

**Planning Commission  
Special Meeting Agenda  
August 20, 2026  
6:00 PM**

**MAYOR**  
MATTHEW LUNDH

**CITY ADMINISTRATOR**  
ROBERT OMANS

**ASSISTANT CITY  
ADMINISTRATOR**  
ERICA KRUM

**PLANNING DIRECTOR**  
SHANNON JOHNSON

**CITY CLERK**



119 W FIRST STREET  
CLE ELUM, WA 98922

**PLANNING COMMISSION**  
GARY BERNDT  
AMANDA HAHNEMANN  
VACANT  
MARC KIRKPATRICK  
COLIN BRISSEY  
PAUL KANTWILL  
IAN STEELE

**COUNCIL LIAISON - CASSIDY**  
BUECHLE-CURTIS

Join Virtually via Zoom: <https://zoom.us/j/7573184018?pwd=dERndjBJVC9GdVQ1d2ISRExwZFhXZz09>  
Meeting ID: 757 318 4018 Passcode: 98922

Join by Phone: 1-(253)215-8782, Meeting ID: 757 318 4018, Passcode: 98922

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Receive city text alerts: text CLEELUM to 91896

**DISCLAIMER:** The City does not guarantee that virtual or telephonic access to the City Council meeting will be available, and the City does not warrant audio quality. Attendees are encouraged to attend in person.

1. **Call to Order and Roll Call**
2. **Adoption of Minutes**
  - a. August 4, 2026
3. **Business Requiring Public Hearings**
4. **Planning Update**
5. **New Business**
  - a. Comp Plan – Critical Areas Chapter Review
6. **Next Meeting Agenda Development**
  - a. Comp Plan – Critical Areas Review Continued (if needed)
7. **Commissioner Comments and Discussion**
8. **Adjournment**

***Upcoming Meetings:***

***Regular Council Meeting — August 25, 2026, at 6:00 p.m.***

***General Government Committee Meeting — August 26, 2026, at 8:30 a.m.***

**City of Cle Elum  
Planning Commission (CEPC) Meeting Minutes  
City Council Chambers  
August 4, 2026, 2026 | 6:00 PM**

**Call to Order**

Chair Kantwill called the meeting to order at 6:00 PM

**Roll Call**

**CEPC Members Present:** Gary Berndt, Marc Kirkpatrick, Ian Steele, Paul Kantwill, Colin Brissey, and Amanda Hahnemann

**CEPC Members Absent:**

**Council Liaison :** Cassidy Buechele-Curtis

**Staff Present:** Shannon Johnson

**Also Present:** Joseph Calhoun, Mike Heit, and HLA Consultants

**1. Call to Order & Roll Call**

Chair Kantwill called the meeting to order at 6:00 p.m. He was pleased to announce that the entire planning commission was present.

**Public Comment**

None

**2. Adoption of the Minutes**

Commissioner Steele motioned to accept the July 21, 2026 minutes as corrected. Commissioner Hahnemann seconded. Motion carried.

\*\*\*At approximately 6:07 p.m., Chair Kantwill noted a brief recess for staff to work on audio issues. City Council Liaison Buechele - Curtis worked diligently to trouble shoot the IT camera issues, and the meeting resumed at approximately 6:10 pm.

**3. Business Requiring Public Hearings – City Planning**

None

**4. Planning Update**

**a. Staff Announcements**

Staff gave a brief overview of current projects and noted that Commissioner Hahnemann would like to ask for more discussion on the Capital Facilities and Transportation chapters.

## 5. Unfinished Business

### a. **Capital Facilities Chapter – Continued Discussion**

Joseph Calhoun, HLA Consultant, informed that he had created a track changes paragraph for review. He shared his screen and read through the track changes related to hydrant capacities. Discussion ensued with commissioners asking questions in regard to existing and future water demands. Mike Heit, HLA Engineering Consultant, provided clarification for the group.

### b. **Transportation Chapter – Continued Discussion**

Commissioner Hahnemann began discussion on public education system impact fees. Chair Kantwill added school district plan information. Discussion ensued. City Council Liaison Buechele-Curtis added that the school district is a separate entity. HLA Consultant Calhoun elaborated. Engineering Consultant Heit provided background information.

\*\*\*At approximately 6:29 p.m., there was a power outage. There were Consultants and Commissioners that were in attendance online, where the camera continued to roll. Chair Kantwill and the commissioners that were in attendance in person waited along with staff and Liaison Buechele-Curtis, however the power did not resume.

## 6. Next Meeting Agenda Development

- a. Comp Plan – Critical Areas Review

## 7. Commissioner Comments and Discussion

Chair Kantwill reminded members that the next regularly scheduled meeting will be on Thursday, August 20, 2026 (special date due to council chamber scheduling), and reminded that the Periodic Update Grant Open House would commence at 5:00 p.m. prior to the regular meeting.

## 8. Adjournment

***Kantwill adjourned the meeting at 6:44 pm. The Commission will reconvene for their next Meeting set for August 20, 2026 at 6:00 p.m.***

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Chair Kantwill

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Date

# Critical Areas Checklist

A Technical Assistance Tool from Growth Management Services – updated May 2024

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| <b>Name of city or county:</b> City of Cle Elum, Kittitas County (HLA Project No. 24126E).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Staff contact, phone, and e-mail address:</b> Rob Omans, City Administrator. <a href="mailto:romans@cleelum.gov">romans@cleelum.gov</a> (509) 674-2262.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>INSTRUCTIONS</b><br><p>This checklist is intended to help local governments update their development regulations, pursuant to the schedule in <b>RCW 36.70A.130(5)</b>. We strongly encourage but do not require jurisdictions to complete the checklist and return it to Growth Management Services (GMS), along with their updates. <b>However, If the jurisdiction is using a portion of their Periodic Update Grant (PUG) to update the Critical Areas Ordinance, this checklist is required.</b></p> <p>This checklist may be used by all jurisdictions, including those local governments planning for resource lands and critical areas only. For general information on update requirements, refer to <a href="#">A Guide to the Periodic Update Process Under the Growth Management Act – Fully Planning Counties &amp; Cities, 2022</a> and <a href="#">WAC 365-196-610</a>.</p> <p>For additional information, resources, and general checklists pertaining to comprehensive plan and development regulation periodic updates please visit Commerce’s <a href="#">Growth Management Act Periodic Update webpage</a>.</p> <p><b>Bold items are a GMA requirement or may be related requirements of other state or federal laws. Underlined items are links to Internet sites and may include best practices or other ideas to consider.</b></p> <p><b>Commerce WAC provisions are advisory</b> under Commerce’s statutory mandate to provide technical assistance, <b>RCW 43.330.120</b> which states that the Department of Commerce “...<i>shall help local officials interpret and implement the different requirements of the act through workshops, model ordinances, and information materials.</i>” If you have questions, call GMS at (360) 725-3066.</p> <p><b>How to fill out the checklist</b></p> <p>Using the current version of your critical areas regulations, fill out each item in the checklist. Select the check box or type in text fields, answering the following question:</p> <p><b>Is this item addressed in your current Critical Areas Ordinance (CAO)?</b> If YES, fill in the form with citation(s) to where in the plan or code the item is addressed. We recommend using citations rather than page numbers because they stay the same regardless of how the document is printed. If you have questions about the requirement, follow the hyperlinks to the relevant statutory provision or rules. If you still have questions, visit the</p> | <b>CONTENTS</b><br><p>Instructions..... 1</p> <p>Overall Requirements..... 2</p> <p>Wetlands..... 3</p> <p>Critical Aquifer Recharge Areas..... 5</p> <p>Frequently Flooded Areas.... 6</p> <p>Geologically Hazardous Areas..... 7</p> <p>Fish and Wildlife Habitat Conservation Areas..... 8</p> <p>Designating and Protecting Waters of the State..... 9</p> <p>Anadromous Fisheries..... 10</p> <p>Reasonable Use Exceptions..... 10</p> <p>Agricultural Activities..... 11</p> <p>Forest Practices Regulations..... 11</p> |

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| <a href="#">Commerce Growth Management Services Web page</a> or contact one of the <a href="#">Commerce planners</a> assigned to your region. | <b>Good Ideas.....12</b> |
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## CRITICAL AREAS

Regulations protecting critical areas are required by **RCW 36.70A.060(2)** and **RCW 36.70A.172(1)**. [WAC 365-195-900 through 925](#) provide guidelines. Guidance can also be found in [Commerce's Critical Areas Handbook](#) (2022); the Minimum Guidelines [WAC 365-190-080 through 130](#); Best Available Science [WAC 365-195](#); and Procedural Criteria, [WAC 365-196-485](#) and [WAC 365-196-830](#), and on Growth Management's [Critical Areas](#) webpage.

| Regulations required to protect critical areas                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Addressed in current plan or regulations? If yes, note where                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| <p><b>OVERALL REQUIREMENTS</b></p> <p>The CAO includes best available science to clearly designate and protect all critical areas that might be found within the jurisdiction.</p> <p><b>1. Designation of Critical Areas</b></p> <p><b>RCW 36.70A.170(1)(d)</b> requires all counties and cities to designate critical areas. <b>RCW 36.70A.170(2)</b> requires that counties and cities consider the Commerce Minimum Guidelines pursuant to <b>RCW 36.70A.050</b>.</p> <p><b>RCW 36.70A.050</b> directs Commerce to adopt the Minimum Guidelines to classify critical areas. <a href="#">WAC 365-190-080 through 130</a> provide guidance on defining or "designating" each of the five critical areas.</p> <p><a href="#">WAC 365-190-040</a> outlines the process to classify and designate natural resource lands and critical areas.</p> <p><b>2. Definition of Critical Areas</b></p> <p><b>RCW 36.70A.030(11)</b> provides definitions for critical areas. Sections (20) regarding geologically hazardous areas; and (48) regarding wetlands were updated in 2010.</p> <p><a href="#">WAC 365-190-030</a> provides definitions in the Minimum Guidelines.</p> <p><b>3. Protection of Critical Areas</b></p> <p><b>RCW 36.70A.060(2)</b> requires counties and cities to adopt development regulations that protect the critical areas required to be designated under <b>RCW 36.70A.170</b>.</p> <p><b>RCW 36.70A.172(1)</b> requires the inclusion of best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.</p> | <p>Was BAS documented in the record for the review and updates to the critical areas regulations?</p> <p><input checked="" type="checkbox"/> Yes<br/><input type="checkbox"/> No</p> <p>Location in Text:<br/>CEMC 18.01.010<br/>CEMC 18-01.020</p> <p>Do your regulations address no net loss and require compensatory mitigation?</p> <p><input checked="" type="checkbox"/> Yes<br/><input type="checkbox"/> No</p> <p>Location in Text:<br/>CEMC 18.01.070(C)(1)(i)<br/>CEMC 18.01.020<br/>CEMC 18.01.070(A)(10-11)</p> |

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| <p><a href="#">WAC 365-196-830</a> provides guidance on protection of critical areas.</p> <p><b>4. Inclusion of Best Available Science</b></p> <p><b>RCW 36.70A.172(1)</b> requires inclusion of the best available science (BAS).</p> <p><a href="#">WAC 365-195-900 through 925</a> outlines recommended criteria for determining which information is the BAS, for obtaining the BAS, for including BAS in policies and regulations, for addressing inadequate scientific information, and for demonstrating “special consideration” to conservation or protection measures necessary to preserve or enhance anadromous fisheries.</p> <p><a href="#">WAC 365-195-915</a> provides criteria for including BAS in the record.</p> <p><b>5. No net loss</b> of critical area functions and values is a requirement for development regulations in <a href="#">WAC 365-196-830(4)</a>. If development regulations allow harm to critical areas, they must require compensatory mitigation of the harm.</p> |  |
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| <p><b>WETLANDS DEFINITION</b></p> <p>The definition of wetlands is consistent with <b>RCW 36.70A.030(48)</b>.</p>                                                                                                                                                                                                                                  | <p>Is the wetland definition consistent with RCW 36.70A.030(48)?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> N/A</p> <p>Location in Text:</p> <p>CMP 18.01.020</p>                                                                                                                                            |
| <p><b>WETLANDS DELINEATION</b></p> <p><b>Wetlands are delineated using the approved federal wetland delineation manual and applicable regional supplements</b> in accordance with <a href="#">WAC 173-22-035</a>.</p> <p>See Ecology’s <a href="#">Wetland Delineation</a> page and <a href="#">WAC 365-190-090</a> for additional assistance.</p> | <p>Are wetlands delineated using the approved Federal Wetland Delineation Manual and Regional Supplements?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> N/A</p> <p>Location in Text:</p> <p>CEMC 18.01.030(C)</p> <p>Reference is oblique via a link. Recommend specifying in the CAO. See attached Notes.</p> |

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| <p><b>WETLANDS PROTECTION</b></p> <p><b>Policies and regulations protect the functions and values of wetlands. <u>RCW 36.70A.172(1)</u>.</b></p> <p>Counties and cities are encouraged to make their actions consistent with the intent and goals of “protection of wetlands”, <a href="#">Executive Order 89-10</a> as it existed on September 1, 1990.</p> <p><a href="#">WAC 365-190-090(3)</a> recommends using a wetlands rating system that evaluates the existing wetland functions and values to determine what functions must be protected. Ecology updated its recommended wetlands rating systems effective January 2015. For information on the rating system, including the July 2018 adjustments to ranges for habitat scores, see:</p> <ul style="list-style-type: none"> <li>• <a href="#">2014 Updates to the Washington State Wetland Rating Systems</a></li> <li>• <a href="#">Washington State Wetland Rating System for Western Washington</a></li> <li>• <a href="#">Washington State Wetland Rating System for Eastern Washington</a></li> </ul> <p>For other resources and guidance on protecting wetlands, go to Ecology’s <a href="#">Local Wetland Regulations: Growth Management Act technical assistance</a> and see:</p> <ul style="list-style-type: none"> <li>• <a href="#">Wetland Guidance for Critical Areas Ordinance (CAO) Updates: Western and Eastern Washington (2022)</a></li> </ul>                                                        | <p>Do the regulations use a rating system to determine wetlands protection?</p> <p><input checked="" type="checkbox"/> Yes<br/> <input type="checkbox"/> No<br/> <input type="checkbox"/> N/A</p> <p>Location in Text:<br/> CEMC 18.01.030(C)<br/> CEMC 18.01.070(A)(2)(a)</p>                                                                             |
| <p><b>CRITICAL AQUIFER RECHARGE AREAS</b></p> <p><b>Policies and regulations protect the functions and values of critical aquifer recharge areas. <u>RCW 36.70A.172(1)</u>.</b></p> <p><b>Policies and regulations protect the quality and quantity of groundwater used for public water supplies. <u>RCW 36.70A.070(1)</u> and <u>WAC 365-196-485(1)(d)</u>.</b></p> <p>The following references also relate to protection of groundwater resources:</p> <ul style="list-style-type: none"> <li>• <b><u>RCW 90.44</u></b> – Regulation of Public Groundwaters</li> <li>• <b><u>RCW 90.48</u></b> – Water Pollution Control</li> <li>• <b><u>RCW 90.54</u></b> – Water Resources Act of 1971</li> <li>• <b><u>RCW 36.36.020</u></b> - Creation of aquifer protection area (1985)</li> <li>• <a href="#">WAC 365-190-100</a> Critical Aquifer Recharge Areas 2023</li> <li>• <a href="#">WAC 173-100</a> Groundwater Management Areas and Programs (1988)</li> <li>• <a href="#">WAC 173-200</a> Water Quality Standards for Groundwaters of the State of Washington (1990)</li> <li>• <a href="#">WAC 365-196-735</a> Consideration of state and regional planning provisions (list) (2010)</li> </ul> <p>The <a href="#">Critical Aquifer Recharge Areas Guidance Document</a> (2021) provides information on protecting functions and values of critical aquifer recharge areas, best available science, how to work with state and local regulations and adaptive management.</p> | <p>If groundwater is used for potable water, do regulations protect the quality and quantity of ground water?</p> <p><input checked="" type="checkbox"/> Yes<br/> <input type="checkbox"/> No<br/> <input type="checkbox"/> N/A</p> <p>Location in text:<br/> CEMC 18.01.020<br/> CEMC 18.01.030(D)<br/> CEMC 18.01.055(C)(1-2)<br/> CEMC 18.01.070(B)</p> |

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| <p><b>CRITICAL AQUIFER RECHARGE AREAS</b></p> <p>Also, consider the following:</p> <ul style="list-style-type: none"> <li>Prohibiting or strictly regulating hazardous uses in critical aquifer recharge areas (CARAs) and designating and protecting wellhead areas. See Ecology's guidance on <a href="#">Critical Aquifer Recharge Areas</a>.</li> <li>Limiting impervious surfaces to reduce stormwater runoff, as required under Phase I and II municipal stormwater permits. Ecology's Stormwater Manual for Western Washington (2012) includes low impact development (LID) related definitions, requirements, and an LID performance standard. See <a href="#">Stormwater Management and Design Manuals</a> on Ecology's web page.</li> <li>For additional guidance on LID resources, see Commerce's <a href="#">Incentivizing low-impact development guidebook</a>.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <p>Are the critical aquifer recharge regulations consistent with current mapping of these critical areas?</p> <p><input checked="" type="checkbox"/> Yes<br/> <input type="checkbox"/> No<br/> <input type="checkbox"/> N/A</p> <p>Location in text:<br/> CEMC 18.01.030(D)</p> <p>NOTE: References mapping but does not provide link for reference. Recommend updating to provide access to source mapping. See attached Notes.</p> |
| <p><b>FREQUENTLY FLOODED AREAS</b></p> <p><b>Regulations protect the functions and values of frequently flooded areas and safeguard the public from hazards to health and safety. <a href="#">RCW 36.70A.172(1)</a>.</b></p> <p><a href="#">WAC 365-196-830</a> provides: "'Protection' in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety."</p> <p><a href="#">WAC 365-190-110</a> directs counties and cities to consider the following when designating and classifying frequently flooded areas:</p> <ol style="list-style-type: none"> <li>Effects of flooding on human health and safety, and to public facilities and services;</li> <li>Available documentation including federal, state, and local laws, regulations, and programs, local studies and maps, and federal flood insurance programs, including the provisions for urban growth areas in <a href="#">RCW 36.70A.110</a>;</li> <li>The future flow flood plain, defined as the channel of the stream and that portion of the adjoining flood plain that is necessary to contain and discharge the base flood flow at build out;</li> <li>The potential effects of tsunamis, high tides with strong winds, sea level rise, and extreme weather events, including those potentially resulting from global climate change;</li> <li>Greater surface runoff caused by increasing impervious surfaces.</li> </ol> <p>Classification of and regulations for frequently flooded areas should not conflict with the FEMA requirements for the <a href="#">National Flood Insurance Program (NFIP)</a>. See <a href="#">Ecology's Frequently Flooded areas: Critical Areas Ordinance</a> webpage and <a href="#">44 CFR 60</a>.</p> <p>Communities that are located on Puget Sound or the Strait of Juan de Fuca, or have lakes, rivers or streams that directly or indirectly drain to those water bodies,</p> | <p>Are frequently flooded areas designated and regulated using FEMA and Ecology guidance?</p> <p><input checked="" type="checkbox"/> Yes<br/> <input checked="" type="checkbox"/> No<br/> <input type="checkbox"/> N/A</p> <p>Location in Text:<br/> CEMC 18.01.020<br/> CEMC 18.01.030(E)<br/> CEMC 18.01.055(E)<br/> CEMC 18.01.070(D)</p> <p>The CAO does not appear to reference Ecology guidance. See attached Notes.</p>       |

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| <p><b>FREQUENTLY FLOODED AREAS</b></p> <p>are subject to the NFIP Biological Opinion (BiOp) for Puget Sound. The biological opinion required changes to the implementation of the NFIP in order to meet the requirements of the Endangered Species Act (ESA) in the Puget Sound watershed. FEMA Region X has developed an implementation plan that allows communities to apply the performance standards contained in the Biological Opinion by implementing:</p> <ol style="list-style-type: none"> <li>1) <a href="#">a model ordinance</a>;</li> <li>2) <a href="#">a programmatic Checklist</a>; or</li> <li>3) on a permit by permit basis as long as it can be demonstrated that there is no adverse effect to listed species. Communities have the <u>option</u> of utilizing their CAOs as part of a programmatic response to address the requirements of the biological opinion. FEMA must approve a community's biological opinion compliance strategy.</li> </ol> <p>Additional resources:</p> <p><b><u>RCW 86.12</u></b> Flood Control by Counties</p> <p><b><u>RCW 86.16</u></b> Floodplain Management</p> <p><b><u>RCW 86.26</u></b> State Participation in Flood Control Maintenance</p> <p><b><u>RCW 86.16.041</u></b> Floodplain Management Ordinance and Amendments</p> <p><b><u>WAC 173-158-070</u></b> Requirements for construction in Special Flood Hazard Areas</p> | <p>Are you utilizing your CAO as part of a programmatic response to the BiOp?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> N/A</p> <p>Location in Text:</p> <p>Cle Elum is located in Eastern WA.</p>                                                       |
| <p><b>DEFINITION OF GEOLOGICALLY HAZARDOUS AREAS</b></p> <p><b>The definition of geologically hazardous areas is consistent with <u>RCW 36.70A.030(20)</u> and <a href="#">WAC 365-190-120(1)</a>.</b></p> <p>"Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <p>Is the geologically hazardous areas definition consistent with</p> <p><b>RCW 36.70A.030(20)?</b></p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> N/A</p> <p>Location in Text:</p> <p>CEMC 18.01.020</p> <p>CEMC 18.01.030(F)</p> <p>See attached Notes.</p> |
| <p><b>PROTECTION OF GEOLOGICALLY HAZARDOUS AREAS</b></p> <p><b>Regulations protect the functions and values of geologically hazardous areas and safeguard the public from hazards to health and safety. <u>RCW 36.70A.172(1)</u>.</b></p> <p><a href="#">WAC 365-196-830</a> provides: "'Protection"' in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety."</p> <p><b>Geologically hazardous areas are designated, and their use is regulated or limited consistent with public health and safety concerns. <u>RCW 36.70A.030(20)</u></b></p> <p><a href="#">WAC 365-190-120</a> describes the different types of hazardous areas:</p> <ul style="list-style-type: none"> <li>• Geologically hazardous areas include: <ul style="list-style-type: none"> <li>• Erosion hazards</li> </ul> </li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <p>Are uses in geologically hazardous areas designated and regulated or limited consistent with public health and safety?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> N/A</p>                                                                              |

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| <ul style="list-style-type: none"> <li>• <a href="#">Landslide hazards</a></li> <li>• <a href="#">seismic hazards</a></li> <li>• <a href="#">tsunami hazards</a></li> <li>• <a href="#">volcanic hazards</a></li> <li>• <a href="#">channel migration zones</a></li> <li>• areas subject to other geological events such as coal mine hazards including: mass wasting, debris flows, rock falls, and differential settlement.</li> </ul> <p>The Department of Natural Resource's Washington Geological Survey <a href="#">Geologic Hazards and the Environment</a> website includes information on earthquakes and faults, landslides, volcanoes and lahars, tsunamis, hazardous minerals, emergency preparedness, historic mines and includes geologic hazard maps that can be accessed from the <a href="#">Geologic Information Portal</a>.</p> | <p>Location in Text:</p> <p>CEMC 18.01.060(C)<br/>CEMC 18.01.070(E)</p> |
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| <p><b>DEFINITION OF FISH AND WILDLIFE HABITAT AND CONSERVATION AREAS</b></p> <p><b>The definition of fish and wildlife habitat conservation areas is consistent with <a href="#">WAC 365-190-030(6)</a>.</b> The definition of fish and wildlife habitat conservation areas was amended to state that they do not include: <b><i>"such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company"</i></b>.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p>Is the FWHCA definition consistent with WAC 365-190-030(6)?</p> <p><input checked="" type="checkbox"/> Yes<br/><input type="checkbox"/> No<br/><input type="checkbox"/> N/A</p> <p>Location in Text:</p> <p>CEMC 18.01.020</p>                                                                                                                                                                                                                           |
| <p><b>PROTECTION OF FISH AND WILDLIFE HABITAT AND CONSERVATION AREAS</b></p> <p><b>Policies and regulations protect the functions and values of fish and wildlife habitat conservation areas. <a href="#">RCW 36.70A.172(1)</a> and <a href="#">WAC 365-190-030(6)</a>.</b></p> <p><a href="#">WAC 365-190-130(4)</a> says local jurisdictions must consult current information on priority habitats and species identified by <a href="#">WDFW</a>. Additional information that must be consulted is available from DNR's <a href="#">natural heritage program</a> and <a href="#">aquatic resources program</a>. BAS regarding biodiversity areas and corridors has advanced significantly. Recent updates and resources include:</p> <ul style="list-style-type: none"> <li>• <a href="#">Aquatic Habitat Guidelines</a></li> <li>• <a href="#">Priority Habitat and Species maps</a></li> <li>• <a href="#">Priority Habitats and Species List</a> (updated June 2023)</li> <li>• <a href="#">Priority Habitats and Species: Management recommendations:</a> <ul style="list-style-type: none"> <li>• <a href="#">Landscape Planning for Washington's Wildlife</a> (2009)</li> <li>• <a href="#">Land Use Planning for Salmon, Steelhead and Trout</a> (2009)</li> <li>• <a href="#">Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications</a> (2020)</li> <li>• <a href="#">Riparian Ecosystems, Volume 2: Management Recommendations</a> (2020)</li> <li>• <a href="#">Riparian Management Zone Checklist for CAOs</a> (2023)</li> <li>• <a href="#">Shrub-Steppe Management Recommendations</a> (2020)</li> <li>• <a href="#">Oregon White Oak Woodlands Ecosystems Management Recommendations</a> (1998)</li> </ul> </li> </ul> | <p>Have you reviewed your regulations regarding any applicable changes in management recommendations for priority habitats and species?</p> <p><input checked="" type="checkbox"/> Yes<br/><input checked="" type="checkbox"/> No<br/><input type="checkbox"/> N/A</p> <p>Location in Text</p> <p>CEMC 18.01.030(G)(3): references WDFW PHS but should be updated to better parallel the latest breadth of HCA protection guidance. See attached Notes.</p> |

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| <ul style="list-style-type: none"> <li>• <a href="#">Management recommendations for Washington's Priority Species</a> (by taxa)</li> <li>• <a href="#">Puget Sound Kelp Conservation and Recovery Plan</a> (2020)</li> <li>• <a href="#">Stream Habitat Restoration Guidelines</a> (2012)</li> <li>• <a href="#">Water Crossing Design Guidelines</a> (2013)</li> </ul> <p>“Areas where endangered, threatened, and sensitive species have a primary association” must be considered per <a href="#">WAC 365-190-130(2)(a)</a>. Consult WDFW’s <a href="#">Threatened and Endangered Species list</a> and U.S. Fish and Wildlife Service’s <a href="#">Information for Planning and Consultation</a> resources for up to date information on all state and federal listed species.</p> <p>Also see the <a href="#">Puget Sound Partnership’s Salmon Recovery website</a> for Water Resource Inventory Area (WRIA) Plans in Puget Sound.</p> | <p>Have you reviewed your regulations regarding any changes in species listings?</p> <p><input checked="" type="checkbox"/> Yes<br/> <input checked="" type="checkbox"/> No<br/> <input type="checkbox"/> N/A</p> <p>Location in Text</p> <p>CEMC 18.01.030(1-7): obliquely mentions the need to reference current species listing statuses at the federal level but not beyond that.</p> |
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| <p><b>DESIGNATING AND PROTECTING WATERS OF THE STATE</b></p> <p><b>RCW 90.48.020</b> defines waters of the state, which include all surface waters, salt waters, groundwater and all other water courses in Washington. <a href="#">WAC 365-190-130(2)(f)</a> recommends designating all waters of the state as fish and wildlife habitat conservation areas (FWHCAs).</p> <p>Stream types are classified in <a href="#">WAC 222-16-030</a> with field verification, or an alternate system that considers factors listed in <a href="#">WAC 365-190-130(4)(f)(iii)</a>. See <a href="http://www.dnr.wa.gov/forest-practices-water-typing">http://www.dnr.wa.gov/forest-practices-water-typing</a> to use Washington State Department of Natural Resources (DNR)’s stream typing system.</p> <p>Establish riparian management zones to maintain no net loss of riparian ecosystem functions and values.</p> <p>Designate areas that risk contaminating or harming shoreline resources including tidelands and bedland suitable for shellfish harvest, kelp and eelgrass beds and forage fish spawning areas.</p> | <p>Do you designate waters of the state as FWHCAs?</p> <p><input checked="" type="checkbox"/> Yes<br/> <input type="checkbox"/> No<br/> <input type="checkbox"/> N/A</p> <p>Location in Text:</p> <p>CEMC 18.01.030(G)(5)</p> <p>Do your regulations protect waters of the state?</p> <p><input checked="" type="checkbox"/> Yes<br/> <input checked="" type="checkbox"/> No<br/> <input type="checkbox"/> N/A</p> <p>Location in Text:</p> <p>CEMC 18.01.070(C)(1)(a-p): The CEMC outlines protection measures for Fish and Wildlife Habitat Conservation Areas, including Waters of the State.</p> |
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| <p><b>ANADROMOUS FISHERIES</b></p> <p><b>Policies and regulations for protecting critical areas give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.</b> <u>RCW 36.70A.172(1)</u> is the requirement and <u>WAC 365-195-925</u> lists criteria involved. This requirement applies to all five types of critical areas. <u>WAC 365-190-130(4)(i)</u> recommends sources and methods for protecting fish and wildlife habitat conservation areas, including salmonid habitat. Counties and cities may use information prepared by the United States Department of the Interior Fish and Wildlife Service, National Marine Fisheries Service, the Washington State Department of Fish and Wildlife, the State Recreation and Conservation Office, and the Puget Sound Partnership to designate, protect and restore salmonid habitat. Counties and cities should consider recommendations found in the regional and watershed specific salmon recovery plans (see the <u>Governor's Salmon Recovery Office webpage</u> and the Puget Sound Partnership's <u>Salmon Recovery webpage</u>). <u>Land Use Planning for Salmon, Steelhead and Trout</u>: A land use planner's guide to salmonid habitat protection and recovery (October 2009) is an excellent resource.</p> | <p>Do your regulations give special consideration to anadromous fisheries?</p> <p><input checked="" type="checkbox"/> Yes<br/> <input type="checkbox"/> No<br/> <input type="checkbox"/> N/A</p> <p>Location in Text:<br/> CEMC 18.01.070(C)(1)(I)(i-iii)</p> |
| <p><b>REASONABLE USE EXCEPTIONS</b></p> <p><b>The Critical Areas Ordinance (CAO) allows for "reasonable use" if the CAO would otherwise deny all reasonable use of property.</b> Reasonable use provisions should limit intrusions into critical areas to the greatest extent possible and apply the mitigation sequence as needed for no net loss of ecosystem functions and values <u>RCW 36.70A.370</u>. Common exemptions include emergencies, remodels that do not further extend into critical areas, surveying, walking, and development that has already been completed with critical areas review under a previous permit. See <u>Critical Areas Handbook, Chapter 3: Structuring Critical Areas Regulations, p.10 (Updated 2022)</u>.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <p>Do you have reasonable use provisions?</p> <p><input checked="" type="checkbox"/> Yes<br/> <input type="checkbox"/> No</p> <p>Location in Text:<br/> CEMC 18.01.090(A-D)</p>                                                                               |
| <p><b>AGRICULTURAL ACTIVITIES (COUNTIES ONLY)</b></p> <p><b>Non-VSP Counties</b></p> <p>Critical areas regulations as they specifically apply to agricultural activities in counties or watersheds not participating in the <u>Voluntary Stewardship Program (VSP)</u> have been reviewed, and if needed, revised pursuant to <u>RCW 36.70A.130</u>. <u>RCW 36.70A.710(6)</u></p> <p>"Agricultural activities" means all agricultural uses and practices as defined in <u>RCW 90.58.065</u>.</p> <p><b>VSP Counties</b></p> <p>After watershed work plan approval, <u>VSP counties</u> are encouraged to reference and describe their participation in the program within their critical areas development regulations (<u>WAC 365-196-832</u>). See <u>Critical Areas Handbook</u>, Chapter 5: Protecting Critical Areas in Natural Resource Lands (2022).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p>Did you review your regulations as they apply to agricultural activities?</p> <p><input type="checkbox"/> Yes<br/> <input type="checkbox"/> No<br/> <input checked="" type="checkbox"/> N/A</p> <p>Location in Text:</p>                                   |

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| <p><b>FOREST PRACTICES APPLICATION REGULATIONS</b></p> <p><i>If applicable, regulations for forest practices have been adopted: <b>RCW 36.70A.570</b>.</i></p> <p><b>RCW 76.09.240</b>, requires many counties over 100,000 in population, and the cities and towns within those counties to adopt regulations for forest practices. These are often included in clearing and grading ordinances.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <p>Have you adopted forest practices regulations?</p> <p><input type="checkbox"/> Yes<br/> <input type="checkbox"/> No<br/> <input checked="" type="checkbox"/> N/A</p> <p>Location in Text:<br/> The population of Kittitas County is 48,172. As such, this question is not applicable.</p>                                                                                                                                                                                                                     |
| <p><b>GOOD IDEAS</b></p> <p><b>Non-regulatory measures</b> to protect or enhance functions and values of critical areas may be used to complement regulatory methods. These may include:</p> <ul style="list-style-type: none"> <li>• public education</li> <li>• stewardship programs</li> <li>• pursuing grant opportunities</li> <li>• water conservation</li> <li>• joint planning with other jurisdictions and non-profit organizations</li> <li>• stream and wetland restoration activities</li> <li>• <a href="#">transfer of development rights</a></li> </ul> <p><b>Monitoring and adaptive management</b> is encouraged in <a href="#">WAC 365-195-905(6)</a> to improve implementation of your regulations. See Commerce’s Monitoring and Adaptive Management chapter in the <a href="#">Critical Areas Handbook</a>, Chapter 7: Monitoring and Adaptive Management of Critical Areas (2022).</p> | <p>Are you using non-regulatory measures to protect critical areas?</p> <p><input type="checkbox"/> Yes<br/> <input checked="" type="checkbox"/> No</p> <p>Location in Text:<br/> None of the non-regulatory measures at left are mentioned in CEMC 18.01.</p> <p>Do you have a monitoring and adaptive management program for your CAO?</p> <p><input type="checkbox"/> Yes<br/> <input checked="" type="checkbox"/> No</p> <p>Location in Text:<br/> “Adaptive Management” is not mentioned in CEMC 18.01.</p> |



May 10, 2025

Joseph Calhoun, Planning Supervisor  
HLA Engineering and Land Surveying, Inc.  
2803 River Road | Yakima, WA 98902  
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**RE: Critical Areas Checklist Notes – City of Cle Elum (HLA Project No. 24126E)**

Mr. Calhoun,

GG Environmental, LLC (Geoffrey Gray, MA, PWS) was contracted by HLA Engineering and Land Surveying, Inc. (HLA) to complete a Critical Areas Checklist (checklist) for the City of Cle Elum (city), Washington (HLA Project No. 24126E).

These notes are intended to accompany the completed checklist, allowing for greater detail in justifying the checklist entries.

The city's Critical Areas Ordinance (CAO) is contained in Chapter 18.01 of the Cle Elum Municipal Code (CEMC) located at: <https://cleelum.municipal.codes/CEMC/18.01>. **The CEMC is current through Ordinance 1653, passed September 11, 2023.**

**CRITICAL AREAS CHECKLIST – NOTES BY QUESTION**

**NOTE:** Incorrect information or suggestions for improvement are highlighted in yellow.

**OVERALL REQUIREMENTS:**

**Best available science:** CEMC 18.01.010: The city of Cle Elum shall regulate all uses, activities and developments within, adjacent to, or likely to affect, one or more critical areas, consistent with the **best available science** and the provisions herein.

**CEMC 18.01.020 (Definitions):** “**Best available science**” means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 365-195-925. Sources of **best available science** are included in “**Best Available Science For the City of Cle Elum, Washington**” dated October 28, 2020, or as amended.

**No-net-lost, compensatory mitigation:** CEMC 18.01.070(C)(1)(i): Buffer Averaging. The city may allow modification of standard fish and wildlife habitat conservation area buffer in accordance with an approved critical area report on a case-by-case basis. With buffer averaging, the buffer width may be reduced in one location and increased in

another location to maintain the same overall buffer area provided there is **no net loss** in the function or value of the buffer.

**CEMC 18.01.020 (Definitions):** “**Compensatory mitigation**” means replacing project-induced critical areas losses or impacts, and includes, but is not limited to, restoration, creation, enhancement, and/or preservation.

**CEMC 18.01.070 (A)(10-11):** These sections discuss wetland **compensatory mitigation** as well as requirements for compensatory mitigation.

#### **WETLANDS DEFINITION:**

**RCW 36.70A.030(48):** Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

**CMP 18.01.020 (Definitions):** “Wetland or wetlands” means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and other similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate the conversion of wetlands.

#### **WETLANDS DELINEATION:**

**CEMC 18.01.030(C):** Wetlands Designation. Wetlands are those areas, **designated in accordance with the procedures outlined in WAC 173-22-035**. All areas within the city

meeting the wetland designation criteria as outlined in **WAC 173-22-035** are hereby designated critical areas and are subject to the provisions of this chapter.

**WAC 173-22-035: Wetland identification and delineation.** Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the **approved federal wetland delineation manual and applicable regional supplements**. Review copies are available at the department of ecology headquarters and regional offices. Links to the online versions are accessible through the department of ecology wetlands web page. Copies of the original published manual are available through the U.S. Army Corps of Engineers National Technical Information Service (phone 703-487-4650).

**NOTE:** Reference to federal guidance is correct but oblique. Recommend specifying this in the CAO rather than deflecting via a link.

#### **WETLANDS PROTECTION:**

**CEMC 18.01.030(C):** Wetlands shall be **rated according to the Ecology wetland rating system** found in the Washington State Wetland Rating System documents (Eastern Washington, Ecology Publication No. 04-06-030) or as revised by Ecology.

**CEMC 18.01.070(A)(2)(a):** The following buffer widths have been established in accordance with the best available science. They are based on the **category of wetland** and the habitat score as determined by a qualified wetland professional using the **Washington State Wetland Rating System for Eastern Washington: 2014 Update** (Ecology Publication No. 14-06-030, or as revised and approved by Ecology).

#### **CRITICAL AQUIFER RECHARGE AREAS:**

**CEMC 18.01.020(Definitions):** “Critical aquifer recharge area (CARA)” means an area designated by WAC 365-190-100 that is determined to have a critical recharging effect on aquifers (i.e., maintain the quality and quantity of water) used for potable water as defined by WAC 365-190-030(3). These areas include the following: 1. Wellhead protection areas; 2. Sole source aquifers; 3. Susceptible groundwater management areas; 4. Special protection areas; 5. Moderately or highly vulnerable aquifer recharge areas; and 6. Moderately or highly susceptible aquifer recharge areas.

**CEMC 18.01.030(D): Critical aquifer recharge areas (CARAs)** are those areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2). CARAs have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of groundwater resources or contribute significantly to the replenishment of groundwater. Aquifer recharge areas shall be rated as having high, moderate, or low susceptibility based on soil permeability, geologic

matrix, infiltration, and depth to water as determined by the criteria established by Ecology. The city lies over alluvial soil deposits. There are unconsolidated materials composed of silt, sand and gravel, which in places are several hundred feet in depth. This deposit material is important as a water conveying unit and supplies the groundwater of stream flow (recharge). In general, areas of permeable soils in combination with geological transfer structure may be aquifer recharge areas. **Based on the information and maps contained in hydrology of the Upper Yakima River Basin and landscape planning, environmental applications, the city is an aquifer recharge area.** This is a preliminary determination until further studies of geology and hydrology are conducted on an overall or individual property specific basis to either include or exclude them as an aquifer recharge area. **NOTE: References mapping but does not provide link for reference. Recommend updating to provide access to source mapping.** Web search shows 2020 CARA remapping memorandum available here (see Fig 5): <https://www.co.kittitas.wa.us/uploads/documents/cds/cao/bas-review-2020/Technical%20Memo%20-%20Critical%20Aquifer%20Recharge%20Areas.pdf>

**CEMC 18.01.070(B):** Protection (performance standards) for Critical Aquifer Recharge Areas (CARA) discussed in this section.

**CEMC 18.01.055(C)(1-2): (1):** As stated in CEMC Section 18.01.030(C), **the entire city limits are presumed to be located within a critical aquifer recharge area unless a hydrogeologic study demonstrates otherwise.** This is a preliminary determination until further studies of geology and hydrology are conducted on an overall or individual property specific basis to either include or exclude them as an aquifer recharge area. **(2):** All critical aquifer recharge areas shall be classified as having either a high, medium, or low aquifer recharge potential. At a minimum, classification shall be based on soil permeability and recharge potential as described within the Soil Survey of Kittitas County. Where adequate information is available, aquifer recharge potential shall be further classified based on the recharge potential of surficial geologic materials, presence or absence of restrictive layers, surface and groundwater monitoring data, wellhead protection areas, depth to groundwater, topography (i.e., slopes), and locally adopted groundwater protection plans and studies. Land classified as having a high, medium, or low aquifer recharge potential shall also be classified as having a high, medium, or low susceptibility to contamination of an underlying aquifer, respectively. Based on these criteria, the potential for recharging aquifers or transmitting contaminants to the underlying aquifer is greatest where the aquifer is close to the ground surface, where ground surface slopes are minimal, and where the recharge potential of the soils and/or surficial geologic material is greatest. **All wellhead protection areas shall be designated as highly susceptible critical aquifer recharge**

**areas.** This can be provided in the hydrogeologic study or separate memo prepared by a qualified professional.

#### **FREQUENTLY FLOODED AREAS:**

**CEMC 18.01.020(Definitions): “Frequently flooded areas”** means lands in the floodplain subject to a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high groundwater and those lands that provide important flood storage, conveyance, and attenuation functions. These areas include, but are not limited to, streams, rivers, lakes, wetlands, and areas where high groundwater forms ponds on the ground surface, and Crystal Creek and ephemeral drainages identified by DNR and the Washington Department of Fish and Wildlife (WDFW).

**CEMC 18.01.030(E): Frequently flooded areas** are those areas subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high groundwater. These areas include: **1.** Waterways (streams, rivers, lakes, coastal areas, wetlands, and areas where high groundwater forms ponds on the ground surface). This includes Crystal Creek and ephemeral drainages identified by DNR and the Washington Department of Fish and Wildlife (WDFW). **2.** Floodways and floodplains identified in the **most recent FEMA flood insurance rate map**, and as subsequently revised and amended. **NOTE: The CAO does not appear to reference Ecology guidance for FFA.**

**CEMC 18.01.055(E): Frequently Flooded Areas. A Federal Emergency Management Agency (FEMA) elevation certificate** shall be required for new construction, any addition affixed to the side of a structure, and substantial improvements located within flood hazard areas. The most current version of the FEMA elevation certificate must be completed and certified by a professional land surveyor, currently licensed in the state of Washington, kept on file by the city for public inspection, recording the actual (as-built) elevation (in relation to mean sea level) of: **1.** The lowest floor, including basement, of all new or substantially improved structures, whether or not the structure contains a basement; **2.** For floodproofed nonresidential structures, where the structure was floodproofed (including floodproofing certifications).

**CEMC 18.01.070(D): Frequently Flooded Areas Performance Standards. 1. General Standards.** The following standards apply to all frequently flood areas: **a.** All structures and other improvements shall be located on the buildable portion of the site out of the area of flood hazard. Where necessary, residential buildings may be elevated. **b.** Utilities shall either be located three or more feet above the base flood elevation (BFE), or be engineered to the city of Cle Elum engineer’s requirements appropriate for the conditions. **c.** All new construction and substantial improvements shall be constructed using flood resistant materials and using methods and practices that minimize flood

damage. **d.** All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure. **e.** No rise in the BFE shall be allowed. Post and piling techniques are preferred and are presumed to produce no increase in the BFE. **f.** In areas within base flood elevations (but a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

**NOTE:** Cle Elum is not located on Puget Sound or the Strait of Juan de Fuca, or has lakes, rivers or streams that directly or indirectly drain to those water bodies. As such, Cle Elum is not subject to the NFIP Biological Opinion (BiOp) for Puget Sound.

### **GEOLOGICALLY HAZARDOUS AREAS:**

**RCW 36.70A.030:** Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

**CEMC.18.01.020 (Definitions):** "Geologically hazardous area" means an area that is not suited to commercial, residential, or industrial development because of its susceptibility to erosion, sliding, earthquakes, or other geological events hazardous to public health or safety.

**CEMC 18.01.030(F):** Geologically hazardous areas are areas susceptible to erosion, sliding, earthquake, or other geological events, that are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns. Geological hazardous areas as designated by **WAC 365-190-080** include the following areas: **1.** Erosion Hazard Areas. Erosion hazard areas are at least those areas identified by the U.S. Department of Agriculture Natural Resources Conservation Service as having a "moderate to severe," "severe," or "very severe" rill and inter-rill erosion hazard. Erosion hazard areas are also those areas impacted by shore land and/or stream bank erosion and those areas within a river's channel migration zone. **2.** Landslide Hazard Areas. Landslide hazard areas are areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors, and include, at a minimum, the following (per WAC 365-190-120(6)): **a.** Areas of historic failures, such as: **i.** Those areas delineated by the U.S. Department of Agriculture Natural Resources Conservation Service as having a significant limitation for building site development; **ii.**

Those coastal areas mapped as class u (unstable), uos (unstable old slides), and urs (unstable recent slides) in the Ecology coastal atlas; or **iii.** Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the United States Geological Survey or Washington Department of Natural Resources. **b.** Areas with all three of the following characteristics: **i.** Slopes steeper than fifteen percent; **ii.** Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and **iii.** Springs or groundwater seepage. **c.** Areas that have shown movement during the holocene epoch (from ten thousand years ago to the present) or which are underlain or covered by mass wastage debris of this epoch;

**d.** Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials; **e.** Slopes having gradients steeper than eighty percent subject to rockfall during seismic shaking; **f.** Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action, including stream channel migration zones; **g.** Areas that show evidence of, or are at risk from, snow avalanches; **h.** Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and **i.** Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of bedrock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief. **j.** Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of bedrock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief. **k.** Known landslide areas documented by the Washington State Department of Natural Resources (DNR) (2020) and those areas with slopes greater than thirty-five percent. **l.** Known mass wasting areas identified in the 2005 Landslide Hazard Zonation Project – Mass Wasting Assessment prepared by Powell, L.

**CEMC 18.01.060(C) and CEMC 18.01.070(E):** Cle Elum regulates and limits uses in GHA consistent with public safety.

### **FISH AND WILDLIFE HABITAT AND CONSERVATION AREAS:**

**WAC 365-190-030(6)(a-c):** **(a)** "Fish and wildlife habitat conservation areas" are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and

areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species. (b) "Habitats of local importance" designated as fish and wildlife habitat conservation areas include those areas found to be locally important by counties and cities. (c) "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company.

**CEMC 18.01.020 (Definitions):** "Fish and wildlife habitat conservation areas" are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors, and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species. 1. "Habitats of local importance" designated as fish and wildlife habitat conservation areas include those areas found to be locally important by counties and cities. 2. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company.

**CEMC 18.01.030(G):** Fish and wildlife habitat conservation areas include the following: 1. Federally Designated Endangered, Threatened and Sensitive Species. Areas with which federally designated endangered, threatened and sensitive species have a primary association. Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted for current listing status. 2. State-Designated Endangered, Threatened and Sensitive Species. Areas with which state-designated endangered, threatened and sensitive species have a primary association. State-designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington, identified by the Washington Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State-designated endangered, threatened, and sensitive species are periodically recorded in

WAC 232-12-014 (state endangered species) and WAC 232-12-011 (state threatened and sensitive species). The state Department of Fish and Wildlife maintains the most current listing and should be consulted for current listing status. **3. State Priority Habitats and Areas Associated With State Priority Species.** Priority habitats and species (PHS) are considered to be priorities for conservation and management. PHS require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. PHS habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority PHS habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the state Department of Fish and Wildlife. **4. Habitats and Species of Local Importance.** Habitats and species of local importance are those identified by the city of Cle Elum, including but not limited to those habitats and species that, due to their population status or sensitivity to habitat manipulation, warrant protection. Habitats may include a seasonal range or habitat element with which a species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. **5. Waters of the state.** **6. Streams.** All streams that meet the criteria for Type S, F or N (Np and Ns) waters as set forth in WAC 222-16-030 and provided in definitions in CEMC Section 18.01.020. Official water type reference maps maintained by the Department of Natural Resources should be consulted. These maps are a reference and do not provide a conclusive or final critical area designation. **7. Naturally occurring and manmade ponds under twenty acres in size.**

#### **PROTECTION OF FISH AND WILDLIFE HABITAT AND CONSERVATION AREAS:**

**CEMC 18.01.030(G)(3):** State Priority Habitats and Areas Associated With State Priority Species. Priority habitats and species (PHS) are considered to be priorities for conservation and management. PHS require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. PHS habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority PHS habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the state Department of Fish and Wildlife.

**CEMC 18.01.060(C):** The following activities shall require a critical areas permit if they are not already reviewed through a more general permit in which the applicant has reported a possible impact on a critical area: **(C) In Fish and Wildlife Habitat**

**Conservation Areas. Any land use or other activity having the potential to significantly degrade the habitat or harm wildlife.**

**CEMC 18.01.070(C)(1)(a-p):** The CEMC outlines protection measures for Fish and Wildlife Habitat Conservation Areas. **NOTE: The CEMC does reference WDFW Priority Habitat and Species but does not seem to reference other sources as listed in the Checklist. The CEMC does not seem to indicate that the city has reviewed any applicable changes in management recommendations for PHS.**

**CEMC 18.01.030(1-7):** obliquely mentions the need to reference **current species listing statuses** at the federal level but not beyond that.

#### **DESIGNATING AND PROTECTING WATERS OF THE STATE:**

**CEMC 18.01.020 (Definitions):** “Waters of the state” include lakes, rivers, ponds, streams, inland waters, underground waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in RCW 90.48.020.

**CEMC 18.01.030(G)(5):** Fish and wildlife habitat conservation areas include the following: 5. **Waters of the state.**

**CEMC 18.01.070(C)(1)(a-p):** The CEMC outlines protection measures for Fish and Wildlife Habitat Conservation Areas, including **Waters of the State.**

#### **ANADROMOUS FISHERIES:**

**CEMC 18.01.020 (Definitions):** “**Anadromous fish**” means fish that spawn and rear in freshwater and mature in the marine environment.

**CEMC 18.01.070(C)(1)(I)(i-iii): Anadromous Fish Habitat Standards.** **i.** All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall adhere to the following standards: **(A)** Activities shall be timed to occur only during the allowable work window as designated by the Department of Fish and Wildlife for the applicable species; **(B)** An alternative alignment or location for the activity is not feasible; **(C)** The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas; and **(D)** Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved critical area report. **ii.** Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed. **iii.** Fills shall not adversely

impact anadromous fish or their habitat or shall mitigate any unavoidable impacts, and shall only be allowed for a water-dependent use.

**Question #12 – REASONABLE USE EXCEPTIONS:**

**CEMC 18.01.090(A-D):** **A.** Where the provisions of this chapter would prevent all reasonable use of those properties completely encumbered by critical areas, the property owner may apply for a reasonable use exception if it is demonstrated that all of the following four conditions exist: **1.** No reasonable use of the property is possible without some impact to the critical area. **2.** No feasible and reasonable on-site alternative to the proposed activities is possible, including possible changes in site layout, reductions in density, and similar factors that would allow a reasonable economic use with fewer adverse impacts. **3.** The proposed activities, as conditioned, will result in the minimum possible impacts to affected critical areas, considering their functions and values and/or the risks associated with proposed development. The inability to derive reasonable economic use is not the result of the applicant's actions or that of a previous property owner, such as by segregating or dividing the property and creating an undevelopable condition. **4.** Any alteration of a critical area approved under this section shall be subject to appropriate conditions and will require mitigation under an approved mitigation plan. **B.** The responsibility of proving the presence of the above criteria shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application. **C.** A request for a reasonable use exception shall be made to the city of Cle Elum and shall be processed as a Type 3 application according to the provisions in CEMC Section 14.30.070, "quasi-judicial review of applications." The request shall include a critical areas report, including a habitat management plan and a mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act. The city planner shall prepare a recommendation to the city's planning commission based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria identified above. **D.** The planning commission shall review and decide upon the request for reasonable use, and shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with the reasonable use exception criteria identified above.

**AGRICULTURAL ACTIVITIES (COUNTIES ONLY):**

Not applicable. Only applies to counties.

**FOREST PRACTICES APPLICATION REGULATION:**

According to the US Census Bureau, the population of Kittitas County is 48,172 (July 1, 2024). Available at:

<https://www.census.gov/quickfacts/fact/table/kittitascountywashington/PST045223>

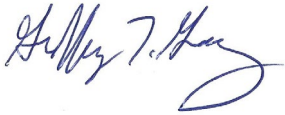
As such this question is not applicable to Cle Elum.

**GOOD IDEAS:**

Neither *non-regulatory measures* nor *adaptive management* are mentioned in CEMC 18.01.

Should you have any questions in regard to these notes, feel free to contact me.

Cheers,

A handwritten signature in blue ink, appearing to read "Geoffrey Gray".

Geoffrey Gray, MA, PWS  
GG Environmental, LLC

## **City of Cle Elum**

### **Chapter 18.01**

#### **CRITICAL AREAS PROTECTION**

##### **18.01.010 Purpose.**

The purpose of this chapter is to protect the functions and values of critical areas, and to protect the public health, safety, and welfare of the citizens of Cle Elum. Additionally, this chapter is intended to protect public and private property and natural ecosystems found within city limits. The city of Cle Elum shall regulate all uses, activities and developments within, adjacent to, or likely to affect, one or more critical areas, consistent with the best available science and the provisions herein. The city of Cle Elum finds that development in and/or near critical areas may pose a threat to public and private property, to natural ecosystems and to the public health, safety and welfare. This chapter aims to protect critical areas and to channel development to less ecologically sensitive areas.

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

##### **18.01.020 Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Anadromous fish” means fish that spawn and rear in freshwater and mature in the marine environment.

“Best available science” means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC [365-195-900](#) through [365-195-925](#). Sources of best available science are included in “Best Available Science For the City of Cle Elum, Washington” dated October 28, 2020, or as amended.

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

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

“Compensatory mitigation” means replacing project-induced critical areas losses or impacts, and includes, but is not limited to, restoration, creation, enhancement, and/or preservation.

“Creation” means actions performed to intentionally establish a critical area at a site where it did not formerly exist.

“Critical aquifer recharge area (CARA)” means an area designated by WAC [365-190-100](#) that is determined to have a critical recharging effect on aquifers (i.e., maintain the quality and quantity of water) used for potable water as defined by WAC [365-190-030\(3\)](#).

These areas include the following:

1. Wellhead protection areas;
2. Sole source aquifers;
3. Susceptible groundwater management areas;
4. Special protection areas;
5. Moderately or highly vulnerable aquifer recharge areas; and
6. Moderately or highly susceptible aquifer recharge areas.

“Enhancement” means actions performed within an existing degraded shoreline, critical area, and/or buffer to intentionally increase or augment one or more ecological functions or values of the existing area. Enhancement actions include, but are not limited to, increasing plant diversity and cover; increasing wildlife habitat and structural complexity (snags, woody debris); installing environmentally compatible erosion controls; or removing nonindigenous plant or animal species.

“Fish and wildlife habitat conservation areas” are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors, and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species.

1. “Habitats of local importance” designated as fish and wildlife habitat conservation areas include those areas found to be locally important by counties and cities.
2. “Fish and wildlife habitat conservation areas” does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company.

“Floodplain” means all areas subject to inundation by the base flood, but outside the limits of the floodway. Those portions of the A, AE, AH, and shaded X zones not defined as floodway, and that portion of a pothole and FEMA shaded X zone area that is between zero feet (base flood elevation) and three feet in depth.

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

“Frequently flooded areas” means lands in the floodplain subject to a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high groundwater and those lands that provide important flood storage, conveyance, and attenuation functions. These areas include, but are not limited to, streams, rivers, lakes, wetlands, and areas where high groundwater forms ponds on the ground surface, and Crystal Creek and ephemeral drainages identified by DNR and the Washington Department of Fish and Wildlife (WDFW).

“Geologically hazardous area” means an area that is not suited to commercial, residential, or industrial development because of its susceptibility to erosion, sliding, earthquakes, or other geological events hazardous to public health or safety.

“In-kind compensation” means to replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity. The determination of in-kind versus out-of-kind compensation for wetlands is dependent upon equivalency in wetland functions, not wetland categories.

“Mitigation” means avoiding, minimizing or compensating for adverse critical areas impacts. Mitigation, in the following order of preference, is:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
3. Rectifying the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project;
4. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;
5. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;

6. Compensating for the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
7. Monitoring the hazard or other required mitigation and taking remedial action when necessary.

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

“Moderately or highly susceptible aquifer recharge areas” means aquifer recharge areas moderately or highly susceptible to degradation or depletion because of hydrogeologic characteristics are those areas meeting the criteria established by the Washington State Department of Ecology (Ecology).

“Moderately or highly vulnerable aquifer recharge areas” means aquifer recharge areas that are moderately or highly vulnerable to degradation or depletion because of hydrogeologic characteristics are those areas delineated by a hydrogeologic study prepared in accordance with Ecology guidelines.

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

“Ordinary high water mark (OHWM)” on all lakes, rivers, and streams means that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or Ecology.

“Priority habitat” means a habitat type with a unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes: comparatively high fish or wildlife densities; comparatively high fish or wildlife species diversity; fish spawning habitat; important wildlife habitat; important fish or wildlife seasonal range; important fish or wildlife movement corridors; rearing and foraging habitat; refuge; limited availability; high vulnerability to habitat alteration; unique or dependent species; or shellfish beds. A priority habitat may be described by its unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be

described by a successional stage (such as old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or nonpriority fish and wildlife (WAC [173-26-020\(28\)](#)).

“Priority species” means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed in WAC [173-26-020\(29\)](#).

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

1. A qualified professional for wetlands must be a professional wetland scientist with at least two years of full-time work experience as a wetlands professional, including delineating wetlands using the state or federal manuals, preparing wetlands reports, conducting function assessments, and developing and implementing mitigation plans.
2. A qualified professional for habitat must have a degree in biology or a related degree and professional experience related to the subject species.
3. A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.
4. A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

“Rehabilitation” means a type of restoration action intended to repair natural or historic functions and processes. Activities could involve breaching a dike to reconnect wetlands to a floodplain or other activities that restore the natural water regime.

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

“Riparian” means alongside a water body: stream, river, lake, pond, bay, sea, and ocean. Riparian areas are sometimes referred to by different names: riparian ecosystems, riparian habitats, riparian corridors, or riparian zones.

“Riparian management zone (RMZ)” means a delineable area defined in a land use regulation; often synonymous with riparian buffer. For the purposes of this chapter, RMZ is defined as the area that has the potential to provide full riparian functions. In many forested regions of the state this area occurs within one two-hundred-year site-potential tree height (SPTH) measured from the edge of the stream channel. In situations where a channel migration zone is present, this occurs within one site-potential tree height measured from the edges of the channel migration zone. In nonforest zones the RMZ is defined by: the greater of the outermost point of the riparian vegetative community, ~~or~~ the pollution removal function (filter strips), at one hundred feet, or Site Potential Tree Height at 200 years (SPTH<sub>200</sub>).

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

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

“Special protection areas” means those areas defined by WAC [173-200-090](#).

“Susceptible groundwater management areas” means areas that have been designated as moderately or highly vulnerable or susceptible in an adopted groundwater management program developed pursuant to Chapter [173-100](#) WAC.

“Type F waters” means segments of natural waters other than Type S waters, which are within the bankfull widths of defined channels and periodically inundated areas of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of one-half acre or greater at seasonal low water and which in any case contain fish habitat or are described by one of the following categories:

1. Waters which are diverted for domestic use by more than ten residential or camping units or by a public accommodation facility licensed to serve more than ten persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type F water upstream from the point of such diversion for one thousand five hundred feet or until the drainage area is reduced by fifty percent, whichever is less;
2. Waters which are diverted for use by federal, state, tribal or private fish hatcheries. Such waters shall be considered Type F water upstream from the point of diversion

for one thousand five hundred feet, including tributaries if highly significant for protection of downstream water quality. The department may allow additional harvest beyond the requirements of Type F water designation provided the department determines after a landowner-requested on-site assessment by the Department of Fish and Wildlife, Ecology, the affected tribes and interested parties that:

- a. The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and
  - b. Such additional harvest meets the requirements of the water type designation that would apply in the absence of the hatchery;
3. Waters which are within a federal, state, local, or private campground having more than ten camping units; provided, that the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within one hundred feet of a camping unit, trail or other park improvement;
  4. Riverine ponds, wall-based channels, and other channel features that are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria:
    - a. The site must be connected to a fish habitat stream and accessible during some period of the year; and
    - b. The off-channel water must be accessible to fish.

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

“Type Np water” mean all segments of natural waters within the bankfull width of defined channels that are perennial non-fish habitat streams. Perennial streams are flowing waters that do not go dry any time of a year of normal rainfall and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.

“Type Ns water” means all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np waters. These are seasonal, non-fish habitat streams in which surface flow is not present for a least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np water. Ns waters must be physically connected by an above-ground channel system to Type S, F, or Np waters.

“Type S waters” means all waters, within their bankfull width, inventoried as “shorelines of the state” under Chapter [90.58](#) RCW and the rules promulgated pursuant to Chapter [90.58](#) RCW including periodically inundated areas of their associated wetlands. As

of August 2020, the only known Type S waters in Cle Elum are the Yakima and Cle Elum rivers.

“Waters of the state” include lakes, rivers, ponds, streams, inland waters, undergroundwaters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in RCW [90.48.020](#).

“Wellhead protection areas” are areas defined by the boundaries of the ten-year time of groundwater travel, or boundaries established using alternate criteria approved by the Department of Health in those settings where groundwater time of travel is not a reasonable delineation criterion, in accordance with WAC [246-290-135](#).

“Wetland or wetlands” means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and other similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate the conversion of wetlands.

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

#### **18.01.030 Designation and mapping of critical areas.**

- A. All areas within the city meeting the definition of one or more critical areas defined above are hereby designated critical areas and are subject to the provisions of this chapter except for critical areas within the city of Cle Elum shorelines. The city of Cle Elum shoreline master program supersedes this chapter for only those critical areas within shoreline designations.
- B. The city of Cle Elum shall regulate all uses, activities and developments within, adjacent to, or likely to affect, one or more critical areas, consistent with the best available science and the provisions herein.
- C. *Wetlands Designation.* Wetlands are those areas, designated in accordance with the procedures outlined in WAC [173-22-035](#). All areas within the city meeting the wetland designation criteria as outlined in WAC [173-22-035](#) are hereby designated critical areas and are subject to the provisions of this chapter. Wetlands shall be rated according to the Ecology wetland rating system found in the Washington State

Wetland Rating System documents (Eastern Washington, Ecology Publication No. 04-06-030) or as revised by Ecology. Wetland delineations are valid for five years; after such date the city shall determine whether a revision or additional assessment is necessary.

1. The approximate location and extent of known wetlands are shown on the adopted critical area map, or the latest revision of this map, as derived from the National Wetlands Inventory. The city's critical area mapping, National Wetland Inventory Map, Soil Surveys, and any Washington Department of Natural Resource wetland mapping are to be used as a guide for the city, project applicants, and/or property owners to identify potential wetland areas, but do not provide a conclusive or definitive indication of wetland presence or extent. Other wetlands may exist that do not appear on the maps and some wetlands that appear on these maps may not meet all of the wetland designation criteria.
  2. The exact location of a wetland's boundary shall be determined through the performance of a field investigation by a qualified professional.
- D. Critical aquifer recharge areas (CARAs) are those areas with a critical recharging effect on aquifers used for potable water as defined by WAC [365-190-030\(2\)](#). CARAs have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of groundwater resources or contribute significantly to the replenishment of groundwater. Aquifer recharge areas shall be rated as having high, moderate, or low susceptibility based on soil permeability, geologic matrix, infiltration, and depth to water as determined by the criteria established by Ecology.

The city lies over alluvial soil deposits. There are unconsolidated materials composed of silt, sand and gravel, which in places are several hundred feet in depth. This deposit material is important as a water conveying unit and supplies the groundwater of stream flow (recharge). In general, areas of permeable soils in combination with geological transfer structure may be aquifer recharge areas. Based on the information and maps contained in hydrology of the Upper Yakima River Basin and landscape planning, environmental applications, the city is an aquifer recharge area. This is a preliminary determination until further studies of geology and hydrology are conducted on an overall or individual property specific basis to either include or exclude them as an aquifer recharge area.

- E. Frequently flooded areas are those areas subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high groundwater. These areas include:
1. Waterways (streams, rivers, lakes, coastal areas, wetlands, and areas where high groundwater forms ponds on the ground surface). This includes Crystal

Creek and ephemeral drainages identified by DNR and the Washington Department of Fish and Wildlife (WDFW).

2. Floodways and floodplains identified in the most recent FEMA flood insurance rate map, and as subsequently revised and amended.

~~2.3.~~ Areas with increased impervious surfaces which increase surface runoff.

F. Geologically hazardous areas are areas susceptible to erosion, sliding mass wasting, debris flows, earthquake, avalanche, oversteepened slopes, rockfalls, -or other geological events, that are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns. Geological hazardous areas as designated by reference from the United States Department of Agriculture Natural Resources Conservation Service in accordance with WAC 365-190-120 or ~~365-190-080~~ RCW 36.70A.030 include the following areas:

1. *Erosion Hazard Areas*. Erosion hazard areas are at least those areas identified by the U.S. Department of Agriculture Natural Resources Conservation Service as having a “moderate to severe,” “severe,” or “very severe” rill and inter-rill erosion hazard. Erosion hazard areas are also those areas impacted by shore land and/or stream bank erosion and those areas within a river’s channel migration zone.
2. *Landslide Hazard Areas*. Landslide hazard areas are areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors, and include, at a minimum, the following (per WAC 365-190-120(6)):
  - a. Areas of historic failures, such as:
    - i. Those areas delineated by the U.S. Department of Agriculture Natural Resources Conservation Service as having a significant limitation for building site development;
    - ii. Those coastal areas mapped as class u (unstable), uos (unstable old slides), and urs (unstable recent slides) in the Ecology coastal atlas; or
    - iii. Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the United States Geological Survey or Washington Department of Natural Resources.
  - b. Areas with all three of the following characteristics:
    - i. Slopes steeper than fifteen percent;
    - ii. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
    - iii. Springs or groundwater seepage.

- c. Areas that have shown movement during the holocene epoch (from ten thousand years ago to the present) or which are underlain or covered by mass wastage debris of this epoch;
  - d. Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;
  - e. Slopes having gradients steeper than eighty percent subject to rockfall during seismic shaking;
  - f. Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action, including stream channel migration zones;
  - g. Areas that show evidence of, or are at risk from, snow avalanches;
  - h. Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and
  - i. Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of bedrock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief.
  - j. Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of bedrock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief.
  - k. Known landslide areas documented by the Washington State Department of Natural Resources (DNR) (2020) and those areas with slopes greater than thirty-five percent.
  - l. Known mass wasting areas identified in the 2005 Landslide Hazard Zonation Project – Mass Wasting Assessment prepared by Powell, L.
3. *Seismic Hazard Areas*. Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, lateral spreading, or surface faulting. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils of low density, typically in association with a shallow groundwater table. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington, and ground settlement may occur with shaking. As specified in WAC [365-190-120\(7\)](#), the strength of ground shaking is primarily affected by:
- a. The magnitude of an earthquake;
  - b. The distance from the source of an earthquake;

- c. The type or thickness of geologic materials at the surface; and
  - d. The type of subsurface geologic structure.
  - e. The Washington Department of Natural Resources Seismic Scenario Catalog, liquefaction susceptibility, and U.S. Department of Agriculture Natural Resource Conservation Service soil surveys should be consulted. These maps are a reference and do not provide a conclusive or final critical area designation.
- 4. *Mine Hazard Areas.* Mine hazard areas are those areas underlain by, adjacent to, or affected by mine workings such as adits, gangways, tunnels, drifts, or air shafts. Factors which should be considered in accordance with BAS include: proximity to development, depth from ground surface to the mine working, and geologic material.
  - 5. *Volcanic Hazard Areas.* Volcanic hazard areas are areas subject to pyroclastic flows, lava flows, debris avalanche, and inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.
  - 6. *Steep Slopes.* Known landslide areas documented by the Washington State Department of Natural Resources (DNR) (2020) and are those areas with steep slopes greater than thirty-five percent.
  - 7. *Other Hazard Areas.* Geologically hazardous areas shall also include areas determined by the director to be susceptible to other geological events including mass wasting, debris flows, rock falls, and differential settlement.
- G. Fish and wildlife habitat conservation areas include the following:
- 1. *Federally Designated Endangered, Threatened and Sensitive Species.* Areas with which federally designated endangered, threatened and sensitive species have a primary association. Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted for current listing status.
  - 2. *State-Designated Endangered, Threatened and Sensitive Species.* Areas with which state-designated endangered, threatened and sensitive species have a primary association. State-designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington, identified by the Washington Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State-designated endangered, threatened, and sensitive species are periodically

recorded in WAC [232-12-014](#) (state endangered species) and WAC [232-12-011](#) (state threatened and sensitive species). The state Department of Fish and Wildlife maintains the most current listing and should be consulted for current listing status.

3. *State Priority Habitats and Areas Associated With State Priority Species.* Priority habitats and species (PHS) are ~~considered to be~~ priorities for conservation and management. PHS require protective measures for their perpetuation of functions and values due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance in accordance with WAC 365-190-130. PHS habitats are those habitat types or elements with unique or significant functions and values to a diverse assemblage of species. A ~~priority~~ PHS habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, area where endangered, threatened and sensitive species have a primary association, ~~or~~ a specific structural element, or as part of an indicated PHS future recovery area. Priority habitats and species are identified by the ~~Washington State~~ Department of Fish and Wildlife or listed PHS described by the Washington State Department of Ecology following BAS designation as described in chapter WAC 365-195.
4. *Habitats and Species of Local Importance.* Habitats and species of local importance are those identified by the city of Cle Elum, including but not limited to those habitats and species that, due to their population status or sensitivity to habitat manipulation, warrant protection. Habitats may include a seasonal range or habitat element with which a species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.
5. Waters of the state described in RCW 90.48.020 are designated fish and wildlife habitat conservation areas as recommended within WAC 365-190-130(2)(f).
6. *Streams.* All streams that meet the criteria for Type S, F or N (Np and Ns) waters as set forth in WAC [222-16-030](#) and provided in definitions in CEMC Section [18.01.020](#). Official water type reference maps maintained by the Department of Ecology's Washington State Hydrography Dataset (WASHD) ~~Natural Resources~~ should be consulted. These maps are a reference and do not provide a conclusive or final critical area designation.
7. Naturally occurring and manmade ponds under twenty acres in size.

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

#### **18.01.040 Construction with other laws.**

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

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

#### **18.01.050 Permitting.**

All applications for permits to conduct activities having a possible significant impact on critical areas that are located on or near a project site must identify the areas affected and make an estimate of the probable impact. The city of Cle Elum shall deny all requests for permits which would result in activities degrading a ~~wetland or fish and/or wildlife habitat conservation area~~ critical area detailed within RCW 365-196-830, which would put people or property in a position of unacceptable risk with respect to floods or geologic hazards, which would tend to aggravate geologic hazards, ~~or which would~~ harm critical recharging areas for aquifers not otherwise in accordance with this chapter, ~~or reduce the functions and values of the natural environment~~. The city of Cle Elum may, however, grant permits which include contiguous adaptive mitigation measures if the mitigation measures adequately protect the critical area and people involved. In granting a permit that includes mitigation measures, best available science, which shall be determined utilizing the criteria set out in WAC 365-195-900 through 365-195-925, shall be used to develop and approve the mitigation measures. Applicable permit fees, as set forth by resolution of the city council, are due at the time of application. The applicant shall be responsible for the initiation, preparation, submission, and expense of all required reports, assessment(s), studies, plans, reconnaissance(s), peer review(s) by qualified consultants, and other work prepared in support of or necessary to review the application.

(Ord. 1653 § 1 (Exh. A), 2023; Ord. 1543 § 1, 2019; Ord. 1335 § 1, 2010)

#### **18.01.055 Determination.**

- A. Each development permit shall be reviewed to determine if the proposal is within a critical area or critical area buffer.
- B. *Wetlands.* A wetland assessment prepared by a qualified wetlands specialist is required for projects situated within two hundred feet of a known or suspected wetland and shall include the following:
1. The category and precise location of the boundary of the wetland(s); and
  2. Delineated wetlands and required buffers within two hundred feet of the project area shall be depicted on the site plan. Best available information includes, but is not to be limited to, aerial photos, soils maps, and/or topographic maps; and
  3. An analysis of the on-site wetland(s) including the following site- and proposal-related information:

- a. Documentation of any fieldwork performed on the site, including but not limited to field delineation data sheets for delineations, the wetland rating forms, and baseline hydrologic data;
- b. A description of the methodologies used to conduct the wetland delineations; and the vegetative, faunal, and hydrologic characteristics of the wetland.

**C. Critical Aquifer Recharge Area.**

1. As stated in CEMC Section [18.01.030\(C\)](#), the entire city limits are presumed to be located within a critical aquifer recharge area unless a hydrogeologic study demonstrates otherwise. This is a preliminary determination until further studies of geology and hydrology are conducted on an overall or individual property specific basis to either include or exclude them as an aquifer recharge area.
2. All critical aquifer recharge areas shall be classified as having either a high, medium, or low aquifer recharge potential. At a minimum, classification shall be based on soil permeability and recharge potential as described within the Soil Survey of Kittitas County. Where adequate information is available, aquifer recharge potential shall be further classified based on the recharge potential of surficial geologic materials, presence or absence of restrictive layers, surface and groundwater monitoring data, wellhead protection areas, depth to groundwater, topography (i.e., slopes), and locally adopted groundwater protection plans and studies. Land classified as having a high, medium, or low aquifer recharge potential shall also be classified as having a high, medium, or low susceptibility to contamination of an underlying aquifer, respectively. Based on these criteria, the potential for recharging aquifers or transmitting contaminants to the underlying aquifer is greatest where the aquifer is close to the ground surface, where ground surface slopes are minimal, and where the recharge potential of the soils and/or surficial geologic material is greatest. All wellhead protection areas shall be designated as highly susceptible critical aquifer recharge areas. This can be provided in the hydrogeologic study or separate memo prepared by a qualified professional.

**D. Fish and Wildlife Habitat Conservation Area.**

1. A critical areas report prepared by a qualified biologist is required if a proposed use or development is located within two hundred feet of a designated fish and wildlife habitat conservation area and shall include the following:
  - a. Identify all streams as classified according to WAC [222-16-030](#).
  - b. If located within two hundred feet of Crystal Creek, identify the Riparian Management Zone, per Chapter 2 of the Washington Department of Fish and Wildlife Riparian Ecosystems, Volume 2: Management Recommendations.

This includes identifying and denoting the channel migration zone and the site-potential tree height.

- c. All fish and wildlife habitat conservation areas and required buffers within two hundred feet of the project area shall be depicted on the site plan;
  - d. The vegetative, faunal, topographic, and hydrologic characteristics of the fish and wildlife habitat conservation areas; and
  - e. A detailed discussion of the direct and indirect potential impacts on fish and wildlife habitat conservation areas by the project. Such discussion shall include a discussion of the ~~ongoing~~ adaptive management practices that will protect habitat and species functions and values after the project site has been developed.
2. A habitat management plan prepared by a qualified biologist is required for projects situated within two hundred feet of a known or suspected fish and wildlife habitat conservation area. The habitat management plan shall include a discussion of the potential direct and indirect impacts, as well as a discussion of the ongoing management practices that will protect habitat after the project site has been developed. The habitat management plan will include any relevant information and recommendations from the Washington Department of Fish and Wildlife habitat guidelines for the affected species and/or habitat. Based on the characteristics of the site, the city may require that all or a portion of the following be included in a habitat management plan:
- a. A map drawn to scale or survey showing the location of the fish and wildlife habitat conservation area on the subject property, as well as the approximate location of any potential fish and wildlife habitat conservation area within two hundred feet of the subject property;
  - b. A description of the methodologies used to classify the water type and the associated fish;
  - c. Detailed description of vegetation and habitat characteristics within and adjacent to the site;
  - d. Identification of any endangered, threatened, sensitive, or candidate species that have a primary association with habitat on the project area, and assessment of potential project impacts to use of the buffer and critical area on the site by the species;
  - e. Methods and measures to avoid, minimize and/or compensate for adverse impacts associated with the proposed development, including but not limited to:
    - i. Prohibition or limitation of development activities within the fish and wildlife habitat conservation area;

- ii. Establishment of a buffer around the fish and wildlife habitat conservation area;
- iii. Retention of vegetation and/or revegetation of areas/habitats critically important to species;
- iv. Special construction techniques;
- v. Implementation of erosion and sediment control measures;
- vi. Habitat enhancement (i.e., fish passage barrier removal);
- vii. Seasonal restrictions on construction activities on the subject property;
- viii. Clustering of development on the subject property; and
- ix. Any other requirements and/or recommendations from WDFW's habitat management guidelines.

E. *Frequently Flooded Areas*. A Federal Emergency Management Agency (FEMA) elevation certificate shall be required for new construction, any addition affixed to the side of a structure, and substantial improvements located within flood hazard areas. The most current version of the FEMA elevation certificate must be completed and certified by a professional land surveyor, currently licensed in the state of Washington, kept on file by the city for public inspection, recording the actual (as-built) elevation (in relation to mean sea level) of:

- 1. The lowest floor, including basement, of all new or substantially improved structures, whether or not the structure contains a basement;
- 2. For floodproofed nonresidential structures, where the structure was floodproofed (including floodproofing certifications).

F. *Geological Hazard Areas Risk Assessment*. If it is determined that a landslide, erosion, mine, volcanic and seismic hazard area hazard may be present on or adjacent to a proposed development site, the applicant shall submit a geologic hazard area risk assessment prepared by a professional engineer, engineering geologist, or geologist. The geologic hazard area risk assessment shall include a description of the geology of the site and the proposed development; an assessment of the potential impact the project may have on the geologic hazard; an assessment of what potential impact the geologic hazard may have on the project; appropriate mitigation measures, if any; and a conclusion as to whether further analysis is necessary. The assessment shall be signed by and bear the seal of the engineer or geologist who prepared it. No further analysis shall be required if the geologic hazard area risk assessment concludes that there is no geologic hazard present on the site, nor will the project affect or be affected by any potential geologic hazards that may be nearby. If the professional preparing the geologic hazard area risk assessment concludes that further analysis is necessary, the applicant shall submit a geotechnical report.

G. *Geological Hazard Areas Geotechnical Report*. If the geological hazard areas risk assessment requires further analysis, a geotechnical report is required. The geotechnical report shall include a certification from the professional preparing the report, including the professional's stamp and signature. The geotechnical report shall include the following:

1. A detailed description of the geology and soil conditions of the site;
2. Evaluation of the geologic conditions giving rise to the geologic hazard;
3. An evaluation of the safety of the proposed project;
4. Conclusions and recommendations regarding the effect of geologic conditions on the proposed development;
5. Conclusions and recommendations on the suitability of the site to be developed;
6. A statement regarding the risk of damage from the project, both on and off site; and whether or not the project will materially increase the risk of occurrence of the hazard;
7. The report shall make a recommendation for the minimum no-disturbance buffer and minimum building setback from any geologic hazard based upon the geotechnical analysis.
8. Recommendations concerning drainage practices, vegetation retention and other mitigation and monitoring measures which may be needed to ensure slope stability;
9. Recommended erosion and sediment control measures;
10. A bibliography of scientific citations; and
11. Any other specific measures which must be incorporated into the design and operational plan of the project to eliminate or reduce the risk of damage due to the hazard. This shall include a recommendation on the required buffer or setback distance that must be maintained between the proposed development and the hazard to ensure the safety of the development.

H. All mitigation measures, construction techniques, recommendations and technical specifications provided in the geotechnical report shall be applied during the implementation of the proposal. The engineer of record shall submit sealed verification at the conclusion of construction that development occurred in conformance with the approved plans.

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

**18.01.060 New permits required for activities in critical areas.**

The following activities shall require a critical areas permit if they are not already reviewed through a more general permit in which the applicant has reported a possible impact on a critical area:

- A. *In Wetlands*. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter or material of any kind; dumping, discharging, or filling with any material; the draining, flooding, or disturbing of the water level or water table; the driving of piling; the placing of obstructions; the construction, reconstruction, or demolition or expansion of any structure; the destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland, or activities that result in a significant change of connectivity, water temperature, the physical or chemical characteristics of the wetland water sources, including quantity and accessible quantity, or the introduction of pollutants.
- B. *In Critical Aquifer Recharge Areas*. Any land use, agricultural activity, or other activity having significant potential to contaminate the water.
- C. *In Fish and Wildlife Habitat Conservation Areas*. Any land use or other activity having the potential to significantly degrade the habitat or harm wildlife.
- D. *In Frequently Flooded Areas*. Any land use or other activity likely to contribute to a significant increase in flood hazards or to place a significant number of people in danger.
- E. *In Geologically Hazardous Areas*. Any land use or other activity likely to contribute to a significant increase in geological hazards or to place people in danger.
- F. Designated critical areas and any associated buffers shall be designated and disclosed on the final plats, maps, documents, etc., as critical area tracts, nonbuildable lots and buffer areas or common areas.

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

#### **18.01.070 Performance standards.**

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

- A. *Wetland Performance Standards*.
  - 1. General measures to minimize impacts to wetlands:
    - a. Lights shall be directed away from the wetland.

- b. Activities that generate noise shall be located away from the wetland, or noise impacts shall be minimized through design or insulation techniques.
- c. Toxic runoff from new impervious surface area shall be directed away from wetlands.
- d. Treated stormwater runoff may be allowed into vegetated wetland buffers in accordance with provisions of the Eastern Washington Stormwater Manual. Channelized flow shall be prohibited.
- e. Use of pesticides, insecticides and fertilizers within one hundred fifty feet of wetland boundary shall be limited and follow best management practices (BMPs) in Table 18.02-2.

## 2. Buffer Widths

- a. The following buffer widths have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington State Wetland Rating System for Eastern Washington: 2014 Update (Ecology Publication No. 14-06-030, or as revised and approved by Ecology). The adjacent land use intensity is assumed to be high. For wetlands that score six points or more for habitat function, the buffers in Table 18.01-1 can be used.
- b. For wetlands that score three to five habitat points, only the measures in Table 18.01-2 are required for the use of Table 18.01-1.
- c. If an applicant chooses not to apply the mitigation measures in Table 18.01-2, or chooses not to provide a protected corridor where available, then Table 18.01-3 must be used.
- d. The buffer widths in Tables 18.01-1 and 18.01-3 assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

**Table 18.01-1. Standard Wetland Buffer Requirements**

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

| Category of Wetland | Habitat Score 3 – 5 Points (Corridor Not Required) | Habitat Score 6 – 7 Points | Habitat Score 8 – 9 Points | Buffer Width Based on Special Characteristics |
|---------------------|----------------------------------------------------|----------------------------|----------------------------|-----------------------------------------------|
|---------------------|----------------------------------------------------|----------------------------|----------------------------|-----------------------------------------------|

|                                                                                |    |     |     |     |
|--------------------------------------------------------------------------------|----|-----|-----|-----|
| Category I and II: Based on rating of wetland functions (and not listed below) | 75 | 110 | 150 | NA  |
| Category I and II: Forested                                                    | 75 | 110 | 150 | NA  |
| Category I: Bogs, calcareous fens, and wetlands of high conservation value     | NA | NA  | NA  | 190 |
| Category I: Alkali                                                             | NA | NA  | NA  | 150 |
| Category II: Vernal pool                                                       | NA | NA  | NA  | 150 |
| Category III                                                                   | 60 | 110 | 150 | NA  |
| Category IV                                                                    | 40 | 40  | 40  | NA  |

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

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

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

| Examples of Disturbance | Activities and Uses That Cause Disturbances                                                                                                                                                              | Examples of Measures to Minimize Impacts                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Lights                  | <ul style="list-style-type: none"> <li>• Parking lots</li> <li>• Commercial/industrial</li> <li>• Residential</li> <li>• Recreation (e.g., athletic fields)</li> <li>• Agricultural buildings</li> </ul> | <ul style="list-style-type: none"> <li>• Direct lights away from wetland</li> <li>• Only use lighting where necessary for public safety and keep lights off when not needed</li> <li>• Use motion-activated lights</li> <li>• Use full cut-off filters to cover light bulbs and direct light only where needed</li> <li>• Limit use of blue-white colored lights in favor of red-amber hues</li> <li>• Use lower-intensity LED lighting</li> </ul> |

|                            |                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                            |                                                                                                                                                                                                                                                     | <ul style="list-style-type: none"> <li>• Dim light to lowest acceptable intensity</li> </ul>                                                                                                                                                                                                                                                                                                                                      |
| Noise                      | <ul style="list-style-type: none"> <li>• Commercial</li> <li>• Industrial</li> <li>• Recreation (e.g., athletic fields)</li> <li>• Residential agriculture</li> </ul>                                                                               | <ul style="list-style-type: none"> <li>• Locate activity that generates noise away from wetland</li> <li>• Construct a fence to reduce noise impacts on adjacent wetland and buffer</li> <li>• Plant a strip of dense shrub vegetation adjacent to wetland buffer</li> </ul>                                                                                                                                                      |
| Toxic Runoff               | <ul style="list-style-type: none"> <li>• Parking lots</li> <li>• Roads</li> <li>• Commercial/industrial</li> <li>• Residential areas</li> <li>• Application of pesticides</li> <li>• Landscaping</li> <li>• Agriculture</li> </ul>                  | <ul style="list-style-type: none"> <li>• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</li> <li>• Establish covenants limiting use of pesticides within 150 ft. of wetland</li> <li>• Apply integrated pest management</li> </ul> <p>(Note: These examples are not necessarily adequate for minimizing toxic runoff if threatened or endangered species are present at the site.)</p> |
| Stormwater runoff          | <ul style="list-style-type: none"> <li>• Parking lots</li> <li>• Roads</li> <li>• Residential areas</li> <li>• Commercial/industrial</li> <li>• Recreation landscaping/lawns</li> <li>• Other impermeable surfaces, compacted soil, etc.</li> </ul> | <ul style="list-style-type: none"> <li>• Retrofit stormwater detention and treatment for roads existing adjacent development</li> <li>• Prevent channelized or sheet flow from lawns that directly enters the buffer</li> <li>• Infiltrate or treat, detain, and disperse new runoff from impervious surfaces and lawns</li> </ul>                                                                                                |
| Pets and human disturbance | <ul style="list-style-type: none"> <li>• Residential areas</li> <li>• Recreation</li> </ul>                                                                                                                                                         | <ul style="list-style-type: none"> <li>• Use privacy fencing</li> <li>• Plant dense native vegetation to delineate buffer edge and to discourage disturbance</li> </ul>                                                                                                                                                                                                                                                           |

|      |                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                    |
|------|------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      |                                                                                    | <ul style="list-style-type: none"> <li>• Place wetland and its buffer in a separate tract</li> <li>• Place signs around the wetland buffer every 50 – 200 ft., and for subdivisions place signs at the back of each residential lot</li> <li>• When platting new subdivisions, locate greenbelts, stormwater facilities, or other lower-intensity land uses adjacent to wetland buffers</li> </ul> |
| Dust | <ul style="list-style-type: none"> <li>• Tilled fields</li> <li>• Roads</li> </ul> | <ul style="list-style-type: none"> <li>• Use best management practices to control dust</li> </ul>                                                                                                                                                                                                                                                                                                  |

**Table 18.01-3. Standard Wetland Buffer Requirements if Table 18.01-2 Is Not Implemented**

**Buffer Width (In Feet) Based on Habitat Score**

| <b>Wetland Category</b>                                     | <b>3 – 5</b>                                      | <b>6 – 7</b> | <b>8 – 9</b> |
|-------------------------------------------------------------|---------------------------------------------------|--------------|--------------|
| Category I:<br>Based on total score                         | 100                                               | 150          | 200          |
| Category 1:<br>Forested                                     | 100                                               | 150          | 200          |
| Category I:<br>Bogs and Wetlands of High Conservation Value | 250<br>(buffer width not based on habitat scores) |              |              |
| Category I:<br>Alkali                                       | 200<br>(buffer width not based on habitat scores) |              |              |
| Category II:<br>Based on total score                        | 100                                               | 150          | 200          |
| Category II:<br>Vernal Pool                                 | 200<br>(buffer width not based on habitat scores) |              |              |

|                    |     |     |     |
|--------------------|-----|-----|-----|
| Category II:       |     |     |     |
| Forested           | 100 | 150 | 200 |
| Category III (all) | 80  | 150 | 200 |
| Category IV (all)  | 50  |     |     |

3. All wetland buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Buffers must be fully vegetated in order to be included in buffer area calculations.
4. *Interrupted Buffer.* When a wetland buffer contains an existing legally established public road or private access road, the city may allow development on the landward side of the road; provided, that the development will not have a detrimental impact to the wetland. The applicant may be required to provide a wetland critical area report to describe the potential impacts. In determining whether a critical areas report is necessary, the city shall consider the hydrologic, geologic, and/or biological habitat connection potential and the extent and permanence of the buffer interruption.
5. *Increased Wetland Buffers.* The city shall increase wetland buffer zone widths for a development project on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values. Such determination shall be based on site-specific and project-related conditions which include, but are not limited to, the following circumstances:
  - a. Wetland sites with known locations of state priority or federally listed endangered, threatened, or sensitive species for which a habitat management plan indicates a larger buffer is necessary to protect habitat values for such species; or
  - b. The adjacent land is susceptible to severe erosion, and erosion control best management practices will not effectively prevent adverse wetland impacts;
  - c. Wetland sites in geologically hazardous areas or where adjacent land has slopes greater than thirty percent.
6. *Wetland Buffer Condition.* Wetland buffer areas shall be retained in a natural condition or may be improved to enhance buffer functions and values. Where buffer disturbance is allowed pursuant to this section, revegetation with native vegetation shall be required. Alterations of the buffer that are not associated with a development or listed as an exemption under CEMC Section [18.01.080](#) shall be prohibited.

7. *Building Setback.* A fifteen-foot building setback is required from the landward edge of any wetland buffer. Minor intrusions into the area of the building setback may be allowed if the city determines that such intrusions will not negatively impact the wetland. The setbacks shall be shown on all site plans submitted with the application.
8. *Buffer Averaging.* The city may allow, at its sole discretion, modification of standard wetland buffer width in accordance with the report and the best available science on a case-by-case basis by averaging buffer widths. Where the city allows modification of standard wetland buffer width this modification may only be allowed where a qualified wetlands professional demonstrates that:
  - a. It will not reduce wetland functions or values;
  - b. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;
  - c. The total area contained in the buffer area after averaging is equal to the area required without averaging; and
  - d. The minimum width of the buffer at any given point is at least seventy-five percent of the standard width unless the applicant demonstrates an acceptable reasonable use as described in CEMC Section [18.01.090](#). Total buffer area after averaging must equal the area required without averaging.
9. Before impacting any wetland or its buffer, an applicant shall demonstrate that the following actions have been taken. Mitigation plans shall include a discussion of mitigation alternatives (sequencing) as they relate to:
  - a. Avoid the impact altogether by not taking a certain action or parts of an action.
  - b. Minimize impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
  - c. Rectify the impact by repairing, rehabilitating, or restoring the affected environment.
  - d. Reduce or eliminate the impact over time by preservation and maintenance operations.
  - e. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.
  - f. Monitor the required compensation and take remedial or corrective measures when necessary.

10. *Wetland Compensatory Mitigation.* Compensatory mitigation is required for all alterations to wetlands or their buffers, except for city-approved buffer averaging.

11. *Requirements for Compensatory Mitigation.*

- a. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions.
- b. Compensatory mitigation plans shall be consistent with Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans – Version 1 (Ecology Publication No. 06-06-011b, Olympia, WA, March 2006 or as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington) (Publication No. 10-06-07, November 2010 or as revised).
- c. Mitigation ratios shall be consistent with Table 18.01-2.
- d. *Preference of Mitigation Actions.* Mitigation actions that require compensation by replacing, enhancing, or substitution shall occur in the following order of preference:
  - i. Restoring and/or rehabilitating filled or altered wetlands to their predevelopment or near predevelopment condition.
  - ii. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of nonnative introduced species. This should only be attempted when there is a consistent source of hydrology and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is being designed.
  - iii. Enhancing significantly degraded wetlands in combination with restoration or creation.
- e. *Mitigation for Lost or Affected Functions.* Compensatory mitigation actions shall replace functions affected by the alteration and shall provide equal or greater functions compared to the impacted wetland.
- f. *Mitigation Timing.* Mitigation projects shall be completed prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.
- g. *Delay in Mitigation.* The city may authorize a one-time temporary delay, up to one hundred twenty days, in completing minor construction and landscaping when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the

delay shall not be injurious to the health, safety, and general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints which preclude implementation of the mitigation plan. The justification must be verified and approved by the city and include a financial guarantee.

- h. *Mitigation Ratios for Wetland Impacts.* Mitigation ratios shall be used when impacts to wetlands cannot be avoided, as specified in Table 18.01-4. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered. Compensatory mitigation shall restore, create, rehabilitate or enhance equivalent or greater wetland functions. The ratios shall apply to mitigation that is in kind, is on site, is the same category, is timed prior to or concurrent with alteration, and has a high probability of success. If available, these ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply in those cases. These ratios do not apply to the use of credits from a certified wetland mitigation bank or in-lieu fee program. When credits from a certified bank or in-lieu fee program are used, replacement ratios should be consistent with the requirements of the bank's/program's certification.

**Table 18.01-4. Wetland Mitigation Ratios for Unavoidable Wetland Impacts**

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

**Table Footnotes:**

1. Natural heritage sites, alkali wetlands, and bogs are considered irreplaceable wetlands because they perform special functions that cannot be replaced through compensatory mitigation. Impact to such wetlands would therefore result in a net loss of some functions no matter what kind of mitigation is provided.

2. Provides gains in a whole suite of functions at both the site and landscape scale. Rehabilitation actions often focus on restoring environmental processes that have been disturbed or altered by previous ongoing human activity.
3. Actions which provide gains in only a few functions. Enhancement actions often focus on structural or superficial improvements to a site and generally do not address larger scale environmental processes.
4. Compensatory mitigation for vernal pool impacts must be seasonally ponded wetland area(s).

i. *Increased Replacement Ratios.* The city shall increase the wetland mitigation ratios under the following circumstances:

- i. Uncertainty exists as to the probable success of the proposed restoration or creation;
- ii. A significant period of time will elapse between impact and replication of wetland functions;
- iii. Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacted; or
- iv. The impact was an unauthorized impact.
  - j. *Alternative Mitigation Ratios.* The city may approve different mitigation ratios when the applicant proposes a combination of wetland creation, restoration, rehabilitation, and/or enhancement, provided that federal and state resource agencies approve the mitigation plan.
  - k. *Mitigation Ratios for Wetland Buffer Impacts.* To mitigate impacts to functions and values of buffers, a minimum buffer ratio of 1:1 (alteration area: mitigation area) is required. This ratio assumes that creation/ restoration of wetland buffer with appropriate native vegetation is sufficient to compensate for the wetland buffer functions and values affected by alteration of existing wetland buffer. If enhancement of an existing wetland buffer is proposed as mitigation, a higher mitigation ratio may be required. For any proposed wetland buffer activities, the applicant must show that the functions and values of the altered wetland buffer will be fully replaced by the proposed mitigation. The city may increase the buffer mitigation ratios under the following circumstances:
    - l. The replacement ratio needed to recover the lost functions and values of buffer area is greater than 1:1 based upon the existing type of vegetative cover of either the impact site or the proposed mitigation site;

- ii. Uncertainty exists as to the probable success of the proposed restoration or creation;
    - iii. A significant period of time will elapse between impact and replication of wetland functions;
    - iv. The impact was an unauthorized impact.
  - l. *Mitigation Banking and In-Lieu Fee (ILF) Mitigation.* The city may establish a mitigation bank and ILF program as a form of compensatory mitigation for wetland and habitat conservation area impacts. If established, the bank and ILF program shall be certified in accordance with applicable federal and state mitigation rules.
  - m. *Monitoring.* Mitigation monitoring shall be required for a period necessary to establish that performance standards have been met, but not for a period less than five years. This period may be longer for more fragile mitigation proposals such as those containing woody vegetation. The project mitigation plan shall include monitoring elements that ensure certainty of success for the project's natural resource values and functions. If the mitigation goals are not obtained within the initial five-year period, the applicant remains responsible for restoration of the natural resource values and functions until the mitigation goals agreed to in the mitigation plan are achieved.
- B. *Critical Aquifer Recharge Areas (CARA).*
1. New development in a critical aquifer recharge area shall meet the following standards:
    - a. The proposed development will not cause contaminants to enter the aquifer and will not significantly adversely affect the recharging of the aquifer.
    - b. The proposed development must comply with applicable water source protection requirements and recommendations of the federal Environmental Protection Agency, Washington State Department of Health, and the Kittitas County health department.
    - c. The proposed development must be designed and constructed in accordance with applicable stormwater management standards.
    - d. Impervious coverage of the lot shall be minimized.
  2. When located within an area of medium or high aquifer susceptibility, aboveground/underground storage tanks or vaults for the storage of hazardous substances, animal wastes, sewage sludge, fertilizers, or other chemical or biological hazards or dangerous wastes as defined in Chapter [173-303 WAC](#), or any other substances, solids, or liquids in quantities identified by Kittitas County public health, consistent with Chapter [173-303 WAC](#), as a risk to groundwater quality, shall be designated and constructed so as to:

- a. Prevent the release of such substances to the ground, groundwaters, or surface waters;
  - b. Be contained or enclosed by an impervious containment area with a volume greater than the volume of the storage tank or vault to avoid an overflow of the containment area;
  - c. Provide for release detection;
  - d. Provide written spill response and spill notification procedures to the local fire district;
  - e. Use material in the construction or lining of the storage containment area which is compatible with the substance to be stored to protect against corrosion or leakage, or otherwise designed in a manner to prevent the release or threatened release of any storage substance; and
  - f. Comply with Chapters [173-303](#) and [173-360](#) WAC.
  - g. The tanks must comply with Ecology regulations contained in Chapters [173-303](#) and [173-360](#) WAC as well as International Building Code requirements.
3. The city may grant a waiver from one or more of the above requirements (in subsections [\(B\)\(2\)\(a\)](#) through [\(g\)](#) of this section) upon a finding that the aboveground storage activity would not create a significant risk to groundwater quality. Aboveground or underground storage facilities designed and maintained according to an approved plan from the Natural Resources Conservation Service or Kittitas County conservation district are exempt from these requirements but remain under the jurisdiction of the city to ensure compliance with the protective features of this section and for enforcement purposes.
4. The use of fertilizers, herbicides, pesticides, or other chemicals for vegetation management within critical aquifer recharge areas shall adhere to the best management practices to prevent impacts to water quality and water supply. Where the application of such chemicals covers five or more acres, a mitigation plan shall be required pursuant to the regulations listed below.
5. The following development activities, when proposed in medium or high susceptibility critical aquifer recharge areas, have the potential to adversely affect groundwater quality and/or quantity and may only be allowed subject to the city's review and approval of a special hydrogeological assessment prepared by a qualified professional:
- a. Vehicle repair, servicing and salvaging facilities; provided, that the facility must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur. Dry wells

shall not be allowed on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by Ecology prior to commencement of the proposed activity.

- b. Use of reclaimed wastewater must be in accordance with adopted water or sewer comprehensive plans that have been approved by Ecology.
- c. Any other development activity that the city determines is likely to have a significant adverse impact on groundwater quality or quantity, or on the recharge of the aquifer. The determination must be made based on credible scientific information.
- d. new landfills, including hazardous or dangerous waste, municipal solid waste, special waste, wood waste of more than two thousand cubic yards, and inert and demolition waste landfills.
- e. *Underground Injection Wells*. Class I, III, and IV wells and subclasses 5D03, 5F01, 5F04, 5N24, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, and 5X28 of Class V wells.
- f. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade).
- g. Facilities that store, process, or dispose of chemicals containing perchloroethylene (PCE) or methyl tertiary butyl ether (MTBE).
- 6. *State and Federal Regulations*. The uses listed below shall be conditioned as necessary to protect critical aquifer recharge areas in accordance with the applicable state and federal regulations.

| Activity                                                          | Statute – Regulation – Guidance                                                                                          |
|-------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| Above Ground Storage Tanks                                        | WAC <a href="#">173-303-640</a>                                                                                          |
| Animal Feedlots                                                   | Chapters <a href="#">173-216</a> and <a href="#">173-220</a> WAC                                                         |
| Automobile Washers                                                | Chapter <a href="#">173-216</a> WAC, Best Management Practices for Vehicle and Equipment Discharges (Ecology WQ-R-95-56) |
| Below Ground Storage Tanks                                        | Chapter <a href="#">173-360</a> WAC                                                                                      |
| Chemical Treatment Storage and Disposal Facilities                | WAC <a href="#">173-303-282</a>                                                                                          |
| Hazardous Waste Generator (Boat Repair Shops, Biological Research | WAC <a href="#">173-303-170</a>                                                                                          |

|                                                                                                                                           |                                                                                                                                                                                                 |
|-------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Facility, Dry Cleaners, Furniture Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, etc.) |                                                                                                                                                                                                 |
| Injection Wells                                                                                                                           | <a href="#">40 CFR Parts 144 and 146</a> , Chapter <a href="#">173-218 WAC</a>                                                                                                                  |
| Spills and Discharges into the Environment                                                                                                | WAC <a href="#">173-303-145</a>                                                                                                                                                                 |
| Junk Yards and Salvage Yards                                                                                                              | Chapter <a href="#">173-304 WAC</a> , Best Management Practices to Prevent Stormwater Pollution at Vehicles Recycler Facilities (Washington State Department of Ecology WDOE 94-146)            |
| Oil and Gas Drilling                                                                                                                      | Chapter <a href="#">173-218 WAC</a> , WAC <a href="#">332-12-450</a>                                                                                                                            |
| On-Site Sewage Systems (Large Scale)                                                                                                      | Chapter <a href="#">173-240 WAC</a>                                                                                                                                                             |
| On-Site Sewage Systems (< 14,500 gal/day)                                                                                                 | Chapter <a href="#">246-272 WAC</a> , Local Health Ordinances                                                                                                                                   |
| Pesticide Storage and Use                                                                                                                 | Chapters <a href="#">15.54</a> and <a href="#">17.21 RCW</a>                                                                                                                                    |
| Sawmills                                                                                                                                  | Chapters <a href="#">173-303</a> and <a href="#">173-304 WAC</a> , Best Management Practices to Prevent Stormwater Pollution at Log Yards (Washington State Department of Ecology WDOE 95-53)   |
| Solid Waste Handling and Recycling Facilities                                                                                             | Chapter <a href="#">173-304 WAC</a>                                                                                                                                                             |
| Surface Mining                                                                                                                            | WAC <a href="#">332-18-015</a>                                                                                                                                                                  |
| Waste Water Application to Land Surface                                                                                                   | Chapters <a href="#">173-200</a> and <a href="#">173-216 WAC</a> , WDOE Washington State Department of Ecology Land Application Guidelines, Best Management Practices for Irrigated Agriculture |

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

*1. Fish and Wildlife Habitat Conservation Areas Regulations.*

- a. Stream buffer widths are established to protect the integrity, functions and values of all streams as classified according to WAC [222-16-030](#) based on best available science. The city's stream buffer widths are based on the specific fish and wildlife conservation areas as follows:
  - i. Type S streams are shorelines of the state that are regulated by the city's shoreline master program (SMP). The buffer widths for these streams are provided within the city's SMP: as designated under RCW 90.58 in accordance with rules promulgated pursuant to WAC 222-16-031.
  - ii. Crystal Creek buffer width is the width of the riparian management zone (RMZ) based on the site-potential tree height at two hundred years (SPTH) measured horizontally from the channel migration zone.
  - iii. All other WAC [222-16-030](#) classified streams, not located within the shoreline master program shoreline jurisdiction, shall have stream buffers based on best available science in accordance with RCW 43.21C or rules promulgated pursuant to WAC 365-190-130 as defined by stream typing as detailed in Table 18.01-5, and measured horizontally from the ordinary high water mark.

**Table 18.01-5. Stream Buffer Requirements**

**Stream Type Standard Buffer Width**

|         |                                                                        |
|---------|------------------------------------------------------------------------|
| Type F  | <u>SPTH<sub>200</sub> or 100<del>50</del> ft, whichever is larger</u>  |
| Type Np | <u><del>25</del> SPTH<sub>200</sub> or 100 ft, whichever is larger</u> |
| Type Ns | <u><del>25</del> SPTH<sub>200</sub> or 100 ft, whichever is larger</u> |
| Type S  | <u>See the SMP</u>                                                     |

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

- monitoring, to qualify the applicant must demonstrate that the current RMZ is less than 25% vegetated with native trees or shrubs.
- c. *Multiple Buffers.* In the event that buffers for any fish and wildlife habitat conservation areas or other critical areas are contiguous or overlapping, the landward-most edge of all such buffers shall apply.
- d. Stream buffers in adherence to best available science shall not be altered except as authorized by this section.
- e. No clearing of vegetation or land disturbances shall be allowed within the wildlife habitat conservation area, priority habitat and species (PHS) area, designated as future PHS recovery areas, or associated terrestrial buffer area without an approved mitigation plan and written authorization from the city pursuant to no-net-loss compensatory mitigation management practices identified in WAC 365-196-830. Compensatory mitigation management practices determinations shall incorporate cumulative effects described in RCW 43.21C in consideration of impacts on the functions and values of priority habitat and species as identified in fish and wildlife habitat conservation areas (FWHCA) minimum protections guidelines designated within WAC 360-190-130.
- e.f. Areas where endangered, threatened, and sensitive species have a primary association must be identified and considered within
- f.g. *Increased Buffers.* The city has the authority to increase the stream and wildlife buffer widths when such buffers protect priority PHS species utilizing the fish and wildlife habitat conservation areas. This determination shall be supported by appropriate documentation from the Department of Ecology and Fish and Wildlife, showing that the increased buffer width is reasonably related to the protection of the fish and/or wildlife in accordance with BAS identified in WAC 365-195. The increased buffer distance may be limited to those areas that provide connectivity or are necessary to protect habitat functions and values. Increasing the buffer widths will only be done where necessary to preserve the structure, functions and values of habitat.
- g.h. *Buffer Condition.* Fish and wildlife habitat conservation area buffers shall be maintained in a predominantly well vegetated and undisturbed condition. No alterations which impact reduce the functions or values shall occur without written authorization from the city.
- i. *Interrupted Buffer.* When a fish and wildlife habitat conservation area buffer is impacted by an existing legally established public road or private access road, and/or buildings which does not support potential for water crossing design improvements, the city may determine that the fish and wildlife habitat conservation area buffer does not extend landward of the existing

improvements; provided, that the proposed use and/or development will not have a detrimental impact to the stream or ecological functions it provides.

1. The applicant may be required to provide a critical areas report to ensure that there is no detrimental impact to the stream or a loss of ecological quality or function. In determining whether a fish and wildlife habitat conservation area critical areas report is necessary, the city shall consider the hydrologic, geologic, and/or biological habitat connection potential and the extent and permanence of the buffer interruption.

h.i.

- i. *Buffer Averaging.* The city may allow modification of standard fish and wildlife habitat conservation area buffer in accordance with an approved critical area report on a case-by-case basis. With buffer averaging, the buffer width may be reduced in one location and increased in another location to maintain the same overall buffer area provided there is no net loss in the functions s or values s of the buffer. Proposals for buffer averaging shall not require compensatory mitigation if the following conditions are met:
  - i. The development is not a residential subdivision of more than four lots;
  - ii. The buffer has not been averaged or reduced by any prior actions administered by the city;
  - iii. No feasible site design could be accomplished without buffer averaging;
  - iv. The buffer averaging will not reduce stream or habitat functions or adversely affect salmon or trout habitat;
  - v. The minimum width of the Crystal Creek stream buffer, if applicable, is not less than one hundred feet. All other WAC [222-16-030](#) classified streams shall have a minimum buffer width at any given point of at least seventy-five percent of the standard width, or twenty-five feet, whichever is greater, unless the applicant demonstrates an acceptable reasonable use as described in CEMC Section [18.01.090](#); and
  - vi. The area that is added to the buffer to offset the reduction is well vegetated. The city may require vegetation enhancement if needed to ensure this criterion is met.
- j. Prior to approving a request for buffer averaging, the city shall ensure the development is designed to separate and screen the stream from impacts such as noise, glare, and vegetation trampling. The site design shall consider the varying degrees of impacts of different land uses. For example, parking lots, store entrances, and roads generally have higher noise and glare impacts than the rear of the store. Site screening should take advantage of natural topography or existing vegetation, wherever possible. Where natural screening is not

- available, berms, landscaping, and structural screens should be implemented to meet no-net-loss mitigation requirements described in WAC 220-110. (e.g., orient buildings to screen parking lots and store entrances from critical areas).
- k. *Building Setback*. A fifteen-foot building setback required from the landward edge of any stream buffer. Minor intrusions into the area of the building setback may be allowed if the city determines that such intrusions will not negatively impact the stream. The setbacks shall be shown on all site plans submitted with the application.
  - l. *Anadromous Fish Habitat Standards*.
    - i. All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall adhere to the following standards:
      - (A) Activities shall be timed to occur only during the allowable work window as designated by the Department of Fish and Wildlife for the applicable species;
      - (B) An alternative alignment or location for the activity is not feasible;
      - (C) The activity is designed so that it will not degrade the functions or values of the fish and wildlife habitat or other critical areas; and
      - (D) Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved critical area report.
    - ii. Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.
    - iii. Fills shall not adversely impact anadromous fish or their habitat or shall mitigate any unavoidable impacts, and shall only be allowed for a water-dependent use.
      - m. Fish and wildlife habitat compensatory mitigation is required for all alterations to fish and wildlife habitat or their buffers, except for buffer averaging.
      - n. Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas through mitigation sequencing.
      - o. *Fish and Wildlife Habitat Management and Mitigation Plan*. For unavoidable impacts to wildlife habitat conservation areas, a wildlife habitat management and mitigation plan shall be prepared by a wildlife biologist who is

knowledgeable of fish and wildlife habitat within Kittitas County. The wildlife habitat management and mitigation plan shall:

- i. Demonstrate, when implemented, that there shall be no ~~net~~-loss of ecological functions and values of habitat.
  - ii. identify how impacts from the proposed project shall be mitigated, as well as the necessary monitoring and contingency actions for the continued maintenance of the wildlife habitat conservation area and its associated buffer.
  - iii. Mitigation shall be implemented before or concurrent with start of construction to avoid additional temporal loss of a lag between the impact and implementation of mitigation.
  - iv. Any area functioning as mitigation should have permanent protection through deed restrictions or conservation easements as necessary to maintain the functions and values of the mitigation area.
  - ~~ii.v.~~ Fencing placed within a fish and wildlife habitat conservation area shall be a wildlife friendly design to ensure safe passage of wildlife through the habitat area.
- p. In addition to the general mitigation plan requirements described above, the fish and wildlife habitat management and mitigation plan shall contain a report containing, but not limited to, the following information:
- i. A map or maps indicating the ordinary high water mark; the boundary of the habitat conservation areas; associated stream and wildlife habitat buffers; the width and length of all existing and proposed structures, utilities, roads, easements; wastewater and stormwater facilities; adjacent land uses, zoning districts and comprehensive plan designations;
  - ii. A description of the proposed project including the nature, density and intensity of the proposed development and the associated grading, structures, roads, easements, wastewater facilities, stormwater facilities, utilities, etc., in sufficient detail to allow analysis of such land use change upon the habitat conservation area;
  - iii. A description of the vegetation in the habitat conservation area, on the overall project site and adjacent to the site;
  - iv. A detailed description of the proposed project's effect on the habitat conservation area, and a discussion of any federal, state or local management recommendations which have been developed for the species or habitats in the area;
  - v. An explanation of how any adverse impacts created by the proposed development will be mitigated, including the following techniques:

- (A) Establishment of buffer zones;
- (B) Preservation of critically important plants and trees;
- (C) Special construction techniques;
- (D) Implementation of erosion and sediment control measures;
- (E) Limitation of access to the habitat conservation area;
- (F) Seasonal restriction of construction activities;
- (G) Habitat enhancement (i.e., fish passage barrier removal);
- (H) Any other requirements and/or recommendations from WDFW's habitat management guidelines;
- (I) Establishment of a timetable for periodic review of the plan. This includes a program for monitoring construction of the compensation project, and for assessing a completed project. The project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five years; and
- (J) Contingency plan if monitoring and evaluation indicates project performance standards are not being met.

*D. Frequently Flooded Areas Performance Standards.*

1. *General Standards.* The following standards apply to all frequently flood areas:
  - a. All structures and other improvements shall be located on the buildable portion of the site out of the area of flood hazard. Where necessary, residential buildings may be elevated.
  - b. Utilities shall either be located three or more feet above the base flood elevation (BFE), or be engineered to the city of Cle Elum engineer's requirements appropriate for the conditions.
  - c. All new construction and substantial improvements shall be constructed using flood resistant materials and using methods and practices that minimize flood damage.
  - d. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
  - e. No rise in the BFE shall be allowed. Post and piling techniques are preferred and are presumed to produce no increase in the BFE.
  - f. In areas within base flood elevations (but a regulatory floodway has not been designated), no new construction, substantial improvements, or other

development (including fill) shall be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

2. *Floodways.* Any development, encroachment, clearing and grading, new construction, or substantial improvements, including structures that do not require a building permit, shall be prohibited within the floodway, except as allowed in CEMC Section [18.01.080](#), Exemptions, and the following:
  - a. Agricultural activities that do not require the installation of structures and that do not have any associated fill.
  - b. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications, which are solely necessary to assure safe living conditions.
  - c. Prior to the repair or replacement of a substantially damaged residential structure located within a floodway, a recommendation shall be obtained from the Washington Department of Ecology in accordance with WAC [173-158-076](#).
3. All developments shall be subject to provisions of CEMC Chapter [15.24](#), Flood Hazard Prevention. If CEMC Chapter [15.24](#), Flood Hazard Prevention, standards conflict with the frequently flood area performance standards provided above, the later shall supersede.
4. When compensatory mitigation is required, the flooded areas mitigation plans shall be prepared by a civil engineer licensed in the state of Washington and familiar with hydrology, hydraulics, and fluvial geomorphology.
  - ~~a.~~ Within compensatory mitigation plans which effect have significant impacts on the human health and safety, public facilities and services, priority habitat and species (PHS), or as part of a PHS indicated future recover area; plans shall adhere to no-net-loss measures outlined in Washington State Department of Ecology guidelines pursuant to WAC 365-196-830 during the development of an adaptive management program.

E. *Geologically Hazardous Areas Performance Standards.*

1. The following general standards apply to proposed development activities within or near geologically hazardous areas:
  - a. Will not increase the threat of the geological hazard to adjacent properties beyond predevelopment conditions;
  - b. Will not adversely impact other critical areas;
  - c. Are designed so that the hazard to the project is eliminated or mitigated;

- d. Structures and improvements should be located to preserve the most critical portion of the site and its natural landforms and vegetation;
  - e. Structures and improvements shall minimize alterations to the natural contour of the slope, and foundations shall be tiered where possible to conform to existing topography; and
  - f. Development shall be designed to minimize impervious surfaces within the critical area and critical area buffer.
  - g. A proposed development cannot be approved if it is determined by the city, following review of the geotechnical report, that either the proposed development or adjacent properties will be at risk of damage from the geologic hazard, or that the project will increase the risk of occurrence of the hazard, and there are no adequate mitigation measures to alleviate the risks.
2. A buffer shall be established from all edges of erosion and landslide hazard areas. The size of the buffer shall be determined by the planning director to eliminate or minimize the risk of property damage, death, or injury resulting from landslides caused in whole or part by the development, based upon review of, and concurrence with, a geotechnical report prepared by a qualified professional:
- a. The minimum buffer shall be equal to the height of the slope or fifty feet, whichever is greater;
  - b. The buffer may be reduced to a minimum of ten feet based on a finding by the city following review of the geotechnical report recommendations that the reduction will adequately protect the proposed development, adjacent developments and uses, and the subject critical area;
  - c. The buffer may be increased where based on a finding by the city following review of the geotechnical report determines a larger buffer is necessary to prevent risk of damage to proposed and existing development;
3. A building setback of twenty feet shall be provided from all edges of the geological hazard area buffers. The building setback may be reduced based on a finding by the city following review of the geotechnical report recommendations that the reduction will adequately protect the proposed development, adjacent developments and uses, and the subject critical area;
4. Alterations of an erosion or landslide hazard area and/or buffer may only occur for activities for which a hazards analysis is submitted and based on findings by the city following review of the geotechnical report that:
- a. The development will not increase surface water discharge or sedimentation to adjacent properties beyond predevelopment conditions;
  - b. The development will not decrease slope stability on adjacent properties; and

- c. Such alterations will not adversely impact other critical areas and are certified as safe as designed and under anticipated conditions by a qualified professional, licensed in the state of Washington.
5. Unless otherwise provided or as part of an approved alteration, removal of vegetation from an erosion or landslide hazard area or related buffer shall be prohibited.
6. On-site sewage disposal systems, including drain fields, shall be prohibited within erosion and landslide hazard areas and related buffers.
7. Critical facilities, such as hospitals and emergency response centers, shall not be sited within geologically hazardous areas unless there is no other practical alternative.
8. When compensatory mitigation is required, the geologically hazardous areas mitigation plan shall be prepared by a qualified professional who is either a geologist or a geotechnical engineer, or a civil engineer licensed in the state of Washington, who is knowledgeable of regional geologic conditions and who has professional experience in landslide and erosion hazard evaluation, mitigation plan design, implementation, and monitoring.

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

#### **18.01.080 Exemptions.**

The following developments, activities and associated uses may be determined by the city to be exempt from the provisions of this chapter; provided, that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements:

- A. *Emergencies.* Those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventative action in a time frame too short to allow for compliance with the requirements of this chapter. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency. In addition, they must have the least possible impact to the critical area or its buffer. Once the immediate threat has been addressed, any adverse impacts on critical areas are subject to the provisions of this chapter, including, but not limited to, minimizing and mitigating any impacts to critical areas.
- B. *Operation, Maintenance, or Repair.* Operation, maintenance, or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems, that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of

the proposed operation, maintenance, or repair. Operation and maintenance includes vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities, including ~~those~~ minor vegetation removal activities such as limbing or those covered under a habitat management plan (HMP) ~~as necessary for fire reduction~~; provided, that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species.

- C. *Passive Outdoor Activities*. Recreation, education and scientific research activities that do not degrade the critical area, including fishing, hiking, and bird watching.
- D. *Forest Practices Regulated by the State*. Forest practices regulated and conducted in accordance with provisions of Chapter 76.09 RCW and the forest practices regulations in WAC Title 222 are exempt except for conversions to forestry uses.

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

#### **18.01.085 Notice and financial securities.**

- A. *Notice*. The owner of any property containing critical areas or buffers on which a development project is submitted shall record with Kittitas County notice of said critical areas or buffers in a format approved by the city. Such notice shall identify or provide notice of the presence of any critical areas or buffers on the property. The owner shall submit proof to the city that the notice has been filed for record within thirty days after the approval of a development permit. The notice shall run with the land, and failure to provide such notice to any purchaser prior to transferring any interest in the property shall be a violation of this chapter. Development proposals which are defined as normal repair and maintenance of existing structures or development, including but not limited to roof repair, interior remodeling, wood stove permits, and on-site sewage disposal systems repairs, are exempt from this requirement.
- B. When mitigation required pursuant to a development proposal is not completed prior to the city final permit approval, such as final plat approval or final building inspection, the city shall require of the applicant an assignment of funds or post a performance bond or other security in a form and amount deemed acceptable by the city. If the development proposal is subject to mitigation, the applicant shall post mitigation security in a form and amount deemed acceptable by the city to ensure mitigation is fully functional.

- C. The performance security shall be in the amount of one hundred twenty-five percent of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater, and the cost of maintenance and monitoring for a five-year period.
- D. The security shall be in the form of assignment of funds, a surety bond, performance bond, assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the city attorney.
- E. The security authorized by this section shall remain in effect until the city determines, in writing, that the standards bonded for have been met. Security shall be held by the city for a minimum of five years to ensure that the required mitigation has been fully implemented and demonstrated to function and may be held for longer periods when necessary.
- F. Depletion, failure, or collection of security funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.
- G. Public development proposals shall be relieved from having to comply with the security requirements of this section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.
- H. Any failure to satisfy critical areas requirements established by law or condition, including, but not limited to, the failure to provide a monitoring report within thirty days after it is due or comply with other provisions of an approved mitigation plan, shall constitute a default, and the city may demand payment of any financial guarantees or require other action authorized by the city code or any other law.
- I. Any funds recovered pursuant to this section shall be used to complete the required mitigation.

(Ord. 1653 § 1 (Exh. A), 2023)

**18.01.090 Reasonable use.**

- A. Where the provisions of this chapter would prevent all reasonable use of those properties completely encumbered by critical areas, the property owner may apply for a reasonable use exception if it is demonstrated that all of the following four conditions exist:
  - 1. No reasonable use of the property is possible without some impact to the critical area.
  - 2. No feasible and reasonable on-site alternative to the proposed activities is possible, including possible changes in site layout, reductions in density, and

similar factors that would allow a reasonable economic use with fewer adverse impacts.

3. The proposed activities, as conditioned, will result in the minimum possible impacts to affected critical areas, considering their functions and values and/or the risks associated with proposed development. The inability to derive reasonable economic use is not the result of the applicant's actions or that of a previous property owner, such as by segregating or dividing the property and creating an undevelopable condition.
  4. Any alteration of a critical area approved under this section shall be subject to appropriate conditions and will require mitigation under an approved mitigation plan.
- B. The responsibility of proving the presence of the above criteria shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.
- C. A request for a reasonable use exception shall be made to the city of Cle Elum and shall be processed as a Type 3 application according to the provisions in CEMC Section [14.30.070](#), "quasi-judicial review of applications." The request shall include a critical areas report, including a habitat management plan and a mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act. The city planner shall prepare a recommendation to the city's ~~hearing examiner~~~~planning commission~~ based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria identified above.
- D. The ~~hearing examiner~~~~planning commission~~ shall review and decide upon the request for reasonable use, and shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with the reasonable use exception criteria identified above.

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

#### **18.01.100 Enforcement.**

- A. *Applicability.* Enforcement action by the department or local government may be taken whenever a person has violated this chapter. The choice of enforcement action and the severity of any penalty should be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the existence or degree of bad faith of the persons subject to the enforcement action.

- B. *Site Inspections.* The city is authorized to make site inspections and take such actions as necessary to enforce this chapter. The city shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.
- C. *Unauthorized Alterations.*
1. The city shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation or replacement measures at the responsible party's expense to compensate for violation of provisions of this chapter. At a minimum, the structural and functional values of the critical area shall be restored and any hazard shall be reduced to a level equal to, or less than, the predevelopment conditions.
  2. All development work shall remain stopped until a restoration plan has been approved by the city. Such a plan shall be prepared by a qualified professional. The city may, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.
- D. *Order to Cease and Desist.*
1. *Authority.* The city shall have the authority to serve upon a person a cease and desist order if an activity being undertaken in critical areas, upon a reasonable belief, is in violation of Chapter [90.58](#) RCW or this chapter.
  2. *Contents.* The order shall set forth:
    - a. A description of the specific nature, extent, and time of violation and the damage or potential damage;
    - b. A notice that the violation or the potential violation cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time;
    - c. The amount of the civil penalty;
    - d. A statement that the person to whom the order is directed may request an administrative appeal hearing to review the violation and/or imposed penalty. Such request must be in writing, accompanied by applicable fees, and received by the city within ten working days after the order has been served.
  3. *Effective Date.* The cease and desist order shall become effective immediately upon receipt by the person to whom the order is directed.
  4. *Compliance.* Failure to comply with the terms of a cease and desist order can result in enforcement actions including, but not limited to, the issuance of a civil penalty.
- E. *Penalties.* Any person, party, firm, corporation, or other legal entity convicted of violating any of the provisions of this chapter shall be guilty of a misdemeanor. Each

day or portion of a day during which a violation of this chapter is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of this chapter shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington. The city may levy civil penalties against any person, party, firm, corporation, or other legal entity for violation of any of the provisions of this chapter. The civil penalty shall be assessed at a maximum rate of one thousand dollars per day per violation. Daily fines shall not be levied until after a violator has received a notice of violation and shall not be levied while the violator is making a good faith and diligent effort to correct the violation in cooperation with city enforcement personnel nor while a notice of violation is under appeal through the applicable appeal process.

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

#### **18.01.110 Administrative appeals.**

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

(Ord. 1653 § 1 (Exh. A), 2023)

#### **18.01.120 Nonconforming activities.**

A regulated activity that was approved prior to the passage of this chapter and to which significant economic resources have been committed pursuant to such approval but which does not conform to this chapter may be continued subject to the following:

- A. No such activity shall be expanded, changed, enlarged, or altered in any way that increases the extent of its nonconformity without a permit issued pursuant to the provisions of this chapter.
- B. Except for cases of discontinuance as part of a normal agricultural activity, if a nonconforming activity is discontinued for twelve consecutive months, any resumption of the activity shall conform to this chapter.
- C. If a nonconforming use or activity is destroyed by human activities or an act of God, it shall not be resumed except in conformity with the provisions of this chapter.
- D. Activities or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming activities.

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

#### **18.01.130 Severability.**

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

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

DRAFT



State of Washington  
DEPARTMENT OF FISH AND WILDLIFE

South Central Region • Region 3 • 1701 South 24<sup>th</sup> Avenue, Yakima, WA 98902-5720  
Telephone: (509) 575-2740 • Fax: (509) 575-2474

March 9, 2026

Joseph Calhoun  
City of Cle Elum  
Planning Consultant

SUBJECT: WDFW Comments on City of Cle Elum Critical Areas Ordinance February 2026  
Draft

Dear Mr. Calhoun,

The Washington Department of Fish and Wildlife (WDFW) has reviewed the draft of the City of Cle Elum Critical Areas Ordinance (CAO). WDFW has previously commented on drafts of the city's CAO in 2021, 2022 and 2023 and following the adoption of the most recent version of the CAO, a comment letter in December 2024 discussing recommendations for updates in the next version of the CAO. The 2024 letter is attached and relevant points are included below in our comments. We appreciate that many of our previous comments were included in the 2023 adopted CAO. We provide these comments to help incorporate the remaining recommendations into this draft and to align the CAO with WDFW's mission to preserve, protect and perpetuate the state's fish, wildlife and ecosystems. We look forward to working with City of Cle Elum and would be happy to meet to discuss our comments.

18.01.030. Designation and mapping of critical areas.

G. 6. Streams. Washington DNR maps are recommended only for use in Forest Practices. It is recommended to use the Department of Ecology's Washington State Hydrography Dataset (WASHD) for mapping of stream locations in the CAO.

18.01.055. Determination.

D. Please update all mentions of "Fish habitat conservation area" with "Fish and wildlife habitat conservation area". The term is also used on page 33, under multiple buffers and page 36 under subpoint c.

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

C. 1. A. Stream buffer widths. Table 18.01-5. Stream Buffer Requirements.

The city's critical area ordinance currently has a 50-foot wide buffer width for Type F streams and a 25-foot wide buffer for Type N streams. While WDFW recognizes the extent of past development within the city limits, these widths are substantially less than recommended Best Available Science (BAS) as synthesized by WDFW (Quinn et al., 2020). The document can be found at: <https://wdfw.wa.gov/publications/01988>. WDFW Riparian Guidelines recommends that for streams the Riparian Management Zones (RMZ) be either Site Potential Tree Height at 200 years (SPTH<sub>200</sub>) or in non-forested areas a minimum of 100 ft RMZ be applied. The 100-

foot RMZ minimum was designed to capture pollutant removal for stream water quality. Our guidance shows that this width should be applied to both fish and non-fish streams.

WDFW recognizes that the City of Cle Elum contains both intensively developed areas and areas still largely forested. In recognition of this varying level of development to date and the need for protection of RMZs we have crafted recommendations for both the intensively developed areas and the largely forested areas.

Within high intensity development areas

WDFW proposes that the city adopt a 100-foot RMZ on all streams within the currently developed areas of the city, excluding Crystal Creek (currently SPTH<sub>200</sub>) and waters that fall within the jurisdiction of the city's Shoreline Management Plan. These developed areas would include areas currently zoned as commercial, industrial, and residential (single and multiple family) in the city's zoning map. We believe that this will balance existing development with stream protections. WDFW recommends placing a date of adoption, to differentiate these areas of current high intensity development from potential future zoning changes.

Within the high intensity developed areas, some RMZs have little to no existing vegetative cover. WDFW proposes these areas of RMZs could be reduced to 75-foot RMZ width without the need for a reasonable use permit if the remaining 75-foot is restored to a heavily vegetated state where at least 80 percent of the ground is covered by native riparian trees or shrubs. The 80 percent coverage would be measured at the end of restoration monitoring. To qualify for the reduced RMZ widths and replanting, WDFW recommends code language where the applicant must demonstrate that the current RMZ is less than 25% vegetated with native trees or shrubs.

To ensure that the revegetation is successful, WDFW recommends adding monitoring and performance requirements into the code. The applicant would place the revegetated area in a form of a deed restriction to ensure the long-term viability of the revegetated area.

These monitoring requirements would include:

- The applicant should develop a revegetation plan that would include the proposed planting plan and subsequent monitoring plan to ensure at least 80% survival of the plants.
- The planting plan would be reviewed by agencies of expertise, including WDFW. WDFW would recommend at least 3 years of restoration monitoring. WDFW would also recommend a provision of bonding to ensure that the applicant follows through with the restoration and monitoring.

Within existing forested areas

Outside of the high intensity developed areas of the city, significant areas of standing forest remain in the RMZs. These areas would include areas currently zoned as planned mixed use, public use and areas currently within the Urban Growth Area (UGA) boundary. WDFW recommends adoption of the SPTH<sub>200</sub> for the RMZs in these areas. WDFW recommends placing a date of adoption, to differentiate these current areas from potential future zoning changes.

C. 1. i. Interrupted buffer. Please clarify the size and condition of the road allowed to qualify as an interrupted buffer. Smaller (single lane) graveled roads are unlikely to meet the definition of

an interrupted buffer when referring to whether the road could truncate the functions of the riparian management zone.

C. 1. o. Fish and Wildlife Habitat Management and Mitigation Plan.

Please add “fish and wildlife” to all mentions of “wildlife habitat conservation area” or “wildlife habitat management plan”.

Please add that mitigation should be required to be implemented before or concurrent with start of construction to avoid additional temporal loss of a lag between the impact and implementation of mitigation.

Please add that any mitigation area should have permanent protection, through a deed restriction, conservation easement or other similar protection.

Fencing. Please add that any fencing placed within a fish and wildlife habitat conservation area shall be a wildlife friendly design to ensure safe passage of wildlife through the habitat area.

18.01.070. D. Frequently Flooded Areas Performance Standards.

4.a. Priority Habitat and Species is given the acronym of “PSH”, please modify to the standard acronym of “PHS”.

18.01.080. Exemptions.

B. Operation, Maintenance or Repair. WDFW is concerned with the language surrounding vegetation management. As currently written, it states “that is part of ongoing maintenance of structures...including those vegetation removal activities as necessary for fire reduction”. WDFW recommends modifying the exemption for vegetation removal activities in the riparian management zone (RMZ) to only minor activities such as minor pruning (limbing) and removal of brush and debris directly adjacent to structures. WDFW would recommend that other fuel treatments within the RMZ be covered under a habitat management plan (HMP) where specifics on what is being removed can be clarified and measures to offset those impacts to achieve no net loss of riparian function.

Please review these suggested changes and then if there are questions or concerns, WDFW recommends meeting with the city to discuss the concerns so that the code adequately reflects protections for fish and wildlife and their habitats.

Sincerely,



Scott Downes

Regional Land Use Lead

[Scott.Downes@dfw.wa.gov](mailto:Scott.Downes@dfw.wa.gov)

Attachment: Cle Elum CAO RMZ Recommendations WDFW Comments.pdf



State of Washington  
**DEPARTMENT OF FISH AND WILDLIFE**  
South Central Region • Region 3 • 1701 South 24<sup>th</sup> Avenue, Yakima, WA 98902-5720  
Telephone: (509) 575-2740 • Fax: (509) 575-2474

December 13, 2024

Colleda Monick  
City of Cle Elum  
Planning Consultant

**SUBJECT: WDFW COMMENTS ON CITY OF CLE ELUM CRITICAL AREAS  
ORDINANCE RIPARIAN MANAGEMENT ZONE RECOMMENDATIONS**

Dear Ms. Monick,

Following the adoption of Cle Elum's Critical Areas Ordinance (CAO) update in the fall of 2023, City of Cle Elum and WDFW had discussions on measures that the city could do to address WDFW concerns on Riparian Management Zones (RMZ) widths within the adopted code. The following are WDFW's recommendations to improve the City of Cle Elum Critical Areas Ordinance (CAO) regarding their RMZ widths. The recommendations vary 1) within the current high-intensity developed area and 2) outside of the current high-intensity developed areas. No changes are proposed for either Shoreline (type S) streams or Crystal Creek which currently has a Site Potential Tree Height (SPTH<sub>200</sub>). The recommended SPTH<sub>200</sub> on Crystal Creek is 138 feet.

The city's critical area ordinance currently has 50-foot wide RMZ for Type F streams and 25-foot wide RMZ for Type N streams in its CAO. While WDFW recognizes the extent of past development within the city limits, these RMZs are substantially less than recommended Best Available Science (BAS) as synthesized by WDFW (Quinn et al., 2020). Within that guidance, SPTH<sub>200</sub> is recommended for all streams within the forested environment. Outside of the forested environment, a 100-foot RMZ was recommended for all streams as the minimum RMZ width. The 100-foot RMZ minimum was designed to capture pollutant removal for stream water quality. For already developed areas within the city, there is little existing forested cover and no streams, except for Crystal Creek and areas covered under the Shoreline Management Plan have existing vegetation that meet the SPTH<sub>200</sub> requirements.

*Within high intensity development areas*

WDFW proposes that the city adopt a 100-foot RMZ on all streams within the currently developed areas of the city, excluding Crystal Creek and waters that fall within the jurisdiction of the city's Shoreline Management Plan. These developed areas would include areas currently zoned as commercial, industrial, and residential in the city's zoning map. We believe that this will balance existing development with stream protections and enable voluntary or compensatory restoration of important riparian functions in areas that are not yet built out. WDFW recommends placing a date of adoption, to differentiate these areas of current high intensity development from potential future zoning changes.

Within the high intensity developed areas, some RMZs have little to no existing vegetative cover. WDFW recommends these areas of RMZs could be reduced to 75-foot RMZ width without the need for a reasonable use permit if the remaining 75-foot is restored to a heavily vegetated state where at least 80 percent of the ground is covered by native riparian trees or shrubs. The 80 percent coverage would be measured at the end of restoration monitoring. To qualify for the reduced RMZ widths and replanting, WDFW recommends code language where the applicant must demonstrate that the current RMZ is less than 25% vegetated with native trees or shrubs.

To ensure that the revegetation is successful, WDFW recommends adding monitoring and performance requirements into the code. These monitoring requirements would include:

- The applicant should develop a revegetation plan that would include the proposed planting plan and subsequent monitoring plan to ensure at least 80% survival of the plants. The planting plan would be reviewed by agencies of expertise, including WDFW. WDFW would recommend at least 3 years of restoration monitoring. WDFW would also recommend a provision of bonding to ensure that the applicant follows through with the restoration and monitoring.
- The applicant would place the revegetated area in some form of a deed restriction to ensure the long-term viability of the revegetated area.

#### Within existing forested areas

Outside of the previously developed areas of the city, significant areas of standing forest remain in the RMZs. These areas would include areas currently zoned as planned mixed use, public use and areas currently within the Urban Growth Area (UGA) boundary. WDFW recommends adoption of the SPTH<sub>200</sub> for the RMZs in these areas. The SPTH<sub>200</sub> for these areas would be approximately 150 feet. WDFW guidance is the RMZ should not differ by stream type, whether the creek is fish-bearing or not. WDFW recommends placing a 150-foot RMZ for all streams in these zoning areas, consistent with BAS. WDFW recommends placing a date of adoption, to differentiate these current areas from potential future zoning changes.

#### Other recommendations

##### *Reasonable Use*

WDFW examined the city's current reasonable use code (CMC 18.01.090) and found it to be consistent with other jurisdictions' codes and sufficient for use in RMZ protection. When a development permit proposes to utilize a reasonable use exemption, close coordination with a WDFW habitat biologist is recommended to provide the city and the applicant with important technical recommendations on how to evaluate and offset the impacts to critical area functions and values.

##### *Fuel treatments in the RMZ*

WDFW recognizes that the city's forested areas are susceptible to fire and provides the following guidance to balance RMZ protection with fire protection. To balance fire protection and RMZ protection, WDFW would recommend including measures in the Community Wildfire Protection Plan (CWPP) where limited treatments such as removal of lower limbs on overstory trees and limited brush removal could be allowed within the RMZ. WDFW would recommend crafting

these measures with WDFW participation to ensure that a proper balance of RMZ protection and fuel reduction occurs. As part of the code, WDFW recommends that any fuel treatments within the RMZ be specified through a Habitat Management Plan (HMP). Such HMPs should be written to avoid and minimize impacts to the RMZ while performing fuel reductions and should be approved before fuel reduction work in the RMZ is started. As technical experts in RMZ management, WDFW would like to be consulted on the HMP's development and review, including, if necessary, arrangement of an on-site meeting.

*Amending wording in CMC 18.01.055*

In the current critical areas code, CMC 18.01.055, Section D, it refers to Fish Habitat Conservation Area. WDFW requests that the term be modified to "Fish and Wildlife Habitat Conservation Area" to align with definitions in WAC 365-196-830. This change would also align with usage of this term in subsequent text in CMC 18.01.055, Section D and anywhere else in the code where fish or wildlife are not included in the term Fish and Wildlife Habitat Conservation Area.

Please review these suggested changes and then it would be recommended that the city and WDFW work to formalize these changes into code. WDFW would be happy to work with the city on red-line edits to the current code and discuss with the city's planning commission these recommended changes. Thank you for working with WDFW on incorporating these changes to the city's riparian areas. The fish and wildlife of the area will benefit from these changes and the city will have habitat that the residents will be able to enjoy fish and wildlife within their city.

Sincerely,



Scott Downes  
Regional Land Use Lead  
[Scott.Downes@dfw.wa.gov](mailto:Scott.Downes@dfw.wa.gov)

**CITY OF CLE ELUM  
Planning Department**

**Critical Areas Ordinance  
Proposed Amendment**

**AGENDA DATE:**                    **September 11, 2023**

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**INCLUDED IN THIS PACKET:**

Planning Commission recommendation 2023 and 2021  
Consultant recommendation  
Applicable meeting minutes  
Draft ordinance 1653  
Draft code with highlighted amendments  
Best Available Science

**CITY OF CLE ELUM**  
**Planning Commission**

**Critical Areas Ordinance Update**

**DATE:** September 11, 2023

**TO:** Planning Commission recommendation to the City Council to adopt the proposed Critical Areas Ordinance (CAO) amendments

**FROM:** Gary Berndt, Planning Commission Chair

**RE:** Planning Commission Recommendation for ORD 1653, amending CEMC 18.01 (CAO)

---

On behalf of the Planning Commission, I am pleased to forward the City Council this recommendation on the proposed amendments to the City's Critical Areas Ordinance Chapter 18.01 Cle Elum Municipal Code (CEMC).

**BACKGROUND**

The City's Critical Areas Ordinance (CAO) is a set of development regulations that serves to protect sensitive areas in the City, including wetlands, steep slopes, fish and wildlife habitat areas, and critical aquifer recharge areas. As part of the City's compliance with the Growth Management Act, the City is required to review its CAO in accordance with new best available science and make updates, as necessary. The City's current Critical Areas Ordinance was last amended in 2010 (Ordinance No. 1335), as codified in Chapter 18.01 CEMC. AHBL was contracted as a consultant to assist with the process and perform work for the update. AHBL sub-contracted with Herrera Environmental Consultants for review of the Best Available Science (BAS).

**PROJECT HISTORY**

AHBL identified items to consider amending or updating using a Department of Commerce CAO checklist and Herrera's Best Available Science report. Using that as a basis for amendments, AHBL began review of the existing CAO in August 2020.

Public comment was solicited throughout the process via the City's website and interested parties were kept up to date via social media and news media. An open house was held on November 10, 2020 which provided an opportunity for visioning and identification of high-priority issues and sought specific input on several issues. Public comments were encouraged throughout and posted to the webpage.

In February 2021, AHBL prepared draft amendments for review by other agencies and the public. Feedback received was incorporated into the review and subsequent drafts.

On March 16, 2021, the Planning Commission held a Public Hearing on the CAO amendments. Following public testimony by the Washington State Department of Wildlife (WDFW), the City made additional revisions to the CAO, incorporating WDFW's guidance on stream buffers into the ordinance for Crystal Creek, a fish-bearing stream that is not regulated under the City's Shoreline Master Program. The City noticed a new public hearing on the CAO to incorporate feedback on the new revisions.

On May 24th, 2021, City Planner, Lucy Temple; Planning Commission Chair, Gary Berndt; and two consultants from AHBL presented their findings to Council, and recommended adopting Ordinance No. 1606, noting that the City was currently out of compliance. At this meeting, discussion ensued regarding the Best Available Sciences used to determine mapping. A motion was made by Ken Ratliff and seconded by Beth Williams to table this agenda item until the next meeting. The motion carried unanimously. The Shoreline Master Plan was adopted by Council, under ORD 1606.

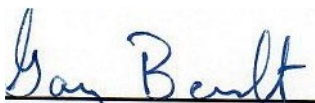
On June 14th, 2021, Mayor McGowan reported to the Council that the City was conducting an internal review of the Best Available Sciences and that a report would be brought back to a future meeting. The review went back to the Planning Commission.

As of September 2023, staff has met with the Department of Ecology and reviewed the proposed regulations and Best Available Science and received support as well as recommended edits to the existing documents to bring them up to date.

On September 5, 2023, The Planning Commission discussed next steps and Commissioner Brissey made a motion to forward the existing documents with the recommended changes from the Department of Ecology to the City Council. Commissioner Kantwill seconded. The motion carried unanimously.

#### **PLANNING COMMISSION RECOMMENDATION**

The Planning Commission recommends that the City Council adopt Ordinance No. 1653, amendments to the Critical Areas Ordinance as presented in the packet materials and attached as Exhibit A to the ordinance.



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Gary Berndt  
Chair, City of Cle Elum Planning Commission

SEPTEMBER 6, 2023  
Date

**CITY OF CLE ELUM**  
**Planning Commission**

**Critical Areas Ordinance Update**

**DATE:** May 5, 2021

**TO:** Planning Commission recommendation to the City Council to adopt the proposed Critical Areas Ordinance (CAO) amendments.

**FROM:** Gary Berndt, Planning Commission Chair

**RE:** Planning Commission Recommendation for ORD 1606, amending CEMC 18.01 (CAO)

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On behalf of the Planning Commission, I am pleased to forward to the City Council this recommendation on the proposed amendments to the City's Critical Areas Ordinance Chapter 18.01 Cle Elum Municipal Code (CEMC).

**BACKGROUND**

The City's Critical Areas Ordinance (CAO) is a set of development regulations that serves to protect sensitive areas in the City, including wetlands, steep slopes, fish and wildlife habitat areas, and critical aquifer recharge areas. As part of the City's compliance with the Growth Management Act, the City is required to review its CAO in accordance with new best available science and make updates, as necessary. The City's current Critical Areas Ordinance was last amended in 2010 (Ordinance No. 1335), as codified in Chapter 18.01 CEMC. AHBL was contracted as a consultant to assist with the process and perform work for the update. AHBL sub-contracted with Herrera Environmental Consultants for review of the Best Available Science (BAS).

**PROJECT HISTORY**

AHBL identified items to consider amending or updating using a Department of Commerce CAO checklist and Herrera's Best Available Science report. Using that as a basis for amendments, AHBL began review of the existing CAO in August 2020.

Public comment was solicited throughout the process via the City's website and interested parties were kept up to date via social media and news media. An open house was held on November 10, 2020 which provided an opportunity for visioning and identification of high-priority issues and sought specific input on several issues. Public comments were encouraged throughout and posted to the webpage.

In February 2021, AHBL prepared draft amendments for review by other agencies and the public. Feedback received was incorporated into the review and subsequent drafts.

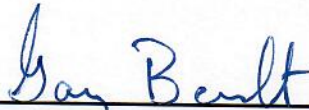
On March 16, 2021, the Planning Commission held a Public Hearing on the CAO amendments. Following public testimony by the Washington State Department of Wildlife (WDFW), the City made additional revisions to the CAO, incorporating WDFW's guidance on stream buffers into the ordinance for Crystal Creek, a fish-bearing stream that is not regulated under the City's Shoreline

Master Program. The City noticed a new public hearing on the CAO to incorporate feedback on the new revisions.

**PLANNING COMMISSION RECOMMENDATION**

On May 4, 2021, the Planning Commission continued the Public Hearing, heard public comment, deliberated on the proposed action, and voted 4-0 to recommend amendments to Chapter 18.01 CEMC – Critical Areas Protection to the City Council.

The Planning Commission recommends that the City Council adopt Ordinance No. 1606, amendments to the Critical Areas Ordinance as presented in the May 4, 2021 Planning Commission packet materials and attached as Exhibit A to the ordinance.



Gary Berndt

Chair, City of Cle Elum Planning Commission

5/5/2021  
Date

# PROJECT MEMO



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|                 |                                                                      |                      |                                          |
|-----------------|----------------------------------------------------------------------|----------------------|------------------------------------------|
| <b>TO:</b>      | Lucy Temple,<br>City Planner<br>City of Cle Elum                     | <b>DATE:</b>         | March 30, 2021                           |
| <b>FROM:</b>    | Brittany Port, AICP<br>Josh Kubitza, AICP<br>Tacoma - (253) 383-2422 | <b>PROJECT NO.:</b>  | 2200315.30                               |
|                 |                                                                      | <b>PROJECT NAME:</b> | Cle Elum Critical Areas Ordinance Update |
| <b>SUBJECT:</b> | WDFW CAO Stream Buffer Response Memo                                 |                      |                                          |

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On March 16, 2021, the City of Cle Elum Planning Commission requested that AHBL look into how incorporating the Washington Department of Fish and Wildlife (WDFW) comments into the City of Cle Elum Critical Area Ordinance would impact the periodic update schedule.

On March 17, 2021, Lucy Temple, City Planner for the City of Cle Elum, along with AHBL and Herrera Environmental Staff met to discuss Washington Department of Fish and Wildlife comments on the City of Cle Elum's Critical Area Ordinance (CAO) Update and next steps.

## Summary:

The WDFW Riparian Ecosystems, Volume 2: Management Recommendations (2020 Stream Guidance) was published in December 2020. The 2020 Stream Guidance was published after the City's consultants (AHBL and Herrera Environmental) completed the Best Available Science and prepared amendments to the City's Critical Area Ordinance updates. The City of Cle Elum received comments on its CAO amendments from the WDFW requesting the City incorporate the Stream Guidance on February 16, 2021 following the distribution of City's SEPA Notice of Decision.

WDFW is requesting that the City of Cle Elum incorporate the new stream guidance into its CAO update. The 2020 Stream Guidance utilizes Site-Potential-Tree Height (SPTH) to determine stream buffers, as opposed to prior guidance that relied on standard buffers assigned based on stream typing. Additionally, the new stream guidance measures the stream buffer from the Channel Migration Zone (CMZ) instead of the Ordinary High-Water Line (OHWL) that is used within the City's Shoreline Master Program. It appears from the WDFW SPTH Map that the 2020 Stream Guidance would require a stream buffer between a minimum of 100 feet to 169 feet in the City of Cle Elum. It does not appear from the guidance if WDFW would allow stream buffer reduction or buffer averaging that would reduce the stream buffer less than 100-feet. WDFW does not currently have template code language to assist the City in incorporating the Stream Guidance.

Currently, the City does not require buffers on streams not regulated by the City's Shoreline Master Program which addresses the Yakima and Cle Elum Rivers and does not include Crystal Creek or any ephemeral (seasonal) streams. Prior to the 2020 Stream Guidance, the Best Available Science recommended utilizing a 25-foot buffer for all non-fish bearing streams and a 50-foot buffer for fish bearing streams measured from the OHWL. Increasing the stream buffer from zero (as the CAO previously did not require buffers for any streams in the City) to 25 and 50 feet is a significant regulatory change for the City. If the City incorporated the 2020 Stream Guidance, the City's stream buffers would go from zero to between 100- and 165-feet as measured from the CMZ. This would require Town Ditch and other waterways going through the City to have a minimum of a 100-foot buffer causing many properties within heavily developed parts of the City to become legal non-conforming properties. The increase in non-conforming status will cause hardships for the City to regulate and property owners to develop.

Additionally, the City is already heavily developed in the areas that would be affected. The main area of the City that could see additional development pressure is along Crystal Creek. Crystal Creek is a fish bearing stream, with established vegetation, that flows into the Yakima River (Shoreline of the State). There are sections along Crystal Creek that have not been developed or feature less intensive development. If the intent of the 2020 Stream



Guidance is to protect streams and existing riparian habitat, it appears that Crystal Creek would provide the most benefit from the new stream guidance.

**Recommendation:**

We recommend that the City of Cle Elum Planning Commission take one of two strategies to addressing the comments presented by the WDFW:

1. CAO Version 1: Move forward with the Draft CAO Amendments Version 1 that was presented at the March 16, 2021 Planning Commission and does not address WDFW stream buffer comments;
2. CAO Version 2 (preferred option): Move forward with the Draft CAO Amendments Version 2 that has been included with this packet and adopts site-potential-tree-height buffers for Crystal Creek only.

Full incorporation of the 2020 Stream Guidance would significantly increase non-conformities within the City and would likely cause avoidance of redevelopment due to stream buffer impacts. Additionally, Crystal Creek is the only stream with major development pressure. It is recommended that the City continues with the proposed 25-foot and 50-foot buffers measured from the OHWL for all non-fish and fish bearing streams, except Crystal Creek. On Crystal Creek, we recommend that the buffer be based on the SPTH measured from the CMZ as recommended by the 2020 Stream Guidance. This will allow the City to protect the streams within the developed portions of the City without causing significant non-conformity issues, while also allowing for greater protections along Crystal Creek where the City may see future development. The Draft CAO Amendments Version 2 includes the WDFW recommended definitions, reference to the 2020 Stream Guidance, new stream report requirements, and streams buffers for Crystal Creek based on Site-Potential-Tree Height. All other streams would be regulated by water type and standard buffer as recommended by the BAS and previously reviewed by the Planning Commission.

\\ahbl.com\data\Projects\2020\2200315\30\_PLN\Working\_Files\Staff Reports\20210330-AHBL-Response-WDFW-CAO-Comments-2200315.docx

CITY OF CLE ELUM  
PLANNING COMMISSION MEETING  
Meeting Minutes  
March 16, 2021 6:00

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6 **1. Call to Order & Roll Call**

7 *Commissioner Berndt called the meeting to order at 6:01pm. All Commissioners were*  
8 *present.*

9 **Set Agenda**

10 *Commissioner Hawk motioned and Commissioner Torrey seconded to set the agenda as*  
11 *presented. Motion passed.*

12 **2. Review of the minutes**

13 *Review minutes from February 16, 2021. Commissioner Torrey motioned and*  
14 *Commissioner Hawk seconded to accept the minutes as presented. Motion passed.*

15 **3. Staff Report**

16 *Staff yielded their time in light of full agenda.*

17 **4. Citizen Comments on Non-Agenda Items (limited to 5 minutes)**

18 *None.*

19 **5. Public Appearances**

20 *None.*

21 **6. New Business**

22 a. **Draft 2021 Planning Commission Work Program – Gregg Dohrn**

23 *Mr. Dohrn requested to review the work program at a later meeting because of*  
24 *potential changes based on the outcome from hearings on this agenda and whether*  
25 *there are any submittal for comprehensive plan amendments [due March 31]. Mr.*  
26 *Dohrn anticipates reviewing the work program at the Commission's next meeting and*  
27 *then as needed and quarterly or as-needed thereafter.*

28 b. **Future Land Use Map (FLUM) – Gregg Dohrn**

29 *Planning consultant Gregg Dohrn introduced the Future Land Use Map and the*  
30 *iterative process the Commission can expect. Mr. Dohrn introduced the Future Land*  
31 *Use Map (FLUM), which is used to evaluate changes to the zoning map. The FLUM*  
32 *presented by Mr. Dohrn is what is in effect today and stated that there are planned*  
33 *changes. Discussion will ultimately be provided to the City Council for adoption.*

34 *The FLUM shows a mix of industrial, commercial, and residential along First Street.*  
35 *Mr. Dohrn asked if the City's vision is to have residences next to industrial and*  
36 *commercial or whether that area would be additional industrial and commercial.*

37 *Discussion included foreseeable future development of the First Street corridor,*  
38 *planning for more attractive downtown entrances, rezoning some of the industrial*  
39 *areas away from downtown, developing downtown "gateways", and different*  
40 *levels/types of commercial zoning.*

41 *Mr. Dohrn asked for the Commission's thoughts on the future of Second Street,*  
42 *particularly on the south side. Discussion ensued regarding potential commercial*  
43 *zoning along West Second Street*

Commissioner Berndt asked how the Commission could develop a set of recommendations to be the most productive. Mr. Dohrn responded that after each Commission discussion, revised maps with notes will be presented to the Commission for follow-up discussion.

Official Zoning Map (OZM) – Gregg Dohrn

The agenda did not allow time for this agenda item.

**7. Business Requiring Open Hearing**

**a. Joint Public Hearing on Shoreline Master Program Periodic Update – City/Ecology**

- City consultant Josh Kubitza of AHBL presented a PowerPoint introducing proposed changes to the Shoreline Master Program (SMP).
- Commissioner Torrey recused herself since she is an agency representative for the Washington Department of Fish & Wildlife (WDFW) who submitted comments. Commissioner Torrey muted her microphone and did not participate in the discussion.
- Commissioner Berndt opened the public hearing at 7:16pm.
- Testimony was taken from Jennifer Nelson from WDFW who made the Commission aware that the agency submitted comments on the SMP earlier in the day. Commissioners should be aware of the draft online Habitat and Species Maps and channel migration maps. Encourage city to incorporate and implement best available science of the WDFW proposed aquatic area protection.
- Public comment portion of the hearing was closed at 7:22pm.
- Discussion of the SMP and proposed changes and how the WDFW comments might alter the draft SMP as presented to the Commission. AHBL added that the WDFW comments do add some complexity to the process which has already been presented to the public through the hearing notices and the SEPA process.
- The Ecology checklist includes the best guidance and state law updates that the City is required to include. If the discussions with the Ecology based on WDFW changes require additional changes to be made would result in a schedule change that would delay the City's adoption of the WDFW proposed changes.
- Chelsea Benner of Ecology informed the Commission that the joint comment period ends on March 3, 2021. Once the comment period is over, the comments are formally responded to and the comments and drafts are submitted to Ecology. If amendments are added to the draft that was circulated, the City can bring the SMP review back to the Commission at their discretion. Ms. Benner highlighted the complete timeline of the review, approval, and appeals process. After the June 30, 2021 deadline all work must be paid for by the City.
- The City could cover the amendment in a locally-initiated amendment at any time.
- Public hearing was closed at 7:48pm and Commissioner Berndt asked the Commission for action on how to move forward.
- Ecology needs comments and the proposed SMP to be submitted within 30 days of the close of the joint public comment period, which allows time for AHBL to present a high-clip assessment of how WDFW SMP comments would change the

scope, schedule, and budget of the project, which has a June 30, 2021 deadline requirement.

- Commissioner Berndt asked for a motion to continue the discussion of the SMP action to the April 6<sup>th</sup> meeting where the Commission will hear from AHBL on extent of SMP comments and how the process might change accordingly. Commissioner Graham moved and Commissioner Hawk seconded. Motion passed.

**b. Public Hearing on Critical Areas Ordinance Update – City**

- City consultant Josh Kubitza of AHBL presented a PowerPoint introducing proposed changes to the Critical Areas Ordinance (CAO).
- Commissioner Torrey remained recused during this portion of the meeting since she is an agency representative for WDFW who submitted comments on the draft CAO. Commissioner Torrey's microphone remained muted and she did not participate in the discussion.
- Commissioner Berndt opened the public hearing at 8:12pm.
- Testimony was taken from Jennifer Nelson from WDFW who made the Commission aware that there are other critical areas besides Crystal Creek. Ms. Nelson stated that the riparian protection area should be no less than 100 feet and should be based on the height of trees used horizontally within the riparian zone.
- Public comment portion of the hearing was closed at 8:16 pm.
- The Commission and staff discussion included how the proposed changes would impact the process. Staff provided an overview of how the SMP and CAO are different, and how they may overlap, in addition to why the City chose to run the SMP/CAO processes simultaneously.
- The discussion of the WDFW comments surrounded the Site Potential Tree Height (SPTH) rather than standard stream buffers.
- Public hearing was closed at 8:56 pm and Commissioner Berndt asked the Commission for action on how to move forward.
- Commissioner Hawk made a motion to continue the discussion of the proposed CAO to the next Commission meeting on April 6<sup>th</sup>, 2021. Staff and consultants will provide WDFW comments and proposed recommended changes.

**8. Unfinished Business**

None.

**9. Report of Committees**

None.

**10. Commissioner Comments and Discussion**

Deliverables for the next meeting: SMP – AHBL will assess how comments might be addressed reasonably to reach a Commission decision for recommendation to City Council, and CAO – AHBL will assess how WDFW comments might be addressed reasonably and how that might change the scope, schedule, and budget for the project.

**11. Adjournment**

*Commissioner Fluegge motioned and Commissioner Hawk seconded to adjourn the meeting at 9:02pm. Next regular meeting Tuesday, April 6, 2021, 6:00 pm.*

CITY OF CLE ELUM  
PLANNING COMMISSION MEETING  
Meeting Minutes  
April 6, 2021 6:00

**1. Call to Order & Roll Call**

*Commissioner Berndt called the meeting to order at 6:00pm. Commissioners Peterson and Graham were absent. Commissioner Hawk motioned and Commissioner Fluegge seconded to excuse Commissioner Graham. Motion passed.*

**Set Agenda**

*Commissioner Fluegge motioned and Commissioner Hawk seconded to set the agenda as presented. Motion passed.*

**2. Review of the minutes**

*Review minutes from March 16, 2021. Commissioner Torrey motioned and Commissioner Hawk seconded to accept the minutes as presented. Motion passed.*

**3. Staff Report**

*Staff yielded their time considering the full agenda.*

**4. Citizen Comments on Non-Agenda Items (limited to 5 minutes)**

*None.*

**5. Public Appearances**

*None.*

**6. Business Requiring Open Hearing**

*None.*

**7. New Business**

**a. First and Second Street plans – Lucy Temple**

*Staff presented the City's First and Second Street plans in response to a discussion at the March 16<sup>th</sup> Commission meeting when consultant Gregg Dohrn and the Commission discussed future land use plans for the commercial and industrial areas. The City is pursuing a pedestrian/bike (residential) focus on Second Street, a commerce/tourism/dining focus on First in the Downtown Core, and an industrial/freight focus on Railroad Street.*

**8. Unfinished Business**

**a. Announcements, appointments, awards, & recognition**

**i. Summary of training for Commission meetings – Pam Hawk/Lucy Temple**

*The City Planner provided a summary of the Jurassic Parliament course she, Commissioners Berndt and Hawk, the City's Mayor, and Clerk all attended in February.*

**b. Continued Review of Future Land Use Map**

*Planning consultant Gregg Dohrn led the Commission through a continued discussion about updating the Future Land Use Map. Mr. Dohrn with specific areas of discussion.*

*Mr. Dohrn also introduced a discussion about vacant parcels based on their current zoning.*

**c. Shoreline Master Program – ongoing discussion**

1 Staff presented the Shoreline Master Program (SMP) periodic review  
2 recommendation based on best available science and WDFW comments, and  
3 commissioner discussion followed.

4 *Commissioner Hawk motioned to accept the SMP as proposed as part of the SMP*  
5 *periodic review, without incorporating the 2020 Stream Guidance until Ecology has*  
6 *worked with WDFW to publish guidance for how local jurisdictions can incorporate*  
7 *this guidance. Commissioner Fluegge seconded. Motion passed.*

8 d. **Critical Areas Ordinance – ongoing discussion**

9 Staff presented the Critical Areas Ordinance (CAO) recommendations from the CAO  
10 consultants based on best available science and WDFW comments, and commissioner  
11 discussion followed.

12 *Commissioner Hawk moved to accept the consultant recommendation of CAO*  
13 *Version 2 establishing 25-50-ft buffers from the O~~W~~WL, except on Crystal Creek*  
14 *where the buffer will be based on SPTH measured from the CMZ as recommended by*  
15 *the 2020 Stream Guidance. The motion was seconded by Commissioner Fluegge. The*  
16 *motion passed.*

17  
18 *Commissioner Berndt requested a motion to recommend amendments to the SMP and*  
19 *CAO as proposed to the City Council. Commissioner Hawk moved and Commissioner*  
20 *Fluegge seconded. Motion passed.*

21  
22 9. **Report of Committees**

23 None.

24 10. **Commissioner Comments and Discussion**

25 None.

26 **Adjournment**

27 *Commissioner Berndt adjourned the meeting at 8:15pm. Next regular meeting Tuesday,*  
28 *April 20, 2021, 6:00 pm.*

CITY OF CLE ELUM  
PLANNING COMMISSION MEETING  
Meeting Minutes  
April 20, 2021 6:00

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6 **1. Call to Order & Roll Call**

7 *Commissioner Berndt called the meeting to order at 6:00pm. Commissioner Peterson was*  
8 *absent.*

9 **Set Agenda**

10 *Commissioner Fluegge motioned and Commissioner Torrey seconded to set the agenda*  
11 *as presented. Motion passed.*

12 **2. Review of the minutes**

13 *Review minutes from April 6, 2021. Commissioner Torrey motioned and Commissioner*  
14 *Fluegge seconded to accept the minutes as presented. Motion passed.*

15 **3. Staff Report**

16 *Staff reported that on April 9, 2021 the City issued a notice of an application for a minor*  
17 *modification to the City Heights development agreement with a two-week comment*  
18 *period ending on April 23, 2021. Staff also reported that on April 16, 2021 the City*  
19 *published the Final Supplemental Environmental Impact Statement for and that an*  
20 *application for the development is anticipated now that the EIS process is complete. Staff*  
21 *advised that additional information for both projects are on the City's website.*

22 *Commissioners commented that the notice for City Heights did not include sufficient*  
23 *detail on the proposed modification and that commissioners did not receive the*  
24 *notifications. Gregg Dohrn discussed the modification in terms of a limited potential for*  
25 *public comment at this time, the modification of Summit View Road, and concerns of the*  
26 *City for park dedications. Mr. Dohrn encouraged the Commissioners to review the terms*  
27 *of the approval. Mr. Dohrn also included a recommendation to review the City's website.*

28 **4. Citizen Comments on Non-Agenda Items (limited to 5 minutes)**

29 *None.*

30 **5. Public Appearances**

31 *None.*

32 **6. Business Requiring Open Hearing**

33 *None.*

34 **7. Unfinished Business**

35 **a. Announcements, appointments, awards, & recognition**

36 *None.*

37 **b. Posting Commission packets to website.**

38 *Staff advised that the Commission's packets have been posted to the Planning*  
39 *Commission's agendas and minutes page on the City's website and would be*  
40 *available at that location in the future.*

41 **c. Request for update on Commission's role in recommending the SMP/CAO to City**  
42 **Council**

43 *Staff updated the Commission on the status of the SMP/CAO with an additional*  
44 *Planning Commission public hearing at the May 4, 2021 meeting. This will be*

1 followed by a presentation of the formal recommendation to City Council at one of  
2 their May meetings.

3 d. Review of Future Land Use Map – Gregg Dohrn

4 Planning consultant Gregg Dohrn led the Commission through a continued discussion  
5 about updating the Future Land Use Map (FLUM). Mr. Dohrn highlighted several  
6 sections of the FLUM and asked the commissioners for their preferences in each area.  
7 Discussions focused on best locations for industrial, commercial, and residential  
8 areas. Mr. Dohrn informed the Commissioners that a further discussion about multi-  
9 family zoning would commence at the next meeting. Commissioners also discussed  
10 the potential for a green space in the vicinity of Crystal Creek south of First Street.

11 Mr. Dohrn also highlighted the Urban Growth Areas adjacent to the City limits and a  
12 discussion ensued about these areas and their potential to annex into the City.

13 **8. New Business**

14 a. Introduce Comprehensive Plan amendment received – Gregg Dohrn

15 Agenda did not reach this item.

16 b. Introduce Official Zoning Map and Table of Permitted Uses – Gregg Dohrn

17 Agenda did not reach this item.

18 **9. Report of Committees**

19 None.

20 **10. Commissioner Comments and Discussion**

21 Mr. Dohrn said he will provide the updated maps and provide large poster copies to the  
22 Commission before their next meeting.

23 Staff announced the Commission's iPads should be available by the next regular meeting  
24 and that Commissioners will need to sign a document acknowledging receipt.

25 **Adjournment**

26 *Commissioner Berndt called for a motion to adjourn. Commissioner Fluegge motioned*  
27 *and Commissioner Hawk seconded to adjourn the meeting at 7:32pm. Next regular*  
28 *meeting Tuesday, May 4, 2021, 6:00 pm.*

CITY OF CLE ELUM  
PLANNING COMMISSION MEETING  
Meeting Minutes  
May 4, 2021 6:00

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6 **1. Call to Order & Roll Call**

7 *Commissioner Berndt called the meeting to order at 6:00pm. Commissioner Fluegge was*  
8 *absent. Commissioner Torrey motioned and Commissioner Hawk seconded to excuse*  
9 *Commissioner Fluegge.*

10 **Set Agenda**

11 *Commissioner Torrey motioned and Commissioner Hawk seconded to set the agenda as*  
12 *presented. Motion passed.*

13 **2. Adoption of Minutes**

14 *Review minutes from April 20, 2021. Commissioner Hawk motioned and Commissioner*  
15 *Torrey seconded to accept the minutes as presented. Motion passed.*

16 **3. Staff Report**

17 *Staff announced the Commission's iPads will be distributed when setup is complete.*  
18 *Staff reported on older developments or approvals in response to an email request from*  
19 *Commissioner Torrey. Mr. Dohrn assisted with filling in details for Cle Elum Pines West*  
20 *and City Heights current statuses, neither of which are likely to come before the Planning*  
21 *Commission. Mr. Dohrn advised that the Commission might see the 47 Degrees North*  
22 *project, which may need a public hearing for modifications to the master site plan. Mr.*  
23 *Dohrn*

24 **4. Citizen Comments on Non-Agenda Items (limited to 5 minutes)**

25 *None.*

26 **5. Public Appearances**

27 *None.*

28 **6. Business Requiring Open Hearing**

29 **a. Proposed Critical Areas Ordinance amendments**

- 30 • *Staff provided a brief background before the hearing on the proposed Critical*  
31 *Areas Ordinance and reason for the second hearing.*
- 32 • *Commissioner Torrey recused herself since she is an agency representative for the*  
33 *Washington Department of Fish & Wildlife (WDFW) who submitted comments.*  
34 *Commissioner Torrey muted her microphone and did not participate in the*  
35 *discussion.*
- 36 • *Commissioner Berndt opened the public hearing at 6:38pm.*
- 37 • *No comments were received.*
- 38 • *Commissioners discussed the proposed ordinance amendment.*
- 39 • *Commissioner Berndt asked for a motion to adopt a recommended version.*  
40 *Commissioner Graham moved to recommend version 2 of the Critical Areas*  
41 *Ordinance to the City Council and Commissioner Hawk seconded. Motion*  
42 *passed.*

43 **7. Unfinished Business**

44 **a. Announcements, appointments, awards, & recognition**

- 1 None.
- 2 b. Continued Review of potential Future Land Use Map amendments – Gregg Dohrn
- 3 Mr. Dohrn presented the potential Future Land Use Map (FLUM) and a draft of the
- 4 potential amendments to the goals and policies of the Comprehensive Plan that will
- 5 accompany the FLUM.
- 6 **8. New Business**
- 7 a. Introduce Official Zoning Map and Table of Permitted Uses – Gregg Dohrn
- 8 Mr. Dohrn presented the draft Official Zoning Map and will plan to provide
- 9 additional information at the next meeting. The next meeting will discuss potential
- 10 changes to the draft Zoning map and particularly multi-family zoning.
- 11 Mr. Dohrn will provide this information to the Commissioners and a map that
- 12 highlights priority areas for future property acquisition areas.
- 13 Time did not allow for a presentation of the Table of Permitted Uses by Mr. Dohrn.
- 14 **9. Report of Committees**
- 15 None.
- 16 **10. Commissioner Comments and Discussion**
- 17 Commissioner Berndt requested staff and Mr. Dohrn to discuss a work plan at the next
- 18 meeting. Commissioners brought up a design guideline priority, particularly at entrance
- 19 points into the City.
- 20 **Adjournment**
- 21 *Commissioner Berndt called for a motion to adjourn. Commissioner Torrey motioned*
- 22 *and Commissioner Hawk seconded to adjourn the meeting at 7:31pm. Next regular*
- 23 *meeting Tuesday, May 18, 2021, 6:00 pm.*

**CITY OF CLE ELUM  
WASHINGTON  
ORDINANCE NO. 1653**

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**AN ORDINANCE OF THE CITY OF CLE ELUM,  
WASHINGTON, AMENDING THE CRITICAL AREAS  
PROTECTION ORDINANCE, 18.01 CEMC; PROVIDING  
FOR SEVERABILITY; AND ESTABLISHING AN  
EFFECTIVE DATE**

---

WHEREAS, the Critical Areas Ordinance (CAO) is a set of development regulations that serves to protect sensitive areas in the City, including wetlands, steep slopes, fish and wildlife habitat areas, and critical aquifer recharge areas; and

WHEREAS, as part of the City's compliance with the Growth Management Act, the City is required to review its CAO in accordance with new best available science and make updates, as necessary; and

WHEREAS, the City's current CAO was last amended in 2010 (Ordinance No. 1335), as codified in Chapter 18.01 CEMC; and

WHEREAS, beginning in August 2020, a Best Available Science document was developed for the City to determine required amendments to bring the regulations into concurrence with state law, per the Department of Commerce Critical Areas Ordinance Checklist; and

WHEREAS, public comment was solicited throughout the process via the City's website and interested parties were kept up to date via social media and news media; and

WHEREAS, an open house was held in November 2020 which provided an opportunity for visioning and identification of high priority issues and sought specific input on several issues; and

WHEREAS, in February 2021, the City prepared draft amendments for review by other agencies and the public and feedback received was incorporated into the review and subsequent drafts; and

WHEREAS, a public hearing was held before the Cle Elum Planning Commission on March 16, 2021 to collect public comments on the proposed amendments; and

WHEREAS, following public testimony by the Washington State Department of Wildlife (WDFW), the City made additional revisions to the CAO, incorporating WDFW's guidance on

stream buffers into the ordinance for Crystal Creek, a fish-bearing stream that is not regulated under the City’s Shoreline Master Program; and

WHEREAS, due to substantive WDFW comments, the City noticed a new public hearing on the CAO to incorporate feedback on the new revisions; and

WHEREAS, on May 4, 2021, the Planning Commission continued the Public Hearing, heard public comment, deliberated on the proposed action, and voted to recommend amendments to Chapter 18.01 CEMC – Critical Areas Protection to the City Council; and

WHEREAS, on September 6, 2023, the Planning Commission reviewed updated comments from the Department of Ecology and voted to accept the changes as presented and to recommend amendments to Chapter 18.01 CEMC – Critical Areas Protection to the City Council; and

WHEREAS, it is in the interest of the health, safety, and welfare of the City to adopt the regulations as described below.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLE ELUM, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Chapter 18.01 CEMC (“Critical Areas Protection”), Amended. Cle Elum Municipal Code Section 18.01 is hereby amended to read as set forth in the attached Exhibit A and incorporated herein by this reference.

Section 2. Severability. Should any portion of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE**  
**\_\_\_\_\_ DAY OF \_\_\_\_\_ 2023.**

CITY OF CLE ELUM

\_\_\_\_\_  
Jay McGowan, Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Debbie Lee, City Clerk

## Chapter 18.01

### CRITICAL AREAS PROTECTION\*

#### Sections:

|                  |                                                        |
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\* Editor's note: Ord. No. [1335](#), § 1, adopted Nov. 9, 2010, amended Ch. [18.01](#) in its entirety to read as herein set out. Former ch. 18.01, §§ 18.01.010 – 18.01.520, pertained to maintenance, enhancement and preservation of critical areas, and derived from Ord. [1039](#), adopted 1996.

#### 18.01.010 Purpose.

The purpose of this chapter is to protect the functions and values of critical areas, and to protect the public health, safety, and welfare of the citizens of Cle Elum. Additionally, this chapter is intended to protect public and private property and natural ecosystems found within city limits. [The City of Cle Elum shall regulate all uses, activities and developments within, adjacent to, or likely to affect, one or more critical areas, consistent with the best available science and the provisions herein.](#) The City of Cle Elum finds that development in and/or near critical areas may pose a threat to public and private property, to natural ecosystems and to the public health, safety and welfare. This chapter aims to protect critical areas and to channel development to less ecologically sensitive areas.

(Ord. 1335 § 1, 2010)

## 18.01.020 Definitions.

[The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

“Anadromous fish” means fish that spawn and rear in freshwater and mature in the marine environment.

“Best available science” means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 925. Sources of best available science are included in “Best Available Science For the City of Cle Elum, Washington” prepared dated October 28, 2020 or amended.

“Buffer” means an area contiguous to and protects a critical area that is required for the continued maintenance, functioning, and/or structural stability of a critical area. “Buffer” or “wetland buffer” shall mean those standard buffer widths as shown on attached in CEMC 18.01.070 Table 18.01-12.

Table 18.01-1. Table Wetland Buffer Requirements

| <b>Wetland Category</b>               | <b>Standard-Buffer-Width</b> |
|---------------------------------------|------------------------------|
| Category I: Based on total score      | 75 ft                        |
| Category I: Forested                  | 75 ft                        |
| Category I: Bogs                      | 190 ft                       |
| Category I: Alkali                    | 150 ft                       |
| Category I: Natural Heritage Wetlands | 190 ft                       |
| Category II: Based on total score     | 75 ft                        |
| Category II: Vernal Pool              | 150 ft                       |
| Category II: Forested                 | 75 ft                        |
| Category III: (all)                   | 60 ft                        |
| Category IV: (all)                    | 40 ft                        |

“Critical areas” include the following areas and ecosystems:

1. Wetlands;
2. Areas with a critical recharging effect on aquifers used for potable water;

3. ~~Fish and wildlife habitat conservation areas;~~

4. ~~Frequently flooded areas; and~~

5. ~~Geologically hazardous areas.~~

"Channel migration zone (CMZ)" means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings. ~~"Fish and wildlife habitat conservation areas"~~

"Compensatory mitigation" means replacing project-induced critical areas losses or impacts, and includes, but is not limited to restoration, creation, enhancement, and/or preservation.

"Creation" means actions performed to intentionally establish a critical area at a site where it did not formerly exist.

"Critical aquifer recharge area (CARA)" means an area designated by WAC 365-190-100 that is determined to have a critical recharging effect on aquifers (i.e., maintain the quality and quantity of water) used for potable water as defined by WAC 365-190-030(3). These areas include the following:

1. Wellhead Protection Areas;
2. Sole Source Aquifers;
3. Susceptible Ground Water Management Areas;
4. Special Protection Areas;
5. Moderately or Highly Vulnerable Aquifer Recharge Areas; and
6. Moderately or Highly Susceptible Aquifer Recharge Areas.

"Enhancement" means actions performed within an existing degraded shoreline, critical area, and/or buffer to intentionally increase or augment one or more ecological functions or values of the existing area. Enhancement actions include, but are not limited to, increasing plant diversity and cover; increasing wildlife habitat and structural complexity (snags, woody debris); installing environmentally compatible erosion controls; or removing non-indigenous plant or animal species.

"Fish and wildlife habitat conservation areas" are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat,

winter range, and movement ~~corridors~~, and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species.

- ~~1. "Habitats of local importance" designated as fish and wildlife habitat conservation areas include those areas found to be locally important by counties and cities.~~
- ~~2. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company. include:~~
  - ~~1. Areas with which endangered, threatened, and sensitive species have primary association;~~
  - ~~2. Habitats and species of local importance;~~
  - ~~3. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish and wildlife habitat;~~
  - ~~4. Waters of the state;~~
  - ~~5. State natural area preserves and natural resource conservation areas.~~

~~"Frequently flooded areas" means lands in the floodplain subject to a one percent (1%) or greater chance of flooding in any given year, or within areas subject to flooding due to high groundwater and those lands that provide important flood storage, conveyance, and attenuation functions. These areas include, but are not limited to, streams, rivers, lakes, wetlands, and areas where high groundwater forms ponds on the ground surface include those flooded areas in the 100-year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program, and Crystal Creek and ephemeral drainages identified by DNR and the Washington Department of Fish and Wildlife (WDFW) and other frequently flooded areas.~~

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

~~"Floodplain" are all areas subject to inundation by the base flood, but outside the limits of the floodway. Those portions of the A, AE, AH, and shaded X zones not defined as floodway, and that portion of a pothole and FEMA shaded X zone area that is between zero feet (base flood elevation) and three feet in depth.~~

~~"Geologically hazardous area" means an area that is not suited to commercial, residential, or industrial development because of its susceptibility to erosion, sliding, earthquakes, or other geological events hazardous to public health or safety.~~

~~"In-kind compensation" means to replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity. -The determination of in-~~

kind versus out-of-kind compensation for wetlands is dependent upon equivalency in wetland functions, not wetland categories.

“Mitigation” -means avoiding, minimizing or compensating for adverse critical areas impacts. Mitigation, in the following order of preference, is:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
3. Rectifying the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project;
4. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;
5. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
6. Compensating for the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
7. Monitoring the hazard or other required mitigation and taking remedial action when necessary.

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

“Moderately or highly susceptible aquifer recharge areas” means aquifer recharge areas moderately or highly susceptible to degradation or depletion because of hydrogeologic characteristics are those areas meeting the criteria established by the Washington State Department of Ecology (Ecology).

“Moderately or highly vulnerable aquifer recharge areas” means aquifer recharge areas that are moderately or highly vulnerable to degradation or depletion because of hydrogeologic characteristics are those areas delineated by a hydrogeologic study prepared in accordance with Ecology guidelines.

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

“Ordinary high watermark (OHWM)” on all lakes, rivers, and streams means that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the

abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the Washington State Department of Ecology; provided that in any area where the OHWM cannot be found, the OHWM salt water shall be the line of mean higher high tide and the OHWM adjoining freshwater shall be the line of mean high water.

"Priority habitat" means a habitat type with a unique or significant value to one (1) or more species. An area classified and mapped as priority habitat must have one (1) or more of the following attributes: comparatively high fish or wildlife densities; comparatively high fish or wildlife species diversity; fish spawning habitat; important wildlife habitat; important fish or wildlife seasonal range; important fish or wildlife movement corridors; rearing and foraging habitat; refuge; limited availability; high vulnerability to habitat alteration; unique or dependent species; or shellfish beds. A priority habitat may be described by its unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be described by a successional stage (such as old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or non-priority fish and wildlife (WAC 173-26-020(28)).

"Priority species" means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed in WAC 173-26-020(29).

"Rehabilitation" means a type of restoration action intended to repair natural or historic functions and processes. Activities could involve breaching a dike to reconnect wetlands to a floodplain or other activities that restore the natural water regime.

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

"Riparian" means alongside a waterbody: stream, river, lake, pond, bay, sea, and ocean. Riparian areas are sometimes referred to by different names: riparian ecosystems, riparian habitats, riparian corridors, or riparian zones.

"Riparian Management Zone (RMZ) means a delineable area defined in a land use regulation; often synonymous with riparian buffer. For the purposes of this document, we define the RMZ as the area that has the potential to provide full riparian functions. In many forested regions of the state this area occurs within one 200-year site-potential tree height (SPTH) measured from the edge of the stream channel. In situations where a channel migration zone is present, this occurs within one site-potential tree height measured from the edges of the channel migration zone. In non-forest zones the RMZ is defined by the greater of the outermost point of the riparian vegetative community or the pollution removal function, at 100-feet.

“Site-Potential Tree Height” means the average maximum height of the tallest dominant trees for a given age and site class.

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

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

“Susceptible ground water management areas” means areas that have been designated as moderately or highly vulnerable or susceptible in an adopted ground water management program developed pursuant to WAC 173-100.

“Type F waters” means segments of natural waters other than Type S Waters, which are within the bankfull widths of defined channels and periodically inundated areas of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low water and which in any case contain fish habitat or are described by one of the following categories:”

1. Waters, which are diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type F Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;
2. Waters, which are diverted for use by federal, state, tribal or private fish hatcheries. Such waters shall be considered Type F Water upstream from the point of diversion for 1,500 feet, including tributaries if highly significant for protection of downstream water quality. The department may allow additional harvest beyond the requirements of Type F Water designation provided the department determines after a landowner-requested on-site assessment by the department of fish and wildlife, Ecology, the affected tribes and interested parties that:
  - a. The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and
  - b. Such additional harvest meets the requirements of the water type designation that would apply in the absence of the hatchery;
3. Waters, which are within a federal, state, local, or private campground having more than 10 camping units: Provided, That the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within 100 feet of a camping unit, trail or other park improvement;
4. Riverine ponds, wall-based channels, and other channel features that are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria:

- a. The site must be connected to a fish habitat stream and accessible during some period of the year; and
- b. The off-channel water must be accessible to fish.

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

“Type Np Water” mean all segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry any time of a year of normal rainfall and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.

“Type Ns Water” means all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for a least some portion of a year of normal rainfall and are not located downstream from and stream reach that is a Type Np Water. Ns Waters must be physically connected by an above-ground channel system to Type S, F, or Np Waters.

“Type S Waters” means all waters, within their bankfull width, as inventoried as “shorelines of the state” under chapter 90.58 RCW and the rules promulgated pursuant to chapter 90.58 RCW including periodically inundated areas of their associated wetlands. As of August 2020, the only known Type S waters in Cle Elum are the Yakima and Cle Elum rivers.

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

- a1. A qualified professional for wetlands must be a professional wetland scientist with at least two years of full time work experience as a wetlands professional, including delineating wetlands using the state or federal manuals, preparing wetlands reports, conducting function assessments, and developing and implementing mitigation plans.
- b2. A qualified professional for habitat must have a degree in biology or a related degree and professional experience related to the subject species.
- e3. A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the State of Washington.
- d4. A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

~~“Qualified scientific expert” has the expertise appropriate to the relevant critical areas and is determined by the person’s professional credentials and/or certification, any advanced degrees earned in the pertinent scientific discipline from a recognized university, the number of years experience in the pertinent scientific discipline, formal training in the specific area of expertise, and field and/or laboratory experience with evidence of the ability to produce peer-reviewed publications or other professional literature. No one factor is determinative in deciding whether a person is a qualified scientific expert.~~

~~“Waters of the state” include lakes, rivers, ponds, streams, inland waters, underground waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in RCW 90.48.020.~~

~~“Wellhead protection areas” are areas defined by the boundaries of the ten (10) year time of ground water travel, or boundaries established using alternate criteria approved by the Department of Health in those settings where ground water time of travel is not a reasonable delineation criterion, in accordance with WAC 246-290-135.~~

~~“Wetland or wetlands” means an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and other similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas created to mitigate the conversion of wetlands.~~

(Ord. 1335 § 1, 2010)

#### 18.01.030 Designation and Mapping of critical areas.

A. All areas within the city meeting the definition of one or more critical areas defined above are hereby designated critical areas and are subject to the provisions of this chapter except for critical areas within the City of Cle Elum shorelines. The City of Cle Elum Shoreline Master Program supersedes this chapter for only those critical areas within shoreline designations.

AB. The City of Cle Elum shall regulate all uses, activities and developments within, adjacent to, or likely to affect, one or more critical areas, consistent with the best available science and the provisions herein.

~~— B. Critical areas regulated by this chapter include:~~

C4. Wetlands Designation:

Wetlands are those areas, designated in accordance with the procedures outlined in WAC 173-22-035. All areas within the city meeting the wetland designation criteria as outlined in WAC 173-22-035 are hereby designated critical areas and are subject to the provisions of this chapter. Wetlands shall be rated according to the ~~Washington State Department of~~ Ecology wetland rating system found in the Washington State Wetland Rating System documents (Eastern Washington, Ecology Publication #04-06-~~15030~~) or as revised by Ecology. Wetland delineations are valid for five years; after such date the City shall determine whether a revision or additional assessment is necessary.

1. ~~The approximate location and extent of known wetlands are shown on the adopted critical area map, or the latest revision of this map, as derived from the National Wetlands Inventory. The City's critical area mapping, National Wetland Inventory Map, Soil Surveys, and any Washington Department of Natural Resource wetland is map is mapping are to be used as a guide for the City, project applicants, and/or property owners to identify potential wetland areas, but do not provide a conclusive or definitive indication of wetland presence or extent. Other wetlands may exist that do not appear on the maps and some wetlands that appear on these maps may not meet all of the wetland designation criteria, and may be continuously updated as new critical areas are identified. It is a reference and does not provide a final critical area designation.~~
2. The exact location of a wetland's boundary shall be determined through the performance of a field investigation by a qualified professional

D2. Critical aquifer recharge areas (CARAs) are those areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2). CARAs have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water. Aquifer recharge areas shall be rated as having high, moderate, or low susceptibility based on soil permeability, geologic matrix, infiltration, and depth to water as determined by the criteria established by ~~the state Department of~~ Ecology. ~~These areas include the following:~~

1. ~~a. Wellhead Protection Areas. Wellhead protection areas may be defined by the boundaries of the ten year time of ground water travel or boundaries established using alternate criteria approved by the Washington State Department of Health in those settings where ground water time of travel is not a reasonable delineation criterion, in accordance with WAC 246-290-135.~~
2. ~~Sole Source Aquifers. Sole source aquifers are areas that have been designated by the U.S. Environmental Protection Agency pursuant to the Federal Safe Water Drinking Act.~~
3. ~~Susceptible Ground Water Management Areas. Susceptible ground water management areas are areas that have been designated as moderately or highly vulnerable or susceptible in an adopted ground water management program developed pursuant to WAC 173-100.~~
4. ~~Special Protection Areas. Special protection areas are those areas defined by WAC 173-200-090.~~
5. ~~Moderately or Highly Vulnerable Aquifer Recharge Areas. Aquifer recharge areas that are moderately or highly vulnerable to degradation or depletion because of hydrogeologic characteristics are those areas delineated by a hydrogeologic study prepared in accordance with the state Department of Ecology guidelines.~~

Moderately or Highly Susceptible Aquifer Recharge Areas. Aquifer recharge areas moderately or highly-susceptible to degradation or depletion because of hydrogeologic characteristics are those areas meeting the criteria established by the state Department of Ecology. The city lies over alluvial soil deposits. There are unconsolidated materials composed of silt, sand and gravel, which in places are several hundred feet in depth. This deposit material is important as a water conveying unit and supplies the groundwater of stream flow (recharge). In general, areas of permeable soils in combination with geological transfer structure may be aquifer recharge areas. Based on the information and maps contained in hydrology of the Upper Yakima River Basin and landscape planning, environmental applications, the city is an aquifer recharge area. This is a preliminary determination until further studies of geology and hydrology are conducted on an overall or individual property specific basis to either include or exclude them as an aquifer recharge area

E3. Frequently flooded areas are those areas subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high ground water. These areas include: that have a one percent or greater chance of flooding in any given year. These areas may include, but are not limited to,

1. ~~Water-ways: Including~~ (streams, rivers, lakes, coastal areas, wetlands, and areas where high ground water forms ponds on the ground surface), streams (including intermittent ones), draws/ravines, rivers, wetlands, draws and the like. This includes Crystal Creek. Crystal Creek and ephemeral drainages identified by DNR and the Washington Department of Fish and Wildlife (WDFW).
2. ~~b. Floodways~~ Floodways and Floodplains ~~- Identified in the most recent: the May 5, 1981 FEMA Flood Insurance Rate Map, and as subsequently revised and amended. e. Crystal Creek. Crystal Creek and ephemeral drainages identified by DNR and the Washington State Department of Fish and Wildlife (DFW).~~

F4. Geologically hazardous areas are areas susceptible to erosion, sliding, earthquake, or other geological events, that are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns. Geological hazardous areas as designated by WAC 365-190-080 include those with the following- are characteristics:

1. ~~a.~~ Erosion Hazard Areas. Erosion hazard areas are at least those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "moderate to severe," "severe," or "very severe" rill and inter-rill erosion hazard. Erosion hazard areas are also those areas impacted by shore land and/or stream bank erosion and those areas within a river's channel migration zone.
2. ~~b.~~ Landslide Hazard Areas. Landslide hazard areas are areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible

because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors, and include, at a minimum, the following (per WAC 365-190-120(6)):-

- a. Areas of historic failures, such as:
  - i. Those areas delineated by the United States Department of Agriculture Natural Resources Conservation Service as having a significant limitation for building site development;
  - ii. Those coastal areas mapped as class u (unstable), uos (unstable old slides), and urs (unstable recent slides) in the Ecology coastal atlas; or
  - iii. Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the United States Geological Survey or Washington department of natural resources.
- b. Areas with all three of the following characteristics:
  - i. Slopes steeper than fifteen percent;
  - ii. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
  - iii. Springs or groundwater seepage.
- c. Areas that have shown movement during the holocene epoch (from ten thousand years ago to the present) or which are underlain or covered by mass wastage debris of this epoch;
- d. Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;
- e. Slopes having gradients steeper than eighty percent subject to rockfall during seismic shaking;
- f. Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action, including stream channel migration zones;
- g. Areas that show evidence of, or are at risk from snow avalanches;
- h. Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and
- i. Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of bedrock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief.

- j. Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of bedrock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief.
  - k. Known landslide areas documented by the Washington State Department of Natural Resources (DNR)(2020) and those areas with slopes greater than 35%.
  - l. Known mass wasting areas identified in the 2005 Landslide Hazard Zonation Project – Mass Wasting Assessment prepared by Powell, L.
3. e.—Seismic Hazard Areas. Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, lateral spreading, or surface faulting. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless soils of low density, typically in association with a shallow groundwater table. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington, and ground settlement may occur with shaking. As specified in WAC 365-190-120(7), The strength of ground shaking is primarily affected by:
- a. The magnitude of an earthquake;
  - b. The distance from the source of an earthquake;
  - c. The type of thickness of geologic materials at the surface; and
  - d. The type of subsurface geologic structure.

The Washington Department of Natural Resources Seismic scenario catalog, liquefaction susceptibility, and U.S. Department of Agriculture Natural Resource Conservation Service soil surveys should be consulted. These maps are a reference and do not provide a conclusive or final critical area designation. Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, or surface faulting. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless, loose, or soft-saturated soils of low density, typically in association with a shallow ground water table.

4. d.—Mine Hazard Areas Mine hazard areas are those areas underlain by, adjacent to, or affected by mine workings such as adits, gangways, tunnels, drifts, or air shafts. Factors which should be considered include: Proximity to development, depth from ground surface to the mine working, and geologic material. Mine hazard areas are those areas underlain by or affected by mine workings such as adits, gangways, tunnels, drifts, or airshafts, and those areas of probable sink holes, gas releases, or subsidence due to mine workings. Coal mining activities during the early part of this century left some areas in the Upper Kittitas County honeycombed with abandoned mine workings. Many of these abandoned workings pose a danger to collapse or sinking, especially during a seismic event. Factors

~~that should be considered include: proximity to development, depth from ground surface to the mine-working, and geologic material.~~

5. ~~e.~~—Volcanic Hazard Areas. Volcanic hazard areas are areas subject to pyroclastic flows, lava flows, debris avalanche, and inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.
6. ~~f.~~ Steep Slopes: Known landslide areas documented by the Washington State Department of Natural Resources (DNR)(2020) and are those areas with steep slopes greater than 35%.
7. ~~g.~~—Other Hazard Areas. Geologically hazardous areas shall also include areas determined by the ~~[director]~~ to be susceptible to other geological events including mass wasting, debris flows, rock falls, and differential settlement.

G5. Fish and wildlife habitat conservation areas include ~~those with the following characteristics:~~

1. ~~a.~~—Federally Designated Endangered, Threatened and Sensitive Species. Areas with which federally designated endangered, threatened and sensitive species have a primary association. Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted for current listing status.
2. ~~b.~~—State Designated Endangered, Threatened and Sensitive Species. Areas with which state designated endangered, threatened and sensitive species have a primary association. State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington identified by the Washington Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC 232-12-014 (state endangered species) and WAC 232-12-011 (state threatened and sensitive species). The state Department of Fish and Wildlife maintains the most current listing and should be consulted for current listing status.
3. ~~c.~~—State Priority Habitats and Areas Associated With State Priority Species. Priority habitats and species (PHS) are considered to be priorities for conservation and management. Priority-species-PHS require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority-PHS habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority PHS habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the state Department of Fish and Wildlife.

~~4. d.~~ **Habitats and Species of Local Importance.** Habitats and species of local importance are those identified by the ~~city/county~~ **City of Cle Elum**, including but not limited to those habitats and species that, due to their population status or sensitivity to habitat manipulation, warrant protection. Habitats may include a seasonal range or habitat element with which a species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

**5. Waters of the State.**

**6. Streams.** All streams that meet the criteria for Type S, F or N (Np and Ns) waters as set forth in WAC 222-16-030 and provided in definitions in CEMC 18.01.020. Official Water Type Reference Maps maintained by the Department of Natural Resources should be consulted. These maps are a reference and do not provide a conclusive or final critical area designation.

**7. Naturally occurring and man-made ponds under twenty (20) acres in size.**

~~GC. All areas within the city meeting the definition of one or more critical areas defined above are hereby designated critical areas and are subject to the provisions of this chapter.~~

(Ord. 1335 § 1, 2010)

#### 18.01.040 Construction with other laws.

~~A. Abrogation and Greater Restrictions.~~ It is not intended that this chapter repeals, abrogates, or impairs any existing regulations, easements, covenants, or deed restrictions. However, when this chapter imposes greater restrictions, the provisions of this chapter shall prevail.

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

(Ord. 1335 § 1, 2010)

#### 18.01.050 Permitting.

All applications for permits to conduct activities having a possible significant impact on critical areas that are located on or near a project site must identify the areas affected and make an estimate of the probable impact. The city of Cle Elum shall deny all requests for permits which would result in activities degrading a wetland or fish and/or wildlife habitat conservation area, which would put people or property in a position of unacceptable

risk with respect to floods or geologic hazards, which would tend to aggravate geologic hazards, or which would harm critical recharging areas for aquifers not otherwise in accordance with this Chapter. The city of Cle Elum may, however, grant permits which include mitigation measures if the mitigation measures adequately protect the critical area and people involved. In granting a permit that includes mitigation measures, best available science, which shall be determined utilizing the criteria set out in WAC 365-195-900 through 365-195-925, shall be used to develop and approve the mitigation measures. Applicable permit fees, as set forth by resolution of the city council, are due at the time of application. The applicant shall be responsible for the initiation, preparation, submission, and expense of all required reports, assessment(s), studies, plans, reconnaissance(s), peer review(s) by qualified consultants, and other work prepared in support of or necessary to review the application.

(Ord. 1543 § 1, 2019; Ord. 1335 § 1, 2010)

#### 18.01.055 Determination.

A. Each development permit shall be reviewed to determine if the proposal is within a critical area or critical area buffer. City staff shall use maps and data maintained by the city and a site inspection if appropriate.

~~B. If it is determined that a critical area(s) is present additional assessments prepared by a qualified professional best suited for the type of identified critical area(s) may be required.~~

B. Wetlands. A wetland assessment prepared by a qualified wetlands specialist is required for projects situated within 200 feet of a known or suspected wetland and shall include the following: of a critical area, and or its buffers. The wetland assessment should provide results of a preliminary environmental agency data resources review applicable to the site, field investigation data forms and site photographs, and a map of the delineated critical area and associated buffer areas as it relates to the property's extent and the proposed project footprint.

1. The category and precise location of the boundary of the wetland(s); and
2. Delineated wetlands and required buffers within 200 feet of the project area shall be depicted on the site plan. Best available information includes, but is not be limited to, aerial photos, soils maps, and/or topographic maps; and
3. An analysis of the onsite wetland(s) including the following site- and proposal-related information:
  - a. Documentation of any fieldwork performed on the site, including but not limited to field delineation data sheets for delineations, the wetland rating forms, and baseline hydrologic data;
  - b. A description of the methodologies used to conduct the wetland delineations; and ~~T~~the vegetative, faunal, and hydrologic characteristics of the wetland.

### C. Critical Aquifer Recharge Area.

1. As stated in CEMC 18.01.030.C, the entire city limits is presumed to be located within in critical aquifer recharge area unless a hydrogeologic study demonstrates otherwise. This is a preliminary determination until further studies of geology and hydrology are conducted on an overall or individual property specific basis to either include or exclude them as an aquifer recharge area.
2. All critical aquifer recharge areas shall be classified as having either a high, medium, or low aquifer recharge potential. At a minimum, classification shall be based on soil permeability and recharge potential as described within the Soil Survey of Kittitas County. Where adequate information is available, aquifer recharge potential shall be further classified based on the recharge potential of surficial geologic materials, presence or absence of restrictive layers, surface and groundwater monitoring data, wellhead protection areas, depth to groundwater, topography (i.e., slopes), and locally adopted groundwater protection plans and studies. Land classified as having a high, medium, or low aquifer recharge potential shall also be classified as having a high, medium, or low susceptibility to contamination of an underlying aquifer, respectively. Based on these criteria, the potential for recharging aquifers or transmitting contaminants to the underlying aquifer is greatest where the aquifer is close to the ground surface, where ground surface slopes are minimal, and where the recharge potential of the soils and/or surficial geologic material is greatest. All wellhead protection areas shall be designated as highly susceptible critical aquifer recharge areas. This can be provided in the hydrogeologic study or separate memo prepared by a qualified professional.

### D. Fish Habitat Conservation Area.

1. A critical areas report prepared by a qualified biologist is required if a proposed use or development is located within two hundred (200) feet of a designated fish habitat conservation area and shall include the following:
  - a. Identify the water type as classified according to WAC 222-16-030 and Waters of the State, all streams as classified according to WAC 222-16-030.
  - b. The location of the ordinary high watermark; If located within 200 feet from Crystal Creek, identify the Riparian Management Zone, per Chapter 2 of the Washington Department of Fish and Wildlife Riparian Ecosystems, Volume 2: Management Recommendations. This includes identifying and denoting the Channel Migration Zone and the Site-Potential Tree Height.
  - c. All Fish habitat and Wildlife Habitat Conservation Areas and required buffers within two hundred (200) feet of the project area shall be depicted on the site plan;
  - d. The vegetative, faunal, topographic, and hydrologic characteristics of the Fish and Wildlife Habitat Conservation Areas; and

- e. A detailed discussion of the direct and indirect potential impacts on ~~f~~Fish and Wildlife ~~H~~habitat ~~e~~Conservation ~~a~~Areas by the project. Such discussion shall include a discussion of the ongoing management practices that will protect habitat after the project site has been developed.
- 2. A habitat management plan prepared by a qualified biologist is required for projects situated within 200 feet of a known or suspected fish and wildlife habitat conservation areas. The habitat management plan shall include a discussion of the potential direct and indirect impacts, as well as a discussion of the ongoing management practices that will protect habitat after the project site has been developed. The habitat management plan will include any relevant information and recommendations from the Washington Department of Fish and Wildlife habitat guidelines for the affected species and/or habitat. Based on the characteristics of the site, the City may require that all or a portion of the following be included in a habitat management plan:
  - a. A map drawn to scale or survey showing the location of the fish and wildlife habitat conservation area on the subject property, as well as the approximate location of any potential fish and wildlife habitat conservation area within two hundred (200) feet of the subject property;
  - b. A description of the methodologies used to classify the water type and the associated fish
  - c. Detailed description of vegetation and habitat characteristics within and adjacent to the site;
  - d. Identification of any endangered, threatened, sensitive, or candidate species that have a primary association with habitat on the project area, and assessment of potential project impacts to use of the buffer and critical area on the site by the species;
  - e. Methods and measures to avoid, minimize and/or compensate for adverse impacts associated with the proposed development, including but not limited to:
    - i. Prohibition or limitation of development activities within the fish and wildlife habitat conservation area;
    - ii. Establishment of a buffer around the fish and wildlife habitat conservation area;
    - iii. Retention of vegetation and/or revegetation of areas / habitats critically important to species;
    - iv. Special construction techniques;
    - v. Implementation of erosion and sediment control measures;
    - vi. Habitat enhancement (i.e., fish passage barrier removal);
    - vii. Seasonal restrictions on construction activities on the subject property;
    - viii. Clustering of development on the subject property; and

ix. Any other requirements and/or recommendations from WDFW's habitat management guidelines.

E. Frequently Flooded Areas. A Federal Emergency Management Agency (FEMA) elevation certificate shall be required for new construction, any addition affixed to the side of a structure, and substantial improvements located within flood hazard areas. The most current version of the FEMA elevation certificate must be completed and certified by a professional land surveyor, currently licensed in the state of Washington, kept on file by the city for public inspection, recording the actual (as-built) elevation (in relation to mean sea level) of:

1. The lowest floor, including basement, of all new or substantially improved structures, whether or not the structure contains a basement;
2. For floodproofed nonresidential structures, where the structure was floodproofed (including floodproofing certifications).

F. Geological Hazard Areas Risk Assessment. If it is determined that a landslide, erosion, mine, volcanic and seismic hazard area hazard may be present on or adjacent to a proposed development site, the applicant shall submit a geologic hazard area risk assessment prepared by a professional engineer, engineering geologist, or geologist. The geologic hazard area risk assessment shall include a description of the geology of the site and the proposed development; an assessment of the potential impact the project may have on the geologic hazard; an assessment of what potential impact the geologic hazard may have on the project; appropriate mitigation measures, if any; and a conclusion as to whether further analysis is necessary. The assessment shall be signed by and bear the seal of the engineer or geologist that prepared it. No further analysis shall be required if the geologic hazard area risk assessment concludes that there is no geologic hazard present on the site, nor will the project affect or be affected by any potential geologic hazards that may be nearby. If the professional preparing the geologic hazard area risk assessment concludes that further analysis is necessary, the applicant shall submit a geotechnical report.

G. Geological Hazard Areas Geotechnical Report. If the geological hazard areas risk assessment requires further analysis, a geotechnical report is required. The geotechnical report shall include a certification from the professional preparing the report, including the professional's stamp and signature. The geotechnical report shall include the following:

1. A detailed description of the geology and soil conditions of the site;
2. Evaluation of the geologic conditions giving rise to the geologic hazard;
3. An evaluation of the safety of the proposed project;
4. Conclusions and recommendations regarding the effect of geologic conditions on the proposed development;

5. Conclusions and recommendations on the suitability of the site to be developed;
6. A statement regarding the risk of damage from the project, both on- and off-site; and whether or not the project will materially increase the risk of occurrence of the hazard;
7. The report shall make a recommendation for the minimum no-disturbance buffer and minimum building setback from any geologic hazard based upon the geotechnical analysis.
8. Recommendations concerning drainage practices, vegetation retention and other mitigation and monitoring measures which may be needed to ensure slope stability;
9. Recommended erosion and sediment control measures;
10. A bibliography of scientific citations; and
11. Any other specific measures which must be incorporated into the design and operational plan of the project to eliminate or reduce the risk of damage due to the hazard. This shall include a recommendation on the required buffer or setback distance that must be maintained between the proposed development and the hazard to ensure the safety of the development.~~In cases related to geohazards, the assessment shall include a description of the geology of the site and the proposed development; and assessment of the potential impact the project may have on the geologic hazard; an assessment of what potential impact the geologic hazard may have on the project; appropriate mitigation measures, if any; a conclusion as to whether further analysis is necessary; and be signed by and bear the seal of the engineer or geologist that prepared it.~~~~DE.~~ When a geotechnical report is required it shall include a certification from the engineer preparing the report, including the engineer's professional stamp and signature, stating all of the following:1. The risk of damage from the project, both on and off site;2. The project will not materially increase the risk of occurrence of the hazard; and3. The specific measures incorporated into the design and operational plan of the project to eliminate or reduce the risk of damage due to the hazard

**EH.** All mitigation measures, construction techniques, recommendations and technical specifications provided in the geotechnical report shall be applied during the implementation of the proposal. The engineer of record shall submit sealed verification at the conclusion of construction that development occurred in conformance with the approved plans.

**FG.**~~A proposed development cannot be approved if it is determined by the geotechnical report that either the proposed development or adjacent properties will be at risk of damage from the geologic hazard, or that the project will increase the risk of occurrence of the hazard, and there are no adequate mitigation measures to alleviate the risks.~~(Ord. 1335 § 1, 2010)

### 18.01.060 New permits required for activities in critical areas.

The following activities shall require a critical areas permit if they are not already reviewed through a more general permit in which the applicant has reported a possible impact on a critical area:

- A. In Wetlands: The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter or material of any kind; dumping, discharging, or filling with any material; the draining, flooding, or disturbing of the water level or water table; the driving of piling; the placing of obstructions; the construction, reconstruction, or demolition or expansion of any structure; the destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland, or activities that result in a significant change of water temperature, a physical or chemical characteristics ~~or of the~~ wetland water sources, including quantity, or the introduction of pollutants.
- B. In Critical Aquifer Recharge Areas: Any land use, agricultural activity, or other activity having significant potential to contaminate the water.
- C. In Fish and Wildlife Habitat Conservation Areas: Any land use or other activity having the potential to significantly degrade the habitat or harm wildlife.
- D. In Frequently Flooded Areas: Any land use or other activity likely to contribute to a significant increase in flood hazards or to place a significant number of people in danger.
- E. In Geologically Hazardous Areas: Any land use or other activity likely to contribute to a significant increase in geological hazards or to place people in danger.
- F. Designated critical areas and any associated buffers shall be designated and disclosed on the final plats, maps, documents, etc., as critical area tracts, non-buildable lots and buffer areas or common areas.

(Ord. 1335 § 1, 2010)

### 18.01.070 Performance standards.

The following general performance standards shall apply to activities permitted with-in critical areas or critical area buffers. Additional standards may be necessary based on site specific considerations or proposed development impacts.

#### ~~A. General Performance Standards.~~

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1. ~~Areas of new permanent disturbance and all areas of temporary disturbance shall be mitigated and/or restored pursuant to a mitigation and restoration plan based off of Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance (Version 1, Publication #06-06-011a, March 2006, or as amended) and Wetland Mitigation in Washington State, Part 2: Developing Mitigation Plans (Version 1, Publication #06-06-011b, March 2006, or as amended).~~

2. ~~Mitigation plans shall include a discussion of mitigation alternatives (sequencing) as they relate to:~~

- ~~a. Avoiding the impact altogether by not taking a certain action or parts of an action;~~
- ~~b. Minimizing impacts by limiting the degree or magnitude of the actions and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;~~
- ~~c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;~~
- ~~d. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;~~
- ~~e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or~~
- ~~f. Monitoring the impact and taking appropriate corrective measures.~~

3. ~~All boundaries of critical areas or any associated buffers shall be delineated prior to development activity on site.~~

4. ~~Mitigation Ratios shall mean those wetland mitigation ratios as shown on attached Table 18.01-2.~~

~~Table 18.01-21. Table Wetland Mitigation Ratios~~

| <b>Category and Type of Wetland</b>    | <b>Creation or Re-establishment</b> | <b>Rehabilitation</b> | <b>Enhancement</b> | <b>Preservation</b> |
|----------------------------------------|-------------------------------------|-----------------------|--------------------|---------------------|
| Category I: Bog, Natural Heritage Site | Not considered possible             | 6:1                   | Case-by-case       | 10:1                |
| Category I: Mature Forested            | 6:1                                 | 12:1                  | 24:1               | 24:1                |
| Category I: Based on functions         | 4:1                                 | 8:1                   | 16:1               | 20:1                |
| Category II                            | 3:1                                 | 6:1                   | 12:1               | 20:1                |
| Category III                           | 2:1                                 | 4:1                   | 8:1                | 15:1                |

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| Category and Type of Wetland | Creation or Re-establishment | Rehabilitation | Enhancement | Preservation |
|------------------------------|------------------------------|----------------|-------------|--------------|
| Category IV                  | 4.5:1                        | 3:1            | 6:1         | 10:1         |

AB. Wetland ~~Area~~ Performance Standards.

1. General measures to minimize impacts to wetlands:
  - a. Lights shall be directed away from the wetland.
  - b. Activities that generate noise shall be located away from the wetland, or noise impacts shall be minimized through design or insulation techniques.
  - c. Toxic runoff from new impervious surface area shall be directed away from wetlands.
  - d. Treated storm water runoff may be allowed into vegetated wetland buffers in accordance with provisions of the Eastern Washington Stormwater Manual. Channelized flow shall be prohibited.
  - e. Use of pesticides, insecticides and fertilizers within 150 feet of wetland boundary shall be limited and follow Best Management Practices (BMPs) in Table 18.02-2.
- ~~6. The outer edge of the wetland buffer shall be marked, identified, planted with dense native vegetation and/or fenced with wildlife permeable fencing for the purposes of identifying the wetland buffer area and to discourage human disturbance.~~
2. The following buffer widths have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington State Wetland Rating System for Eastern Washington: 2014 Update (Ecology Publication #14-06-030, or as revised and approved by Ecology). The adjacent land use intensity is assumed to be high. Buffer widths are established to protect the integrity, functions, and values of all regulated wetlands and are measured horizontally in all directions from the regulated wetland edge as marked in the field. The prescribed buffer widths are based on the wetland category and the expected level of impact of the proposed adjacent land use.
  - a. For wetlands that score 6 points or more for habitat function, the buffers in Table 18.01-1 can be used, if both of the following criteria are met: High impact land use: Commercial, urban, industrial, institutional, retail sales, residential (more than 1 unit/acre), hobby farms, and high intensity recreation (golf course, ball fields, etc.) and conversion to high intensity agricultural (dairies, nurseries, greenhouses, growing and harvesting crops requiring annual tilling and raising and maintaining animals, etc).
  - b. Moderate-For wetlands that score 3-5 habitat points, only the measures in Table 18.01-2 are required for the use of Table 18.01-1. impact land use: Residential development (1 unit/acre or less), parks with biking, jogging, etc., paved trails, building of logging roads, conversion or

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~~agriculture related to orchards, hay fields, etc., and utility corridor or right-of-way shared by several utilities.~~

- ~~bc. Low~~ If an applicant chooses not to apply the mitigation measures in Table 18.01-2, or is chooses not to provide a protected corridor where available, then Table 18.01-3 must be used. ~~impact land use includes forestry (cutting of trees only), open space (hiking, bird watching, preservation of natural resources, etc.), unpaved trails, and utility corridors without a maintenance road and little or no vegetation management.~~
- d. The buffer widths in Table 18.01-1 and 18.01-3 assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

Table 18.01-1 Standard Wetland Buffer Requirements, in feet, if Table 18.01-2 is Implemented and a habitat corridor is provided.

| <u>Category of wetland</u>                                                              | <u>Habitat Score 3-5 points (corridor not required)</u> | <u>Habitat Score 6-7 points</u> | <u>Habitat Score 8-9 points</u> | <u>Buffer width based on special characteristics</u> |
|-----------------------------------------------------------------------------------------|---------------------------------------------------------|---------------------------------|---------------------------------|------------------------------------------------------|
| <u>Category I &amp; II: Based on rating of wetland functions (and not listed below)</u> | <u>75</u>                                               | <u>110</u>                      | <u>150</u>                      | <u>NA</u>                                            |
| <u>Category I &amp; II: Forested</u>                                                    | <u>75</u>                                               | <u>110</u>                      | <u>150</u>                      | <u>NA</u>                                            |
| <u>Category I: Bogs, calcareous fens, and Wetlands of High Conservation Value</u>       | <u>NA</u>                                               | <u>NA</u>                       | <u>NA</u>                       | <u>190</u>                                           |
| <u>Category I: Alkali</u>                                                               | <u>NA</u>                                               | <u>NA</u>                       | <u>NA</u>                       | <u>150</u>                                           |
| <u>Category II: Vernal pool</u>                                                         | <u>NA</u>                                               | <u>NA</u>                       | <u>NA</u>                       | <u>150</u>                                           |
| <u>Category III</u>                                                                     | <u>60</u>                                               | <u>110</u>                      | <u>150</u>                      | <u>NA</u>                                            |
| <u>Category IV</u>                                                                      | <u>40</u>                                               | <u>40</u>                       | <u>40</u>                       | <u>NA</u>                                            |

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|                                                                                                                           | <b><u>Buffer Width (in feet) Based on Habitat Score</u></b>                   |                   |                   |
|---------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|-------------------|-------------------|
| <b><u>Wetland Category</u></b>                                                                                            | <b><u>3-5</u></b>                                                             | <b><u>6-7</u></b> | <b><u>8-9</u></b> |
| <b><u>Category I:</u></b><br><b><u>Based on total score</u></b>                                                           | <b><u>75</u></b>                                                              | <b><u>110</u></b> | <b><u>150</u></b> |
| <b><u>Category I:</u></b><br><b><u>Forested</u></b>                                                                       | <b><u>75</u></b>                                                              | <b><u>110</u></b> | <b><u>150</u></b> |
| <b><u>Category I:</u></b><br><b><u>Bogs and Wetlands of</u></b><br><b><u>High Conservation</u></b><br><b><u>Value</u></b> | <b><u>190</u></b><br><b><u>(buffer width not based on habitat score)</u></b>  |                   |                   |
| <b><u>Category I:</u></b><br><b><u>Alkali</u></b>                                                                         | <b><u>150</u></b><br><b><u>(buffer width not based on habitat scores)</u></b> |                   |                   |
| <b><u>Category II:</u></b><br><b><u>Based on total score</u></b>                                                          | <b><u>75</u></b>                                                              | <b><u>110</u></b> | <b><u>150</u></b> |
| <b><u>Category II:</u></b><br><b><u>Vernal Pool</u></b>                                                                   | <b><u>150</u></b><br><b><u>(buffer width not based on habitat scores)</u></b> |                   |                   |
| <b><u>Category II:</u></b><br><b><u>Forested</u></b>                                                                      | <b><u>75</u></b>                                                              | <b><u>110</u></b> | <b><u>150</u></b> |
| <b><u>Category III (all)</u></b>                                                                                          | <b><u>60</u></b>                                                              | <b><u>110</u></b> | <b><u>150</u></b> |
| <b><u>Category IV (all)</u></b>                                                                                           | <b><u>40</u></b>                                                              |                   |                   |

**Impact minimization measures****Formatted: Font: Bold**

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

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

**Formatted: Left****Table 18.01-2. Required Measures to Minimum Impacts to Wetlands**

| <b><u>Examples of disturbance</u></b> | <b><u>Activities and uses that cause disturbances</u></b>                    | <b><u>Examples of measures to minimize impacts</u></b>                                          |
|---------------------------------------|------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| <b><u>Lights</u></b>                  | <ul style="list-style-type: none"> <li><b><u>Parking lots</u></b></li> </ul> | <ul style="list-style-type: none"> <li><b><u>Direct lights away from wetland</u></b></li> </ul> |

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|                   |                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                   | <ul style="list-style-type: none"> <li>Commercial/Industrial</li> <li>Residential</li> <li>Recreation (eg., athletic fields)</li> <li>Agricultural buildings</li> </ul>                                                                 | <ul style="list-style-type: none"> <li>Only use lighting where necessary for public safety and keep lights off when not needed</li> <li>Use motion-activated lights</li> <li>Use full cut-off filters to cover light bulbs and direct light only where needed.</li> <li>Limit use of blue-white colored lights in favor of red-amber hues</li> <li>Use lower-intensity LED lighting</li> <li>Dim light to lowest acceptable intensity</li> </ul> | <p><b>Formatted:</b> Font: Times New Roman, 10.5 pt</p> <p><b>Formatted:</b> List Paragraph, Justified, Space Before: 0 pt, After: 0 pt, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Noise             | <ul style="list-style-type: none"> <li>Commercial</li> <li>Industrial</li> <li>Recreation (eg., athletic fields)</li> <li>Residential Agriculture</li> </ul>                                                                            | <ul style="list-style-type: none"> <li>Locate activity that generates noise away from wetland</li> <li>Construct a fence to reduce noise impacts on adjacent wetland and buffer</li> <li>Plant a strip of dense shrub vegetation adjacent to wetland buffer</li> </ul>                                                                                                                                                                           | <p><b>Formatted:</b> List Paragraph, Left, Space Before: 0 pt, After: 0 pt, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"</p> <p><b>Formatted:</b> Font: Times New Roman, 10.5 pt</p> <p><b>Formatted:</b> Space Before: 0 pt, After: 0 pt</p> <p><b>Formatted:</b> Space Before: 0 pt, After: 0 pt</p> <p><b>Formatted:</b> Left</p> <p><b>Formatted:</b> Font: Times New Roman, 10.5 pt</p> <p><b>Formatted:</b> List Paragraph, Left, Space Before: 0 pt, After: 0 pt, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"</p>                                                                                                                                                   |
| Toxic Runoff      | <ul style="list-style-type: none"> <li>Parking Lots</li> <li>Roads</li> <li>Commercial/industrial</li> <li>Residential areas</li> <li>Application of pesticides</li> <li>Landscaping</li> <li>Agriculture</li> </ul>                    | <ul style="list-style-type: none"> <li>Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</li> <li>Establish covenants limiting use of pesticides within 150 ft. of wetland</li> <li>Apply integrated pest management (Note: These examples are not necessarily adequate for minimizing toxic runoff if threatened or endangered species are present at the site.)</li> </ul>                             | <p><b>Formatted:</b> List Paragraph, Left, Space Before: 0 pt, After: 0 pt, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"</p> <p><b>Formatted:</b> Font: Times New Roman, 10.5 pt</p> <p><b>Formatted:</b> Left, Space Before: 0 pt, After: 0 pt</p> <p><b>Formatted:</b> Space Before: 0 pt, After: 0 pt</p> <p><b>Formatted:</b> Left, Indent: Left: 0.25", Space Before: 0 pt, After: 0 pt</p> <p><b>Formatted:</b> Font: Times New Roman, 10.5 pt</p> <p><b>Formatted:</b> List Paragraph, Left, Space Before: 0 pt, After: 0 pt, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"</p> <p><b>Formatted:</b> Font: Times New Roman, 10.5 pt</p> <p><b>Formatted:</b> Left</p> |
| Stormwater runoff | <ul style="list-style-type: none"> <li>Parking Lots</li> <li>Roads</li> <li>Residential areas</li> <li>Commercial/industrial</li> <li>Recreation Landscaping/lawns</li> <li>Other impermeable surfaces, compacted soil, etc.</li> </ul> | <ul style="list-style-type: none"> <li>Retrofit stormwater detention and treatment for roads existing adjacent development</li> <li>Prevent channelized or sheet flow from lawns that directly enters the buffer</li> <li>Infiltrate or treat, detain, and disperse new runoff from impervious surfaces and lawns</li> </ul>                                                                                                                     | <p><b>Formatted:</b> List Paragraph, Left, Space Before: 0 pt, After: 0 pt, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"</p> <p><b>Formatted:</b> Font: Times New Roman, 10.5 pt</p> <p><b>Formatted:</b> Left</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

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| <u>Examples of disturbance</u>    | <u>Activities and uses that cause disturbances</u>                                                    | <u>Examples of measures to minimize impacts</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----------------------------------|-------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>Pets and human disturbance</u> | <ul style="list-style-type: none"> <li><u>Residential areas</u></li> <li><u>Recreation</u></li> </ul> | <ul style="list-style-type: none"> <li><u>Use privacy fencing</u></li> <li><u>Plant dense native vegetation to delineate buffer edge and to discourage disturbance</u></li> <li><u>Place wetland and its buffer in a separate tract</u></li> <li><u>Place signs around the wetland buffer every 50-200 ft., and for subdivisions place signs at the back of each residential lot</u></li> <li><u>When platting new subdivisions, locate greenbelts, stormwater facilities, or other lower-intensity land uses adjacent to wetland buffers</u></li> </ul> |
| <u>Dust</u>                       | <ul style="list-style-type: none"> <li><u>Tilled Fields</u></li> <li><u>Roads</u></li> </ul>          | <ul style="list-style-type: none"> <li><u>Use best management practices to control dust</u></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

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| <u>Disturbance</u>  | <u>Required Measures to minimize Impacts</u>                                                                                                                                                                                                                                                                                                                                                                              |
|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>Lights</u>       | <u>Direct lights away from wetland</u>                                                                                                                                                                                                                                                                                                                                                                                    |
| <u>Noise</u>        | <u>Locate activity that generates noise away from wetland</u><br><u>If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</u><br><u>For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer</u> |
| <u>Toxic Runoff</u> | <u>Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</u>                                                                                                                                                                                                                                                                                                                          |

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|                                          |                                                                                                                                                                                                                                                                                                               |
|------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                          | <del>Establish covenants limiting use of pesticides within 150 ft of wetland</del><br><del>Apply integrated pest management</del>                                                                                                                                                                             |
| <b><u>Stormwater Runoff</u></b>          | <del>Retrofit stormwater detention and treatment for roads and existing adjacent development</del><br><del>Prevent channelized flow from lawns that directly enters the buffer</del><br><del>Use Low-Intensity Development techniques (for more information refer to the drainage ordinance and manual)</del> |
| <b><u>Changes in water regime</u></b>    | <del>Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</del>                                                                                                                                                                                            |
| <b><u>Pets and human disturbance</u></b> | <del>Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance</del><br><del>Using vegetation appropriate for the ecoregion;</del><br><del>Place wetland and its buffer in a separate tract or protect with a conservation easement</del>                          |
| <b><u>Dust</u></b>                       | <del>Use best management practices to control dust</del>                                                                                                                                                                                                                                                      |

Table 18.01-3. Standard Wetland Buffer Requirements if Table 18.01-2 is NOT Implemented

| <u>Wetland Category</u>                                                 | <u>Buffer width (in feet) based on habitat score</u>     |            |            |
|-------------------------------------------------------------------------|----------------------------------------------------------|------------|------------|
|                                                                         | <u>3-5</u>                                               | <u>6-7</u> | <u>8-9</u> |
| <u>Category I:<br/>Based on total score</u>                             | <u>100</u>                                               | <u>150</u> | <u>200</u> |
| <u>Category I:<br/>Forested</u>                                         | <u>100</u>                                               | <u>150</u> | <u>200</u> |
| <u>Category I:<br/>Bogs and Wetlands of<br/>High Conservation Value</u> | <u>250</u><br>(buffer width not based on habitat scores) |            |            |
| <u>Category I:<br/>Alkali</u>                                           | <u>200</u><br>(buffer width not based on habitat scores) |            |            |
| <u>Category II:<br/>Based on total score</u>                            | <u>100</u>                                               | <u>150</u> | <u>200</u> |

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|-----------------------------|---------------------------------------------------|-----|-----|
| Category II:<br>Vernal Pool | 200<br>(buffer width not based on habitat scores) |     |     |
| Category II:<br>Forested    | 100                                               | 150 | 200 |
| Category III (all)          | 80                                                | 150 | 200 |
| Category IV (all)           | 50                                                |     |     |

3. All wetland buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Buffers must be fully vegetated in order to be included in buffer area calculations.
4. Interrupted buffer: When a wetland buffer contains an existing legally established public road or private access road, the City may allow development on the landward side of the road provided that the development will not have a detrimental impact to the wetland. The applicant may be required to provide a wetland critical area report to describe the potential impacts. In determining whether a critical areas report is necessary, the City shall consider the hydrologic, geologic, and/or biological habitat connection potential and the extent and permanence of the buffer interruption.
5. Increased wetland buffers: The City shall increase wetland buffer zone widths for a development project on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values. Such determination shall be based on site-specific and project-related conditions which include, but are not limited to, the following circumstances:
  - a. Wetland sites with known locations of state priority or federally listed endangered, threatened, or sensitive species for which a habitat management plan indicates a larger buffer is necessary to protect habitat values for such species; or
  - b. The adjacent land is susceptible to severe erosion, and erosion control best management practices will not effectively prevent adverse wetland impacts
  - c. Wetland sites in geologically hazardous areas or where adjacent land has slopes greater than 30%.
6. Wetland buffer condition: Wetland buffer areas shall be retained in a natural condition or may be improved to enhance buffer functions and values. Where buffer disturbance is allowed pursuant to this section, revegetation with native vegetation shall be required. Alterations of the buffer that are not associated with a development or listed as an exemption under CEMC 18.01.080 shall be prohibited.
7. Building setback: A 15-foot building setback is required from the landward edge of any wetland buffer. Minor intrusions into the area of the building setback may be allowed if the City determines that such intrusions will not negatively impact the wetland. The setbacks shall be shown on all site plans submitted with the application.

8. Buffer Averaging: The City may allow, at its sole discretion, modification of standard wetland buffer width in accordance with the report and the best available science on a case-by-case basis by averaging buffer widths. Where the City allows modification of standard wetland buffer width this modification may only be allowed where a qualified wetlands professional demonstrates that:
  - a. It will not reduce wetland functions or values;
  - b. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;
  - c. The total area contained in the buffer area after averaging is equal to the area required without averaging; and
  - d. The minimum width of the buffer at any given point is at least seventy-five percent (75%) of the standards width unless the applicant demonstrates an acceptable reasonable use as described in CEMC 18.01.090. Total buffer area after averaging must equal the area required without averaging.
9. Before impacting any wetland or its buffer, an applicant shall demonstrate that the following actions have been taken. Mitigation plans shall include a discussion of mitigation alternatives (sequencing) as they relate to:
  - a. Avoid the impact altogether by not taking a certain action or parts of an action.
  - b. Minimize impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
  - c. Rectify the impact by repairing, rehabilitating, or restoring the affected environment.
  - d. Reduce or eliminate the impact over time by preservation and maintenance operations.
  - e. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.
  - f. Monitor the required compensation and take remedial or corrective measures when necessary.
10. Wetland Compensatory Mitigation: Compensatory mitigation is required for all alterations to wetlands or their buffers, except for City approved buffer averaging.
11. Requirements for Compensatory Mitigation:
  - a. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions.

- b. Compensatory mitigation plans shall be consistent with Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans--Version 1, (Ecology Publication #06-06- 011b, Olympia, WA, March 2006 or as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington) (Publication #10-06-07, November 2010 or as revised).
- c. Mitigation ratios shall be consistent with Table 18.01-2.
- d. Preference of mitigation actions: Mitigation actions that require compensation by replacing, enhancing, or substitution shall occur in the following order of preference:

  - i. Restoring and/or rehabilitating filled or altered wetlands to their pre-development or near pre-development condition.
  - ii. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of nonnative introduced species. This should only be attempted when there is a consistent source of hydrology and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is being designed.
  - iii. Enhancing significantly degraded wetlands in combination with restoration or creation.
- e. Mitigation for lost or affected functions: Compensatory mitigation actions shall replace functions affected by the alteration and shall provide equal or greater functions compared to the impacted wetland.
- f. Mitigation timing: Mitigation projects shall be completed prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.
- g. Delay in mitigation: The City may authorize a one-time temporary delay, up to one hundred twenty (120) days, in completing minor construction and landscaping when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, and general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints which preclude implementation of the mitigation plan. The justification must be verified and approved by the City and include a financial guarantee.
- h. Mitigation ratios for wetland impacts: Mitigation ratios shall be used when impacts to wetlands cannot be avoided, as specified in Table 4.2-2. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered. -Compensatory mitigation shall restore, create, rehabilitate or enhance equivalent or greater wetland functions. The ratios shall apply to mitigation that is in-kind, is on-site, is the same category, is timed prior to or concurrent with alteration, and has a high probability of success. If available, these ratios do

not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply in those cases. These ratios do not apply to the use of credits from a certified wetland mitigation bank or in-lieu fee program. When credits from a certified bank or in-lieu fee program are used, replacement ratios should be consistent with the requirements of the bank's/program's certification.

Table 18.01-4. Wetland Mitigation Ratios for Unavoidable Wetland Impacts:

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

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**Table Footnotes:**

<sup>1</sup> Natural heritage sites, alkali wetlands, and bogs are considered irreplaceable wetlands because they perform special functions that cannot be replaced through compensatory mitigation. Impact to such wetlands would therefore result in a net loss of some functions no matter what kind of mitigation is provided.

<sup>2</sup> Provides gains in a whole suite of functions both at the site and landscape scale. Rehabilitation actions often focus on restoring environmental processes that have been disturbed or altered by previous ongoing human activity.

<sup>3</sup> Actions which provide gains in only a few functions. Enhancement actions often focus on structural or superficial improvements to a site and generally do not address larger scale environmental processes.

<sup>4</sup> Compensatory mitigation for vernal pool impacts must be seasonally ponded wetland area(s).

i. Increased replacement ratios: The City shall increase the wetland mitigation ratios under the following circumstances:

i. Uncertainty exists as to the probable success of the proposed restoration or creation;

ii. A significant period of time will elapse between impact and replication of wetland functions;

- iii. Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacts; or
- iv. The impact was an unauthorized impact.
- j. Alternative mitigation ratios: The City may approve different mitigation ratios when the applicant proposes a combination of wetland creation, restoration, rehabilitation, and/or enhancement, provided that federal and state resource agencies approve the mitigation plan.
- k. Mitigation ratios for wetland buffer impacts: To mitigate impacts to functions and values of buffers, a minimum buffer ratio of 1:1 (alteration area: mitigation area) is required. This ratio assumes that creation/ restoration of wetland buffer with appropriate native vegetation is sufficient to compensate for the wetland buffer functions and values affected by alteration of existing wetland buffer. -If enhancement of an existing wetland buffer is proposed as mitigation, a higher mitigation ratio may be required. -For any proposed wetland buffer activities, the applicant must show that the functions and values of the altered wetland buffer will be fully replaced by the proposed mitigation. The City may increase the buffer mitigation ratios under the following circumstances:
  - i. The replacement ratio needed to recover the lost functions and values of buffer area is greater than 1:1 based upon the existing type of vegetative cover of either the impact site or the proposed mitigation site;
  - ii. Uncertainty exists as to the probable success of the proposed restoration or creation;
  - iii. A significant period of time will elapse between impact and replication of wetland functions;
  - iv. The impact was an unauthorized impact.
- l. Mitigation banking and in-lieu fee (ILF) mitigation: The City may establish a mitigation bank and ILF program as a form of compensatory mitigation for wetland and habitat conservation area impacts. If established, the bank and ILF program shall be certified in accordance with applicable federal and state mitigation rules.
- m. Monitoring: Mitigation monitoring shall be required for a period necessary to establish that performance standards have been met, but not for a period less than five years. This period may be longer for more fragile mitigation proposals such as those containing woody vegetation. The project mitigation plan shall include monitoring elements that ensure certainty of success for the project's natural resource values and functions. If the mitigation goals are not obtained within the initial five-year period, the applicant remains responsible for restoration of the natural resource values and functions until the mitigation goals agreed to in the mitigation plan are achieved.

C. Critical Aquifer Recharge Areas (CARA).

- ~~1. The city lies over alluvial soil deposits. There are unconsolidated materials composed of silt, sand and gravel, which in places are several hundred feet in depth. This deposit material is important as a water-conveying unit and supplies the groundwater of stream flow (recharge). In general, areas of permeable soils in combination with geological transfer structure may be aquifer recharge areas. Based on the information and maps contained in hydrology of the Upper Yakima River Basin and landscape planning, environmental applications, the city is as an aquifer recharge area. This is a preliminary determination until further studies of geology and hydrology are conducted on an overall or individual property specific basis to either include or exclude them as an aquifer recharge area~~
- ~~2. All structures shall be placed to provide a maximum buffer to known specific CARA.~~
- ~~3. Impervious coverage of the lot shall be minimized.~~
- ~~4. Best Management Practices shall be used during construction.~~
1. New development in a critical aquifer recharge area shall meet the following standards:
  - a. The proposed development will not cause contaminants to enter the aquifer and will not significantly adversely affect the recharging of the aquifer.
  - b. The proposed development must comply with applicable water source protection requirements and recommendations of the Federal Environmental Protection Agency, Washington State Department of Health, and the Kittitas County health department.
  - c. The proposed development must be designed and constructed in accordance with applicable storm water management standards.
  - d. Impervious coverage of the lot shall be minimized.
2. When located within an area of medium or high aquifer susceptibility, aboveground/underground storage tanks or vaults for the storage of hazardous substances, animals wastes, sewage sludge, fertilizers, or other chemical or biological hazards or dangerous wastes as defined in Chapter 173-303 WAC, or any other substances, solids, or liquids in quantities identified by Kittitas County Public Health, consistent with WAC 173-303, as a risk to groundwater quality, shall be designated and constructed so as to:
  - a) Prevent the release of such substances to the ground, groundwaters, or surface waters;
  - b) Be contained or enclosed by an impervious containment area with a volume greater than the volume of the storage tank or vault to avoid an overflow of the containment area;
  - c) Provide for release detection;
  - d) Provide written spill response and spill notification procedures to the local fire district;

- e) Use material in the construction or lining of the storage containment area which is compatible with the substance to be storage to protect against corrosion or leakage, or otherwise designed in a manner to prevent the release or threatened release of any storage substance; and
  - f) Comply with Chapters 173-303 and 173-360 WAC.
  - g) The tanks must comply with Ecology regulations contained in Chapters 173-360 and 173-303 WAC as well as International Building Code requirements.
3. The City may grant a waiver from one or more of the above requirements (in 3 a through g) upon a finding that the aboveground storage activity would not create a significant risk to groundwater quality. Aboveground or underground storage facilities designed and maintained according to an approved plan from the Natural Resources Conservation Service or Kittitas County Conservation District are exempt from these requirements but remain under the jurisdiction of the City to ensure compliance with the protective features of this Section and for enforcement purposes.
4. The use of fertilizers, herbicides, pesticides, or other chemical for vegetation management within critical aquifer recharge areas shall adhere to the best management practices to prevent impacts to water quality and water supply. Where the application of such chemicals covers five (5) or more acres, a mitigation plan shall be required pursuant the regulations listed below.
5. The following development activities, when proposed in medium or high susceptibility critical aquifer recharge areas, have the potential to adversely affect groundwater quality and/or quantity and may only be allowed subject to the City's review and approval of a special hydrogeological assessment prepared by a qualified professional:
- a) Vehicle repair, servicing and salvaging facilities; provided that the facility must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur. Dry wells shall not be allowed on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by Ecology prior to commencement of the proposed activity.
  - b) Use of reclaimed wastewater must be in accordance with adopted water or sewer comprehensive plans that have been approved by Ecology.
  - c) Any other development activity that the City determines is likely to have a significant adverse impact on groundwater quality or quantity, or on the recharge of the aquifer. The determination must be made based on credible scientific information.

- d) New landfills, including hazardous or dangerous waste, municipal solid waste, special waste, wood waste of more than two thousand (2,000) cubic yards, and inert and demolition waste landfills.
- e) Underground injection wells. Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells.
- f) Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade).
- g) Facilities that store, process, or dispose of chemicals containing perchloroethylene (PCE) or methyl tertiary butyl ether (MTBE).

6. State and Federal Regulations. The uses listed below shall be conditioned as necessary to protect critical aquifer recharge areas in accordance with the applicable state and federal regulations.

| <u>Activity</u>                                                                                                                                                                                                           | <u>Statute - Regulation - Guidance</u>                                                                          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| <u>Above Ground Storage Tanks</u>                                                                                                                                                                                         | <u>Chapter 173-303 -640 WAC</u>                                                                                 |
| <u>Animal Feedlots</u>                                                                                                                                                                                                    | <u>Chapter 173-216 WAC, Chapter 173-220 WAC</u>                                                                 |
| <u>Automobile Washers</u>                                                                                                                                                                                                 | <u>Chapter 173-216 WAC, Best Management Practices for Vehicle and Equipment Discharges (Ecology WQ-R-95-56)</u> |
| <u>Below Ground Storage Tanks</u>                                                                                                                                                                                         | <u>Chapter 173-360 WAC</u>                                                                                      |
| <u>Chemical Treatment Storage and Disposal Facilities</u>                                                                                                                                                                 | <u>Chapter 173-303-182 282 WAC</u>                                                                              |
| <u>Hazardous Waste Generator (<i>Boat Repair Shops, Biological Research Facility, Dry Cleaners, Furniture Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, etc.</i>)</u> | <u>Chapter 173-303-170 WAC</u>                                                                                  |
| <u>Injection Wells</u>                                                                                                                                                                                                    | <u>Federal 40 CFR Parts 144 and 146, Chapter 173-218 WAC</u>                                                    |
| <u>Spills and Discharges into the Environment</u>                                                                                                                                                                         | <u>Chapter Section 173-303-145 WAC</u>                                                                          |

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

~~5. Activities involving fertilizers, herbicides, and pesticides will require a hydrogeological study prepared by a qualified professional for critical aquifer recharge areas and in accordance with the state Department of Ecology guidelines.~~

D. Fish and Wildlife Habitat Conservation Areas Performance Standards.

~~1. Flora (plant life) and Fauna (animal life) identified as protected, shall be sheltered from construction activities using Best Management Practices.~~

2. Replacement of any flora shall be maintained by the applicant for three years to establish viable plant life.

13. Fish and Wildlife Habitat Conservation Areas Regulations:

- a. Stream buffer widths are established to protect the integrity, functions and values of all streams as classified according to WAC 22-16-030 based on best available science.that meet the criteria for Type S, F or N (Np and Ns) waters. The City’s stream bBuffer widths are based on the specific Fish and Wildlife Conservation Areas as follows: have been determined in accordance with the best available science and are measured horizontally from the ordinary high-water mark.
  - i. Type S streams are Shorelines of the State that are regulated by the City’s Shoreline Master Program (SMP). The buffer widths for these streams are provided within the City’s SMP.
  - ii. Crystal Creek buffer width is the width of the Riparian Management Zone (RMZ) based on the Site-Potential Tree Height at 200 years (SPTH) measured horizontally from the Channel Migration Zone.
  - iii. All other WAC 22-16-030 classified streams, not located within the Shoreline Master Program Shoreline Jurisdiction, shall have stream buffers based on Stream Typing as detailed in Table 18.01-5, and measured horizontally from the ordinary high-water mark.

Table 18.01-5. Stream Buffer Requirements

| Stream Type Standard Buffer Width |        |
|-----------------------------------|--------|
| Type S                            | 200 ft |
| Type F                            | 50 ft  |
| Type Np                           | 25 ft  |
| Type Ns                           | 25 ft  |

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- b. Wildlife buffer widths are established to protect the integrity, functions, and values of all listed and/or priority wildlife species. Buffer widths have been determined in accordance with the best available science. The city shall require a 100-foot buffer from the documented present listed and or priority wildlife species.
- c. Multiple buffers: In the event that buffers for any fish habitat conservation areas or other critical areas are contiguous or overlapping, the landward-most edge of all such buffers shall apply.
- d. Stream buffers shall not be altered except as authorized by this section.

- e. No clearing of vegetation or land disturbances shall be allowed within the wildlife habitat conservation area or associated terrestrial buffer area without an approved mitigation plan and written authorization from the City.
- f. Increased buffers: If there is credible evidence of historic or current fish use within a non-Type S stream, the City shall increase the non-Type S water buffer up to a maximum of two hundred (200) feet to protect fish habitat forming processes. The City has the authority to increase the stream and wildlife buffer widths when such buffers to protect priority PHS species utilizing the Fish and Wildlife Habitat Conservation Areas. This determination shall be supported by appropriate documentation from the Department of Ecology and Fish and Wildlife, showing that the increased buffer width is reasonably related to the protection of the fish and/or wildlife. The increased buffer distance may be limited to those areas that provide connectivity or are necessary to protect habitat functions. Increasing the buffer widths will only be done where necessary to preserve the structure, function and value of habitat.
- g. Buffer condition: Fish and wildlife habitat conservation area buffers shall be maintained in a predominantly well-vegetated and undisturbed condition. No alterations shall occur without written authorization from the City.
- h. Interrupted buffer: When an Fish and Wildlife Habitat Conservation Area buffer contains anis impacted by an existing legally established public road or private access road, and/or buildings, the City may determine that the Fish and Wildlife Habitat Conservation Areas buffer does not extend landward of the existing improvements, provided that the proposed use and/or allow a use and/or development on the landward side of the road provided that the use and/or development will not have a detrimental impact to the habitat areastream. The applicant may be required to provide a eCritical aAreas rReport to describe the impactsensure that there is no determinantal impact to the stream of a loss of ecological function. In determining whether a criticalFish and Wildlife Habitat Conservation Area critical areas report is necessary, the City shall consider the hydrologic, geologic, and/or biological habitat connection potential and the extent and permanence of the buffer interruption.
- i. Buffer averaging: The City may allow modification of standard fish and wildlife habitat conservation area buffer in accordance with an approved critical area report on a case-by-case basis. With buffer averaging, the buffer width may be reduced in one location and increased in another location to maintain the same overall buffer area provided there is no net loss in the function or value of the buffer. Proposals for buffer averaging shall not require compensatory mitigation if the following conditions are met:
  - i. The development is not a residential subdivision of more than four (4) lots;
  - ii. The buffer has not been averaged or reduced by any prior actions administered by the City;
  - iii. No feasible site design could be accomplished without buffer averaging;

- iv. The buffer averaging will not reduce stream or habitat functions or adversely affect salmon or trout habitat;
- v. The minimum width of the Crystal Creek stream buffer, if applicable, is not less than 100 feet. All other WAC 222-16-030 classified streams shall have a minimum buffer width -at any given point isof at least seventy-five percent (75%) of the standards width, or twenty-five (25) feet, whichever is greater unless the applicant demonstrates an acceptable reasonable use as described in CEMC 18.01.090; and
- vi. The area that is added to the buffer to offset the reduction is well-vegetated. The City may require vegetation enhancement if needed to ensure this criterion is met.
- j) Prior to approving a request for buffer averaging, the City shall ensure the development is designed to separate and screen the stream from impacts such as noise, glare, and vegetation trampling. The site design shall consider the varying degrees of impacts of different land uses. For example, parking lots, store entrances, and roads generally have higher noise and glare impacts than the rear of the store. Site screening should take advantage of natural topography or existing vegetation, wherever possible. Where natural screening is not available, berms, landscaping, and structural screens should be implemented (e.g., orient buildings to screen parking lots and store entrances from critical areas).
- k) Building setback: A 15-foot building setback ~~line equal to the side yard setback requirement of the applicable zoning district~~ is required from the landward edge of any stream buffer. Minor intrusions into the area of the building setback may be allowed if the City determines that such intrusions will not negatively impact the stream. The setbacks shall be shown on all site plans submitted with the application.
- l) Anadromous Fish Habitat Standards.
  - i. All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall adhere to the following standards:
    - (a) Activities shall be timed to occur only during the allowable work window as designated by the Department of Fish and Wildlife for the applicable species;
    - (b) An alternative alignment or location for the activity is not feasible;
    - (c) The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas; and
    - (d) Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved critical area report.

- ii. Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.
  - iii. Fills shall not adversely impact anadromous fish or their habitat or shall mitigate any unavoidable impacts, and shall only be allowed for a water-dependent use.
- m. Fish and wildlife habitat compensatory mitigation is required for all alterations to fish and wildlife habitat or their buffers, except for buffer averaging.
- n. Applicants shall demonstrate that all reasonable efforts have been examined within the intent to avoid and minimize impacts to critical areas through mitigation sequencing.
- o. Fish and wildlife habitat management and mitigation plan: For unavoidable impacts to wildlife habitat conservation areas, a wildlife habitat management and mitigation plan shall be prepared by a wildlife biologist who is knowledgeable of fish and wildlife habitat within Kittitas County. The wildlife habitat management and mitigation plan shall:
  - i. Demonstrate, when implemented, that there shall be no net loss of ecological function of habitat.
  - ii. Identify how impacts from the proposed project shall be mitigated, as well as the necessary monitoring and contingency actions for the continued maintenance of the wildlife habitat conservation area and its associated buffer.
- p. In addition to the general mitigation plan requirements described above, the fish and wildlife habitat management and mitigation plan shall contain a report containing, but not limited to, the following information:
  - i. A map or maps indicating the Ordinary High Water Mark; the boundary of the habitat conservation areas; associated stream and wildlife habitat buffers; the width and length of all existing and reposed structures, utilities, roads, easements; wastewater and stormwater facilities; adjacent land uses, zoning districts and comprehensive plan designations;
  - ii. A description of the proposed project including the nature, density and intensity of the proposed development and the associated grading, structures, roads, easements, wastewater facilities, stormwater facilities, utilities, etc., in sufficient detail to allow analysis of such land use change upon the habitat conservation area;
  - iii. A description of the vegetation in the habitat conservation area, on the overall project site and adjacent to the site;

- iv. A detailed description of the proposed project's effect on the habitat conservation area, and a discussion of any federal, state or local management recommendations which have been developed for the species or habitats in the area;
- v. An explanation of how any adverse impacts created by the proposed development will be mitigated, including the following techniques:
  - (a) Establishment of buffer zones;
  - (b) Preservation of critically important plants and trees;
  - (c) Special construction techniques;
  - (d) Implementation of erosion and sediment control measures;
  - (e) Limitation of access to the habitat conservation area;
  - (f) Seasonal restriction of construction activities;
  - (g) Habitat enhancement (i.e., fish passage barrier removal);
  - (h) Any other requirements and/or recommendations from WDFW's habitat management guidelines
  - (i) Establishment of a timetable for periodic review of the plan. This includes a program for monitoring construction of the compensation project, and for assessing a completed project. The project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five years; and
  - (j) Contingency plan if monitoring and evaluation indicates project performance standards are not being met.

E. Frequently Flooded Areas Performance Standards.

1. General Standards. The following standards apply to all frequently flood areas:

- a. All structures and other improvements shall be located on the buildable portion of the site out of the area of flood hazard. Where necessary residential buildings may be elevated.
- b. ~~2.~~ Utilities shall either be located three or more feet above the base flood elevation (BFE), or be engineered to the City of Cle Elum Engineers requirements appropriate for the conditions.
- c. ~~3.~~ All new construction and substantial improvements shall be constructed using flood resistant materials and using methods and practices that minimize flood damage.

~~d. 4.~~ All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

~~e. 5.~~ No rise in the BFE shall be allowed. Post and piling techniques are preferred and are presumed to produce no increase in the BFE.

~~f. 6. Modification of stream channels shall be avoided.~~

~~f. In areas within base flood elevations (but a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.~~

2. Floodways. Any development, encroachment, clearing and grading, new construction, or substantial improvements, including structures that do not require a building permit, shall be prohibited within the floodway, except as allowed in CEMC 18.01.080 Exceptions and the following:

a. Agricultural activities that do not require the installation of structures and that do not have any associated fill.

b. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications, which are solely necessary to assure safe living conditions.

c. Prior to the repair or replacement of a substantially damaged residential structure located within a floodway, a recommendation shall be obtained from the Washington Department of Ecology in accordance with WAC 173-158-076.

3. All developments shall be subject to provisions of Chapter 15.24, Flood Hazard Prevention CEMC. If Chapter 15.24, Flood Hazard Prevention CEMC standards conflicts with the Frequently Flood Area Performance Standards provided above, the later shall supersede.

4. When compensatory mitigation is required, the flooded areas mitigation plans shall be prepared by a civil engineer licensed in the State of Washington and familiar with hydrology, hydraulics, and fluvial geomorphology.

#### F. Geologically Hazardous Areas Performance Standards.

1. The following general standards apply to proposed development activities within or near geologically hazardous areas:

a. Will not increase the threat of the geological hazard to adjacent properties beyond pre-development conditions;

- b. Will not adversely impact other critical areas;
  - c. Are designed so that the hazard to the project is eliminated or mitigated;
  - d. Structures and improvements [should](#) be located to preserve the most critical portion of the site and its natural landforms and vegetation;
  - e. Structures and improvements shall minimize alterations to the natural contour of the slope, and foundations shall be tiered where possible to conform to existing topography; and
  - f. Development shall be designed to minimize impervious surfaces within the critical area and critical area buffer.
  - g. A proposed development cannot be approved if it is determined [by the City, following review of the geotechnical report](#), that either the proposed development or adjacent properties will be at risk of damage from the geologic hazard, or that the project will increase the risk of occurrence of the hazard, and there are no adequate mitigation measures to alleviate the risks.
- 2. A buffer shall be established from all edges of erosion and landslide hazard areas. The size of the buffer shall be determined by the Planning Director to eliminate or minimize the risk of property damage, death, or injury resulting from landslides caused in whole or part by the development, based upon review of, and concurrence with, a geotechnical report prepared by a qualified professional;
  - a. The minimum buffer shall be equal to the height of the slope or 50 feet, whichever is greater;
  - b. The buffer may be reduced to a minimum of 10 feet [based on a finding by the City following review of the geotechnical report recommendations that the reduction will adequately protect the proposed development, adjacent developments and uses, and the subject critical area;](#)
  - c. The buffer may be increased where [based on a finding by the City following review of the geotechnical report](#) determines a larger buffer is necessary to prevent risk of damage to proposed and existing development;
- 3. A building setback of 20-feet shall be provided from all edges of the geological hazard area buffers. The building setback may be reduced [based on a finding by the City following review of the geotechnical report recommendations that the reduction will adequately protect the proposed development, adjacent developments and uses, and the subject critical area](#)
- 4. Alterations of an erosion or landslide hazard area and/or buffer may only occur for activities for which a hazards analysis is submitted and [based on findings by the City following review of the geotechnical report that:](#)
  - a. The development will not increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions;

- b. The development will not decrease slope stability on adjacent properties; and
  - c. Such alterations will not adversely impact other critical areas and are certified as safe as designed and under anticipated conditions by a qualified professional, licensed in the state of Washington.
- 5. Unless otherwise provided or as part of an approved alteration, removal of vegetation from an erosion or landslide hazard area or related buffer shall be prohibited.
- 6. On-site sewage disposal systems, including drain fields, shall be prohibited within erosion and landslide hazard areas and related buffers.
- 7. Critical facilities, such as hospitals and emergency response centers, shall not be sited within geologically hazardous areas unless there is no other practical alternative.
- ~~— Seasonal Restriction. Clearing shall be allowed only from May 1st to October 1st of each year; provided, that the city may extend or shorten the dry season on a case-by-case basis depending on actual weather conditions, except that timber harvest, not including brush clearing or stump removal, may be allowed pursuant to an approved forest practice permit issued by the city or the Department of Natural Resources;~~
- 8. When compensatory mitigation is required, the geologically hazardous areas mitigation plan shall be prepared by a qualified professional who is either a geologist or a geotechnical engineer, or a civil engineer licensed in the State of Washington, who is knowledgeable of regional geologic conditions and who has professional experience in landslide and erosion hazard evaluation, mitigation plan design, implementation, and monitoring.
  - ~~1. Structures and improvements shall minimize alterations to the natural contour of the slope, and foundations shall be tiered where possible to conform to existing topography.~~
  - ~~2. Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation.~~
  - ~~3. The proposed development shall not result in greater risk or a need for increased buffers on neighboring properties.~~
  - ~~4. Development shall be designed to minimize impervious surfaces within the critical area and critical area buffer.~~
- ~~G. Additional Considerations:~~
  - ~~1. Site specific considerations may warrant additional performance standards, to be determined during the permit process, to ensure the protection of critical areas.~~
  - ~~2. Development specific considerations may warrant additional performance standards based on level of impact to critical areas.~~

(Ord. 1335 § 1, 2010; Ord. 1039 (part), 1996)

#### 18.01.080 Exemptions.

The following developments, activities and associated uses may be determined by the City to~~shall~~ be exempt from the provisions of this chapter, provided that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements:

- A. **Emergencies.** Those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of this chapter. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. Once the immediate threat has been addressed, any adverse impacts on critical areas as subject to the provisions of this chapter, including but not limited to, minimizing and mitigating any impacts to critical areas.
- B. **Operation, Maintenance, or Repair.** Operation, maintenance, or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems, that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair. Operation and maintenance includes vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities, including those vegetation removal activities as necessary for fire reduction, provided that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species; and
- C. **Passive Outdoor Activities.** Recreation, education and scientific research activities that do not degrade the critical area, including fishing, hiking, and bird watching.
- D. **Forest Practices Regulated by the State.** Forest practices regulated and conducted in accordance with provisions of Chapter 76.09 RCW and forest practices regulations, title 222 WAC, are exempt, except for conversions to forestry uses.

(Ord. 1335 § 1, 2010)

### 18.01.085 Notice and Financial securities.

- A. Notice. The owner of any property containing critical areas or buffers on which a development project is submitted shall record with Kittitas County notice of said critical areas or buffers in a format approved by the City. Such notice shall ~~provide notice in the public record of identify or provide notice of~~ the presence of any critical areas or buffers ~~on the property~~. The owner shall submit proof to the city that the notice has been filed for record within 30 days after the approval of a development permit. The notice shall run with the land, and failure to provide such notice to any purchase prior to transferring any interest in the property shall be a violation of this chapter. Development proposals which are defined as normal repair and maintenance of existing structures or development, including but not limited to roof repair, interior remodeling, wood stove permits, and on-site sewage disposal systems repairs, are exempt from this requirement
- B. When mitigation is required pursuant to a development proposal is not completed prior to the city final permit approval, such as final plat approval or final building inspection, the city shall require of the applicant an assignment of funds or post a performance bond or other security in a form and amount deemed acceptable by the city. If the development proposal is subject to mitigation, the applicant shall post mitigation security in a form and amount deemed acceptable by the city to ensure mitigation is fully functional.
- C. The performance security shall be in the amount of one hundred and twenty-five percent (125 %) of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater, and the cost of maintenance and monitoring for a five-year period.
- D. The security shall be in the form of assignment of funds, a surety bond, performance bond, assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the city attorney.
- E. The security authorized by this section shall remain in effect until the city determines, in writing, that the standards bonded for have been met. Security shall be held by the city for a minimum of five years to ensure that the required mitigation has been fully implemented and demonstrated to function and may be held for longer periods when necessary.
- F. Depletion, failure, or collection of security funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.

- G. Public development proposals shall be relieved from having to comply with the security requirements of this section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.
- H. Any failure to satisfy critical areas requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within 30 days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default, and the city may demand payment of any financial guarantees or require other action authorized by the city code or any other law.
- I. Any funds recovered pursuant to this section shall be used to complete the required mitigation.

#### 18.01.090 Reasonable use.

- A. Where the provisions of this chapter would prevent all reasonable use of those properties completely encumbered by critical areas, the property owner may apply for a reasonable use exception if it is demonstrated that all of the following five conditions exist:
1. No reasonable use of the property is possible without some impact to the critical area.
  2. No feasible and reasonable onsite alternative to the proposed activities is possible, including possible changes in site layout, reductions in density, and similar factors that would allow a reasonable economic use with fewer adverse impacts.
  3. The proposed activities, as conditioned, will result in the minimum possible impacts to affected critical areas, considering their functions and values and/or the risks associated with proposed development. The inability to derive reasonable economic use is not the result of the applicant's actions or that of a previous property owner, such as by segregating or dividing the property and creating an undevelopable condition.
  4. Any alteration of a critical area approved under this section shall be subject to appropriate conditions and will require mitigation under an approved mitigation plan.
- B. The responsibility of proving the presence of the above criteria shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.
- C. A request for a reasonable use exception shall be made to the City of Cle Elum and shall be processed as a Type III application according to the provisions in CEMC [17.100](#) "quasi-judicial review of applications." The request shall include a critical areas report, including a [habitat management plan and a mitigation](#)

plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy. the city planner shall prepare a recommendation to the city's planning commission based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria identified above.

- D. The Planning Commission shall review and decide upon the request for reasonable use, and shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with the reasonable use exception criteria identified above.

(Ord. 1335 § 1, 2010)

#### 18.01.100 Penalties Enforcement.

A. Applicability: Enforcement action by the department or local government may be taken whenever a person has violated this chapter. The choice of enforcement action and the severity of any penalty should be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the existence or degree of bad faith of the persons subject to the enforcement action.

B. Site Inspections. The City is authorized to make site inspections and take such actions as necessary to enforce this chapter. The City shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.

C. Unauthorized Alterations.

1. The city shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation or replacement measures at the responsible party's expense to compensate for violation of provisions of this chapter. At a minimum, the structural and functional values of the critical area shall be restored and any hazard shall be reduced to a level equal to, or less than, the predevelopment conditions.
2. All development work shall remain stopped until a restoration plan has been approved by the city. Such a plan shall be prepared by a qualified professional. The city may, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

D. Order to cease and desist.

1. Authority. The City shall have the authority to serve upon a person a cease and desist order if an activity being undertaken in critical areas, upon a reasonable belief, in violation of RCW 90.58 or this master program critical areas ordinance.
2. Contents. The order shall set forth:
  - a. A description of the specific nature, extent, and time of violation and the damage or potential damage;
  - b. A notice that the violation or the potential violation cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time;
  - c. The amount of the civil penalty;
  - d. A statement that the person to whom the order is directed may request an administrative appeal hearing to review the violation and/or imposed penalty. Such request must be in writing, accompanied by applicable fees, and received by the City within 10 working days after the Order has been served.
3. Effective date. The cease and desist order shall become effective immediately upon receipt by the person to whom the order is directed.
4. Compliance. Failure to comply with the terms of a cease and desist order can result in enforcement actions including, but not limited to, the issuance of a civil penalty.

E. Penalties. Any person, party, firm, corporation, or other legal entity convicted of violating any of the provisions of this chapter shall be guilty of a misdemeanor. Each day or portion of a day during which a violation of this chapter is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of this chapter shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington. The city may levy civil penalties against any person, party, firm, corporation, or other legal entity for violation of any of the provisions of this chapter. The civil penalty shall be assessed at a maximum rate of \$1,000 per day per violation. Daily fines shall not be levied until after a violator has received a notice of violation and shall not be levied while the violator is making a good faith and diligent effort to correct the violation in cooperation with City enforcement personnel nor while a notice of violation is under appeal through the applicable appeal process. The city shall process violations of this chapter in accordance with the procedures identified in Chapter 8.60 Code Enforcement, of the Cle Elum Municipal Code.

(Ord. 1335 § 1, 2010)

### 18.01.110 Administrative appeals.

Any aggrieved person dissatisfied with a permitting decision may appeal the decision in accordance with the procedures identified in Chapter 17.100.130 Appeals, of the Cle Elum Municipal Code.

(Ord. 1335 § 1, 2010)

### 18.01.120 Nonconforming activities.

A regulated activity that was approved prior to the passage of this chapter and to which significant economic resources have been committed pursuant to such approval but which does not conform to this chapter may be continued subject to the following:

- A. No such activity shall be expanded, changed, enlarged, or altered in any way that increases the extent of its nonconformity without a permit issued pursuant to the provisions of this chapter.
- B. Except for cases of discontinuance as part of a normal agricultural activity, if a nonconforming activity is discontinued for twelve consecutive months, any resumption of the activity shall conform to this chapter.
- C. If a nonconforming use or activity is destroyed by human activities or an act of God, it shall not be resumed except in conformity with the provisions of this chapter.
- D. Activities or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming activities.

(Ord. 1335 § 1, 2010)

### 18.01.130 Severability.

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

(Ord. 1335 § 1, 2010)

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**The Cle Elum Municipal Code is current through Ordinance 1588, passed June 8, 2020.**

Disclaimer: The city clerk's office has the official version of the Cle Elum Municipal Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited here.

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