mitigate impacts to critical areas and buffers consistent with the purpose and standards of this section.
 - b. There is no reasonable use with less impact on the wetland, fish and wildlife habitat or geo-hazard area.
 - c. The requested use or activity will not result in any damage to other property and will not threaten public health, safety or welfare, on or off the property.
 - d. Any alteration to the wetland, fish and wildlife habitat or geo-hazard area is the minimum necessary to allow for reasonable use of the property.
 - e. The inability of the applicant to derive reasonable use is not the result of actions by the applicant in subdividing the property or adjusting boundary lines thereby creating the undevelopable condition after the effective date of this section.
4. **Decision.** The Administrator shall include findings on each of the evaluation criteria listed above in a written decision. The written decision shall comply with Notice of Decision standards provided in **CMC 18.20.040 Part D**. The written decision shall include conditions necessary to serve the purposes of this section.

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J. **Frequently Flooded Areas.**

1. **Purpose.** It is the intent of the City to recognize and diminish potential hazards that may be caused by inappropriate development in areas where severe and costly flooding is anticipated to occur. Based on historical observation and information collected by the Federal Emergency Management Agency, the City endorses a cautious posture that limits construction in areas located within zones designated to be flood prone. This decision stems from local, as well as state and federal, understanding that development limitations in these areas help to serve the health, safety and public welfare of the people of the City.
2. **Classification.** Classification of frequently flooded areas, according to the minimum guidelines, should include, at a minimum, the 100-year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

The following are categories of frequently flooded areas established for the purpose of classification:

- a. **Floodways.** The channel of a stream, plus any adjacent floodplain areas, that must be kept free of encroachment in order that the base flood be carried without substantial increases in flood heights.
 - b. **Floodplains.** The floodway and special flood hazard areas.
 - c. **Special Flood Hazard Areas.** The areas adjoining the floodway which are subject to a one percent or greater chance of flooding in any given year, as identified and determined by the Federal Insurance Administration.
3. **Designation.** All city lands and waters which are currently identified within the 100-year floodplain in the Federal Emergency Management Agency publication entitled "The Flood Insurance Rate Map for Stevens County, WA, and Incorporated Areas," with accompanying flood insurance rate and boundary maps are designated as frequently flooded areas. If and when this study becomes updated to reflect new conditions, designation of frequently flooded areas will include the changes.
4. All new development within designated frequently flooded areas shall be in compliance with **CMC 18.08.150** Floodplain Management Overlay (FM) Zone.

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K. Wetlands.

1. **Purposes** of this section are to:
 - a. Recognize and protect the beneficial functions performed by many wetlands, which include, but are not limited to, providing food, breeding, nesting and/or rearing habitat for fish and wildlife; recharging and discharging groundwater; contributing to stream flow during low flow periods; stabilizing stream banks and shorelines; storing storm and flood waters to reduce flooding and erosion; and improving water quality through biofiltration, adsorption, and retention and transformation of sediments, nutrients, and toxicants.
 - b. Regulate land use to avoid adverse effects on wetlands and maintain the functions and values of wetlands throughout the City of Chewelah.
 - c. Establish review procedures for development proposals in and adjacent to wetlands.
 - (1) Compliance with the provisions of this section does not constitute compliance with other federal, state, and local regulations and permit requirements (for example, Shoreline Substantial Development Permits, Hydraulic Project Approval Permits, Army Corps of Engineers Section 404 Permits, National Pollutant Discharge Elimination System Permits). The applicant is responsible for complying with these requirements, apart from the process established in this section.
 - (2) The classification of a wetland shall be defined according to the *Washington State Wetland Rating System for Eastern Washington: 2014 Update* (Ecology Publication # 14-06-030 or as revised and approved by Ecology) and the *1987 Federal Wetland Delineation Manual* and appropriate Regional Supplement, or as amended.

2. Identification and Rating.

- a. Identification and Delineation. Identification of wetlands and delineation of their boundaries pursuant to this section shall be done in accordance with the approved *1987 Federal Wetland Delineation Manual* and appropriate Regional Supplement, or as amended. All areas within the city meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this section. Wetland delineations are valid for five years; after such date the Administrator shall determine whether a revision or additional assessment is necessary.
- b. Rating. Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the *Washington State Wetland Rating System for Eastern Washington: 2014 Update* (Ecology Publication #14-06-030, or as revised and approved by Ecology), which contains the definitions and methods for determining whether the criteria for the following are met:
 - (1) *Category I wetlands* perform many functions very well (scores between 22-27 points).
 - (A) They include:
 - (a) Alkali wetlands.
 - (b) Wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/Department of Natural Resources.
 - (c) Bogs and calcareous fens.
 - (d) Mature and old-growth forested wetlands over one quarter acre with slow-growing trees.
 - (e) Forests with stands of aspen.
 - (B) These wetlands are those that:
 - (a) Represent a unique or rare wetland type; or
 - (b) Are more sensitive to disturbance than most wetlands; or
 - (c) Are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or
 - (d) Provide a high level of function.
 - (2) *Category II wetlands* perform functions well (scores between 19-21 points).
 - (A) They include:
 - (a) Forested wetlands in the floodplains of rivers.
 - (b) Mature and old-growth forested wetlands over one quarter acre with fast-growing trees.
 - (c) Vernal pools
 - (B) These wetlands are difficult, though not impossible, to replace and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands but still need a relatively high level of protection.
 - (3) *Category III wetlands* have a moderate level of functions (scores between 16-18 points). These wetlands can often be adequately replaced with a well-planned mitigation project. Wetlands scoring between 16-18 points generally have been disturbed in some way and are often less diverse or more

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isolated from other natural resources in the landscape than Category II wetlands.

(4) *Category IV wetlands* have the lowest level of functions (scores fewer than 16 points) and are often heavily disturbed. These are wetlands that should be able to be replaced, and in some cases, improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions and also need to be protected.

3. **Illegal Modifications.** Wetland rating categories shall not change due to illegal modifications made by the applicant or with the applicant's knowledge.

4. **Regulated Activities.**

a. For any regulated activity, a critical areas report (**see Part G,3**) may be required to support the requested activity.

b. The following activities are regulated if they occur in a regulated wetland or its buffer:

(1) The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind.

(2) The dumping of, discharging of, or filling with any material.

(3) The draining, flooding, or disturbing of the water level or water table.

(4) Pile driving.

(5) The placing of obstructions.

(6) The construction, reconstruction, demolition, or expansion of any structure.

(7) The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland.

(8) "*Class IV - General Forest Practices*" under the authority of the "*1992 Washington State Forest Practices Act Rules and Regulations*," WAC 222.12.030, or as amended.

(9) Activities that result in:

(A) A significant change of water temperature.

(B) A significant change of physical or chemical characteristics of the sources of water to the wetland.

(C) A significant change in the quantity, timing or duration of the water entering the wetland.

(D) The introduction of pollutants.

5. **Subdivisions.** The subdivision and/or short subdivision of land in wetlands and associated buffers are subject to the following:

a. Land that is located wholly within a wetland or its buffer may not be subdivided.

b. Land that is located partially within a wetland or its buffer may be subdivided provided that an accessible and contiguous portion of each new lot is:

(1) Located outside of the wetland and its buffer; and

(2) Meets the minimum lot size requirements of **CMC 18.08 Zones**.

6. **Exemptions and Allowed Uses in Wetlands.**

a. Small isolated wetlands in arid landscapes often have a higher value and perform greater functions than in other settings. However, in certain circumstances, applying the buffers in **Part K,7** may result in buffer areas greater than that of the

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wetland being protected. In these instances, the Administrator may consult with the Department of Ecology to determine whether exemptions from mitigation sequencing and/or reduced buffers are warranted.

- b. Activities allowed in wetlands. The following activities are allowed in wetlands. These activities do not require submission of a critical areas report, except where such activities result in a loss of the functions and values of a wetland or wetland buffer. These activities include:
- (1) Existing and ongoing agricultural activities, provided that they implement applicable Best Management Practices contained in the latest edition of the USDA Natural Resources Conservation Service Field Office Technical Guide; or develop a farm conservation plan in coordination with the local conservation district. Best Management Practices and/or farm plans should address potential impacts to wetlands from livestock, nutrient and farm chemicals, soil erosion and sediment control and agricultural drainage infrastructure. Best Management Practices and/or farm plans should ensure that ongoing agricultural activities minimize their effects on water quality, riparian ecology, salmonid populations, and wildlife habitat.
 - (2) Those activities and uses conducted pursuant to the Washington State Forest Practices Act and its rules and regulations (WAC 222-12-030) where state law specifically exempts local authority, except those developments requiring local approval for Class 4 – General Forest Practice Permits (conversions) as defined in RCW 76.09 and WAC 222-12.
 - (3) Conservation or preservation of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or functions of the existing wetland.
 - (4) The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops, provided that the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.
 - (5) Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer, provided that the drilling does not interrupt the groundwater connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the groundwater connection to the wetland or percolation of surface water down through the soil column will be disturbed.
 - (6) Enhancement of a wetland through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.
 - (7) Educational and scientific research activities.

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- (8) Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, provided that the maintenance or repair does not expand the footprint of the facility or right-of-way.
- (9) Stormwater management facilities. A wetland or its buffer can be physically or hydrologically altered to meet the requirements of a LID, Runoff Treatment or Flow Control Best Management Practice if ALL of the following criteria are met:
 - (A) The wetland is classified as a Category IV or a Category III wetland with a habitat score of 3-5 points.
 - (B) There will be “no net loss” of functions and values of the wetland.
 - (C) The wetland does not contain a breeding population of any native amphibian species.
 - (D) The hydrologic functions of the wetland can be improved as outlined in questions 3, 4, 5 of Chart 4 and questions 2, 3, 4 of Chart 5 in the “Guide for Selecting Mitigation Sites Using a Watershed Approach,” as provided by the Department of Ecology; or the wetland is part of a priority restoration plan that achieves restoration goals identified in a Shoreline Master Program or other local or regional watershed plan.
 - (E) The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing.
 - (F) All regulations regarding stormwater and wetland management are followed, including but not limited to, local and state wetland and stormwater codes, manuals, and permits.
 - (G) Modifications that alter the structure of a wetland or its soils will require permits. Existing functions and values that are lost would have to be compensated/replaced.
 - (H) Stormwater LID Best Management Practices required as part of new or redevelopment projects can be considered within wetlands and their buffers. However, these areas may contain features that render LID Best Management Practices infeasible. A site-specific characterization is required to determine if an LID Best Management Practice is feasible at the project site.

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7. Wetland Buffers.

- a. **Buffer Requirements.** The following buffer widths have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the *Washington State Wetland Rating System for Eastern Washington: 2014 Update* (Ecology Publication #14-06-030, or as revised and approved by Ecology).

Wetland Buffer Requirements

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

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8. **Increased Wetland Buffer Area Width.** Buffer widths shall be increased on a case-by-case basis as determined by the Administrator when a larger buffer is necessary to protect wetland functions and values. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the wetland. The documentation must include but is not limited to the following criteria:
 - a. The wetland is used by a state or federally listed plant or animal species or has essential or outstanding habitat for those species, or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees.
 - b. The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts.
 - c. The adjacent land has minimal vegetative cover or slopes greater than thirty percent.
9. **Buffer averaging to improve wetland protection** may be permitted when **all** of the following conditions are met:
 - a. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a “dual-rated” wetland with a Category I area adjacent to a lower-rated area.

- b. The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas report from a qualified wetland professional.
 - c. The total area of the buffer after averaging is equal to the area required without averaging.
 - d. The buffer at its narrowest point is never less than either seventy-five percent of the required width or seventy-five feet for Category I and II, fifty feet for Category III and twenty-five feet for Category IV, whichever is greater.
10. **Averaging to allow reasonable use** of a parcel may be permitted when **all** of the following are met:
- a. There are no feasible alternatives to the site design that could be accomplished without buffer averaging.
 - b. The averaged buffer will not result in degradation of the wetland's functions and values as demonstrated by a critical areas report from a qualified wetland professional.
 - c. The total buffer area after averaging is equal to the area required without averaging.
 - d. The buffer at its narrowest point is never less than either seventy-five percent of the required width or seventy-five feet for Category I and II, fifty feet for Category III and twenty-five feet for Category IV, whichever is greater.
11. **Measurement of Wetland Buffers.** All 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. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers or included in buffer area calculations.
12. **Buffers on Mitigation Sites.** All wetland mitigation sites shall have buffers consistent with the buffer requirements of this section. Buffers shall be based on the expected or target category of the proposed wetland mitigation site.
13. **Overlapping Critical Area Buffers.** If buffers for two contiguous critical areas overlap (such as buffers for a stream and a wetland), the wider buffer applies.
14. **Allowed Buffer Uses.** The following uses may be allowed within a wetland buffer in accordance with the review procedures of this section, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland:
- a. **Conservation and Restoration Activities.** Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.
 - b. **Passive Recreation.** Passive recreation facilities designed and in accordance with an approved critical areas report, including:
 - (1) Walkways and trails, provided that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent of the wetland buffer area, and located so as to avoid removal of significant trees. They should be limited to pervious surfaces no more than five

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feet in width for pedestrian use only. Raised boardwalks utilizing non-treated pilings may be acceptable.

(2) Wildlife-viewing structures.

- c. Educational and scientific research activities.
- d. Normal and routine maintenance and repair of any existing public or private facility within an existing right-of-way, provided that the maintenance or repair does not increase the footprint or use of the facility or right-of-way.
- e. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops, provided that the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.
- f. Drilling for utilities/utility corridors under a buffer, with entrance/exit portals located completely outside of the wetland buffer boundary, provided that the drilling does not interrupt the groundwater connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the groundwater connection to the wetland or percolation of surface water down through the soil column is disturbed.
- g. Enhancement of a wetland buffer through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.
- h. Repair and maintenance of non-conforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity.

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15. Signs and Fencing of Wetlands and Buffers (optional).

- a. **Temporary Markers.** The outer perimeter of the wetland buffer and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary “clearing limits” fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the Administrator prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.
- b. **Permanent Signs.** As a condition of any permit or authorization issued pursuant to this section, the Administrator may require the applicant to install permanent signs along the boundary of a wetland or buffer.
 - (1) Permanent signs shall be made of an enamel-coated metal face and attached to a metal post or another non-treated material of equal durability. One sign must be posted at fifty-foot intervals, or one per lot if the lot is less than fifty feet wide; and must be maintained by the property owner in perpetuity. The signs shall be worded as follows or with alternative language approved by the Administrator:

**Protected Wetland Area Do Not Disturb
Contact City of Chewelah
Regarding Uses, Restrictions, and Opportunities for Stewardship**

(2) The provisions of **Part K,15,a** may be modified as necessary to ensure protection of sensitive features or wildlife.

c. Fencing.

(1) The applicant shall be required to install a permanent fence around the wetland or buffer when domestic grazing animals are present or may be introduced on site.

(2) Fencing installed as part of a proposed activity or as required in **Part K,15,c,(1)** shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

16. Critical Areas Report for Wetlands.

a. If the Administrator determines that the site of a proposed development includes, is likely to include, or is adjacent to a wetland, a wetland report prepared by a qualified professional shall be required. The expense of preparing the wetland report shall be borne by the applicant.

b. Minimum Standards for Wetland Reports. The written report and the accompanying plan sheets shall contain the following information:

(1) The written report shall include at a minimum:

(A) The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the wetland critical areas report; a description of the proposal; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.

(B) A statement specifying the accuracy of the report and all assumptions made and relied upon.

(C) Documentation of any fieldwork performed on the site, including field data sheets for delineations, rating system forms, baseline hydrologic data, etc.

(D) A description of the methodologies used to conduct the wetland delineations, wetland ratings, or impact analyses, including references.

(E) Identification and characterization of all critical areas, wetlands, water bodies, shorelines, floodplains, and buffers on or adjacent to the proposed project area. For areas off-site of the project site, estimate conditions within two hundred fifty feet of the project boundaries using the best available information.

(F) For each wetland identified on-site and within two hundred fifty feet of the project boundary, provide: the wetland rating, including a description of and score for each function, per **Part K,2,a-b**; required buffers; hydrogeomorphic classification; wetland acreage based on a professional survey from the field delineation (acreages for on-site portion and entire wetland area including off-site portions); Cowardin classification of vegetation communities; habitat elements; soil conditions based on site

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assessment and/or soil survey information; and to the extent possible, hydrologic information such as location and condition of inlet/outlets (if they can be legally accessed), estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g., algal mats, drift lines, flood debris, etc.). Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site.

- (G) A description of the proposed actions including an estimation of acreages of impacts to wetlands and buffers based on the field delineation and survey and an analysis of site development alternatives, including a no-development alternative.
 - (H) An assessment of the probable cumulative impacts to the wetlands and buffers resulting from the proposed development.
 - (I) A description of reasonable efforts made to apply mitigation sequencing pursuant to **Part K,17,a** in order to avoid, minimize, and mitigate impacts to critical areas.
 - (J) A discussion of measures, including avoidance, minimization, and compensation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land use activity.
 - (K) A conservation strategy for habitat and native vegetation that addresses methods to protect and enhance on-site habitat and wetland functions.
 - (L) An evaluation of the functions of the wetland and adjacent buffer. Include reference for the method used and data sheets.
- (2) A copy of the site plan sheet(s) for the project must be included with the written report and must include, at a minimum:
- (A) Maps (to scale) depicting delineated and surveyed wetland and required buffers on-site, including buffers for off-site critical areas that extend onto the project site; the development proposal; other critical areas; grading and clearing limits; areas of proposed impacts to wetlands and/or buffers (include square footage estimates).
 - (B) A depiction of the proposed stormwater management facilities and outlets (to scale) for the development, including estimated areas of intrusion into the buffers of any critical areas. The written report shall contain a discussion of the potential impacts to the wetland(s) associated with anticipated hydroperiod alterations from the project.

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17. Compensatory Mitigation.

- a. Mitigation Sequencing. Before impacting any wetland or its buffer, the applicant shall demonstrate that the following actions have been taken. Actions are listed in the order of preference:
 - (1) Avoid the impact altogether by not taking a certain action or parts of an action.
 - (2) 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.
 - (3) Rectify the impact by repairing, rehabilitating, or restoring the affected environment.
 - (4) Reduce or eliminate the impact over time by preservation and maintenance

operations.

- (5) Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.
- (6) Monitor the required compensation and take remedial or corrective measures when necessary.

b. Requirements for Compensatory Mitigation:

- (1) 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. Compensatory mitigation plans shall be consistent with *Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans--Version 1*, (Ecology Publication #06-06-11b, Olympia, WA, March 2006 or as amended), and *Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington)* (Publication #10-06-07, November 2010, or as amended).
- (2) Mitigation ratios shall be consistent with **Part K,19**.

c. Compensating for Lost or Affected Functions. Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except when either:

- (1) The lost wetland provides minimal functions, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington state watershed assessment plan or protocol; or
- (2) Out-of-kind replacement of wetland type or functions will best meet watershed goals formally identified by the City, such as replacement of historically diminished wetland types.

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d. Approaches to Compensatory Mitigation (optional). Mitigation for lost or diminished wetland and buffer functions shall rely on the following approaches:

- (1) Wetland mitigation banks. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the mitigation bank instrument. Use of credits from a wetland mitigation bank certified under WAC 173-700 is allowed if:
 - (A) The Administrator determines that it would provide appropriate compensation for the proposed impacts.
 - (B) The impact site is located in the service area of the bank.
 - (C) The proposed use of credits is consistent with the terms and conditions of the certified mitigation bank instrument.
 - (D) Replacement ratios for projects using bank credits is consistent with replacement ratios specified in the certified mitigation bank instrument.
- (2) Permittee-responsible mitigation. In this situation, the permittee performs the mitigation after the permit is issued and is ultimately responsible for implementation and success of the mitigation. Permittee-responsible mitigation may occur at the site of the permitted impacts or at an off-site location within the same watershed. Permittee-responsible mitigation shall be

used only if the applicant's qualified wetland professional demonstrates to the Administrator's satisfaction that the proposed approach is ecologically preferable to use of a mitigation bank, consistent with the criteria in this section.

e. **Types of Compensatory Mitigation.** Mitigation for lost or diminished wetland and buffer functions shall rely on a type listed below in order of preference. A lower- preference form of mitigation shall be used only if the applicant's qualified wetland professional demonstrates to the Administrator's satisfaction that all higher-ranked types of mitigation are not viable, consistent with the criteria in this section.

(1) **Restoration.** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historical functions to a former or degraded wetland. For the purpose of tracking net gains in wetland acres, restoration is divided into:

(A) **Re-establishment.** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historical functions to a former wetland. Re-establishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.

(B) **Rehabilitation.** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historical functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.

(2) **Establishment (Creation).** The manipulation of the physical, chemical, or biological characteristics of a site to develop a wetland on an upland or deepwater site where a wetland did not previously exist. Establishment results in a gain in wetland acres. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species.

(A) If a site is not available for wetland restoration to compensate for expected wetland and/or buffer impacts, the Administrator may authorize creation of a wetland and buffer upon demonstration by the applicant's qualified wetland professional that:

(a) The hydrologic and soil conditions at the proposed mitigation site are conducive for sustaining the proposed wetland and that creation of a wetland at the site will not likely cause hydrologic problems elsewhere.

(b) Adjacent land uses and site conditions do not jeopardize the viability of the proposed wetland and buffer (e.g., due to the presence of invasive plants or noxious weeds, stormwater runoff, noise, light, or other impacts).

(c) The proposed wetland and buffer will eventually be self- sustaining with little or no long-term maintenance.

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- (3) **Enhancement.** The manipulation of the physical, chemical, or biological characteristics of a wetland site in order to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Activities typically consist of planting vegetation, controlling non-native or invasive species, modifying site elevations or the proportion of open water to influence hydroperiods, or some combination of these activities. Applicants proposing to enhance wetlands or associated buffers shall demonstrate how the proposed enhancement will increase the wetland's/buffer's functions, how this increase in function will adequately compensate for the impacts, and how existing wetland functions at the mitigation site will be protected.
- (4) **Protection/Maintenance (Preservation).** Removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This includes the purchase of land or easements, or repair of water control structures or fences. This term also includes activities commonly associated with the term *preservation*. Preservation does not result in a gain of wetland acres. Permanent protection of a Category I or II wetland and associated buffer at risk of degradation can be used only if:
- (A) The Administrator determines that the proposed preservation is the best mitigation option.
 - (B) The proposed preservation site is under threat of undesirable ecological change due to permitted, planned, or likely actions that will not be adequately mitigated under existing regulations.
 - (C) The area proposed for preservation is of high-quality or critical for the health of the watershed or basin due to its location. Some of the following features may be indicative of high-quality sites:
 - (a) Category I or II wetland rating (using the wetland rating system for eastern Washington).
 - (b) Rare or irreplaceable wetland type (for example, bogs, mature forested wetlands, estuarine wetlands) or aquatic habitat that is rare or a limited resource in the area.
 - (c) The presence of habitat for priority or locally important wildlife species.
 - (d) Provides biological and/or hydrological connectivity.
 - (e) Priority sites in an adopted watershed plan.
 - (D) Permanent preservation of the wetland and buffer will be provided through a conservation easement or tract held by an appropriate natural land resource manager, such as a land trust.
 - (E) The Administrator may approve other legal and administrative mechanisms in lieu of a conservation easement if it determines they are adequate to protect the site.
 - (F) Ratios for preservation in combination with other forms of mitigation

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generally range from 10:1 to 20:1, as determined on a case-by-case basis, depending on the quality of the wetlands being impacted and the quality of the wetlands being preserved. Ratios for preservation as the sole means of mitigation generally start at 20:1.

18. **Location of Compensatory Mitigation.** Compensatory mitigation actions shall generally be conducted within the same sub-drainage basin and on the site of the alteration except when the applicant can demonstrate that off-site mitigation is ecologically preferable. The following criteria will be evaluated when determining whether the proposal is ecologically preferable. When considering off-site mitigation, preference should be given to using alternative mitigation, such as a mitigation bank or advance mitigation.

- a. There are **no reasonable opportunities on site or within the sub-drainage basin** (e.g., on-site options would require elimination of high-functioning upland habitat) that have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts. Considerations should include anticipated replacement ratios for wetland mitigation, buffer conditions and proposed widths, available water to maintain anticipated hydrogeomorphic classes of wetlands when restored, proposed flood storage capacity, and potential to mitigate riparian fish and wildlife impacts (such as connectivity).
- b. On-site mitigation would require elimination of high-quality upland habitat.
- c. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the altered wetland.
- d. Off-site locations shall be in the same sub-drainage basin.
- e. The design for the compensatory mitigation project needs to be appropriate for its location (i.e., position in the landscape). Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland.
- f. **Timing of Compensatory Mitigation.** It is preferred that compensatory mitigation projects be completed prior to activities that will disturb wetlands. At the least, compensatory mitigation shall be completed immediately following disturbance and prior to use or occupancy of the action or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.
- g. The Administrator may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a written explanation from a qualified wetland professional as to the rationale for the delay. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties (e.g., project delay lapses past a fisheries window, or installing plants should be delayed until the dormant season to ensure greater survival of installed materials). 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, or general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the compensatory mitigation plan. The justification must be verified and approved by the Administrator.

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19. Wetland Mitigation Ratios.

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

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20. **Compensatory Mitigation Plan.** When a project involves wetland and/or buffer impacts, a compensatory mitigation plan prepared by a qualified professional shall be required, meeting the following minimum standards:

- a. **Wetland Critical Areas Report.** A critical areas report for wetlands must accompany or be included in the compensatory mitigation plan and include the minimum parameters described in **Part K,16,b**.
- b. **Compensatory Mitigation Report.** The report must include a written report and plan sheets that must contain, at a minimum, the following elements. Full guidance can be found in *Wetland Mitigation in Washington State– Part 2: Developing Mitigation Plans (Version 1)* (Ecology Publication #06- 06-011b, Olympia, WA, March 2006 or as amended).

(1) The written report must contain, at a minimum:

- (A) The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the compensatory mitigation report; a description of the proposal; a summary of the impacts and proposed compensation concept; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.
- (B) Description of how the project design has been modified to avoid, minimize, or reduce adverse impacts to wetlands.
- (C) Description of the existing wetland and buffer areas proposed to be impacted. Include acreage (or square footage), water regime, vegetation, soils, landscape position, surrounding lands uses, and functions. Also describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating, based on **Part K,2,b**.

- (D) Description of the compensatory mitigation site, including location and rationale for selection. Include an assessment of existing conditions: acreage (or square footage) of wetlands and uplands, water regime, sources of water, vegetation, soils, landscape position, surrounding land uses, and functions. Estimate future conditions in this location if the compensation actions are NOT undertaken (i.e., how would this site progress through natural succession?).
 - (E) Surface and subsurface hydrologic conditions, including an analysis of existing and proposed hydrologic regimes for enhanced, created, or restored compensatory mitigation areas. Include illustrations of how data for existing hydrologic conditions were used to determine the estimates of future hydrologic conditions.
 - (F) A description of the proposed actions for compensation of wetland and upland areas affected by the project. Include overall goals of the proposed mitigation, including a description of the targeted functions, hydrogeomorphic classification, and categories of wetlands.
 - (G) A description of the proposed mitigation construction activities and timing of activities.
 - (H) Performance standards (measurable standards for years post-installation) for upland and wetland communities, a monitoring schedule, and a maintenance schedule and actions proposed by year.
 - (I) A discussion of ongoing management practices that will protect wetlands after the development project has been implemented, including proposed monitoring and maintenance programs (for remaining wetlands and compensatory mitigation wetlands).
 - (J) Proof of establishment of *Notice on Title* for the wetlands and buffers on the project site, including the compensatory mitigation areas.
- (2) The scaled plan sheets for the compensatory mitigation must contain, at a minimum:
- (A) Surveyed edges of the existing wetland and buffers, proposed areas of wetland and/or buffer impacts, location of proposed wetland and/or buffer compensation actions.
 - (B) Existing topography, ground-proofed, at two-foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed to create the compensation area(s). Also, existing cross-sections of on-site wetland areas that are proposed to be impacted, and cross-section(s) (estimated one-foot intervals) for the proposed areas of wetland or buffer compensation.
 - (C) Conditions expected from the proposed actions on site, including future hydrogeomorphic types, vegetation community types by dominant species (wetland and upland), and future water regimes.
 - (D) Required wetland buffers for existing wetlands and proposed compensation areas. Also, identify any zones where buffers are proposed to be reduced or enlarged outside of the standards identified in this section.
 - (E) A planting plan for the compensation area, including all species by proposed community type and water regime, size and type of plant material

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to be installed, spacing of plants, typical clustering patterns, total number of each species by community type, and timing of installation.

21. **Buffer Mitigation Ratios.** Impacts to buffers shall be mitigated at a minimum 1:1 ratio. Compensatory buffer mitigation shall replace those buffer functions lost from development.
22. **Protection of the Mitigation Site.** The area where the mitigation occurred and any associated buffer shall be located in a critical area tract or a conservation easement consistent with this section.
23. **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. If a scrub-shrub or forested vegetation community is proposed, monitoring may be required for ten years or more. 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.
 - a. **Advance Mitigation.** Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to federal rules, state policy on advance mitigation, and state water quality regulations consistent with *Interagency Regulatory Guide: Advance Permittee-Responsible Mitigation* (Ecology Publication #12-06-015, Olympia, WA, December 2012, or as amended).
 - b. **Alternative Mitigation Plans.** The Administrator may approve alternative wetland mitigation plans that are based on best available science, such as priority restoration plans that achieve restoration goals identified in the City of Chewelah Shoreline Master Program. Alternative mitigation proposals must provide an equivalent or better level of protection of wetland functions and values than would be provided by the strict application of this section. The Administrator shall consider the following for approval of an alternative mitigation proposal:
 - (1) The proposal uses a watershed approach consistent with *Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington)* (Ecology Publication #10-06-07, November 2010, or as amended).
 - (2) Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas.
 - (3) Mitigation according to **Part K,17,e** is not feasible due to site constraints such as parcel size, stream type, wetland category, or geologic hazards.
 - (4) There is clear potential for success of the proposed mitigation at the proposed mitigation site.
 - (5) The plan shall contain clear and measurable standards for achieving compliance with the specific provisions of the plan. A monitoring plan shall, at a minimum, meet the provisions in **Part K,20**.
 - (6) The plan shall be reviewed and approved as part of overall approval of the proposed use.
 - (7) A wetland of a different type may be justified based on regional needs or functions and values. The replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative.

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- (8) Qualified professionals in each of the critical areas addressed shall prepare the plan.
- (9) The Administrator may consult with agencies with expertise and jurisdiction over the critical areas during the review to assist with analysis and identification of appropriate performance measures that adequately safeguard critical areas.

L. Fish and Wildlife Habitat Conservation Areas.

- 1. Purpose.** The City designates Fish and Wildlife Habitat Conservation Areas within the city and its urban growth area in accordance with *Washington Department of Fish and Wildlife Priority Habitat and Species Program*, or as amended. The Administrator shall ask the appropriate resource agencies to review and comment on the development impacts and provisions of the Habitat Management Plan.
- 2. Fish and Wildlife Habitat Conservation Area.** For purposes of this section, fish and wildlife habitat conservation areas shall include all of the following:
 - a. The Washington State Department of Fish and Wildlife Priority Habitats and Species Recommendations for Species and Habitats, for:
 - (1) Endangered species listed at WAC 220-610-010.
 - (2) Threatened species listed at WAC 220-400-010.
 - (3) Sensitive species listed at WAC 220-400-100.
 - b. Bald eagle habitat pursuant to WAC 220-610-100.
 - c. Endangered or threatened species listed in accordance with the federal Endangered Species Act together with the areas with which they have a primary association.
- 3. Water Bodies.**
 - a. Streams shall be designated in accordance with the Washington State Department of Natural Resources stream type as provided in WAC 222-16-030 with the following provisions:
 - (1) *Type S Water.* All waters inventoried as “shorelines of the state” under RCW 90.58 and the rules promulgated pursuant to RCW 90.58, including periodically inundated areas of their associated wetlands.
 - (2) *Type F-A Water.* Segments of natural waters, other than Type S Waters, which are within defined channels greater than ten feet in width, as defined by the Ordinary High Water Mark 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.
 - (3) *Type F-B Water.* Segments of natural waters, other than Type S Waters, which are within defined channels less than ten feet in width, as defined by the Ordinary High Water Mark, or within lakes, ponds, or impoundments having a surface area of less than one-half acre at seasonal low water and which in any case contain fish habitat.
 - (4) *Type Np Water.* All segments of natural waters within defined channels that are perennial nonfish habitat streams. Perennial streams are waters that do not go dry any time of a year of normal rainfall. However, for the purpose of

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water typing, Type Np Waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.

- (5) *Type Ns Water*. All segments of natural waters within defined channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at 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 aboveground channel system to Type S, F, or Np Waters.

4. *Classes of Wildlife Conservation Areas*.

- a. The City shall use two general classifications of Fish and Wildlife Habitat Conservation Areas. These classifications are not intended to prioritize protection of one class of habitat over the other, but to recognize that the two types of habitat areas have differing functions and values within the urban environment. In reviewing development proposal(s), the City shall consider the Fish and Wildlife Habitat Conservation Areas classification in establishing buffer widths, mitigation requirements, and permit conditions. Any decision regarding establishment of buffers, buffer widths, access restrictions, vegetation conservation and restoration requirements, mitigation requirements, or permit conditions shall be a Type II review, subject to **CMC 18.20.030** Development Review Procedure.

- (1) *Aquatic and Riparian Habitat Conservation Areas*. With this classification, the City recognizes that riparian habitat within the city limits and urban growth area frequently coincides with shoreline areas, flood hazard areas, wetlands and aquifer recharge areas. Riparian areas typically offer relatively contiguous habitat that is essential to a diverse array of fish and wildlife species. Best available science indicates that these areas are especially sensitive to pressures from urban development, and that they provide important habitat functions and values for many species, including anadromous fish species.

- (2) *Upland Habitat Conservation Areas*. With this classification, the City recognizes that those upland areas within the defined city limits and urban growth boundary that are not otherwise designated as critical areas are frequently the most suited for human development. Upland habitats that support federal or state identified endangered, threatened or sensitive species, or any habitats which are identified as providing a high level of functions and values, must be protected in accord with federal and state regulations. However, in considering best available science, this classification also is intended to ensure that development is not subject to burdensome regulation in those areas most suited to support it. Upland habitat areas shall not include those portions of the city and Urban Growth Area where a development pattern is already established such that connectivity of habitat has already been broken and protection of identified habitat areas is unlikely to provide measurable benefit to any of the priority species identified by Washington Department of Fish and Wildlife.

5. *Mapping*. Priority Habitat and Species maps used by the Washington Department of Fish and Wildlife depict general locations of Fish and Wildlife Habitat Conservation Areas. However, because species populations and habitat systems are dynamic, agency consultation shall be required to verify designation as a habitat conservation

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area, except in cases in which a plan or agreement for the habitat or species in question has been prepared and approved by the Washington Department of Fish and Wildlife and the City.

6. **Standards.** In addition to the general provisions of this section and the requirements of the underlying zone, the following minimum standards shall apply to development activities within and adjacent to fish and wildlife habitat conservation areas:
- a. Alterations shall not degrade the functions and values of the habitat. A habitat conservation area may be altered only if the proposed alterations of the habitat or the mitigation proposed do not degrade the functions and values of the habitat.
 - b. Non-indigenous species shall not be introduced. No non-indigenous plant, wildlife, or fish species shall be introduced into a fish and wildlife habitat conservation area unless authorized by a federal or state permit or approval.
 - c. Mitigation shall attempt to preserve contiguous corridors. Where wildlife corridors exist, such as along stream corridors, mitigation shall preserve those corridors by appropriate buffer widths.
 - d. Approvals of activities may be conditioned. The Administrator may condition approval of activities allowed within or adjacent to a Fish and Wildlife Habitat Conservation Area or its buffers, as necessary to minimize or mitigate adverse impacts.
 - e. Mitigation shall achieve equivalent or greater biological function. Mitigation alterations to habitat conservation areas shall achieve equivalent or greater biological function. Mitigation shall address each function affected by alteration to the habitat.
 - f. Habitat Assessment. Habitat Management Plans for Fish and Wildlife Habitat Conservation Areas shall include a habitat assessment to evaluate the presence or absence of a priority species of habitat.
 - g. All projects shall comply with applicable federal, state, and local regulations regarding the species and habitats identified upon a site.
 - h. The Washington State Department of Fish and Wildlife priority habitat and species management recommendations shall be consulted in developing specific measures to protect a specific project site.
 - i. Any approved alteration or development shall be required to minimize impacts to native vegetation. Where disturbance is unavoidable, the applicant shall restore the area to the extent possible using native plants appropriate to the site. New plantings shall be monitored and maintained in good growing condition and kept free of invasive weeds until well established upon the site.
 - j. Within Riparian Habitat Conservation Areas, vegetation shall not be removed unless no other alternative exists. In such cases clearing shall be limited to those areas necessary and disturbed areas shall be replanted with site-appropriate native riparian vegetation.
 - k. Access to Fish and Wildlife Habitat Conservation Areas or buffers may be restricted in accord with the findings of a critical areas report, mitigation report, Priority Habitat Species Management recommendations or other best available science. Access restrictions may include fencing and signs, as needed to ensure protection of habitat functions and values. Restrictions may be seasonal in nature.

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1. All activities, uses and alterations proposed to be located in or adjacent to water bodies used by anadromous fish shall give special consideration to the preservation and enhancement of associated habitats.

7. Buffer Requirements for Fish and Wildlife Habitat Conservation Areas.

- a. Buffers are required for activities in or adjacent to fish and wildlife habitat conservation areas when needed to protect habitat functions and values. Fish and wildlife habitat buffer widths shall reflect the sensitivity of the habitat type and intensity of human activity proposed to be conducted nearby and shall be consistent with recommendations issued by the Washington Department of Fish and Wildlife.
- b. Riparian buffers shall be required to Type S, F, Np and Ns waters and shall extend landward perpendicularly from the ordinary high water mark as follows:
 - (1) Type S waters: seventy-five feet.
 - (2) Type F waters: seventy-five feet.
 - (3) Type Np waters: sixty feet.
 - (4) Type Ns waters: fifty feet.
 - (5) Undifferentiated Type N waters shall be considered as Type Np waters unless verified otherwise by a qualified professional.
- c. The Administrator may allow the recommended habitat area buffer width to be reduced in accordance with a critical areas report, the best available science, and the management recommendations issued by the Washington Department of Fish and Wildlife, only if:
 - (1) It will not reduce habitat functions and values.
 - (2) It will provide additional resource protection, such as buffer enhancement.
 - (3) The total area contained in a buffer area after averaging is no less than the area that would have been contained in the standard buffer.
 - (4) Maximum buffer width is not reduced by more than fifty percent in any location.
- d. The Administrator may allow a required buffer width to be reduced in accordance with a Fish and Wildlife Habitat Management Plan if:
 - (1) The width reduction will not reduce stream or habitat functions, including those of nonfish habitat.
 - (2) The width reduction will not degrade the habitat, including habitat for anadromous fish.
 - (3) The proposal will provide additional habitat protection(s).
 - (4) The total area contained in the riparian habitat area of each stream on the development proposal site is not decreased.
 - (5) The recommended riparian habitat area width is not reduced by more than thirty-five percent in any one location.
 - (6) The width reduction is not located within another critical area or associated buffer.
 - (7) The reduced riparian habitat area width is supported by best available science.
- e. The Administrator may allow a required buffer width to be reduced by twenty-five percent as compensation for riparian enhancement when a critical areas report demonstrates that:



- (1) Nonnative and/or invasive plant species cover more than forty percent of the buffer area.
- (2) Native trees and/or shrub vegetation covers less than twenty-five percent of the buffer area.
- (3) The stream buffer has slopes of less than twenty-five percent.
- (4) Includes an enhancement plan for the reduced buffer which:
 - (A) Includes planting of appropriate native tree and shrub species at a minimum planting density of ten feet on-center for trees and five feet on-center for shrubs.
 - (B) Compares how the proposed enhancement will benefit the value and functions of the subject area as opposed to retaining the required buffer without enhancement.
 - (C) Provides a monitoring and maintenance plan for the enhanced buffer for five years from the date of completing the enhancement.
- f. Any structure legally existing as of the effective date of this section and located within a standard buffer width required under this section may undergo normal maintenance and repair, or replacement; provided, however, that such action does not increase the degree of nonconformity.
- g. Signs and fencing of habitat conservation areas. The outer perimeter of the habitat conservation area or buffer shall be marked in the field by appropriate temporary markers during construction and, if necessary, shall be delineated by a permanent marker after completion of the activity at the discretion of the Administrator. Fencing may be required at the discretion of the Administrator in order to exclude harmful disturbances such as grazing animals.

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8. Habitat Management Plan.

- a. Prepared by a qualified professional. A habitat management plan report for a habitat conservation area shall be prepared by a qualified professional who has professional course work and training and has prepared reports for the relevant type of habitat.
- b. Area addressed in the critical areas report.
 - (1) The project area of the proposed activity.
 - (2) All habitat conservation area within two hundred feet of the project area.
 - (3) All shorelines, floodplains, and other critical areas and related buffers within two hundred feet of the project area.
- c. Habitat assessment. A habitat assessment is an investigation of the project area to evaluate the presence or absence of potential critical wildlife species habitat. A critical area habitat report shall contain the following:
 - (1) Detailed description of vegetation on and adjacent to the project area.
 - (2) Identification of any species of local importance, priority species, or endangered, threatened, or sensitive species that have primary association with the habitat on or adjacent to the project area, and assessment of potential impacts to the use of the site by the species.
 - (3) A discussion of any federal, state, or local special management recommendations.
 - (4) A detailed discussion of potential impacts on habitat by the project, including impacts to water quality.

- (5) A discussion of measures including avoidance, minimization and mitigation, proposed to preserve existing habitats in accordance with the following:
 - (A) The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas. Unless otherwise provided in this title, if alteration to the critical area is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a developing proposal or alteration shall be mitigated in accordance with an approved critical areas report and SEPA documents.
 - (B) Mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.
 - (C) Mitigation shall not be implemented until after the Administrator's approval of a critical areas report that includes a mitigation plan, and mitigation shall be in accordance with the provisions of the approved critical areas report.
 - (D) A discussion of ongoing management practices that will protect the habitat after the project site has been developed, including monitoring and maintenance.
- d. When appropriate the Administrator may request additional information relevant to the habitat characteristics and management of the site.

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M. Geologically Hazardous Areas.

1. A minimum twenty-five-foot buffer shall be established from the top, toe or sides of an identified geological hazard, including landslides, earthquake fault lines, or steep slope areas (forty percent or greater). The buffer may be increased, if necessary, to protect public health, safety and welfare, based on information contained in a geotechnical report prepared by a qualified professional engineer.
2. The hearing examiner may allow a reduction in the buffer provided the geotechnical report substantiates the following findings:
 - a. The proposed development will not create a hazard to the subject property or surrounding properties or rights-of-way; or erosion or sedimentation to off-site properties or bodies of water.
 - b. The proposal uses construction techniques which minimize disruption of existing topography and natural vegetation.
 - c. The proposal mitigates all impacts identified in the geotechnical report.
3. Buffers shall be maintained with plants or trees that provide soil stability and erosion control.

N. Critical Aquifer Recharge/Wellhead Protection Areas.

1. The wellhead protection area maps provided by the Washington State Department of Health provide a graphical representation of drinking water source protection areas.
2. In areas designated as highly susceptible to aquifer contamination, all uses shall be connected to the city's sewer system. No new uses on a septic system are permitted in high susceptibility areas of critical aquifer recharge without explicit authorization from Tri-County Health District.

3. For uses located within a critical aquifer recharge area and requiring site plan review, a disclosure form indicating activities and hazardous materials that will be used shall be provided for review and approval.
4. Impervious surfaces shall be minimized within the critical aquifer recharge areas.
5. Best management practices shall be followed by commercial and industrial uses located in the critical aquifer recharge areas.
6. A spill prevention and emergency response plan shall be prepared and submitted for review and approval.

O. Reasonable Use Exception.

1. If application of the requirements in this section would deny all reasonable economic use of the lot, development will be permitted if the applicant demonstrates all of the following to the satisfaction of the hearing examiner when reviewed through a site plan review process:
 - a. There is no other reasonable use or feasible alternative to the proposed development with less impact on the critical area.
 - b. The proposed development does not pose a threat to the public health, safety and welfare on or off of the subject lot.
 - c. Any alterations permitted to the requirements of this section shall be the minimum necessary to allow for reasonable use of the property.
 - d. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line thereby creating the undevelopable condition after the effective date of this section.
 - e. The proposal mitigates the impacts on the critical area to the maximum extent possible.

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SECTION 4: Part E of Section 18.08.150 Floodplain Management Overlay (FM) Zone is amended as follows (Deletions are denoted by ~~strikeout~~; Additions are denoted by underline; remaining text is unchanged):


- E. Site Plan Review. Site plan review shall be obtained before construction or development begins within the FM zone. The review shall be for all "structures" including mobile homes and for all other "development" including fill and other activities. Site plan review shall be in accordance with **CMC 18.16.040** and shall include information necessary to gauge the effect of the proposed development on floodplain management. In the case of a proposal for an uncovered deck, the site plan review may be performed administratively as outlined in **CMC 18.08.140 ~~Part D, 3, a-h~~ Part H**.

SECTION 5: SEVERABILITY CLAUSE. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or

federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

SECTION 6: ORDINANCE TO BE TRANSMITTED TO DEPARTMENT: Pursuant to RCW 36.70A.106, the City Planner shall transmit this Ordinance to the Washington Department of Commerce within ten days of adoption.

SECTION 7: EFFECTIVE DATE. This Ordinance shall be in full force and effect five (5) days after passage and publication as required by law.

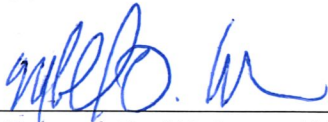


Mayor Dorothy L. Knauss



AUTHENTICATE: Pamela McCart, Clerk/Treasurer

Approved as to form:



Michael D. Waters, WSBA #46497
McGrane & Schuerman, PLLC
City Attorney

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