



SKAMANIA COUNTY PLANNING COMMISSION

AGENDA

Tuesday, November 19, 2019 @ 6:15 PM

SKAMANIA COUNTY COURTHOUSE ANNEX, BASEMENT MEETING ROOM
170 NW VANCOUVER AVE, STEVENSON, WA

I. CALL TO ORDER

II. ROLL CALL

III. AGENDA ITEMS

1. Approval of minutes from the October 15, 2019, Planning Commission Meeting.
2. PUBLIC WORKSHOP on proposed Critical Areas code updates to standards for fish and wildlife habitat conservation areas, wetlands, and general provisions.

IV. PLANNING COMMISSION BUSINESS

V. ADJOURN



Skamania County Planning Commission

PLANNING COMMISSION MEETING MINUTES

**Tuesday, October 15, 2019
Skamania County Annex
170 NW Vancouver Avenue
Stevenson, WA 98648**

Planning Commission Members:
Present:
John Prescott, Cyndi Soliz, Ken Bajema,
Adam King, Tony Coates, Sue Davis and
Mathew Joy arrived after meeting start

Community Development Department Staff
Present:
Alan Peters
Teri Wyckoff

Absent: None

AUDIENCE

See attached sign-in sheet.

PROCEEDINGS

Meeting was called to order at 6:02 P.M. by Chair, John Prescott
Quorum was met.

AGENDA ITEMS

1. Approve Minutes from the October 15, 2019 Planning Commission meeting.
 - a. Motion was made by Cindy Soliz and seconded by Adam King to approve the minutes of the October 15, 2019 Planning Commission Meeting.
 - b. Motion passed 4-0. Tony Coates abstained.
 2. The Planning Commission entered into a workshop to discuss the proposed critical areas update.
 - a. Mr. Peters introduced WSP representative, Dustin Day.
 - b. Mr. Peters discussed the proposed wetland and fish and wildlife habitat conservation area regulations and how they differed from the existing regulations.
 - c. Mr. Day, described the Ecology's buffer rating system and the process for wetland rating.
 - d. Chair Prescott opened the meeting to public comment. Two members of the public provided comment.
 - i. Staci Patton, provided public comment
 - ii. Mitch Patton, provided public comment
-

- e. The Planning Commission discussed the staff recommendations and public comments. The Planning Commissioners discussed ways to lessen the burden on applicants in fish and wildlife conservation areas, including utilizing WDFW's biologists if the applicant would prefer. The Planning Commission is not in favor of increasing buffers on wetland buffers. Mr. Peters will prepare a draft of the changes discussed to the WDFW review process and present it at the next meeting along with additional information about wetlands.
3. Planning Commission Business:
- a. Next Planning Commission meeting will be held Tuesday, November 5, 2019 which will be a continuation of this Workshop.
 - b. Chair Prescott will be unable to attend the next three meetings and Vice-Chair Joy will preside over the meetings. He wanted to inform the members due to his commitment to his business he may not be able to start the meetings until approximately 6:15 pm. Due to the upcoming holiday season discussion regarding meetings during the months of November and December was addressed.
 - c. Communication between staff and members was discussed with the option of all members obtaining a county assigned e-mail.

4. MEETING ADJOURNED

ATTEST

Planning Commission Chair

Secretary



Skamania County
Community Development Department
Building/Fire Marshal • Environmental Health • Planning

Skamania County Courthouse Annex
Post Office Box 1009
Stevenson, Washington 98648
Phone: 509-427-3900 Inspection Line: 509-427-3922

MEMO

TO: Planning Commission
FROM: Alan Peters, Assistant Planning Director
DATE: November 14, 2019
RE: Critical Areas Update

The purpose of this workshop is to continue the Planning Commission's review of the Wetland and Fish and Wildlife Habitat Conservation Area (FWHCA) provisions in the draft Critical Areas Ordinance as well as review the General Provisions chapter of the code. The contents of this memo with regard to each of these sections is as follows:

Wetlands

- Compare existing vs. updated wetland rating system
- Compare existing buffers vs. alternative options
- Noxious Weeds comments

FWHCAs

- Revised FWHCA review process

General Provisions

- Summary of chapter

Staff anticipates that with the direction gathered from the Planning Commission after this workshop, the revised draft of the CAO will be ready for SEPA review and a public hearing.

Wetlands (Chapter 19.03)

Wetland discussions at the October 15th meeting involved the wetland rating system and wetland buffers. The Planning Commission is concerned about any wetland buffers being increased. This memo explains how adoption of Ecology's buffer guidance may result in some buffer reductions. Staff requests final direction regarding the rating system and buffers.

Rating System

As discussed, the 2014 Ecology wetland rating system was designed to differentiate among wetlands based on their sensitivity to disturbance, their significance, their rarity, our ability to replace them, and the functions they provide. Wetland rating categories provide a basis for developing standards for protecting and managing wetlands. This system divides wetlands into four categories. Our current critical areas code utilizes an older version of Ecology's rating system from 1993. Ecology updated the rating system in 2004 and again in 2014. The best way to compare the different rating systems is to compare how many wetlands are in each category based on the different rating systems. Ecology collected data at 122 wetlands to calibrate the

rating system in 2004. Data from 111 of these were used to re-calibrate the scoring for the 2014 revision. Some wetlands were lost through natural and human alterations and some could not be re-located. The following chart demonstrates the distribution of wetlands using the 1993 system, 2004 system, and 2014 system. 2004 is separated into two columns to account for the wetlands lost between 2004 and 2014.

Number of Wetlands in Each Category Based on Various Rating Systems

| Category | 1993 (Current Code) | 2004 | | 2014 |
|-----------------|----------------------------|-------------|----|-------------|
| I | 27 | 24 | 13 | 11 |
| II | 68 | 50 | 52 | 44 |
| III | 20 | 39 | 39 | 49 |
| IV | 7 | 9 | 7 | 7 |

Based on this sample of wetlands, the newer 2014 rating system trends towards a lower classification. This is most apparent when comparing the Category II and III wetland counts from 1993 and 2014. Using our current code, 68 wetlands are Category II and 20 are Category III. However, using the 2014 guidance, 44 wetlands are Category II and 49 are Category III, suggesting that the 2014 guidance downgrades wetlands compared to our current code, resulting in narrower buffers.

Buffers

Our current code has four standard minimum buffer widths, one for each category as follows:

- Class I – 200'
- Class II – 100'
- Class III – 50'
- Class IV – 25'

Newer Ecology buffer guidance included in the current draft has buffer ranges from 25 ft. to 300 ft. This system bases buffers on the proposed use and ecological value of the wetland. Under the current system, all Class I wetlands would have a buffer of 200 ft. If the County chose to change systems, Class I wetlands could have buffers anywhere from 50 ft. to 300 ft. In some cases, the current system requires more restrictive buffers as demonstrated by the following tables. These tables include Ecology’s buffer alternatives and the difference between those buffers and our code’s buffers. The figures in parentheses reflect the difference in buffer widths between our existing code and if we were to use Ecology’s guidance. Those prefaced with a minus (-) sign and in green reflect a buffer reduction. Those prefaced with a plus (+) sign and in red demonstrate an increase in buffer width.

Category I Buffers

| Habitat Score in Rating Form | Low Intensity Use (ft) | Moderate Intensity Use (ft) | High Intensity Use (ft) |
|---------------------------------------|------------------------|-----------------------------|-------------------------|
| Western Washington¹ | | | |
| 5 points or less | 50 (-150) | 85 (-115) | 100 (-100) |
| 6 | 75 (-125) | 120 (-80) | 150 (-50) |
| 7 | 100 (-100) | 155 (-45) | 200 (same) |
| 8 | 125 (-75) | 190 (-10) | 250 (+50) |
| 9 | 150 (-50) | 225 (+25) | 300 (+100) |
| Eastern Washington² | | | |
| 5 points or less | 50 (-150) | 75 (-125) | 100 (-100) |
| 6 | 70 (-130) | 95 (-105) | 125 (-75) |
| 7 | 80 (-120) | 110 (-90) | 150 (-50) |
| 8 | 90 (-110) | 135 (-65) | 175 (-25) |
| 9 | 100 (-100) | 150 (-50) | 200 (same) |

Category II Buffers

| Habitat Score in Rating Form | Low Intensity Use (ft) | Moderate Intensity Use (ft) | High Intensity Use (ft) |
|---------------------------------------|------------------------|-----------------------------|-------------------------|
| Western Washington¹ | | | |
| 5 points or less | 50 (-50) | 85 (-15) | 100 (same) |
| 6 | 75 (-25) | 120 (+20) | 150 (+50) |
| 7 | 100 (same) | 155 (+55) | 200 (+100) |
| 8 | 125 (+25) | 190 (+90) | 250 (+150) |
| 9 | 150 (+50) | 225 (+125) | 300 (+200) |
| Eastern Washington² | | | |
| 5 points or less | 50 (-50) | 75 (-25) | 100 (same) |
| 6 | 70 (-30) | 95 (-5) | 125 (+25) |
| 7 | 80 (-20) | 110 (+10) | 150 (+50) |
| 8 | 90 (-10) | 135 (+35) | 175 (+75) |
| 9 | 100 (same) | 150 (+50) | 200 (+100) |

Category III Buffers

| Habitat Score in Rating Form | Low Intensity Use (ft) | Moderate Intensity Use (ft) | High Intensity Use (ft) |
|---|--|-----------------------------|-------------------------|
| Eastern and Western Washington¹ | | | |
| 3 | 40 (-10) | 60 (+10) | 80 (+30) |
| 4 | 45 (-5) | 70 (+20) | 90 (+40) |
| 5 | 55 (+5) | 80 (+30) | 110 (+60) |
| 6 | 65 (+15) | 100 (+50) | 130 (+80) |
| 7 | 75 (+25) | 110 (+60) | 150 (+100) |
| 8 | If wetland scores 8 habitat points, use Table 19.03-1 for Category II buffers. | | |
| 9 | If wetland scores 9 habitat points, use Table 19.03-1 for Category II buffers. | | |

Category IV Buffers

| Habitat Score in Rating Form | Low Intensity Use (ft) | Moderate Intensity Use (ft) | High Intensity Use (ft) |
|------------------------------|------------------------|-----------------------------|-------------------------|
| Western Washington | | | |
| 3 - 6 | 25 (same) | 40 (+15) | 50 (+25) |
| Eastern Washington | | | |
| 3 - 6 | 25 (same) | 40 (+15) | 50 (+25) |

The land use intensities are based on the following table which separates land uses into “low”, “moderate”, and “high” intensities:

Table 19.03-4. Land Use Intensity Matrix¹

| Intensity | Parks and Recreation | Streets and Roads | Stormwater Facilities | Utilities | Commercial/Industrial | Residential ² |
|-----------|--|---|---|---|-----------------------|--|
| Low | Natural fields and grass areas, viewing areas, split rail fencing | NA | Outfalls, spreaders, constructed wetlands, bioswales, vegetated detention basins, overflows | Underground and overhead utility lines, manholes, power poles (without footings) | NA | NA |
| Moderate | Impervious trails, engineered fields, fairways | Residential driveways and access roads | Wet ponds | Maintenance access roads | NA | Single-family with density less than 1 unit per acre |
| High | Greens, tees, structures, parking, lighting, concrete or gravel pads, security fencing | Public and private streets, security fencing, retaining walls | Maintenance access roads, retaining walls, vaults, infiltration basins, sedimentation forebays and structures, security fencing | Paved or concrete surfaces, structures, facilities, pump stations, towers, vaults, security fencing, etc. | All site development | Single- and multifamily with density higher than 1 unit per acre |

The land use intensity matrix splits residential development intensities into two tiers: densities less than 1 unit per acre and densities higher than 1 unit per acre. Residential development in Skamania County is generally developed at much lower densities. Only three zones allow lots smaller than 2-acres: Residential 1 (only in cases where public water is provided), High Density Residential (Carson), and Rural Residential (Carson). Unless public water is provided, Residential 1 and all other zones require lot sizes of at least 2 acres, which results in development that is of a lower intensity than contemplated by this matrix. The Planning Commission could consider adjusting the matrix to suit the development densities seen in Skamania County by including some single-family residential densities to the table as a “low” intensity.

Noxious Weeds

The Skamania County Noxious Weed Program provided recommended language for an existing exemption in the draft code for removal of noxious weeds:

“Removal of invasive vegetation designated by the Skamania County Noxious Weed Control Program including but not limited to: English Ivy (*Hedera helix*); Himalayan blackberry (*Rubus armeniacus*) evergreen blackberry (*Rubus laciniatus*); giant knotweed (*Polygonum sachalinense*); Himalayan knotweed (*Polygonum polystachyum*); and Japanese knotweed (*Polygonum cuspidatum*) utilizing the Best Management Practices for species present.”

Fish and Wildlife Habitat Conservation Areas (Chapter 19.05)

Staff has drafted revisions to the FHWCA review process that would allow for an initial notice to WDFW prior to the requirement for a full-blown critical areas report. Draft language is included below and follows the following general outline:

- Site plans for uses proposed within FWHCAs would be submitted to the WDFW for their review. WDFW would be given 14 days to provide comments.
- Review would terminate if:
 - WDFW either confirms that the project is located outside of a FWHCA or that the proposed use would not impact the wildlife area; OR
 - WDFW provides recommendations that would eliminate any impacts of the use by simply modifying the site plan or regulating the timing of new uses and the applicant accepts these recommendations.
- Review proceeds if WDFW provides no comments or the proposal cannot be adjusted according to recommendations from WDFW.
 - Applicant either submits a Critical Area Permit; OR
 - Provides a confirmation letter that project is not located within or would not impact a buffer

“19.05.030 Review Process.

A. Review by Department of Fish and Wildlife. Site plans for uses proposed within fish and wildlife habitat conservation areas shall be submitted by the administrator to the Washington Department of Fish and Wildlife (WDFW) for their review within a 14-day comment period. The purpose of this review is to allow WDFW to determine if a proposed activity or development is located within or would impact a fish and wildlife habitat conservation area and to provide management recommendations.

- a. If WDFW determines that the proposed activity or development is not located within and/or would not impact a fish and wildlife habitat conservation area or buffer as designated in 19.05.010(C), then review may terminate and further compliance with this chapter is not required.
- b. If WDFW determines that the proposed use would have only minor effects on the wildlife area or site that could be eliminated through mitigation measures recommended by the state wildlife biologist, or by simply modifying the site plan or regulating the timing of new uses, then these measures shall be included as conditions of approval in any required building or development permits.
- c. If WDFW provides no response within the 14-day comment period or determines that the proposed activity or development is located within or would impact a fish and wildlife habitat conservation area, review shall proceed under this chapter according to 19.05.030(B) or (C).

B. Critical Area Permit Required. Unless addressed under 19.05.030(A) or exempted by 19.05.010(A) or 19.01.060, all development or non-development clearing activities located within a fish and wildlife habitat conservation area require a Critical Area Permit and the submission of a Critical Area Report.

C. Confirmation letter. Although an area may be mapped as a fish and wildlife habitat conservation area, it may not meet the designation criteria of a fish and wildlife habitat conservation area. Compliance with this chapter is not required when the applicant provides a letter from a qualified professional demonstrating that a proposed activity or development is not located within and/or would not impact a fish and wildlife habitat conservation area or buffer as designated in 19.05.010(C)."

General Provisions (Chapter 19.01)

The general provisions chapter contains information about the purpose of the ordinance, administrative procedures, lists of exempt activities, general regulations that apply to all critical areas, mitigation requirements, and critical areas report requirements. All other chapters include the regulations and requirements unique to each individual critical area.

Administration

Section 19.01.050 outlines the permit requirements and review process. Some projects will require critical areas permits and some may also require variances; all permits must be issued within 120 days of application submittal. This section includes the criteria to qualify for a variance and information about the appeal process.

Regulated Activities

Section 19.01.060 includes a list of activities regulated by the critical areas ordinance. In addition to construction or development there are other activities that can impact critical areas. These are listed in this section so that it is clearer to what types of activities these regulations apply.

Exemptions

Section 19.01.070 includes four pages of exemptions. In some cases, exemptions are dependent upon compliance with specific requirements. New exemptions, such as for emergency actions or site investigation work are included.

General regulations and mitigation requirements

Section 19.01.080 discusses buffers and buffer reductions and also includes new provisions for density transfer for residential land divisions, and fencing. Section 19.01.090 provides direction for mitigation plans. Mitigation is required only when new uses directly impact critical areas. Mitigation is not required for work located outside of critical areas buffers.

General critical area report requirements

Section 19.01.100 includes the requirements for critical areas reports. Additional information may be required depending on the specific critical areas present. The administrator has the authority to determine applicability of individual report requirements.

19.03 WETLANDS

19.03.010 Purpose.

The purposes of this Chapter are to:

- A. Recognize and protect the beneficial functions performed by many wetlands, which include, but are not limited to, providing food and habitat for breeding, nesting, and/or rearing for fish and wildlife; recharging and discharging groundwater; contributing to stream flow during low flow periods; stabilizing streambanks and shorelines; storing storm and flood waters to reduce flooding and erosion; and improving water quality through biofiltration, adsorption, and retention and transformation of sediments, nutrients, and toxicants.
- B. Regulate land use to avoid adverse effects on wetlands and maintain the functions and values of wetlands throughout Skamania County.
- C. Establish review procedures for development proposals in and adjacent to wetlands.

19.03.020 Applicability.

The provisions of this Chapter apply to all regulated activities in wetlands or wetland buffers listed in 19.01.060 and all activities not specifically listed as exempt in 19.01.070 or 19.03.040.

For the purposes of this section, the division between eastern and western Washington is the Cascade Mountains from the international border to the top of Mount Adams, then the ridgeline dividing the White Salmon River drainage from the Lewis River drainage and the ridgeline dividing the Little White Salmon River drainage from the Wind River drainage to the Washington-Oregon state line (Washington Administrative Code [WAC] 222-16-010). Communities in western Washington include Washougal, Prindle, Skamania, North Bonneville, Stevenson, Carson, Stabler, and Home Valley. Communities in eastern Washington include Mill A, Willard, and Underwood.

19.03.040 Exemptions.

1. The following wetlands may be exempt from the requirements to avoid impacts (Chapter 19.01.090[B][1]), and they may be filled if the impacts are fully mitigated based on the remaining actions in Chapter 19.01.090(B)(2) through (6). If available, impacts should be mitigated through the purchase of credits from an in-lieu fee program or mitigation bank, consistent with the terms and conditions of the program or bank. In order to verify the following conditions, a critical area report for wetlands meeting the requirements in Chapter 19.03.060 must be submitted. Isolated wetlands are still regulated by Ecology. This provision does not exempt the applicant from securing authorization from Ecology to impact the types of wetlands listed below.
 - a. Exempt wetlands in Western Washington:
 - i. All isolated Category IV wetlands less than 4,000 square feet that:
 - (a) Are not associated with riparian areas or their buffers;
 - (b) Are not associated with shorelines of the state or their associated buffers;

- (c) Are not part of a wetland mosaic;
 - (d) Do not score 6 or more points for habitat function based on the Washington State Department of Ecology *Washington State Wetland Rating System for Western Washington: 2014 Update*; or as amended; and
 - (e) Do not contain a priority habitat or a priority area for a priority species identified by the Washington Department of Fish and Wildlife, or do not contain federally listed species or their critical habitat or species of local importance identified in Chapter 19.05.
- ii Wetlands less than 1,000 square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this Chapter.
- b. Exempt wetlands in Eastern Washington:
 - i Small isolated wetlands in arid landscapes often have a higher value and perform greater functions than in other settings. However, in certain circumstances, applying the buffers in Tables 19.03 (1 through 3) may result in buffer areas that are greater than the area of the wetland being protected. In these instances, the City may consult with the Washington Department of Ecology (Ecology) to determine whether exemptions from mitigation sequencing and/or reduced buffers are warranted.
2. Existing and ongoing agricultural activities. Existing agricultural activities are encouraged to implement applicable best management practices (BMPs) contained in the latest editions of the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Field Office Technical Guide.
 3. Conservation, preservation, or restoration activities for soil, water, vegetation, fish, and/or other wildlife that improve or do not change the structure or functions of the existing wetland.
 4. ~~The removal with hand labor and low impact equipment~~ Removal of any invasive vegetation designated by the Skamania County Noxious Weed Control Program including but not limited to: English ivy (*Hedera helix*); Himalayan blackberry (*Rubus armeniacus*); evergreen blackberry (*Rubus laciniatus*); giant knotweed (*Polygonum sachalinense*); Himalayan knotweed (*Polygonum polystachyum*); and Japanese knotweed (*Polygonum cuspidatum*) utilizing the Best Management Practices for species present.

19.03.030 Regulations.

A. Wetland Delineation.

1. Wetlands shall be identified and delineated by a qualified wetland professional in accordance with WAC 173-22-035 and designated based on the definitions, methods and standards set forth in the currently approved federal wetland delineation manual and applicable regional supplements. All areas within the County meeting the wetland designation criteria in those procedure are hereby designated critical areas and are

subject to the provisions of this Chapter. Wetland delineations are valid for five years; after such date, the County shall determine whether a revision or additional assessment is necessary.

2. A full wetland delineation shall not be required when a project applicant submits a letter written by a qualified wetland professional that demonstrates that a proposed use or activity will be located outside of wetlands and any applicable wetland buffers. Wetland categories must be established in accordance with Chapter 19.03.040(B) and buffers must be established in accordance with Chapter 19.03.040(C) when a proposed use or activity is within 300 feet of the wetland boundary.

B. Wetland Rating.

1. The determination of wetland ratings will be based on the entire extent of wetlands, unrelated to property lines or ownership patterns. Wetlands shall be rated according to the *Washington State Wetland Rating System for Eastern Washington* and/or *Western Washington*, as amended, published by Ecology.
 - a. Wetlands in Western Washington shall be rated according to Ecology's wetland rating system, as set forth in the *Washington State Wetland Rating System for Western Washington: 2014 Update* (Ecology Publication #14-06-029, or as revised and approved by Ecology), which contains the definitions and methods for determining whether the criteria below are met.
 - i. Category I wetlands are (1) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/Washington Department of Natural Resources (DNR); (2) bogs; (3) mature and old-growth forested wetlands larger than 1 acre; and (4) wetlands that perform many functions well (scoring 23 points or more). Category I wetlands: (1) represent unique or rare wetland types; (2) are more sensitive to disturbance than most wetlands; (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.
 - ii. Category II wetlands are wetlands with a moderately high level of functions (scoring between 20 and 22 points).
 - iii. Category III wetlands (1) are wetlands with a moderate level of functions (scoring between 16 and 19 points) and (2) can often be adequately replaced with a well-planned mitigation project.
 - iv. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed.
 - b. Wetlands in Eastern Washington shall be rated in accordance with Ecology's wetland rating system, as set forth in the *Washington State Wetland Rating System for Eastern Washington* (Ecology Publication #04-06-015, or as revised and approved by Ecology), which contains the definitions and methods for determining whether the criteria below are met.

- i Category I wetlands are (1) alkali wetlands; (2) wetlands that are identified by scientists of the Washington Natural Heritage Program/Department of Natural Resources (DNR) as high quality wetlands; (3) bogs and calcareous fens; (4) mature and old-growth forested wetlands over 1/4 acre with slow-growing trees; (5) forests with stands of aspen; and (6) wetlands that perform many functions very well (scores of 22 points or more).
 - ii Category II wetlands are (1) forested wetlands in the floodplains of rivers; (2) mature and old-growth forested wetlands over 1/4 acre with fast-growing trees; (3) vernal pools; and (4) wetlands that perform functions well (scores between 19-21 points).
 - iii Category III wetlands are wetlands with a moderate level of functions (scores between 16-18 points) and can often be adequately replaced with a well-planned mitigation project.
 - iv Category IV wetlands have the lowest levels of functions (scores less than 16 points) and are often heavily disturbed.
2. Illegal modifications. Wetland ratings categories shall not change due to illegal modifications made by the applicant or with the applicant's knowledge.

C. Wetland Buffers, Averaging, and Reductions

1. Buffer Requirements. The following buffer widths have been established in accordance with the best available science. They are based on the category of wetland, the proposed land use intensity, and the habitat score as determined by a qualified wetland professional using Ecology's wetland rating system as set forth in the *Washington State Wetland Rating System for Eastern Washington* (Ecology Publication #04-06-015) or the *Washington State Wetland Rating System for Western Washington: 2014 Update* (Ecology Publication #14-06-029), or these publications as revised and approved by Ecology as appropriate. The standard required widths of wetland buffers are shown in tables 19.03-1 through 3, and land use intensities are listed in Table 19.03-4.

Table 19.03-1. Buffers Required to Protect Habitat Functions in Category I and II Wetlands

| Habitat Score in Rating Form | Low Intensity Use (ft) | Moderate Intensity Use (ft) | High Intensity Use (ft) |
|---------------------------------------|------------------------|-----------------------------|-------------------------|
| Western Washington¹ | | | |
| 5 points or less | 50 | 85 | 100 |
| 6 | 75 | 120 | 150 |
| 7 | 100 | 155 | 200 |
| 8 | 125 | 190 | 250 |
| 9 | 150 | 225 | 300 |
| Eastern Washington² | | | |
| 5 points or less | 50 | 75 | 100 |
| 6 | 70 | 95 | 125 |
| 7 | 80 | 110 | 150 |
| 8 | 90 | 135 | 175 |

| Habitat Score in Rating Form | Low Intensity Use (ft) | Moderate Intensity Use (ft) | High Intensity Use (ft) |
|------------------------------|------------------------|-----------------------------|-------------------------|
| 9 | 100 | 150 | 200 |

1 - Modified from tables 8C-6 and 8C-7, "Appendix 8-C: Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Western Washington Wetland Rating System."

2 - Modified from tables 8D-6 and 8D-7, "Appendix 8-D: Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Eastern Washington Wetland Rating System."

Table 19.03-2. Buffers Required to Protect Habitat Functions in Category III Wetlands

| Habitat Score in Rating Form | Low Intensity Use (ft) | Moderate Intensity Use (ft) | High Intensity Use (ft) |
|---|--|-----------------------------|-------------------------|
| Eastern and Western Washington¹ | | | |
| 3 | 40 | 60 | 80 |
| 4 | 45 | 70 | 90 |
| 5 | 55 | 80 | 110 |
| 6 | 65 | 100 | 130 |
| 7 | 75 | 110 | 150 |
| 8 | If wetland scores 8 habitat points, use Table 19.03-1 for Category II buffers. | | |
| 9 | If wetland scores 9 habitat points, use Table 19.03-1 for Category II buffers. | | |

1 - Modified from Table 8C-5, "Appendix 8-C: Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Western Washington Wetland Rating System."

2 - Modified from Table 8D-5, "Appendix 8-D: Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Eastern Washington Wetland Rating System."

Table 19.03-3. Buffers Required to Protect Habitat Functions in Category IV Wetlands¹

| Habitat Score in Rating Form | Low Intensity Use (ft) | Moderate Intensity Use (ft) | High Intensity Use (ft) |
|------------------------------|------------------------|-----------------------------|-------------------------|
| Western Washington | | | |
| 3 - 6 | 25 | 40 | 50 |
| Eastern Washington | | | |
| 3 - 6 | 25 | 40 | 50 |

1 Modified from Table 8C-4, "Appendix 8-C: Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Western Washington Wetland Rating System."

Table 19.03-4. Land Use Intensity Matrix¹

| Intensity | Parks and Recreation | Streets and Roads | Stormwater Facilities | Utilities | Commercial/Industrial | Residential ² |
|-----------|---|--|---|--|-----------------------|--|
| Low | Natural fields and grass areas, viewing areas, split rail fencing | NA | Outfalls, spreaders, constructed wetlands, bioswales, vegetated detention basins, overflows | Underground and overhead utility lines, manholes, power poles (without footings) | NA | NA |
| Moderate | Impervious trails, engineered fields, fairways | Residential driveways and access roads | Wet ponds | Maintenance access roads | NA | Single-family with density less than 1 unit per acre |
| High | Greens, tees, structures, | Public and private streets, | Maintenance access roads, | Paved or concrete | All site development | Single- and multifamily |

| Intensity | Parks and Recreation | Streets and Roads | Stormwater Facilities | Utilities | Commercial/Industrial | Residential² |
|------------------|--|-----------------------------------|---|---|------------------------------|--|
| | parking, lighting, concrete or gravel pads, security fencing | security fencing, retaining walls | retaining walls, vaults, infiltration basins, sedimentation forebays and structures, security fencing | surfaces, structures, facilities, pump stations, towers, vaults, security fencing, etc. | | with density higher than 1 unit per acre |

1 The County Planning staff shall determine the intensity categories that apply to proposals should their characteristics not be specifically listed in Table 19.03-4.

2 Measured as density averaged over a site, not individual lot sizes.

2. When impervious surfaces from previous development completely functionally isolate the buffer from the wetland, the wetland buffer shall extend from the edge of the boundary of the delineated wetland to the impervious surfaces.
 3. Any wetland created as compensation for an approved wetland alteration shall have the standard buffer required for the category, habitat score, and land use intensity of the created wetland expected at the end of the monitoring period. Wetlands to be created shall be located such that the buffer associated with the new wetland does not cross onto adjacent property, unless the same property owner owns the adjacent property.
 4. Buffer averaging. Buffer averaging is allowed in accordance with 19.01.080(D)(5).
 5. Measurement of Wetland Buffers (see 19.01.080(D)).
 6. Buffer Maintenance. Except as otherwise specified or allowed in accordance with this Chapter, wetland buffers shall be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, the removal of invasive non-native weeds is required for the duration of the monitoring period (19.01.090).
 7. Impacts to Buffers. Requirements for the compensation for impacts to buffers are outlined in 19.03.050 of this Chapter.
- D. Development Standards within Wetlands and Buffers. When permitted through a critical areas permit or variance, development within wetlands and buffers is subject to the following standards subject to preparation of a critical areas report including a mitigation plan for unavoidable impacts to critical areas or buffers.
1. Subdivisions. In the case of all subdivisions, a wetland and its buffer must be set aside in a non-buildable open space tract or conservation easement. Residential density may be transferred out of critical areas in accordance with the cluster development standards in SCC 21.70.150.-
 2. Public roads and utilities.
 - a. The expansion of the footprints of public roads and utilities may occur within wetland and buffer areas not to exceed locally established levels of service, and to provide for and protect public safety when no lesser impacting option is feasible and the width of the corridor is minimized to the maximum extent possible.

- b. Public and private utility corridors may be allowed within wetland buffers only for Category II, III, and IV wetlands when no lesser impacting alternative alignment is feasible, and wetland and wetland buffer functions and values will not be degraded. Utilities, whenever possible, shall be constructed in existing improved roads, drivable surfaces or shoulders subject to compliance with road maintenance BMPs, or within existing utility corridors. Otherwise, corridor alignment, construction, restoration, and maintenance shall adhere to the following criteria:
 - i Corridor alignment shall be limited to the outer 25 percent of the buffer width, except when crossing a Category IV wetland and its buffer; or if installed using drilling techniques;
 - ii Corridor construction and maintenance shall maintain and protect the ecological functions of the wetland and the buffer;
 - iii Corridors shall be fully revegetated with appropriate native vegetation upon completion of construction; and
 - iv Utilities requiring maintenance roads shall be prohibited in wetlands and wetland buffers unless the following criteria are met:
 - (a) There are no lesser impacting alternatives;
 - (b) Any required maintenance roads shall be no wider than 15 feet. Roads shall be located as close as is practicable to the utility to minimize disturbances; and,
 - (c) The maintenance road shall be constructed of pervious materials and designed to maintain and protect the ecological functions of the wetland and its buffer.
 - c. Drilling for utilities/utility corridors. When drilling under a wetland for the installation of utilities or utility corridors, entrance and exit portals must be located completely outside the wetland buffer, provided that the drilling does not interrupt the groundwater connection to the wetland or the percolation of surface water down through the soil column. Studies by a hydrologist are necessary to determine whether the groundwater connection to the wetland or the percolation of surface water down through the soil column will be disturbed.
3. Stormwater management facilities. A wetland or its buffer can be physically or hydrologically altered to meet the requirements of a low impact development, runoff treatment, or flow control BMP if ALL of the following criteria are met:
 - a. The wetland is classified as a Category IV or a Category III wetland with a habitat score of 3-5 points; and
 - b. Functions and values of the wetland are protected; and
 - c. The wetland does not contain a breeding population of any native amphibian species; and

- d. The hydrologic functions of the wetland can be improved as outlined in questions 3, 4, and 5 of Chart 4, and questions 2, 3, and 4 of Chart 5 in the "Guide for Selecting Mitigation Sites Using a Watershed Approach" (available here: <http://www.ecy.wa.gov/biblio/0906032.html>); or the wetland is part of a priority restoration plan that achieves restoration goals identified in a shoreline master program or other local or regional watershed plan; and
 - e. The wetland lies in the natural routing of the runoff, and the discharge follows the natural drainage; and
 - f. All regulations regarding stormwater and wetland management are followed, including, but not limited to, local and state wetland and stormwater codes, manuals, and permits; and
 - g. Modifications that alter the structure of a wetland or its soils will require permits. Existing functions and values that are lost will have to be compensated/replaced.
4. Passive recreation facilities. If not using the buffer flexibility options in 19.01.080, the following uses may be permitted within a wetland buffer, provided they are not prohibited by any other applicable law and are conducted in a manner that minimizes impacts to the buffer and adjacent wetland:
- a. Walkways and trails may be permitted provided that they are generally parallel to the perimeter of the wetland, are located in the outer 25 percent of the buffer area, are constructed with a surface that does not interfere with soil permeability, and their surface is no more than 5 feet wide. The design and construction of walkways and trails shall avoid impacts to established native woody vegetation. Raised boardwalks using non-treated materials are acceptable.
 - b. Wildlife viewing structures. Wildlife viewing structures may be permitted provided they are associated with a walkway or trail, are located in the outer 25 percent of the buffer area, are constructed with a surface that does not interfere with soil permeability, and their surface is no more than 8 feet wide. The design and construction of wildlife viewing structures shall avoid impacts to established native woody vegetation. Raised platforms utilizing non-treated pilings are acceptable.
 - c. 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.
 - d. If invasive vegetation is removed from wetlands or other water bodies, only chemical herbicides approved by the U.S. Environmental Protection Agency for use in aquatic environments may be employed.
 - e. Aquatic herbicides can be used or applied only by certified applicators or persons under the direct supervision of a certified applicator, and only for those uses covered by the certified applicator's license category. Applicators are required to be

permitted under Ecology’s noxious weed control permit. Applicators shall comply with all conditions of the noxious weed control permit.

- f. Revegetation with appropriate native species at natural densities is allowed and encouraged in conjunction with removal of invasive plant species.

19.03.070 Wetland Mitigation.

A. Protection of wetland functions and values shall occur as a result of the overall project. Only unavoidable wetland impacts will be authorized. In addition to the requirements in 19.01.090 “General Mitigation Requirements for All Critical Areas,” the following mitigation measures to minimize and reduce wetland impacts shall be required:

- 1. Mitigation shall achieve equivalent or greater biological functions. Mitigation plans shall be consistent with Ecology’s publication *Wetland Mitigation in Washington State: Part 2 - Developing Mitigation Plans*, 2006 or as revised.

Table 19.03-5. Standard Wetland Mitigation Ratios

| Wetland to be Replaced | Reestablishment or Creation | Rehabilitation | Reestablishment or Creation and Rehabilitation | Reestablishment or Creation and Enhancement | Enhancement |
|--|-----------------------------|--|--|---|--------------|
| Category IV | 1.5:1 | 3:1 | 1:1 R/C and 1:1 RH | 1:1 R/C and 2:1 E | 6:1 |
| Category III | 2:1 | 4:1 | 1:1 R/C and 2:1 RH | 1:1 R/C and 4:1 E | 8:1 |
| Category II | 3:1 | 6:1 | 1:1 R/C and 4:1 RH | 1:1 R/C and 8:1 E | 12:1 |
| Category I, Forested | 6:1 | 12:1 | 1:1 R/C and 10:1 RH | 1:1 R/C and 20:1 E | 24:1 |
| Category I, Based on Score for Functions | 4:1 | 8:1 | 1:1 R/C and 6:1 RH | 1:1 R/C and 12:1 E | 16:1 |
| Category I, Natural Heritage Site | Not Considered Possible | 6:1 Rehabilitate a Natural Heritage Site | N/A | N/A | Case-by-Case |

B. Requirements for compensatory mitigation.

- 1. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with *Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans--Version 1* (Ecology Publication #06-06-011b, March 2006 or as revised), and *Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington)* (Ecology Publication #10-06-07, November 2010) or *Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)* (Ecology Publication #09-06-032, December 2009).
- 2. Mitigation ratios for permittee-responsible mitigation shall be consistent with Table 19.03-5 of this Chapter. Requiring a greater area for mitigation than the wetland area

that will be impacted helps offset the risk that compensatory mitigation will fail as well as the temporal loss of functions that may occur.

3. Mitigation requirements may also be determined using the credit/debit tool described in “Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Eastern Washington: Final Report” (Ecology Publication #11-06-015, August 2012) or “Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report” (Ecology Publication #10-06-011, March 2011), consistent with 19.03.050(G)(2) of this Chapter.
- C. Compensating for lost or affected functions. Compensatory mitigation shall address the functions affected by the proposed project, with the intention of achieving functional equivalency or the improvement of functions. The goal shall be for the compensatory mitigation to provide wetland functions similar to those lost, except when either:
1. The lost wetland provides minimal functions, and the proposed compensatory mitigation action(s) will provide equal or greater functions, or will provide functions shown to be limiting within a watershed through a formal Washington watershed assessment plan or protocol; or
 2. Out-of-kind replacement of wetland type or functions will best meet watershed goals formally identified by the County, such as replacement of historically diminished wetland types
- D. Preference of mitigation actions. Mitigation actions that require compensation shall occur in the following order of preference:
1. Wetland mitigation banks. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the mitigation bank instrument. Use of credits from a wetland mitigation bank certified under WAC 173-700 is allowed if:
 - a. The County determines that the use of credits would provide appropriate compensation for the proposed impacts; and
 - b. The impact site is located in the service area of the bank; and
 - c. The proposed use of credits is consistent with the terms and conditions of the certified mitigation bank instrument; and
 - d. Replacement ratios for projects using bank credits is consistent with replacement ratios specified in the certified mitigation bank instrument.
 2. In-lieu fee mitigation: To help implement off-site mitigation, the County may develop an in-lieu fee program. It shall be developed and approved through a public process and be consistent with federal rules, state policy regarding in-lieu fee mitigation, and state water quality regulations. An approved in-lieu-fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor, a governmental or non-profit natural resource management entity.

Credits from an approved in-lieu-fee program may be used when ALL of the following apply:

- a. The County determines that these credits would provide environmentally appropriate compensation for the proposed impacts; and
 - b. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee program instrument; and
 - c. Projects using in-lieu-fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland professional using the credit assessment method specified in the approved instrument for the in-lieu-fee program; and
 - d. The impacts are located within the service area specified in the approved in-lieu-fee instrument.
3. Permittee-responsible mitigation. In this situation, the permittee or responsible party performs the mitigation after the permit has been issued and is ultimately responsible for implementation and success of the mitigation. Permittee-responsible mitigation may occur at the site of the permitted impacts or at an off-site location within the same watershed. Permittee-responsible mitigation shall be used only if the applicant's qualified wetland professional demonstrates to the approval authority's satisfaction that the proposed approach is ecologically preferable to the use of a bank or in-lieu fee program, consistent with the criteria in this section.
- a. Restoration: For the purpose of tracking net gains in wetland acres, restoration is divided into:
 - i Reestablishment: The goal of reestablishment is to return the natural or historic functions to a former wetland.
 - ii Rehabilitation: The goal of rehabilitation is to repair the natural or historic functions of an existing degraded wetland
 - b. Establishment (Creation): The goal of establishment is to develop a wetland from an upland or deepwater site where a wetland did not previously exist
 - c. Enhancement. The goal of enhancement is to heighten, intensify, or improve specific functions, or to change the growth stage or composition of existing vegetation with a wetland.
 - d. Protection/maintenance (Preservation). Removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This includes appropriate legal and physical mechanisms (such as recording conservation easements and providing structural protections like fences and signs and repairing water control structures). Preservation does not result in a gain of wetland acres. Permanent protection of a Category I or II wetland and its associated buffer at risk of degradation can be used only if:

- i The County determines that the proposed preservation is the best mitigation option.
 - ii The proposed preservation site is under threat of undesirable ecological change due to permitted, planned, or likely actions that will not be adequately mitigated under existing regulations.
 - iii The area proposed for preservation is of high quality or critical for the health of the watershed or basin due to its location. Some of the following features may be indicative of high-quality sites:
 - (a) Category I or II wetland rating (using the appropriate wetland rating system for eastern or western Washington);
 - (b) Rare or irreplaceable wetland type (for example, bogs, mature forested wetlands, estuarine wetlands) or aquatic habitat that is rare or a limited resource in the area;
 - (c) Habitat for priority or locally important wildlife species;
 - (d) Provides biological and/or hydrological connectivity; and
 - (e) Priority sites in an adopted watershed plan.
 - e. Permanent preservation of the wetland and buffer will be provided through a conservation easement or tract held by an appropriate natural land resource manager (such as a land trust) that provides permanent preservation of the wetland and buffer.
 - f. The County may approve other legal and administrative mechanisms in lieu of a conservation easement if it determines they are adequate to protect the site.
 - g. 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 impacted and the quality of the wetlands being preserved. Ratios for preservation as the sole means of mitigation generally start at 20:1.
- E. Location of compensatory mitigation. Compensatory mitigation actions shall generally be conducted within the same sub-drainage basin and on the site of the alteration except when the applicant can demonstrate that off-site mitigation is ecologically preferable. The following criteria will be evaluated when determining whether the proposal is ecologically preferable. When considering off-site mitigation, preference should be given to using alternative mitigation, such as a mitigation bank, an in-lieu-fee program, or advance mitigation.
- 1. 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 riparian fish and wildlife impacts (such as connectivity).

2. On-site mitigation would require elimination of high-quality upland habitat.
 3. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the altered wetland.
 4. Off-site locations shall be in the same sub-drainage basin unless:
 - a. Established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the County and strongly justify location of mitigation at another site; or
 - b. 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; or
 - c. Fees are paid to an approved in-lieu fee program to compensate for the impacts.
 5. The design for the compensatory mitigation project needs to be appropriate for its location (i.e., position in the landscape). Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland.
- F. Timing for compensatory mitigation shall comply with 19.01.090(E)(4).
- G. Compensatory mitigation plan. When a project involves wetland and/or buffer impacts, a compensatory mitigation plan prepared by a qualified professional meeting the following minimum standards shall be required:
1. 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 Minimum Standards for Wetland Reports (19.03.050) of this Chapter.
 2. Compensatory mitigation report. The report must include a written report and plan sheets that must contain, at a minimum, the following elements. Complete guidance can be found in *Wetland Mitigation in Washington State— Part 2: Developing Mitigation Plans* (Version 1) (Ecology Publication No. 06-06-011b, March 2006, or as revised).
 - a. In addition to the requirements of 19.01.090(F), the written report must contain, at a minimum:
 - i Description of how the project design has been modified to avoid, minimize, or reduce adverse impacts to wetlands.
 - ii Description of the existing wetland and buffer areas proposed to be impacted. Include acreage (or square footage), water regime, vegetation, soils, landscape position, surrounding lands uses, and functions. Also describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating, based on Wetland Ratings (19.03.030 of this Chapter).

- iii 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.
 - iv Surface and subsurface hydrologic conditions, including an analysis of existing and proposed hydrologic regimes for created or restored compensatory mitigation areas. Include illustrations of how data for existing hydrologic conditions were used to determine the estimates of future hydrologic conditions.
 - v A description of the proposed actions for compensation of impacts to 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.
 - vi A description of the proposed mitigation construction activities and timing of activities.
 - vii Performance standards (measurable standards for years post-installation) for upland and wetland communities, a monitoring schedule, and a maintenance schedule and actions proposed by year.
 - viii A discussion of ongoing management practices that will protect wetlands after the development project has been implemented, including proposed monitoring and maintenance programs (for remaining wetlands and compensatory mitigation wetlands).
 - ix A financial guarantee as per 19.01.080.
 - x Proof of establishment of Notice on Title for the wetlands and buffers on the project site, including the compensatory mitigation areas.
- b. The scaled plan sheets for the compensatory mitigation must contain, at a minimum:
- i 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.
 - ii Existing topography, ground-proofed, at 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 impacted, and cross section(s) (estimated 1-foot intervals) for the proposed areas of wetland or buffer compensation.
 - iii 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.

- iv 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 Chapter.
 - v A planting plan 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, and timing of installation.
- H. Buffer mitigation ratios. Impacts to buffers shall be mitigated at a minimum 1:1 ratio. Compensatory buffer mitigation shall replace those buffer functions lost from development.
- I. Protection of the mitigation site. The area where the mitigation occurred and any associated buffer shall be located in a critical area tract or a conservation easement consistent with 19.01.090.
- J. 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 5 years. If a scrub-shrub or forested vegetation community is proposed, monitoring may be required for 10 years or more. Monitoring shall be completed consistent with 19.01.090(G).
- K. Advance mitigation. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to federal rules, state policy on advance mitigation, and state water quality regulations consistent with "Interagency Regulatory Guide: Advance Permittee Responsible Mitigation" (Ecology Publication #12-06-015, December 2012).
- L. Alternative Mitigation Plans. The Administrator may approve alternative wetland mitigation plans that are based on best available science. Alternative mitigation proposals must provide an equivalent or better level of protection of wetland functions and values than would be provided by the strict application of this Chapter.

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

1. The proposal uses a watershed approach consistent with "Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington)" (Ecology Publication #10-06-07, November 2010) or "Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)" (Ecology Publication #09-06-032, December 2009).
2. Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas.
3. Mitigation according to 19.01.090 is not feasible due to site constraints such as parcel size, stream type, wetland category, or geologic hazards.
4. There is clear potential for success of the proposed mitigation at the proposed mitigation site.

5. The plan shall contain clear and measurable standards for achieving compliance with the specific provisions of the plan. A monitoring plan shall, at a minimum, meet the provisions in 19.03.050(K) of this Chapter.
6. The plan shall be reviewed and approved as part of the overall approval of the proposed use.
7. A wetland of a different type may be justified based on regional needs or functions and values; the replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative.
8. Mitigation guarantees shall meet the minimum requirements as outlined in 19.03.050(H)(2)(a)(ix).
9. Qualified professionals in each of the critical areas addressed shall prepare the plan.
10. The County may consult with agencies with expertise and jurisdiction over the critical areas during the review to assist with the analysis and identification of appropriate performance measures that adequately safeguard critical areas.

19.03.080 Report requirements.

- A. In addition to the general requirements for critical areas reports provided under Chapter 19.01, wetland critical area reports, prepared by a qualified professional, shall include items listed below. The Administrator has the authority to determine the applicability of individual critical areas report requirements and may waive report requirements determined to be unnecessary on a case-by-case basis.
 1. On the site map:
 - a. Wetlands shall be identified as delineated by a qualified wetland professional in accordance with WAC 173-22-035.
 - b. The location of any proposed wetland mitigation area(s) shall be identified.
 - c. The location of any proposed wetland or buffer alteration or fill shall be shown.
 2. In the report:
 - a. A statement specifying the accuracy of the report and all assumptions made and relied upon.
 - b. Documentation of any fieldwork performed on the site, including field data sheets for delineations, rating system forms, baseline hydrologic data, etc.
 - c. A description of the methodologies used to conduct the wetland delineations, wetland ratings, or impact analyses including references.
 - d. Description of the wetland by classification per the *Washington State Wetland Rating System for Eastern Washington* (Ecology Publication No. 14-06-030 or as revised) or *Western Washington* (Ecology Publication No.14-06-029 or as revised).
 - e. General condition of the wetland.

- f. Description of vegetation species and community types present in the wetland and surrounding buffer.
 - g. Description of soil types within the wetland and the surrounding buffer using the USDA Soil Conservation Service soil classification system.
- B. Description of hydrologic regime and related findings.
- C. A copy of the site plan sheet(s) for the project must be included with the written report and must include, at a minimum:
- 1. Maps (to scale) depicting delineated and surveyed wetland and required buffers on-site, including buffers for off-site critical areas that extend onto the project site; the development proposal; other critical areas; grading and clearing limits; areas of proposed impacts to wetlands and/or buffers (include square footage estimates).
 - 2. 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.

19.05 FISH AND WILDLIFE HABITAT CONSERVATION AREAS

19.05.010 Applicability.

A. Review under the standards of this Chapter shall apply to any proposed development or non-development clearing activities within fish and wildlife habitat conservation areas, defined below, which are not listed as exempt, pursuant to Skamania County Code (SCC) 19.01.070, Exemptions.

1. Development activities are those proposals already subject to existing County land division, building, grading or other review processes.
2. Non-development clearing activities are proposals that are not otherwise subject to County review, but involve the alteration or removal of vegetation in designated fish and wildlife habitat conservation areas.
3. Or regulated activities as outlined in SCC 19.01.060.

~~B. Confirmation letter. Although an area may be mapped as a fish and wildlife habitat conservation area, it may not meet the designation criteria of a fish and wildlife habitat conservation area. Compliance with this chapter is not required when the applicant provides a letter from a qualified professional demonstrating that a proposed activity or development is not located within and/or would not impact a fish and wildlife habitat conservation area or buffer as designated in 19.05.010(C).~~

~~C.B.~~ B. Designation. All areas within the County meeting one or more of the following designations, regardless of formal identification, are considered fish and wildlife habitat conservation areas and are subject to the provisions of this Chapter.

1. Areas where endangered, threatened, and sensitive species have a primary association, including federal and state species (Washington Department of Fish and Wildlife [WDFW] priority habitats and species, including riparian habitat areas) and state priority habitat and areas associated with state priority species. Priority habitats and species are considered to be priorities for conservation and management. Priority species require protective measures for their perpetuation because of 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.
2. Waters of the state. Waters of the state shall be those defined in Washington Administrative Code (WAC) 222-16-030:
 - a. Type S Waters are all waters, within their bankfull width, as inventoried as "shorelines of the state" under Chapter 90.58 of the Revised Code of Washington (RCW) and the rules promulgated pursuant to Chapter 90.58, including periodically

- inundated areas of their associated wetlands. Type S shorelines are regulated under the County shoreline management program (SMP).
- b. Type F Waters are segments of natural waters, which are not classified as Type S Waters and have a high fish, wildlife, or human use. These are segments of natural waters and the periodically inundated areas of their associated wetlands.
 - c. Type Np Waters are all segments of natural waters within defined channels that are perennial non-fish habitat streams. Perennial streams are waters that do not go dry at any time of a year of normal rainfall. However, for the purpose of water typing, Type Np Waters include the intermittently dry portions of the perennial channel below the uppermost point of perennial flow.
 - d. Type Ns Waters are all segments of natural waters within defined channels that are not Type S, F, or Np Waters. These are seasonal, non-fish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np Water. Ns Waters must be physically connected by an aboveground channel system to a Type S, F, or Np Water.
3. Habitats and species of local importance, as determined locally;
 4. Forage fish spawning areas;
 5. Naturally occurring ponds under 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 other waters.

This does not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds, and landscape amenities, unless such artificial ponds were intentionally created for mitigation.
 6. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and
 7. State or federal natural area preserves, natural resource conservation areas, and state wildlife areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the Washington State Department of Natural Resources (DNR).

19.050.020 Exemptions

- A. Activities exempt from the provisions of this section are specified in SCC 19.01.070, Exemptions. In addition, the following habitat-specific exemption applies in deer and elk wintering range mapped by WDFW. Deer and elk are sensitive to disturbance from human development including roads and buildings in their wintering habitat. They normally

require mature trees and undergrowth for screening in their wintering habitat and can do well in open areas lacking tree coverage provided there is a lack of human disturbance.

1. Single-family residences and accessory uses are exempt from review in WDFW mapped deer and elk wintering range provided all the following criteria are met as demonstrated by the applicant:
 - a. The subject site is located in an area of tree canopy coverage of less than 60 percent;
 - b. The subject site is located in an area of existing human disturbance where road density is greater than 1.5 miles of road within 1 square mile of the proposed development site and where existing density of residences is greater than one residence per 5 acres
 - c. The subject site is located in areas greater than $\frac{3}{4}$ -mile from water sources (streams, lakes, or rivers).

19.05.030 Review Process.

A. Review by Department of Fish and Wildlife. Site plans for uses proposed within fish and wildlife habitat conservation areas shall be submitted by the administrator to the Washington Department of Fish and Wildlife (WDFW) for their review within a 14-day comment period. The purpose of this review is to allow WDFW to determine if a proposed activity or development is located within or would impact a fish and wildlife habitat conservation area and to provide management recommendations.

- a. If WDFW determines that the proposed activity or development is not located within and/or would not impact a fish and wildlife habitat conservation area or buffer as designated in 19.05.010(C), then review may terminate and further compliance with this chapter is not required.
- b. If WDFW determines that the proposed use would have only minor effects on the wildlife area or site that could be eliminated through mitigation measures recommended by the state wildlife biologist, or by simply modifying the site plan or regulating the timing of new uses, then these measures shall be included as conditions of approval in any required building or development permits.
- c. If WDFW provides no response within the 14-day comment period or determines that the proposed activity or development is located within or would impact a fish and wildlife habitat conservation area, review shall proceed under this chapter according to 19.05.030(B) or (C).

B. Critical Area Permit Required. Unless addressed under 19.05.030(A) or exempted by 19.05.010(A) or 19.01.060, all development or non-development clearing activities located within a fish and wildlife habitat conservation area require a Critical Area Permit and the submission of a Critical Area Report.

C. Confirmation letter. Although an area may be mapped as a fish and wildlife habitat conservation area, it may not meet the designation criteria of a fish and wildlife habitat conservation area. Compliance with this chapter is not required when the applicant

provides a letter from a qualified professional demonstrating that a proposed activity or development is not located within and/or would not impact a fish and wildlife habitat conservation area or buffer as designated in 19.05.010(C).

19.05.030-040 Regulations.

- A. The following requirements apply in addition to those identified in SCC 19.01. All new structures and land alterations shall be prohibited from fish and wildlife habitat conservation areas and their buffers, except in accordance with this Chapter. Additional standards follow:
1. Development and clearing within a fish and wildlife habitat conservation area or an associated buffer shall protect the functions and values of the existing habitat to the extent feasible; activities shall protect critical area functions and values. Protection is to be provided by avoiding (the preferred alternative) or minimizing and mitigating impacts as specified in SCC 19.01.090.
 2. Any use or development proposed within or adjacent to a fish and wildlife habitat conservation area shall ensure the area is protected as required by this Chapter. If the Administrator determines that a proposal is likely to impact a fish and wildlife habitat conservation area adversely, additional protective measures (such as a buffer area) may be required.
 3. Development or clearing within a priority habitat and/or species area shall follow WDFW management guidelines, management recommendations, or other standards approved by the WDFW. Where no guidelines, recommendations, or other standards exist, development or clearing may occur provided that:
 - a. The development or clearing protects habitat functions and values; and
 - b. Functionally significant habitat, defined as habitat that cannot be replaced or restored within 20 years shall be preserved. Forested stands that do not meet the definition of old-growth/mature forests as specified by the WDFW Priority Habitats and Species List, may be exempt from this (19.05.030-040(A)(3)(b)) provision.
 4. The County or its qualified professional biologist shall condition the approval of activities located in fish and wildlife habitat conservation areas or their buffers as necessary. Approval conditions shall require the applicant to mitigate any potential adverse impacts according to the approved critical area report and habitat mitigation plan.
 5. Proposals for activities, uses, and alterations located below the ordinary high water mark (OHWM) shall identify with specificity how the preservation and enhancement of anadromous fish habitat will be achieved, including, but not limited to, the following:
 - a. Activities shall not occur outside the allowable work window as designated by the WDFW.
 - b. An alternative alignment or location for the activity is not feasible.

- c. The activity is designed so that it will minimize the degradation of the downstream functions or values of the fish habitat or other critical areas.
- d. Any impact to the functions and values of the habitat conservation area are mitigated in accordance with an approved critical areas report.
- e. Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish. Fish bypass facilities shall be provided, as necessary, to allow the upstream and downstream migration of all salmonid life stages and shall prevent juveniles migrating downstream from being trapped or harmed. This standard does not apply to existing dams regulated/licensed by the Federal Energy Regulatory Commission.
- f. Water intakes shall be screened to prevent fish from being drawn into pipes, pumps, and diversion devices in accordance with WAC 220-660-250.

B. Development Standards.

1. Alterations within fish and wildlife habitat conservation areas. A habitat conservation area may be altered, provided, that the proposed alteration of the habitat or the mitigation proposed is unavoidable and does not degrade the quantitative and qualitative functions and values of the habitat, and provided that the proposed alteration is not otherwise restricted or prohibited by this Chapter. Applicants proposing activities subject to this Chapter are required to demonstrate that the activity:
 - a. Substantially maintains the level of habitat functions and values as characterized and documented using best available science.
 - b. Minimizes habitat disruption or alteration beyond the extent required to undertake the proposal.
2. Nonindigenous Species. Plants, wildlife, or fish species not indigenous to the region shall not be introduced into a habitat conservation area unless authorized by a state or federal permit or approval.
3. Clearing and Grading. When clearing and grading is permitted as part of an approved critical areas report, 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; provided, that the County may extend or shorten the dry season on a case-by-case basis, as determined by actual weather conditions.
 - b. Best management practices for erosion and sediment control must be in place prior to, during, and after construction.
4. If it is determined that habitat designated under this Chapter will incur a net loss of functions or values as a result of a proposal, disrupted functions and values shall be mitigated on site as a first priority, and off site thereafter.

5. Mitigation should be guided by applicable watershed, fish recovery, sub-basin or other science-based plans. Any science used to guide mitigation actions, whether on site or off site, must meet the criteria and characteristics of best available science listed in WAC 365-195-905, or the state standards in effect at the time of application.
6. Mitigation actions that require compensation shall occur in accordance with Section 19.01.090, General Mitigation Requirements.
7. The following additional mitigation requirements for Fish and Wildlife Habitat Conservation Areas shall apply.
 - a. Mitigation for alterations to fish and wildlife habitat conservation areas shall be consistent with WDFW and other state or federal agencies' management recommendations and guidance documents for best practices mitigation.
 - b. Mitigation shall be required to the level or extent necessary to protect fish and wildlife habitat conservation area functions and values.
 - c. Proposed mitigation for impacts within fish and wildlife habitat conservation areas may be conditioned by the County on a case-by-case basis using recommendations provided by Washington Department of Fish and Wildlife.

C. Habitat Specific Development Standards.

1. Endangered, Threatened, and Sensitive Species. Where federal or state management recommendations exist to protect a state or federally protected species, development or other activities may be allowed within or adjacent to a habitat conservation area or buffer with which the state or federally endangered, threatened, or sensitive species has a primary association only when the management recommendations are utilized as demonstrated in a critical area assessment prepared by a qualified professional and approved by the Administrator.
2. 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 Section 19.03, Wetlands. If overlap occurs between these critical areas, the provisions of this section or Section 19.03, Wetlands, whichever provides greater protection to the habitat, apply.
3. Riparian Habitat. Riparian habitat areas shall be established for habitats that include aquatic and terrestrial ecosystems that mutually influence each other and that are located adjacent to waters of the state. Unless otherwise allowed in this title, all structures and activities shall be located outside riparian habitat areas.
 - a. Isolated Riparian Habitat Areas. When impervious surfaces from previous development or flood control structures, such as levees, completely functionally isolate the riparian area from the watercourse, the riparian habitat area shall extend from the OHWM to the impervious surfaces, or toe of the flood control structure.
 - b. Seasonal Restrictions. When a species is more susceptible to adverse impacts during particular periods of the year, seasonal restrictions may apply. Larger riparian

habitat area widths may be required and activities may be further restricted during the specified season.

4. Required Riparian Habitat Area. The required widths are shown in the table below. Widths shall be measured outward in each direction, on the horizontal plane, from the OHWM (or from the top of bank, if the OHWM cannot be identified) to the edge of the 100-year floodplain, or the distances shown in the table below, whichever is greater.

**Table 19.05-1. Riparian Habitat Areas –
Stream Type - Required Riparian Habitat Area Widths**

| Stream Type | Riparian Habitat Area Width (ft) |
|--|----------------------------------|
| DNR Type S Waters | See County SMP |
| DNR Type F Waters (salmon-bearing) | 150 100 |
| DNR Type F Waters (non-salmon-bearing) | 100 |
| DNR Type Np Waters | 75 50 |
| DNR Type Ns Waters | 50 25 |

5. Alterations to Waters of the State and Associated Riparian Habitat Areas. Activities may be permitted within a pond, lake, water of the state, or associated riparian habitat area when the activity complies with the provisions in this subsection and in accordance with an approved critical areas report and all applicable state or federal permits.
 - a. All work shall comply with the WDFW in-water work window for the relevant species; and
 - b. The proposal will not degrade the functions or values of the aquatic habitat or other critical areas.
6. Alteration of Natural Watercourses. Alteration of natural watercourses shall be avoided. If unavoidable, the following provisions shall apply to the alteration:
 - a. Watercourse alteration projects shall not result in blockage of side channels;
 - b. The applicant shall maintain the altered or relocated portion of the watercourse to ensure that its flood-carrying capacity is not diminished; and
 - c. Unavoidable impacts shall be mitigated consistent with mitigation requirements found in SCC 19.01.090, General Mitigation Requirements.
7. In-Stream Structures. No structures that prevent the migration of salmonids will be allowed in the portions of waterbodies currently used by anadromous fish.
8. Fills shall minimize impacts to anadromous fish or their habitat.
9. New Docks and Launching Ramps – Public or Private. On Type F and Type Np Waters, launching ramps and new docks may be permitted in accordance with an approved critical areas report that has demonstrated the following:
 - a. The development minimizes adverse impacts to fish or wildlife habitat areas;

- b. Adequate mitigation measures protect functions and values of aquatic or riparian habitat as a result of the structures; and
- c. If applicable, the applicant has obtained a Hydraulic Project Approval (HPA) from the WDFW.

10. Trails and stream crossings for roads and trails. Construction of trails and of bridges or culverts for trail or roadway stream crossings may be permitted without submission of a buffer averaging or reduction request under 19.01.080.D or critical areas variance and are subject to the following additional standards:

- a. There is no other feasible alternative route with less impact on the environment;
- b. Mitigation for impacts is provided pursuant to a mitigation plan of an approved critical area assessment;
- c. Wherever feasible, trails and associated viewing platforms shall not be made of continuous impervious materials;
- d. Trail and roadway stream crossings shall cross at a perpendicular angle to the degree feasible, or, if not feasible, at an angle no less than 60 degrees.
- e. Any stream crossing must receive a WDFW-issued HPA prior to the County issuing a permit decision.

11. Roads within fish and wildlife habitat conservation areas or buffers require application for a critical areas variance under 19.01.050 or approval of a request for buffer averaging or buffer reduction under 19.01.080 or 19.01.050.

12. Utility Facilities. New utility lines and facilities may be permitted to cross watercourses, if they comply with the following additional standards:

- a. There is no other feasible alternative route with less impact on the environment;
- b. Installation shall be accomplished by boring beneath the scour depth and the saturated zone beneath the watercourse and channel migration zone, where feasible;
- c. The utilities shall cross at an angle greater than 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;
- e. The utility route shall avoid paralleling the stream or following a down-valley course near the channel;
- f. The utility installation shall not increase or decrease the natural rate of shore migration or channel migration; and
- g. Utility facilities that carry liquid petroleum products or any other hazardous substance as defined in Chapter 173-303 WAC may be permitted only when

demonstrated by a qualified professional that the design, location, and monitoring of the proposed facility will not cause contaminants to enter the protected resource.

h. If applicable, the applicant has obtained an HPA through WDFW.

13. Fences in Deer and Elk Wintering Range. New development permits issued by the County shall include a requirement that, in deer and elk winter range, the construction of new and replacement fences shall be subject to the following:

- a. New fences in deer and elk winter range shall be allowed only when necessary to control livestock or pets or to exclude wildlife from specified areas, such as gardens or orchards. Fenced areas shall be the minimum necessary to meet the needs of the project applicant.
- b. New and replacement fences in winter range shall comply with the following, unless the applicant demonstrates the need for an alternative design:
 - i The top wire shall not be more than forty-two inches high to make it easier for deer to jump over the fence.
 - ii The distance between the top two wires shall be at least ten inches to make it easier for deer to free themselves if they become entangled.
 - iii The bottom wire shall be at least sixteen inches above the ground to allow fawns to crawl under the fence. It should consist of smooth wire because barbs often injure animals as they crawl under fences.
 - iv Stays or braces placed between strands of wire shall be positioned between fence posts where deer are most likely to cross. Stays create a more rigid fence, which allows deer a better chance to wiggle free if their hind legs become caught between the top two wires.
- c. Woven wire fences may be authorized only when a project applicant clearly demonstrates that such a fence is required to meet his or her specific needs, such as controlling hogs and sheep.

19.05.040 Critical Area Report requirements.

A. A critical areas report for fish and wildlife habitat conservation areas shall be prepared by a qualified biologist with experience analyzing aquatic and/or wildlife when a development activity is proposed in a habitat area or buffer. As deemed necessary by the Administrator, the County may seek WDFW review and input on the report's methodology. In the interest of ensuring that the consultant work proposed is in line with agency expectations, notice that a critical areas report has been received by the County will be provided to the WDFW with the CAO permit notice per SCC 19.01.050 or as soon as the critical areas report has been received. The County will seek WDFW response within 14 days and will not rely solely on WDFW review.

In addition to the general critical areas report requirements of SCC 19.01.100, a critical area reports for fish and wildlife habitat conservation areas shall provide an assessment of

existing habitats. The Administrator has the authority to determine the applicability of individual critical areas report requirements and may waive report requirements determined to be unnecessary on a case-by-case basis. Critical areas reports for fish and wildlife habitat conservation areas must include the following information as determined necessary by the Administrator:

1. Identification of any species of local importance, priority species, or endangered, threatened, sensitive or candidate species that have a primary association with habitat in or adjacent to the project area, and an assessment of potential project impacts to the use of the site by the species.
2. A discussion of any federal, state, or local species/habitat management recommendations, including the WDFW habitat management recommendations, that have been developed for the identified species or habitat.
3. Any buffers necessary for the protection of the identified species.
4. Developments that propose alterations to streams or their associated riparian habitat shall include the following within the critical areas report:
 - a. Characterization of riparian (streamside) vegetation species, composition, and habitat function;
 - b. Descriptions of the soil types adjacent to and underlying the stream, using the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) soil classification system;
 - c. Characterization of flow regime (i.e., perennial, intermittent, or ephemeral);
 - d. Determination of the presence or absence of fish, and reference sources; and
 - e. When stream alteration is proposed, include stream width and flow rate, stability of the channel including erosion or aggradation potential, type of substratum, discussions of infiltration capacity and biofiltration before and after alteration, presence of hydrologically associated wetlands, analysis of fish and wildlife habitat, and any proposed floodplain limits.
5. On the site map: (a) the location of the identified habitat; (b) the location of the OHWM; (c) the toe of any slope 25 percent or greater within 25 feet of the OHWM; and (d) the location of any proposed or existing stream crossing.
6. Habitat Mitigation Plans. Development proposals or alterations within a fish and wildlife habitat conservation area or buffer as determined by the administrator in consultation with the WDFW shall have prepared, and submitted, as part of its critical areas report, a habitat mitigation plan.
 - a. In addition to the general mitigation requirements of SCC 19.01.090, the habitat mitigation plan for fish and wildlife habitat conservation areas shall include a habitat mitigation plan in the critical areas report that identifies the existing habitat and the qualities that are essential to maintain feeding, breeding, and nesting of listed

species using the fish and wildlife habitat conservation area, and that identifies measures to minimize the impact on these ecological structures, functions, and processes from the proposed activities. The applicant shall be guided by, but not limited to:

- i *Management Recommendations for Washington's Priority Habitats and Species* (1991), issued by WDFW, as amended;
 - ii *Management Recommendations for Washington's Priority Habitats and Species: Oregon White Oak Woodlands* (1998), issued by WDFW, as amended;
 - iii *Management Recommendations for Washington's Priority Habitats: Riparian* (1997), issued by WDFW, as amended;
 - iv *Management Recommendations for Washington's Priority Species Volume III: Amphibians and Reptiles* (1997), issued by WDFW, as amended;
 - v *Management Recommendations for Washington's Priority Species Volume IV: Birds* (2012), issued by WDFW, as amended;
 - vi Any recovery and management plans prepared or adopted by the WDFW for the listed species pursuant to WAC 232-12-297, National Marine Fisheries Service (NMFS), and the U.S. Fish and Wildlife Service (USFWS) pursuant to the federal Endangered Species Act (ESA);
 - vii The Washington Lower Columbia Salmon Recovery and Fish & Wildlife Subbasin Plan by the Lower Columbia Fish Recovery Board; and
 - viii The watershed management plans for Water Resource Inventory Areas 26, 27, 28, and 29A and the associated detailed implementation plans.
- b. Conditions shall be imposed, as necessary, based on the measures identified in the habitat mitigation plan.
 - c. Approval of land alteration within or adjacent to the fish and wildlife habitat conservation area or its buffer shall not occur prior to consultation with WDFW and the appropriate federal agency.

TITLE 19: CRITICAL AREAS

19.01 GENERAL CRITICAL AREA PROVISIONS

19.01.010 Purpose.

A. The purpose of this title is to comply with the Growth Management Act's (GMA) requirement to designate critical areas and adopt development regulations to assure the protection of such areas in accordance with best available science. Critical areas serve a valuable function for people and wildlife in Skamania County, but may also pose a threat to human safety and to public and private property. Building in flood prone or geologically hazardous areas can present humans with safety concerns. CARAs are essential to our drinking water supply. Wetlands serve multiple functions, including providing habitat, enhancing water quality, and attenuating flooding. Fish and wildlife habitat conservation areas are vital to the preservation of protected species. The identification, management, and protection of critical areas are, therefore, necessary to protect the public health, safety, and general welfare of the County's citizens. The purposes of this title with regard to each type of critical area include:

1. Wetlands: To recognize and protect the beneficial functions performed by wetlands.
2. Critical aquifer recharge areas: To protect public health, safety, and welfare by preventing the degradation of the quality or quantity of groundwater within designated CARAs.
3. Fish and wildlife habitat conservation areas: To recognize and protect important physical and biological functions that benefit the county and its residents.
4. Frequently flooded areas: To protect public health and safety from the hazards associated with development within frequently flooded areas.
5. Geologically hazardous areas: To recognize and protect the public from geologic hazards, including landslide hazards, seismic hazards, erosion hazards, and volcanic hazards.

B. In order to protect the rights of individual property owners, this title is to be administered with flexibility and attention to site-specific characteristics. This title shall not be used to deem property unusable by denying its owner reasonable economic use of the property.

19.01.020 Title and authority.

- A. Title. This title shall be known as the Critical Areas Ordinance of Skamania County, Washington.
- B. Authority. This title is established pursuant to Revised Code of Washington (RCW) 36.70A.060 (Washington State Growth Management Act).

19.01.030 Applicability.

- A. The Critical Areas Ordinance applies to development or actions taken by an applicant on land that contains any of the following:

1. Wetland;
 2. Critical aquifer recharge area;
 3. Fish and wildlife habitat conservation area;
 4. Frequently flooded area;
 5. Geologically hazardous area; and
 6. Buffers for these areas, as applicable.
- B. No person, company, agency, or applicant shall alter a critical area or its buffer except as consistent with this title. This title does not apply to critical areas within regulated shoreline jurisdiction that are regulated by the critical area provisions of the County's adopted shoreline master program (SMP). In addition, Title 19 does not apply to land subject to Title 22 (Columbia River Gorge National Scenic Area).
- C. The critical area regulations in this title shall apply in addition to zoning and other regulations established by Skamania County. In the event of any conflict between these and any other regulations of Skamania County, the regulations that provide greater protection of critical areas and their buffers shall apply.

19.01.040 Critical area maps.

- A. The approximate location and extent of critical areas and lands within the County planning area are identified and available on the internet through the Skamania County Community Development Department. The mapped location of critical areas is hereby adopted and considered part of this ordinance. The mapped location of critical areas are intended for use as a general guide for the assistance of property owners and as information for the public. Field investigation and analysis by a qualified professional may be required to confirm the existence, location, and proper classification of a critical area. These map locations of critical areas may be updated as new critical areas are identified. Maps updated and published by state and federal resource agencies may also be used to supplement the adopted maps.

19.01.050 Administration.

- A. The Skamania County Community Development Department, or a designee, shall serve as Administrator of this chapter.
- B. Pre-application conferences. An applicant may request a pre-application conference prior to submitting an application under this title. The purposes of the conference shall be to acquaint the applicant with the substantive procedural requirements of this title, to discuss the principal elements of the proposed action, and to identify opportunities and constraints associated with the proposed action. The applicant may also request that representatives from other agencies with expertise, such as the Washington Department of Fish and Wildlife (WDFW), or the Washington State Department of Ecology (Ecology) attend the pre-application meeting.

- C. Permit types. There are two types of permits under this title: critical areas permits and critical areas variances. Critical areas permits are required for all regulated activities listed in section 19.01.060 and are reviewed administratively with a decision made by the Administrator. Critical area variances are subject to the criteria in Section 19.01.050.C(5) and are reviewed by the Administrator, with a recommendation made to the County Hearing Examiner who makes the final decision after a public hearing in accordance with SCC Chapter 21.16.
- D. Applicants for critical area permits or critical area variances are responsible for complying with all state and federal regulations that may apply to the proposed activity, whether or not a permit or variance is granted by the County. State and federal permits will be required for certain activities in critical areas, including but not limited to in-water or wetland work. All other relevant County permit and regulatory requirements shall also be met for the proposed activity.
- E. Submittal requirements. Applications for critical area permits and critical area variances under this title shall be made on forms provided by the Administrator and shall provide a critical areas report consistent with Section 19.01.100.
- F. Review process.
1. Completeness review. Upon submittal of all the information required by the title, the Administrator shall review the application for completeness and provide notice to the applicant within 28 days whether additional information is required. If the Administrator does not respond within 28 days, the application shall be deemed complete and review shall commence. If the application is deemed incomplete, the applicant shall provide all information requested within 90 days. Once the applicant resubmits all information, the Administrator shall review the application for completeness within 14 days. The determination of completeness shall not preclude the County from requesting additional information or studies during application review.
 2. Noticing. After the application has been deemed complete, the Administrator shall issue a public notice of application within 14 calendar days after the determination of completeness to all persons owning property within 300 feet of the parcel(s) on which the development or use would occur and to any interested persons. The notice shall contain all information required by RCW 36.70B.110.
 - a. If a hearing before the hearing examiner is required, then notice of the hearing shall be published in the newspaper of record at least 10 days prior to the hearing and mailed at least 14 days prior to the hearing.
 - b. Applications for proposals that are categorically exempted from SEPA under WAC 197-11-800 and that do not require variances shall not require a public notice of application.
 3. Critical area permit and critical area variance review process. The critical areas permit and critical areas variance process shall be combined with any other County land use review processes so that applications can be reviewed expeditiously. The Administrator

shall review critical areas applications based on all applicable provisions in Title 19 and the variance criteria, if applicable. In order for a critical areas variance to be approved, the Hearing Examiner shall find that the proposed activity, use, or development meets the criteria contained in Section 19.01.050.C(5)(a).

4. Decision on critical areas permits.
 - a. Following the notice of application, the County may issue a decision on a critical areas permit at any time, at least 14 days after the notice. The decision on a critical areas variance may be issued after the conclusion of the public hearing. The County shall issue its decision on critical areas permits and variances within 120 days after issuance of completeness unless written findings specify the additional time needed for processing.
 - b. For applications for proposals that are categorically exempted from SEPA under WAC 197-11-800 where a public notice of application is not required, the County may issue a decision on a critical areas permit at any time within 120 days after issuance of completeness unless written findings specify the additional time needed for processing. The Administrator shall issue a public notice of decision to all persons owning property within 300 feet of the parcel(s) on which the development or use would occur and to any interested persons. The notice of decision shall include notice of the right to appeal as set forth in Section 19.01.050.C(9).
 - c. The Administrator or Hearing Examiner shall issue a decision on the critical areas permit or variance application, including findings of fact and conclusions, and may impose such conditions as necessary to ensure consistency with the provisions of this title.
 - d. Conditions included in a critical areas permit or variance shall be recorded in the County deed records to ensure notice of the conditions to successors in interest.
 - e. The Administrator shall mail a copy of the decision to the applicant and to any person who, prior to the rendering of the decision, requested notice of the decision, submitted substantive comments on the application, or who testified at the public hearing. The decision shall include notice of the right to appeal as set forth in Section 19.01.050.C(9).
 - f. The decision of the Administrator or Hearing Examiner shall become final unless a notice of appeal is filed consistent with this chapter. No action shall be authorized under any critical areas permit or variance until the expiration of the 14-day appeal period.
5. Critical area variances. To avoid the taking of private property without just compensation, this section establishes a variance process from standard critical area protection regulations.
 - a. The Hearing Examiner shall grant a variance if the applicant demonstrates that the requested variance conforms to all of the criteria set forth below:

- i Special conditions and circumstances exist that are peculiar to the land, the lot, or something inherent in the land, and that are not applicable to other lands in the same district;
 - ii That the special conditions and circumstances do not result from the actions of the applicant;
 - iii That literal interpretation of the provisions of this chapter would deprive the applicant of all reasonable economic uses and privileges permitted to other properties in the vicinity and zone of the subject property under the terms of this chapter, and the variance requested is the minimum necessary to provide the applicant with such rights;
 - iv That the granting of the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings under similar circumstances;
 - v That the granting of the variance is consistent with the general purpose and intent of this chapter, and will not further degrade the functions or values of the associated critical area or otherwise be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the subject property; and
 - vi That the decision to grant the variance includes the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat.
 - b. In granting any variance, the Hearing Examiner shall prescribe such conditions and safeguards as are necessary to secure the protection of critical areas from adverse impacts.
6. Permit validity. ~~The~~ A critical areas permit or variance approval is valid for a period of two years after the date of decision, unless extended under the provisions of this section. If development action is not initiated within two years and completed within five years of the date of the decision or, once initiated, is discontinued for one year or more, the permit decision shall be void. The decision also shall be void if a court or other appellate body of competent jurisdiction determines there was an unconstitutional taking of private property.

Critical areas permit or variance extensions. An applicant may request an extension of a critical areas permit. An extension must be requested by the applicant prior to the expiration of the original permit. A request for an extension of a critical areas permit shall be made in writing, addressed to the Administrator and shall set forth the reasons why an extension is necessary and should be granted. The Administrator may grant an extension of up to two years if it is determined that conditions for which the applicant is not responsible would prevent the applicant from commencing the use or development within the original two-year period.

7. Changes or Alterations to a Permitted Action. Any change or alteration to a development action approved by the county under this title shall be processed as a new action; provided that the Administrator may approve minor changes or alterations deemed consistent with the provisions of this title and the findings and conclusions on the original application.
8. Appeals. Interested persons may appeal the decision of the Administrator on critical areas permits within 14 calendar days from the notice of decision. Appeal shall be made to the Hearing Examiner and shall be commenced with the filing of a notice of appeal.
 - a. Notice of Appeal of Administrator's Decision. Notice of appeal forms shall be available at the Administrator's office. The notice of appeal shall be mailed to all interested parties and shall contain:
 - i The name of the person filing the notice;
 - ii The name of the applicant;
 - iii A brief description of the action proposed by the applicant;
 - iv The date upon which the Administrator's decision was issued;
 - v A concise description of the grounds upon which the appeal is premised; and
 - vi Proof of service upon all interested parties.
 - b. Hearing on Appeal of Administrator's Decision. The hearing before the Hearing Examiner shall be "de novo" – it shall consider the matter from the beginning -- but the hearing shall include the record submitted by the Administrator. The following evidentiary rules shall apply in all hearings:
 - i Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible;
 - ii Irrelevant, immaterial, or unduly repetitious evidence shall be excluded;
 - iii All evidence not objected to shall be received by the Hearing Examiner, subject to the Hearing Examiner's power to exclude irrelevant, immaterial, or unduly repetitious matter; and
 - iv Evidence objected to may be received by the Hearing Examiner. Rulings on the admissibility of such evidence, if not made at the hearing, shall be made at or before the time a final order is issued.
 - c. An order of the Hearing Examiner becomes appealable when it has been reduced to written findings of fact, conclusions, and order, signed by the Hearing Examiner.
 - d. Appeals from Decisions of the Hearing Examiner. A signed written final order of the Hearing Examiner shall be final and conclusive, unless within the time frame provided in RCW 36.70C. The applicant or any adverse party makes application to a court of competent jurisdiction for judicial review of the land use decision.

9. Enforcement. Any person who willfully violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of this title shall be guilty of a gross misdemeanor. Alternatively, any person who willfully violates, disobeys, omits, neglects, or refuses to comply with or resists enforcement of this title shall be subject to a civil penalty not to exceed \$500 per day for each violation hereof.

19.01.060 Regulated activities.

- A. Skamania County shall not approve any application for a critical areas permit or variance, 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 assuring compliance with the requirements of Title 19. The following specific developments, uses, or activities are regulated by this title and require a critical areas permit prior to initiation when located within a critical area or its buffer:
 1. Removing, clearing, grading, excavating, disturbing, or dredging soil, sand, gravel, minerals, organic matter, or materials of any kind;
 2. Dumping, discharging, or filling with any material;
 3. Subdivisions, short plats, planned unit developments (PUDs), mobile home parks, and RV parks;
 4. Construction, reconstruction, demolition, or alteration of the size of any structure or infrastructure;
 5. Construction of any new public or private road or driveway;
 6. Destroying or altering vegetation through clearing, harvesting, cutting, intentional burning, shading, or planting nonnative species where these activities would alter the character of a critical area, or its buffer; provided, that these activities are not part of a Class I, II, or III forest practice governed under Chapter 76.09 RCW and its rules. Class IV forest practices are regulated activities under the County's critical areas ordinance;
 7. Draining, flooding, or altering the water level, duration of inundation, or water table;
 8. Application of pesticides, fertilizers, and/or other chemicals in amounts or at times demonstrated as harmful to water quality, wetland habitat, riparian corridors associated with surface water systems, or wildlife or fish life;
 9. The driving of pilings;
 10. The placing of obstructions; and
 11. Introductions of pollutants.

19.01.070 Exemptions.

- A. The following general activities may be located in critical areas and buffers and are not required to obtain a critical areas permit. ~~In order to obtain an exemption, the applicant must submit a written request for an letter of exemption from the Administrator that~~

~~describes the activity and states the exemption listed in this section that applies for exempt activities.~~

1. The provisions of this title do not apply to those activities and uses conducted pursuant to the Washington State Forest Practices Act and its rules and regulations, RCW 76.09 and Washington Administrative Code (WAC) 222, where state law specifically limits local authority, except with regard to Class IV developments and conversions requiring local approval, when the County is lead agency for environmental review.
2. Existing and ongoing agricultural activities and structures that are in operation at the time of adoption of the ordinance codified in this chapter.
3. Maintenance, operation, repair, reconstruction, or replacement of the following, provided that any such facilities within a watercourse, wetland, or associated buffer will result in no additional disturbance of any critical area or buffer and the risk to life or property will not increase as a result:
 - a. Existing structures;
 - b. Infrastructure, including existing public and private roads, streets, sidewalks, driveways, railroads, trails; and
 - c. Existing utility lines (electric, cable, fiber optic, telephone, gas, sewer, water, stormwater), public and private stormwater detention facilities, wastewater treatment facilities, grass-lined swales, in-stream detention facilities, and flood control and diking facilities.
4. Any remodeling of a structure that does not involve alteration to the building footprint, ground disturbance, or increased impervious surfaces.
5. Existing structures and related improvements. Structures and related improvements may continue to exist in their present form, and may be altered, including remodeled, reconstructed, or expanded, if such alteration complies with the following:
 - a. existing buildings may be altered only one time within the lifetime of the structure, and:
 - i The expansion of the structure's footprint is outside a landslide hazard area or landslide hazard area buffer unless required for safety or seismic upgrades;
 - ii Any expansion of the structure's footprint is located only within a critical area buffer. No expansion of the footprint is allowed within a wetland or fish and wildlife habitat conservation area;
 - iii Cantilevers over critical areas are not allowed;
 - iv The expansion of the structure's footprint at ground level does not exceed 500 square feet;
 - v Any expansion of the structure's footprint is no closer to the critical area than its existing footprint; and

- vi If a building is harmed or destroyed by more than 90 percent of its valuation exclusive of foundations, the building must be reconstructed in compliance with the requirements of this chapter.
- b. An existing single-family dwelling may be replaced with a new dwelling (e.g. mobile or modular home replaced by a new single-family “stick-built” residence), if the new dwelling complies with all provisions of 19.01.070.A.5(a)(i-v). Replacement of dwellings that are harmed or destroyed by a disaster must commence within twelve months of the disaster.
- c. Existing property improvements other than buildings, including driveways, parking areas, yards and landscaped areas, play areas, storage areas, decks less than 5 feet in height, patios, and similar improvements may be altered if:
 - i Any alteration is in substantially the same location as the original property improvement;
 - ii Any expansion of the improvement’s footprint is located only within the required buffer. No expansion of the footprint is allowed within the critical area itself and cantilevers over wetlands and fish and wildlife habitat conservation areas are not allowed; and
 - iii Any expansion of the improvement’s footprint is no closer to the critical area than its existing footprint.
- 6. Structures under 200 square feet in area, which are exempt from building permit requirements, that are residential accessory structures and are not plumbed, provided the structure is placed in an area of the buffer where no woody vegetation exists and will not impact the functions and values of the critical area or its buffer substantially. No more than one such structure is permitted for each existing lot.
- 7. Installation, construction, or replacement of utility facilities located inside road, utility, or railroad rights-of-way or easements that have been disturbed in the past.
- 8. Maintenance of existing and ongoing landscaping, including normal and nondestructive pruning and trimming of vegetation and thinning of limbs or individual trees in a critical area or buffer area, provided that no further disturbance is created and the landscaping was not created in violation of the critical areas ordinance.
- 9. The following vegetation removal activities:
 - a. Removal and disposal using hand tools and low impact machinery of any invasive vegetation designated by the Skamania County Noxious Weed Control Program and in addition, English ivy (*Hedera helix*); Himalayan blackberry (*Rubus armeniacus*); evergreen blackberry (*Rubus laciniatus*); giant knotweed (*Polygonum sachalinense*); Himalayan knotweed (*Polygonum polystachyum*); and Japanese knotweed (*Polygonum cuspidatum*). For the purposes of this provision, hand tools and low impact machinery include chainsaws or hand-held, gas-powered, and electric equipment and machinery designed to be surface-friendly to minimize or eliminate turf damage

and soil compaction. The removal and disposal must be conducted in compliance with the following provisions:

- i If the removal of invasive vegetation occurs in wetlands or other waterbodies, use of chemical herbicides is allowed only when using those approved by the United States Environmental Protection Agency (EPA) for application in aquatic environments.
 - ii Aquatic herbicides can be used or applied only by certified applicators or persons under the direct supervision of a certified applicator, and only for those uses covered by the certified applicator's license category.
 - iii Planting non-native species in areas from which invasive vegetation has been removed is prohibited.
- b. The removal of hazard or diseased trees from critical areas and buffers using hand tools, including chainsaws or hand-held, gas powered and electric equipment, and low impact machinery where the machinery is designed to be surface-friendly to minimize or eliminate turf damage and soil compaction issues; provided that:
- i Where the hazard is not immediately apparent to the Administrator, the applicant shall submit a report from a qualified professional that documents the hazard and provides a replanting schedule for the replacement trees. 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 year. Replacement trees shall be of a native species at least 4 feet in height;
 - ii All non-noxious weed vegetation and cut wood (tree stems, branches, etc.) shall be left within the critical area or buffer unless removal is warranted because of the potential for fire hazard or disease or pest transmittal to healthy vegetation; and
 - iii If a tree to be removed provides critical habitat for a species with federal or state protected status, a qualified wildlife biologist shall be consulted to determine timing and methods of removal that will minimize impacts.
- c. Measures to control a fire or halt the spread of disease or damaging insects consistent with the State Forest Practices Act, RCW 76.09, provided that the removed vegetation shall be replaced in kind or with similar native species within one year in accordance with an approved restoration plan.
10. Minimal site investigative work required for a future development or associated with scientific or archaeological research, such as surveys, soil explorations, percolation tests, and other related activities; provided that impacts on critical areas are minimized, and disturbed areas are restored to the preexisting level of function and value as soon as possible, and at most within one year after investigative work is concluded.

11. Low-impact passive recreational uses, sport fishing or hunting, scientific or educational review, or similar minimum-impact, nondevelopment activities, such as conservation or preservation of soil, water, vegetation, fish, and other wildlife.
12. 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 the soil, planting crops, applying chemicals, or altering the critical area by changing existing topography, water conditions, or water sources.
13. Maintenance of intentionally created artificial wetlands or surface water systems, including irrigation and drainage ditches, grass-lined swales and canals, detention facilities, farm ponds, and landscape or ornamental amenities. Wetlands, streams, lakes, or ponds created as mitigation for approved land use activities or that provide critical habitat shall be regulated according to the mitigation plan.
14. Fish habitat enhancement projects, watershed restoration projects, and plans in compliance with WAC 173-27-040 shall be exempt from this chapter.
15. Any projects currently under review and “vested” as that term is used in RCW 19.27.095 and 58.17.033 by local, state, or federal agencies prior to official adoption of the ordinance codified in this chapter are exempt from this chapter and will be processed under previous critical areas protection measures.
16. Emergency actions that must be undertaken immediately when time is insufficient for full compliance with this chapter may be taken only when it is necessary to prevent threat to/of:
 - a. Public health, safety, or welfare;
 - b. Public or private property;
 - c. Serious environmental degradation.

The person or agency undertaking such action shall notify the Administrator within 1 working day following the commencement of the emergency activity. Following such notification, the Administrator shall determine whether the action taken was within the scope of the emergency actions allowed in this subsection. If the Administrator determines that the action taken or part of the action taken is beyond the scope of allowed emergency actions, enforcement action is authorized, as outlined in Section 19.01.050.

The person or agency undertaking such action, upon abatement of the emergency situation, will be required to apply for a critical areas permit that would have been required, absent an emergency, pursuant to this title. The person or agency has 60 days from the abatement of the emergency to apply for a critical areas permit. The emergency action shall be the minimum possible and use reasonable methods, and restoration and mitigation for impacts shall be initiated within 3 months of the approval of critical areas permits.

19.01.080 General critical area regulations.

- A. The applicant shall determine and the County shall verify, on a case-by-case basis, whether any critical areas exist on or in close proximity to the subject property and the setback or buffer required under this title.
- B. Financial guarantee for high-value projects. The County may require a financial guarantee ensuring fulfillment of the mitigation project, monitoring program, and any contingency measures authorized by this title for mitigation projects exceeding \$500,000 in cost. The guarantee shall be in accordance with the following:
 1. The financial guarantee shall be in a 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 County Attorney.
 2. Bonds or other security authorized by this section shall remain in effect until the County determines, in writing, that the standards bonded for have been met. Bonds or other security shall be held by the County for a minimum of the length of the time specified for monitoring in the plan and shall be released after a request by the applicant and a final inspection, but may be held for longer periods when necessary.
- C. Inspection and right of entry. The Administrator may inspect any development activity or mitigation site to enforce the provisions of this chapter. By submitting a signed permit application, the applicant consents to entry upon the site by the Administrator during regular business hours for the purposes of making reasonable inspections to verify information provided by the applicant and to verify that work is being performed in accordance with the approved plans, permits, and requirements of this chapter. Applicants may request that the Administrator make an appointment prior to any site visits.
- D. Buffers.
 1. All buffers shall be measured from the critical area boundary as determined in the field. The width of the buffer shall be determined according to the requirements of this title and the findings of a critical areas report.
 2. When a road, railroad, levee, other improvement or vertical separation completely functionally isolates the buffer from the critical area, the regulated critical area buffer shall not extend beyond the edge of the road, railroad, levee, other improvement, or vertical separation closest to the critical area. Whether a buffer is functionally isolated shall be determined by the Administrator subject to a critical area report and review.
 3. When one type of critical area overlaps with or is contained within another type of critical area or buffer, the buffer width shall be the greatest distance required by the buffer width of the most restrictive critical area.
 4. Standard buffers. The standard buffer widths presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the critical area functions and values at the time of the proposed activity. If the vegetation or protection

area is inadequate, the County may require an increase in the buffer width or additional native plantings within the standard buffer width.

5. Buffer averaging. The Administrator authorizes averaging for wetland and fish and wildlife habitat conservation buffers only when the buffer area and width after averaging will not impact the critical area and/or buffer functions and values adversely and such averaging does not exceed 25 percent of the buffer width. At a minimum, any proposed buffer averaging shall meet all of the following criteria, as demonstrated in the applicant's critical areas report:
 - a. The buffer area after averaging shall be no less than the area required without averaging.
 - b. The buffer width shall not be reduced by more than 25 percent.
 - c. There are no feasible alternatives to the site design that could be accomplished without buffer averaging.
 - d. The critical area has significant differences in characteristics that affect its habitat functions, so that the buffer is increased adjacent to the higher-functioning area and decreased adjacent to the lower-functioning portion.
 - e. The minimization measures in Table 19.01-1 are implemented, where applicable, to minimize impacts of the adjacent land use on the critical area.
 - f. The additional buffer area is contiguous with the standard buffer.
 - g. A reduced buffer is not located waterward of the top of an associated steep slope or geologically hazardous area, or a frequently flooded area.
6. Buffer reduction. The Administrator may authorize a wetland or fish and wildlife habitat conservation buffer reduction not to exceed 25 percent of the standard critical area buffer width and only if the reduction will not adversely impact the critical area and/or buffer functions and values. Unless otherwise stipulated elsewhere in this Title, the buffer reduction shall be subject to a critical area study performed by a qualified professional who finds that:
 - a. There are no feasible alternatives to the site design that could be accomplished without buffer reduction.
 - b. Buffer impacts have been avoided and minimized to the greatest extent possible, and degraded portions of the remaining buffer are enhanced to protect critical areas functions and values.
 - c. ~~All minimization~~ Minimization measures in Table 19.01-1 are implemented (where applicable) and are used to minimize impacts of the adjacent land use on the critical area.

Table 19.01 - 1 - Measures to Minimize Impacts to Critical Areas

| Disturbance | Measures Required to Minimize Impacts |
|-------------|---|
| Light | Direct lights away from critical areas and/or buffer. |

| Disturbance | Measures Required to Minimize Impacts |
|--|---|
| Noise | Locate activities that generate noise away from critical area and/or buffers. If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source. For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10 feet of native, heavily vegetated buffer adjacent to the required buffer. |
| Toxic Runoff | Route all new, untreated runoff away from critical area. Establish covenants limiting use of pesticides within 150 feet of critical areas and their buffers. Apply integrated pest management. |
| Stormwater Runoff | Retrofit stormwater detention and treatment for roads and existing adjacent development. Prevent channelized flow from lawns that directly enters the buffer. |
| Change in Water Regime | Infiltrate or treat, detain, and disperse new runoff from impervious surfaces and new lawns into buffer. |
| Disturbances by Humans and Pets | Use privacy fencing OR plant dense vegetation to delineate buffer edge and discourage disturbance. Use vegetation appropriate to the ecoregion. Place critical area and its buffer in a separate tract or protect with a conservation easement. |
| Vegetation Disturbances | Conserve and enhance existing native vegetation. |

- d. The reduction will not adversely affect water quality or disrupt a priority habitat.
 - e. If buffer averaging or reductions are requested exceeding 25 percent of the buffer width, a critical areas variance is required consistent with SCC 19.01.050.F(5).
7. Density transfer for residential land divisions. The County shall allow transfer of density for residential uses from lands containing critical areas, as defined by this chapter. In order to accommodate the density transfer, the County may allow reductions in setbacks and lot dimensions and sizes.
- a. The basis for the density transfer will be calculated for the entire property as if it did not have the critical area, subject to the provisions of the underlying zoning designation.
 - b. Residential density may be transferred only from a critical area to an area on the same site that is not a critical area.
 - c. The critical area shall be permanently protected as undeveloped land by an easement or other similar restriction acceptable to the County.
 - d. Requests for density bonuses shall be subject to the cluster development standards in SCC 21.70.150.
- E. Marking and/or fencing.
- 1. Temporary markers. In order to prevent unauthorized intrusion during construction activities, the Administrator may require, as a condition of any permit or variance, that the outer perimeter of a critical area or buffer, whichever is greater, and the limits of

the areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in a manner approved by the County to prevent unauthorized intrusion as appropriate to the type of critical area. This temporary marking shall be maintained throughout construction and shall not be removed until directed by the County or its agent, or until permanent signs and/or fencing, if required, are in place.

2. Permanent markers. The Administrator may require, as a condition of any permit or variance, that the perimeter of the critical area or buffer be permanently identified. If required, this identification shall include permanent wood or metal signs on wood or metal posts, or affixed to stone boundary markers at ground level. Sign content and spacing shall be determined by the Administrator as necessary to meet the purposes of this section.
3. Permanent fencing. The Administrator shall require permanent fencing where there is a substantial likelihood of intrusion into the critical area/buffer with the development proposal or when domestic grazing animals are present or may be introduced on site. The Administrator may also require such fencing when, subsequent to approval of the development proposal intrusions result in damage to critical areas. Fencing shall be designed and constructed in a manner that minimizes impacts to the critical area/buffer.

19.01.090 General mitigation requirements for all critical areas.

- A. Skamania County will use the following general methods and mechanisms to accomplish the purposes of the critical areas regulations. This section shall apply to all uses and developments that result in critical area impacts. These provisions do not apply to CARAs; mitigations for proposed impacts to CARAs shall be in compliance with the findings of a hydrogeological study required by section 19.04.060.
- B. Use and development in or near critical areas and all mitigation actions that require compensation shall observe the mitigation sequence in the following order of priority:
 1. Avoid the impact altogether by not taking a certain action or parts of an action;
 2. Minimize the impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
 3. Rectify the impact by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project or activity;
 4. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action;
 5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments; and
 6. Monitor the impact and the compensation projects and take appropriate corrective measures.

- C. When a critical area is created, restored, or enhanced as compensation for an approved alteration, the following shall apply:
1. The required buffer distance is determined by this title. Buffers must be maintained as required by this title.
- D. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and water quality.
- E. General mitigation requirements: The following section provides general mitigation requirements applicable to alteration of critical areas. Additional specific mitigation requirements are found under the sections for the particular type of critical area.
1. Mitigation is required when a critical area or its buffer has been altered in violation of County regulations and, as a consequence, its functions and values have been degraded. Mitigation is also required when the alteration occurs in violation of County regulations during the construction of an approved development proposal. At a minimum, all impacted areas shall be restored to their previous condition pursuant to an approved mitigation plan.
 2. Restoration is required when the critical area or its buffer will be temporarily impacted during the construction of an approved development proposal. At a minimum, all impacted areas shall be restored to their previous condition pursuant to an approved mitigation plan. A qualified professional should determine whether restoration is possible before any temporary disturbance occurs.
 3. Compensation. The goal of compensation is to protect critical area/or buffer functions and values. Compensation includes replacement, restoration, or enhancement of the critical area or its buffer depending on the scope of the approved alteration and what is needed to maintain or improve the critical area and/or buffer functions. Compensation for approved critical area or buffer alterations shall meet the following minimum performance standards and shall occur pursuant to an approved mitigation plan:
 - a. On-site. Unless otherwise approved, compensation for all critical area impacts shall be in-kind, on-site, and of the same or higher critical area category.
 - b. Off-site. The County or its agent may consider and approve off-site compensation where the applicant demonstrates that greater ecological functions will be achieved. The compensation may include restoration, creation, or enhancement of critical areas. Off-site mitigation banking is permitted at a bank approved through the Interagency Review Team.
 - c. The compensation ratios specified by this title shall apply for both on-site and off-site compensation.
 - d. Increased replacement ratios. The County or its agent may increase the mitigation ratios under the following circumstances:
 - i. Uncertainty exists as to the probable success of the proposed compensation due to an unproven methodology or proponent; or

- ii A significant period will elapse between impact and compensation of critical area functions; or
 - iii The impact was unauthorized.
 - e. Decreased replacement ratios. When all of the following criteria are met, the County or its agent may decrease the mitigation ratios required by the on-site ratios specified under the compensation section of each critical area:
 - i Minimum replacement ratio of 1:1 will be maintained;
 - ii Documentation by a qualified specialist demonstrates that the proposed mitigation actions will provide functions and values that are greater than the critical area being impacted; and
 - iii The proposed mitigation actions are conducted in advance of the impact and have been shown to be successful. If a specific critical area has a greater ratio than the general ratio, then the more stringent ratio would apply.
 - f. Restoration credits. Restoration and enhancement completed in advance of critical area development may be used for future development-related mitigation purposes when:
 - i The restoration and enhancement is: either demonstrably related to the impacts of the proposed development (i.e., in-kind); or not demonstrably related to the impacts of the proposed development (i.e., out-of-kind), provided the restoration and enhancement will result in equal or greater levels of ecological processes or functions than would in-kind restoration and enhancement;
 - ii The restoration was initiated after the effective date of this title;
 - iii The applicant/property owner can provide conclusive evidence of the pre-and post-restoration conditions using photographs, reports, plans, affidavits, or similar evidence;
 - iv The County can verify through a site inspection, photographs, affidavits or other evidence that the restoration actions have improved ecological conditions; and
 - v Protective measures are applied to the restored and enhanced area in the form of a tract, conservation easement, or similar preservation mechanism approved by the County.
 - g. Critical area enhancement as mitigation. Unless otherwise specified by this title, impacts to critical areas may be mitigated by enhancement of existing significantly degraded critical areas for areas impacted at a required mitigation ratio of 2:1. For any remaining impacts not offset by mitigation, a 1:1 replacement mitigation ratio is required. Applicants proposing to enhance critical areas must produce a critical areas report that identifies how enhancement will increase the functions and values of the degraded critical areas and how this increase will adequately compensate for the loss of critical area function at the impact site.

4. Mitigation shall be completed prior to, concurrently with, or immediately following impacts and prior to use or occupancy of the activity or development, or as soon as is seasonally appropriate and shall have a high probability of success, as verified during mitigation plan review. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, water quality, and vegetation.

F. Mitigation plans.

1. Mitigation or alterations to critical areas shall achieve equal or greater ecological functions. Mitigation sites for wetlands, streams, and fish and wildlife habitat conservation critical areas should be located to achieve contiguous habitat corridors in accordance with an approved mitigation plan in order to minimize the isolating effects of development on habitat areas. Mitigation of aquatic habitat shall be located within the same aquatic ecosystem as the area disturbed. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per function basis.
2. At a minimum, the following components shall be included in a complete mitigation plan:
 - a. Name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the compensatory mitigation report; a description of the proposal; a summary of the impacts and proposed compensation concept; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.
 - b. Baseline information. Provide existing conditions information for both the impacted critical areas and the proposed mitigation site.
 - c. 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, 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 completing mitigation site construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area; and
 - ii. A review of the science supporting the proposed mitigation.
 - d. 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. They may include water quality standards, species diversity targets, habitat diversity indices, or other ecological, geological, or hydrological criteria.

3. In addition to the minimum requirements listed above, additional scope and content of a mitigation plan shall be decided on a case-by-case basis by the County or its consultant. As the impacts to the critical area increase, the mitigation measures to offset these impacts will increase in number and complexity. Key factors in this determination shall be the size and nature of the development proposal, the nature of the impacted critical area, the magnitude of the impacts, and the degree of cumulative impacts on the critical area from other existing or anticipated development proposals.
4. Detailed construction plans. These are the written specifications and descriptions of mitigation technique. This plan should include the proposed construction sequencing, grading and excavation details, erosion and sedimentation control features, a native planting plan, and detailed site diagrams and any other drawings appropriate to show construction techniques and anticipated final outcome.
5. Contingency plan. This section identifies potential courses of action, and any corrective measures to be taken when monitoring or evaluation indicates that performance standards have not been met.

G. Monitoring.

1. The County will require long-term monitoring of mitigation sites where alteration of critical areas or their buffers are approved. Such monitoring shall be an element of the required mitigation plan and shall document and track impacts of development on the functions and values of critical areas, and the success and failure of mitigation requirements. The applicant remains responsible for the restoration of the natural resource values and functions until the mitigation goals agreed to in the mitigation plan have been achieved. Monitoring may include, but is not limited to:
 - a. Documenting the percentage of plants that have survived and replanting to replace dead plants;
 - b. Establishing vegetation transects or plots to track changes in plant species composition over time;
 - c. Using aerial or other photography to evaluate vegetation community response;
 - d. Sampling surface and ground waters to determine pollutant loading;
 - e. Measuring base flow rates and stormwater runoff to model and evaluate water quantity predictions;
 - f. Measuring sedimentation rates;
 - g. Sampling fish and wildlife populations to determine habitat use, species abundance, and diversity;
 - h. Sampling of water temperatures for wetlands and streams;
2. The applicant or property owner is required to submit monitoring data and reports to the County on an annual basis or other schedule as required by the County or its agent. Monitoring shall continue for a minimum period of three years or for a longer period if

necessary to establish that the mitigation performance standards have been met or as specified under the specific chapters of this title.

H. Contingencies/adaptive management.

1. When monitoring reveals a significant deviation from predicted impacts or a failure of mitigation measures, the applicant shall be responsible for appropriate corrective action. Contingency plans developed as part of the original mitigation plan shall apply, but may be modified to address a specific deviation or failure. Contingency plan measures shall be subject to the monitoring requirement to the same extent as the original mitigation measures.

19.01.100 General critical area report requirements.

- A. In addition to the information required for any other type of permit (subdivision, conditional use, variance, etc.), or for any development activity that will impact a critical area and/or critical area buffer, or if an applicant proposes buffer averaging or reductions, the applicant is required to submit a critical areas report.
- B. When sufficient information is not available to determine whether a critical area exists on a site based on critical area maps, development project files, or publicly available data (the WDFW, the National Wetland Inventory (NWI), etc.) as determined by the County, County staff or its agent shall notify the applicant that a critical areas study and report are required. The County may rely on input from a qualified representative of the appropriate resource agency to assist with the determination that a critical areas report is necessary. (For example, the WDFW regional representative may be consulted to determine whether the presence of a fish and wildlife conservation area requires a critical areas study.)
- C. Early disclosure and verification. When an applicant submits an application for any development proposal, the application shall indicate whether any critical areas or buffers are located on or within 300 feet of the development. If the applicant states there are no known critical areas, the County should review and confirm whether critical areas exist, and, if critical areas or buffers are present that would be impacted, require the applicant to complete a critical areas report.
- D. Professional review and preparation.
 1. Critical area reports shall be written by a qualified professional, as defined in the definitions section of this title. A critical areas report shall include all information required pursuant to this section.
 2. Studies generated as part of State Environmental Policy Act (SEPA) review or prepared for other federal or state permit processes (such as biological opinions or biological evaluations) shall be provided and may be determined by the Administrator as adequate to satisfy the critical areas report requirements of this title if the project has been developed in enough detail to have evaluated the site-specific impacts and mitigation measures.

2-3. The County or its agent may retain independent qualified consultants, at the applicant's expense, to assist in review of studies that are outside the range of staff expertise. The County may develop a list of pre-qualified consultants that can be used by an applicant in order to preclude the need for peer review of submitted reports.

E. Report contents. The Administrator has the authority to determine the applicability of individual critical areas report requirements and may waive report requirements determined to be unnecessary on a case-by-case basis.

1. A critical areas report shall have three components: (a) a site analysis; (b) an impact analysis, including assessment of cumulative impacts; and (c) proposed mitigation measures. More or less detail may be required for each component depending on the size and intensity of the project and the degree of potential impacts. The County or its agent may waive the requirement of any component when adequate information is otherwise available.
2. In addition to the requirements specified under each critical area, all studies shall contain the following information unless the information has been determined not to apply to the site by the Administrator:
 - a. A site map or set of maps, of the project area at a scale of 1:200 or larger, including:
 - i Reference streets and property lines.
 - ii Existing and proposed easements, rights-of-way, trail corridors, and structures.
 - iii Highlighted 5-foot contour lines
 - iv All critical areas and their buffers.
 - v All mitigation areas.
 - vi Hydrology: Surface water features both on and adjacent to the site, showing any water movement into, through, and off the project area; all stream and wetland classifications (e.g., hydrogeomorphic class, Cowardin class, etc.); seeps, springs, and saturated soil zones; and wetlands not found on the County inventory maps labeled as "un-inventoried."
 - vii Identification of all site preparation, grading activities, and dimensioned location of proposed structures, roads, stormwater facilities, impervious surfaces, and landscaping.
 - viii All drainage plans for discharge of stormwater runoff from developed areas.
 - ix Location of critical area tract and/or easement.
 - b. A written report, including:
 - i The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the critical area report; a description of the proposal; identification of all the local, state, and/or federal permit(s) required for the project; and a vicinity map for the project.

- ii How and when the study was conducted, who conducted it, and who authored the report (including methodology and techniques for field studies).
 - iii Description of the project site and its existing condition, including degraded critical areas.
 - iv Description of existing critical area and buffer functions and values, including any functionally isolated areas.
 - v The total acreage of the site in each type of critical area(s) and associated buffers.
 - vi The proposed action, including, but not limited to, descriptions of filling, dredging, modification for stormwater management, clearing, grading, restoring, enhancing, grazing or other physical activities that will change the existing vegetation, hydrology, soils, or habitat.
 - vii When alteration to a critical area or its buffer is proposed, explain why the impact is unavoidable in accordance with this title.
 - viii Description of potential environmental impact of the proposed project to the critical areas/buffers and demonstration of mitigation sequencing approach, and description of any proposed construction and permanent mitigation measures in accordance with the mitigation plan requirements in 19.01.090.F.
 - ix Native vegetation conservation strategy that addresses methods to protect and enhance on-site critical area functions.
 - x A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.
 - xi Description of local, state, and federal regulations applicable to the critical area and permit requirements.
- c. The County may waive selected components of the report or accept an alternative form of the required information if the County determines, in consultation with the appropriate resource agency, that sufficient detail will be provided to determine whether all applicable criteria and standards have been met.

19.01.110 Unauthorized Alterations and Enforcement

- A. The provisions of the SCC shall govern the enforcement of these critical area regulations.
- B. Adherence to the provisions of this chapter and/or to any project conditions shall be required throughout the construction of the development. Should the County or its agent determine that a development is not in compliance with the approved plans, a stop work order may be issued for the violation.
- C. When a stop work order has been issued, construction shall not continue until such time as the violation has been corrected and the County determines that the same or similar violation is not likely to reoccur.

- D. When a critical area or its buffer has been altered in violation of this Ordinance, all ongoing development work shall stop and the applicant shall obtain all the federal, state, and local permits that would have been required had the applicant first obtained permits. Further, this requirement applies to mitigating for all impacts, including temporal loss of functions. The County shall have the authority to issue a stop-work order to cease all ongoing development work and to order restoration, rehabilitation, or replacement measures at the applicant's or other responsible party's expense to compensate for the violation of the provisions of this Chapter.
- E. When the County or its agent determine that complete restoration is required, the owner or responsible party shall submit a restoration plan. Such a plan shall be prepared by a qualified professional using currently accepted scientific principles and shall describe how the actions proposed meet the minimum requirements described in subsection F. At the expense of the applicant or responsible party, the County or its agent shall seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.
- F. Minimum performance standards for restoration. The following minimum performance standards shall be met for the restoration of a critical area, provided that if the applicant or responsible party can demonstrate that greater functions and habitat values can be obtained, these standards may be modified:
1. The historical structure, functions, and values of the affected critical area shall be restored, including water quality and habitat functions.
 2. The historical soil types and configuration shall be restored to the extent practicable.
 3. The critical areas and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities. The historical functions and values should be replicated at the location of the alteration.
 4. Information demonstrating compliance with other applicable provisions of this Chapter shall be submitted to the County or its agent.
- G. Site Investigations. The County or its agent is authorized to make site inspections and take such actions as are necessary to enforce this Chapter. The County or its agent shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.
- H. Penalties. Any person, party, firm, corporation, or other legal entity convicted of violating any of the provisions of this Chapter shall be guilty of a misdemeanor.
1. Each day or portion of a day during which a violation of this Chapter is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of this Chapter shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington. The County may levy civil penalties against any person, party, firm, corporation, or other legal entity for violation of any of the provisions of this Chapter. The civil penalty shall be assessed at a maximum rate of \$500 per day per violation.

2. If the critical area affected cannot be restored, monies collected as penalties shall be deposited in a dedicated account for the preservation or restoration of landscape processes and functions in the watershed in which the affected critical area is located. The County may coordinate its preservation or restoration activities with other jurisdictions in the watershed to optimize the effectiveness of the restoration action.

19.01.120 Property Tax Relief

- A. The county assessor shall consider the wetlands and wetland buffer areas, fish and wildlife habitat conservation areas and geologically hazardous areas contained within this chapter when determining the fair market value of land.
- B. Any owner of a wetland, wetland buffer area, or fish and wildlife habitat conservation area who has dedicated a conservation easement or entered into a perpetual conservation restriction with a department of the local, state, or federal government; or a nonprofit organization to permanently control some or all the uses and activities within these areas may request that the county assessor reevaluate that specific area consistent with those restrictions and provisions of open space land current use taxation.

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