

City of Westport – Draft Critical Areas Ordinance

Chapter 15.34 CRITICAL AREAS

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Article I: Purpose and General Provisions.

15.34.010 Title.

The ordinance codified in this chapter shall be known and cited as the “Westport Critical Areas Ordinance.”

15.34.020 Definitions.

Any word or phrase not defined in this chapter that is called into question shall be as defined in the city code, the Washington Administrative Code (WAC), or the Revised Code of Washington (RCW). Words not found in either code shall be as defined in the any city resolution, ordinance, policy, or regulation, legal definitions generated from case law or provided within a law dictionary, or the common dictionary.

“Adaptive management” means scientific methods used to evaluate how well regulatory and non-regulatory actions protect the critical area. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty.

“Adjacent” means immediately adjoining (in contact with the boundary of the influence area) or within a distance that is less than that needed to separate activities from critical areas to ensure protection of the functions and values of the critical areas. Adjacent shall mean any activity or development located:

- (1) On a site immediately adjoining a critical area;
- (2) A distance equal to or less than the required critical area buffer width and building setback;
- (3) A distance equal to or less than one-half (1/2) mile from a bald eagle nest;
- (4) A distance equal to or less than three hundred (300) feet upland from a stream, wetland, or waterbody;
- (5) Bordering or within the floodway or floodplain; or
- (6) A distance equal to or less than two hundred (200) feet from a CARA.

“Administrator” means the ~~city public works director or, in the public works director’s absence, the city administrator individual selected by the mayor shall to~~ be the administrator of this chapter, and shall perform all the duties ascribed to the administrator in this chapter, and shall administer the permit and notification systems.

Comment [NS1]: AHBL Comment: Randy Lewis:
“Administrator needs to be changed to indicate it will be the individual designated by the Mayor. The rest of the language is fine”

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“Advance mitigation” means mitigation of an anticipated critical area impact or hazard completed according to an approved critical area report and prior to site development.

“Alteration” means any human-induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to, grading, filling, channelizing, dredging, clearing of vegetation, construction, compaction, excavation, or any other activity that changes the character of the critical area.

“Anadromous fish” means fish that spawn and rear in freshwater and mature in the marine environment. While Pacific salmon die after their first spawning, adult char (bull trout) can live for many years, moving in and out of saltwater and spawning each year. The life history of Pacific salmon and char contains critical periods of time when these fish are more susceptible to environmental and physical damage than at other times. The life history of salmon, for example, contains the following stages: upstream migration of adults, spawning, inter-gravel incubation, rearing, smoltification (the time period needed for juveniles to adjust their body functions to live in the marine environment), downstream migration, and ocean rearing to adults.

“Applicant” means any person or entity designated or named in writing by the property or easement owner to be the applicant, in an application for a development proposal, permit, or approval.

“Appurtenance” means any building, structure, or development necessarily connected to the use and enjoyment of a single-family residence that is located landward of the OHWM and of the perimeter of any wetland. On a statewide basis, normal appurtenances include a garage, deck, driveway, utilities, fences, installation of a septic tank and drain field, and grading which does not exceed two hundred and fifty (250) cubic yards (except to construct a conventional drain field) and which does not involve placement of fill in any wetland or waterward of the OHWM.

“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.

“Aquifer recharge areas” means areas that, due to the presence of certain soils, geology, and surface water, act to recharge ground water by percolation.

“Aquifer, sole source” means an area designated by the U.S. Environmental Protection Agency under the Safe Drinking Water Act of 1974, Section 1424(e). The aquifer(s) must supply fifty (50) percent or more of the drinking water for an area without a sufficient replacement available.

“Aquifer susceptibility” means the ease with which contaminants can move from the land surface to the aquifer based solely on the types of surface and subsurface materials in the area.

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Susceptibility usually defines the rate at which a contaminant will reach an aquifer unimpeded by chemical interactions with the vadose zone media.

“Best available science (BAS)” means information from research, inventory, monitoring, surveys, modeling, synthesis, expert opinion, and assessment that is used to designate, protect, or restore critical areas that is derived from a valid scientific process as defined by WAC 365-195-900 through WAC 365-195-925. BAS is derived from a process that includes peer-reviewed literature, standard methods, logical conclusions and reasonable inferences, quantitative analysis, and documented references to produce reliable information.

“Berm” means a linear mound or series of mounds of sand or gravel generally that parallels the water at or landward of the line of ordinary high tide. In addition, a linear mound used to screen an adjacent use, such as a parking lot, from transmitting excess noise and glare.

“Best management practices (BMPs)” means the utilization of methods, techniques, or products, which have been demonstrated to be the most effective and reliable in minimizing environmental impacts. BMPs encompass a variety of behavioral, procedural, and structural measures that reduce the amount of contaminants in stormwater run-off and in receiving waters and include conservation practices or systems of practices and management measures that:

- (1) Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, or sediment;
- (2) Minimize adverse impacts to surface water and ground water flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;
- (3) Protect trees, vegetation and soils designated to be retained during and following site construction and use native plant species appropriate to the site for re-vegetation of disturbed areas; and
- (4) Provide standards for proper use of chemical herbicides within critical areas.

“Bog” means a low nutrient, acidic wetland with organic soils and characteristic bog plants, which is sensitive to disturbance and impossible to re-create through compensatory mitigation.

“Buffer or buffer zone” means the area contiguous with a critical area that maintains the functions and/or structural stability of the critical area.

“Building setback” means a required structural setback, specified in the Critical Areas Ordinance (CAO), measured horizontally upland from a buffer. A building setback protects the critical area from the impacts related to use of a structure.

[“Cascadia event” means an earthquake and/or tsunami resulting from a seismic event along the Cascadia subduction zone, which lies primarily off the shore of Washington, British Columbia](#)

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[and Oregon. Reports published by the Washington State Department of Natural Resources indicate that a seismic event along this tectonic zone would likely produce a “great earthquake” of very high magnitude, such as M9.0 or higher.](#)

Comment [NS2]: ABL Comment: “Cascadia event” is now discussed in 15.34.810 so this definition is added

“Clearing” means the removal of vegetation or plant cover by manual, chemical, or mechanical means. Clearing includes, but is not limited to, actions such as cutting, felling, thinning, flooding, killing, poisoning, girdling, uprooting, or burning.

“Compensation” means actions necessary to replace project-induced critical area and buffer losses, including land acquisition, planning, construction plans, monitoring, and contingency actions.

“Compensatory mitigation” means replacing project-induced losses or impacts to a critical area, and includes, but is not limited to, the following:

- (1) “Restoration” means actions performed to reestablish wetland functional characteristics and processes that have been lost by alterations, activities, or catastrophic events within an area that no longer meets the definition of a wetland.
- (2) “Creation” means actions performed to establish a wetland intentionally at a site where it did not formerly exist.
- (3) “Enhancement” means actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality.
- (4) “Preservation” means actions taken to ensure the permanent protection of existing, high-quality wetlands.

“Comprehensive plan” means the document, including maps adopted by the city in accordance with applicable state law.

“Conservation easement” means a legal agreement that the property owner enters into to restrict uses of the land. Such restrictions can include, but are not limited to, passive recreation uses such as trails or scientific uses and fences or other barriers to protect habitat. The easement is recorded on a property deed, runs with the land, and is legally binding on all present and future owners of the property, therefore, providing permanent or long-term protection.

“Creation” means the manipulation of the physical, chemical, or biological characteristics to develop a wetland on an upland or deepwater site, where a wetland did not previously exist. Creation results in a gain in wetland acreage and function. A typical action is the excavation of upland soils to elevations that will produce a wetland hydroperiod and hydric soils, and support the growth of hydrophytic plant species.

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“Critical aquifer recharge area (CARA)” means areas designated by WAC 365-190-080(2) that are determined to have a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2).

“Critical areas” are defined under Chapter 36.70A RCW and include the following areas and ecosystems:

- (1) Wetlands;
- (2) Areas with a critical recharging effect on aquifers used for potable waters;
- (3) Fish and wildlife habitat conservation areas;
- (4) Frequently flooded areas; and
- (5) Geologically hazardous areas.

“Critical area tract” means land held in private ownership and retained in an open condition in perpetuity for the protection of critical areas. Lands within this type of dedication may include but are not limited to, portions and combinations of forest habitats, grasslands, shrub steppe, on-site watersheds, one hundred (100) year floodplains, riparian areas, and wetlands.

“Critical areas report” means a study that identifies and characterizes any critical area as a part of the larger development proposal site, assesses any hazards to the proposed development, assesses impacts of the development proposal on any critical areas on or adjacent to the development proposal site, and assesses the impacts of any alteration proposed for a critical area. Reports propose adequate mitigation, maintenance and monitoring plans and bonding measures. Critical areas reports include a scale map of the development proposal site and a written report.

“Cumulative impact” means the impact on the environment, which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over an interval of time.

“Development” means the construction or exterior alteration of buildings or structures; dredging; drilling; dumping; filling; removal of sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or a project of a permanent or temporary nature.

“Development permit” means any permit issued by the city or other authorized agency, for construction, land use, or the alteration of land.

“Ecology” means the Washington State Department of Ecology.

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“Emergency” means an unanticipated and imminent threat to public health, safety, or the environment, requiring immediate action within a time too short to allow full compliance with the CAO.

“Endangered species act (ESA)” means a federal law intended to protect any fish or wildlife species that are threatened with extinction throughout all or a significant portion of its range.

“Enhancement” means the manipulation of the physical, chemical, or biological characteristics of a buffer or wetland to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, floodwater retention, or wildlife habitat. Enhancement results in a change in buffer or wetland function(s) and can lead to a decline in other buffer or wetland functions, but does not result in a gain in buffer or wetland area. Examples are planting vegetation, controlling non-native or invasive species, and modifying site elevations to alter hydroperiods.

“Environmental impacts” means the effects or consequences of actions on the natural and built environments. Environmental impacts include effects upon the elements of the environment listed in the State Environmental Policy Act (SEPA). Refer to WAC 197-11-600 and WAC 197-11-444.

“Erosion” means the process whereby wind, rain, water, and other natural agents mobilize and transport particles.

“Erosion hazard areas” means at least those areas identified by the United States Department of Agriculture (USDA) National Resources Conservation Service (NRCS) as having a “severe” rill and inter-rill erosion hazard.

“Feasible” means an action, such as a development project, mitigation, or preservation requirement that meets all of the following conditions:

- (1) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
- (2) The action provides a reasonable likelihood of achieving its intended purpose; and
- (3) The action does not physically preclude achieving the project's primary intended legal use.

The burden of proving infeasibility is on the applicant.

In determining an action's infeasibility, the city may weigh the action's relative public costs and public benefits, considered in the short- and long-term periods.

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“Fill” means raising the elevation or creating dry land by adding soil, sand, rock, gravel, sediment, earth-retaining structure, or other material to an area waterward of the OHWM or in a wetland.

“Fish and wildlife habitat conservation areas” means areas necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created as designated by WAC 365-190-080(5). These areas include:

- (1) Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association;
- (2) Habitats of local importance, including but not limited to areas designated as priority habitat by the Washington State Department of Fish and Wildlife (WDFW);
- (3) Commercial and recreational shellfish areas;
- (4) Kelp and eelgrass beds;
- (5) Herring and smelt spawning areas;
- (6) Naturally occurring ponds under twenty (20) acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds;
- (7) Waters of the state, including lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the state;
- (8) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;
- (9) State natural area preserves and natural resource conservation areas; and
- (10) Land essential for preserving connections between habitat blocks and open spaces.

“Fish habitat” means habitat that is used by fish at any life stage at any time of the year, including potential habitat likely to be used by fish that could be recovered by restoration or management and includes off-channel habitat.

“Flood or flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation of run-off of surface waters from any source.

“Flood insurance map” means the official map on which the Federal Insurance Administration has delineated the areas of special flood hazards and includes the risk premium zones applicable to the community. This is also known as a “flood insurance rate map (FIRM).”

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“Floodplain” is synonymous with one hundred (100) year floodplain. The land area that is susceptible to being inundated with a one (1) percent chance of being equaled or exceeded in a given year. The limits of this area are based on flood regulation ordinance maps.

“Floodway” means the area that has either:

- (1) Has been established in Federal Emergency Management Agency (FEMA) FIRMs or floodway maps; or
- (2) Consists of those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually.

Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from floodwaters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

“Forested wetland” means a wetland with at least thirty (30) percent of the surface area covered by woody vegetation greater than twenty (20) feet in height that is at least partially rooted within the wetland.

“Frequently flooded areas” means those lands in the floodplain subject to a one (1) percent or greater chance of flooding in any given year. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and the like. The one-hundred-year floodplain designations of the National Flood Insurance Program delineate the presence of frequently flooded areas.

“Functions and values” means the services provided by critical areas to society, including, but not limited to, improving and maintaining water quality, providing fish and wildlife habitat, supporting terrestrial and aquatic food chains, reducing flooding and erosive flows, wave attenuation, historical or archaeological importance, educational opportunities, and recreation.

“Geologically hazardous areas” means areas that may not be suited to development consistent with public health, safety, or environmental standards, because of their susceptibility to erosion, sliding, earthquake, or other geological events as designated by WAC 365-190-080(4). Types of geologically hazardous areas include erosion, landslide, seismic, mine, and volcanic hazards.

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“Geotechnical report or geotechnical analysis” means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local geology and processes.

“Grading” means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

“Ground water” means water in a saturated zone or stratum beneath the surface of land or a surface waterbody.

“Ground water management area” means a specific geographic area or subarea designated pursuant to Chapter 173-100 WAC for which a ground water management program is required.

“Ground water management program” means a comprehensive program designed to protect ground water quality, to ensure ground water quantity, and to provide for efficient management of water resources while recognizing existing ground water rights and meeting future needs consistent with local and state objectives, policies, and authorities within a designated ground water management area or subarea and developed pursuant to Chapter 173-100 WAC.

“Growth management act (GMA)” means Chapters 36.70A and 36.70B RCW, as amended.

“Habitat conservation areas” means areas designated as fish and wildlife habitat conservation areas.

“Habitats of local importance” means those areas including a seasonal range or habitat element with which a given species has a primary association, and which, if altered may reduce the likelihood that the species will maintain and reproduce over the long-term. These might include areas of high relative 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 areas” means areas designated as frequently flooded areas or geologically hazardous areas due to potential for erosion, landslide, seismic activity, mine collapse, or other geological condition.

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“Hazardous substances” means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical, or biological properties described in WAC 173-303-090 or WAC 173-303-100.

“Impervious surface” means any alterations to the surface of a soil that prevents or retards the entry of water into it compared to its undisturbed condition, or any reductions in infiltration that cause water to run off the surface in greater quantities or at an increased rate of flow compared to that present prior to development. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces, which similarly impede the natural infiltration of stormwater.

“Infiltration” means the downward entry of water into the immediate surface of soil.

“Injection well(s)” include:

- (1) “Class I” means a well used to inject industrial, commercial, or municipal waste fluids beneath the lowermost formation containing, within one-quarter (1/4) mile of the well bore, an underground source of drinking water.
- (2) “Class II” means a well-used to inject fluids:
 - (A) Brought to the surface in connection with conventional oil or natural gas exploration or production and may be commingled with wastewaters from gas plants that are an integral part of production operations, unless those waters are classified as dangerous wastes at the time of injection;
 - (B) For enhanced recovery of oil or natural gas; or
 - (C) For storage of hydrocarbons that are liquid at standard temperature and pressure.
- (3) “Class III” means a well-used for extraction of minerals, including but not limited to the injection of fluids for:
 - (A) In-situ production of uranium or other metals that have not been conventionally mined;
 - (B) Mining of sulfur by Frasch process; or
 - (C) Solution mining of salts or potash.
- (4) “Class IV” means a well used to inject dangerous or radioactive waste fluids.
- (5) “Class V” means all injection wells not included in Classes I, II, III, or IV.

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“Interrupted buffer” means an area that is functionally separated from a wetland and does not protect the wetland from adverse impacts due to preexisting roads, structures, or vertical separation.

Comment [NS3]: ABL Comment: 15.34.550(H) now discusses interrupted buffers, so this definition is added

“Landscaping” means vegetated ground cover including shrubs, trees, flowerbeds, grass, ivy and other similar plants and including tree bark and other materials, which aid vegetative growth and maintenance.

“Landslide hazard areas” means areas that are potentially subject to risk of mass movement due to a combination of geologic landslide resulting from a combination of geologic, topographic, and hydrologic factors. These areas are typically susceptible to landslides because of a combination of factors including bedrock, soil, slope gradient, slope aspect, geologic structure, ground water, or other factors.

“Marine” means pertaining to tidally influenced waters, including oceans, sounds, straits, marine channels, and estuaries, including the Pacific Ocean, Puget Sound, Straits of Georgia, and Juan de Fuca, and the bays, estuaries, and inlets associated therewith.

“Mature forested wetland” means a wetland where at least one acre of the wetland surface is covered by woody vegetation greater than twenty (20) feet in height with a crown cover of at least thirty (30) percent and where at least eight (8) trees per acre are eighty (80) to two hundred (200) years old or have average diameters (d. b. h.) exceeding twenty-one (21) inches measured from the uphill side of the tree trunk at four and one half (4.5) feet up from the ground.

“May” means an action that is acceptable, provided it conforms to the provisions of the CAO.

“Mitigation or mitigation sequencing” means avoiding, reducing, or compensating for a proposal’s environmental impact(s). See WAC 197-11-768. Mitigation or mitigation sequencing means the following sequence of steps listed in order of priority, with (a) of this subsection being top priority:

- (1) Avoiding the impact all together 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 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 projects and taking appropriate corrective measures.

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

“Must” means a mandate; the action is required.

“Native growth protection area (NGPA)” means an area where native vegetation is preserved for preventing harm to property and the environment, including, but not limited to, controlling surface water run-off and erosion, maintaining slope stability, buffering, and protecting plants and animal habitat.

“Native vegetation” means vegetation comprised of plant species that are indigenous to an area.

“Ordinary high water mark (OHWM)” means that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by the city or Ecology: provided, that in an area where the OHWM cannot be found, the OHWM adjoining fresh water shall be the line of mean high water.

“Permeability” means the capacity of an aquifer or confining bed to transmit water. It is a property of the aquifer or confining bed and is independent of the force causing movement.

“Practical alternative” means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, with less of an impact to critical areas.

“Preservation” means the removal of a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This term includes the purchase of land or easements, repairing water control structures or fences, or structural protection. Preservation does not result in a gain of wetland acres but may result in a gain in functions over the long term.

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

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- (1) Comparatively high fish or wildlife density;
- (2) Comparatively high fish or wildlife species diversity;
- (3) Fish spawning habitat;
- (4) Important wildlife habitat;
- (5) Important fish or wildlife seasonal range;
- (6) Important fish or wildlife movement corridor;
- (7) Rearing and foraging habitat;
- (8) Important marine mammal haul-out;
- (9) Refugia habitat;
- (10) Limited availability;
- (11) High vulnerability to habitat alteration;
- (12) Unique or dependent species; or
- (13) Shellfish bed.

A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be described by a successional stage (such as, old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as talus slopes, caves, and snags) of key value to fish and wildlife. A priority habitat may contain priority and/or non-priority fish and wildlife.

“Priority species” means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the four criteria listed below.

- (1) Criterion 1. State-listed or state proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the WDFW (POL-M-6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.
- (2) Criterion 2. Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations.

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(3) Criterion 3. Species of recreational, commercial, or tribal importance. Native and non-native fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.

(4) Criterion 4. Species listed under the ESA as either proposed, threatened, or endangered.

“Project area” means all areas, including those within fifty (50) feet of the area, proposed to be disturbed, altered, or used by the proposed activity or the construction of any proposed structures. When the action binds the land, such as a subdivision, short subdivision, binding site plan, planned unit development, or rezone, the project area shall include the entire parcel, at a minimum.

“Proposed, threatened, and endangered species” means those native species that are proposed to be listed or are listed in rule by the WDFW as threatened or endangered, or that are proposed to be listed as threatened or endangered or that are listed as threatened or endangered under the ESA.

“Provisions” means policies, regulations, standards, guideline criteria, or wetland designations.

“Public interest” means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected such as an effect on public property or on health, safety, or general welfare resulting from a use or development.

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

- (1) A qualified professional for habitats or wetlands must have a degree in geology, hydrology, or biology and professional experience related to the subject species.
- (2) A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.
- (3) A qualified professional for CARAs means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

“Recharge” means the process involved in the absorption and addition of water to ground water.

“Reclaimed water” means municipal wastewater effluent that has been adequately and reliability treated so that it is suitable for beneficial use. Following treatment, it is no longer

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considered wastewater. Treatment levels and water quality requirements are given in the water reclamation and reuse standards adopted by Ecology and the Washington State Department of Health (WDOH).

“Re-establishment” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in rebuilding a former wetland and results in a gain in wetland acres and functions. Activities could include removing fill, plugging ditches, or breaking drain tiles.

“Rehabilitation” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions and processes of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or returning tidal influence to a wetland.

“Repair or maintenance” means an activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.

“Replacement” means replacing wetlands either on or away from the site on which a resource has been impacted by a regulated activity.

“Reasonable use” means a legal concept articulated by federal and state courts in regulatory taking cases.

“Restore or restoration” means the reestablishment or upgrading of impaired ecological processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive structures and removal or treatment of toxic materials.

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

“Riparian habitat” means areas adjacent to aquatic systems with flowing water 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 from the OHWM or from the top of bank if the OHWM 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 stream

Comment [BM4]: AHBL Comment: Source: City of Auburn Chapter 16.10.020 Critical Areas, Definitions.

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system. Riparian habitat areas include those riparian areas severely altered or damaged due to human development activities.

“Run-off” means water that is not absorbed into the soil but rather flows along the ground surface following the topography.

“Scrub-shrub wetland” means a wetland with at least thirty (30) percent of its surface area covered by woody vegetation less than twenty (20) feet in height as the uppermost strata.

“Section 404 permit” means a permit issued by the USACE for the placement of dredge or fill material or clearing in waters of the United States, including wetlands, in accordance with 33 USC § 1344. Section 404 permits may also be for endangered species consultation. They require a consultation under Section 7 of the ESA.

“Seeps” means a spot where water oozes from the earth, often forming the source of a small stream.

“Seismic hazard areas” means areas that are subject to severe risk of damage because of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.

“Serviceable” means presently usable.

“Shall” means a mandate; the action must be done.

“Should” means a particular action is required unless there is a demonstrated, compelling reason against taking the action.

“Significant portion of its range” means that portion of a species range likely to be essential to the long-term survival of the population in the state.

“Significantly degrade” means to cause significant ecological impact.

“Single-family residence” means a detached dwelling designed for and occupied by one family including those buildings, structures and developments within a contiguous ownership, which are a normal appurtenance.

“Soil survey” means the most recent soil survey for the local area or Grays Harbor County by the NRCS, USDA.

“Special protection areas” means aquifer recharge areas defined by WAC 173-200-090 that require special consideration or increased protection because of unique characteristics, including, but not limited to the following:

- (1) Ground waters that support an ecological system requiring more stringent criteria than drinking water standards;

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(2) Ground water recharge areas and wellhead protection areas that are vulnerable to pollution because of hydrogeologic characteristics; and

(3) Sole source aquifer status.

“Species” means any group of animals or plants classified as a species or subspecies as commonly accepted by the scientific community.

“Species, endangered” means any wildlife species native to the state that is seriously threatened with extinction throughout all or a significant portion of its range within the state (WAC 232-12-297, Section 2.4).

“Species of local importance” means those species of local concern designated by the city due to their population status or their sensitivity to habitat manipulation.

“Species, priority” means any fish or wildlife species requiring protective measures and/or management guidelines to ensure its persistence at genetically viable population levels as classified by the WDFW, including endangered, threatened, sensitive, candidate, and monitor species, and those of recreational, commercial, or tribal importance.

“Species, sensitive” means any wildlife species native to the state that is vulnerable or declining and is likely to become endangered or threatened throughout a significant portion of its range within the state without cooperative management or removal of threats (WAC 232-12-297, Section 2.6).

“Species, threatened” means any wildlife species native to the state that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range within the state without cooperative management or removal of threats (WAC 232-12-297, Section 2.5).

“Steep slope” means any ground that rises at an inclination of forty (40) percent or more within a vertical elevation change of at least ten feet (a vertical rise of ten (10) feet or more for every twenty-five (25) feet of horizontal distance). A slope is delineated by establishing its toe and top as measured by averaging the inclination over at least ten feet of vertical relief.

- A. Toe of a slope is a distinct topographic break in slope, which separates slopes inclined at less than forty (40) percent from slopes equal to or in excess of forty (40) percent. Where no distinct break exists, the toe of a steep slope is the lowermost limit of the area where the ground surface drops ten (10) feet or more vertically within a horizontal distance of twenty-five (25) feet.
- B. Top of a slope is a distinct, topographic break in slope, which separates slopes inclined at less than forty (40) percent from slopes equal to or in excess of forty (40) percent. Where no distinct break in slope exists, the top of slope shall be the uppermost limit of

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the area where the ground surface drops ten (10) feet or more vertically within a horizontal distance of twenty-five (25) feet.

“Stream” means a naturally occurring body of periodic or continuously flowing water where the water is contained within a channel.

“Sub-drainage basin or subbasin” means the drainage area of the highest order stream containing the subject property impact area. Stream order is the term used to define the position of a stream in the hierarchy of tributaries in the watershed. The smallest streams are the highest order (first order) tributaries. These are the upper watershed streams and have no tributaries of their own. When two first order streams meet, they form a second order stream, and when two second order streams meet they become a third order stream, and so on.

“Unavoidable impacts” means adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

“Upland” means generally described as the dry land area above and landward of the OHWM.

“Utilities” means services and facilities that produce, transmit, store, process, or dispose of electric power, gas, water, stormwater, sewage, and communications.

“Vulnerability” means the combined effect of susceptibility to contamination and the presence of potential contaminants.

“Water quality” means the physical characteristics of water, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics.

“Well” means a bored, drilled, or driven shaft, or a dug hole whose depth is greater than the largest surface dimension for the purpose of withdrawing or injecting water or other liquids.

“Wellhead protection area” means the portion of a zone of contribution for a well, well field, or spring, as defined using criteria established by Ecology.

“Wetland or wetland areas” means areas 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 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, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

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“Wetland mitigation bank” means a site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved expressly for providing advance mitigation to compensate for future, permitted impacts to similar resources.

“Wetland mosaic” means an area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; on average, patches are less than one hundred (100) feet from each other; and areas delineated as vegetated wetland are more than fifty (50) percent of the total area of the entire mosaic, including uplands and open water.

“Zone of contribution” means the area surrounding a well or spring that encompasses all areas or features that supply ground water recharge to the well or spring.

15.34.030 Purpose and goals.

- (1) The purpose of this chapter is to designate and classify ecologically sensitive and hazardous areas and to protect these areas and their functions and values, while also allowing for reasonable use of private property, as required within the Growth Management Act (GMA). Furthermore, the purpose is also to protect people, public, and private property, and natural and/ or balanced ecosystems, as required by the GMA.
- (2) This chapter implements the goals, policies, guidelines, and requirements of the Westport comprehensive plan and the GMA.
- (3) The city finds that critical areas provide a variety of valuable and beneficial biological and physical functions that benefit the city and its residents, and/or may pose a threat to human safety or to public and private property. The beneficial functions and values provided by critical areas include, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation of flood waters, ground water recharge and discharge, erosion control, wave attenuation, protection from hazards, historical, archaeological, and aesthetic value protection, and recreation. These beneficial functions are not listed in order of priority.
- (4) This chapter protects environmentally sensitive resources outside the shoreline jurisdiction of the city as defined by the Shoreline Master Program (SMP). All environmentally sensitive resources that are within the shoreline jurisdiction of the city are protected according to the city’s SMP. The chapter protects environmentally sensitive resources by establishing minimum standards for development of properties that contain environmentally sensitive features and their buffers and thereby protecting the public health, safety, and welfare. These standards serve to preclude land uses and developments which are incompatible with critical areas by:

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- (A) Protecting the public and public resources and facilities from injury, loss of life, or property damage due to flooding, erosion, landslides and steep slope failures, seismic events, tsunamis, or soil subsidence;
 - (B) Avoiding public expenditures to address improper use or improper management of critical areas;
 - (C) Preventing degradation of the natural environment;
 - (D) Protecting unique, fragile, and valuable elements of the environment;
 - (E) Including BAS in developing policies and development regulations to protect the functions and values of critical areas;
 - (F) Giving special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries;
 - (G) Protecting the local renewable resources that the city's economy is heavily dependent on through conservation and protective measures;
 - (H) Alerting property owners, potential buyers or lessees, and others to the existence of and the development limitations of critical areas; and
 - (I) Providing city officials with sufficient information to protect critical areas when approving, conditioning, or denying public or private development proposals.
- (5) This chapter is intended to protect critical areas and their buffers in accordance with the GMA through the application of the BAS, and in consultation with state and federal agencies and other qualified professionals.
- (6) This chapter is to be administered with flexibility and attention to site-specific characteristics. It is not the intent of the city to make property unusable or to prevent the provision of public facilities and services necessary to support existing development and planned for by the community.
- (7) The city's enactment or enforcement of this chapter shall not be construed for the benefit of any individual person or group of persons other than the general public.

15.34.040 Authority.

- (1) As provided herein, the administrator is given the authority to interpret and apply, and the responsibility to enforce this chapter to accomplish the stated purpose.
- (2) The city may withhold, condition, or deny development permits or activity approvals to ensure that the proposed action is consistent with this chapter.

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15.34.050 Relationship to other regulations.

- (1) These critical areas regulations shall apply as an overlay and in addition to zoning and other regulations adopted by the city.
- (2) Any individual critical area adjoined by another type of critical area shall have the buffer and meet the requirements that provide the most protection to the critical areas involved. When any provision of this chapter or any existing regulation, easement, covenant, or deed restriction conflicts with this chapter, that which provides more protection to the critical areas shall apply.
- (3) These critical areas regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as locally adopted. Any conditions required pursuant to this chapter shall be included in the SEPA review and threshold determination.
- (4) Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Hydraulic Permit Act (HPA) permits, Section 106 of the National Historic Preservation Act, U.S. Army Corps of Engineers Section 404 permits, National Pollution Discharge Elimination System permits). The applicant is responsible for complying with these requirements, apart from the process established in this chapter.

15.34.060 Administrative procedures.

- (1) The administrative procedures followed during the critical area review process shall conform to the standards and requirements found in WMC Title 14 and WMC Title 17. This shall include, but not be limited to, timing, appeals, exemptions, variances, and fees associated with applications covered by this chapter.
- (2) The ~~city public works director or, in the public works director's absence, the~~ city administrator shall be the administrator of this chapter, and shall perform all the duties ascribed to the administrator in this chapter, and shall administer the permit and notification systems.

15.34.065 Fees.

- (1) The city by resolution shall establish fees for filing a critical area identification form, critical area review processing, and other services provided by the city as required by this chapter. These fees shall be based on the anticipated sum of direct costs incurred by the city for any individual development or action and may be established as a sliding scale that will recover all of the city costs including the enforcement of these code provisions. Basis for these fees

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shall include, but not be limited to, the cost of engineering and planning review time, cost of inspection time, costs for administration, and any other special costs attributable to the critical area review process.

- (2) Unless otherwise indicated in this chapter, the applicant shall be responsible for the initiation, preparation, submission, and expense of all required reports, assessment(s), studies, plans, reconnaissance(s), peer review(s) by qualified consultants, and other work prepared in support of or necessary to review the application.

15.34.070 Severability.

If any clause, sentence, paragraph, section, or part of this chapter or the application thereof to any person or circumstances shall be judged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered. The decision shall not affect or invalidate the remainder of any part thereof and to this end, the provisions of each clause, sentence, paragraph, section, or part of this law are hereby declared severable.

15.34.075 Administrative rules.

Applicable departments within the city are authorized to adopt such administrative rules and regulations as necessary and appropriate to implement this chapter and to prepare and require the use of such forms as necessary for its administration.

15.34.080 Interpretation.

In the interpretation and application of this ordinance, the provisions of this chapter shall be considered to be the minimum requirements necessary, shall be liberally construed to serve the purpose of this ordinance, and shall be deemed to neither limit nor repeal any other provisions under state statute.

15.34.090 Jurisdiction – critical areas.

- (1) The city shall regulate all uses, activities, and developments within, adjacent to, or likely to affect, one or more critical areas, consistent with the best available science (BAS) and the provisions herein.
- (2) Critical areas regulated by this chapter include:
 - (A) Wetlands as designated in Chapter 15.34 WMC Article X: Wetlands;

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- (B) Critical aquifer recharge areas (CARAs) as designated in Chapter 15.34 WMC Article XI: Critical Aquifer Recharge Areas;
 - (C) Frequently flooded areas as designated in Chapter 15.34 WMC Article XII: Frequently Flooded Areas;
 - (D) Geologically hazardous areas as designated in Chapter 15.34 WMC Article XIII: Geologically Hazardous Areas; and
 - (E) Fish and wildlife habitat conservation areas as designated Chapter 15.34 WMC Article XIV: Fish and Wildlife Habitat Conservation Areas.
- (3) All areas within the city meeting the definition of one or more critical areas, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter.
- (4) Areas adjacent to critical areas subject to regulation. Areas adjacent to critical areas shall be considered to be within the jurisdiction of these requirements and regulations to support the intent of this chapter and ensure protection of the functions and values of critical areas. Adjacent shall mean any activity located:
- (A) On a site immediately adjoining a critical area;
 - (B) A distance equal to or less than the required critical area buffer width and building setback;
 - (C) A distance equal to or less than one-half mile (2,640 feet) from a bald eagle nest;
 - (D) A distance equal to or less than three hundred (300) feet upland from a stream, wetland, or water body;
 - (E) Within the floodway, floodplain, or channel migration zone; or
 - (F) A distance equal to or less than two hundred (200) feet from a CARA.

Comment [NS5]: AHBL Comment: Distance of 2,640 feet is based on the Washington Department of Fish and Wildlife's *Management Recommendations for Washington's Priority Species, Volume IV: Birds*, 2000.

Comment [NS6]: AHBL Comment: Distance of three hundred (300) feet is based on maximum recommended riparian habitat area width from Washington Department of Fish and Wildlife's *Management Recommendations for Washington's Priority Habitats: Riparian*, 1997.

Comment [NS7]: AHBL Comment: In the GMS Sample Code Provisions, Distance of two hundred (200) feet is a suggested distance to ensure that activities within the critical aquifer recharge area are included under the application of this chapter, even when the exact boundaries of the critical aquifer recharge area are not known at the time of application.

15.34.095 Protection of critical areas.

Any action taken pursuant to this chapter shall result in equivalent or greater functions and values of the critical areas associated with the proposed action, as determined by the BAS. All actions and developments shall be designed and constructed in accordance with WMC 15.34.230 to avoid, minimize, and restore all adverse impacts. Applicants must first demonstrate an inability to avoid or reduce impacts, before restoration and compensation of impacts will be allowed. No activity or use shall be allowed that results in a net loss of the functions or values of critical areas.

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Article II: Applicability, Exemptions, and Exceptions.

15.34.100 Applicability.

- (1) The provisions of this chapter shall apply to all lands, all land uses and development activity, and all structures and facilities in the city, 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 city. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purposes and requirements of this chapter.
- (2) The city shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated buffer, without first ensuring compliance with the requirements of this chapter, including, but not limited to, the following:
 - (A) Building permit;
 - (B) Clearing and grading permit;
 - (C) Conditional use permit;
 - (D) Short subdivision;
 - (E) Subdivision;
 - (F) Planned unit development;
 - (G) Binding site plan;
 - (H) Zoning variance;
 - (I) Zoning code amendment; or
 - (J) Any other adopted permit or required approval not expressly exempted by this chapter.
- (3) Approval of a permit or development proposal pursuant to the provisions of this chapter does not discharge the obligation of the applicant to comply with the provisions of this chapter.

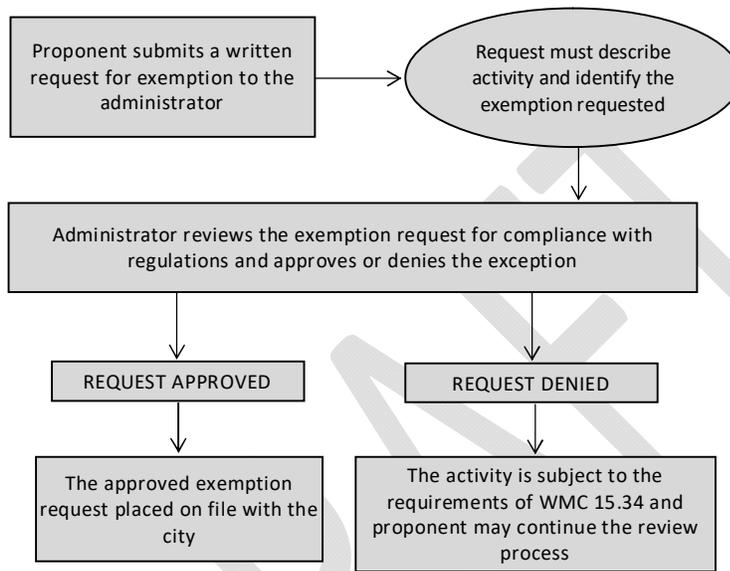
15.34.110 Exemptions.

- (1) Exemption request and review process. The proponent of the activity may submit a written request for exemption to the administrator that describes the activity and states the exemption listed in the section that applies. The administrator shall review the exemption

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request to verify that it complies with this chapter and approve or deny the exemption. If the exemption is approved, it shall be placed on file with the city. If the exemption is denied, the proponent may continue in the review process and shall be subject to the requirements of this chapter. [This process is shown in Figure 15.34-1.](#)

Figure 15.34-1: Review process flowchart.



Comment [BM8]: AHBL Comment: Added flowchart at staff request.

- (2) Exempt activities and impacts to critical areas. All exempted activities shall use reasonable methods to avoid potential impacts to critical areas. To be exempt from this chapter does not give permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense.
- (3) Exempt activities. The following developments, activities, and associated uses shall be exempt from the provisions of this chapter, provided that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements:
 - (A) Emergencies. Those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of this chapter.

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- (i) Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. The person or agency undertaking such action shall notify the city within one (1) working day following commencement of the emergency activity. Within thirty (30) days, the administrator shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the administrator determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions of WMC 15.34.340 shall apply.
- (ii) After the emergency, the person or 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 an approved critical area report and mitigation plan. The person or agency undertaking the action shall apply for review, and the alteration, critical area report, and mitigation plan shall be reviewed by the city 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, and completed in a timely manner;

(B) Operation, maintenance, or repair. Operation, maintenance, or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems, that do not require construction permits, or require construction permits that do not involve expansions or additions, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair. Examples of permitted activities that meet these criteria include window and roof replacements, pothole repair, and hydrant replacement.

Operation and maintenance includes vegetation management performed in accordance with best management practices (BMPs) that is part of ongoing maintenance of structures, infrastructure, or utilities, provided that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species;

(B)(C) Passive outdoor activities. Recreation, education, and scientific research activities that do not degrade the critical area, including fishing, hiking, and bird watching. Trails must be constructed pursuant to WMC 15.34.150(3)(E); ~~and~~

Comment [NS9]: AHB Comment: Changes made as requested by Randy Lewis

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(D) Forest practices. Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practices regulations, Title 222 WAC, and those that are exempt from city’s jurisdiction, if forest practice conversions are not exempt;

(E) Invasive and noxious weeds. Removal of state-listed invasive and noxious weeds, and additional aggressive non-native species, including Japanese knotweed, Scot’s broom, English ivy, Himalayan and evergreen blackberry; provided, only hand labor and light equipment that minimizes disturbance to the sensitive area or buffer is used, and chemical applications approved for use adjacent to streams and wetlands, provided best management practices are used.

Comment [BM10]: AHBL Comment: Source: Snoqualmie CAO Chapter 19.12.030 – Applicability

(F) Dangerous trees. Removal of dangerous trees, with the city administrator’s approval. A certified arborist’s evaluation may be required in the discretion of the city administrator if the hazard is not clearly evident.

Comment [BM11]: AHBL Comment: Source: Snoqualmie CAO Chapter 19.12.030 – Applicability

(G) Restoration activities. Enhancement and restoration plantings for the purpose of restoring functions and values of sensitive areas or buffers that do not require construction permits; provided, only hand labor and light equipment that minimizes disturbance to the sensitive area or buffer is used. Removal or trimming of trees within sensitive areas or their buffers, and replacing them with lower growing shrubs, for the purpose of creating or expanding a view corridor, shall not be deemed an enhancement or restoration action and is not an exempted activity.

Comment [BM12]: AHBL Comment: Source: Snoqualmie CAO Chapter 19.12.030 – Applicability

(H) Agriculture. The following agricultural activities in existence as of the effective date of Ordinance No. XXXX:

Comment [BM13]: AHBL Comment: Source: Snoqualmie CAO Chapter 19.12.030 – Applicability

(i) Grazing of livestock, provided best management practices are implemented to protect the water quality;

(ii) Mowing of hay, grass or grain crops;

(iii) Tilling, disking, planting, seeding, harvesting and related activities for pasture, food crops, grass seed or sod; provided, that such activities do not involve any expansion into the sensitive areas or buffer of the area involved from that existing on the date this chapter becomes effective;

(iv) Normal and routine maintenance of drainage and irrigation ditches, provided they are not used by salmonids; farm ponds, stocked fish ponds, manure lagoons, and created livestock watering ponds; provided, that such activities shall not involve conversion of or expansion into any wetland or buffer not currently being used for such activity and best management practices are used.

Comment [BM14]: AHBL Comment: This will be the effective date of the Critical Areas Ordinance.

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Maintenance actions within drainage ditches that drain directly to salmonid-bearing waters may require permits from state or federal regulatory agencies.

(I) Standards for Existing Development.

(i) Existing Structures and Related Improvements. Structures and related improvements that were legally built or vested prior to the effective date of Ordinance No. XXXX that do not meet the setback or buffer requirements of this chapter may continue to exist in their present form, and may be altered; including remodeled, reconstructed, or expanded, if such alteration complies with the provisions of this section.

Comment [BM15]: AHBL Comment: Source: Bainbridge Island CAO Chapter 16.20.040(D) – Critical Areas

Comment [BM16]: AHBL Comment: This will be the effective date of the Critical Areas Ordinance

(ii) Replacement of Existing Structures and Related Improvements. The replacement of an existing legally constructed structure and related improvements that were legally built prior to the effective date of Ordinance No. XXXX that did not meet the setback or buffer requirements of this chapter substantially damaged by fire, flood, or act of nature may be replaced or restored if initiated within one year of the date of such damage, as evidenced by the issuance of a valid building permit; and diligently pursued to completion.

Comment [BM17]: AHBL Comment: This will be the effective date of the Critical Areas Ordinance

(iii) Existing structures, not located in a geologically hazardous area, that were legally built or vested prior to the effective date of Ordinance No. XXXX may be altered if:

Comment [BM18]: AHBL Comment: This will be the effective date of the Critical Areas Ordinance

(a) There is no change in the footprint of the building;

(b) The remodel is entirely inside the existing building;

(c) There is no further encroachment into the buffers required pursuant to this chapter unless a variance is first approved; or

(d) Any expansion of the building footprint is exclusively on the sides that do not touch the buffers and there is no increased risk to life or property as a result of the alteration.

Comment [NS19]: AHBL Comment: Added to match with phrase in WDC 15.34.150(3)(2)(B)

(iv) Existing property improvements other than structures, including driveways, parking areas, yards, play areas, storage areas, and similar improvements that were legally established or vested prior to the effective date of Ordinance No. XXXX may be altered if:

Comment [BM20]: AHBL Comment: This will be the effective date of the Critical Areas Ordinance

(a) There is no change in the location of the improvement;

(b) Any alteration of the improvement is entirely inside of the existing boundaries of the improvement;

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(c) There is no further encroachment into the buffers unless a variance is first approved; or

(d) Any increase in the area of the improvement is exclusively on the sides that do not touch the buffers and there is no increased risk to life or property as a result of the alteration.

(v) Alterations permitted by this section shall not be exempt from applicable city review or permit requirements or other applicable city codes.

Comment [NS21]: AHBL Comment: Added to match with phrase in WDC 15.34.150(3) (2) (B)

15.34.120 Exceptions – public agency and utility.

- (1) If the application of this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.
- (2) Exception request and review process. An application for a public agency and utility exception shall be made to the city administrator and shall include a critical area identification form; critical area report, 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 SEPA. The administrator shall prepare a recommendation to the land-use hearing examiner 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 WMC 15.34.120(4).
- (3) Land-use hearing examiner review. The land-use hearing examiner shall review the application and administrator's recommendation, and conduct a public hearing pursuant to the provisions of the Chapter 2.26 WMC. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the public agency and utility exception criteria in WMC 15.34.120(4).
- (4) Public agency and utility review criteria. The criteria for review and approval of public agency and utility exceptions follow:
 - (A) There is no other practical alternative to the proposed development with less impact on the critical areas;
 - (B) The application of this chapter would unreasonably restrict the ability to provide utility services to the public;
 - (C) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;

Comment [BM22]: AHBL Comment: An amendment will need to be made to WMC 2.26.010 to add the following:

"10) Matters prescribed by the city of Westport critical areas ordinance, Chapter 15.12 WMC;"

Question for the City: Is there a section of the code that describes the procedures for a public hearing?

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- (D) The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the BAS; and
- (E) The proposal is consistent with other applicable regulations and standards.
- (5) 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 has to be made on the application.

15.34.130 Exceptions – reasonable use.

(1) The standards and requirements of these regulations are not intended, and shall not be construed or applied in a manner, to deny all reasonable use of private property. If an applicant demonstrates to the satisfaction of the hearing examiner that strict application of these standards would deny all reasonable use of a property, development may be permitted subject to appropriate conditions.

~~(1)(2)~~ If the application of this chapter would deny all reasonable economic use of the subject property, the city shall determine if compensation is an appropriate action, or the property owner may apply for an exception pursuant to this section. Exception request and review process. An application for a reasonable use exception shall be made to the city administrator and shall include a critical area identification form; critical area report, including mitigation plan(s), if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to SEPA. The administrator shall prepare a recommendation to the land use hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in WMC 15.134.130(4).

~~(2)(3)~~ Land use hearing examiner review. The land use hearing examiner shall review the application and conduct a public hearing pursuant to the provisions of the Chapter 2.26 WMC. The land use hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use exception review criteria in WMC 15.134.130(4).

(4) Reasonable use review criteria. An applicant for relief from strict application of these standards shall demonstrate that all of the following criteria are met:

- (A) No reasonable use with less impact on the critical area and its buffer is possible.
- (B) There is no feasible and reasonable on-site alternative to the activities proposed, considering possible changes in site layout, reductions in density and similar factors, that would allow a reasonable and economically viable use with fewer adverse impacts;

Comment [NS23]: AHBL Comment: Randy - Take a look at the revisions we made to the entire exception section to see if you concerns are addressed.

Randy Lewis emailed comments of 12/10/2015: I like the changes that have been made from the previous draft but I still have a concern in the potential application of this section.

The past practice of applying reasonable use exemptions, either in the shoreline jurisdiction or through SEPA in wetland areas has consisted of a two tiered evaluation. First, was the proposed use reasonable based on factors such as being an allowed use and compliance with established land use requirements. Once that was determined then the second standard was applied which was basically the same as subsection (4) (B). If an applicant came in with an application for a single family residence in a residential zone then the reasonable use was pretty much determined. The second test was applied to see if the design and site plan demonstrated that impacts to critical areas were minimized to the fullest extent possible. The City did not get into making a determination on whether there was an alternative use than what was proposed, but as I read this that is what will occur.

I am not as concerned what the City will decide, but what a 3rd party might try to do with it. If I have a home on a lot and you have a vacant lot next to mine, especially if your lot is between mine and a view, then I would argue that there is an alternative reasonable use to allowing you to build a residence that impacted a buffer area and that would be an open space or maybe a park. That sounds lik... [1]

Comment [BM24]: AHBL Comment: The 'Flexibility in Environmental Regulation' web page on MRSC's website (<http://mrsc.org/Home/Explore-Topics/Environment/Special-Topics/Flexibility-in-Environmental-Regulation.aspx>) was reviewed and the other city and county examples of reasonable use exemption chapters were reviewed.

Source for revisions to this chapter to address Randy's comments was primarily the City of Auburn Chapter 16.10.150 Critical Areas, Reasonable Use Provisions. It seemed to address Randy's concerns the best.

WMC 15.34.130(4)(g) was left in to address the relationship with other code requirements.

The definition of 'reasonable use' was added to the definitions section.

Comment [BM25]: AHBL Comment: An amendment will need to be made to WMC 2.26.010 to add the following:

"10) Matters prescribed by the city of Westport critical areas ordinance, Chapter 15.12 WMC;"

Question for the City: Is there a section of the code that describes the procedures for a public hearing?

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- (C) The proposed activities, as conditioned, will result in the minimum possible impacts to affected critical areas;
- (D) All reasonable mitigation measures have been implemented or assured;
- (E) The inability to derive reasonable use is not the result of the applicant's actions or that of a previous property owner, such as by segregating or dividing the property and creating an undevelopable condition;
- (F) The applicant shall demonstrate that the use would not cause a hazard to life, health, or property; and

~~(A)(G)~~ The proposal is consistent with other applicable regulations and standards.

(5) 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 has to be made on the application.

(6) Other permits and approvals. Approval of a reasonable use exception shall not eliminate the need for any other permit or approval otherwise required for a proposal by applicable city codes.

(7) If granted, a reasonable use exception shall be valid for a period of two years, with a one year extension possible.

~~(3)~~(8) When a variance is required. Except when application of this chapter would prohibit a development proposal by a public agency or utility or deny all reasonable use of a site, an applicant who seeks an exception from the regulations of the chapter shall pursue a variance as provided in WMC 17.44.

Comment [NS26]: ABL Comment: This has been updated from the set of criteria in the state's model ordinance provided to the city in a previous draft. This may address the concerns that Randy Lewis wrote in his email about "reasonable use" issues.

Comment [BM27]: ABL Comment: This should address Randy's concerns that the use be permitted or conditioned under the applicable zoning district.

Article III: Best Available Science.

15.34.140 Best available science.

- (1) Critical area reports and decisions to alter critical areas shall rely on BAS to protect the functions and values of critical areas and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish, such as salmon and bull trout, and their habitat.
- (2) Herrera Environmental Consultants prepared a Summary of Best Available Science report (Herrera, 2015) for the city, which included a synthesis of BAS current as of the date of the final report which is consistent with criteria established in WAC 365-195-900 through 365-195-925.

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- (3) Where there is an absence of valid scientific information or incomplete scientific information relating to a critical area, leading to uncertainty about the risk to critical area function of permitting an alteration of or impact to the critical area, the city shall:
- (A) Take a precautionary or a no-risk approach that strictly limits development activities until the uncertainty is sufficiently resolved; and
 - (B) Require an effective adaptive management program that relies on scientific methods to evaluate how well regulatory and non-regulatory actions protect the critical area.

Article IV: Allowed Activities.

15.34.150 Allowed activities.

- (1) Critical area report. Activities allowed under this chapter shall have been reviewed and permitted or approved by the city or other agency with jurisdiction. The administrator may apply conditions to the underlying permit or approval to ensure that the allowed activity is consistent with the provisions of this chapter to protect critical areas.
- (2) Required use of BMPs. All allowed activities shall be conducted using the BMPs, adopted pursuant to the Stormwater Manual for Western Washington, current edition, prepared by Washington State Department of Ecology (Ecology), that result in the least amount of impact to the critical areas. BMPs shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The city shall observe the use of BMPs to ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense.
- (3) Allowed activities. The following activities are allowed:
- (A) Permit requests subsequent to previous critical area review. Development permits and approvals that involve both permit approvals and construction approvals if all of the following conditions have been met:
 - (i) The provisions of this chapter have been previously addressed as part of another approval;
 - (ii) There have been no material changes in the potential impact to the critical area or buffer since the prior review;
 - (iii) There is no new information available that is applicable to any critical area review of the site or particular critical area;

Comment [NS28]: AHBL Comment: Allowed activities are similar to exemptions in that they do not require critical area review. However, unlike exemptions, allowed activities must follow the critical areas standards. Conditions may be applied to the underlying permit, such as the building permit, to ensure critical area protection.

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- (iv) The permit or approval has not expired or, if no expiration date, no more than five years has elapsed since the issuance of that permit or approval; and
 - (v) Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured.
- (B) Modification to existing structures. Structural modification of, addition to, or replacement of an existing legally constructed structure that does not further alter or increase the impact to the critical area or buffer and there is no increased risk to life or property as a result of the proposed modification or replacement, provided that restoration of structures substantially damaged by fire, flood, or act of nature must be initiated within one year of the date of such damage, as evidenced by the issuance of a valid building permit, and diligently pursued to completion;
- (C) Activities within the improved right-of-way. Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a city authorized private roadway except those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater; subject to the following:
- (i) Critical area and/or buffer widths shall be increased, where possible, equal to the width of the right-of-way improvement, including disturbed areas; and
 - (ii) Retention and replanting of native vegetation shall occur wherever possible along the right-of-way improvement and resulting disturbance;
 - (iii) All impacts shall be fully mitigated.
- (D) Minor utility projects. Utility projects which have minor or short-duration impacts to critical areas, as determined by the administrator in accordance with the criteria below, and which do not significantly impact the function or values of a critical area, if such projects are constructed with BMPs and additional restoration measures are provided. Minor activities shall not result in the transport of sediment or increased stormwater. Such allowed minor utility projects shall meet the following criteria:
- (i) There is no practical alternative to the proposed activity with less impact on critical areas;
 - (ii) The activity involves the placement of a utility pole, street signs, anchor, or vault or other small component of a utility facility; and
 - (iii) The activity involves disturbance of an area less than seventy-five (75) square feet.

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- (E) Public and private pedestrian trails. Public and private pedestrian trails, except in wetlands, fish and wildlife habitat conservation areas, or their buffers, subject to the following:
- (i) The trail surface shall meet all other requirements including water quality standards set forth in the Stormwater Manual for Western Washington, current edition, prepared by Ecology;
 - (ii) Critical area and/or buffer widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas; and
 - (iii) Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report; and
 - (iv) All impacts are fully mitigated.
- (F) Select vegetation removal activities. The following vegetation removal activities, provided that no vegetation shall be removed from a critical area or its buffer without approval from the administrator:
- (i) The removal of the following vegetation with hand labor and light equipment:
 - (a) Invasive and noxious weeds;
 - (b) English Ivy (*Hedera helix*);
 - (c) Himalayan blackberry (*Rubus discolor*, *R. procerus*); and
 - (d) Evergreen blackberry (*Rubus laciniatus*).
 - (ii) The removal of trees from critical areas and buffers that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property, provided that:
 - (a) The applicant submits a report from a certified arborist, registered landscape architect, or professional forester that documents the hazard and provides a replanting schedule for the replacement trees;
 - (b) Tree cutting shall be limited to pruning and crown thinning, unless otherwise justified by a qualified professional. Where pruning or crown thinning is not sufficient to address the hazard, trees should be removed or converted to wildlife snags;

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- (c) All vegetation cut (tree stems, branches, etc.) shall be left within the critical area or buffer unless removal is warranted due to the potential for disease or pest transmittal to other healthy vegetation;
 - (d) The landowner shall replace any trees that are removed with new trees at a ratio of two replacement trees for each tree removed (2:1) within one (1) year in accordance with an approved restoration plan. Replacement trees may be planted at a nearby location if it can be determined that planting in the same location would create a new hazard or potentially damage the critical area. Replacement trees shall be species that are native and indigenous to the site and a minimum of one (1) inch in diameter-at-breast height for deciduous trees and a minimum of six (6) feet in height for evergreen trees as measured from the top of the root ball;
 - (e) If a tree to be removed provides critical habitat, such as an eagle perch, a qualified wildlife biologist shall be consulted to determine timing and methods or removal that will minimize impacts; and
 - (f) Hazard trees determined to pose an imminent threat or danger to public health or safety, to public or private property, or of serious environmental degradation may be removed or pruned by the landowner prior to receiving written approval from city. Within fourteen (14) days following such action, the landowner shall submit a restoration plan that demonstrates compliance with the provisions of this chapter.
- (iii) Measures to control a fire or halt the spread of disease or damaging insects conducted or directed by a governmental agency consistent with the state Forest Practices Act; Chapter 76.09 RCW, provided that the removed vegetation shall be replaced in-kind or with similar native species within one (1) year in accordance with an approved restoration plan; and
- (iv) Unless otherwise provided, or as a necessary part of an approved alteration, removal of any vegetation or woody debris from a habitat conservation area or wetland shall be prohibited;
- (G) Chemical applications. The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary, as approved by the city, provided that their use shall be restricted in accordance with Washington State Department of Fish and Wildlife (WDFW) Management Recommendations and the regulations of Washington State Department of Agriculture and the EPA;

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- (H) Minor site investigative work. Work necessary for permit submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored; and
- (I) Navigational aids and boundary markers. Construction or modification of navigational aids and boundary markers.

Article V: Critical Areas Project Review Process.

15.34.160 General requirements.

- (1) As part of this review, the city shall:
 - (A) Verify the information submitted by the applicant;
 - (B) Evaluate the project area and vicinity for critical areas;
 - (C) Determine whether the proposed project is likely to impact the functions or values of critical areas; and
 - (D) Determine if the proposed project adequately addresses the impacts and avoids impacts to the critical area associated with the project.
- (2) If the proposed project is within, adjacent to, or is likely to impact a critical area, the city shall:
 - (A) Require a critical area report from the applicant that has been prepared by a qualified professional;
 - (B) Review and evaluate the critical area report;
 - (C) Determine whether the development proposal conforms to the purposes and performance standards of this chapter, including the review criteria in WMC 15.34.350;
 - (D) Assess the potential impacts to the critical area and determine if they can be avoided or minimized; and
 - ~~(E)~~ Determine if any mitigation proposed by the applicant is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of this chapter.

(E)

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15.34.165 -Review process overview.

Figure 15.34-2 provides a basic overview of the review process.

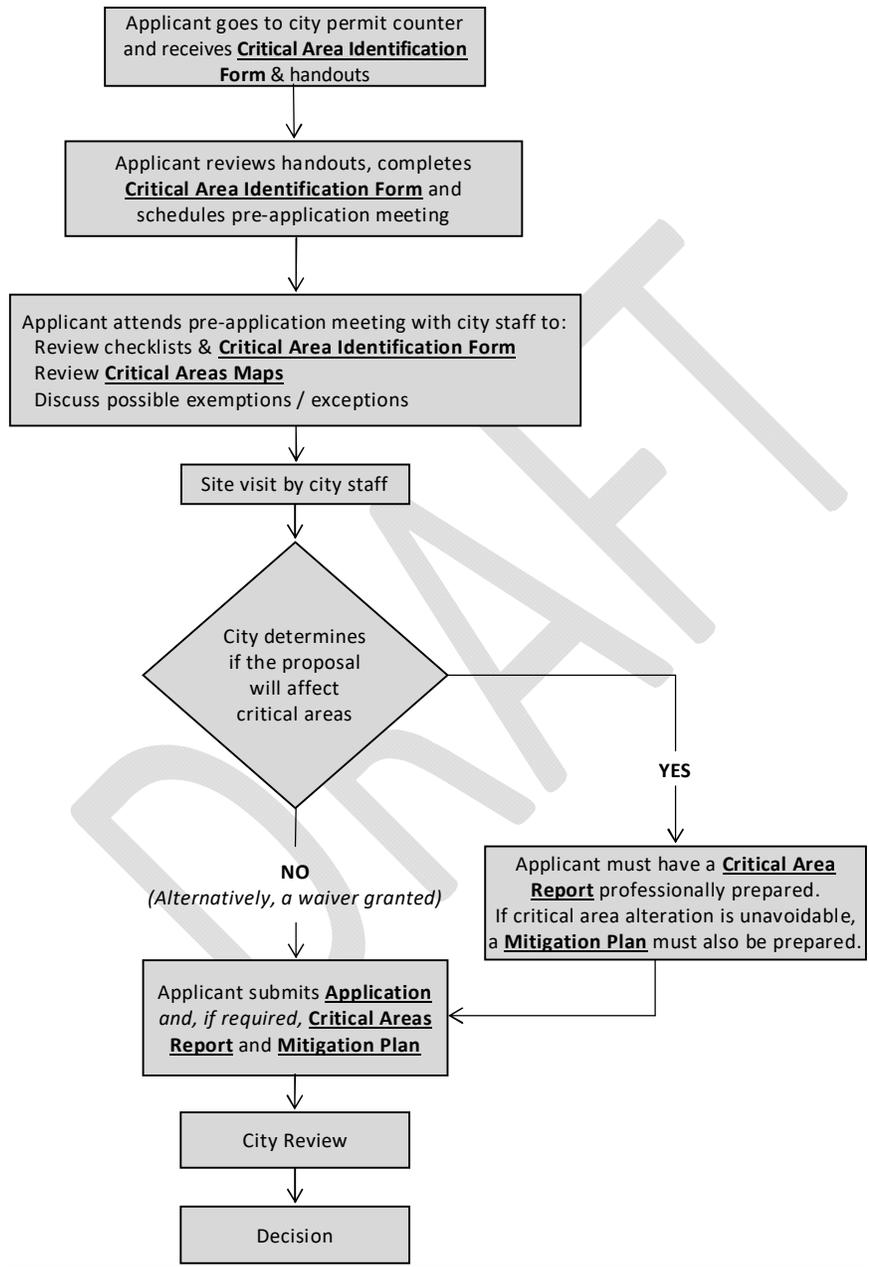
Comment [NS29]: AHBL Comment: Randy Lewis: As you get into the standards and report requirements it is very hard to keep in mind that you may be reading some very complex requirements that aren't applicable. It strikes me this would really benefit by putting together a step by step flow chart or similar tool with references to the applicable sections that would help someone walk through the process. It would help them to stop at the appropriate place if they really didn't need to go any farther. It would also help staff communicate better to citizens.

AHBL Comment: Added flowchart at staff request.

DRAFT

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Figure 15.34-2: Review process flowchart.



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15.34.170 Critical area pre-application consultation.

Any person preparing to submit an application for development or use of land that may be regulated by the provisions of this chapter shall conduct a consultation meeting with the administrator prior to submitting an application for development or other approval. At this meeting, the administrator shall discuss the requirements of this chapter; provide critical area maps, scientific information, and other source materials; outline the review process; and work with the activity proponent to identify any potential concerns that might arise during the review process, in addition to discussing other permit procedures and requirements.

15.34.180 Critical area identification form.

- (1) Submittal. Prior to the city's consideration of any proposed activity not found to be exempt the applicant shall submit to the administrator a complete critical area identification form provided by the city.
- (2) Site Inspection. Upon receipt of a project application and a critical area identification form, the administrator shall conduct a site inspection to review critical area conditions on site. The administrator shall notify the property owner of the inspection prior to the site visit. The property owner shall provide reasonable access to the site for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period.
- (3) Critical area identification form review process. The administrator shall review the critical area identification form, conduct a site inspection, and review other information available pertaining to the site and the proposal and make a determination as to whether any critical areas may be affected by the proposal and if a more detailed critical area report shall be submitted.
 - (A) Decision indicators. The administrator may use the following indicators to assist in determining the need for a critical area report:
 - (i) Indication of a critical area on the city critical areas maps that may be impacted by the proposed activity;
 - (ii) Information and scientific opinions from appropriate agencies, including but not limited to Ecology, WDFW, and Washington State Department of Natural Resources (WDNR);
 - (iii) Documentation, from a scientific or other reasonable source, of the possible presence of a critical area; or

Comment [BM30]: AHBL Question for City: Do these exist or will they be created?

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(iv) A finding by a qualified professional or a reasonable belief by the administrator that a critical area may exist on or adjacent to the site of the proposed activity.

(4) Decision on identification form.

(i) No critical areas present. If after a site visit the administrator's analysis indicates that the project area is not within or adjacent to a critical area or buffer and that the proposed activity is unlikely to degrade the functions or values of a critical area, then the administrator shall rule that the critical area review is complete. The administrator shall note on the identification form the reasons that no further review is required. A summary of this information shall be included in any decision on the underlying permit.

(ii) Critical areas present, but no impact – waiver. If the administrator determines there are critical areas within or adjacent to the project area, but, after consultation with a qualified professional hired by the city, that the BAS shows that the proposed activity is unlikely to degrade the functions or values of the critical area, the administrator may waive the requirement for a critical area report. A waiver may be granted if there is substantial evidence that all of the following requirements will be met:

(a) There will be no alteration of the critical area or buffer;

(b) The development proposal will not impact the critical area in a manner contrary to the purpose, intent, and requirements of this chapter; and

(c) The proposal is consistent with other applicable regulations and standards.

A summary of this analysis and the findings shall be included in any decision on the underlying permit.

(iii) Critical areas may be affected by proposal. If the administrator determines that a critical area or areas may be affected by the proposal, then the administrator shall notify the applicant that a critical area report must be submitted prior to further review of the project, and indicate each of the critical area types that should be addressed in the report.

(5) Administrator's determination subject to reconsideration. A determination regarding the apparent absence of one or more critical areas by the administrator 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.

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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.

15.34.190 Public notice of initial determination.

- (1) The city shall notify the public of proposals.
 - (A) If the administrator determines that no critical area report is necessary, the city shall state the reasons for this determination in the notice of application issued by the city for the proposal.
 - (B) If the administrator determines that the proposed project is unlikely to impact critical areas on the site and the project has been granted a waiver from the requirement to complete a critical area report, then a summary of the analysis and findings for this decision shall be stated in the notice of application for the proposal.
 - (C) If the administrator determines that critical areas may be affected by the proposal and a critical area report is required, public notice of the application shall include a description of the critical area that might be affected and state that a critical area report is required.

Article VI: Critical Areas Report.

15.34.200 Critical area report – requirements.

- (1) Preparation by qualified professional. If required by the administrator in accordance with WMC 15.34.300, the applicant shall submit a critical area report prepared by a qualified professional as defined herein.
- (2) Incorporating of BAS. The critical area report shall use scientifically valid methods and studies in the analysis of critical area data and field reconnaissance and reference the source of science used. The critical area report shall evaluate the proposal and all probable impacts to critical areas in accordance with the provisions of this chapter.
- (3) Minimum report contents. At a minimum, the report shall contain the following [items](#). [In the event the following items have been addressed in reports or permit applications required by other agencies, the administrator may accept the permit or study from another agency in whole or part as meeting the requirements below.](#)
 - (A) The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;

Comment [NS31]: AHBL Comment: Added per the following:

From email 11/24/2015 -
Brad: If other agency permits are required, the City may require that the applicant in their critical areas studies only address those concerns in its CAO that are not already addressed by the reports prepared for other agencies.

Randy Lewis: This should be added to and made clear in the CAO. I would take it to the point that the administrator may accept a study/report for another permitting agency if he feels it meets the intent and requirements of the CAO.

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- (B) A copy of the site plan for the development proposal including:
- (i) A vicinity map;
 - (ii) A map to scale depicting delineated and surveyed critical areas, required buffers including buffers for off-site critical areas that extend onto the project site, the development proposal, any areas to be cleared and areas of proposed impacts to critical areas and/or buffers (include square footage estimates); and
 - (iii) A depiction of the proposed stormwater management facilities and outlets (to scale) for the development, including estimated areas of intrusion into the buffers of any critical areas. The written report shall contain a discussion of the potential impacts to the wetland(s) associated with anticipated hydroperiod alterations from the project.
 - (a) The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
 - (b) Identification and characterization of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area; and
 - (c) A statement specifying the accuracy of the report, and all assumptions made and relied upon;
 - (iv) An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;
 - (v) An analysis of site development alternatives including a no development alternative;
 - (vi) A description of reasonable efforts made to apply mitigation sequencing pursuant to WMC 15.34.230 to avoid, minimize, and mitigate impacts to critical areas;
 - (vii) Plans for adequate mitigation, as needed, to offset any impacts, in accordance with WMC 15.34.240, including, but not limited to:
 - (a) The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and
 - (b) The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment;
 - (viii) A discussion of the performance standards applicable to the critical area and proposed activity;
 - (ix) Financial guarantees to ensure compliance; and

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- (x) Any additional information required for the critical area as specified in the corresponding chapter of this chapter.
- (4) Unless otherwise provided, a critical area report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the administrator.

15.34.210 Critical area report – modifications to requirements.

- (1) Limitations to study area. The administrator may limit the required geographic area of the critical area report as appropriate if:
 - (A) The applicant, with assistance from the city, cannot obtain permission to access properties adjacent to the project area; or
 - (B) The proposed activity will affect only a limited part of the subject site.
- (2) Modifications to required contents. The applicant may consult with the administrator prior to or during preparation of the critical area report to obtain city approval of modifications to the required contents of the report where, in the judgment of a qualified professional, more or less information is required to address the potential critical area impacts and required mitigation adequately.
- (3) Additional information requirements. The administrator may require additional information to be included in the critical area report when determined to be necessary to the review of the proposed activity in accordance with this chapter. Additional information that may be required, includes, but is not limited to:
 - (A) Historical data, including original and subsequent mapping, aerial photographs, data compilations and summaries, and available reports and records relating to the site or past operations at the site;
 - (B) Grading and drainage plans; and
 - (C) Information specific to the type, location, and nature of the critical area.

15.34.220 Mitigation requirements.

- (1) The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas. Unless otherwise provided in this chapter, if alteration to the critical area is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a development proposal shall be mitigated using BAS in accordance with an approved critical

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area report and SEPA documents, to result in no net loss of critical area functions and values.

- (2) Mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.
- (3) Mitigation shall not be implemented until after city approval of a critical area report, which includes a mitigation plan, and mitigation shall be in accordance with the provisions of the approved critical area report.

15.34.230 Mitigation sequencing.

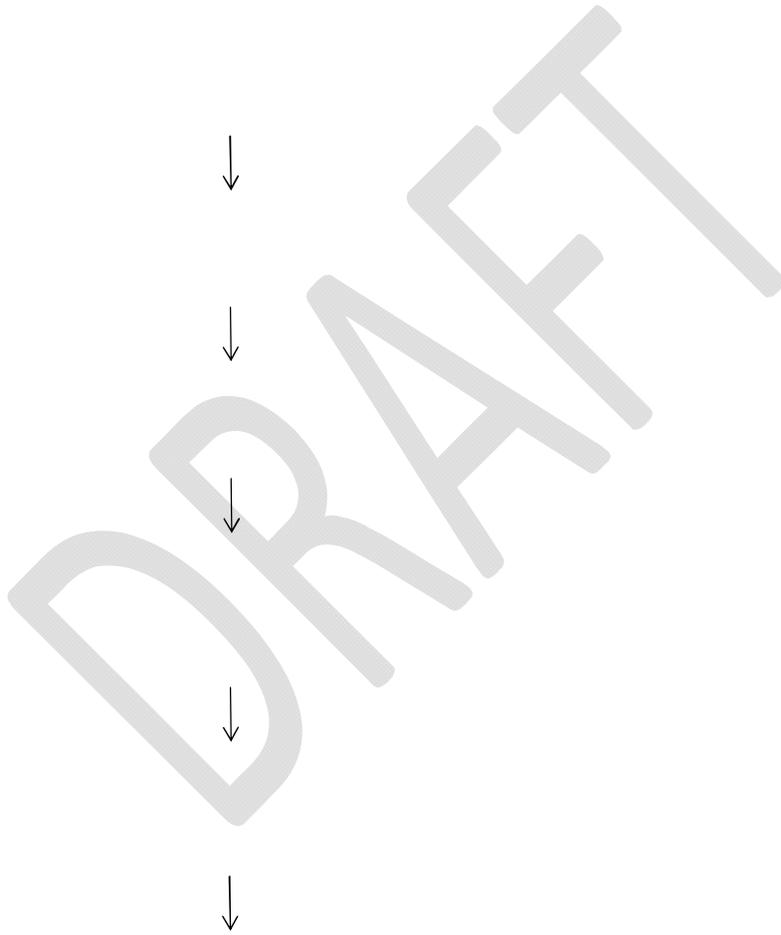
(1) Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following sequential order of preference, [as shown in Figure 15.34-3](#):

- (A) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (B) Minimizing impacts by limiting the degree or magnitude of the 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;
- (C) Rectifying the impact to wetlands, CARAs, frequently flooded areas, and habitat conservation areas by repairing, rehabilitating, existing at the time of the initiation of the project;
- (D) Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;
- (E) Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
- (F) Compensating for the impact to wetlands, CARAs, frequently flooded areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
- (G) Monitoring the hazard or other required mitigation and taking remedial action when necessary.

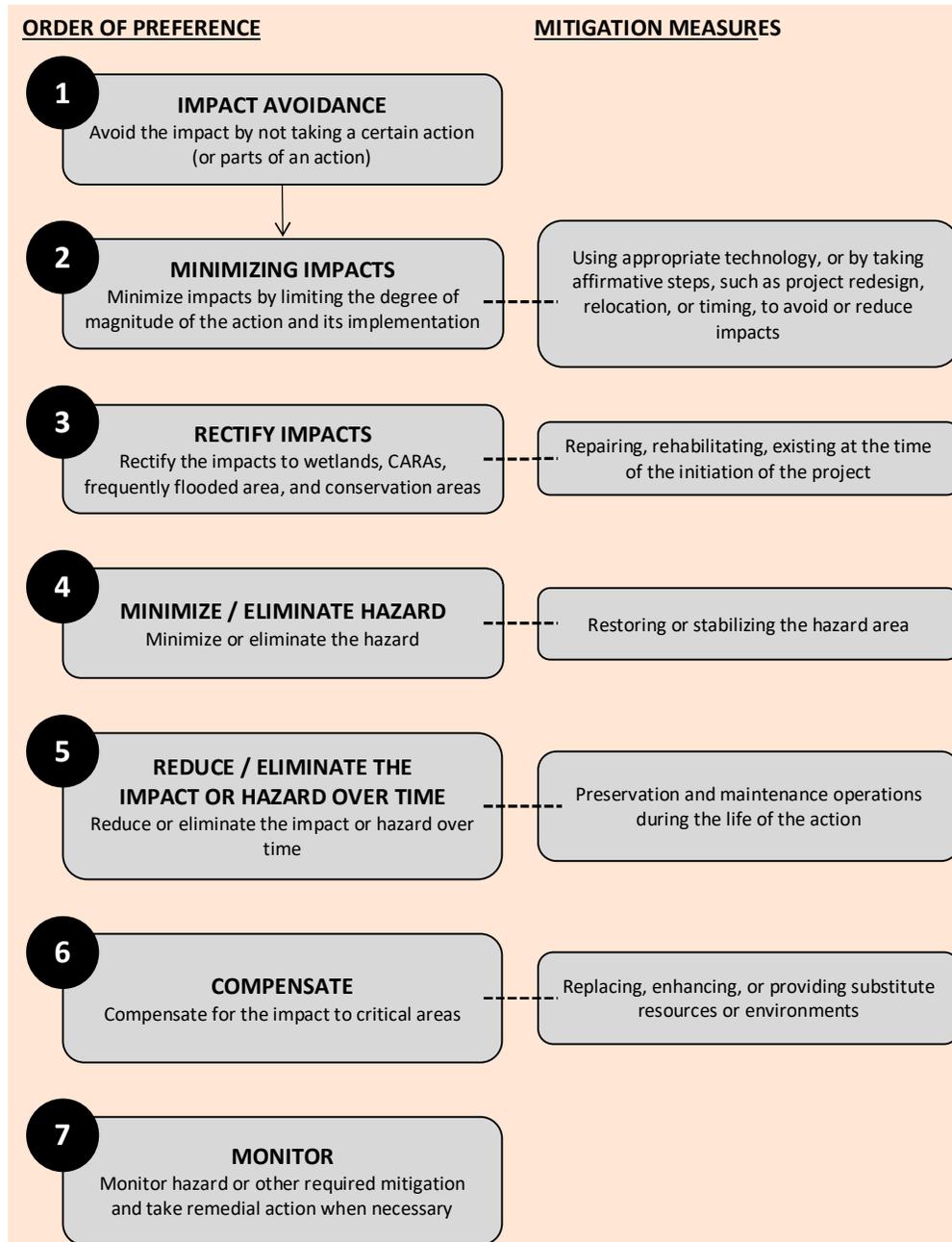
(2) Mitigation for individual actions may include a combination of the above measures.

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Figure 15.34-3: Mitigation sequencing flowchart.



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Comment [BM32]: ABL Comment: Added flowchart at staff request.

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15.34.240 Mitigation plan requirements.

- (1) When mitigation is required, the applicant shall submit for approval by city a mitigation plan as part of the critical area report. The mitigation plan shall include:
- (A) Environmental goals and objectives. The mitigation plan shall include a written report identifying environmental goals and objectives of the compensation proposed and including:
 - (i) A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area;
 - (ii) A review of the BAS supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed; and
 - (iii) An analysis of the likelihood of success of the compensation project.
 - (B) Performance standards. The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of this chapter have been met.
 - (C) Detailed construction plans. The mitigation plan shall include written specifications and descriptions of the mitigation proposed, such as:
 - (i) The proposed construction sequence, timing, and duration;
 - (ii) Grading and excavation details;
 - (iii) Erosion and sediment control features;
 - (iv) A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
 - (v) Measures to protect and maintain plants until established.

These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated outcome.

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- (D) Monitoring program. The mitigation plan shall include a program for monitoring construction of the compensation project and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring, and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation 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.
- (E) Contingency plan. The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.
- (F) Financial guarantees. The mitigation plan shall include financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures shall be posted in accordance with WMC 15.34.400.

15.34.250 Innovative mitigation.

- (1) The city may encourage, facilitate, and approve innovative mitigation projects that are based on the BAS. Advance mitigation or mitigation banking are examples of alternative mitigation projects allowed under the provisions of this section wherein one or more applicants, or an organization with demonstrated capability, may undertake a mitigation project together if it is demonstrated that all of the following circumstances exist:
 - (A) Creation or enhancement of a larger system of critical areas and open space is preferable to the preservation of many individual habitat areas;
 - (B) The group demonstrates the organizational and fiscal capability to act cooperatively;
 - (C) The group demonstrates that long-term management of the habitat area will be provided; and
 - (D) There is a clear potential for success of the proposed mitigation at the identified mitigation site.

(2) Conducting mitigation as part of a cooperative process does not reduce or eliminate the required replacement ratios.

(2)(3) [Chapter 173-700 WAC and Chapter 90.84 RCW provide state rules and laws on wetland mitigation banks.](#)

Comment [NS33]: AHBL Comment: .Erik (Herrera) suggested that the CAO reference the state law for wetland banks state rules (per 11/23 phone call with AHBL)

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Article VII: Determination Process.

15.34.280 Determination.

The administrator shall make a determination as to whether the proposed activity and mitigation, if any, is consistent with the provisions of this chapter. The administrator's determination shall be based on the review criteria in WMC 15.34.290.

15.34.290 Review Criteria.

- (1) Any alteration to a critical area, unless otherwise provided for in this chapter, shall be reviewed and approved, approved with conditions, or denied based on the proposal's ability to comply with all of the following criteria:
 - (A) The proposal minimizes the impact on critical areas in accordance with WMC 15.34.230;
 - (B) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
 - (C) The proposal is consistent with the general purposes of this chapter and the public interest;
 - (D) Any alterations permitted to the critical area are mitigated in accordance with WMC 15.34.220;
 - (E) The proposal protects the critical area functions and values consistent with the BAS and results in no net loss of critical area functions and values; and
 - (F) The proposal is consistent with other applicable regulations and standards.
- (2) The city may condition the proposed activity as necessary to mitigate impacts to critical areas and to conform to the standards required by this chapter.
- (3) Except as provided for by this chapter, any project that cannot adequately mitigate its impacts to critical areas in the sequencing order of preferences in WMC 15.34.230 shall be denied.

15.34.300 Favorable determination.

- (1) If the administrator determines the proposed activity meets the criteria in WMC 15.34.290 and complies with the applicable provisions of this chapter, the administrator shall prepare a written notice of determination and identify any required conditions of approval. The notice of determination and conditions of approval shall be included in the project file and be considered in the next phase of the city's review of the proposed activity in accordance with any other applicable codes or regulations.

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- (2) Any conditions of approval included in a notice of determination shall be attached to the underlying permit or approval. Any subsequent changes to the conditions of approval shall void the previous determination pending re-review of the proposal and conditions of approval by the administrator.
- (3) A favorable determination should not be construed as endorsement or approval of any underlying permit or approval.

15.34.310 Unfavorable determination.

- (1) If the administrator determines that a proposed activity does not adequately mitigate its impacts on the critical areas and/or does not comply with the criteria in WMC 15.34.290 and the provisions of this chapter, the administrator shall prepare written notice of the determination that includes findings of noncompliance.
- (2) No proposed activity or permit shall be approved or issued if it is determined that the proposed activity does not adequately mitigate its impacts on the critical areas and/or does not comply with the provisions of this chapter.
- (3) Following notice of determination that the proposed activity does not meet the review criteria and/or does not comply with the applicable provisions of this chapter, the applicant may request consideration of a revised critical area report. If the revision is found to be substantial and relevant to the critical area review, the administrator may reopen the critical area review and make a new determination based on the revised report.

15.34.320 Completion of the critical area review.

The city's determination regarding critical areas pursuant to this chapter shall be final concurrent with the final decision to approve, condition, or deny the development proposal or other activity involved.

15.34.330 Appeals.

Any decision to approve, condition, or deny a development proposal or other activity based on the requirements of this chapter may be appealed according to the appeal procedure found in WMC 17.52.

Article VIII: Unauthorized Alterations and Enforcement.

15.34.340 Unauthorized alterations and enforcement.

- (1) Unauthorized critical area alterations and enforcement.

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- (A) When a critical area or its buffer has been altered in violation of this chapter, all ongoing development work shall stop and the critical area shall be restored. The city shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation, or replacement measures at the owner's or other responsible party's expense to compensate for violation of provisions of this chapter.
- (B) Requirement for restoration plan. All development work shall remain stopped until a restoration plan is prepared and approved by city. Such a plan shall be prepared by a qualified professional using BAS and shall describe how the actions proposed meet the minimum requirements described in WMC 15.34.340(1)(C). The administrator shall seek expert advice in determining the adequacy of the plan at the violator's expense. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.
- (C) Minimum performance standards for restoration.
- (i) For alterations to CARAs, frequently flooded areas, wetlands, and 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:
- (a) The historic structural and functional values shall be restored, including water quality and habitat functions;
- (b) The historic soil types and configuration shall be replicated;
- (c) The critical area and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities. The historic functions and values should be replicated at the location of the alteration; and
- (d) Information demonstrating compliance with the requirements in WMC 15.34.240 shall be submitted to the administrator.
- (ii) For alterations to flood and geological hazards, 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:
- (a) The hazard shall be reduced to a level equal to, or less than, the pre-development hazard;

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- (b) Any risk of personal injury resulting from the alteration shall be eliminated or minimized; and
- (c) The hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.
- (D) Site investigations. The administrator is authorized to make site inspections and take such actions as are necessary to enforce this chapter. The administrator shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.
- (E) Penalties. Any person, party, firm, corporation, or other legal entity convicted of violating any of the provisions of this chapter shall be penalized under the provisions of WMC 17.56.

Article IX: General Critical Area Protective Measures.

15.34.350 Critical area markers and signs.

- (1) Temporary markers. The outer perimeter of the critical area buffer and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary “clearing limits” fencing in such a way as to ensure that unauthorized intrusion will not occur. The marking is subject to inspection by the administrator prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.
- (2) [Fencing](#). Fencing installed as part of a proposed activity or as required in WMC 15.34.350, shall be designed not to interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.
- (3) Permanent signs. As a condition of any permit or authorization issued pursuant to this chapter, the administrator may require the applicant to install permanent signs along the boundary of a critical area or buffer.
- (4) [Permanent signs – specifications](#). Permanent signs shall be made of an enamel-coated metal face and attached to a metal post or another non-treated material of equal durability. Signs must be posted at an interval of one (1) per lot or every fifty (50) feet, whichever is less, and must be maintained by the property owner in perpetuity. The signs shall be worded as follows or with alternative language approved by the administrator:

Protected Area

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Do Not Disturb

Contact the city of Westport

Regarding Uses, Restrictions, and Opportunities for Stewardship

- (5) The provisions of WMC 15.34.350(1) may be modified as necessary to assure protection of sensitive features or wildlife.

15.34.360 Notice on title.

- (1) In order to inform subsequent purchasers of real property of the existence of critical areas, the owner of any property containing a critical area or buffer on which a development proposal is submitted shall file a notice with the Grays Harbor County Auditor according to the direction of the city. The notice shall state the presence of the critical area or buffer on the property, the application of this chapter to the property, and the fact that limitations on actions in or affecting the critical area or buffer may exist. The notice shall “run with the land.”
- (2) This notice on title shall not be required for a development proposal by a public agency or public or private utility:
- (A) Within a recorded easement or right-of-way;
 - (B) Where the agency or utility has been adjudicated the right to an easement or right-of-way; or
 - (C) On the site of a permanent public facility.
- (3) The applicant shall submit proof that the notice has been filed for public record before the city approves any permit.

15.34.370 Native growth protection areas.

- (1) Unless otherwise required in this chapter, native growth protection areas (NGPAs) shall be used in development proposals for long subdivisions, short subdivisions, master plan developments, and binding site plans to delineate and protect those contiguous critical areas and buffers listed below:
- (A) All landslide hazard areas and buffers;
 - (B) All wetlands and buffers;
 - (C) All habitat conservation areas; and
 - (D) All other lands to be protected from alterations as conditioned by project approval.
- (2) NGPAs shall be recorded on all documents of title of record for all affected lots.

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- (3) NGPAs shall be designated on the face of the plat or in a recorded drawing in a format approved by the City Attorney. The designation shall include the following restrictions:
- (A) An assurance that native vegetation will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and
 - (B) The right of the city to enforce the terms of the restriction.

15.34.380 Critical area tracts.

- (1) Critical area tracts shall be used in development proposals in the for long subdivisions, short subdivisions, master plan developments, and binding site plans to delineate and protect those contiguous critical areas and buffers listed below that total five thousand (5,000) or more square feet:
- (A) All landslide hazard areas and buffers;
 - (B) All wetlands and buffers;
 - (C) All habitat conservation areas; and
 - (D) All other lands to be protected from alterations as conditioned by project approval.
- (2) Critical area tracts shall be recorded on all documents of title of record for all affected lots.
- (3) Critical area tracts shall be designated on the face of the plat or recorded as a drawing in a format approved by the city attorney. The designation shall include the following restriction:
- (A) An assurance that native vegetation will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and
 - (B) The right of the city to enforce the terms of the restriction.
- (4) The city may require that any required critical area tract be dedicated to the city, held in an undivided interest by each owner of a building lot within the development with the ownership interest passing with the ownership of the lot, or held by an incorporated homeowner's association or other legal entity.

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15.34.390 Building setbacks.

- (1) Unless otherwise provided, buildings and other structures shall be set back a distance of fifteen feet from the edges of all critical area buffers or from the edges of all critical areas, if no buffers are required. The following may be allowed in the building setback area:
 - (A) Landscaping;
 - (B) Uncovered decks;
 - (C) Building overhangs, if such overhangs do not extend more than eighteen (18) inches into the setback area; and
 - (D) Impervious ground surfaces, such as driveways and patios, if such improvements are subject to water quality regulations as adopted in the Stormwater Manual for Western Washington, current edition, prepared by Ecology.

Comment [BM34]: AHBL Comment:
Throughout the CAO we reference the Stormwater Manual for Western Washington, current edition, prepared by Ecology.

Area for Discussion with City: We will need to discuss further with the City how this will work with the City not having an adopted SWM.

15.34.400 Bonds to ensure mitigation, maintenance, and monitoring.

- (1) When mitigation required pursuant to a development proposal is not completed prior to the city final permit approval, such as final plat approval or final building inspection, the city shall require the applicant to post a performance bond or other security in a form and amount deemed acceptable by the city. If the development proposal is subject to mitigation, the applicant shall post a mitigation bond or other security in a form and amount deemed acceptable by the city to ensure mitigation is fully functional.
- (2) The bond shall be for one-hundred and twenty-five (125) percent of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater.
- (3) The bond shall be in the form of a surety bond, performance bond, assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the city attorney.
- (4) Bonds or other security authorized by this section shall remain in effect until the city determines, in writing, that the standards bonded for have been met. Bonds or other security shall be held by the city for a minimum of five (5) years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.
- (5) Depletion, failure, or collection of bond funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.

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- (6) Public development proposals shall be relieved from having to comply with the bonding requirements of this section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.
- (7) Any failure to satisfy critical area requirements that were 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. The city may demand payment of any financial guarantees or require other action authorized by the city code or any other law.
- (8) Any funds recovered pursuant to this section shall be used to complete the required mitigation.

15.34.410 Critical area inspections.

Reasonable access to the site shall be provided to the city, state, and federal agency review staff for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period.

Article X: Wetlands.

15.34.500 Purpose.

- (1) The purpose of this chapter includes the following:
 - (A) Recognize and protect the beneficial functions performed by many wetlands, which include, but are not limited to, providing food, breeding, nesting and/or rearing habitat for fish and wildlife; recharging and discharging ground water; storing storm and flood waters to reduce flooding and erosion; and improving water quality through biofiltration, adsorption, and retention and transformation of sediments, nutrients, and toxicants.
 - (B) Regulate land use to avoid adverse effects on wetlands and maintain the functions and values of wetlands throughout the city.
 - (C) Establish review procedures for development proposals in and adjacent to wetlands.

15.34.510 Wetland identification and delineation.

- (1) Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. All areas the city meeting the wetland designation criteria

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in that procedure are designated critical areas and are subject to the provisions of this chapter.

- (2) Wetland delineations are valid for five years; after such date, the city shall determine whether a revision or additional assessment is necessary.

15.34.520 Wetland rating.

- (1) Wetlands shall be rated in accordance with Washington State Wetland Rating System for Western Washington: 2014 Update, 2014, Ecology Publication No. 14-06-029, as revised and approved by Ecology, which contains the definitions and methods for determining whether the criteria below are met.

- (A) Category I wetlands. Category I wetlands are those that 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; or 4) provide a high level of functions. Category I wetlands are those wetlands of exceptional value in terms of protecting water quality, storing flood and storm water, and/or providing habitat for wildlife as indicated by their special characteristics and/or a total rating system score of 23 to 27 points or more on the Ecology rating forms. These wetland communities of infrequent occurrence often provide documented habitat for sensitive, threatened or endangered species, and/or have other attributes that are very difficult or impossible to replace if altered.
- (B) Category II wetlands. Category II wetlands are difficult, though not impossible, to replace, and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but still need a relatively high level of protection. Category II wetlands have significant value based on their function as indicated by their special characteristic and/or a total rating system score of between 20 and 22 points on the Ecology rating forms. They do not meet the criteria for Category I rating but occur infrequently and have qualities that are difficult to replace if altered.
- (C) Category III wetlands. Category III wetlands are 1) wetlands with a moderate level of functions (scores between 16-19 points), 2) can often be adequately replaced with a well-planned mitigation project, and 3) interdunal wetlands between one tenth (0.1) and one (1) acre in size. Wetlands scoring between 16-19 points generally have been disturbed in some ways, and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.
- (D) Category IV wetlands. Category IV wetlands have the lowest levels of functions (scores fewer than 16 points) and are often heavily disturbed. These wetlands may be able to

Comment [NS35]: AHB Comment: In addition, per Herrera BAS report, need to update WMC 17.32.065(5)(B)(i) to remove the exemption for wetlands 500 square feet or less.

The City will need to address amending or deleting WMC 17.32 as part of the SMP update adoption process.

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replaces and in some cases improves. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and need to be protected. They typically have vegetation of similar age and class, lack special habitat features, and/or are isolated or disconnected from other aquatic systems or high quality upland habitats.

- (2) Wetland rating categories shall not change due to illegal modifications made by the applicant or with the applicant's knowledge.

15.34.530 Regulated activities.

- (1) For any regulated activity, a critical areas report for wetlands as defined in WMC 15.34.560 may be required by the administrator to support the requested activity.
- (2) The following activities are regulated if they occur in a regulated wetland or its buffer:
- (A) The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind.
 - (B) The dumping of, discharging of, or filling with any material.
 - (C) The draining, flooding, or disturbing of the water level or water table.
 - (D) Pile driving.
 - (E) The placing of obstructions.
 - (F) The construction, reconstruction, demolition, or expansion of any structure.
 - (G) The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland.
 - (H) Class IV - General Forest Practices" under the authority of the 1992 Washington State Forest Practices Act Rules and Regulations, WAC 222-12-030, or as thereafter amended.
 - (I) Activities that result in:
 - (i) A significant change of water temperature;
 - (ii) A significant change of physical or chemical characteristics of the sources of water to the wetland;
 - (iii) A significant change in the quantity, timing, or duration of the water entering the wetland; or
 - (iv) The introduction of pollutants.

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- (3) The subdivision or short subdivision of land in wetlands and associated buffers are subject to the following:
- (A) Land that is located wholly within a wetland or its buffer may not be subdivided.
 - (B) Land that is located partially within a wetland or its buffer may be subdivided provided that an accessible and contiguous portion of each new lot is:
 - (i) Located outside of the wetland and its buffer; and
 - (ii) It meets the minimum lot size requirements of Title 17 WMC.

15.34.540 Exemptions and allowed uses in wetlands.

- (1) The following wetlands are exempt from the buffer provisions contained in this section and the normal mitigation sequencing process in WMC 15.34.230. These wetlands may be filled if impacts are fully mitigated based on provisions in WMC 15.34.570. In order to verify the following conditions, a critical area report for wetlands meeting the requirements in WMC 15.34.560 must be submitted.
- (A) All isolated Category III and IV wetlands less than one thousand (1,000) square feet that:
 - (i) Are not associated with riparian areas or buffers;
 - (ii) Are not part of a wetland mosaic; and
 - (iii) Do not contain habitat identified as essential for local populations of priority species identified by the WDFW or species of local importance identified in WMC 15.34.910.
- (2) The activities listed below are allowed in wetlands. These activities do not require submission of a critical area report, except where such activities result in a loss of the functions and values of a wetland or wetland buffer. These activities include:
- (A) Conservation or preservation of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or functions of the existing wetland.
 - (B) The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.
 - (C) Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer, if the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the

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ground water connection to the wetland or percolation of surface water down through the soil column will be disturbed.

- (D) Enhancement of a wetland through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. All removed plant material shall be taken away from the site and disposed of appropriately. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.
- (E) Educational and scientific research activities.
- (F) Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, if the maintenance or repair does not expand the footprint of the facility or improved right-of-way.

15.34.550 Wetland buffers.

- (1) A wetland buffer that separates a wetland from a development is required. The purpose of the buffer is to mitigate adverse impacts of development activities and future use on the wetland. The width and character of buffers shall be as necessary to protect the identified functions and values of the wetland from impacts associated with the specific type and character of the proposed development activities and use of the property in accordance with the BAS.
- (2) The standard wetland buffer widths in Table 15.34-1: Wetland Buffer Requirements have been established in accordance with the BAS. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington state wetland rating system for western Washington.
 - (A) The use of the standard buffer widths requires the implementation of the measures in Table 15.34-2: Required Measures to Minimize Impacts to Wetlands, where applicable, to minimize the impacts of the adjacent land uses.
 - (B) If an applicant chooses not to apply the mitigation measures in Table 15.34-2: Required Measures to Minimize Impacts to Wetlands, then a thirty-three (33) percent increase in the width of all buffers is required. For example, a seventy-five (75) foot buffer with the mitigation measures would be a one hundred (100) foot buffer without them.

Comment [NS36]: AHBL Comment: Per the Herrera BAS report, they recommend to separate the buffer averaging regulation from the wetland mitigation regulations in WMC 17.32.065 (Current SMP) as buffer averaging is not a mitigation measure.

The City will need to address amending or deleting WMC 17.32 as part of the SMP update adoption process.

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- (C) The standard buffer widths assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should be planted to create the appropriate plant community, or the buffer should be widened to ensure that adequate functions of the buffer are provided.
- (D) Additional buffer widths are added to the standard buffer widths. For example, a Category I wetland scoring 8 points for habitat function would require a buffer of two hundred and twenty-five (225) feet (75 feet (Standard Buffer) + 150 feet (Additional Buffer Width if Wetland Scores 8-9 Habitat Points)).

Table 15.34-1: Wetland Buffer Requirements

Wetland Category	Standard Buffer Width (3-4 Habitat Points)	Additional Buffer Width if Wetland Scores 5 Habitat Points	Additional Buffer Width if Wetland Scores 6-7 Habitat Points	Additional Buffer Width if Wetland Scores 8-9 Habitat Points
Category I:				
Based on total score	75 feet	Add 30 feet	Add 90 feet	Add 150 feet
Interdunal	N/A	N/A	N/A	225 feet
Forested	75 feet	Add 30 feet	Add 90 feet	Add 150 feet
Estuarine	150 feet (habitat scores not applicable)			
Category II:				
Based on score	75 feet	Add 30 feet	Add 90 feet	Add 150 feet
Interdunal Wetlands	110 feet		N/A	N/A
Category III:				
Based on score	60 feet	Add 45 feet	Add 105 feet	Add 165 feet
Interdunal wetlands	60 feet	N/A	N/A	N/A
Category IV (all)	40 feet (habitat scores not applicable)			

Comment [NS37]: AHBL Comment: Herrera (based on phone call with Brad): It may be possible to remove specific types of wetlands that may not be present in the City (such as Category 1: Bogs and Wetlands of High Conservation Values or Category 1: Coastal Lagoons), but the buffers expansions determined by habitat value are based on the actual wetland rating forms required to be used as part of the delineation process. Therefore, eliminating the higher end of habitat scores in the CAO does not mean that they would go away during the delineation process.

Randy Lewis (email 11/24/2015): I would recommend this be done.

Response: AHBL Removed the two types of the Category I wetlands not found in the city (Bogs and Wetlands of High Conservation Value and Coastal Lagoons). The high end of habitat scores were not removed per Herrera input.

Comment [NS38]: AHBL Comment: Randy Lewis (emailed comments of 12/10/2015): "I agree with the note that indicates that wetland categories that do not exist in the City can (should) be eliminated from Table 15.34-1 and any other tables (15.34-3?) and sections that reference them to avoid confusion."

Comment [NS39]: AHBL Comment: "Bogs" is now deleted from table 15.34-3. I did not see any other references to bogs and wetlands of high conservation value or coastal lagoons that would cause confusion.

Table 15.34-2: Required Measures to Minimize Impacts to Wetlands

Disturbance	Required Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> Direct lights away from wetland
Noise	<ul style="list-style-type: none"> Locate activity that generates noise away from wetland

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Disturbance	Required Measures to Minimize Impacts
	<ul style="list-style-type: none"> • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional ten (10) feet of heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
Toxic runoff	<ul style="list-style-type: none"> • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within one hundred and fifty (150) feet of wetland • Apply integrated pest management
Stormwater runoff	<ul style="list-style-type: none"> • Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use Low Intensity Development techniques
Change in water regime	<ul style="list-style-type: none"> • Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	<ul style="list-style-type: none"> • Use privacy fencing or plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion • Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	<ul style="list-style-type: none"> • Use BMPs to control dust
Disruption of corridors or connections	<ul style="list-style-type: none"> • Maintain connections to offsite areas that are undisturbed • Restore corridors or connections to offsite habitats by replanting

Note:

Measures are required, where applicable to a specific proposal

(E) Increased wetland buffer area width. Buffer widths shall be increased on a case-by-case basis as determined by the administrator when a larger wetland buffer is necessary to protect wetland functions and values. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the wetland. The documentation must include but not be limited to the following criteria:

- (i) The wetland is used by a plant or animal species listed by the federal government or the state as endangered, threatened, candidate, sensitive, monitored or

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- documented priority species or habitats, or essential or outstanding habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
- (ii) The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or
 - (iii) The adjacent land has minimal vegetative cover or slopes greater than thirty (30) percent.
- (F) Buffer averaging to improve wetland protection may be permitted when all of the following conditions are met:
- (i) The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a “dual-rated” wetland with a Category I area adjacent to a lower-rated area;
 - (ii) The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas report from a qualified wetland professional;
 - (iii) The total area of the buffer after averaging is equal to the area required without averaging; and
 - (iv) The buffer at its narrowest point is never less than either seventy-five (75) percent of the required width or seventy-five (75) feet for Category I and II, fifty (50) feet for Category III, and twenty-five (25) feet for Category IV, whichever is greater.
- (G) Averaging to allow reasonable use of a parcel may be permitted when all of the following are met:
- (i) There are no feasible alternatives to the site design that could be accomplished without buffer averaging;
 - (ii) The averaged buffer will not result in degradation of the wetland’s functions and values as demonstrated by a critical areas report from a qualified wetland professional;
 - (iii) The total buffer area after averaging is equal to the area required without averaging; and

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(iv) The buffer at its narrowest point is never less than either seventy-five (75) percent of the required width or seventy-five (75) feet for Category I and II, fifty (50) feet for Category III, and twenty-five (25) feet for Category IV, whichever is greater.

(H) Where an interrupted buffer exists, the minimum buffer width may be reduced to the edge of the isolating road, structure, or grade separation, if that portion of the buffer sought to be reduced:

(i) Does not provide additional protection to the proposed development or the critical area; and

(ii) Does not perform any biological, geological, or hydrological buffer functions to undisturbed portions of the critical area or its buffer.

(3) Measurement of wetland buffers. All wetland buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers will be considered. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers or included in buffer area calculations.

(4) Buffers on mitigation sites. All mitigation sites shall have buffers consistent with the buffer requirements of this Section. Buffers shall be based on the expected or target category of the proposed wetland mitigation site.

(5) Buffer maintenance. Except as otherwise specified, or allowed in accordance with this Section, wetland buffers shall be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive non-native weeds is required for the duration of the mitigation bond.

(6) Impacts to buffers. Requirements for the compensation for impacts to buffers are outlined in WMC 15.34.570.

(7) Overlapping critical area buffers. If buffers for two contiguous critical areas overlap, such as buffers for a wetland and landslide hazard area, the wider buffer applies.

(8) Allowed wetland buffer uses. The following uses may be allowed within a wetland buffer in accordance with the review procedures of this Section, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the wetland buffer and adjacent wetland:

(A) Conservation and restoration activities. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.

Comment [NS40]: AHBL Comment: Per Herrera: we should look at "interrupted buffers." In a recent example in Long Beach, it was found consistent with Ecology guidance that if the buffers for an interdunal wetland crossed a developed roadway, then the wetland-side of that roadway establishes the edge of the buffer and the buffer does not cross the road.

Response: This section on "interrupted buffers" and the definition in the definition section has been added. Source: Long Beach 2010 CAO. Long Beach used the term "functionally isolated buffers"

Comment [NS41]: AHBL Comment: Randy Lewis emailed comments 12/10/15: I agree with the language added to address interrupted buffers

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- (B) Passive recreation. Passive recreation facilities designed and in accordance with an approved critical area report, including:
 - (i) Walkways and trails provided that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five (25) percent of the wetland buffer area, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five (5) feet in width for pedestrian use only. Raised boardwalks utilizing non-treated pilings may be acceptable.
 - (ii) Wildlife-viewing structures.
- (C) Educational and scientific research activities.
- (D) Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, if the maintenance or repair does not increase the footprint or use of the facility or right-of-way.
- (E) The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.
- (F) Drilling for utilities/utility corridors under a buffer, with entrance/exit portals located completely outside of the wetland buffer boundary, if the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column is disturbed.
- (G) Enhancement of a wetland buffer through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal. All removed plant material shall be taken away from the site and disposed of properly. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.
- (H) Stormwater management facilities. Stormwater management facilities are limited to stormwater dispersion outfalls and bioswales. Stormwater management facilities are not allowed in buffers of Category I or II wetlands. They may be allowed within the outer twenty-five (25) percent of the buffer of Category III or IV wetlands only, provided that:

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- (i) No other location is feasible; and
 - (ii) The location of such facilities will not degrade the functions or values of the wetland.
- (l) Non-conforming uses. Repair and maintenance of non-conforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity.

15.34.560 Critical area report for wetlands.

- (1) Preparation by a qualified professional. A wetland critical area report shall be prepared by a qualified professional.
- (2) Minimum standards for wetland reports. A wetland report consists of a written report and accompanying plan sheets:
- (A) In addition to the requirements of WMC 15.34.200, a wetlands report shall include at a minimum:
- (i) Identification of all the local, state, and/or federal wetland-related permit(s) required for the project.
 - (ii) Documentation of any fieldwork performed on the site, including field data sheets for delineations, rating system forms, baseline hydrologic data, etc.
 - (iii) A description of the methodologies used to conduct the wetland delineations, rating system forms, or impact analyses including references.
 - (iv) Identification and characterization of all critical areas, wetlands, water bodies, shorelines, floodplains, and buffers on or adjacent to the proposed project area. For areas off site of the project site, estimate conditions within three hundred (300) feet of the project boundaries using the best available information.
 - (v) For each wetland identified on site and within three hundred (300) feet of the project site the following needs to provide:
 - (a) The wetland rating, including a description of and score for each function, per WMC 15.34.520;
 - (b) Required buffers; hydrogeomorphic classification; wetland acreage based on a professional survey from the field delineation (acres for on-site portion and entire wetland area including off-site portions);
 - (c) Cowardin classification of vegetation communities;
 - (d) Habitat elements;

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- (e) Soil conditions based on site assessment and/or soil survey information; and
- (f) Hydrologic information to the extent possible such as location and condition of inlet/outlets (if they can be legally accessed), estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g., algal mats, drift lines, flood debris, etc.).
- (g) Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site.
- (vi) A description of the proposed actions, including an estimation of acreages of impacts to wetlands and buffers based on the field delineation and survey.
- (vii) A discussion of measures, including avoidance, minimization, and compensation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land-use activity.
- (viii) A conservation strategy for habitat and native vegetation that addresses methods to protect and enhance on-site habitat and wetland functions.
- (ix) An evaluation of the functions of the wetland and adjacent buffer that includes reference for the method used and data sheets.

15.34.570 Mitigation requirements.

- (1) Mitigation Sequencing. Before impacting any wetland or its buffer, an applicant shall demonstrate that the actions listed in WMC 15.34.570(4) have been taken.
- (2) Requirements for Compensatory Mitigation:
 - (A) Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans--Version 1, (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington) (Publication #09-06-32, Olympia, WA, December 2009).
 - (B) Mitigation ratios shall be consistent with WMC 15.34.570(10).
- (3) Compensating for Lost or Affected Functions. Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except when either:

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- (A) The lost wetland provides minimal functions, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington state watershed assessment plan or protocol; or
 - (B) Out-of-kind replacement of wetland type or functions will best meet watershed goals formally identified by the city, such as replacement of historically diminished wetland types.
- (4) Preference of mitigation actions. Mitigation for lost or diminished wetland and buffer functions shall rely on the types below in the following order of preference:
- (A) Restoration (re-establishment and rehabilitation) of wetlands:
 - (i) The goal of re-establishment is returning natural or historic functions to a former wetland. Re-establishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.
 - (ii) The goal of rehabilitation is repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.
 - (B) Creation (establishment) of wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of non-native species. Establishment results in a gain in wetland acres. This should be attempted only when there is an adequate source of water and it can be shown that the surface and subsurface hydrologic regime is conducive to the wetland community that is anticipated in the design.
 - (i) If a site is not available for wetland restoration to compensate for expected wetland and/or buffer impacts, the approval authority may authorize creation of a wetland and buffer upon demonstration by the applicant's qualified wetland scientist that:
 - (a) The hydrology and soil conditions at the proposed mitigation site are conducive for sustaining the proposed wetland and that creation of a wetland at the site will not likely cause hydrologic problems elsewhere;
 - (b) The proposed mitigation site does not contain invasive plants or noxious weeds or that such vegetation will be completely eradicated at the site;
 - (c) Adjacent land uses and site conditions do not jeopardize the viability of the proposed wetland and buffer (e.g., due to the presence of invasive plants or noxious weeds, stormwater runoff, noise, light, or other impacts); and

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- (d) The proposed wetland and buffer will eventually be self-sustaining with little or no long-term maintenance.
- (C) Enhancement of significantly degraded wetlands in combination with restoration or creation. Enhancement should be part of a mitigation package that includes replacing the altered area and meeting appropriate ratio requirements. Enhancement is undertaken for specified purposes such as water quality improvement, floodwater retention, or wildlife habitat. Enhancement alone will result in a loss of wetland acreage and is less effective at replacing the functions lost. Applicants proposing to enhance wetlands or associated buffers shall demonstrate:
 - (i) How the proposed enhancement will increase the wetland's/buffer's functions;
 - (ii) How this increase in function will adequately compensate for the impacts; and
 - (iii) How all other existing wetland functions at the mitigation site will be protected.
- (D) Preservation. Preservation of high quality, at-risk wetlands as compensation is generally acceptable when done in combination with restoration, creation, or enhancement, if a minimum of 1:1 acreage replacement is provided by re-establishment or creation. Ratios for preservation in combination with other forms of mitigation generally range from 10:1 to 20:1, as determined on a case-by-case basis, depending on the quality of the wetlands being altered and the quality of the wetlands being preserved.
- (E) Preservation of high quality at-risk wetlands and habitat may be considered as the sole means of compensation for wetland impacts when the following criteria are met:
 - (i) The area proposed for preservation is of high quality. The following features may be indicative of high-quality sites:
 - (a) Category I or II wetland rating (using the wetland rating system for western Washington)
 - (b) Rare wetland type (for example, bogs, mature forested wetlands, estuarine wetlands)
 - (c) The presence of habitat for priority or locally important wildlife species.
 - (d) Priority sites in an adopted watershed plan.
 - (ii) Wetland impacts will not have a significant adverse impact on habitat for listed fish, or other Endangered Species Act (ESA) listed species.
 - (iii) There is no net loss of ecological or habitat functions within the watershed or basin.

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- (iv) Mitigation ratios for preservation as the sole means of mitigation shall generally start at 20:1. Specific ratios should depend upon the significance of the preservation project and the quality of the wetland resources lost.
- (v) Permanent preservation of the wetland and buffer will be provided through a conservation easement or a tract held by a land trust.
- (vi) The impact area is small (generally < one-half (½) acre) and/or impacts are occurring to a low-functioning system (Category III or IV wetland).

All preservation sites shall include buffer areas adequate to protect the habitat and its functions from encroachment and degradation.

(5) Location of compensatory mitigation. Compensatory mitigation actions shall be conducted within the same sub-drainage basin and on the site of the alteration except when all of WMC 15.34.570(5)(A) through WMC 15.34.570(5)(D) below applies. In that case, mitigation may be allowed off-site within the subwatershed of the impact site. When considering off-site mitigation, preference should be given to using alternative mitigation, such as a mitigation bank or advanced mitigation.

- (A) There are no reasonable opportunities on site or within the sub-drainage basin (e.g., on-site options would require elimination of high-functioning upland habitat), or opportunities on site or within the sub-drainage basin do not have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts. Considerations should include: anticipated replacement ratios for wetland mitigation, buffer conditions and proposed widths, available water to maintain anticipated hydrogeomorphic classes of wetlands when restored, proposed flood storage capacity, and potential to mitigate wildlife impacts (such as connectivity).
- (B) On-site mitigation would require elimination of high-quality upland habitat.
- (C) Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the altered wetland.
- (D) Off-site locations shall be in the same sub-drainage basin unless:
 - (i) Established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the city and strongly justify location of mitigation at another site; or
 - (ii) Credits from a state-certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the certified bank instrument.

(6) Compensatory mitigation project design. The design for the compensatory mitigation project needs to be appropriate for its location (i.e., position in the landscape). Therefore,

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compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland. An atypical wetland refers to a compensation wetland (e.g., created or enhanced) that does not match the type of existing wetland that would be found in the geomorphic setting of the site (i.e., the water source(s) and hydroperiod proposed for the mitigation site are not typical for the geomorphic setting). Likewise, it should not provide exaggerated morphology or require a berm or other engineered structures to hold back water. For example, excavating a permanently inundated pond in an existing seasonally saturated or inundated wetland is one example of an enhancement project that could result in an atypical wetland. Another example would be excavating depressions in an existing wetland on a slope, which would require the construction of berms to hold the water.

- (7) Timing of compensatory mitigation. It is preferred that compensatory mitigation projects be completed prior to activities that will disturb wetlands. At the least, compensatory mitigation shall be completed immediately following disturbance and prior to use or occupancy of the action or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.
- (A) The administrator may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a written explanation from a qualified wetland professional as to the rationale for the delay. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, or general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the compensatory mitigation plan. The justification must be verified and approved by the city.
- (8) Wetland mitigation ratios:

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Table 15.34-3: Wetland Mitigation Ratios¹

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

Comment [NS42]: AHBL Comment: Bogs are eliminated as this wetland category does not exist in the city.

Interdunal wetlands are not an option for enhancement per Wetlands in Washington State Appendix 8-C Volume 2 – Protecting and Managing Wetlands – Western Washington April 2005.

- (9) Compensatory mitigation plan. When a project involves wetland and/or buffer impacts, a compensatory mitigation plan prepared by a qualified professional shall be required, meeting the following minimum standards:
- (A) Wetland critical area report. A critical area report for wetlands must accompany or be included in the compensatory mitigation plan and include the minimum parameters described in WMC 15.34.560.
 - (B) Compensatory mitigation report. The report must include a written report and plan sheets that must contain, at a minimum, the following elements. Full guidance can be found in Wetland Mitigation in Washington State– Part 2: Developing Mitigation Plans (Version 1) (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised).
 - (i) The written report must contain, at a minimum:
 - (a) The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the compensatory mitigation report; a description of the proposal; a summary of the impacts and proposed compensation concept; identification of all the local, state, and/or

¹ Ratios for rehabilitation and enhancement may be reduced when combined with 1:1 replacement through creation or re-establishment. See Table 1a, *Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance--Version 1*, (Ecology Publication #06-06-011a, Olympia, WA, March 2006 or as revised).

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federal wetland-related permit(s) required for the project; and a vicinity map for the project.

- (b) Description of how the project design has been modified to avoid, minimize, or reduce adverse impacts to wetlands.
 - (c) Description of the existing wetland and buffer areas proposed to be altered. Include acreage (or square footage), water regime, vegetation, soils, landscape position, surrounding lands uses, and functions. Also, describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating, based on wetland ratings found in WMC 15.34.520.
 - (d) Description of the compensatory mitigation site, including location and rationale for selection. Include an assessment of existing conditions: acreage (or square footage) of wetlands and uplands, water regime, sources of water, vegetation, soils, landscape position, surrounding land uses, and functions. Estimate future conditions in this location if the compensation actions are not undertaken, such as how this site would progress through natural succession.
 - (e) A description of the proposed actions for compensation of wetland and upland areas affected by the project. Include overall goals of the proposed mitigation, including a description of the targeted functions, hydrogeomorphic classification, and categories of wetlands.
 - (f) A description of the proposed mitigation construction activities and timing of activities.
 - (g) A discussion of ongoing management practices that will protect wetlands after the project site has been developed, including proposed monitoring and maintenance programs for remaining wetlands and compensatory mitigation wetlands.
 - (h) A bond estimate for the entire compensatory mitigation project, including the following elements: site preparation, plant materials, construction materials, installation oversight, maintenance twice per year for up to five years, annual monitoring field work and reporting, and contingency actions for a maximum of the total required number of years for monitoring.
 - (i) Proof of establishment of notice on title for the wetlands and buffers on the project site, including the compensatory mitigation areas.
- (ii) The scaled plan sheets for the compensatory mitigation must contain, at a minimum:

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- (a) Surveyed edges of the existing wetland and buffers, proposed areas of wetland and/or buffer impacts, location of proposed wetland and/or buffer compensation actions.
 - (b) Existing topography, ground-profiled, at two (2) foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed to create the compensation area(s). Also existing cross-sections of on-site wetland areas that are proposed to be altered, and cross-section(s) (estimated one (1) foot intervals) for the proposed areas of wetland or buffer compensation.
 - (c) Surface and subsurface hydrologic conditions, including an analysis of existing and proposed hydrologic regimes for enhanced, created, or restored compensatory mitigation areas. Also, illustrations of how data for existing hydrologic conditions were used to determine the estimates of future hydrologic conditions.
 - (d) Conditions expected from the proposed actions on site, including future hydrogeomorphic types, vegetation community types by dominant species (wetland and upland), and future water regimes.
 - (e) Required wetland buffers for existing wetlands and proposed compensation areas. Also, identify any zones where buffers are proposed to be reduced or enlarged outside of the standards identified in this Section.
 - (f) A plant schedule for the compensation area, including all species by proposed community type and water regime, size and type of plant material to be installed, spacing of plants, typical clustering patterns, total number of each species by community type, timing of installation.
 - (g) Performance standards in terms of measurable standards reflective of years post-installation for upland and wetland communities, monitoring schedule, and maintenance schedule and actions by each biennium.
- (10) Buffer mitigation ratios. Impacts to buffers shall be mitigated at a 1:1 ratio. Compensatory buffer mitigation shall replace those buffer functions lost from development.
- (11) Protection of the mitigation site. The area where the mitigation occurred and any associated buffer shall be located in a critical area tract or a conservation easement.
- (12) Monitoring. Mitigation monitoring shall be required for a period necessary to establish that performance standards have been met, but not for a period less than five (5) years. If a scrub-shrub or forested vegetation community is proposed, monitoring may be required for ten (10) years or more. The project mitigation plan shall include monitoring elements

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that ensure certainty of success for the project’s natural resource values and functions. If the mitigation goals are not obtained within the initial five (5) year period, the applicant remains responsible for restoration of the natural resource values and functions until the mitigation goals agreed to in the mitigation plan are achieved.

(13) Wetland mitigation banks.

(A) Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

- (i) The bank is certified under state rules;
- (ii) The administrator determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
- (iii) The proposed use of credits is consistent with the terms and conditions of the certified bank instrument.

(B) Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument.

(C) Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the certified bank instrument. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

(D) [Chapter 173-700 WAC and Chapter 90.84 RCW provide state rules and laws on wetland mitigation banks.](#)

(14) Advance mitigation. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to federal rules, state policy on advance mitigation, and state water quality regulations.

(15) Alternative mitigation plans. The administrator may approve alternative critical areas mitigation plans that are based on BAS. Alternative mitigation proposals must provide an equivalent or better level of protection of critical area functions and values than would be provided by the strict application of this Section.

The administrator shall consider the following for approval of an alternative mitigation proposal:

(A) The proposal uses a watershed approach consistent with Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington) (Ecology Publication #09-06-32, Olympia, WA, December 2009).

Comment [NS43]: AHBL Comment: Erik (Herrera) suggested that the CAO reference the state law for wetland banks state rules (per 11/23 phone call with AHBL)

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- (B) Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas.
- (C) Mitigation according to WMC 15.34.570(5) is not feasible due to site constraints such as parcel size, stream type, wetland category, or geologic hazards.
- (D) There is clear potential for success of the proposed mitigation at the proposed mitigation site.
- (E) The plan shall contain clear and measurable standards for achieving compliance with the specific provisions of the plan. A monitoring plan shall meet the provisions in WMC 15.34.570(9) at a minimum.
- (F) The plan shall be reviewed and approved as part of overall approval of the proposed use.
- (G) A wetland of a different type is justified based on regional needs or functions and values; the replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative.
- (H) Mitigation guarantees shall meet the minimum requirements as outlined in WMC 15.34.570(9)(B)(i)(h).
- (I) Qualified professionals in each of the critical areas addressed shall prepare the plan.
- (J) The city may consult with agencies with expertise and jurisdiction over the resources during the review to assist with analysis and identification of appropriate performance measures that adequately safeguard critical areas.

Article XI: Critical Aquifer Recharge Areas

15.34.600 Designation, rating, and mapping.

- (1) CARAs designation. CARAs are those areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2). CARAs have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water. Additionally, CARAs in the city are potentially sensitive to saltwater intrusion, which results from over pumping. These areas include the following:
 - (A) Wellhead protection areas. Wellhead protection areas may be defined by the boundaries of the ten year time of ground water travel or boundaries established using alternate criteria approved by the Washington State Department of Health (WDOH) in

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those settings where ground water time of travel is not a reasonable delineation criterion, in accordance with WAC 246-290-135.

- (B) Sole source aquifers. Sole source aquifers are areas that have been designated by the EPA pursuant to the Federal Safe Water Drinking Act.
 - (C) Susceptible ground water management areas. Susceptible ground water management areas are areas that have been designated as moderately or highly vulnerable or susceptible in an adopted ground water management program developed pursuant to WAC 173-100.
 - (D) Special protection areas. Special protection areas are those areas defined by WAC 173-200-090.
 - (E) Moderately or highly vulnerable aquifer recharge areas. Aquifer recharge areas that are moderately or highly vulnerable to degradation or depletion because of hydrogeologic characteristics are those areas delineated by a hydrogeologic study prepared in accordance with Ecology guidelines.
 - (F) Moderately or highly susceptible aquifer recharge areas. Aquifer recharge areas moderately or highly susceptible to degradation or depletion because of hydrogeologic characteristics are those areas meeting the criteria established by Ecology.
- (2) Aquifer recharge area susceptibility ratings. Aquifer recharge areas shall be rated as having high, moderate, or low susceptibility based on soil permeability, geologic matrix, infiltration, and depth to water as determined by the criteria established by Ecology.
- (3) Mapping of CARAs.
- (A) The approximate location and extent of CARAs are shown on the adopted critical areas maps.
 - (B) These maps are to be used as a guide for the city, project applicants, and/or property owners and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.

15.34.610 Allowed activities.

- (1) Activities Allowed in CARAs. The following activities are allowed in CARAs pursuant to WMC 15.34.120 and do not require submission of a critical area report:
- (A) Construction of structures and improvements, including additions, resulting in less than five (5) percent or two thousand and five hundred (2,500) square feet, whichever is

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greater, total site impervious surface area that does not result in a change of use or increase the use of a hazardous substance.

- (B) Development and improvement of parks, recreation facilities, open space, or conservation areas resulting in less than five (5) percent total site impervious surface area that do not increase the use of a hazardous substance.
- (C) On-site domestic septic systems releasing less than fourteen thousand and five hundred (14,500) gallons of effluent per day and that are limited to a maximum density of one (1) system per one (1) acre.

15.34.620 Critical areas report - additional report requirements.

- (1) Critical Area Report – additional requirements for CARAs. In addition to the general critical area report requirements of WMC 15.34.200, critical area reports for CARAs must meet the requirements of this Section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.
 - (A) Preparation by a qualified professional. An aquifer recharge area critical area report shall be prepared by a qualified professional.
 - (B) Hydrogeologic assessment. For all proposed activities to be located in a CARA, a critical area report shall contain a level one (1) hydrogeological assessment. A level two (2) hydrogeologic assessment shall be required for any of the following proposed activities:
 - (i) Activities that result in five (5) percent or more impervious site area;
 - (ii) Activities that divert, alter, or reduce the flow of surface or ground waters, or otherwise reduce the recharging of the aquifer;
 - (iii) The use of hazardous substances, other than household chemicals used according to the directions specified on the packaging for domestic applications;
 - (iv) The use of injection wells, including on-site septic systems, except those domestic septic systems releasing less than fourteen thousand and five hundred (14,500) gallons of effluent per day and that are limited to a maximum density of one (1) system per one (1) acre; or
 - (v) Any other activity determined by the administrator likely to have an adverse impact on ground water quality or quantity or on the recharge of the aquifer.
 - (C) Level one hydrogeologic assessment. A level one hydrogeologic assessment shall include the following site- and proposal-related information at a minimum:

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- (i) Available information regarding geologic and hydrogeologic characteristics of the site including the surface location of all CARAs located on site or immediately adjacent to the site, and permeability of the unsaturated zone;
 - (ii) Ground water depth, flow direction, and gradient based on available information;
 - (iii) Currently available data on wells and springs within one thousand and three hundred (1,3,000) feet of the project area;
 - (iv) Location of other critical areas, including surface waters, within one thousand and three hundred (1,3,000) feet of the project area;
 - (v) Available historic water quality data for the area to be affected by the proposed activity; and
 - (vi) BMPs proposed to be utilized.
- (D) Level two hydrogeologic assessment. A level two hydrogeologic assessment shall include the following site- and proposal-related information at a minimum, in addition to the requirements for a level one hydrogeological assessment:
- (i) Historic water quality data for the area to be affected by the proposed activity compiled for at least the previous five year period;
 - (ii) Ground water monitoring plan provisions;
 - (iii) Discussion of the effects of the proposed project on the ground water quality and quantity, including:
 - (a) Predictive evaluation of ground water withdrawal effects on nearby wells and surface water features; and
 - (b) Predictive evaluation of contaminant transport based on potential releases to ground water; and
 - (iv) A spill plan that identifies equipment and/or structures that could fail, resulting in an impact. Spill plans shall include provisions for regular inspection, repair, and replacement of structures and equipment that could fail.

Comment [NS44]: AHBL Comment: Randy Lewis emailed comments of 12/10/15: Section 15.34.620 (1) (C) (iii) and (iv) on Page 76 - there is a discrepancy between the language and the numbers in parenthesis "one thousand and three hundred (13,000)".

AHBL Response: Correction made

15.34.630 Performance standards.

- (1) Performance standards – general requirements.
 - (A) Activities may only be permitted in a CARA if the applicant can show that the proposed activity will not cause contaminants to enter the aquifer and that the proposed activity will not adversely affect the recharging of the aquifer.

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- (B) The proposed activity must comply with the water source protection requirements and recommendations of the U.S. Environmental Protection Agency, WDOH, and the Grays Harbor County Public Health & Social Services Department.
 - (C) The proposed activity must be designed and constructed in accordance with Stormwater Manual for Western Washington, current edition, prepared by Ecology.
- (2) Performance standards – specific uses.
- (A) Storage tanks. All storage tanks proposed to be located in a CARA must comply with local building code requirements and must conform to the following requirements:
 - (i) Underground tanks. All new underground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:
 - (a) Prevent releases due to corrosion or structural failure for the operational life of the tank;
 - (b) Be protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substances; and
 - (c) Use material in the construction or lining of the tank that is compatible with the substance to be stored.
 - (ii) Aboveground tanks. All new aboveground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:
 - (a) Not allow the release of a hazardous substance to the ground, ground waters, or surface waters;
 - (b) Have a primary containment area enclosing or underlying the tank or part thereof; and
 - (c) A secondary containment system either built into the tank structure or a dike system built outside the tank for all tanks.
 - (B) Vehicle repair and servicing.
 - (i) Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a

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manner that protects them from weather and provides containment should leaks occur.

- (ii) No dry wells shall be allowed in CARAs on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by Ecology prior to commencement of the proposed activity.
- (C) Residential use of pesticides and nutrients. Application of household pesticides, herbicides, and fertilizers shall not exceed times and rates specified on the packaging.
- (D) Use of reclaimed water for surface percolation or direct recharge. Water reuse projects for reclaimed water must be in accordance with the adopted water or sewer comprehensive plans that have been approved by Ecology and WDOH.
 - (i) Use of reclaimed water for surface percolation must meet the ground water recharge criteria given in Chapter 90.46.080(1) and Chapter 90.46.010(10) RCW. Ecology may establish additional discharge limits in accordance with Chapter 90.46.080(2) RCW.
 - (ii) Direct injection must be in accordance with the standards developed by authority of Chapter 90.46.042 RCW.
- (E) State and federal regulations. The uses listed below shall be conditioned as necessary to protect CARAs in accordance with the applicable state and federal regulations.

Table 15.34-4: Statutes, Regulations, and Guidance Pertaining to Ground Water Impacting Activities

Activity	Statute – Regulation – Guidance
Above Ground Storage Tanks	Chapter 173-303-640 WAC
Animal Feedlots	Chapter 173-216 WAC, Chapter 173-220 WAC
Automobile Washers	Chapter 173-216 WAC, Best Management Practices for Vehicle and Equipment Discharges (Washington Department of Ecology WQ-R-95-56)
Below Ground Storage Tanks	Chapter 173-360 WAC
Chemical Treatment Storage and Disposal Facilities	Chapter 173-303-182 WAC
Hazardous Waste Generator (Boat Repair Shops, Biological Research Facility, Dry Cleaners, Furniture Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, etc.)	Chapter 173-303 WAC
Injection Wells	Federal 40 CFR Parts 144 and 146, Chapter

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

15.34.640 Prohibited uses

(1) Uses prohibited from CARAs. The following activities and uses are prohibited in CARAs:

- (A) Landfills. Landfills, including hazardous or dangerous waste, municipal solid waste, special waste, wood waste, and inert and demolition waste landfills;
- (B) Underground injection wells. Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells;
- (C) Mining.
 - (i) Metals and hard rock mining; and
 - (ii) Sand and gravel mining, prohibited from CARAs determined to be highly susceptible or vulnerable;
- (D) Wood treatment facilities. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);

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- (E) Storage, processing, or disposal of radioactive substances. Facilities that store, process, or dispose of radioactive substances; and
- (F) Other prohibited uses or activities.
 - (i) Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source;
 - (ii) Activities that would significantly reduce the recharge to aquifers that are a source of significant base flow to a regulated stream; and
 - (iii) Activities that are not connected to an available sanitary sewer system, prohibited from CARAs associated with sole source aquifers.

Article XII: Frequently Flooded Areas.

15.34.700 Applicability.

All development within the designated frequently flooded areas shall be managed in accordance with Chapter 15 WMC. The critical areas provisions related to the flood damage prevention of Ordinance No. 844, dated 1989 and Ordinance No. 1441, dated 2008 (WMC 15.12).

Article XIII: Geologically Hazardous Areas.

15.34.800 Purpose.

Geologically hazardous areas are characterized by lot slope, soil type, geologic material, and ground water which may combine to create problems with slope stability, erosion and water quality during and after construction or during natural events such as tsunamis, earthquakes or excessive rain-storms. The following regulations, in combination with the performance standards for development, will guide development in geologically hazardous areas. The purpose of these regulations is to maintain the natural integrity of hazardous areas and their buffers in order to protect adjacent lands from the impacts of landslides, subsidence, excessive erosion, and seismic events, and to safeguard the public from these threats to life or property. Construction in geologically hazardous areas should be avoided when the potential risk to public health and safety cannot be reduced to a level comparable to the risk if the site were stable.

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15.34.810 Designation, classification, and mapping.

(1) Designation of geologically hazardous areas. Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They 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 also may increase the hazard to surrounding development and use.

The entire city is susceptible to widespread and damaging effects of Cascadia event seismic and tsunami hazards. Aside from the Cascadia event scenario, the city is prone to four primary geological hazards. Areas in the city susceptible to one or more of these four primary geological hazards, which do not consider the extreme effects of a Cascadia event, shall be designated as a geologically hazardous area:

- (A) Erosion hazard;
- (B) Landslide hazard;
- (C) Seismic hazard;
- (D) Tsunami hazard;

(2) Designation of specific hazard areas.

- (A) Erosion hazard areas. Erosion hazard areas are those areas identified by the following:
 - (i) Any area containing soil or soil complexes described or mapped within the United States Department of Agriculture (USDA) Soil Conservation Service Soil Survey for Grays Harbor County as having a severe to very severe erosion hazard potential;
 - (ii) Areas susceptible to wind erosion (aeolian erosion) identified as having soil types of Dunelands, Netarts, fine sand, and Westport fine sand;
 - (iii) Areas subject to wave erosion identified as those properties within shorelands associated with the Pacific Ocean and Grays Harbor.
- (B) Landslide hazard areas. Landslide hazard areas are areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Examples of these may include the following:
 - (i) Areas of historic failures, such as:
 - (a) Those areas delineated by the USDA's Natural Resources Conservation Service as having a "severe" limitation for building site development;

Comment [BM45]: AHBL Comment: We looked at how does Long Beach or the Pacific County SMP update's critical areas regulations may address Cascadia events and found that we could not locate the Long Beach SMP.

In the current SMP draft for Pacific County (not yet adopted) there is no text on a Cascadia event, but there is a comment from a reviewer (CRCFA) that specifies "Crude Oil, petroleum products storage, and other toxic material facilities and MUST not be located in inundation areas that are predictable from historical inundations like the 1700 style tsunami triggered by a Cascadia Fault Earthquake of 8.0 or greater"

Comment [NS46]: AHBL Comment: Randy Lewis: The section on seismic and tsunami hazards needs to be expanded to differentiate between a Cascadia event and other local or distant events. It appears that the standards are really based on a Cascadia event which is projected to be 9+. Based on that the entire area is subject to inundation and extreme damage. In all other scenarios for earthquakes and tsunami events, there are areas that are basically unaffected. Construction to withstand the Cascadia event is not economically feasible.

Response: Text to differentiate has been added, as well as a definition on "Cascadia event"

Comment [NS47]: AHBL Comment: Randy Lewis emailed comments 12/10/15: Over all I like the additional language to 15.34.810 to eliminate the Cascadia event from the standard. The section references a number of different maps and products that can be used as reference but there isn't a definitive map or maps, similar to the jurisdiction map in the SMP that helps people to initially decide whether they are in a geologically hazardous area. I recommend that one or more maps be produced and referenced in this section that are similar in appearance to the figures in the BAS report that show the general location of the geologically hazardous areas designated in 15.34.810 (1) (A) through (D). A disclaimer can be included that these maps or figures are included purely for general reference.

Comment [NS48]: AHBL response: Agree it would be helpful to provide maps. However, the only map that has been produced is Figure 3, Landslides and Liquefaction Areas from the BAS report. There is no map in the report that shows Seismic hazards, Tsunami hazard, etc. However, DNR's website does provide interactive maps that can display some seismogenic features, landslides, liquefaction susceptibility, and tsunami inundation. Disclaimers are included (i.e. "The Seismogenic Features dataset is not a substitute for a site-specific investigation to assess the level of risk for any development project. It cannot be used to determine the presence or absence of faults beneath any specific locality ... [2]

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- (b) Those areas mapped by Ecology (Coastal Zone Atlas) or WDNR (slope stability mapping) as unstable (U or class 3), unstable old slides (UOS or class 4), or unstable recent slides (URS or class 5); or
 - (c) Areas designated as landslides on maps published by the United State Geological Survey or WDNR;
 - (d) Areas mapped in the Landslide and Liquefaction Maps for the Ocean Shores and Westport Peninsulas, Grays Harbor County, Washington: Effects on Tsunami Inundation Zones of a Cascadia Subduction Zone Earthquake by the Washington Division of Geology and Earth Resources Report of Investigations.
- (ii) Areas with all three of the following characteristics:
- (a) Slopes steeper than fifteen (15) percent;
 - (b) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
 - (c) Springs or ground water seepage.
- (iii) Areas potentially unstable because of rapid stormwater runoff, soil saturation, and undercutting by wave action;
- (iv) Any area with a slope of forty (40) percent or steeper and with a vertical relief of ten or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least ten feet of vertical relief.
- (C) Seismic hazard areas. [While a Cascadia event would likely cause expansive and extreme damage to the entire area, a non-Cascadia event would affect particular identified seismic hazard areas, which can be addressed through protective regulatory measures to safeguard the public.](#) Seismic hazard areas are areas subject to severe risk of damage because of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, or surface faulting. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington. The strength of ground shaking is primarily affected by:
- (i) The magnitude of an earthquake;
 - (ii) The distance from the source of an earthquake;
 - (iii) The type of thickness of geologic materials at the surface; and
 - (iv) The type of subsurface geologic structure.

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Settlement and soil liquefaction conditions occur in areas underlain by cohesionless, loose, or soft-saturated soils of low density, typically in association with a shallow ground water table.

- (D) Tsunami hazard areas. [While a Cascadia event would likely cause expansive and extreme damage to the entire area, a non-Cascadia event would affect particular identified tsunami hazard areas, which can be addressed through protective regulatory measures to safeguard the public.](#) Tsunami hazard areas are coastal areas susceptible to flooding and inundation as the result of excessive wave action derived from seismic or other geologic events.
- (E) Based on a review of BAS, the city has concluded that no areas of the city require regulation for protection from mine hazards or volcanic hazards.

~~(2)~~(3) Mapping of geologically hazardous areas.

- (A) The approximate location and extent of geologically hazardous areas are shown on the adopted critical area maps. The adopted critical areas maps include:
 - (i) Coastal Zone Atlas (for marine bluff hazards);
 - (ii) U.S. Geological Survey landslide hazard and seismic hazard maps;
 - (iii) WDNR seismic hazard maps for Western Washington, including Liquefaction Susceptibility Map of Grays Harbor County, Washington;
 - (iv) WDNR slope stability maps;
 - (v) National Oceanic and Atmospheric Administration tsunami hazard maps;
 - (vi) Federal Emergency Management Agency (FEMA) flood insurance maps;
 - (vii) Landslide and Liquefaction Maps for the Ocean Shores and Westport Peninsulas, Grays Harbor County, Washington;
 - (viii) Tsunami Hazard Map of the Southern Washington Coast by WDNR; and
 - (ix) Locally adopted maps.
- (B) These maps are to be used as a guide for the city, project applicants, and property owners and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.

15.34.820 Allowed activities.

Activities allowed in geologically hazardous areas. The following activities are allowed in geologically hazardous areas pursuant to WMC 15.34.120 and do not require submission of a critical area report:

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(1) Erosion and landslide hazard areas. Except as otherwise provided for in this chapter, only those activities approved and permitted consistent with an approved critical area report in accordance with this chapter shall be allowed in erosion or landslide hazard areas.

(2) Seismic hazard areas. The following activities are allowed within seismic hazard areas pursuant to WMC 15.34.120 and do not require submission of a critical area report:

(A) Construction of new buildings with less than 2,500 square feet of floor area or roof area, whichever is greater, and which are not residential structures or used as places of employment or public assembly;

(B) Additions to existing single-story residences that are 250 square feet or less; and

(C) Installation of fences.

~~(D)~~ Construction that does not require a permit from the city, such as patios, fire pits, or small sheds.

(3) Tsunami hazard areas. The following activities are allowed within tsunami hazard areas pursuant to WMC 15.34.120 and do not require submission of a critical area report:

(A) Construction of new buildings with less than 2,500 square feet of floor area or roof area, whichever is greater, and which are not residential structures or used as places of employment or public assembly;

(B) Additions to existing residences that are two hundred fifty square feet or less; and

(C) Installation of fences.

~~(D)~~ Construction that does not require a permit from the city, such as patios, fire pits, or small sheds.

15.34.830 Critical area report requirements.

(1) Critical area report – additional requirements for geologically hazardous areas.

(A) Preparation by a qualified professional. A critical areas report for a geologically hazardous area shall be prepared by a qualified professional.

(B) Areas addressed in critical area report. The following areas shall be addressed in a critical area report for geologically hazardous areas:

(i) The project area of the proposed activity; and

(ii) All geologically hazardous areas within 200 feet of the project area or that have potential to be affected by the proposal;

Comment [NS49]: AHBL Comment: Randy Lewis: Section 15.34.820 (B) needs to be reworded. Does this really say you can't build residential structures, places of employment or public assembly in a seismic hazard or tsunami hazard area? If so that means the entire city because it is all within the Cascadia event area.

Response: Residential structures, public assembly, etc. can be built but it requires a critical area report to do so. The text added to the beginning of this section distinguishes the Cascadia event from others.

Comment [NS50]: AHBL Comment: Recommended addition by Randy Lewis per email comments 12/15/2015

Comment [NS51]: AHBL Comment: Randy Lewis: The initial statement about 2,500 square feet of floor area or roof area whichever is greater does not seem necessary. Is there a reason to not just indicate floor area and leave it at that?

State model ordinance document says: "Allowing construction and additions of some buildings of a certain size should be considered for each hazard area. It may be scientifically acceptable to allow limited development in some hazard areas, as shown here, but not in others. Whether to allow limited construction, and to what extent, needs to be evaluated based on the severity of the hazard. Thresholds of 2,500 square feet and 250 square feet have been adopted by some jurisdictions for some hazards, but these should be scientifically evaluated in relation to the applicable environment before being adopted locally."

Response: This simply means that any building greater than 2500 sq. feet would require a critical area report. Residential structures, public as ... [3]

Comment [NS52]: AHBL Comment: Randy Lewis: The allowed uses also need to be expanded to account for things like patios, fire pits, small sheds and other construction that doesn't require a building permit and will not impact critical areas. **Response:** Additions made.

Comment [NS53]: AHBL Comment: Randy Lewis: Section 15.34.820 (C) needs to be reworded. Does this really say you can't build residential structures, places of employment or public assembly in a seismic hazard or tsunami hazard area? If so that means the entire city because it is all within the Cascadia event area.

Response: Residential structures, public assembly, etc. can be built but it requires a critical area report to do so.

Comment [NS54]: AHBL Comment: Recommended addition by Randy Lewis per email comments 12/15/2015 (he indicated "I think that someone reading this section could easily skip the opening and read the sections to indicate that only the uses indicated in the title of the seismic and tsunami areas can be built.")

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- (C) Geological hazards assessment. A critical area report for a geologically hazardous area shall contain an assessment of geological hazards including the following site- and proposal-related information at a minimum:
- (i) Site and construction plans. The report shall include a copy of the site plans for the proposal showing:
 - (a) The type and extent of geologic hazard areas, any other critical areas, and buffers on, adjacent to, within 200 feet of, or that are likely to impact the proposal;
 - (b) Proposed development, including the location of existing and proposed structures, fill, storage of materials, and drainage facilities, with dimensions indicating distances to the floodplain, if available;
 - (c) The topography, in two-foot contours, of the project area and all hazard areas addressed in the report; and
 - (d) Clearing limits; and
 - (ii) Assessment of geological characteristics. The report shall include an assessment of the geologic characteristics of the soils, sediments, and/or rock of the project area and potentially affected adjacent properties, and a review of the site history regarding landslides, erosion, and prior grading. Soils analysis shall be accomplished in accordance with accepted classification systems in use in the region. The assessment shall include, but not be limited to:
 - (a) A description of the surface and subsurface geology, hydrology, soils, and vegetation found in the project area and in all hazard areas addressed in the report;
 - (b) A detailed overview of the field investigations, published data, and references; data and conclusions from past assessments of the site; and site specific measurements, test, investigations, or studies that support the identification of geologically hazardous areas; and
 - (c) A description of the vulnerability of the site to seismic and other geologic events;
 - (iii) Analysis of proposal. The report shall contain a hazards analysis including a detailed description of the project, its relationship to the geologic hazard(s), and its potential impact upon the hazard area, the subject property, and affected adjacent properties; and

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- (iv) Minimum buffer and building setback. The report shall make a recommendation for the minimum no-disturbance buffer and minimum building setback from any geologic hazard based upon the geotechnical analysis.
 - (D) Incorporation of previous study. Where a valid critical areas report has been prepared within the last five years for a specific site, and where the proposed land use activity and surrounding site conditions are unchanged, said report may be incorporated into the required critical area report. The applicant shall submit a hazards assessment detailing any changed environmental conditions associated with the site.
 - (E) Mitigation of long-term impacts. When hazard mitigation is required, the mitigation plan shall specifically address how the activity maintains or reduces the pre-existing level of risk to the site and adjacent properties on a long-term basis (equal to or exceeding the projected lifespan of the activity or occupation). Proposed mitigation techniques shall be considered to provide long-term hazard reduction only if they do not require regular maintenance or other actions to maintain their function. Mitigation may also be required to avoid any increase in risk above the pre-existing conditions following abandonment of the activity.
- (2) Critical area report – additional technical information requirements for specific hazards. In addition to the general critical area report requirements of WMC 15.34.200 and WMC 15.34.830, critical area reports for geologically hazardous areas must meet the requirements of this Section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.
- (A) Erosion and landslide hazard areas. In addition to the basic critical area report requirements, the technical information for an erosion hazard or landslide hazard area shall include the following information at a minimum:
 - (i) Site plan. the critical area report shall include a copy of the site plan for the proposal showing:
 - (a) The height of slope, slope gradient, and cross-section of the project area;
 - (b) The location of springs, seeps, or other surface expressions of ground water on or within 200 feet of the project area or that have potential to be affected by the proposal; and
 - (c) The location and description of surface water runoff features;
 - (ii) Hazards analysis. the hazards analysis component of the critical areas report shall specifically include:
 - (a) A description of the extent and type of vegetative cover;

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- (b) A description of subsurface conditions based on data from site-specific explorations, if any information exists;
 - (c) Descriptions of surface and ground water conditions, public and private sewage disposal systems, fills and excavations, and all structural improvements;
 - (d) An estimate of slope stability and the effect construction and placement of structures will have on the slope over the estimated life of the structure;
 - (e) An estimate of the bluff retreat rate that recognizes and reflects potential catastrophic events such as seismic activity or a one hundred-year storm event;
 - (f) Consideration of the run-out hazard of landslide debris and/or the impacts of landslide run-out on down slope properties.
 - (g) A study of slope stability including an analysis of proposed cuts, fills, and other site grading;
 - (h) Recommendations for building siting limitations; and
 - (i) An analysis of proposed surface and subsurface drainage, and the vulnerability of the site to erosion;
- (iii) Geotechnical engineering report. The technical information for a project within a landslide hazard area shall include a geotechnical engineering report prepared by a licensed engineer that presents engineering recommendations for the following:
- (a) Parameters for design of site improvements including appropriate foundations and retaining structures. These should include allowable load and resistance capacities for bearing and lateral loads, installation considerations, and estimates of settlement performance;
 - (b) Recommendations for drainage and subdrainage improvements;
 - (c) Earthwork recommendations including clearing and site preparation criteria, fill placement and compaction criteria, temporary and permanent slope inclinations and protection, and temporary excavation support, if necessary; and
 - (d) Mitigation of adverse site conditions including slope stabilization measures and seismically unstable soils, if appropriate;
- (iv) Erosion and sediment control plan. For any development proposal on a site containing an erosion hazard area, an erosion and sediment control plan shall be required. The erosion and sediment control plan shall be prepared in compliance with requirements set forth in the Stormwater Manual for Western Washington, current edition, prepared by Ecology;

Comment [NS55]: AHBL Comment: Randy Lewis: We should look at the amount of information required in the critical area reports in general. It would seem that many requirements such as (2) (A) (b) are we really going to require site specific sub surface exploration for every building proposal; only when one has been completed previously; or on a case by case basis based on the type of a proposal and the conditions of the site?
Response: Added "if any information exists"

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- (v) Drainage plan. The technical information shall include a drainage plan for the collection, transport, treatment, discharge, and/or recycle of water prepared in accordance with the Stormwater Manual for Western Washington, current edition, prepared by Ecology. The drainage plan should consider on-site septic system disposal volumes where the additional volume will affect the erosion or landslide hazard area;
 - (vi) Mitigation plans. Hazard and environmental mitigation plans for erosion and landslide hazard areas shall include the location and methods of drainage, surface water management, locations and methods of erosion control, a vegetation management and/or replanting plan, and/or other means for maintaining long-term soil stability; and
 - (vii) Monitoring surface waters. If the administrator determines that there is a significant risk of damage to downstream receiving waters due to potential erosion from the site, based on the size of the project, the proximity to the receiving waters, or the sensitivity of the receiving waters, the technical information shall include a plan to monitor the surface water discharge from the site. The monitoring plan shall include a recommended schedule for submitting monitoring reports to the city.
- (B) Seismic hazard areas. In addition to the basic report requirements, a critical area report for a seismic hazard area shall also meet the following requirements:
- (i) The site map shall show all known and mapped faults within 200 feet of the project area or that have potential to be affected by the proposal.
 - (ii) The hazards analysis shall include a complete discussion of the potential impacts of seismic activity on the site (for example, forces generated and fault displacement).
 - (iii) A geotechnical engineering report shall evaluate the physical properties of the subsurface soils, especially the thickness of unconsolidated deposits and their liquefaction potential. If it is determined that the site is subject to liquefaction, mitigation measures appropriate to the scale of the development shall be recommended and implemented.
- (C) Tsunami hazard areas. In addition to the basic report requirements, a critical area report for a tsunami hazard area shall also meet the following requirements:
- (i) Site plan. The site plan shall show all areas within 200 feet of the project area that have potential to be inundated by wave action derived from a seismic event;

Comment [NS56]: AHBL Comment: Randy Lewis: Are there actually any known faults within the city? If not there isn't a need to have a requirement for mapping faults within 200 feet of a project site. The same question goes for the tsunami hazard. If this is going to remain a requirement then a design event other than the largest Cascadia event.

Response: Consultation on the Geologic Information Portal -- Natural Hazards theme (online map) shows active faults and earthquakes on DNR's Geologic Information Portal. While no faults were identified in the city, that doesn't mean that they won't be discovered in the future. Recommend we leave this language intact. The site plans could simply show "no known faults." Keeping this requirement per the state recommendation may afford the city future legal protection if needed.

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- (ii) Hazards analysis. The hazards analysis shall include a complete discussion of the potential impacts of the tsunami hazard on the site; and
- (iii) Emergency management plan. The emergency management plan shall include plans for emergency building exit routes, site evacuation routes, emergency training, notification of local emergency management officials, and an emergency warning system.

15.34.840 Performance standards.

(1) Performance standards – general requirements.

- (A) Alterations of geologically hazardous areas or associated buffers may only occur for activities that:
 - (i) Will not increase the threat of the geological hazard to adjacent properties beyond pre-development conditions;
 - (ii) Will not adversely impact other critical areas;
 - (iii) Are designed so that the hazard to the project is eliminated or mitigated to a level equal to or less than pre-development conditions; and
 - (iv) Are certified as safe as designed and under anticipated conditions by a qualified engineer or geologist, licensed in the state of Washington.
- (B) Critical Facilities Prohibited. Critical facilities shall not be sited within geologically hazardous areas unless there is no other practical alternative.

(2) Performance standards – specific hazards.

- (A) Erosion and landslide hazard areas. Activities on sites containing erosion or landslide hazards shall meet the standards of WMC 15.34.840(1) and the specific following requirements:
 - (i) **Buffer requirement.** A buffer shall be established from all edges of landslide hazard areas. The size of the buffer shall be determined by the administrator to eliminate or minimize the risk of property damage, death, or injury resulting from landslides caused in whole or part by the development, based upon review of and concurrence with a critical area report prepared by a qualified professional.
 - (a) **Minimum buffer.** The minimum buffer shall be equal to the height of the slope (as defined in WMC 15.34.020) or fifty (50) feet, whichever is greater.
 - (b) **Buffer reduction.** The buffer may be reduced to a minimum of ten feet when a qualified professional demonstrates to the administrator’s satisfaction that the

Comment [NS57]: AHBL Comment: GMS Guide states: Buffer distances of fifty (50) feet, height of slope, or potentially ten (10) feet are commonly used by jurisdictions to protect against erosion and landslide hazards. However, such distances may not be appropriate in all jurisdictions, and they should be scientifically evaluated in relation to local hazards before being adopted.

This allows enough flexibility to for the City to increase or decrease a buffer based on the specific conditions found in the critical areas study.

Comment [NS58]: AHBL Comment: Randy Lewis: Is the height of the slope above sea level or surrounding area? If surrounding area then there aren't any slopes higher than 50 feet in the City meaning the minimum buffer is 50 feet everywhere. This should be changed to whichever is less, or the height of the slope + 10%.
Response: The height of the slope would be calculated as per the definition found under "Steep Slope"

Comment [NS59]: AHBL Comment: : "as defined..." added per Randy Lewis email comments of 12/10/2015: "include a reference to the definition of steep slope in Section 15.34.020. The note was helpful in explaining that but won't be included in the final version."

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reduction will adequately protect the proposed development, adjacent developments, and uses and the subject critical area.

- (c) Increased buffer. The buffer may be increased where the administrator determines a larger buffer is necessary to prevent risk of damage to proposed and existing development;
- (ii) Alterations. Alterations of an erosion or landslide hazard area and/or buffer may only occur for activities for which a hazards analysis is submitted and certifies that:
 - (a) The development will not increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions;
 - (b) The development will not decrease slope stability on adjacent properties; and
 - (c) Such alterations will not adversely impact other critical areas;
- (iii) Design standards. Development within an erosion or landslide hazard area and/or buffer shall be designed to meet the following basic requirements unless it can be demonstrated that an alternative design that deviates from one or more of these standards provides greater long-term slope stability while meeting all other provisions of this chapter. The requirement for long-term slope stability shall exclude designs that require regular and periodic maintenance to maintain their level of function. The basic development design standards are:
 - (a) The proposed development shall not decrease the factor of safety for landslide occurrences below the limits of 1.5 for static conditions and 1.2 for dynamic conditions. Analysis of dynamic conditions shall be based on a minimum horizontal acceleration as established by the current version of the Uniform Building Code;
 - (b) Structures and improvements shall be clustered to avoid geologically hazardous areas and other critical areas;
 - (c) Structures and improvements shall minimize alterations to the natural contour of the slope, and foundations shall be tiered where possible to conform to existing topography;
 - (d) Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation;
 - (e) The proposed development shall not result in greater risk or a need for increased buffers on neighboring properties;

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- (f) The use of retaining walls that allow the maintenance of existing natural slope area is preferred over graded artificial slopes; and
- (g) Development shall be designed to minimize impervious lot coverage;
- (iv) Vegetation retention. Unless otherwise provided or as part of an approved alteration, removal of vegetation from an erosion or landslide hazard area or related buffer shall be prohibited;
- (v) Seasonal restriction. Clearing shall be allowed only from May 1 to October 1 of each year provided that the city may extend or shorten the dry season on a case-by-case basis depending on actual weather conditions, except that timber harvest, not including brush clearing or stump removal, may be allowed pursuant to an approved forest practice permit issued by the city or WDNR;
- (vi) Utility lines and pipes. Utility lines and pipes shall be permitted in erosion and landslide hazard areas only when the applicant demonstrates that no other practical alternative is available. The line or pipe shall be located above ground and properly anchored and/or designed so that it will continue to function in the event of an underlying slide. Stormwater conveyance shall be allowed only through a high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior;
- (vii) Point discharges. Point discharges from surface water facilities and roof drains onto or upstream from an erosion or landslide hazard area shall be prohibited except as follows:
 - (a) Conveyed via continuous storm pipe downslope to a point where there are no erosion hazards areas downstream from the discharge;
 - (b) Discharged at flow durations matching predeveloped conditions, with adequate energy dissipation, into existing channels that previously conveyed stormwater runoff in the predeveloped state; or
 - (c) Dispersed discharge upslope of the steep slope onto a low-gradient undisturbed buffer demonstrated to be adequate to infiltrate all surface and stormwater runoff, and where it can be demonstrated that such discharge will not increase the saturation of the slope;
- (viii) Subdivisions. The division of land in landslide hazard areas and associated buffers is subject to the following:
 - (a) Land that is located wholly within a landslide hazard area or its buffer may not be subdivided. Land that is located partially within a landslide hazard area or its

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buffer may be divided if each resulting lot has sufficient buildable area outside of, and will not affect, the landslide hazard or its buffer.

- (b) Access roads and utilities may be permitted within the landslide hazard area and associated buffers if the city determines that no other feasible alternative exists; and
- (ix) Prohibited development. On-site sewage disposal systems, including drain fields, shall be prohibited within erosion and landslide hazard areas and related buffers.
- (B) Seismic hazard areas. Activities proposed to be located in seismic hazard areas shall meet the standards of WMC 15.34.840(1). All engineering plans submitted for a location within a mapped high liquefaction zone shall carry a stamp indicating the plans are being made in a high liquefaction zone.
- (C) Tsunami hazard areas. Activities on sites containing areas susceptible to inundation due to tsunamis hazards shall require an evacuation and emergency management plan. All engineering plans submitted for a location within a mapped tsunami zone shall carry a stamp indicating the plans are being made in a tsunami zone. The city may use the performance standards for coastal high hazard areas as guidance in reviewing new structures proposed in tsunami hazard areas.

Article XIV: Fish and Wildlife Habitat Conservation Areas.

15.34.900 Purpose.

The city shall manage development and subsequent uses in fish and wildlife habitat conservation areas to maintain species in suitable habitats within their natural geographic distribution and to prevent isolated subpopulations.

15.34.910 Designation and mapping.

- (1) Designation of fish and wildlife habitat conservation areas.
 - (A) Fish and wildlife habitat conservation areas include:
 - (i) Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association.
 - (a) Federally designated endangered and threatened species are those fish and wildlife species identified by the USFWS and the NMFS that are in danger of extinction or threatened to become endangered. The USFWS and the NMFS should be consulted for current listing status.

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- (b) State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state identified by WDFW that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC 232-12-014 (state endangered species) and WAC 232-12-011 (state threatened and sensitive species). The WDFW maintains the most current listing and it should be consulted for current listing status.
- (c) This subsection shall not apply to hair seals and sea lions that are threatening to damage or are damaging commercial fishing gear being utilized in a lawful manner or when said mammals are damaging or threatening to damage commercial fish being lawfully taken with commercial gear.
- (ii) State priority habitats and areas associated with state priority species. Priority habitats and species are considered priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the WDFW.
- (iii) Commercial and recreational shellfish areas. These areas include all public and private tidelands or bedlands suitable for shellfish harvest, including shellfish protection districts established pursuant to Chapter 90.72 RCW.
- (iv) Kelp and eelgrass beds and herring and smelt spawning areas. Kelp and eelgrass beds have been identified and mapped by WDNR in some areas. Herring and smelt spawning times and locations are outlined in WAC 220-110-240 through 220-110-260.
- (v) Naturally occurring ponds under twenty (20) acres. Naturally occurring ponds are those ponds under twenty (20) acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary

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construction ponds, and landscape amenities, unless such artificial ponds were intentionally created for mitigation.

- (vi) Waters of the state. Waters of the state include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in WAC 222-16-031 (or WAC 222-16-030 depending on classification used).
 - (vii) State natural area preserves and natural resource conservation areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by WDNR.
 - (viii) Areas of rare plant species and high quality ecosystems. Areas of rare plant species and high quality ecosystems are identified by WDNR through the Natural Heritage Program.
 - (ix) Land useful or essential for preserving connections between habitat blocks and open spaces.
- (B) All areas within the city meeting one or more of these criteria, regardless of any formal identification, are hereby-designated critical areas, are subject to the provisions of this chapter, and shall be managed consistent with the BAS, such as WDFW’s Management Recommendations for Priority Habitat and Species.
- (C) Mapping. The approximate location and extent of habitat conservation areas are shown on the critical area maps adopted by the city, as most recently updated. The following critical area maps are hereby adopted:
- (i) WDFW Priority Habitat and Species maps;
 - (ii) Ecology Washington State Coastal Atlas;
 - (iii) WDNR, Official Water Type Reference maps, as amended;
 - (iv) WDNR ShoreZone Inventory;
 - (v) WDNR Natural Heritage Program mapping data;
 - (vi) WDOH Annual Inventory of Shellfish Harvest Areas;
 - (vii) Anadromous and resident salmonid distribution maps contained in the Habitat Limiting Factors reports published by the Washington Conservation Commission;
 - (viii) WDNR State Natural Area Preserves and Natural Resource Conservation Area maps;
and
 - (ix) City official habitat maps.

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These maps are to be used as a guide for the city, project applicants, and property owners and should be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.

15.34.920 Additional report requirements.

- (1) Critical area report – additional requirements for habitat conservation areas. In addition to the general critical area report requirements of WMC 15.34.200, critical area reports for habitat conservation areas must meet the requirements of this section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.
 - (A) Preparation by a qualified professional. A critical areas report for a habitat conservation area shall be prepared by a qualified professional who is a biologist with experience preparing reports for the relevant type of habitat.
 - (B) Areas addressed in critical area report. The following areas shall be addressed in a critical area report for habitat conservation areas:
 - (i) The project area of the proposed activity;
 - (ii) All habitat conservation areas and recommended buffers within three hundred (300) feet of the project area; and
 - (iii) All floodplains, other critical areas, and related buffers within three hundred (300) feet of the project area.
 - (C) Habitat assessment. A habitat assessment is an investigation of the project area to evaluate the potential presence or absence of designated critical fish or wildlife species or habitat. A critical area report for a habitat conservation area shall contain an assessment of habitats including the following site- and proposal-related information at a minimum:
 - (i) Detailed description of vegetation on and adjacent to the project area and its associated buffer;
 - (ii) Identification of any species of local importance, priority species, or endangered, threatened, sensitive, or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;
 - (iii) A discussion of any federal, state, or local special management recommendations, including WDFW habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;

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- (iv) A detailed discussion of the direct and indirect potential impacts on habitat by the project, including potential impacts to water quality;
 - (v) A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity and to be conducted in accordance with WMC 15.34.570; and
 - (vi) A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.
- (D) Impact assessment. An impact assessment is required when development is proposed on parcels located in or adjacent to fish and wildlife habitat conservation areas. The assessment must identify and protect areas that contribute to nearshore geomorphic processes from hydraulic or other projects that may impact nearshore zone habitat, pursuant to WAC 220-660-320(4).
- (E) Additional information may be required. When appropriate due to the type of habitat or species present or the project area conditions, the administrator may also require the habitat management plan to include:
- (i) An evaluation by an independent qualified professional regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate;
 - (ii) A request for consultation with WDFW or the local tribe or other appropriate agency; and
 - (iii) Detailed surface and subsurface hydrologic features both on and adjacent to the site.

15.34.930 Performance standards.

(1) Performance standards – general requirements.

- (A) Alterations. A habitat conservation area may be altered only if the proposed alteration of the habitat or the mitigation proposed does not degrade the quantitative and qualitative functions and values of the habitat. All new structures and land alterations shall be prohibited from habitat conservation areas, except in accordance with this chapter.

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- (B) Non-indigenous species. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a habitat conservation area unless authorized by a state or federal permit or approval.
- (C) Mitigation and contiguous corridors. Mitigation sites shall be located to preserve or achieve contiguous wildlife habitat corridors in accordance with a mitigation plan that is part of an approved critical area report to minimize the isolating effects of development on habitat areas, so long as mitigation of aquatic habitat is located within the same aquatic ecosystem as the area disturbed.
- (D) Approvals of activities. The administrator shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions shall be based on BAS and may include, but are not limited to, the following:
 - (i) Establishment of buffer zones;
 - (ii) Preservation of critically important vegetation and/or habitat features such as snags and downed wood;
 - (iii) Limitation of access to the habitat area, including fencing to deter unauthorized access;
 - (iv) Seasonal restriction of construction activities;
 - (v) Establishment of a duration and timetable for periodic review of mitigation activities; and
 - (vi) Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation.
- (E) Mitigation and equivalent or greater biological functions. Mitigation of alterations to habitat conservation areas shall achieve equivalent or greater biologic and hydrologic functions and shall include mitigation for adverse impacts upstream or downstream of the development proposal site. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per function basis.
- (F) Approvals and the BAS. Any approval of alterations or impacts to a habitat conservation area shall be supported by the BAS.
- (G) Buffers.
 - (i) Establishment of buffers. The administrator shall require the establishment of buffer areas for activities adjacent to habitat conservation areas when needed to protect habitat conservation areas. Buffers shall consist of an undisturbed area of

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native vegetation or areas identified for restoration established to protect the integrity, functions, and values of the affected habitat. Required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby and shall be consistent with the management recommendations issued by WDFW. Habitat conservation areas and their buffers shall be preserved in perpetuity using NGPAs and critical area tracts in accordance with WMC 15.34.370 and WMC 15.34.380.

- (ii) Seasonal restrictions. When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger buffers may be required and activities may be further restricted during the specified season.
- (iii) Habitat buffer averaging. The administrator may allow the recommended habitat area buffer width to be reduced in accordance with a critical area report, the BAS, and the management recommendations issued by WDFW, only if:
 - (a) It will not reduce stream or habitat functions;
 - (b) It will not adversely affect salmonid habitat;
 - (c) It will provide additional natural resource protection, such as buffer enhancement;
 - (d) The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and
 - (e) The buffer area width is not reduced by more than twenty-five (25) percent in any location.
- (H) Signs and fencing of habitat conservation areas.
 - (i) Temporary markers. The outer perimeter of the habitat conservation area or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that unauthorized intrusion will not occur and verified by the administrator prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.
 - (ii) Permanent signs. As a condition of any permit or authorization issued pursuant to this chapter, the administrator may require that applicant to install permanent signs along the boundary of a habitat conservation area or buffer.
 - (a) Permanent signs shall be made of a metal face and attached to a metal post or another material of equal durability. Signs must be posted at an interval of one

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per lot or every 50 feet, whichever is less and must be maintained by the property owner in perpetuity. The sign shall be worded as follows or with alternative language approved by the administrator:

Habitat Conservation Area

Do Not Disturb

Contact the City of Westport

Regarding Uses and Restriction

- (b) The provisions of WMC 15.34.920(1)(H)(ii)(a) may be modified by the administrator as necessary to assure protection of sensitive features or wildlife.
- (iii) Fencing.
 - (a) The administrator shall determine if fencing is necessary to protect the functions and values of the critical area. If found to be necessary, the administrator shall condition any permit or authorization issued pursuant to this chapter to require the applicant to install a permanent fence at the edge of the habitat conservation area or buffer, when fencing will prevent future impacts to the habitat conservation area.
 - (b) The applicant shall be required to install a permanent fence around the habitat conservation area or buffer when domestic grazing animals are present or may be introduced on site.
 - (c) Fencing installed as part of a proposed activity or as required in this subsection shall be design so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes habitat impacts.
- (l) Subdivisions. The subdivision and short subdivision of land in fish and wildlife habitat conservation areas and associated buffers is subject to the following:
 - (a) Land that is located wholly within a habitat conservation area or its buffer may not be subdivided.
 - (b) Land that is located partially within a habitat conservation area or its buffer may be divided if the developable portion of each new lot and its access is located outside of the habitat conservation area or its buffer and meets the minimum lot size requirements of WMC Title 17: Zoning.
 - (c) Access roads and utilities serving the proposed subdivision may be permitted within the habitat conservation area and associated buffers only if the city

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determines that no other feasible alternative exists and that it is consistent with this chapter.

(2) Performance standards – specific habitats.

(A) Endangered, threatened, and sensitive species.

- (i) No development shall be allowed within a habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a management plan established by WDFW or applicable state or federal agency.
- (ii) Whenever activities are proposed adjacent to a habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with a critical area report prepared by a qualified professional and approved by the city. Approval for alteration of land adjacent to the habitat conservation area or its buffer shall not occur prior to consultation with WDFW for animal species, WDNR for plant species, and other appropriate federal or state agencies.
- (iii) Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292). Whenever activities are proposed adjacent to a verified nest territory or communal roost, a habitat management plan shall be developed by a qualified professional. Activities are adjacent to bald eagle sites when they are within 800 feet or within one half mile and in a foraging area. The city shall verify the location of eagle management areas for each proposed activity. Approval of the activity shall not occur prior to approval of the habitat management plan by WDFW.

(B) Anadromous fish.

- (i) All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:
 - (a) Activities shall be timed to occur only during the allowable work window as designated by WDFW for the applicable species;
 - (b) An alternative alignment or location for the activity is not feasible;
 - (c) The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas;

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- (d) Erosion control measures shall be designed to use bioengineering methods or soft armoring techniques, according to an approved critical area report, and
 - (e) Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved critical area report.
 - (ii) Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish. Fish bypass facilities shall be if allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.
 - (iii) Fills shall not adversely impact anadromous fish or their habitat or shall mitigate any unavoidable impacts and shall only be allowed for a water-dependent use.
- (C) Wetland habitats. All proposed activities within or adjacent to habitat conservation areas containing wetlands shall conform to the wetland development performance standards set forth in WMC 15.34 Article X: Wetlands. If non-wetlands habitat and wetlands are present at the same location, the provisions of this chapter or WMC 15.34 Article X: Wetlands, whichever provides greater protection to the habitat, applies.
- (D) Riparian habitat areas. Unless otherwise allowed in this chapter, all structures and activities shall be located outside of the riparian habitat area.
- (i) Establishment of riparian habitat areas. Riparian habitat areas shall be established for habitats that include aquatic and terrestrial ecosystems that mutually benefit each other and that are located adjacent to perennial or intermittent streams, seeps, and springs.
 - (ii) Riparian habitat area widths. Recommended riparian habitat area widths are shown in the Table 15.34-5: Riparian Habitat Area Buffers. A riparian habitat area shall have the width recommended, unless a greater width is required pursuant to WMC 15.34.920(2)(D)(iii), or a lesser width is allowed pursuant to WMC 15.34.920(2)(D)(iv). Widths shall be measured outward in each direction, on the horizontal plane, from the ordinary high water mark (OHWM), or from the top of bank, if the OHWM cannot be identified. Riparian areas should be sufficiently wide to achieve the full range of riparian and aquatic ecosystem functions, which include but are not limited to protection of instream fish habitat through control of temperature and sedimentation in streams; preservation of fish and wildlife habitat; and connection of riparian wildlife habitat to other habitats.

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Table 15.34-5: Riparian Habitat Area Buffers

Riparian Habitat Areas	
Stream type	Recommended Riparian Habitat Areas widths
Type S Water. All waters, as inventoried as “shoreslines of the state” under the jurisdiction of the Shoreline Management Act, except associated wetlands.	See Shoreline Master Program
Type F-A Water. Segments of natural waters other than Type S waters, which are greater than ten feet in width.	150 feet
Type F-B Water. Segments of natural waters other than Type S waters, which are less than ten feet in width.	100 feet
Type Np Water. Segments of natural waters that are perennial nonfish habitat streams	75 feet
Type Np Water. Segments of natural waters within defined channels that are seasonal, nonfish habitat streams	50 feet

Comment [SM60]: Ns?

(iii) Increased riparian habitat area widths. The recommended riparian habitat area widths shall be increased, as follows:

- (a) When the administrator determines that the recommended width is insufficient to prevent habitat degradation and to protect the structure and functions of the habitat area;
- (b) When the frequently flooded area exceeds the recommended riparian habitat area width, the riparian habitat area shall extend to the outer edge of the frequently flooded area;

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- (c) When the habitat area is in an area of high blowdown potential, the riparian habitat area width shall be expanded an additional 50 feet on the windward side;
or
 - (d) When the habitat area is within an erosion or landslide hazard area, or buffer, the riparian habitat area width shall be the recommended distance, or the erosion or landslide hazard area or buffer, whichever is greater.
- (iv) Riparian habitat area width averaging. The administrator may allow the recommended riparian habitat area width to be reduced in accordance with a critical area report only if:
- (a) The width reduction will not reduce stream or habitat functions, including those of nonfish habitat;
 - (b) The width reduction will not degrade the habitat, including habitat for anadromous fish;
 - (c) The proposal will provide additional habitat protection;
 - (d) The total area contained in the riparian habitat area of each stream on the development proposal site is not decreased;
 - (e) The recommended riparian habitat area width is not reduced by more than twenty-five (25) percent in any one location;
 - (f) The width reduction will not be located within another critical area or associated buffer; and
 - (g) The reduced riparian habitat area width is supported by the BAS.
- (v) Riparian habitat mitigation. Mitigation of adverse impacts to riparian habitat areas shall result in equivalent functions and values on a per function basis, be located as near the alteration as feasible, and be located in the same sub-drainage basin as the habitat impacted.
- (vi) Alternative mitigation for riparian habitat areas. The performance standards set forth in this subsection may be modified at the city's discretion if the applicant demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected sub-drainage basin because of alternative mitigation measures.
- (E) Aquatic habitat. The following specific activities may be permitted within a riparian habitat area, pond, or associated buffer when the activity complies with the provisions set forth in the Critical Areas Ordinance (CAO) and subject to the standards of this

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subsection. The standards that provide the most protection to protected habitat and species shall apply.

- (i) Clearing and grading. When clearing and grading is permitted as part of an authorized activity or as otherwise allowed in these standards, the following shall apply:
 - (a) Grading is allowed only during the dry season, which is typically regarded as beginning on May 1 and ending on October 1 of each year, if the city may extend or shorten the dry season on a case-by-case basis, determined on actual weather conditions.
 - (b) Filling or modification of a wetland or wetland buffer is permitted only if it is conducted as part of an approved wetland alteration.
 - (c) The soil duff layer shall remain undisturbed to the maximum extent possible. Where feasible, any soil disturbed shall be redistributed to other areas of the project area.
 - (d) The moisture-holding capacity of the topsoil layer shall be maintained by minimizing soil compaction or reestablishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces.
 - (e) Erosion and sediment control that meets or exceeds the standards set forth in the Stormwater Manual for Western Washington, current edition, prepared by Ecology, shall be provided.
- (ii) Streambank stabilization. Streambank stabilization to protect new structures from future channel migration is not permitted except when such stabilization is achieved through bioengineering or soft armoring techniques in accordance with an approved critical area report.
- (iii) Launching ramps – public or private. Launching ramps may be permitted in accordance with an approved critical area report that has demonstrated the following:
 - (a) The project will not result in increased beach erosion or alterations to, or loss of, substrate within one-quarter mile of the site;
 - (b) The ramp will not adversely impact critical fish or wildlife habitat areas or associated wetlands;
 - (c) Adequate mitigation measures ensure that there is no net loss of the functions or values of intertidal habitat or riparian habitat as a result of the ramp; and

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- (d) No alteration of intertidal migration corridors will occur because of the ramp.
- (iv) Roads, trails, bridges, and rights-of-way. Construction of trails, roadways, and minor road bridging, less than or equal to thirty (30) feet wide, may be permitted in accordance with an approved critical area report subject to the following standards:
 - (a) There is no other feasible alternative route with less impact on the environment;
 - (b) The crossing minimizes interruption of downstream movement of wood and gravel;
 - (c) Roads in riparian habitat areas or their buffers shall not run parallel to the water body;
 - (d) Trails shall be located on the outer edge of the riparian area or buffer, except for limited viewing platforms and crossings;
 - (e) Crossings, where necessary, shall only occur as near to perpendicular with the water body as possible;
 - (f) Mitigation for impacts is provided pursuant to a mitigation plan of an approved critical area report;
 - (g) Road bridges are designed according to WDFW Fish Passage Design at Road Culverts, 1999, and the NMFS Guidelines for Salmonid Passage at Stream Crossings, 2000; and
 - (h) Trails and associated viewing platforms shall not be made of continuous impervious materials.
- (v) Utility facilities. New utility lines and facilities may be permitted to cross watercourses in accordance with an approved critical area report, if they comply with the following standards:
 - (a) Fish and wildlife habitat areas shall be avoided to the maximum extent possible;
 - (b) Installation shall be accomplished by boring beneath the scour depth and hyporheic zone of the water body, where feasible;
 - (c) The utilities shall cross at an angle greater than sixty (60) degrees to the centerline of the channel in streams or perpendicular to the channel centerline whenever boring under the channel is not feasible;
 - (d) Crossings shall be contained within the footprint of an existing road or utility crossing where possible;

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- (e) The utility route shall avoid paralleling the stream or following a down-valley course near the channel; and
- (f) The utility installation shall not increase or decrease the natural rate of shore migration or channel migration.
- (vi) Public flood protection measures. New public flood protection measures and expansion of existing ones may be permitted, subject to the city's review and approval of a critical area report and the approval of a Federal Biological Assessment by the federal agency responsible for reviewing actions related to a federally listed species.
- (vii) Instream structures. Instream structures, such as, but not limited to, high flow bypasses, sediment ponds, instream ponds, retention and detention facilities, tide gates, dams, and weirs, shall be allowed only as part of an approved watershed basin restoration project approved by the city and upon acquisition of any required state or federal permits. The structure shall be designed to avoid modifying flows and water quality in ways that may adversely affect habitat conservation areas.
- (viii) Stormwater conveyance facilities. Conveyance structures may be permitted in accordance with an approved critical area report subject to the following standards:
 - (a) No other feasible alternatives with less impact exist;
 - (b) Mitigation for impacts is provided;
 - (c) Stormwater conveyance facilities shall incorporate fish habitat features; and
 - (d) Vegetation shall be maintained and, if necessary, added adjacent to all open channels and ponds in order to retard erosion, filter out sediments, and shade the water.
- (ix) On-site sewage systems and wells.
 - (a) New on-site sewage systems and individual wells may be permitted in accordance with an approved critical area report only if accessory to an approved residential structure, for which it is not feasible to connect to a public sanitary sewer system.
 - (b) Repairs to failing on-site sewage systems associated with an existing structure shall be accomplished by utilizing one of the following methods that result in the least impact: connection to an available public sanitary sewer system; replacement with a new on-site sewage system located in a portion of the site that has already been disturbed by development and is located landward as far as possible, provided the proposed sewage system is in compliance with the

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Grays Harbor County Public Health and Social Services Department; or repair to the existing on-site septic system.

15.34.940 Mitigation requirements.

- (1) To increase protection for fish and wildlife habitat conservation areas, the administrator may find that mitigation is required for the loss of area or functional value of those areas.
- (2) Mitigation may be achieved via interlocal agreements or similar instruments (such as mitigation banking and in-lieu fees) that allow mitigation to occur in other jurisdictions, to allow offsite mitigation with onsite mitigation is not practical or environmentally preferred. However, the correct sequence of mitigation per WMC 15.34.230 still applies.
- (3) Mitigation for the loss of area or functional value of fish and wildlife habitat conservation areas shall conform to the following guidelines:
 - (A) Restoration is required when an FWHCA has been altered prior to project approval unless the alteration was not prohibited by law; or when FWHCA are temporarily affected by construction or any other temporary phase of a project.
 - (B) Mitigation is required when an FWHCA is permanently altered by an approved project or activity.
 - (C) Onsite mitigation is preferred.
 - (D) Offsite mitigation is allowed in situations where onsite mitigation is not feasible or practical. When offsite mitigation is allowed, it should occur within the same subbasin as the impact it mitigates.
 - (E) Mitigation shall be completed prior to granting of temporary or final occupancy, or completion or final approval of any development activity for which mitigation measures have been required.

AHBL Comment: Randy - Take a look at the revisions we made to the entire exception section to see if you concerns are addressed.

Randy Lewis emailed comments of 12/10/2015: I like the changes that have been made from the previous draft but I still have a concern in the potential application of this section.

The past practice of applying reasonable use exemptions, either in the shoreline jurisdiction or through SEPA in wetland areas has consisted of a two tiered evaluation. First, was the proposed use reasonable based on factors such as being an allowed use and compliance with established land use requirements. Once that was determined then the second standard was applied which was basically the same as subsection (4) (B). If an applicant came in with an application for a single family residence in a residential zone then the reasonable use was pretty much determined. The second test was applied to see if the design and site plan demonstrated that impacts to critical areas were minimized to the fullest extent possible. The City did not get into making a determination on whether there was an alternative use than what was proposed, but as I read this that is what will occur.

I am not as concerned what the City will decide, but what a 3rd party might try to do with it. If I have a home on a lot and you have a vacant lot next to mine, especially if your lot is between mine and a view, then I would argue that there is an alternative reasonable use to allowing you to build a residence that impacted a buffer area and that would be an open space or maybe a park. That sounds like a reasonable use to me that could be constructed without impacting wetlands or buffers. The City was involved with a very contentious case similar to this that went on for a couple of years. That case involved a new SFR that was constructed in front of a vacant. The owners of the vacant lot planned to build their retirement home there and saw their view was ruined. They went over every section of city and building codes to try to find a way to get the City to deny the permit for the new residence. The situation only resolved because they found someone to buy them out that wasn't worried about the view.

There are a large number of platted lots that will be entirely within a critical area or the adjacent buffer. If the process will be for the City to apply an exception to the standards after it determines there isn't another reasonable use before it can apply an exception to the proposed use that will create a major impact to a number of citizens. I understand that in the principal of avoidance there is a question as to whether the proposal can be constructed somewhere else but I don't think that should apply to an individual property owner who is trying to develop that property in accordance with the allowed uses in the zoning code. The bigger issue in that instance should be making sure that the construction they are proposing minimizes the impacts to the fullest extent possible which then allows a reasonable use exception.

AHBL Comment: AHBL response: Agree it would be helpful to provide maps. However, the only map that has been produced is Figure 3, Landslides and Liquefaction Areas from the BAS report. There is no map in the report that shows Seismic hazards, Tsunami hazard, etc. However, DNR's website does provide interactive maps that can display some seismogenic features, landslides, liquefaction susceptibility, and tsunami inundation. Disclaimers are included (i.e. "The Seismogenic Features dataset is not a substitute for a site-specific investigation to assess the level of risk for any development project. It cannot be used to determine the presence or absence of faults beneath any specific locality.....".) **Note that a list of available maps and description are included in 15.34.810(3)(A) and (B)**

AHBL Comment: Randy Lewis: The initial statement about 2,500 square feet of floor area or roof area whichever is greater does not seem necessary. Is there a reason to not just indicate floor area and leave it at that?

State model ordinance document says: "Allowing construction and additions of some buildings of a certain size should be considered for each hazard area. It may be scientifically acceptable to allow limited development in some hazard areas, as shown here, but not in others. Whether to allow limited

construction, and to what extent, needs to be evaluated based on the severity of the hazard. Thresholds of 2,500 square feet and 250 square feet have been adopted by some jurisdictions for some hazards, but these should be scientifically evaluated in relation to the applicable environment before being adopted locally.”

Response: This simply means that any building greater than 2500 sq. feet would require a critical area report. Residential structures, public assembly, etc. can be built but it requires a critical area report to do so. The text added to the beginning of this section distinguishes the Cascadia event from others.