

Critical Areas Ordinance

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Chapter I - General Provisions

1.1 Purpose.

The purpose of this ordinance is to establish regulations pertaining to development which protect designated critical areas, as defined by the Washington State Growth Management Act (GMA) (RCW 36.70A). The GMA requires the use of “best available science,” also as defined in that law, to establish local regulations which protect critical areas. GMA-designated critical areas, all of which are present in Klickitat County, include: Critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, and wetlands. The regulations of this ordinance are intended to:

- A. Prevent degradation of critical areas;
- B. Conserve, protect, and; where feasible, restore critical areas and their functions and values;
- C. Protect unique, fragile and/or valuable elements of the environment, including ground and surface waters, anadromous fish species, and other fish and wildlife and their habitats;
- D. Protect the public health, safety, and general welfare from hazards associated with critical areas;
- E. Further the goals and objectives of the Klickitat County Comprehensive Plan and all of its elements;
- F. Comply with the applicable requirements of the Growth Management Act, Chapter 36.70A RCW, and implementing rules and guidelines;
- G. Allow for reasonable use of all properties in Klickitat County

1.2 Applicability.

The provisions of this chapter shall apply to all lands, all land uses and development activity, and all structures and facilities in unincorporated areas of Klickitat County, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the unincorporated portion of the County. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purposes and requirements of this chapter.

- A. Compliance with the provisions of this Ordinance 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

Commented [BH1]: This chapter has been updated to reflect requests for clarity and improved organization. Some changes are based on examples from other jurisdictions and requests from Klickitat County staff. Organizational and formatting changes include use of standardized alphanumeric sub-section numbering in most areas.

Commented [BH2]: This Section was amended to be consistent with GMA and the intent of providing critical area protections.

Commented [DN3]: This Section was amended to provide clarity.

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Project Approval, Army Corps of Engineer Section 404 permits, National Pollution Discharge Elimination System permits, Endangered Species Act compliance, etc.). The applicant is responsible for complying with these requirements, apart from the process established in this Ordinance.

- B. If an applicant has already performed a critical areas review under other laws for other permitting agencies, the County will not require duplicative review but will consider whether the review previously taken, including mitigation conditions and any buffer requirements imposed, is satisfactory to comply with the critical areas ordinance.

1.3 Regulated Development and Alterations

The following development and alterations are regulated within critical areas and their buffers, unless exempted by this Chapter:

- A. Removing, excavating, disturbing, or dredging soil, sand, gravel, minerals, organic matter, or materials of any kind;
- B. Dumping, discharging, or filling;
- C. Draining, flooding, or disturbing the water level or water table;
- D. Driving piling or placing obstructions, including placement of utilities;
- E. Constructing, reconstructing, demolishing, or altering the size of any structure or infrastructure;
- F. Altering the character and/or functions and values of a regulated area by destroying or altering vegetation through clearing, harvesting, cutting, intentional burning, shading, or planting;

1.4 Exemptions.

- A. **Exemption Request and Review Process.** The proponent of the alteration or development activity may submit a written request for exemption to the Director that describes the alteration or development activity and states the exemption listed in this chapter that applies. The Director shall review the exemption request to verify that it complies with this chapter and approve, approve with conditions, or deny the exemption. If the exemption is approved, it shall be placed on file with the Klickitat County planning department. If the exemption is denied, the proponent may continue in the review process and shall be subject to the requirements of this chapter.

- B. **Exemptions and Impacts to Critical Areas.** All exempted alterations or

Commented [DN4]: This new section was added to provide clarity as to the types of development and alterations regulated under this CAO

Commented [DN5]: This section has been re-formatted to improve usability and the exemption language expanded to provide additional clarity. The exemptions themselves have not changed.

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development shall use reasonable methods to avoid potential impacts to critical areas and their buffers. To be exempt from this Ordinance does not give permission to degrade a critical area or its buffer or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area or its buffer that is not a necessary outcome of the exempted alteration or development shall be restored, rehabilitated, or replaced at the responsible party's expense.

C. **Exempt Development and Alterations.** The following activities shall be exempt from the review process required by this chapter. Exempted activities authorized by the County shall be consistent with all policies and provisions set forth by this chapter and shall require written approval from the County where applicable:

1. **Forest Practices.** Activities or uses conducted pursuant to RCW Chapter 76.09 (Forest Practices)—except for Class IV timber harvest practices—and WAC Chapter 222 (Forest Practices Board), whereby state law specifically limits local authority, except with regard to developments and conversions requiring local approval;
2. **Existing agricultural or ranching activities,** including farming, irrigation, and ranching; existing agricultural or ranching activities are those that have been conducted during two of the past five years. Existing agricultural activities are encouraged to implement applicable best management practices (BMPs) contained in the latest editions of the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Field Office Technical Guide. New development and/or expansion of existing agricultural operations shall comply with both the substantive and procedural provisions of this Ordinance.
3. **Operation, Maintenance, or Repair.** All reconstruction, normal and routine maintenance, operation, and repair of existing public and private right-of-way and utility infrastructure, and other existing structures or appurtenances provided that reconstruction of any such facility does not extend outside the previously disturbed area and provided any maintenance or repair activities shall use best management practices (BMPs) with the least amount of potential impact to the critical areas and any impact to a critical area or its buffer shall be restored after the maintenance to the extent feasible.
4. **Removal or Control of Terrestrial Noxious Weeds.** All normal and routine survey, control, or removal of noxious weeds as authorized by the Klickitat County Noxious Weed Control Board, unless temporary or permanent destruction of critical area habitat functions and values will occur;
5. **Stream Restoration.** Any project approved by the Washington State Department of Fish and Wildlife via Hydraulic Project Approval (HPA)

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for restoration of an eroded or unstable stream bank or shoreline that employs principles of bioengineering or restoration for the purposes of enhancing fish and wildlife habitat; including limited use of rock as a stabilization only at the toe of a bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water;

6. **Site Exploration and Investigation Activities.** Minimal site investigative work required by a landowner, local, state or federal agency, such as surveys, soil logs, percolation tests and other related activities. This does not include activities related to oil, gas, or mineral exploration and associated activities;
7. **Navigation Aids.** Construction or modification of navigational aids such as channel markers and anchor buoys;
8. **Maintenance of created surface water systems.** Maintenance of artificially created wetlands or surface water systems, which were intentionally created on uplands, including irrigation and drainage ditches, grass-lined swales and canals, farm ponds and stock watering facilities, detention facilities, and landscape or ornamental amenities;
9. **Enhancement Actions.** Habitat enhancement actions that do not involve clearing, grading, in-water work or construction activities, such as revegetation with native plants and installation of nest boxes;
10. **Emergencies.** All emergency actions which must be undertaken immediately or for which there is insufficient time for full compliance with this ordinance when it is necessary to prevent (1) an imminent threat to public health or safety; or (2) prevent imminent danger to public or private property.
 - i. Adverse impacts to ecological functions resulting from emergency actions shall be adequately mitigated after the threat or danger has been addressed.
 - ii. The emergency action shall have the least possible impacts to the critical area and its buffer as is reasonably judged in real time while still adequately addressing the emergency situation;
 - iii. The person or authorized representative of the agency undertaking such action shall notify the County within one (1) working day following commencement of the emergency alteration or development. Within thirty (30) days, the Director shall determine if the action taken was within the scope of the emergency actions allowed in this Subsection. If the Director determines that the action taken, or any part of the action, was beyond the scope of an

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allowed emergency action, then the enforcement provisions of Chapter 1.7 of this Chapter shall apply; and

- iv. After the emergency, the person or authorized representative of the agency undertaking the action shall fully fund and conduct necessary restoration and/or mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with approved critical areas report and mitigation plan, as described in chapters 1.12 and 1.13 of this Chapter. The person or authorized representative of the agency undertaking the action shall apply for review, and the alteration, critical areas report, and mitigation plan shall be reviewed by the County in accordance with the review procedures contained herein. Restoration and/or mitigation activities must be initiated within one (1) year of the date of the emergency alteration or development and completed in a timely manner.

- 11. **Clearing and grading under 10,000 square feet.** The critical areas ordinance applies to all grading activity which takes place on 10,000 square feet or more. For grading on 4,000-10,000 square feet a critical areas checklist will be filled out, which will be used to assess whether the critical areas ordinance should be applied. If the activity will adversely impact the functions and values of critical areas then the critical areas ordinance applies as it would to any other activity involving over 10,000 square feet of grading. The purpose of this exemption is to allow activities, such as grading for new agricultural activities, which would otherwise be subject to the critical areas ordinance, but which are unlikely to adversely impact the functions and values of critical areas, and so do not require additional mitigation under this chapter.

1.5 **Exceptions.**

- A. **Public Agency and Utility.** If the application of this Ordinance would prohibit a proposed development by a public agency or public utility, the agency or utility may apply for an exception pursuant to the following:

- 1. **Exception Request and Review Process.** An application for a public agency and utility exception shall be made to the County and shall include a critical areas report, as described in Chapter 1.12, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW). The Director shall prepare recommendations to the Board of Adjustments based on review of the submitted information, a site inspection, and the proposal's ability to comply with public agency and utility exception review criteria in Subsection A.3.

Commented [DN6]: This section has been re-formatted to improved usability, including all exceptions under one heading. This includes adding a new Public Agency and Utility Exception. The reasonable use exception sub-section has been amended to improve clarity and consistency with the County's existing process.

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2. **Board of Adjustment Review.** The Board of Adjustments shall review the application and Director's recommendations and conduct a public hearing pursuant to the provisions of Section 6 of the County's Zoning Ordinance (No. 62678), and as amended. The Board of Adjustments shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all the public agency and utility exception criteria in Chapter 1.5(A)(3).
3. **Public Agency and Utility Review Criteria.** The criteria for review and approval of public agency and utility exceptions are as follows:
 - i. There is no other practical alternative to the proposed development with less impact on the critical area and its buffer;
 - ii. The application of this Ordinance would unreasonably restrict the ability to provide public and utility services to the public;
 - iii. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
 - iv. The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science; and
 - v. The proposal is consistent with other applicable regulations and standards.

B. Reasonable Use. If the application of this Ordinance would deny all reasonable economic use of the subject property, development may be allowed that is consistent with the general purposes of this Ordinance and the public interest.

1. **Exception Request and Review Process.** An application for a critical area reasonable use exception shall be made to the County and shall include a critical areas report, as described in Chapter 1.12, including mitigation plan, if applicable; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW). The Director shall prepare recommendations to the Board of Adjustments based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception review criteria in Subsection B.3.
2. **Board of Adjustment Review.** The Board of Adjustments shall review the application and Director's recommendations and conduct a public hearing pursuant to the provisions of Section 6 of the County's Zoning Ordinance (No. 62678), and as amended. The Board of Adjustments shall

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approve, approve with conditions, or deny the request based on the proposal's ability to comply with all the reasonable use exception criteria in Chapter 1.5(B)(3).

3. **Reasonable Use Review Criteria.** The criteria for review and approval of reasonable use exceptions are as follows:
 - i. Application of this ordinance would deny all reasonable economic use of the property;
 - ii. There is no other reasonable use with less impact on the critical area;
 - iii. The proposed development does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
 - iv. Any alteration is the minimum necessary to allow reasonable use of the property;
 - v. Any authorized alteration of a critical area under this chapter shall require mitigation under an approved mitigation plan per Chapter 1.13; and
 - vi. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant after the effective date of this Ordinance.

C. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision must be made on the application.

1.6 Non-Conforming Lots, Uses, and Structures.

All issues relating to Non-Conforming lots, structures or uses shall be processed in accordance with Section 5 of the Klickitat County Zoning Ordinance No. 62678 (KCC Chapter 19.58). The following provisions additionally apply to lots, structures and uses lawfully established prior to the effective date of this Ordinance, or amendments thereto, which do not conform to the current regulations or standards of this Ordinance. Where conflicts exist between Section 5 of the Klickitat County Zoning Ordinance No. 62678, the provisions in this Ordinance take precedence. The following provisions do not apply to lots, structures or uses that were unlawfully established.

A. Non-conforming lots.

Commented [BH7]: While reference to Section 5 of the County's Zoning Ordinance remains, additional clarity has been included to further define nonconforming lots, uses, and structures. The additional language provided is modified from Kittitas County's CAO, including the allowance for minor expansion.

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1. An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was legally established prior to the effective date of this Ordinance but which does not conform to the present lot size standards may be developed as permitted by the land use regulations of the local government so long as such development conforms to all other requirements of this Ordinance.

B. Non-conforming structures.

1. Nonconforming structures may be maintained, repaired, renovated, and remodeled, provided such activity does not enlarge or expand the structure, beyond the allowances below.
2. Nonconforming structures may be enlarged or expanded, provided:
 - i. The enlargement does not extend closer to the critical area than the existing primary structure or farther into the minimum side yard setback;
 - ii. The enlargement does not expand the footprint of the existing structure by more than 200 square feet in a lateral direction.
3. Enlarging or expanding nonconforming residential structures used for a conforming use in a manner that increases the extent of nonconformity may be allowed if the change is consistent with the provisions of this Ordinance and does not impact critical areas or their associated buffers.
4. Nonconforming single-family residences may increase their height within the existing structural footprint up to maximum allowable per the County's zoning ordinance (No 62678), and as amended).
5. A nonconforming structure which is moved any distance must be brought into conformance with this Ordinance.
6. Damaged nonconforming structures outside frequently flooded areas may be reconstructed to those configurations existing immediately prior to the time the development was damaged.

C. Nonconforming uses.

1. Nonconforming uses may be continued consistent with their lawfully established scale and range of uses.
2. A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only through a Conditional Use permit and may be approved only upon a finding that:

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- i. No reasonable alternative conforming use is practical because of the configuration of the structure and/or the property;
- ii. The proposed use will be at least as consistent with the policies and provisions of this Ordinance and as compatible with the uses in the area as the pre-existing use;
- iii. The use or development is enlarged, intensified, increased or altered only to the minimum amount necessary to achieve the intended functional purpose;
- iv. The structure(s) associated with the nonconforming use shall not be expanded in a manner that increases the extent of the non-conformity, including encroachment into areas such as setbacks, and any critical areas and/or associated buffers where new structures, use, or development would not be allowed;
- v. The buffer standards of this Ordinance are met;
- vi. The change in use, remodel, or expansion will not create adverse impacts to critical areas or their associated buffers and riparian management zones;
- vii. Uses which are specifically prohibited or which would thwart the intent of the Ordinance shall not be authorized; and
- viii. Conditions necessary to assure that the use will not become a nuisance or a hazard have been attached to the development permit and preliminary site analysis.

1.7 Violations, Penalties, and Enforcement.

- A. When a critical area or its buffer has been altered in violation of this Ordinance, all ongoing development work shall stop, and the critical area and buffer shall be restored. The County shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation, or replacement measures at the owner's or other responsible party's expense to compensate for violation of provisions of this Ordinance.
- B. All development work shall remain stopped until a restoration plan is prepared and approved by the County. Such a plan shall be prepared by a qualified professional using best available science and shall describe how the actions proposed meet the minimum requirements described below. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal. The County may consult with agencies of expertise to ensure plan adequacy. The County may engage technical consultants to provide third party review. The

Commented [BH8]: Klickitat County requested that the 3rd party review and applicant's financial responsibility included in 1.11C be included here.

Commented [BH9]: Per Klickitat County staff, enforcement is moving to County Commissioners and they are hiring for an enforcement officer

Commented [DN10]: This section has been amended to include modified language from Kittitas County CAO.

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applicant or violator may be required to pay for or reimburse the County for the review costs incurred.

C. Minimum Performance Standards for Restoration

1. For alterations to critical aquifer recharge areas, wetlands, and fish and wildlife habitat conservation areas, the following minimum performance standards shall be met for the restoration of a critical area, provided that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:
 - i. The pre-violation structural and functional values shall be restored, including water quality, hydrology and habitat functions;
 - ii. The historic soil types and configuration of the altered area shall be replicated;
 - iii. The critical area and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species type and densities. The historic functions and values should be replicated at the location of the alteration; and
 - iv. Information demonstrating compliance with the requirements of this Ordinance shall be submitted to the Director.
2. For alterations to frequently flooded areas and geologically hazardous areas, the following minimum performance standards shall be met for the restoration of a critical area, provided that, if the violator can demonstrate that greater safety can be obtained, these standards may be modified:
 - i. The hazard shall be reduced to a level equal to, or less than, the pre-development hazard;
 - ii. Any risk of personal injury resulting from the alteration shall be eliminated or minimized; and
 - iii. The hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.

- D. Citizen complaints may be submitted to code enforcement. The complaint shall be submitted on violation/complaint forms provided by the code enforcement officer. The violation/complaint form shall include sufficient factual information on which to substantiate the complaint and shall reference the chapters of the code which have been violated. The form should be accompanied by any available, relevant evidence, such as pictures of the violation, maps or reports.

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E. Noncompliance with any chapter of this ordinance may result in enforcement actions.

1.8 Appeals and Variances.

Commented [DN11]: This section has been re-formatted to improved usability and amendments provided to ensure consistency with the County's existing process and rules.

A. Variances from the standards of this Ordinance may be authorized by the County in accordance with the criteria and procedures set forth in Section 6 of the Zoning Ordinance. Variances from this Ordinance may only be granted when the variance request meets all of the criteria in Section 6.2:3(2) of the Zoning Ordinance and the following criteria:

1. The granting of the variance is consistent with the general purpose and intent of this Ordinance, and will not further degrade the functions or values of the associated critical areas or otherwise be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the subject property.
2. The decision to grant the variance considers the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat.

B. If critical areas review is associated with a county permit, any appeal issues associated with critical areas review must be incorporated into a timely appeal of that permit, in accordance with the administrative appeal remedies available through the County code.

C. If critical areas review is not associated with another County permit, then appeals of the final review decision may be filed by the applicant with the Board of Adjustment within 20 calendar days of the date a final decision on critical areas code compliance is issued.

1.9 Severability.

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of this Ordinance or the application of its provisions to other persons or circumstances shall not be impaired or otherwise affected. The degree of risk protection and required by this chapter is considered reasonable for regulatory purposes and is based upon scientific and engineering considerations.

1.10 Liability.

This chapter does not imply that land outside of a critical area or use permitted within such areas will be free from exposure or damage by natural disasters. This chapter shall not create liability on the part of the County or any officer or employee thereof for any damages that result from reliance on this chapter or administrative decision lawfully

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made hereunder. Upon issuance of a permit, the permit holder is solely responsible to comply with other local, state and federal laws.

1.11 **Process for Critical Areas Review.**

Commented [BH12]: A detailed critical areas review process has been included in response to public comment. The review process provides clarity for both applicant and staff.

A. **Administrative Procedures and Rules.** The administrative procedures followed during the critical area review process shall conform to the standards and requirements of all development and alterations. This shall include, but not be limited to, timing, appeals, and fees associated with applications covered by this Ordinance.

B. **General Requirements**

1. **Submittal.** Prior to the County's consideration of any proposed alteration or development not found to be exempt under Chapter 1.4, the applicant shall submit to the County a complete Critical Areas Checklist regarding the critical area on the application for the underlying development, on forms provided by the County.
2. As part of critical areas review, the County shall:
 - i. Verify the information submitted by the applicant;
 - ii. Evaluate the project area and vicinity for critical areas and buffers;
 - iii. Determine whether the applicant is required to seek additional critical area consultation with qualified professionals and/or agencies, which may include a joint site visit with County staff, agency staff, and/or qualified professionals;
 - (1) This additional consultation may be required for, but is not limited to, areas which contain unmapped critical areas and/or difficult mitigation circumstances.
 - iv. Determine whether the proposed development is likely to impact the functions or values of critical areas; and
 - v. Determine if the proposed development avoids impacts or adequately addresses the impacts to the critical area and buffer associated with the alteration or development.
3. Make a review determination:
 - i. **No Critical Areas Present.** If after review, the Director's analysis

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indicates that the project area is not within or adjacent to a critical area or buffer and that the proposed alteration or development is unlikely to degrade the functions or values of a critical area, then the Director shall rule that the critical area review is complete and note on the underlying application the reasons that no further review is required. A summary of this information shall be included in any staff report or decision on the underlying permit.

- ii. **Critical Areas Present, but No Impact – Waiver.** If the Director determines there are critical areas within or adjacent to the project area, but that the best available science shows that the proposed alteration or development is unlikely to degrade the functions or values of the critical area(s) or buffer(s), the Director may waive the requirement for a critical areas report. A waiver may be granted if there is substantial evidence that all of the following requirements will be met:
 - (1) There will be no alteration of the critical area or associated buffer;
 - (2) The development proposal will not negatively impact a critical area or buffer.
- iii. **Critical areas may be affected by proposal.** If the Director determines that a critical area or areas or buffer(s) may be affected by the proposal, then the Director shall notify the applicant that a critical areas report must be submitted prior to further review of the project, as described in Chapter 1.12.A. The Director may use the following indicators to assist in determining the need for a critical areas report:
 - (1) Indication of a critical area on critical areas maps that may be impacted by the proposed alteration or development;
 - (2) Information and scientific opinions from appropriate agencies, including but not limited to the Washington State Departments of Fish and Wildlife and Ecology;
 - (3) Documentation, from a scientific or other reasonable source, of the possible presence of a critical area; or
 - (4) A finding by a qualified professional that a critical area may exist on or adjacent to the site of the proposed alteration or development.
- iv. **Effect of Director’s Determination.** A determination regarding

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the apparent absence of one or more critical areas by the Director is not an expert certification regarding the presence of critical areas and the determination is subject to possible reconsideration and reopening if new information is received. If the applicant wants greater assurance of the accuracy of the critical area review determination, the applicant may choose to hire a qualified professional to provide such assurances.

- C. **Request for Technical Assistance.** The Director may engage technical consultants or agencies of expertise to provide third party review and interpret critical area data and findings submitted by or on behalf of the applicant in instances where County staff lack the resources or expertise to review these materials. An applicant may be required to pay for or reimburse the County for the review costs incurred.

1.12 **Critical Areas Report.**

Commented [BH13]: New section added to provide clarity to applicant and staff

A. **Critical Areas Reports**

1. **Valid Time Period.** When required in accordance with this Ordinance, the applicant shall submit a critical areas report. Critical areas reports are valid for five years from the date of completion, or date of the corresponding delineation documentation, if applicable.
2. **Preparation by Qualified Professional.** The critical areas report shall be prepared by a qualified professional as defined in Chapter 2 Definitions.
3. **Incorporation of Best Available Science.** The critical areas report shall use scientifically valid methods and studies in the analysis of critical area data and field reconnaissance to evaluate the proposed development and all probable impacts to critical areas in accordance with the provisions of this Ordinance. The report shall reference the source(s) of science used.
4. **Minimum Report Contents.** At a minimum, the report shall contain the following:
 - i. The name and contact information of the applicant and a description of the proposal;
 - ii. The site plan for the proposed development, including a map drawn to scale depicting critical areas, buffers and/or setbacks, the proposed development, and any areas to be cleared or altered;
 - iii. The names and qualifications of the persons preparing the report;

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- iv. Documentation of any fieldwork performed on the site;
 - v. Documentation that consultation and/or coordination with agencies of expertise occurred, when appropriate;
 - vi. Identification and characterization of all critical areas and buffers on and adjacent to the proposed development;
 - vii. A statement specifying the accuracy of the report, and all assumptions made and relied upon;
 - viii. A discussion of the performance standards applicable to the critical area and proposed development; and
 - ix. A mitigation plan in accordance with Chapter 1.13.B, if mitigation is required.
5. **Habitat Management Plans.** If the critical area is classified as a Fish and Wildlife Conservation Area, a Habitat Management Plan may be required if the standard riparian buffer width can't be met. Habitat Management Plans must meet the minimum report requirements of critical area reports in this Chapter as well as the additional requirements outlined in Chapter 4 of this Ordinance.

Commented [BH14]: This section was updated per TWC discussion with Klickitat County regarding need to clarify HMPs. Also referenced in Fish and Wildlife Section.

1.13 Critical Areas Mitigation.

Commented [DN15]: New section added to provide clarity to applicant and staff. This includes bringing the mitigation sequence language into this section (previously in the definitions section).

A. Mitigation Sequence. Adverse impacts caused by new alterations and developments shall be mitigated using the following actions in order of priority:

- 1. Avoiding the impact altogether by not taking a certain action or parts of an action;
- 2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
- 3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- 4. Reducing or eliminating the impact over time by preservation and maintenance operations;
- 5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and

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6. Monitoring the impact and the compensation project and taking appropriate corrective measures.

B. Mitigation Plans. When mitigation is required, the applicant shall submit a mitigation plan. The mitigation plan shall include all the following:

1. **Mitigation Sequencing.** A description of reasonable efforts made to apply mitigation sequencing pursuant to subsection A above to avoid, minimize, and mitigate impacts to critical areas and buffers;
2. **Mitigation Details.**
 - i. A description of the anticipated impacts to the critical area and buffer, including impacts to critical area functions and values;
 - ii. The mitigating actions proposed, including: type of mitigation proposed (e.g., on-site or off-site); site selection criteria; identification of compensation goals; and identification of critical area functions.
 - iii. The environmental goals and objectives of the mitigation, together with specific measurable criteria and performance standards for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained;
 - iv. An analysis of the likelihood of success of the mitigation project based on best available science.
3. **Construction Details.** The mitigation plan shall include written specifications, descriptions, and drawings of the mitigation proposed, including:
 - i. Construction sequence, timing, and duration;
 - ii. Grading and excavation details;
 - iii. Erosion and sediment control features; and
 - iv. Planting plan specifying plant species, quantities, locations, size, spacing, density, and measures to protect and maintain plants until established. All plant species must be native to the region.
4. **Monitoring Details.**
 - i. A program for monitoring construction and assessing the outcome of the mitigation project, including the schedule for site monitoring

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(for example, describe how monitoring may occur in years 1, 2, 3 and 5 after site construction), and how the monitoring data will be evaluated to determine if the performance standards are being met. Monitoring reports shall be submitted to the County to document milestones, successes, problems, and contingency actions of the compensation project. The mitigation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five (5) years. Mitigation monitoring shall be the responsibility of the applicant, and monitoring reports will be reviewed by County staff to ensure that performance standards are being met.

- ii. A contingency plan with courses of action and corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met, including a possible extension of the monitoring period until it can be shown that performance standards are being met.
- iii. The mitigation plan shall include financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures in accordance with Subsection 13.C.
- iv. The mitigation plan shall address any additional mitigation requirements relevant to the specific critical area as specified in the following chapters.

C. Financial Guarantees.

- 1. For all projects with an estimated mitigation cost of \$10,000 or more, the Director may require financial assurance which will guarantee compliance with the mitigation plan if the mitigation proposed in the site assessment cannot be completed prior to final approval of the development permit.
- 2. When mitigation is required for a proposed development but is not completed prior to the County's final permit approval, such as final plat approval or final building inspection and exceeds the mitigation costs listed in (1) above, the applicant shall post a financial guarantee to ensure work will be completed and meet the stated environmental objectives. Where financial guarantees are required by other state or federal agencies for specific mitigation features, additional financial guarantees for those features are not required under this provision.
- 3. The financial guarantee shall be in the amount of one hundred and twenty-five percent (125%) of the estimated cost of the uncompleted actions and/or the estimated cost of restoring the functions and values of the critical area(s) that is at risk. The guarantee amount shall be based on an

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itemized cost estimate of the mitigation activity including clearing and grading, plant materials, plant installation, irrigation, weed management, monitoring, and other costs.

4. The financial guarantee may be in the form of an Assignment of Fund, or other form acceptable to the County Treasurer, with terms and conditions acceptable to the Klickitat County attorney.
5. The financial guarantee shall remain in effect until the Director determines, in writing, that the standards bonded for have been met. Financial guarantees for wetland or stream compensatory mitigation shall be held for a minimum of five (5) years after completion of the work to ensure that the required mitigation has been fully implemented and demonstrated to function and may be held for longer periods when necessary.
6. Public development proposals shall be relieved from having to comply with the bonding requirements of this Chapter if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.
7. Any failure to satisfy critical area requirements established by law or condition, including but not limited to the failure to provide a monitoring report within thirty (30) days after it is due or comply with other provisions of an approved mitigation plan, shall constitute a default, and the Director may demand payment of any financial guarantees or require other action authorized by Klickitat County code or any other law.
8. Any funds recovered pursuant to this Chapter shall be used to complete the required mitigation. The County shall use such funds to arrange for completion of the project or mitigation, and follow-up corrective actions.
9. Depletion, failure, or collection of financial guarantees shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.

D. Mitigation Banking and In-Lieu Fee Mitigation. The County may approve mitigation banking and/or in-lieu fee mitigation as a form of compensatory mitigation for wetland and fish and wildlife habitat conservation area impacts when the provisions of this Ordinance require mitigation and when the use of a mitigation bank/in-lieu fee program will provide equivalent or greater replacement of critical area functions and values when compared to conventional permittee-responsible mitigation. Mitigation banks and in-lieu fee program shall only be used when it can be demonstrated that they provide significant ecological benefits including long-term conservation of critical areas, important species, habitats and/or habitat linkages, and when they are documented to provide a

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viable alternative to the piecemeal mitigation for individual project impacts to achieve ecosystem-based conservation goals. Mitigation banks and in-lieu fee programs shall not be used unless they are certified in accordance with applicable federal and state mitigation rules and expressly authorized through County legislative action.

Chapter II - Definitions

For purposes of this Ordinance, the following words shall have the definitions as set out below.

Active Fault means a fault that is likely to undergo renewed movement within a period of time of concern to humans. Faults are commonly considered to be active if the fault has moved one or more times in the last 10,000 years, but faults may also be considered active in some cases if movement has occurred in the last 500,000 years.

Agriculture or agricultural activities means those uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie dormant; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline and/or critical area than the original facility; and maintaining agricultural lands under production or cultivation. Examples of agricultural activities include: raising, harvesting and selling of crops; feeding, breeding, management and sale of, or production of, livestock, poultry, fur-bearing animals or honeybees; dairying and the sale of dairy products; any other agricultural or horticultural use, including Christmas trees; operation, maintenance and conservation measures of farm and stock ponds or drainage ditches, or irrigation systems; changes between agricultural activities, and normal maintenance or repair of existing serviceable structures, facilities or improved areas.

Alluvial Fan means a low, outspread, relatively flat to gently sloping mass of loose alluvium, shaped like an open fan, deposited by a stream where it issues from a narrow valley, or where a tributary stream issues into the main stream, or wherever a constriction in a valley abruptly ceases or the gradient of the stream suddenly decreases; it is steepest near the mouth of the valley where its apex points upstream, and it slopes gently and convexly outward with gradually decreasing gradient.

Alteration is a human action that results in a physical change to the existing condition of land or improvements, including, but not limited to: clearing vegetation, filling and grading, and construction of structures or facilities including impervious surfaces.

Anadromous Fish means fish that spawn in fresh water and mature in the marine environment.

Applicant means any person, public agency, or business entity such as a corporation or

Commented [BH16]: Chapter updated to reflect requests for clarity in defining terms commonly used throughout the regulations. This responds to requests from Klickitat County staff and public comments. Definitions from the original CAO are noted below. New definitions are taken from other jurisdictions.

Commented [BH17]: Added per TWC conversation with Klickitat County, to add pertinent agricultural related definitions. Referenced from Skamania County CAO [637183899692070000](https://www.skamaniacounty.org/637183899692070000) ([skamaniacounty.org](https://www.skamaniacounty.org))

Commented [DN18]: Existing definition

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partnership which applies for a development proposal, permit, or approval subject to review under this chapter.

Aquatic area means the water area of a stream, pond or lake measured at the ordinary high-water mark.

Aquifer means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

Best Available Science (BAS) means scientific information applicable to the critical area 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 365-195-900 through WAC 365-195-925.

Board of Adjustment means that board that has been appointed by the County and which is the statutory authority to hear and determine appeals, interpretations of, and variances to zoning and critical area regulations.

Bog means a peat wetland with a high percent of cover of Sphagnum moss and/or predominantly sphagnum peat in the rooting zone, low nutrient availability, low pH and resulting distinctive flora.

Buffer means that area which surrounds and protects a critical area from adverse impacts to the functions and values of that area. Buffers are to be maintained in their natural condition and are to remain undisturbed, except that activities in buffer areas that enhance fish and wildlife conservation areas are permitted.

Commented [DN19]: Existing definition

Channel Migration Zone (CMZ) means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings

Classification means defined categories to which critical areas are assigned.

Commented [DN20]: Existing definition

Clearing means significant vegetation removal including the removal or alteration of trees, shrubs, and/or ground cover by grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

Conservation Easement means an interest or right of use over a property, less than fee simple, to protect, preserve, maintain, improve, restore, limit the future use of, or conserve for open space purposes any land or improvement on the land.

Critical areas include the following areas and ecosystems:

Commented [DN21]: Existing definition

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- (a) Wetlands;
- (b) Areas with a critical recharging effect on aquifers used for potable water;
- (c) Fish and wildlife habitat conservation areas;
- (d) Frequently flooded areas; and
- (e) Geologically hazardous areas.

Critical Aquifer Recharge Area (CARA) means areas with a critical recharging effect on aquifers used for potable water. These are areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water.

Designation means the identification of particular lands for classification. For planning purposes, designation establishes: a classification scheme, general land distribution and location, and extent of land use.

Commented [DN22]: Existing definition

Development means a regulated project involving property improvement or a change of physical character within the site; the act of using land for building or extractive purposes.

Ecological Functions means the work performed or the role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the critical area's natural ecosystem.

Enhancement means alteration of an existing resource to improve or increase its functions and processes without degrading other existing functions. Enhancements are to be distinguished from resource creation or restoration projects.

Erosion means the general process or the group of processes whereby the materials of the earth's crust are loosened, dissolved, or worn away, and simultaneously moved from one place to another, by natural forces, which include weathering, solution, corrosion, and transportation, but usually exclude mass wasting (American Geological Institute, 1998)

Erosion Hazard Area means those areas containing soils which, according to the United States Department of Agriculture Natural Resource Conservation Service Soil Survey Program, may experience significant erosion. Erosion hazard areas also include channel migrations zones.

Federal Emergency Management Agency (FEMA) means the agency that oversees the administration of the National Flood Insurance Program (44 CFR).

Fish and Wildlife Habitat Conservation Areas means the areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative

Commented [DN23]: Existing definition

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population density or species richness. These areas may also include locally important habitats and species. Fish and wildlife habitat conservation 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.

Flood means a general and temporary condition of partial or complete inundation of normally dry land areas from :

- a) The overflow of inland or tidal waters and/or
- b) The unusual and rapid accumulation of runoff of surface waters from any source
- c) Mudslides (i.e. mudflows) which are proximately caused by flooding as defined in paragraph (1)(b) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

Floodplain for the purposes of this Ordinance is synonymous with 100-year floodplain and means the land area susceptible to being inundated by stream derived waters with a 1 percent chance of being equaled or exceeded in any given year. The limits of this area are based on the Flood Insurance Rate Map (FIRM).

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height..

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, wetlands, and areas where high groundwater forms ponds on the ground surface.

Geologically hazardous areas are areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, may not be suited to siting commercial, residential, or industrial development consistent with public health or safety concerns.

Habitat of local importance means those areas that include a seasonal range or habitat element with which a given species has a primary association, and that, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of high relative population density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alterations, such as cliffs, talus, and wetlands (WAC 365-190-030).

Hazard Tree means a tree with a structural defect, combination of defects or disease resulting in a structural defect that, under the normal range of environmental conditions at the site, will result in the loss of a major structural component of the tree in a manner that will:

Commented [DN24]: Existing definition modified

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1. Damage a residential structure or accessory structure, or a place of employment or public assembly;
2. Damage an approved road, utility, or public facility;
3. Prevent emergency access in the case of medical hardship.; or
4. Endanger pedestrians or users of a recreational area

Hydrology means the properties of the water, including circulation and distribution, on and below the ground

Hyporheic Zone means the area under or beside a stream channel or floodplain that contributes water to the stream and performs ecological functions such as removing excessive nutrients and toxic compounds, water storage, support of vegetation, sediment storage, and maintenance of base flows

Impervious Surface Area means any non-vertical surface artificially covered or hardened so as to prevent or impede the percolation of water into the soil mantle including, but not limited to, roof tops, swimming pools, paved or graveled roads and walkways or parking areas and excluding landscaping and surface water retention/detention facilities.

Intermittent (or Seasonal) Streams means streams that do not have surface flow during at least some portion of the year.

Lahars mean a rapidly flowing mixture of soil, pyroclastic and other rock debris, and water that originate on the slopes of volcanoes.

Landslide means an episodic down slope movement of a mass of soil or rock that includes, but is not limited to, rock falls, slumps, mudflows, and earth flows.

Liquefaction means the process in which the strength and density of a soil is reduced by earthquake shaking or other rapid pressure. It occurs in soils in which the space between individual particles is completely filled with water (e.g., saturated soils). During an earthquake, the water pressure between the particles increases to the point where the soil particles can readily move with respect to each other, and thus the soil loses strength. Liquefaction can induce significant ground settlement, bearing-capacity failure, and lateral spreading.

Mitigation means active steps taken to avoid, minimize, or compensate for adverse impacts upon the functions and values of critical areas. In some cases, the critical areas ordinance will specify the required mitigation, such as providing for buffer widths. In other instances, the applicant will develop mitigation.

Monitoring means the collection of data by various methods for the purpose of understanding natural systems and features, evaluating the impact of development proposals on such systems, and/or assessing the performance of mitigation measures imposed as conditions

Commented [DN28]: Existing definition modified

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of development.

Ordinary high water mark (OHWM) means that mark which is found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, that the soil has a character distinct from that of the abutting upland in respect to vegetation.

Commented [DN30]: Existing definition

Performance standards means a measure, control, procedure, or process which ensures the protection or preservation of critical areas.

Commented [DN31]: Existing definition

Primary association means those areas in which a species has a primary association are those areas in which there is a high relative density or species richness, and the area is significant for providing breeding habitat, winter range, or movement corridors.

Commented [DN32]: Existing definition

Qualified professional means a person with experience and training in the applicable field or critical area. A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, soil science, botany, engineering, environmental studies, fisheries, geology or related field, and a minimum of 2 years of related work experience. Other equivalently qualified professionals may be approved by the Director on a case by case basis.

Commented [BH33]: Amended definition to provide additional detail and clarity

1. A qualified professional for wetlands and fish and wildlife habitat conservation areas must have a degree in biology, soil science, botany or related fields and relevant professional experience or professional certification that documents capability in functional assessment and mitigation techniques. For wetlands, Professional Wetland Scientist Certification is required.
2. A qualified professional for preparing Geologically Hazardous Area Assessments must be a professional geologist or engineering geologist licensed in the State of Washington.
3. Engineered structures for mitigation of geologic hazards must be designed by a qualified professional engineer or engineering geologist, licensed in the State of Washington.
4. A qualified professional for critical aquifer recharge areas must be a professional hydrogeologist licensed in the State of Washington, who is trained and qualified to analyze geologic, hydrologic, and groundwater flow systems.

Reasonable Use Exception is a means of relief that is available for a property that is encumbered to such an extent by critical areas and/or their buffers that application to this ordinance would deny all reasonable use of the subject property and reasonable use of a property cannot be achieved through any other means.

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

Revised Code of Washington (RCW) means the compilation of all permanent laws now in force. It is a collection of Session Laws (enacted by the Legislature, and signed by the Governor, or enacted via the initiative process), arranged by topic, with amendments added and repealed laws removed.

Riparian means of, on, or pertaining to the banks of a river, stream or lake.

Riparian Area means that area immediately adjacent to streams, ponds, lakes and wetlands that directly contributes to the water quality and habitat components of the water body, including but not limited to upland areas immediately adjacent to the water body that directly contribute shade, nutrients, cover or debris.

Riparian Habitat Areas mean areas adjacent to aquatic systems that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other. The width of these areas extends to that portion of the terrestrial landscape that directly influences the aquatic ecosystem by providing shade, fine or large woody material, nutrients, organic and inorganic debris, terrestrial insects, or habitat for riparian-associated wildlife. Widths shall be measured horizontally from the ordinary high water mark, or from the top of bank if the ordinary high water mark cannot be identified. It includes the entire extent of the floodplain and the extent of vegetation adapted to wet conditions as well as adjacent upland plant communities that directly influence the aquatic ecosystem.

Salmonid means a member of the fish family Salmonidae. Including but not limited to chinook, coho, chum, sockeye, and pink salmon; cutthroat, brook, brown, rainbow, and steelhead trout; kokanee; and native char (bull trout and Dolly Varden).

Seismic Hazard Areas means area[s] subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, soil liquefaction, debris flows, or lahars.

Setback means the distance an activity, building, or structure must be located from a critical area or its buffer.

State Environmental Policy Act (SEPA) means the Revised Code of Washington (RCW) Chapter 43.21C. The SEPA process identifies and analyzes environmental impacts associated with governmental decisions. These decisions may be related to issuing permits for private projects, constructing public facilities, or adopting regulations, policies, and plans. The SEPA review process helps agency decision-makers, applicants, and the public understand how the entire proposal will affect the environment. SEPA can be used to modify or deny a proposal to avoid, reduce, or compensate for probable impacts.

Species of local importance means a species whose population is vulnerable (i.e. it is

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endangered, threatened or sensitive), it is vulnerable to habitat manipulation, or it is a game species. The species must also be native or indigenous to Washington State.

Stream means those areas where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is an area which demonstrates clear evidence of the passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds and defined-channel swales. The channel or bed need not contain water year-round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial watercourses unless they are used by salmon or used to convey streams naturally occurring prior to construction.

Waters of the state means all salt waters and fresh waters waterward of ordinary high water lines and within the territorial boundaries of the state.

Commented [DN35]: Existing definition

Watershed means the region drained by or contributing water to a stream, lake, or other body of water.

Water Table means the upper surface of the free groundwater in a zone of saturation except when separated by an underlying of groundwater by unsaturated material.

Wellhead protection area means the portion of a well's, wellfield's, or spring's zone of contribution within the ten-year time of travel boundary, or boundaries established using alternate criteria approved by the state Department of Health in those settings where groundwater time of travel is not a reasonable delineation criteria.

Wetland or wetlands means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds and stock watering facilities, 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 created to mitigate conversion of wetlands.

Commented [DN36]: Existing definition

Wetland functions and values means the beneficial roles served by wetlands that may include but are not limited to: water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage, conveyance and attenuation; groundwater recharge and discharge; erosion control; and aesthetic value protection.

Commented [DN37]: Existing definition

Chapter III - Wetlands

Commented [BH38]: This Chapter was updated to reflect current state requirements for wetland classification/rating. The buffer table was also updated to be consistent with best available science, including updated language on interrupted buffers and the use of buffer averaging.

3.1 Purpose.

The purpose of this chapter is to provide standards for classification and designation of

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wetlands; and provide guidance for protecting those wetlands necessary to maintain the public health, safety, and welfare (e.g., wetlands that lend to reduction of erosion, siltation, flooding, ground and surface water pollution, recharge streams and aquifers, and provide habitat for fish and wildlife).

3.2.1 Wetland Classification and Designation.

- A. Approximate wetland locations shall be identified using National Wetlands Inventory maps, information furnished by the applicant (per a checklist provided by the County), and/or other information provided by qualified professionals or other agencies.
- B. **Designating Wetlands.** Wetlands are those areas, designated in accordance with the approved federal wetland delineation manual and applicable regional supplements that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions.
- C. **Wetland Ratings.** 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 (Ecology Publication #14-06-030, or as revised and approved by Ecology) which contains the definitions and methods for determining whether the criteria below are met:
 1. **Category I Wetlands.** Wetlands which are: alkali wetlands, wetlands that have been identified through the Washington Natural Heritage Program (DNR) as wetlands with high conservation value, bogs, mature old-growth forested wetlands over one-fourth acre with slow-growing trees, forests with stands of aspen, and wetlands that perform many functions very well function at a very high level (scores 22-27 points). These are wetlands which meet at least one of the following criteria: 1) represent a unique or rare wetland type; or 2) are more sensitive to disturbance than most wetlands; or 3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; 4) provide a high level of functions; or 5) documented wetlands of local significance.
 2. **Category II Wetlands.** Category II wetlands are difficult, though not impossible, to replace, and provide high levels of some functions (scores between 19 and 21 points). These wetlands occur more commonly than Category I wetlands, but still need a relatively high level of protection.
 3. **Category III wetlands.** Category III wetlands are 1) vernal pools that are isolated, and 2) wetlands with a moderate level of functions (scores between 16 and 18 points). Wetlands scoring between 16 and 18 points generally have been disturbed in some ways, and are often smaller, less diverse and/or more isolated from other natural resources in the landscape

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than Category II wetlands.

4. **Category IV Wetlands.** Category IV wetlands have the lowest levels of functions (scores fewer than 16 points) and are often heavily disturbed.

3.3 Wetland Performance Standards.

A. The following uses shall be regulated to achieve, at a minimum, no net loss of wetland functions and values, including lost time when the wetland does not perform the function:

1. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
2. The dumping, discharging, or filling with any material, including discharges of stormwater and domestic, commercial, or industrial wastewater
3. The draining, flooding, or disturbing of the water level, duration of inundation, or water table;
4. The driving of pilings;
5. The placing of obstructions;
6. The construction, reconstruction, demolition, or expansion of any structure;
7. Significant vegetation removal, provided that these activities are not part of a forest practice governed under chapter 76.09 RCW and its rules;
8. Other uses or development that results in an ecological impact to the physical, chemical, or biological characteristics of wetlands; or
9. Activities reducing the functions and values of wetland buffers.

B. If a proposal is located within 300 feet of a wetland, the applicant shall provide a wetland boundary/delineation/survey and wetland rating, with analysis of impacts to existing ecological functions prepared by a qualified professional. Wetland boundaries shall be delineated using the currently approved federal manual and supplements. Impacts shall be mitigated pursuant to adherence to appropriate buffers. Impacts that will not be mitigated by buffers will be mitigated pursuant to mitigation sequencing.

C. If it is determined that a proposed development is not within 300 feet of a wetland, then the proposed development will not be reviewed for impacts to

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wetlands under this Chapter.

- D. **Wetland buffers:** The width of the standard buffer shall be based on the wetland category and the intensity of the proposed land use adjacent to the buffer as indicated in the table below.

Wetland Category	Land Use with Low Intensity	Land Use with Moderate Intensity	Land Use with High Intensity
I	125 ft	190 ft	250 ft
II	100 ft	150 ft	200 ft
III	75 ft	110 ft	150 ft
IV	25 ft	40 ft	50 ft

1. High intensity use and developments include: commercial, urban, industrial, institutional, retail sales, residential (more than 1 unit/acre), conversion from non-agricultural lands to high intensity agriculture (dairies, animal feed lots, nurseries and green houses, and like uses), high intensity recreation (golf courses, ball fields, RV parks, high-use camping facilities, and like uses), cell towers, and hobby farms. Moderate intensity use and developments include: residential (1 unit/acre or less), moderate intensity open space (parks with biking, jogging, and like uses), conversion from non-agricultural lands to moderate intensity agriculture (orchard, hay fields, and like uses), paved trails, building of logging roads, and utility corridor or right-of-way shared by several utilities and including access/maintenance roads. Low intensity use and developments include: forestry (cutting of trees only), low intensity open space (hiking, bird-watching, and like uses), unpaved trails, and utility corridor without a maintenance road and little or no vegetation management.
2. **Wetland buffer condition.** Wetland buffer areas shall be retained in a natural condition or may be improved to enhance buffer functions and values. Where buffer disturbance is allowed, re-vegetation with native vegetation shall be required. Alterations of the wetland buffer that are not associated with an allowed use or development shall be prohibited.
3. **Interrupted buffer.** When a wetland buffer contains an existing legally established public or private road, the Director may allow development on the landward side of the road provided that the development will not have a detrimental impact to the wetland. The applicant may be required to provide a wetland critical areas report to describe the potential impacts. In determining whether a critical areas report is necessary, the County shall consider the hydrologic, geologic, and/or biological habitat connection potential and the extent and permanence of the buffer interruption.

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4. **Buffers of restored wetlands.** 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.
5. **Buffer averaging.** Averaging of required wetland buffer width shall be allowed if a qualified professional prepares a mitigation plan per Chapter 1.13.B. that demonstrates no net loss of existing wetland ecological functions will result. In no case shall the total area within the averaged buffer area be less than the area contained within the required buffer areas without averaging, and no portion of an averaged buffer area shall be reduced by more than 25 percent of the standard buffer width or be less than 25 feet wide, whichever is greater.
6. Vegetation in buffers shall not be removed, with the following exceptions:
 - i. Hazard trees and vegetation may be removed when necessary to:
 - (1) Control fire;
 - (2) Halt the spread of disease or damaging insects consistent with the State Forest Practice Act, Chapter 76.09 RCW;
 - (3) Avoid a hazard such as landslides; or
 - (4) Avoid a threat to existing structures or aboveground utility lines.
 - ii. Before hazard trees and vegetation may be removed by the landowner pursuant to Subsections (i) above:
 - (1) Unless there is an emergency, the landowner shall obtain prior written approval from the Director. This consent shall be processed promptly and may not be unreasonably withheld. If the County fails to respond to a hazard tree removal request within 10 business days, the landowner's request shall be conclusively allowed;
 - (2) The removed tree or vegetation should be left within the critical areas or buffer unless the Director, or a qualified professional, warrants its removal to avoid spreading disease or pests;
 - (3) Any removed tree or vegetation shall be replaced by the landowner with an appropriate native species in appropriate size. Replacement shall be performed consistent with

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accepted restoration standards for critical areas within 1 calendar year;

- (4) For this Section only, a “qualified professional” shall mean a certified arborist, certified forester or landscape architect.
7. Buffers shall be delineated on all permits. Any approved buffer modification, such as buffer averaging, must be recorded on title.
 8. **Allowed Buffer Uses.** The Director may allow the following alterations and development within a wetland buffer provided that they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland, including wetland functions and values:
 - i. Conservation or restoration activities aimed at protecting or enhancing the soil, water, vegetation, or wildlife.
 - ii. The following passive recreation facilities designed in accordance with an approved critical areas report:
 - (1) Walkways and trails; provided that those pathways which are generally parallel to the perimeter of the wetland shall be located in the outer twenty-five percent (25%) of the buffer area and constructed with a surface that is not impervious to water. Raised boardwalks utilizing non-treated pilings may be acceptable; and
 - (2) Wildlife viewing structures less than five hundred (500) square feet in size, including hunting blinds.
 - iii. Stormwater management facilities, limited to stormwater conveyance and dispersion facilities, outfalls and bioswales, may be allowed within the outer twenty-five percent (25%) of the buffer of wetlands in accordance with an approved critical areas report provided that:
 - (1) No other location is feasible;
 - (2) The facility is designed to meet or exceed the standards set forth in the current version of the Stormwater Manual for Eastern Washington; and
 - (3) The location of such facility will not degrade the functions or values of the wetland

3.4 Wetland Mitigation.

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- A. Compensatory mitigation shall be allowed only after mitigation sequencing is applied per Chapter 1.13.
- B. A mitigation plan, prepared by a qualified professional, providing for restoration/enhancement, or replacement, may be accepted if the mitigation plan will protect and maintain the functions and values of the critical area. Mitigation of wetland losses and impacts shall be in the following descending order of preference:
 - 1. Complete restoration.
 - 2. In-kind replacement in the same functional area.
 - 3. In-kind replacement outside the area.
 - 4. Out-of-kind replacement inside the area.
 - 5. Out-of-kind replacement outside the area.

C. Wetland Mitigation Plan

- 1. The wetland mitigation plan shall be prepared in accordance with Chapter 1.13.B. Mitigation Plans and identify how the proposed mitigation will adequately mitigate for the loss of wetland area and function at the impact site.
 - 2. If mitigation is located off-site, the wetland mitigation plan shall assess whether an appropriate location has been identified to adequately replace lost wetland functions at the site of impact. The mitigation plan will evaluate the site to assess if a site has a high likelihood of success due to an adequate source of water, ability to control invasive species, appropriate adjacent land uses and development pressures, adequate buffers, connectivity to other habitats and other relevant factors.
- D. Alteration of wetlands shall require the creation, restoration or enhancement of wetlands to provide equivalent or greater area, functions and values. The below standard ratios shall apply to the creation of new wetlands or restoration of former wetlands. The first number specifies the area of wetlands requiring replacement and the second number specifies the area of wetlands altered. When impacts to wetlands are mitigated by enhancement of existing significantly degraded wetlands the ratio shall generally be higher than for creation or restoration because enhancement does not replace wetland area and only improves some wetland functions. Applicants proposing to enhance wetlands must identify how enhancement will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site. An enhancement proposal must also show whether existing wetland

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functions will be reduced by the enhancement actions.

Category I	6:1
Category II	3:1
Category III.....	2:1
Category IV.....	1.5:1

1. The standard replacement ratio may be decreased under the following circumstances:
 - i. Findings of special studies coordinated with agencies and/or other qualified professionals with expertise which demonstrates that no net loss of wetland function or value is attained under the decreased ratio.
 - ii. In all cases, a minimum acreage replacement ratio of 1:1 shall be required.
 2. The standard replacement ratio may be increased under the following circumstances:
 - i. High degree of uncertainty as to the probable success of the proposed restoration or creation;
 - ii. Significant period of time between destruction and replication of wetland functions;
 - iii. Projected losses in functions and values; and/or
 - iv. Off-site compensation.
- E. The applicant shall develop a plan that provides for land acquisition, construction, maintenance, and monitoring of replacement/compensatory wetlands. Mitigation shall be completed prior to wetland destruction or concurrent with development. Any restored, created, purchased, or enhanced wetland shall be maintained as a wetland in perpetuity. All wetland restoration, creation and/or enhancement projects required pursuant to this ordinance either as a permit condition or as the result of an enforcement action must be approved by the Planning Department prior to commencement of any wetland restoration, creation or enhancement activity.

Chapter IV - Fish and Wildlife Habitat Conservation Areas

4.1 Purpose.

The purpose of this chapter is to provide standards for classification and designation of

Commented [BH39]: This Chapter was updated to increase clarity for stream typing definitions/updated buffers to be consistent with current best available science. Stream typing includes Type S (Shoreline waterbodies) and specific reference to the Shoreline Master Program for the regulation of those waters. It was also updated to include a specific mechanism for identifying habitats and species of local importance.

Type N streams, updated to reflect need to presume type Np unless applicant or others can document it is type Ns. The same requirement would apply to anyone who disagrees with their DNR water type.

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fish and wildlife habitat conservation areas; and provide guidance for protecting those fish and wildlife habitat conservation areas, including areas in which anadromous fish, threatened and endangered species, and species of local importance have a primary association.

4.2 Fish and Wildlife Habitat Conservation Area Classification and Designation.

A. Fish and Wildlife Habitat Conservation Areas Designation. For purposes of these regulations, fish and wildlife conservation areas are those areas that meet any of the following criteria:

1. Areas where state or federal designated endangered, threatened, and sensitive species have a primary association.
2. Habitats and species of local importance.
3. Naturally occurring ponds under twenty (20) acres and their submerged aquatic beds that provide fish or wildlife habitat.
4. Waters of the state, as classified in WAC 222-16-030.
5. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity.
6. State natural area preserves, natural resource conservation areas, and state wildlife areas.

B. Habitats and species of local importance.

1. In addition to the fish and wildlife habitat conservation areas identified in Subsection (1) of this Section, additional habitats and species of local importance may be designated by the Director based on declining populations, sensitivity to habitat manipulation or special value including but not limited to commercial, game or public appeal.
2. In order to nominate an area or a species to the category of habitats and species of local importance, an individual or organization must:
 - i. Demonstrate a need for special consideration based on:
 - (1) Declining population;
 - (2) Sensitivity to habitat manipulation; or
 - (3) Commercial or game value or other special value, such as public appeal; and

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- ii. Propose relevant management strategies considered effective and within the scope of this Ordinance; and
 - iii. Provide species habitat location(s) on a map (scale 1:24,000). Submitted proposals will be reviewed by the Director and forwarded to the Departments of Fish and Wildlife, Natural Resources, and/or other local and State agencies or experts for comments and recommendations regarding accuracy of data and effectiveness of proposed management strategies.
3. Klickitat County will hold a public hearing for proposals found to be complete, accurate, potentially effective and within the scope of this Ordinance. Approved nominations will become designated “habitats/species of local importance” and will be subject to the provisions of this Ordinance.

C. Fish and Wildlife Habitat Conservation Areas Classification

Water type shall be determined using the criteria set forth in WAC 222-16-030 and as described below. Artificially created structures, ditches, canals, ponds, irrigation return ditches, and stormwater channels shall not be considered a stream for purposes of this chapter.

1. **Type S:** all waters, within their ordinary high water mark, meeting the criteria as “shorelines of the state” and “shorelines of statewide significance” under RCW Chapter 90.58. The current list of Shoreline waters, along with their specific shorelines environments, is provided in the Klickitat County Shoreline Master Program. Type S streams and lakes are protected by the Shoreline Master Program, rather than through this Ordinance.
2. **Type F:** segments of natural waters other than Type S Waters, which are within the bankfull widths of defined channels and periodically inundated area of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low water and which in any case contain fish habitat.
3. **Type Np:** all segments of natural waters within the bankfull width of defined channels that are perennial non-fish habitat stream. Perennial stream waters do not go dry any time of a year of normal rainfall. However, for the purpose of water typing, Type Np Waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.
4. **Type Ns:** All segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np waters. These are seasonal,

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non-fish 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, F or S Water. Ns Waters must be upstream from and physically connected by an above-ground channel system to Type S, F, or Np Waters.

D. Mapping

Those lands which meet the established criteria for fish and wildlife habitat conservation areas are to be designated as such. Fish and wildlife habitat conservation areas identified through the permitting process shall provide guidance in the land use decision-making process. All sites which maintain fish and wildlife habitat conservation areas, which are not mapped, shall be subject to fish and wildlife habitat conservation area review.

The approximate location and extent of fish and wildlife habitat conservation areas are shown on publicly available maps or other BAS sources, such as the WDFW Priority Habitats and Species maps, the United States Fish and Wildlife Service, and the NOAA Fisheries critical habitat maps. These maps are to be used as a guide and do not provide definitive information about fish and wildlife habitat conservation area size or presence. Fish and wildlife habitat conservation areas may exist that do not appear on the maps. The County may consult with the Department of Fish and Wildlife when there is need to clarify definitions and mapping.

4.3 Fish and Wildlife Habitat Conservation Area Performance Standards.

A. Intent of Riparian Buffers. The intent of riparian buffers is to protect the following 5 basic riparian functions that influence in-stream and near-stream habitat quality:

1. Recruitment of Large Woody Debris (LWD) to the stream. LWD creates habitat structures necessary to maintain salmon/trout and other aquatic organisms' productive capacity and species diversity.
2. Shade. Shading by the forest canopy maintains cooler water temperatures and influences the availability of oxygen for salmon/trout and other aquatic organisms.
3. Bank integrity (root reinforcement). Bank integrity helps maintain habitat quality and water quality by reducing bank erosion and creating habitat structure and in-stream hiding cover for salmon/trout and other aquatic organisms.
4. Runoff filtration. Filtration of nutrients and sediments in runoff (surface

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and shallow subsurface flows) helps maintain water quality.

5. Wildlife habitat. Functional wildlife habitat for riparian-dependent species is based on sufficient amounts of riparian vegetation to provide protection for nesting and feeding.

B. Riparian buffers

1. Standard riparian buffers (Measured horizontally from OHWM)

Water Type	Standard Buffer
Type F Waters	150 feet
Type Np Waters	75 feet
Type Ns Waters	50 feet

2. Buffers for Type S shoreline waterbodies are provided in the Klickitat County Shoreline Master Program.
3. Waters listed as Type N by the Washington State Department of Natural Resources shall be presumed to be a Type Np Water unless an applicant completed the water type modification process.
4. **Interrupted buffer.** When a riparian buffer contains an existing legally established public or private road, the Director may allow development on the landward side of the road provided that the development will not have a detrimental impact to the stream. The applicant may be required to provide a critical areas report to describe the potential impacts. In determining whether a critical areas report is necessary, the County shall consider the hydrologic, geologic, and/or biological habitat connection potential and the extent and permanence of the buffer interruption.
5. **Buffer averaging.** Averaging of required buffer widths shall be allowed if a qualified professional prepares a mitigation plan per Chapter 1.13.B that demonstrates buffer functions and values will not be reduced. In no case shall the total area within the averaged buffer area be less than the area contained within the required buffer area without averaging, and no portion of an averaged buffer shall be reduced by more than 25% of the standard buffer width or be less than 25 feet wide.
6. **Buffer reduction.** Buffer width reductions not exceeding 25%, and in no event less than 25 feet, may be approved if a qualified professional prepares a habitat management plan per Section 4.4. The management plan must protect habitat functions and values, ensure no net loss of habitat, be maintained for the life of the project, and be recorded against the property.

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7. Riparian vegetation in buffers shall not be removed, with the following exceptions:
 - i. A view/access corridor to the OHWM may be cleared to a width not to exceed 10' if habitat values will not be impacted and/or migration will be unaffected. If the functions and values of critical areas are impaired, mitigation must be proposed as part of a habitat management plan, such as widening the riparian buffer at the same location, or widening or enhancing the buffer at another location.
 - ii. Hazard trees may be removed when necessary to:
 - (1) Control fire;
 - (2) Halt the spread of disease or damaging insects consistent with the State Forest Practice Act, Chapter 76.09 RCW;
 - (3) Avoid a hazard such as landslides; or
 - (4) Avoid a threat to existing structures or aboveground utility lines.
 - iii. Before hazard trees and vegetation may be removed by the landowner pursuant to Subsections (i) and (ii) of this Section:
 - (1) Unless there is an emergency, the landowner shall obtain prior written approval from the Director. This consent shall be processed promptly and may not be unreasonably withheld. If the County fails to respond to a hazard tree removal request within 10 business days, the landowner's request shall be conclusively allowed;
 - (2) The removed tree or vegetation should be left within the critical areas or buffer unless the Director, or a qualified professional, warrants its removal to avoid spreading disease or pests;
 - (3) Any removed tree or vegetation shall be replaced by the landowner with an appropriate native species in appropriate size. Replacement shall be performed consistent with accepted restoration standards for critical areas within 1 calendar year;
 - (4) For this Section only, a "qualified professional" shall mean a certified arborist, certified forester or landscape architect.

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8. Buffers shall be delineated on all permits. Any approved buffer modification related to a proposed development, such as buffer averaging or buffer reduction, must be recorded on title.

C. **Special provisions—Streams.** The following provisions supplement those identified in this Chapter and this Ordinance.

1. Activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, the following:
 - i. Activities shall be timed to occur only during the allowable work window as designated by the Washington Department of Fish and Wildlife;
 - ii. An alternative alignment or location for the activity is not feasible;
 - iii. The activity is designed so that it will minimize the degradation of the downstream functions or values of the fish habitat or other critical areas; and
 - iv. Any impact to the functions and values of the habitat conservation area are mitigated in accordance with an approved critical areas report and habitat management plan, if applicable.
2. Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent juveniles migrating downstream from being trapped or harmed.
3. Fills within streams, when authorized, shall minimize the adverse impacts to anadromous fish and their downstream habitat, shall mitigate any unavoidable impacts, and shall only be allowed for water-dependent uses.
4. **Type F Streams.** Activities and uses shall be prohibited in Type F streams and riparian buffers except for the allowable activities and uses listed below.
 - i. **Stream Crossings.** Stream crossing shall be minimized, but when necessary they shall conform to the following standards as well as other applicable laws (see the Department of Fish and Wildlife, or Ecology):
 - (1) The stream crossing is the only reasonable alternative that

Commented [BH40]: Added specificity on allowed activities within Type F streams and best management practices to minimize impacts during development or other land management activities for increased clarity.

Commented [BH41]: Request from public comment to provide more detailed provisions for streams and anadromous fish. Example language comes from White Salmon.

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has the least impact;

- (2) It has been shown in a critical areas report that the proposed crossing will not decrease the stream and associated buffer functions and values;
 - (3) The stream crossing shall use bridges instead of culverts unless it can be demonstrated that a culvert would result in equal or less ecological impacts;
 - (4) All stream crossings using culverts shall use super span or oversized culverts with appropriate fish enhancement measures. Culverts shall not obstruct fish passage;
 - (5) Stream crossings shall be designed according to the Washington Department of Fish and Wildlife Fish Passage Design at Road Culverts, 1999, and the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings, 2000, or as amended;
 - (6) All stream crossings shall be constructed during the summer low flow period between July 1st and August 15th or as specified by the Washington Department of Fish and Wildlife in the hydraulic project approval;
 - (7) Stream crossings shall not occur through salmonid spawning areas unless no other feasible crossing site exists;
 - (8) Bridge piers or abutments shall not be placed in either the floodway or between the ordinary high water marks unless no other feasible alternative placement exists;
 - (9) Stream crossings shall not diminish the flood carrying capacity of the stream;
 - (10) Stream crossings shall minimize interruption of downstream movement of wood and gravel;
 - (11) Stream crossings shall provide for maintenance of culverts and bridges; and
 - (12) Stream crossings shall be minimized by serving multiple properties whenever possible.
- ii. **Passive recreation facilities.** Passive recreation facilities designed in accordance with an approved critical areas report:

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- (1) Walkways and trails; provided that those pathways which are generally parallel to the stream shall be located in the outer twenty-five percent (25%) of the buffer area and constructed with a surface that is not impervious to water. Raised boardwalks utilizing non-treated pilings may be acceptable; and
 - (2) Wildlife viewing structures less than five hundred (500) square feet in size, including hunting blinds.
- iii. **Utilities.** Utility corridors shall not be aligned parallel with any stream channel unless the corridor is outside the buffer, and crossings shall be minimized. Installation shall be accomplished by boring beneath the scour depth and hyporheic zone of the water body where feasible. Crossings shall be contained within the existing footprint of an existing road or utility crossing where possible. Otherwise, crossings shall be at an angle greater than sixty degrees to the centerline of the channel. The criteria for stream crossing shall also apply.
- iv. **Stormwater facilities.** Stormwater facilities provided that they are located in the outer twenty-five percent of the buffer and are located in the buffer only when no practicable alternative exists outside buffer. Stormwater facilities should be planted with native plantings where feasible to provide habitat, and/or less intrusive facilities should be used. Detention/retention ponds should not be located in the buffer.
- v. **Floodway dependent structures.** Floodway dependent structures or installations may be permitted within streams if allowed or approved by other ordinances or other agencies with jurisdiction.
- vi. **Stream bank stabilization.** Stream bank stabilization shall only be allowed when it is shown, through a stream bank stability assessment conducted by a qualified fluvial geomorphologist or hydraulic engineer, that such stabilization is required for public safety reasons, that no other less intrusive actions are possible, and that the stabilization will not degrade instream or downstream channel stability. Stream bank stabilization shall utilize bioengineering or soft armoring techniques unless otherwise demonstrated. Stream bank stabilization shall conform to the Integrated Streambank Protection Guidelines developed by the Washington State Department of Fish and Wildlife, 2002 or as revised. Stabilization measures must demonstrate the following:
- (1) Natural shoreline processes will be maintained. The project

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will not result in increased erosion or alterations to, or loss of, shoreline substrate within one-fourth mile of the project area;

- (2) The stabilization measures will not degrade fish or wildlife habitat conservation areas or associated wetlands;
 - (3) Adequate mitigation measures ensure that there is no net loss of the functions or values of riparian habitat;
- vii. Maintenance of lawfully established existing bank stabilization is allowed provided it does not increase the height or linear amount of bank and does not expand waterward or into aquatic habitat landward.
 - viii. Clearing or development in riparian habitat areas which is at least one hundred feet from the waterline and separated by a continuous public or private roadway serving three or more lots.
5. **Type N Streams.** Activities and uses that result in unavoidable and necessary impacts may be permitted in Type Np and Ns streams and buffers in accordance with an approved critical areas report and habitat management plan, and only if the proposed activity is the only reasonable alternative that will accomplish the applicant's objectives.

4.4 Fish and Wildlife Habitat Conservation Area Mitigation.

- A. Mitigation projects involving in-water work including, but not limited to, stream relocation and installation of large woody debris structures shall be professionally engineered and designed to ensure there are no adverse hydraulic effects on upstream or downstream properties, and shall comply with all applicable permits such as a hydraulic project approval (HPA) from the WA Department of Fish and Wildlife.
- B. Mitigation shall be allowed only after mitigation sequencing is applied per Chapter 1.13.
- C. A mitigation plan, prepared by a qualified professional, may be accepted if the mitigation plan will protect and maintain the functions and values of the critical area.
- D. **Habitat Management Plans**
 1. **When required.** If a proposed development is located within a known or suspected fish and wildlife habitat conservation area and the required buffer width cannot be met, the Director shall require the applicant to

Commented [BH42]: This section was amended to detail out the HMP requirements to be clearer to applicants and staff.

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submit a habitat management plan prepared by a qualified professional, which includes the information listed in this chapter. The requirement to provide a habitat management plan for fish and wildlife habitat conservation areas may be waived on a case by case basis if the Director determines that there are no potential direct and/or indirect impacts on designated species or habitats that would result from the proposed development.

2. **Contents.** When required by this chapter, habitat management plans shall include the general critical areas report requirements, as described in Section 1.12, in addition to the following:
 - i. Identification of any state or federal endangered, threatened, sensitive, or candidate species that have a primary association with habitat on the project area;
 - ii. Map showing the location of the ordinary high water mark and/or locations of fish and wildlife habitat conservation area(s) and their buffers;
 - iii. The vegetative, faunal, topographic, and hydrologic characteristics of the fish and wildlife habitat conservation area;
 - iv. A discussion of any federal, state, or local special management recommendations, including Washington Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitat located on or adjacent to the project area;
 - v. A discussion of the direct and/or indirect potential impacts on the fish and wildlife habitat conservation area by the project. Such discussion shall include a discussion of the ongoing management practices that will protect habitat after the project site has been developed;
 - vi. The general mitigation plan requirements of this ordinance as well as the fish and wildlife habitat conservation area mitigation requirements of this chapter, if the alteration or development will result in unavoidable impacts to fish and wildlife habitat conservation areas; and
 - vii. Methods and measures to avoid, minimize and/or compensate for adverse impacts associated with the proposed development, including, but not limited to:
 - (1) Prohibition or limitation of use, alteration, and

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development within the fish and wildlife habitat conservation area;

- (2) Retention of vegetation and/or re-vegetation of areas/habitats critically important to species;
- (3) Special construction techniques;
- (4) Implementation of erosion and sediment control measures;
- (5) Habitat restoration or enhancement (e.g., fish passage barrier removal);
- (6) Seasonal restrictions on construction activities on the subject property;
- (7) Clustering of alterations or development on the subject property; and
- (8) Any other requirements and/or recommendations from federal, state, or local special management recommendations, including the Washington State Department of Fish and Wildlife's habitat management guidelines.

3. Mitigation requirements.

- i. **General Mitigation Requirements.** Mitigation for alteration or impacts to fish and wildlife habitat conservation areas shall achieve equivalent or greater biological functions and shall include mitigation for adverse impacts upstream and downstream of the development project site. Mitigation shall address each functional attribute affected by the alteration to achieve functional equivalency or improvement on a per function basis. Mitigation elements may include but are not limited to: restoration of previously degraded areas and key habitat features; restoration of riparian vegetation communities to provide shade and large woody debris; addition of large woody debris; and installation of upland habitat features.
- ii. **Type of mitigation required.** In determining the extent and type of mitigation required, the Director may consider all the following:
 - (1) The ecological processes that affect and influence habitat structure and function within the watershed or sub-basin;

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- (2) The individual and cumulative effects of the action upon the functions of the critical area and associated watershed;
 - (3) Observed or predicted trends regarding the gains or losses of specific habitats or species in the watershed, in light of aggregated natural and human processes;
 - (4) The likely success of the proposed mitigation measures; and
 - (5) Effects of the mitigation actions on neighboring properties.
- iii. **Location.** Compensatory mitigation shall be provided on-site or off-site in the location that will provide the greatest ecological benefit to the species and/or habitats affected and have the greatest likelihood of success. Mitigation shall occur as close to the impact site as possible, within the same sub-basin, and in a similar habitat type as the permitted alteration unless the applicant demonstrates to the satisfaction of the Director through a watershed- or landscape-based analysis that mitigation within an alternative sub-basin of the same watershed would have greater ecological benefit.

Chapter V - Geologically Hazardous Areas

Commented [BH43]: This Chapter was updated for increased clarity and to be consistent with current best available science and understanding of risk factors.

5.1 Purpose.

Geologically hazardous areas may pose a threat to the health and safety of citizens when incompatible development is sited in areas of significant hazard. Such incompatible development may not only place itself at risk but may also increase the hazard to surrounding development and uses. The purpose of this chapter is to provide standards for classification and designation of geologically hazardous areas; and provide guidance for reducing or mitigating hazards to public health and safety.

5.2 Geologically Hazardous Areas Classification and designation.

All geologically hazardous areas shall be divided into one of the following risk categories; erosion, landslide, seismic, volcanic, or mine hazard areas.

A. Erosion Hazard Areas - areas of Klickitat County which:

1. Contain soils or soils complexes identified by the U.S. Department of Agriculture's Natural Resource Conservation Service or the Soil Survey for Klickitat County as having "moderate to severe," "severe" or "very severe" erosion hazard potential; or
2. Are impacted by shore land and/or stream bank erosion; or

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3. Have slopes in excess of fifteen percent.
4. **Channel Migration Zones**
 - i. The Director may assemble all available channel migration and erosion hazard maps and studies from Klickitat County and other sources in order to determine the location and severity of known channel migration and erosion hazard zones and shall maintain maps showing the boundaries of all known channel migration and erosion hazard zones once they are developed. In lieu of available channel migration zone maps, the Director may use the 100-year floodplain as a proxy for the channel migration zone.
 - ii. An applicant for a development permit may submit a report by a qualified professional engineer in support of a determination of the boundaries or classification of channel migration and/or erosion hazard areas on a specific property if there is a discrepancy between the approved channel migration zone or erosion hazard map and site-specific conditions or data, or for unmapped potential channel migration zones or erosion hazard areas.
 - iii. No new development may be permitted in the severe channel migration zone unless otherwise allowed under this chapter.
 - iv. The following activities are allowed within the severe and moderate channel migration zone:
 - (1) Trails and boardwalks;
 - (2) Forest practices;
 - (3) Ongoing or existing agricultural activities;
 - (4) Bridges, utilities and transportation structures when no other feasible alternative exists;
 - (5) Development with a primary purpose of protecting or restoring ecological functions.
 - v. Existing structures may be maintained and improved on existing legal lots in the moderate channel migration zone and/or erosion hazard area; provided, the footprint may not be expanded toward the source of channel migration or erosion hazard.
 - vi. New structures may be permitted in the moderate channel migration zone on existing legal lots; provided, that a feasible

Commented [BH44]: Added Channel Migration Zones as an Erosion Hazard Area, but 100-year floodplain will be used as a proxy until CMZ maps are completed.

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alternative location outside of the channel migration hazard is not available on site, and the structure and supporting infrastructure, including septic system, are located at the farthest distance from any source of channel migration or erosion hazard.

- vii. Subdivision of land by any means, including short subdivision or binding site improvement plan, is prohibited within the moderate channel migration zone unless an unrestricted developable area is available on the subdivided lots outside of the moderate channel migration zone.
- viii. New structural flood hazard reduction measures may be allowed in a channel migration zone to protect existing development only where demonstrated through an engineering analysis to be necessary, and when nonstructural methods are infeasible and such measures are located landward of associated wetlands and buffer areas except where no alternative exists as documented in a geotechnical analysis.

B. Landslide Hazard Areas – areas susceptible to landslides because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other physical factors. Potential landslide hazard areas exhibit one or more of the following characteristics:

1. Sensitive Sloped Areas. Slopes exceeding thirty-five percent with a vertical relief of ten or more feet except areas composed of competent rock and properly engineered slopes designed and approved by a geotechnical engineer licensed in the state of Washington and experienced with the site;
2. Areas mapped by the Washington State Department of Natural Resources (slope stability mapping) as unstable ("U"), unstable old slides ("UOS"), or unstable recent slides ("URS");
3. Areas designated by the U.S. Department of Agriculture's Natural Resource Conservation Service as having "severe" limitation for building site development;
4. Areas that have shown evidence of historic failure or instability, including but not limited to back-rotated benches on slopes; areas with structures that exhibit structural damage such as settling and racking of building foundations; and areas that have toppling, leaning, or bowed trees caused by ground surface movement;
5. Slopes greater than fifteen percent that have a relatively permeable geologic unit overlying a relatively impermeable unit and having springs

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or groundwater seepage;

6. Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action;
7. Areas located in a canyon or active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding;
8. Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the U.S. Geological Survey or Washington State Department of Natural Resources;
9. Areas that are at risk of mass wasting due to seismic forces; and
10. Slopes having gradients steeper than eighty percent subject to rock fall during seismic shaking.

C. **Seismic Hazard Areas** – Seismic hazard areas shall be as identified in Washington State Department of Natural Resources seismic hazard and liquefaction susceptibility maps for Eastern Washington and other geologic resources. Klickitat County is located within a C seismic zone, with no known active faults. All new development shall conform to the applicable provisions of the International Codes with Washington State Amendments which contain structural standards and safeguards to reduce risks from seismic activity.

D. **Volcanic** – Volcanic risk is low, although ashfall could be expected during a volcanic event.

E. **Mine** - The likelihood of the presence of underground mines within the County is believed to be remote.

F. Those lands which meet the established criteria for geologically hazardous areas are to be designated as such. Geologically hazardous areas identified through the permitting process shall be mapped and shall provide guidance in the land use decision-making process. All sites which maintain geologically hazardous areas, including those geologically hazardous areas which are not mapped, shall be subject to geologically hazardous areas review by a qualified professional so stated in this chapter.

5.3 Geologically Hazardous Areas Performance Standards.

A. Upon receipt of a complete development application, U.S.G.S. topographic maps and NRCS soil information shall be reviewed to determine if the proposed development is in a geologically hazardous area. If the proposed site is in a geologically hazardous area, the applicant shall be responsible for securing the services of a professional engineer/geologist who shall provide information as

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follows:

1. Maximum and average on-site slopes;
 2. Identification of groundwater seepage areas;
 3. Any known on-site landslide activity;
 4. Identification of any stream incision and/or erosion points; and
 5. The extent of any applicable alluvial fan.
- B. Proposed developments shall be designed in accordance with the requirements of the Uniform Building Code as written now or hereafter amended when a geologically hazardous area is found on or near the proposed development.
- C. Development sites for new structures identified with intermittent or perennial stream-side incision or erosion points shall have all structures located a minimum of 100 feet away from such points.
- D. Any disturbance to erosion hazard areas will require revegetation and stabilization with native plant materials.
- E. New development or the creation of new lots that would cause foreseeable risk from geological conditions to people or improvements during the life of the development is prohibited.

Chapter VI - Critical Aquifer Recharge Areas

Commented [BH45]: This Chapter was revised to provide additional clarity to both applicant and staff. Language taken from Kittitas County CAO.

6.1 Purpose.

The purpose of this chapter is to provide standards for classification and designation of areas with a critical recharging effect on aquifers used for potable water and whose protection is necessary to public health and safety.

6.2 Critical Aquifer Recharge Areas Classification and designation.

- A. Critical aquifer recharge areas function to protect human health from contaminated drinking water (anti-degradation of ground water). CARAs are designated on the basis of:
1. Land use activities which pose a threat to aquifer quality; or
 2. Land use activities which pose a threat to community water systems; or
 3. Aquifers with characteristics conducive to contamination.

Attachment A

- B. Designated areas include Group A wellhead protection areas, susceptible ground water management areas, moderately or highly vulnerable areas, moderately or highly susceptible areas. Susceptibility can be estimated using soil permeability, geologic matrix (underlying soils), infiltration rate, and depth to ground water.
- C. Those lands which meet the established criteria for aquifer recharge areas are to be designated as such. Aquifer recharge areas identified through the permitting process shall be mapped and shall provide guidance in the land use decision-making process. All sites which maintain aquifer recharge areas, including those aquifer recharge areas which are not mapped, shall be subject to aquifer recharge areas review so stated in this chapter.

6.3 Critical Aquifer Recharge Areas Applicability.

- A. This chapter regulates the following uses when located in a critical aquifer recharge area:
 - 1. Storage tanks;
 - 2. Commercial vehicle repair, servicing, and salvaging facilities;
 - 3. Reclaimed wastewater;
 - 4. New landfills, including hazardous or dangerous waste, municipal solid waste, special waste, wood waste of more than two thousand (2,000) cubic yards, and inert and demolition waste landfills;
 - 5. Injection wells used for disposal of waste products including, but not limited to, stormwater discharge, hazardous or radioactive waste, or industrial waste;
 - 6. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);
 - 7. Commercial coal, ore mining operations, and natural gas exploration and extraction;
 - 8. Facilities that store, process, or dispose of chemicals containing perchloroethylene (PCE) or methyl tertiary butyl ether (MTBE) or other chemicals with the potential to contaminate groundwater;
 - 9. Dairy farms and feedlots;
 - 10. Man-made stormwater detention or infiltration ponds, manure lagoons, and irrigation ponds; and

Attachment A

11. Any other alteration or development that the Director determines – based on best available science– is likely to have a significant adverse impact on ground water.

6.4 Critical Aquifer Recharge Areas Protection Measures.

A. Storage tanks. Aboveground and underground storage tanks or vaults used for the storage of hazardous substances, animal wastes, sewage sludge, fertilizers, other chemical or biological hazards, dangerous wastes as defined in WAC Chapter 173-303, or any other substances, solids, or liquids in quantities identified by the Public Health Department as a risk to groundwater quality, shall be designed and constructed to:

1. Prevent the release of such substances to the ground, ground waters, or surface waters;
2. Include an impervious containment area with a volume greater than the volume of the storage tank or vault to avoid an overflow of the containment area;
3. Provide for release detection;
4. Provide written spill response and spill notification procedures to the local fire district;
5. Use material in the construction or lining of the storage containment area which is compatible with the substance to be stored to protect against corrosion or leakage, or otherwise designed in a manner to prevent the release or threatened release of any stored substance; and
6. Comply with WAC 173-303 and 173-360 as well as International Building Code requirements.

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

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

Attachment A

Ecology.

- D. **Other regulated uses.** Protection standards for other uses regulated under Subsection A shall be based on analysis and recommendations contained in the hydrogeologic reports required for specific projects.

6.5 Reporting

- A. **When required.** Except for storage tanks, all uses listed in Section 6.3.A require County review and approval of a special hydrogeological assessment prepared by a qualified professional.
- B. **Contents.** The hydrogeological assessment shall include the general critical areas report requirements of Section 1.12 in addition to the following:
1. Geologic setting and soils information for the site and surrounding area;
 2. Water quality data, including pH, temperature, dissolved oxygen, conductivity, nitrates, and bacteria;
 3. Location and depth of perched water tables;
 4. Recharge potential of site (permeability/transmissivity);
 5. Hydrologic budget;
 6. Local groundwater flow, direction, and gradient;
 7. Location, depth, and other water quality data on the three (3) shallowest wells or springs located within one thousand (1,000) feet of the site;
 8. Potential impacts to wellhead protection areas located within the site;
 9. Surface water locations within one thousand (1,000) feet of the site;
 10. Discussion of the effects of the proposed development on groundwater quality and quantity;
 11. Recommendations on appropriate mitigation, if any, to assure that there shall be no measurable exceedance of minimum state groundwater quality standards or measurable reduction in available quantity of groundwater;
 12. Emergency management plan; and
 13. Containment release detection.

Chapter VII - Frequently Flooded Areas

Commented [BH46]: This Chapter added a cross reference to the County's current Flood Damage Prevention Ordinance

7.1 Purpose.

To provide standards for classification and designation and provide guidance for reducing or mitigating hazards to public health and safety.

7.2 Frequently Flooded Areas Classification and Designation.

Frequently flooded areas are defined as a critical area under RCW 36.70A.030. Criteria for identification and classification of frequently flooded areas and for protection standards for frequently flooded areas are included under the Klickitat County Flood Damage Prevention Ordinance.

DRAFT