CHAPTER 15.02

GENERAL PROVISIONS

SECTIONS:

15.02.010 PURPOSE.

The purpose of this chapter is to designate and classify ecologically sensitive and hazardous areas and to protect these areas and their functions and values, while also allowing for reasonable use of private property. Critical areas provide a variety of valuable and beneficial biological and physical functions that benefit the County and its residents, and/or may pose a threat to human safety or to public and private property. The beneficial functions and values provided by critical areas include, but are not limited to, water quality protection and enhancement, food chain support, flood storage, conveyance and attenuation of flood waters, ground water recharge and discharge, erosion control, protection from hazards, historical, archaeological, and aesthetic value protection, recreation and fish and wildlife habitat. Per RCW 36.70A.172, Best Available Science is included in developing policies and regulations in designating and protecting critical areas and associated functions and values.
[Ord. 609 (2018) § 2]

Commented [EA1]: You might consider including language here regarding the designation and protecting of critical areas, using BAS, consistent with GMA requirements.

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15.02.020 AUTHORITY.

(a) As provided herein, the Planning Administrator is given the authority to interpret and apply, and the responsibility to enforce this chapter to accomplish the stated purpose.

(b) The County may withhold, condition, or deny development permits or activity approvals to ensure that the proposed action is consistent with this chapter.
[Ord. 609 (2018) § 3]

15.02.030 RELATIONSHIP TO OTHER REGULATIONS.

(a) These critical areas regulations shall apply as an overlay and in addition to zoning and other regulations adopted by the County.

(b) Any individual critical area adjoined by another type of critical area ~~shall have the buffer~~or buffers/riparian management zone (RMZ) ~~and~~ shall meet the requirements that provide the most protection to the critical areas involved. When any provision of this chapter or any existing regulation, easement, covenant, or deed restriction conflicts with this chapter, that which provides more protection to the critical areas shall apply.

(c) These critical areas regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as locally adopted. Any potential impacts of a development and

conditions required pursuant to this chapter shall be considered in the SEPA review process.

(d) Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Shoreline Substantial Development permits, Floodplain Development permits, Hydraulic Project Approval (HPA) permits, Section 106 of the National Historic Preservation Act, U.S. Army Corps of Engineers Section 404 permits, National Pollution Discharge Elimination System permits). The applicant is responsible for complying with these requirements, apart from the process established in this chapter.
[Ord. 609 (2018) § 4]

15.02.040 APPLICANT RESPONSIBLE FOR REPORTS REQUIRED UNDER THIS CHAPTER.

Unless otherwise indicated in this chapter, the applicant shall be responsible for the initiation, preparation, submission, and expense of all required reports, assessment(s), studies, plans, reconnaissance(s), peer review(s) by qualified consultants, and other work prepared in support of or necessary to review the application.
[Ord. 609 (2018) § 5]

15.02.050 SEVERABILITY.

If any clause, sentence, paragraph, section, or part of this chapter or the application thereof to any person or circumstances shall be judged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered. The decision shall not affect or invalidate the remainder of any part thereof and to this end the provisions of each clause, sentence, paragraph, section, or part of this law are hereby declared to be severable.
[Ord. 609 (2018) § 6]

15.02.060 INTERPRETATION.

In the interpretation and application of this chapter, the provisions of this chapter shall be considered to be the minimum requirements necessary, shall be liberally construed to serve the purpose of this chapter, and shall be deemed to neither limit nor repeal any other provisions under state statute.
[Ord. 609 (2018) § 7]

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15.02.070 DEFINITIONS.

Words not defined in this chapter shall be as defined in the Benton County Code, the Washington Administrative Code, or the Revised Code of Washington. Words not found in either Code shall be as defined in the Webster's Third New International Dictionary, latest edition.

(1) Adjacent —immediately adjoining or within a distance that is less than that needed to separate activities from critical areas to ensure protection of the functions and values of the critical areas. Adjacent shall mean any activity or development located:

(i) On a site immediately adjoining a critical area;

(ii) A distance equal to or less than the required critical area ~~buffer~~RMZ or other habitat buffer width and building setback;

(iii) A distance equal to or less than three-hundred (300) feet upland from a stream, wetland, or water body; or

(iv) Bordering or within the floodplain.

(2) Alluvial soil— fine-grained fertile soil deposited by water flowing over flood plains or in river beds.

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

(4) Anadromous fish —Fish whose life cycle includes time spent in both fresh and salt water.

(5) Aquifer-A geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(6) Aquifer recharge areas-Areas that, due to the presence of certain soils, geology, or surface water, act to recharge groundwater by percolation.

(7) Base flood-A flood event having a one-percent chance of being equaled or exceeded in any given year, also referred to as the 100-year flood. Designations of base flood areas on flood insurance

map(s) always include the letters A or V.

(8) Best available science-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, as they now exist or may be hereinafter amended. Sources of the best available science are included in Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas published by the Washington State Department of Community, Trade and Economic Development.

(9) Best management practices (BMPs)-Conservation practices or systems of practices and management measures that:

(i) Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, and sediment;

(ii) Minimize adverse impacts to surface water and groundwater flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;

(iii) Protect trees and vegetation designated to be retained during and following site construction and use native plant species appropriate to the site for revegetation of disturbed areas; and

(iv) Provide standards for proper use of chemical herbicides within critical areas.

~~(10) Buffer or buffer zone-An area that is contiguous to and protects a critical area which is required for the continued maintenance, functioning, and/or structural stability of a critical area.~~

(10~~1~~) Compensation project-Actions necessary to replace project-induced critical area and ~~buffer~~RMZ or other habitat buffer losses, including land acquisition, planning, construction plans, monitoring, and contingency actions.

(11~~2~~) Compensatory mitigation-Replacing project-induced losses or impacts to a critical area, and includes, but is not limited to, the following:

(i) Restoration-Actions performed to re-establish wetland functional characteristics and processes that have been lost by alterations, activities, or catastrophic events within an area that no longer meets the definition of a wetland.

(ii) Creation-Actions performed to intentionally establish a wetland at a site where it did not formerly exist.

(iii) Preservation-Actions taken to ensure the permanent protection of existing, high-quality wetlands.

(iv~~ii~~) Enhancement-Actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality.

~~(iv) Preservation-Actions taken to ensure the permanent protection of existing, high-quality wetlands.~~

(12~~3~~) Conservation easement-A legal agreement that the property owner enters into to restrict uses of the land. Such restrictions can include, but are not limited to, passive recreation uses such as trails or scientific uses and fences or other barriers to protect habitat. The easement is recorded on a property deed, runs with the land, and is legally binding on all present and future owners of the property, therefore, providing permanent or long-term protection.

(13~~4~~) Critical aquifer recharge areas- Areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge. [WAC 365-190-030]

(14~~5~~) Critical areas-Critical areas include any of the following areas or ecosystems: aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, and wetlands, as defined in RCW 36.70A, as it now exists or may be hereinafter amended, and this chapter.

(15~~6~~) Critical species-All animal and plant species listed by the state or federal government as threatened or endangered.

(16~~7~~) Cumulative impacts or effects-The combined, incremental effects of human activity on ecological or critical areas functions and values. Cumulative impacts result when the effects of an action are added to or interact with other effects in a particular place and within a particular time. It is the combination of these

Commented [EA2]: Per the updated interagency guidance from 2021 the order of mitigation preference has been updated. We recommend updating to the follow order to align with this guidance:
1. Restoration: Re-establishment/Re-habilitation
2. Creation (establishment)
3. Preservation
4. Enhancement

Commented [BF2R2]: Updated

effects, and any resulting environmental degradation, that should be the focus of cumulative impact analysis and changes to policies and permitting decisions.

(17~~8~~) Development-Any activity upon the land consisting of the removal, excavation, stockpiling, or grading of soil; the dredging of soil, sand, gravel, minerals, organic matter, or material of any kind; the dumping, discharging, or filling with any material, liquid or solid; the draining or flooding which causes alteration of surface water level; the placing or construction, reconstruction, demolition, or expansion of any structure; activities that result in the destruction, or significant reduction of the biologic or hydrologic functions and values of riparian or wetland vegetation, including clearing, harvesting, intentional burning, or planting of non-native vegetation; activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of surface water resources, including quantity, or the introduction of pollutants; the platting or the subdivision of land; Development activity does not include the following activities:

(i) Interior building improvements.

(ii) Exterior structure maintenance activities, including painting and roofing.

(iii) Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning, and weeding.

(iv) Maintenance of the following existing facilities that does not expand the affected area: septic tanks (routine cleaning); wells; individual utility service connections; and individual cemetery plots in established and approved cemeteries.

(18~~9~~) Development permit-Any permit issued by the County, or other authorized agency, for construction, land use, or the alteration of land.

(19~~20~~) Erosion-The process whereby wind, rain, water, and other natural agents mobilize and transport particles.

(20~~1~~) Erosion hazard areas-At least those areas identified by the U.S. Department of Agriculture National Resources Conservation Service as having a "severe" rill and inter-rill erosion hazard.

(21~~2~~) Exotic-Any species of plants or animals, which are

foreign to the County.

(223) Fish and wildlife habitat conservation areas- Areas, including verified Washington State Department of Fish and Wildlife (WDFW) Priority Habitats and Species (PHS) 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 over1 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; areas with high relative population density or species richness; and locally important habitats and species, if so designated by the County. Fish and wildlife habitat conservation area~~s~~ 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. [WAC 365-190-030]

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

(245) Flood or flooding-A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation of runoff of surface waters from any source.

(256) Floodplain-The total land area adjoining a river, stream, watercourse, or lake subject to inundation by the base flood.

(267) Frequently flooded areas- Lands in the flood plain subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high groundwater. These areas include, but are not limited to, streams, rivers, lakes, wetlands, and areas where high groundwater forms ponds on the ground surface. [WAC 365-190-030]

(278) Functions and values-The beneficial roles served by critical areas including, but are not limited to, water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage, conveyance and attenuation; groundwater recharge and discharge; erosion control; wave attenuation; protection from hazards; historical, archaeological, and aesthetic value protection; educational opportunities; and recreation. These beneficial roles are not listed in order of priority. Critical area

functions can be used to help set targets (species composition, structure, etc.) for managed areas, including mitigation sites.

(28~~9~~) Geologically hazardous areas-Areas that may not be suited to development consistent with public health, safety, or environmental standards, because of their susceptibility to erosion, sliding, earthquake, or other geological events as designated by WAC 365-190-120, as it now exists or may be hereinafter amended. Types of geologically hazardous areas include: erosion, steep slopes, landslide, seismic, and volcanic hazards.

(29~~30~~) Groundwater-Water in a saturated zone or stratum beneath the surface of land or a surface water body.

(30~~1~~) Growth Management Act-RCW 36.70A and 36.70B, 36.70C, as they now exist or may be hereinafter amended.

(31) Habitat buffer or habitat buffer zone-An area that is contiguous to and protects a critical area which is required for the continued maintenance, functioning, and/or structural stability of a critical area.

~~(32) Habitat conservation areas-Areas designated as fish and wildlife habitat conservation areas.~~

Commented [BF3]: Covered by FWHCA definition above

(32~~3~~) Habitats of local importance-designated as fish and wildlife habitat conservation areas and include those areas found to be locally important by the County (WAC 365-190-030, as currently existing and hereafter amended).

(33~~4~~) Hazard areas-Areas designated as frequently flooded areas or geologically hazardous areas due to potential for erosion, landslide, seismic activity, mine collapse, or other geological condition.

(34~~5~~) Hearings examiner-An examiner appointed by the Board of County Commissioners authorized to hear and make decisions on variances, land use permits, and certain appeals.

(35~~6~~) Historic condition-Condition of the land, including flora, fauna, soil, topography, and hydrology that existed before the area and vicinity were developed or altered by human activity.

(36~~7~~) Hydraulic project approval (HPA)-A permit issued by the Washington Department of Fish and Wildlife for modifications to waters of the state in accordance with Chapter 75.20 RCW, as it now exists or may be hereinafter amended.

(37~~8~~) Hydric soil-A soil that is saturated, flooded, or ponded

long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined using the federal manual and applicable regional supplement and associated ~~following the~~ methods as described in ~~the Washington State Wetland Identification and Delineation Manual~~BCC Section 15.04.010.

(3~~8~~9) In-kind compensation-To replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity.

(39~~40~~) Infiltration-The downward entry of water into the immediate surface of soil.

(40~~1~~) Joint aquatic resource permit application-A single application form that may be used to apply for hydraulic project approvals, shoreline management permits, approvals of exceedance of water quality standards, water quality certifications, coast guard bridge permits, Washington State Department of Natural Resources use authorization, and U.S. Army Corps of Engineers permits.

(41~~2~~) Landslide hazard areas-Areas that are potentially subject to risk of mass movement due to a combination of geologic landslide resulting from a combination of geologic, topographic, and hydrologic factors. These areas are typically susceptible to landslides because of a combination of factors including: bedrock, soil, slope gradient, slope aspect, geologic structure, groundwater, or other factors.

(42~~3~~) Mitigation-Avoiding, minimizing, or compensating for adverse critical areas impacts consistent with mitigation sequencing as defined in BCC Section 15.02.220. ~~Mitigation, in the following sequential order of preference, is:~~

~~(i) Avoiding the impact altogether by not taking a certain action or parts of an action;~~

~~(ii) 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;~~

~~(iii) Rectifying the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of~~

Commented [EA4]: The use of this manual is out of date and the use of the state delineation manual is no longer supported. Please remove any reference to this from the CAO. Per WAC 173-22-035 all wetlands should be delineated using the approved federal wetland delineation manual and applicable regional supplement. You correctly note the use of the federal manual in your wetlands chapter.

Commented [BF4R2]: Updated

Commented [EA5]: This appears to be referring to the mitigation sequence. This looks close to what we recommend but for consistency you might consider updating the sequence. The following are the steps in the mitigation sequence according to the implementing rules of SEPA (Chapter 197-11-768 WAC). We recommend that the draft CAO require applicants to demonstrate that they have taken these actions:

"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 to avoid or reduce impacts;

3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

6. Monitoring the impact and taking appropriate corrective measures."

Commented [BF5R2]: Good suggestion - updated

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~~the initiation of the project;~~

~~(iv) Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;~~

~~(v) Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;~~

~~(vi) Compensating for the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and~~

~~(vii) Monitoring the hazard or other required mitigation and taking remedial action when necessary.~~

(43~~4~~) Monitoring-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, including gathering baseline data.

(44~~5~~) Native vegetation-Plant species that are indigenous to the area in question.

(45~~6~~) Nonindigenous-See "Exotic."

(46~~7~~) Off-site compensation-To replace critical areas away from the site on which a critical area has been impacted.

(47~~8~~) On-site compensation-To replace critical areas at or adjacent to the site on which a critical area has been impacted.

(48~~9~~) Ordinary high water mark (OHWM)-That mark which is found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, that the soil has a character distinct from that of the abutting upland in respect to vegetation.

(49~~50~~) Out-of-kind compensation-To replace critical areas with substitute critical areas whose characteristics do not closely approximate those destroyed or degraded.

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(501) Planning Administrator-The Benton County Planning Department Manager, Director, or designated representative who shall be responsible for the administration of this chapter.

(512) Potable water-Water that is safe and palatable for human use.

(523) Practical alternative-An alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and has less impacts to critical areas.

(534) Primary association area-The area used on a regular basis by, in close association with, or is necessary for the proper functioning of the habitat of a critical species. Regular basis means that the habitat area is normally, or usually known to contain a critical species, or based on known habitat requirements of the species, the area is likely to contain the critical species. Regular basis is species and population dependent. Species that exist in low numbers may be present infrequently yet rely on certain habitat types.

(545) Priority habitat-Habitat type or elements with unique or significant value to one or more species as classified by the State Department of Fish and Wildlife PHS data system. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element.

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

(567) Qualified professional-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), as it now exists or may be hereinafter amended. A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and two years of related work experience.

(i) A qualified professional for fish and wildlife habitats

must have a degree in biology and professional experience related to the subject species or habitat.

(ii) A qualified professional for a geological hazard must be a professional engineering geologist, geologist, or civil engineer licensed in the State of Washington.

(iii) A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

(iv) A qualified professional for wetlands shall be a certified professional wetland scientist or have, at a minimum: (1) a Bachelor's degree in hydrology, soil science, botany, ecology, or related field; and (2) at least two years of full-time work experience as a wetlands professional, including delineating wetlands using the state or federal manuals, preparing wetland reports, conducting function assessments, and developing and implementing mitigation plans.

(57~~8~~) Recharge-The process involved in the absorption and addition of water to groundwater.

(58~~9~~) Repair or maintenance-An activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.

(59~~60~~) Restoration-Measures taken to restore an altered or damaged natural feature including:

(i) Active steps taken to restore damaged wetlands, streams, protected habitat~~,~~ or their ~~buffer~~buffer/RMZ~~s~~ to the functioning condition that existed prior to an unauthorized alteration; and

(ii) Actions performed to reestablish structural and functional characteristics of the critical area that have been lost by alteration, past management activities, or catastrophic events.

(60) Riparian management zone (RMZ)-The RMZ is the area that has

the potential to provide full riparian functions. In forested areas, including deciduous trees as is common in the lower Yakima and along the Columbia River, this can occur within one 200-year site-potential tree height measured from the edge of a stream channel. In situations where a channel migration zone (CMZ) is present, this occurs within one site potential tree height measured from the edges of the CMZ. 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.

(61) Scientific process-A valid scientific process is one that produces reliable information useful in understanding the consequences of a decision. The characteristics of a valid scientific process are as follows:

(i) Peer Review. The information has been critically reviewed by other qualified scientific experts in that scientific discipline.

(ii) Methods. The methods that were used are standardized in the pertinent scientific discipline or the methods have been appropriately peer-reviewed to ensure their reliability and validity.

(iii) Logical Conclusions and Reasonable Inferences. The conclusions presented are based on reasonable assumptions supported by other studies and are logically and reasonably derived from the assumptions and supported by the data presented.

(iv) Quantitative Analysis. The data have been analyzed using appropriate statistical or quantitative methods.

(v) Context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.

(vi) References. The assumptions, techniques, and conclusions are well referenced with citations to pertinent existing information.

(62) Seismic hazard areas-Areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.

(63) Serviceable-Presently usable.

(64) Shorelines-All of the water areas of the State as defined in RCW 90.58.030, as it now exists or may be hereinafter amended, including reservoirs and their associated shorelands, together with the lands underlying them except shorelines of statewide significance.

(65) Shorelines of the State-The total of all "shorelines," as defined in RCW 90.58.030(2)(e), and "shorelines of statewide significance" within the State, as defined in RCW 90.58.030(2)(f), as now existing or hereafter amended.

(66) Shorelines of statewide significance-Those areas defined in RCW 90.58.030(2)(f), as it now exists or may be hereinafter amended.

(67) Shrubsteppe-A nonforested vegetation type consisting of one or more layers of perennial bunchgrasses and a conspicuous but discontinuous layer of shrubs.

Although Big Sagebrush is the most widespread shrubsteppe shrub, other dominant (or co-dominant) shrubs include Antelope Bitterbrush, Threetip Sagebrush, Scabland Sagebrush, and Dwarf Sagebrush. Dominant bunchgrasses include (but are not limited to) Idaho Fescue, Bluebunch Wheatgrass, Sandberg Bluegrass, Thurber's Needlegrass, and Needle-and-Thread. Sites can also have a layer of algae, mosses, or lichens.

In areas with greater precipitation or on soils with higher moisture-holding capacity, shrubsteppe can also support a dense layer of forbs (i.e., broadleaf herbaceous flora). Shrubsteppe contains various habitat features, including diverse topography, riparian areas, and canyons. Another important component is habitat quality (i.e., degree to which a tract resembles a site potential natural community), which may be influenced by soil condition and erosion; and the distribution, coverage, and vigor of native shrubs, forbs, and grasses. At more disturbed sites, non-natives such as Cheatgrass or Crested Wheatgrass may be co-dominant species.

(68~~7~~) Significant portion of its range-That portion of a species range likely to be essential to the long-term survival of the population in Washington.

(69~~8~~) Soil survey-The most recent soil survey for the County by the National Resources Conservation Service, U.S. Department of

Agriculture.

(7069) Species-Any group of animals classified as a species or subspecies as commonly accepted by the scientific community.

(710) Species, endangered-Any fish or wildlife species that is threatened with extinction throughout all or a significant portion of its range and is listed by the state or federal government as an endangered species.

(721) Species of local importance-Those species of local concern due to their population status or their sensitivity to habitat manipulation, or that are game species (WAC 365-190-030, as currently existing and hereafter amended).

(732) Species, priority-Any fish or wildlife species requiring protective measures and/or management guidelines to ensure their persistence as genetically viable population levels as classified by the Washington Department of Fish and Wildlife, including endangered, threatened, sensitive, candidate and monitor species, and those of recreational, commercial, or tribal importance.

(743) Species, threatened-Any fish or wildlife species that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range without cooperative management or removal of threats, and is listed by the state or federal government as a threatened species.

(754) Stream-See "Watercourse."

(765) Unavoidable-Adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved.

(776) Water typing system-Waters classified according to WAC 222-16-030, as now existing or hereafter amended.

(787) Watercourse-Any portion of a channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the state including areas in which fish may spawn, reside, or through which they may pass, and tributary waters with defined beds or banks, which influence the quality of fish habitat downstream. This definition includes watercourses that flow on an intermittent basis or which fluctuate in level during the year and applies to the entire bed of such watercourse whether or not the water is at peak level. This definition does not include irrigation ditches, canals,

stormwater run-off devices, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.

(798) Well-A bored, drilled, or driven shaft, or a dug hole whose depth is greater than the largest surface dimension for the purpose of withdrawing or injecting water or other liquids.

(8079) Wetlands-Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. 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 to mitigate the conversion of wetlands. ~~[RCW 36.70A.030 (23)]~~

(810) Wetland classes, classes of wetlands, or wetland types-The descriptive classes of the Washington State Wetland Rating System for Eastern Washington: 2014 Update~~ Revised~~ (Ecology Publication #14-06-030), or as revised.

(821) Wetland edge-The boundary of a wetland as delineated based on ~~the definitions contained in this chapter~~federal manual and applicable regional supplement as provided in BCC Section 15.04.010.
[Ord. 609 (2018) § 8]

(83) Wetlands with special characteristics for eastern Washington: Alkali wetlands, bogs, calcareous fens, forested wetlands, vernal pools, and Wetlands of High Conservation Value. Detailed information about these individual wetland types is found in Washington State Wetland Rating System for Eastern Washington: 2014 Update (Ecology Publication #14-06-030), or as revised.

Commented [EA6]: Ensure that these are delineated using the federal manual and applicable regional supplement per GMA requirements.

Commented [BF6R2]: Updated

15.02.080 JURISDICTION-CRITICAL AREAS.

(a) The County 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. Benton County's critical areas maps depict the approximate location and extent of known critical areas and are displayed on various inventory maps at the County Planning Department.

(b) Critical areas regulated by this chapter include:

(1) Wetlands;

(2) Critical aquifer recharge areas;

(3) Frequently flooded areas;

(4) Geologically hazardous areas; and

(5) Fish and wildlife habitat conservation areas.

(c) All areas within unincorporated Benton County meeting the definition of one or more critical areas, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter. Additionally, the presence of critical areas on a parcel triggers the requirements of this chapter, regardless of whether or not a critical area or buffer is depicted on an official map.
[Ord. 609 (2018) § 9]

Commented [EA7]: Consider adding the following: "The presence of critical areas on a parcel triggers the requirements of this chapter, regardless of whether or not a critical area or buffer is depicted on an official map."

Commented [BF7R2]: Updated

15.02.090 ACTIVITIES LIKELY TO AFFECT CRITICAL AREAS SUBJECT TO REGULATION.

Activities likely to affect critical areas shall be considered to be within the jurisdiction of these requirements and regulations to support the intent of this chapter and ensure protection of the functions and values of critical areas.
[Ord. 609 (2018) § 10]

15.02.100 PROTECTION OF CRITICAL AREAS.

Any action taken pursuant to this chapter shall result in equivalent or greater functions and values of the critical areas associated with the proposed action, as determined by the best available science. All actions and developments shall be designed and constructed in accordance with mitigation sequencing (BCC 15.02.220) to avoid, minimize, and restore all adverse impacts. Applicants must first demonstrate an inability to avoid or reduce impacts, before restoration and compensation of impacts will be allowed. No activity or use shall be allowed that results in a net loss of the functions or values of critical areas except under the reasonable use provisions of this chapter.
[Ord. 609 (2018) § 11]

15.02.110 BEST AVAILABLE SCIENCE.

(a) Protect functions and values of critical areas with special consideration to anadromous fish. Critical area reports and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas and must give special consideration to conservation or protection

measures necessary to preserve or enhance anadromous fish, such as salmon and bull trout, and their habitat.

(b) Best Available Science to be Consistent with Criteria. The best available science is that scientific information applicable to the critical area prepared by local, state, or federal natural resource agencies, a qualified scientific professional, or team of qualified scientific professionals that is consistent with criteria established in WAC 365-195-900 through WAC 365-195-925, as now existing and hereafter amended.

(c) Characteristics of a Valid Scientific Process. In the context of critical areas protection, a valid scientific process is one that produces reliable information useful in understanding the consequences of a local government's regulatory decisions, and in developing critical areas policies and development regulations that will be effective in protecting the functions and values of critical areas. To determine whether information received during the permit review process is reliable scientific information, the Planning Administrator shall determine whether the source of the information displays the characteristics of a valid scientific process. Such characteristics are as follows:

(1) Peer Review. The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The proponents of the information have addressed the criticism of the peer reviewers. Publication in a refereed scientific journal usually indicates that the information has been appropriately peer-reviewed;

(2) Methods. The methods used to obtain the information are clearly stated and reproducible. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to ensure their reliability and validity;

(3) Logical Conclusions and Reasonable Inferences. The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained;

(4) Quantitative Analysis. The data has been analyzed using appropriate statistical or quantitative methods;

(5) Context. The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge; and

(6) References. The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other pertinent existing information.

(7) Absence of Valid Scientific Information. Where there is an absence of valid scientific information or incomplete scientific information relating to a critical area leading to uncertainty about the risk to critical area function of permitting an alteration of or impact to the critical area, the Planning Administrator shall take a "precautionary or a no-risk approach," that strictly limits development and land use activities until the uncertainty is sufficiently resolved.
[Ord. 609 (2018) § 12]

15.02.120 APPLICABILITY.

(a) The provisions of this chapter shall apply to all lands, all land uses and development activity, and all structures and facilities in unincorporated Benton County, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the unincorporated portion of the County, except agricultural activities on agricultural lands, as those terms are defined by RCW 36.70A.703(1) and RCW 90.58.065 as now existing or as hereafter amended, are regulated as set forth below. No person, company, agency, or applicant shall alter a critical area or ~~buffer~~RMZ or other habitat buffer except as consistent with the purposes and requirements of this chapter.

(1) Benton County has opted into the Voluntary Stewardship Program (VSP), an alternative to the regulatory protection of critical areas on agricultural lands. A working group comprised of agricultural groups, environmental groups, and tribes developed and approved a work plan that identifies goals and benchmarks to protect critical areas while maintaining the viability of agriculture through voluntary, incentive based measures (WAC 365-1919-010(1) as now existing

and hereafter amended).

(i) The work plan developed and approved by the VSP working group was approved by the Washington State Conservation Commission in April 2018, and the provisions of this chapter will not apply to agricultural activities on agricultural lands, as those terms are defined by RCW 36.70A.703(1) and RCW 90.58.065, as now existing or as hereafter amended.

(ii) If the Washington State Conservation Commission withdraws its approval of the work plan or determines that it fails to meet goals and benchmarks, the provisions and policies of the chapter will apply to agricultural activities on agricultural lands.

(2) The Benton County Shoreline Master Program, adopted pursuant to RCW 90.58 as now existing and hereafter amended, shall apply to all land use and development activities occurring within shoreline jurisdiction. Within shoreline jurisdiction, if critical areas are present where the activities are to take place, compliance with the SMP is required. No further evaluation under this chapter is required.

(b) The County shall not approve any permit or otherwise issue any authorization not expressly exempted by this chapter to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated ~~buffer~~RMZ or other habitat buffer, without first ensuring compliance with the requirements of this chapter.

(c) Approval of a permit or development proposal pursuant to the provisions of this chapter does not discharge the obligation of the applicant to comply with the provisions of this chapter.
[Ord. 609 (2018) § 13; Ord. 637 (2021) § 1]

15.02.130 EXEMPTIONS.

(a) ~~(a)~~ Exemption Request and Review Process. The proponent of the ~~~~activity may submit a written request for exemption to the Planning Administrator that describes the activity and states the exemption listed in this section that applies. The Planning Administrator shall review the exemption request to verify that it complies with this chapter and approve or deny the exemption. If the exemption is denied, the proponent may continue in the review

process and shall be subject to the requirements of this chapter.

(b) Exempt Activities and Impacts to Critical Areas. All exempted activities shall avoid potential impacts to critical areas. To be exempt from this chapter does not give permission to degrade a critical area, conduct an activity that results in a loss of the functions or values of a critical area, or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense. The following developments, activities, and associated uses shall be exempt from the provisions of this chapter, provided they are otherwise consistent with other local, state, and federal laws and requirements:

(1) 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.

(i) Emergency actions that create an impact to a critical area or its buffer/RMZ shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer/RMZ. The person or agency undertaking such action shall notify the County within one working day following commencement of the emergency activity. Within thirty (30) days, the Planning Administrator shall determine if the action taken was within the scope of the emergency actions allowed in this Subsection. If the Planning Administrator determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions in BCC 15.02.290 (Unauthorized Alterations and Enforcement) may apply.

(ii) After the emergency, the person or agency undertaking the action shall fully fund and conduct necessary restoration and/or mitigation for any impacts to the critical area and buffers/RMZ resulting from the emergency action in accordance with an approved critical area report and mitigation plan. The person or agency undertaking the action shall apply for review, and the alteration, critical area report, and mitigation plan shall be reviewed by the County in accordance with the review procedures contained herein. Restoration and/or

mitigation activities must be initiated within one (1) year of the date of the ~~emergency, and~~emergency and completed in a timely manner as approved by the Planning Administrator.

(2) Operation, Maintenance, or Repair. Operation, maintenance, or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems, provided the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer/RMZ and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair.

(3) Passive Outdoor Activities. Recreation, education, and scientific research activities that do not degrade the critical area, including fishing, hiking, and bird watching.

(4) Existing and ongoing agricultural activities, provided they implement applicable Best Management Practices (BMPs) contained in the latest editions of the USDA Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG).

(i) Wetlands. Existing and ongoing agricultural activities do not include removing trees, diverting or impounding water, excavation, ditching, draining, culverting, filling, grading, and similar activities that introduce new adverse impacts to wetlands or other aquatic resources. Conversion of wetlands that are not currently in agricultural use, regardless of their wetlands rating, to a new agricultural use should be subject to the same regulations that govern new development.

(ii) Fish and wildlife habitat conservation areas. Existing and ongoing agricultural activities do not include tree cutting, road building, new agriculture, clearing, earth moving, mining, filling, burning or construction of buildings or other facilities in fish and wildlife habitat conservation areas.

(5) Artificial structures intentionally constructed from upland areas for purposes of storm-water drainage or water quality control, or ornamental landscape ponds, which are not part of a mitigation plan as described and detailed in this

Commented [EA8]: Good addition. This appears to make it clear that conversions should still be (initially) regulated by the CAO. If this change is made make sure it is consistent with your exemptions.

Commented [BF8R2]: Noted

chapter.

(6) Operation, maintenance, repair, or reconstruction of irrigation district delivery systems, irrigation infrastructure, irrigation canals or drainage ditches that lie within the boundaries of and/or are maintained by an irrigation district, provided the activity does not further the impact to, or encroach further within, the critical area or buffer/RMZ and there is no increased risk to life or property as a result of the proposed activity. Includes canal lining projects, pipeline and pump replacement, and the incidental reduction or alteration of regulated wetlands due to canal lining or piping projects.

[Ord. 609 (2018) § 14]

15.02.140 EXCEPTION-PUBLIC AGENCY AND UTILITY.

(a) If the application of this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.

(b) Exception Request and Review Process. An application for a public agency and utility exception shall be made to the County and shall include; a critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW, as it now exists or may be hereinafter amended). The Hearings Examiner shall issue a decision based on review of the submitted information, a site inspection, and the proposal's ability to comply with public agency and utility exception review criteria in subsection (d).

(c) Hearings Examiner Review. The Hearings Examiner shall review the application and Planning Administrator’s recommendation, and conduct a public hearing pursuant to the provisions of the Benton County Code. The Hearings Examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use exception review criteria in subsection (d).

(d) Public Agency and Utility Review Criteria. The criteria for review and approval of public agency and utility exceptions are as follows:

(1) There is no other practical alternative to the proposed development with less impact on the critical areas;

(2) The application of this chapter would unreasonably restrict the ability to provide utility services to the public;

(3) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;

(4) The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science; and

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

(e) Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.
[Ord. 609 (2018) § 15]

15.02.150 EXCEPTION-REASONABLE USE.

(a) If the application of this chapter would deny all reasonable use of the subject property, the property owner may apply for an exception pursuant to this section.

(b) Exception Request and Review Process. An application for a reasonable use exception shall be made to the County and shall include a critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW, as it now exists or may be hereinafter amended) (SEPA documents). The Hearings Examiner shall issue a decision based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in subsection (d).

(c) Hearings Examiner Review. The Hearings Examiner shall review the application and Planning Administrator’s recommendation, and conduct a public hearing pursuant to the provisions of the Benton County Code. The Hearings Examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use exception review criteria in

subsection (d).

(d) Reasonable Use Review Criteria. Criteria for review and approval of reasonable use exceptions are as follows:

(1) The application of this chapter would deny all reasonable use of the property;

(2) No other reasonable use of the property has less impact on the critical area;

(3) The proposed impact to the critical area is the minimum necessary to allow for reasonable use of the property;

(4) The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant after the effective date of this chapter;

(5) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;

(6) The proposal will result in no net loss of critical area functions and values consistent with the best available science; and

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

(e) Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.
[Ord. 609 (2018) § 16]

15.02.160 ALLOWED ACTIVITIES.

(a) Critical Area Report. Activities allowed under this chapter shall have been reviewed and permitted or approved by the County or other agency with jurisdiction, but do not require submittal of a separate critical area report, unless such submittal was required previously for the underlying permit. The Planning Administrator may apply conditions to the underlying permit or approval to ensure that the allowed activity is consistent with the provisions of this chapter to protect critical areas.

(b) Required Use of Best Management Practices. All allowed

activities shall be conducted using the best management practices

that result in the least amount of impact to the critical areas. Best management practices shall be used for vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense.

(c) Allowed Activities. The following activities are allowed:

(1) Permit Requests Subsequent to Previous Critical Area Review. Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits), and construction approvals (such as building permits) if all of the following conditions have been met:

(i) The provisions of this chapter have been previously addressed as part of another approval;

(ii) There have been no material changes in the potential impact to the critical area or buffer since the prior review;

(iii) There is no new information available that is applicable to any critical area review of the site or particular critical area;

(iv) The permit or approval has not expired or, if no expiration date, no more than five years has elapsed since the issuance of that permit or approval; and

(v) Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured.

(d) Modification to Existing Structures. Structural modification of, addition to, or replacement of an existing legally constructed structure that does not further alter or increase the impact to the critical area or buffer/RMZ ~~or buffer~~ and there is no increased risk to life or property as a result of the proposed modification or replacement, provided that restoration of structures substantially damaged by fire, flood, or act of nature must be initiated within one year of the date of such damage, as evidenced by the issuance of a valid building permit, and diligently pursued

Commented [EA9]: You might consider using this language regarding this language on the "RMZ or buffer" in your emergency actions section noted above.

Commented [BF9R2]: Done - updated

to completion.

(e) Activities within the Improved Right-of-Way. Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a County authorized private roadway except those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater; subject to the following:

(1) Critical area and/or buffer widths shall be increased, where possible, equal to the width of the right-of-way improvement, including disturbed areas; and

(2) Retention and replanting of native vegetation shall occur wherever possible along the right-of-way improvement and resulting disturbance.

(f) Minor Utility Projects. Utility projects which have minor or short-duration impacts to critical areas, as determined by the Planning Administrator in accordance with the criteria below, and which do not significantly impact the function or values of a critical area(s), provided that such projects are constructed with best management practices and additional restoration measures are provided. Such allowed minor utility projects shall meet the following criteria:

(1) There is no practical alternative to the proposed activity with less impact on critical areas;

(2) The activity involves the placement of a utility pole, street signs, anchor, or vault or other small component of a utility facility; and

(3) The activity involves disturbance of an area less than seventy-five (75) square feet.

(g) Public and Private Pedestrian Trails. Public and private pedestrian trails, except in wetlands, fish and wildlife habitat conservation areas, or their buffers, subject to the following:

(1) ~~(1)~~ The trail surface shall meet all other requirements including water quality standards

~~.~~

Commented [EA10]: For wetlands we recommend that walkways and trails, provided that they are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent (25%) of the wetland buffer area, and located to avoid removal of significant [as defined in ordinance], old growth, or mature trees. They should be limited to pervious surfaces no more than five (5) feet in width and designed for pedestrian use only. You might consider adding these criteria here for wetlands.

Commented [BF10R2]: Updated

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(2) Walkways and trails are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent (25%) of the wetland buffer area, and located to avoid removal of mature trees. They should be limited to pervious surfaces no more than five (5) feet in width and designed for pedestrian use only.

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(32) Critical area and/~~or buffer~~or buffer/RMZ widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas; and

(~~3~~4) Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report.

(h) Minor Site Investigative Work. Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored.

(i) Navigational Aids and Boundary Markers. Construction or modification of navigational aids and boundary markers.

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

(k) Activities such as legal hunting, hiking, canoeing, nature study, photography, fishing, education or scientific research and wildlife viewing.
[Ord. 609 (2018) § 17]

15.02.170 GENERAL REQUIREMENTS—CRITICAL AREA PROJECT REVIEW PROCESS.

(a) As part of this review, the Planning Administrator shall:

(1) Verify the information submitted by the applicant;

(2) Evaluate the project area and vicinity for critical areas;

(3) Determine whether the proposed project is likely to impact the functions or values of critical areas; and

(4) Determine if the proposed project adequately addresses the impacts and avoids impacts to the critical area associated with the project.

(b) If the proposed project is within, or is likely to impact a critical area, the Planning Administrator shall:

(1) Require a critical area report from the applicant that has been prepared by a qualified professional;

(2) Review and evaluate the critical area report;

(3) Determine whether the development proposal conforms to the purposes and performance standards of this chapter, including the criteria in review criteria (BCC 15.02.240);

(4) Assess the potential impacts to the critical area and determine if they can be avoided or minimized; and

(5) Determine if any mitigation proposed by the applicant is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of this chapter.

[Ord. 609 (2018) § 18]

15.02.180 CRITICAL AREA IDENTIFICATION PROCESS.

(a) Site Inspection. Prior to the County's consideration of any proposed activity not found to be exempt under exemptions (BCC 15.02.130) or allowed pursuant to allowed activities (BCC 15.02.160), the Planning Administrator shall conduct a site inspection to review critical area conditions on site. The Planning Administrator shall notify the property owner of the inspection prior to the site visit. Reasonable access to the site shall be provided by the property owner for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period.

(b) Following a site inspection, the Planning Administrator shall review any other information available pertaining to the site and the proposal and consult with agencies with expertise as to critical areas, as necessary. As part of the review the Planning Administrator shall review data on the location of critical areas, such as the priority species and habitat database, to determine if critical areas are present. After these reviews, the Planning Administrator shall make a determination as to whether any critical areas may be affected by the proposal or whether the proposal will be adversely impacted by a critical area and if a more detailed critical area report shall be submitted.

(c) Decision.

(1) No Critical Areas Present. If after a site visit the Planning Administrator's analysis indicates that the project area is not within or adjacent to a critical area ~~or buffer~~, RMZ or buffer and that the proposed activity is unlikely to degrade the functions or values of a critical area, then the Planning Administrator shall rule that the critical area review is complete and no further review is required. A summary of this information shall be included in any staff report or decision on the underlying permit.

(2) Critical Areas Present, But No Impact—Waiver. If the Planning Administrator determines that there are critical areas within or adjacent to the project area, but that the best available science shows that the proposed activity is unlikely to degrade the functions or values of the critical area, the Planning Administrator may waive the requirement for a critical area report. A waiver may be granted if there is substantial evidence that all of the following requirements will be met:

(i) There will be no alteration of the critical area ~~or buffer~~, RMZ or buffer;

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

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

(iv) A summary of this analysis and the findings shall be included in any staff report or decision on the underlying permit.

(3) Critical Areas May Be Affected by Proposal. If the Planning Administrator determines that a critical area or areas may be affected by the proposal, or is unable to determine if critical areas may be affected by the proposal, then the Planning Administrator shall notify the applicant that a critical area report must be submitted prior to further review of the project, and indicate each of the critical area types that should be addressed in the report.

(4) Planning Administrator Determination Subject to Reconsideration.

(i) A determination regarding the apparent presence or absence of one or more critical areas by the Planning Administrator is not an expert certification and the determination is subject to possible reconsideration and reopening if new information is received.

(ii) If the applicant wants greater assurance of the accuracy of the critical area review determination, the applicant may choose to hire a qualified professional to provide such assurances.

[Ord. 609 (2018) § 19]

15.02.190 CRITICAL AREA REPORT-REQUIREMENTS.

(a) Preparation by Qualified Professional. If required by the Planning Administrator in accordance with General Requirements—Critical Area Project Review Process (BCC 15.02.170), the applicant shall submit a critical area report prepared by a qualified professional as defined herein.

(b) Incorporating Best Available Science. The critical area report shall use scientifically valid methods and studies in the analysis of critical area data and field reconnaissance and reference the source of science used. The critical area report shall evaluate the proposal and all probable impacts to critical areas in accordance with the provisions of this chapter.

(c) Minimum Report Contents. At a minimum, the report shall contain the following:

(1) The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;

(2) A copy of the site plan for the development proposal including: A map to scale depicting critical areas, buffers, the development proposal, and any areas to be cleared;

(3) The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;

(4) Identification and characterization of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area;

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(5) A statement specifying the accuracy of the report, and all assumptions made and relied upon;

(6) An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;

(7) An analysis of site development alternatives;

(8) A description of reasonable efforts made to apply mitigation sequencing pursuant to mitigation sequencing (BCC 15.02.220) to avoid, minimize, and mitigate impacts to critical areas;

(9) Plans for adequate mitigation, as needed, to offset any impacts, in accordance with mitigation plan requirements (BCC 15.02.230), including but not limited to:

(i) The impacts of any proposed development within or adjacent to a critical area ~~or buffer~~, RMZ or buffer on the critical area; and

(ii) The impacts of any proposed alteration of a critical area ~~or buffer~~, RMZ or buffer on the development proposal, other properties and the environment.

(10) A discussion of the performance standards applicable to the critical area and proposed activity;

(11) Financial guarantees to ensure compliance;

(12) Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area;

(13) Unless otherwise provided, a critical area report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the Planning Administrator; and

(14) Any additional information required for the critical area as specified in this chapter.

[Ord. 609 (2018) § 20]

15.02.200 CRITICAL AREA REPORT—MODIFICATIONS TO REQUIREMENTS.

(a) Limitations to Study Area. The Planning Administrator may limit the required geographic area of the critical area report as appropriate if:

(1) The applicant, with assistance from the County, cannot obtain permission to access properties adjacent to the project area; or

(2) The proposed activity will affect only a limited part of the subject site.

(b) Modifications to Required Contents. The applicant may consult with the Planning Administrator prior to or during preparation of the critical area report to obtain County approval of modifications to the required contents of the report where, in the judgment of a qualified professional, more or less information is required to adequately address the potential critical area impacts and required mitigation.

(c) Additional Information Requirements. The Planning Administrator may require additional information to be included in the critical area report when determined to be necessary to the review of the proposed activity in accordance with this chapter. Additional information that may be required, includes, but is not limited to:

(1) Historical data, including original and subsequent mapping, aerial photographs, data compilations and summaries, and available reports and records relating to the site or past operations at the site;

(2) Grading and drainage plans; and

(3) Information specific to the type, location, and nature of the critical area.

[Ord. 609 (2018) § 21]

15.02.210 MITIGATION REQUIREMENTS.

(a) The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas. Unless otherwise provided in this chapter, if alteration to the critical area is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a development proposal or alteration shall

be mitigated ~~using the~~applying best available science in accordance with an approved critical area report and SEPA documents, ~~so as to~~to result in no net loss of critical area functions and values.

(b) Mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.

(c) Mitigation Ratios and Functional Accounting - Compensatory mitigation ratios must be greater than 1:1 to address temporal losses, functional uncertainty, and performance risk. Credits and debits should be based on a scientifically valid measure of habitat function, value, and area.

(d) Activity-Specific Ecological Uplift - Mitigation activities (re-establishment, rehabilitation, enhancement, preservation) should be distinguished by their expected ecological uplift, ensuring that the degree of functional gain is proportional to the magnitude of impact.

(e) Mitigation Hierarchy and Location - Mitigation shall focus on the best possible outcome for compensating for impacts to functions and values within the critical area. The location of the mitigation action shall be preferred in the order referenced below:

1) Preferential consideration shall be given to on-site mitigation measures that replace the impacted functions, and in areas where non-native vegetation is present adjacent to existing native vegetation to the extent practicable.

2) Off-site mitigation located in Benton or an adjacent County with mitigation measures the replace the impacted functions. For offsite shrubsteppe habitat mitigation, the applicant is encouraged to participate in the Benton County mitigation bank program. This program has established a shrubsteppe mitigation bank that applicants can purchase credits to offset impacts for their proposed development.

3) On-site mitigation with out-of-kind mitigation measures the offset the impacted functions.

4) Off-site mitigation located in Benton or adjacent County with out-of-kind mitigation measures to offset the impacted functions

Commented [BF11]: Add reference to program description location

Off-site or out-of-kind mitigation should only be approved when it can be shown to provide equal or greater biological functions and values than on-site, in-kind options).

Alternative off-site mitigation programs such as mitigation banks or in-lieu fee programs may be used to meet mitigation requirements, including both existing and future mitigation banking opportunities, developed in coordination with the county. Whether permittee responsible, mitigation bank or in-lieu fee approach is used, all must follow the applicable mitigation preference sequence and functional accounting framework.

(f) Monitoring, Timing, and Adaptive Management - Mitigation should be implemented before or concurrent with construction, with function-based performance standards and monitoring that continues until success criteria are met. Delayed or unsuccessful mitigation should require additional compensation or corrective actions.

(g) Financial Assurance and Long-Term Site Protection – See BCC Section 15.02.270 for financial surety provisions. Additionally, the county prefers conservation easement, deed restriction or other permanent guarantees held by a third party for mitigation areas.

(h~~e~~) Mitigation shall not be implemented until after County approval of a critical area report that includes a mitigation plan, and mitigation shall be in accordance with the provisions of the approved critical area report.
[Ord. 609 (2018) § 22]

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Commented [BF12]: WDFW comment to discuss - Cumulative Impacts Consideration - Explicitly require evaluation of cumulative impacts at the watershed or landscape scale to ensure that "no net loss" is achieved collectively across projects.

15.02.220 MITIGATION SEQUENCING.

Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following sequential order of preference:

(a) Avoiding the impact altogether by not taking a certain action

or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;

(c) Rectifying the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and fish and wildlife habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;

(d) Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;

(e) Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;

(f) Compensating for the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and fish and wildlife habitat conservation areas by replacing, enhancing, or providing substitute resources or

environments; and

(g) Monitoring the hazard or other required mitigation and taking remedial action when necessary.

Mitigation for individual actions may include a combination of the above measures.
[Ord. 609 (2018) § 23]

Commented [EA13]: This looks similar to the rules of SEPA steps that we recommend for CAOs as well. For consistency you might consider having the steps match the ones in your definition section which have an extra step. Or you could simply have that mitigation sequence definition refer back to this section of the code to avoid repetition.

Commented [BF13R2]: Referenced in def as suggested

15.02.230 MITIGATION PLAN REQUIREMENTS.

When mitigation is required, the applicant shall submit for approval by the Planning Administrator a mitigation plan as part of the critical area report. The mitigation plan shall include:

(a) Environmental Goals and Objectives. The mitigation plan shall include a written report identifying environmental goals and objectives of the compensation proposed and including:

(1) A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area;

(2) A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed; and

(3) An analysis of the likelihood of success of the compensation project.

(b) Performance Standards. The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of this chapter have been met.

(c) Detailed Construction Plans. The mitigation plan shall include written specifications and descriptions of the mitigation proposed,

such as:

(1) The proposed construction sequence, timing, and duration;

(2) Grading and excavation details;

(3) Erosion and sediment control features;

(4) A planting plan specifying plant species, quantities, locations, size, spacing, and density; and

(5) Measures to protect and maintain plants until established.

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

(e) Monitoring Program. The mitigation plan shall include a program for monitoring the mitigation measures and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring (for example, monitoring shall occur in years one, three, five, and seven after site construction), and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the 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.

(f) Contingency Plan. The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.

(g) Financial Guarantees. The mitigation plan shall include financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures shall be posted in accordance with bonds to ensure mitigation, maintenance, and monitoring (BCC 15.02.270). [Ord. 609 (2018) § 24]

15.02.240 REVIEW CRITERIA.

The Planning Administrator shall make a determination as to whether the proposed activity and mitigation, if any, is consistent with the provisions of this chapter, based on the following criteria:

(a) Any alteration to a critical area, unless otherwise provided for in this chapter, shall be reviewed and approved, approved with conditions, or denied based on the proposal's ability to comply with all of the following criteria:

(1) The proposal minimizes the impact on critical areas in accordance with mitigation sequencing (BCC 15.02.220);

(2) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;

(3) The proposal is consistent with the general purposes of this chapter and the public interest;

(4) Any alterations permitted to the critical area are mitigated in accordance with mitigation requirements (BCC 15.02.210);

(5) The proposal protects the critical area functions and values consistent with the best available science and results in no net loss of critical area functions and values; and

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

(b) The Planning Administrator may condition the proposed activity as necessary to mitigate impacts to critical areas and to conform to the standards required by this chapter.

(c) Except as provided for by this chapter, any project that cannot adequately mitigate its impacts to critical areas in the sequencing order of preferences in mitigation sequencing (BCC 15.02.210) shall be denied.
[Ord. 609 (2018) § 25]

15.02.250 COMPLETION OF THE CRITICAL AREA REVIEW.

The County’s determination regarding critical areas pursuant to this chapter shall be final concurrent with the final decision to

approve, condition, or deny the development proposal or other activity involved.
[Ord. 609 (2018) § 26]

15.02.260 APPEALS.

Any decision to approve, condition, or deny a development proposal or other activity based on the requirements of this chapter may be appealed by any person aggrieved to the Benton County Hearings Examiner and the following procedure shall apply:

(a) Appeals shall be filed within fourteen (14) days of the date of the decision being appealed. All appeals shall be in writing, in duplicate, shall be accompanied by a non-refundable fee as established by resolution of the Board of Benton County Commissioners, and shall be filed with the Hearings Examiner.

(b) Upon the filing of an appeal, the Hearings Examiner shall set the time and place at which the matter will be considered. At least a ten (10) day notice of such time and place together with one copy of the written appeal, shall be given to the official whose decision is being appealed and to the adverse parties of record, if any. The official whose decision is appealed shall transmit to the Hearings Examiner all of the records pertaining to the decision, together with such additional written report as he/she deems pertinent.

(c) Notice shall be given not less than twelve (12) days before the hearing date, in the following manner:

(1) By United States Postal Service addressed to the applicant, parties of record, and to the owners of all property within a distance of three-hundred (300) feet in any direction from the subject property. (Notices addressed to the last known address of the person making the most recent tax payment shall be deemed proper notice to the owner of such property.)

(2) By publication of a legal notice in a paper of general circulation.

(d) Upon hearing the appeal, the Hearings Examiner may reverse or affirm, wholly or in part, or may modify the decision appealed, and may make such decision as should be made and, to that end, shall have all the powers of the officials whose decision is appealed, as to the particular issue.

(e) The Hearings Examiner shall keep in a written record of the case, the findings of fact, upon which the action is based. [Ord. 609 (2018) § 27]

15.02.270 BONDS TO ENSURE MITIGATION, MAINTENANCE, AND MONITORING.

(a) When mitigation required pursuant to a development proposal is not completed prior to the County final permit approval, such as final plat approval or final building inspection, the County shall require the applicant to post a performance bond or other security in a form and amount deemed acceptable by the County to cover and remaining costs plus an additional percentage for implementation, monitoring, and contingency. If the development proposal is subject to mitigation, the applicant shall post a mitigation bond or other security in a form and amount deemed acceptable by the County to ensure mitigation is fully functional. Participation in the County shrubsteppe mitigation bank program, including payment for permanent protection of conservation easement or property through acquisition consistent with required mitigation ratios will satisfy the security requirement.

(b) The bond shall be in the amount of one hundred twenty-five (125) percent of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk plus an additional percentage for implementation, monitoring, and contingency, whichever is greater.

(c) The bond shall be in the form of a surety bond, performance bond, assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the County Prosecuting Attorney's Office.

(d) Bonds or other security authorized by this section shall remain in effect until the County determines, in writing, that the standards bonded for have been met. Bonds or other security shall be held by the County for a minimum of five (5) years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.

(e) Depletion, failure, or collection of bond funds shall not discharge the obligation of an applicant or violator to complete

required mitigation, maintenance, monitoring, or restoration.

(f) Public development proposals shall be relieved from having to comply with the bonding requirements of this section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.

(g) Any failure to satisfy critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within thirty (30) days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default, and the County may demand payment of any financial guarantees or require other action authorized by the County code or any other law.

(h) Any funds recovered pursuant to this section shall be used to complete the required mitigation.
[Ord. 609 (2018) § 28]

15.02.280 GENERAL PROTECTIVE MEASURES.

(a) Temporary or Permanent Field Identification. Prior to a regulated activity taking place within or adjacent to a critical area, the County shall require temporary or permanent field markers delineating the critical area boundary and associated buffer. The type of field markers to be used will be agreed to by the applicant and the Planning Administrator depending on site conditions and inspection requirements. Field markers shall be spaced at a minimum of every fifty (50) feet, unless alternative placement or spacing is authorized by the Administrator. If required, the location of field markers must be shown on all site plans and final plats associated with the proposed development. Field markers shall remain in place until any required final inspections are completed and approved. Field markers may be waived by the Administrator if an alternative to field marking achieves the same objective, or if the development and construction activity(ies) is located at a sufficient distance so that impacts to the critical area and its buffer are unlikely to occur. The Administrator may require permanent fencing and/or signage if necessary to protect a critical area and its buffer from adjacent land uses.

(b) Building Setback. Buildings and other structures shall be set back a minimum distance of ten (10) feet from the edges of all critical area buffers or from the edges of all critical areas, if no buffers are required. A setback that is less than 10 feet in width may be allowed if it can be demonstrated in the critical area report that building construction and long-term critical area maintenance can be achieved without encroaching upon the critical area ~~or buffer~~, RMZ or buffer.

(1) ~~(1)~~ The following may be allowed in the building setback area:

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(i) Landscaping;

(ii) Uncovered decks;

(iii) Building overhangs, if such overhangs do not extend more than eighteen (18) inches into the setback area; and

(iv) Impervious ground surfaces, such as driveways and patios.

(c) Notice on Title. To inform subsequent purchasers of real property of the existence of critical areas, the owner of any property containing a critical area ~~or buffer~~, RMZ or buffer on which a development proposal is submitted, shall file a notice with the Benton County Auditor (Recording) according to the direction of the County. The notice should state the presence of the critical area ~~or buffer~~, RMZ or buffer on the property and the fact that limitations on actions in or affecting the critical area ~~or buffer~~, RMZ or buffer may exist.
[Ord. 609 (2018) § 29]

15.02.290 INSPECTION, UNAUTHORIZED CRITICAL AREA ALTERATIONS AND ENFORCEMENT.

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

(b) When a critical area or its buffer has been altered in violation of this chapter, all ongoing development work shall stop and the critical area shall be restored. The County shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation, or replacement measures at the owner's or other responsible party's expense to compensate for violation of provisions of this chapter.

(c) Requirement for Restoration Plan. All development work shall remain stopped until a restoration plan is prepared and approved by the Planning Administrator. Such a plan shall be prepared by a qualified professional using the best available science and shall describe how the actions proposed meet the minimum requirements described in Subsection (d). The Planning Administrator shall, 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) Minimum Performance Standards for Restoration.

(1) For alterations to critical aquifer recharge areas, frequently flooded areas, wetlands, and fish and wildlife habitat conservation areas, the following minimum performance standards shall be met for the restoration of a critical area, provided that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:

(i) The historic structural and functional values shall be restored, including water quality and habitat functions;

(ii) The historic soil types and configuration shall be replicated;

(iii) The critical area and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities. The historic functions and values should be replicated at the location of the alteration; and

(iv) Information demonstrating compliance with the requirements in mitigation plan requirements (BCC 15.02.230) shall be submitted to the Planning Administrator.

(2) For alterations to frequently flooded and geologically hazardous areas, the following minimum performance standards shall be met for the restoration of a critical area, provided that, if the violator can demonstrate that greater safety can be obtained, these standards may be modified:

(i) The hazard shall be reduced to a level equal to, or less than, the predevelopment hazard;

(ii) Any risk of personal injury resulting from the alteration shall be eliminated or minimized; and

(iii) Upon the determination of the Planning Administrator, the hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.

(e) Site Investigations. The Planning Administrator is authorized to make site inspections and take such actions as are necessary to enforce this Chapter. The Planning Administrator shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.

(f) Enforcement and Penalties. Any violation of this Chapter (Benton County Critical Area Regulations) shall be enforced under the provisions BCC Title 11 (Benton County Zoning Regulations), Chapter 11.54 Administration and Disposition of Infractions, as currently existing or hereafter amended. Additionally, penalties for violating the provisions of this chapter are specified in BCC Title 11, Chapter 11.54 Administration and Disposition of Infractions, as currently existing or hereafter amended.
[Ord. 609 (2018) § 30]

15.02.300 EFFECTIVE DATE This Chapter shall take effect and be in full force upon its passage and adoption.
[Ord. 609 (2018) § 65]