CHAPTER 3.26

FLOOD DAMAGE PREVENTION

SECTIONS:

3.26.020 APPLICABILITY. This chapter shall apply to all areas of special flood hazards within the unincorporated areas of Benton County. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full

compliance with the terms of this chapter and other applicable regulations.
[Ord. 208 (1987) § 2]

3.26.030 STATUTORY AUTHORIZATION AND PURPOSE.

The Legislature of the State of Washington has delegated the responsibility to local communities to adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry.

(a) Statement of Purpose. It is the purpose of this chapter to promote the public health, safety, and general welfare; reduce the annual cost of flood insurance; and minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(1) Protect human life and health;

(2) Minimize expenditure of public money for costly flood control projects;

(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) Minimize prolonged business interruptions;

(5) Minimize damage to public facilities and utilities, such as water and gas mains; electric, telephone, and sewer lines; and streets and bridges located in flood hazard areas;

(6) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas so as to minimize blight areas caused by flooding;

(7) Notify potential buyers that the property is in a Special Flood Hazard Area;

(8) Notify those who occupy flood hazard areas that they assume responsibility for their actions; and

(9) Participate in and maintain eligibility for flood insurance and disaster relief.

(b) Methods of Reducing Flood Losses. In order to accomplish its purposes, this chapter includes methods and provisions for:

(1) Restricting or prohibiting development that is dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

(2) Requiring that development vulnerable to floods be protected against flood damage at the time of initial construction;

(3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

(4) Controlling filling, grading, dredging, and other development, which may increase flood damage; and

(5) Preventing or regulating the construction of flood barriers that unnaturally divert floodwaters or may increase flood hazards in other areas.

[Ord. 208 (1987) § 3; Ord. 419 (2005) § 1; Ord. 627 (2020) § 1]

3.26.040 DEFINITIONS. Whenever the words and phrases in this section appear in this chapter, they shall be given the meanings attributed them by this section. When not inconsistent with the context, words used in the present tense shall include the future, singular shall include the plural, and the plural, singular.

(1) "Accessory Structure" means a subordinate use or building clearly incidental to and located upon the same lot occupied by the main use or building.

(2) "Agricultural Structure" means a structure designed and constructed to store farm implements or hay, grain, poultry, livestock, fruit and other agricultural products.

(3) "Alteration of Watercourse" means any action that will change the location of the channel occupied by water within the banks of any portion of a riverine waterbody.

(4) "Appeal" means a request for a review of the interpretation of any provision of this chapter or a request for a variance.

(5) "Area of Shallow Flooding" means a designated AO or AH Zone on the Flood Insurance Rate Map: the base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO characterizes sheet flow and AH indicates ponding.

(6) "Area of Special Flood Hazard", which designation on the Flood Insurance Rate Maps always includes the letter A or V, means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.

(7) "Base Flood", or "100-year Flood", which designation on the Flood Insurance Rate Maps always includes the letter A or V, means the flood having a one percent chance of being ~~equalled~~equaled or exceeded in any given year.

(8) "Base Flood Elevation" or "BFE" means the elevation to which floodwater is anticipated to rise during the base flood.

(9) "Basement" means any area of the structure which has its floor subgrade (i.e. below ground level) on all sides.

(10) "Conditional Letter of Map Revision" or "CLOMR" means the Federal Emergency Management Agency's formal review and comment as to whether a proposed project complies with the minimum National Flood Insurance Program requirements for such projects that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the delineation of the Area of Special Flood Hazard (SFHA). The CLOMR does not revise an effective Flood Insurance Rate Map (FIRM) or Flood Insurance Study (FIS) and a Letter of Map Revision (LOMR) is required upon completion of the project to change the FIRM and/or FIS.

(11) "Crawlspace" means an under-floor space with solid walls that has its interior floor area (finished or not) no more than five feet below the top of the next-higher floor.

(12) "Critical Facility" means the following facilities deemed critical because of the significant danger associated with their flooding:

(a) Police stations, fire stations, and emergency operations centers needed for flood response activities before, during, or after a flood;

(b) Medical facilities, including hospitals, nursing homes, blood banks, and health care facilities (including those storing vital medical records);

(c) Schools and day care centers;

(d) Power generating stations and other public and private utility facilities vital to maintaining or restoring normal services to flooded areas before, during, and after a flood;

(e)Drinking water and wastewater treatment plants; and

(f) Structures or facilities that produce, use, or store highly volatile, flammable, explosive, toxic, and/or water-reactive materials.

(13) "Development" means any man-made change to improved or unimproved real estate, including but not limited to structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.

(14) "Elevation Certificate" means an administrative tool of the National Flood Insurance Program (NFIP) that can be used to track development, provide elevation information, to determine the proper insurance premium rate with Section B completed by Floodplain Administrator, and to support a request for a Letter of Map Amendment (LOMA) or Letter of Map Revision – Based on Fill (LOMR-F) which are issued by the Federal Emergency Management Agency (FEMA).

(15) "Farmhouse" means a single-family dwelling located on a farm site where resulting agricultural products are not produced for the primary consumption or use by the occupants and the farm owner.

(16) "Federal Insurance Administrator" means the official title under the law of the person that is in charge of the Federal

Insurance and Mitigation Administration that is responsible for providing the data upon which flood plain management regulations shall be based and providing a notice of final base flood elevations within Zones A1-30 and/or AE on the community's FIRM and, if appropriate, has designated AO zones, AH zones, A99 zones, and A zones on the community's FIRM, and, if appropriate, has provided data from which the community shall designate its regulatory floodway.

(17) "Flood" or "Flooding" means any of the following;

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

(1) The overflow of inland or tidal waters; or

(2) The unusual and rapid accumulation of runoff of surface waters from any source; or

(3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in sub-paragraph (a)(2) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current; or

(b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

(18) "Flood Boundary and Floodway Map" means the official map, dated July 19, 1982, on which the Federal Insurance Administrator has delineated flood risk zones, floodways, and base flood elevations applicable to the community.

(19) "Flood Insurance Rate Map" or "FIRM" means the official maps, dated July 19, 1982 and June 15, 1994 on which the Federal Insurance Administrator has delineated both the areas of special

flood hazards and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

(20) "Flood Insurance Study" or "FIS" means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface evaluations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards. Also known as Flood Elevation Study.

(21) "Floodplain Administrator" means the Benton County Planning Manager, the community official designated to administer and enforce the floodplain management regulations.

(22) "Floodplain or Flood-Prone Area" means any land area susceptible to being inundated by water from any source.

(23) "Floodplain Management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

(24) "Floodproofing" means a combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents. Floodproofed structures are those that have the structural integrity and design to be impervious to floodwater below the Base Flood Elevation.

(25) "Floodway" means the channels of all rivers or other watercourses and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

(26) "Highest Adjacent Grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

(27) "Historic Structure" means any structure that is:

(a) Listed individually on the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

(d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(1) by an approved state program as determined by the Secretary of the Interior, or

(2) directly by the Secretary of the Interior in states without approved programs.

(28) "Letter of Map Amendment" or "LOMA" means an amendment, requested by the public, based on technical data showing that a property was incorrectly included in a designated area of special flood hazard. A LOMA is approved by the Federal Emergency Management Agency and amends the current effective Flood Insurance Rate Map and establishes that a specific property or structure or portion of property is not located in an area of special flood hazard.

(29) "Letter of Map Revision" or "LOMR" means the Federal Emergency Management Agency's official revision of an effective Flood Insurance Rate Map (FIRM), Flood Insurance Study (FIS), or Flood Boundary and Floodway Map, or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the area of Special Flood Hazard.

(30) "Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements set forth herein.

(31) "Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a recreational vehicle.

(32) "Manufactured Home Park" or "Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

(33) "New Construction" means for floodplain management purposes structures for which the "start of construction" commenced on or after April 6, 1987, which is the date this floodplain management regulation was initially adopted by Benton County, and includes any subsequent improvements to such structures. For insurance purposes, "new construction" means structures for which the "start of construction" commenced on or after July 19, 1982, the effective date of Benton County's initial Flood Insurance Rate Map (FIRM).

(34) "Recreational Vehicle" means a vehicle which is:

(a) built on a single chassis;

(b) four hundred (400) square feet or less when measured at the largest horizontal projection;

(c) designed to be self-propelled or permanently towable by a light duty truck; and

(d) designed primarily as temporary living quarters for recreational, camping, travel, or seasonal use. It is not designed primarily for use as a permanent dwelling.

(35) "Start of Construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/ or walkways; nor does it include excavation for a basement, footings, piers, or foundation or the erection of temporary forms; nor does it include the installation on the property of structures, such as garages or sheds not occupied as dwelling units or not part of the main structure which are on the same parcel of property as the principal structure to be insured and the use of which are incidental to the use of the principal structure. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor, or other structural part of a structure, whether or not that alteration affects the external dimensions of the structure.

(36) "Structure" means a walled and roofed building including a gas or liquid storage tank that is principally above ground as well as a manufactured home.

(37) "Substantial Damage" means damage of any origin to a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

(38) "Substantial Improvement" means any repair, reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed.

The term does not, however, include either:

(a) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been previously identified by a local code enforcement official and which are solely necessary to assure safe living conditions, or

(b) any alteration of a "historic structure", provided that the alteration will not preclude the structure’s continued designation as a "historic structure".

(39) "Variance" means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

(40) "Violation" means the failure of a structure or other development to be fully compliant with this chapter. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

(41) "Water Surface Elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

(42) "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. Wetlands have one or more of the following three attributes: (a) At least periodically, the land supports predominantly hydrophytes; (b) the substrate is predominantly undrained hydric soil; and (c) the substrate is nonsoils and is saturated with water or covered by shallow water at some time during the growing season of each year. [Ord. 208 (1987) § 4; Ord. 224 (1988) § 1; Ord. 230 (1990) § 1; Ord 376 (2001) § 1; Ord. 419 (2005) § 2; Ord. 471 (2009) § 1; Ord. 481 (2010) § 1; Ord. 627 (2020) § 2]

3.26.050 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD. The areas of special flood hazard are those areas identified by the Federal Insurance Administrator in a scientific and engineering report entitled "The Flood Insurance Study for Benton County, Washington, Unincorporated Areas" dated June 15, 1994, and the accompanying Flood Insurance Rate Maps dated July 19, 1982 and June 15, 1994, and Flood Boundary and Floodway Maps dated July 19, 1982 and any subsequent revisions. The Flood Insurance Study, Flood Insurance Rate Maps and Flood Boundary and Floodway Maps are hereby adopted by reference and declared to be a part of this chapter and shall be kept on file at the Benton County Planning Department office location.
[Ord. 208 (1987) § 5; Ord. 212 (1987) § 1; Ord. 230 (1990) § 2; Ord. 376 (2001) § 2; Ord. 627 (2020) § 3]

3.26.070 GENERAL STANDARDS. The following standards are required in all areas of special flood hazards:

(a) Anchoring.

(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(2) All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).

(b) Construction Materials and Methods.

(1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(3) Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated to or above the base flood elevation or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(c) Utilities.

(1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters;

(3) On-site waste disposal systems shall be located to avoid or minimize impairment to them or contamination from them during flooding; and

(4) Water wells for potable water or irrigation water shall be located on high ground outside all floodways.

(d) Project Permit Applications.

(1) All development needing a Project Permit Application, as defined in BCC 17.10.030 (f), shall be consistent with the need to minimize flood damage;

(2) All development needing a Project Permit Application, as defined in BCC 17.10.030 (f), shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

(3) All development needing a Project Permit Application, as defined in BCC 17.10.030 (f), shall have adequate drainage provided to reduce exposure to flood damage; and,

(4) For subdivision and manufactured home park proposals that would create 50 or more lots or be located on parcels of 5 acres or more, base flood elevation data shall be provided.

(e) Construction in AE and A1-30 Zones With No Designated Floodway. Until a floodway review is completed and all floodways in an area are designated by the FIRM, no new construction, substantial improvements or other development (including fill) shall be permitted in such AE or A1-30 zone unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing development and the proposed new construction, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(f) Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study or from another authoritative source, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. In unnumbered A Zones where flood elevation information is not available, construction shall be deemed reasonably safe from flooding if the lowest floor is at least two feet above the highest adjacent grade. Failure to elevate at least two (2) feet above the highest adjacent grade in these zones may result in higher insurance rates.
[Ord. 208 (1987) § 7; Ord. 376 (2001) § 4; Ord. 419 (2005) § 3; Ord. 627 (2020) § 4]

3.26.080 SPECIFIC STANDARDS - CONSTRUCTION AND DEVELOPMENT. The following provisions are required in all areas of special flood hazards where base flood elevation data has been provided as set forth herein:

(a) Residential Construction.

(1) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to one foot or more above base flood elevation.

(2) Enclosed areas, including crawlspaces, below the lowest floor that are subject to flooding are prohibited unless used solely for parking, access, or storage, and are designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or must meet or exceed the following minimum criteria:

(i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

(ii) The bottom of all openings shall be no higher than one (1) foot above the lowest adjacent exterior ~~one foot above~~ grade.

(iii) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(3) Crawlspaces must meet the requirements of subsection (c) below.

[**NOTE**: This section is continued on the following page.]

(b) Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to one foot or more above the base flood elevation or, together with attendant utility and sanitary facilities, shall:

(1) be floodproofed so that one foot or more above the base flood level the structure is watertight with walls substantially impermeable to the passage of water (See note in subsection (b)(5) below.);

(2) have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(3) be certified by a registered professional engineer that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth herein;

(4) nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in BCC 3.26.080(a)(2);

(5) applicants floodproofing nonresidential structures shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a structure constructed to the base flood level will be rated as one foot below that level); and

(6) must meet the criteria set forth in subsection (c) below for crawlspaces.

(c) Structures with Crawlspaces. Structures that are allowed to have below grade crawlspaces may have higher flood insurance premiums than structures that have the interior elevation of the crawlspace soil at or above the Base Flood Elevation. All crawlspaces that have floors below the Base Flood Elevation must:

(1) be designed and adequately anchored to resist flotation, collapse and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) have openings that allow for automatic entry and exit of floodwaters. The bottom of the flood opening can be no more than one (1) foot above the lowest adjacent exterior grade;

(3) use materials resistant to flood damage, including foundation walls, joists, or insulation, if such materials will be below Base Flood Elevation (BFE);

(4) be located in areas where flood velocities do not exceed five (5) feet per second as identified by a registered professional engineer;

(5) have all building utility systems elevated above the BFE or designed so the floodwaters cannot enter or accumulate with the system components during flood conditions;

(6) not have an interior grade more than two (2) feet below the lowest adjacent exterior grade

(7) must not have a height, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall, of more than four (4) feet at any point; and

(8) have an adequate drainage system to remove floodwaters from the interior area of the crawlspace.

Note: See FEMA Technical Bulletin 11 for further information.

Caution: Buildings that have below grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction, with the interior elevation of the crawlspace soil at or above the Base Flood Elevation (BFE).

(d) Accessory structures for parking or storage. Notwithstanding subsection (b) above, accessory structures that are 400 square feet or less in size and used solely for parking or storage only need to meet the following criteria in addition to those in BCC 3.26.070:

(1) The structure must be anchored to resist flotation, collapse, and lateral movement;

(2) The portions of the structure located below the BFE must be constructed with flood-resistant materials;

(3) Mechanical and utility equipment for the accessory structure must be elevated and floodproofed to or above the BFE;

(4) The structure shall not be located or encroach into a floodway; and

(5) The structure shall be floodproofed in a manner to protect the structure from hydrostatic pressure by allowing for the entry and exit of floodwaters, including providing a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. The bottom of all openings shall be no higher than one (1) foot above the lowest adjacent exterior~~foot above~~ grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(e) Manufactured Homes. All manufactured homes to be placed or substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is one foot or more above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of BCC 3.26.070(a)(2).

(f) Recreational Vehicles. Recreational vehicles must:

(1) be on the site for fewer than one hundred and eighty (180) consecutive days, or

(2) be fully licensed and ready for highway use, on its wheels or jacking system, be attached to the site only by quick-disconnect type utilities and security devices, and have no permanently attached additions; or

(3) meet the requirements of BCC 3.26.080(e) and the elevation and anchoring requirements for manufactured homes.

(g) Critical Facilities. Critical facilities should be afforded additional flood protection due to their nature. Communities therefore shall impose minimum standards which are in addition to those used for other types of development. Construction of new critical facilities shall be located outside the limits of the one hundred year floodplain as identified on the community's FIRM. [Ord. 208 (1987) § 8; Ord. 224 (1988) § 2; Ord. 230 (1990) § 3; Ord. 376 (2001) § 5; Ord. 419 (2005) § 4; Ord. 471 (2009) § 2; Ord. 627 (2020) § 5]

3.26.090 FLOODWAYS. Located within areas of special flood hazards are floodways, including but not limited to designated floodways on the Flood Insurance Rate Map (FIRM) and/or the Flood Boundary-Floodway Map (FBFM) of a Flood Insurance Study, dated June 15, 1994, for the area. Because a floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

(a) Encroachments are prohibited, including: fill, new construction, substantial improvements, and other development unless, certification by a registered professional engineer is provided. Such certification must demonstrate through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge.

(b) If BCC 3.26.090(a) is satisfied, all new construction and substantial improvements shall comply with flood hazard reduction provisions set forth herein.

(c) Construction or reconstruction of residential structures are prohibited except under any of the three (3) circumstances below:

(1) repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and either:

(i) the cost of the repairs, reconstruction, or improvements to a structure does not exceed fifty percent of the market value of the structure before the repair, reconstruction, or improvement is started; or

(ii) the structure is substantially damaged and was being restored before the substantial damage occurred; or

(iii) the repairs, reconstruction or improvements are to a historic structure.

(2) Improvements of structures to correct existing violations of state or local health, sanitary, or safety code specifications identified by the local code enforcement official and that are the minimum necessary to assure safe living conditions.

(3) Repairs, reconstruction, replacement, or improvements to existing farmhouse structures located in designated floodways and that are located on lands designated as agricultural lands of long-term significance under RCW 36.70A.170 may be permitted subject to the following:

(i) The new farmhouse is a replacement for an existing farmhouse on the same farm site;

(ii) There is no potential building site for a replacement farmhouse on the same farm outside the designated floodway;

(iii) Repairs, reconstruction, or improvements to a farmhouse shall not increase the total square footage of encroachment of the existing farmhouse;

(iv) A replacement farmhouse shall not exceed the total square footage of encroachment of the farmhouse it is replacing;

(v) A farmhouse being replaced shall be removed, in its entirety, including foundation, from the floodway within ninety days after occupancy of a new farmhouse;

(vi) For substantial improvements and replacement farmhouses, the elevation of the lowest floor of the improvement and farmhouse respectively, including basement, is a minimum of one foot higher than the BFE;

(vii) New and replacement water supply systems are designed to eliminate or minimize infiltration of flood waters into the system;

(viii) New and replacement sanitary sewerage systems are designed and located to eliminate or minimize infiltration of flood water into the system and discharge from the system into the flood waters; and

(ix) All other utilities and connections to public utilities are designed, constructed, and located to eliminate or minimize flood damage.

[Ord. 208 (1987) § 9; Ord. 212 (1987) § 2; Ord. 224 (1988) § 3; Ord. 376 (2001) § 6; Ord. 419 (2005) § 5; Ord. 627 (2020) § 6]

3.26.100 CONFLICTS WITH OTHER ORDINANCES, EASEMENTS, COVENANTS, DEED RESTRICTIONS. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

[Ord. 208 (1987) § 10]

3.26.110 INTERPRETATION. In the interpretation and application of this chapter, all provisions shall be:

(a) Considered as minimum requirements;

(b) Liberally construed in favor of the governing body; and,

(c) Deemed neither to limit nor repeal any other powers granted under state statutes.

[Ord. 208 (1987) § 11]

3.26.120 WARNING AND DISCLAIMER OF LIABILITY. The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of Benton County, any officer or employee thereof, or

the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.
[Ord. 208 (1987) § 12]

3.26.130 DEVELOPMENT PERMIT REQUIRED - INFORMATION NECESSARY.
(a) Development Permit. Unless a permit is obtained under subsection (b) below, a development permit shall be obtained before construction or development begins within any area of special flood hazard. The permit shall be for all structures including manufactured homes, and for all other development including fill and other activities.

Applications for a development permit shall be made on forms furnished by the Planning or Building Department and shall include but not be limited to plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

(1) Elevation, in relation to mean sea level of the lowest floor (including basement) of all structures recorded on a current elevation certificate.

(2) Elevation in relation to mean sea level to which any structure has been floodproofed;

(3) Certification by a registered professional engineer that the floodproofing methods for any nonresidential structure meet the floodproofing criteria herein; and,

(4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(b) Public Utility Permit. A public utility agency may, in lieu of a development permit under subsection (a) above, apply for a public utility permit to cover all of its proposed construction or development for a calendar year that will be within any area of special flood hazard. Only the development activities listed below are eligible for a public utility permit. Applications for a public utility permit shall be made on forms furnished by the Planning or Building Department and shall include but not be limited to plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question with a description of the development activity. For any construction or development not listed in an approved public utility permit, a development permit under subsection (a) above must be obtained. The development activities for which a public utility permit may be obtained are:

(1) Dredging and grading of irrigation and drainage channels, provided that fill from dredging or grading is not deposited on the banks of channels or anywhere within an area of special flood hazard for longer than 10 days;

(2) Seasonal grading within natural stream channels to check or direct water into irrigation facilities;

(3) Deposition of fill within an area of special flood hazard area for less than 10 days. After 10 days, deposited fill must be removed from the area of special flood hazard, or graded and compacted to existing grade within ± 0.2 feet of existing grade. Deposition of fill includes deposition of material resulting from grading or excavating irrigation or drainage channels. Deposition of fill within the mapped floodway requires a development permit under subsection (a) above be obtained and compliance with floodway requirements in Section 3.26.090;

(4) Construction of new underground utilities that do not permanently alter the topography;

(5) In-kind replacement of irrigation and drainage works or components including but not limited to control gates or head gates, measuring devices and their housing structures/stilling wells, culverts, pumps, pipes, flumes, siphons and similar works. A public agency and utility permit cannot authorize the In-kind replacement of dams or bridge structures;

(6) New driveways, trails, sidewalks, roads and streets constructed completely at-or-below existing grade;

(7) New underground utilities that do not permanently alter the existing grade elevations by ± 0.5 feet; and

(8) Armoring, stabilizing, securing, or in-kind replacement of existing infrastructure within the channel banks (such as bridge piers, sewer/utility supports and storm water/sewer drainage outfalls/headwalls) provided the dimensions (bank slopes, channel location, channel elevation) of the channel are not altered. This should not involve replacement with larger or additional above ground infrastructure.

[Ord. 208 (1987) § 13; Ord. 376 (2001) § 7; Ord. 419 (2005) § 6; Ord. 539 (2014) § 1; Ord. 627 (2020) §7]

3.26.135 DEVELOPMENT PERMIT NOT REQUIRED-ACTIVITIES. (a) The proponent of the development activity described in subsection (b) below may submit a written request to the Floodplain Administrator for an exemption to the requirement to obtain a permit under BCC 3.26.130. The request shall be submitted on a form furnished by the Planning or Building Department. The Floodplain 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 all applicable requirements of this chapter.

(b) Activities that do not require a development permit or public utility permit required by BCC 3.26.130:

(1) Cleaning, maintenance or repair of any ditch, canal, lateral, drain, diversion structure or other irrigation or drainage works;

(2) General farming, pasture, clearing/grubbing and horticultural activities which do not involve earthwork that permanently alters the topography;

(3) Grading of existing roads or easements along or near channels and within an area of special flood hazard, provided that the grading does not add fill within an area of special flood hazard;

(4) Maintenance of underground utilities where the maintenance work will not permanently alter topography;

(5) Replacement of existing piers or posts supporting a conforming deck;

(6) Activities associated with land-surface construction stormwater best management practices, provided the activities are not in place for longer than 180 days and do not increase the base flood elevation. Examples of stormwater best management practices activities that do not require a permit include the following: dust control; materials and equipment covers; mulching; geotextile fabrics; matting; bio-filter bags; fiber rolls; silt fences; vegetative buffer strips; temporary swales; and temporary berms; and

(7) New installation or maintenance of non-solid fences constructed parallel to the flow of water during a flood event. Non-parallel or solid fences that block the flow will need to go through the individual permitting process.
[Ord. 627 (2020) § 8]

3.26.140 ADMINISTRATION. Prior to the issuance of a building permit required for any construction or development falling within an area of special flood hazard, the Building Department shall review the project for compliance with this chapter. Construction or development projects which do not require a building permit but involve some other local legislative or administrative approval (i.e., shorelines permit, special use permit, subdivision or short plat approval, etc.), shall be reviewed by the Planning Department for compliance with this chapter.
[Ord. 208 (1987) § 14; Ord. 376 (2001) § 8; Ord. 539 (2014) § 2]

3.26.150 REVIEW OF CONSTRUCTION OR DEVELOPMENT PROJECTS. Review of construction or development projects shall include, but not be limited to:

(a) Permit Review.

(1) Review of all development permits to determine that the permit requirements of this chapter have been satisfied.

(2) Review of all development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

(3) Review of all development permits to determine if the proposed development is located in a floodway. If located in a floodway, encroachment provisions shall be met.

(b) Use of Other Base Flood Data. When base flood elevation data has not been provided, the reviewing department shall obtain, review, and reasonably use any base flood elevation and floodway data available from a federal, state or other source.

(c) Information to be Obtained and Maintained.

(1) When base flood elevation data has been provided through the Flood Insurance Study, FIRM, or required as in BCC 3.26.150(b), the reviewing department shall obtain and maintain an elevation certificate to record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantial improved structures, and record whether the structure contains a basement.

(2) For all new or substantially improved floodproofed structures where base flood elevation data is provided through the Flood Insurance Study, FIRM, or required as in BCC 3.26.150(b), the reviewing department shall:

(i) obtain and maintain the actual elevation (in relation to mean sea level) to which the structure was floodproofed, and

(ii) maintain the floodproofing certifications required herein.

(3) The reviewing department shall maintain for public inspection all records pertaining to the provisions of this chapter.

(d) Notice of Alteration of Watercourses. The reviewing department shall:

(1) Notify adjacent communities and the Washington State Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

(2) Confirm that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

(e) Interpretation of FIRM Boundaries. The reviewing department shall make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation.

(f) Changes to Area of Special Flood Hazard.

(1) If a project will alter the BFE or boundaries of the Area of Special Flood Hazard, then the project proponent shall provide the Floodplain Administrator with engineering documentation and analysis regarding the proposed change. If the change to the BFE or Area of Special Flood Hazard would normally require a Letter of Map Revision, then the project proponent shall initiate, and receive approval of, a Conditional Letter of Map Revision (CLOMR) prior to approval of the development permit. The project shall be constructed in a manner consistent with the approved CLOMR.

(2) If a CLOMR application is made, then the project proponent shall also supply the full CLOMR documentation package to the Floodplain Administrator to be attached to the floodplain development permit, including all required property owner modifications.

[Ord. 208 (1987) §15; Ord. 419 (2005 § 7; Ord. 471 (2009) § 3; Ord. 627 (2020) § 9]

3.26.160 VARIANCE PROCEDURE. (a) Except as provided in BCC 3.26.195, the Hearing Examiner shall hear and decide appeals and requests for variances from the requirements of this chapter.

(b) The Hearing Examiner shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the reviewing department in the enforcement or administration of this chapter.

(c) Decisions of the Hearing Examiner may be appealed to the Superior Court, pursuant to Chapter 36.70C RCW, or as otherwise permitted under Washington State law.

(d) In reviewing applications, the Hearing Examiner shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

(1) the danger that materials may be swept onto other lands to the injury of others;

(2) the danger of life and property due to flooding or erosion damage;

(3) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(4) the importance of the services provided by the proposed facility to the community;

(5) the necessity to the facility of a waterfront location, where applicable;

(6) the availability of alternative locations, for the proposed use which are not subject to flooding or erosion damage;

(7) the compatibility of the proposed use with existing and anticipated development;

(8) the relationship of the proposed use to the comprehensive plan and flood plain management program for that area;

(9) the safety of access to the property in times of flood for ordinary and emergency vehicles;

(10) the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,

(11) the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(e) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items 1 through 11 in BCC 3.26.160(d) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance shall also increase.

(f) Upon consideration of the factors of BCC 3.26.160(d) and the purposes of this chapter, the Hearing Examiner may add reasonable conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(g) The Planning Department shall maintain the records of appeals to the Hearing Examiner and report variances to the Federal Insurance Administrator, including justification for issuing the variance, upon request.
[Ord. 208 (1987) § 16; Ord. 295 (1996) § 1; Ord. 376 (2001) § 9; Ord. 539 (2014) § 3; Ord. 627 (2020) § 10]

3.26.170 CONDITIONS FOR VARIANCES. (a) Variances may be issued for the reconstruction, rehabilitation or restoration of historic structures without regard to the requirements of the rest of this section, provided, the Hearings Examiner makes a determination that the proposed repair, reconstruction, rehabilitation or restoration of the historic structure will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(b) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(d) Variances shall only be issued upon:

(1) a showing of good and sufficient cause; and

(2) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and,

(3) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances; and

(4) written approval from the Washington State Department of Ecology approving the replacement or reconstruction of any structure within the floodway.

(e) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. Variances primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

(f) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except BCC 3.26.160(e), and otherwise complies with BCC 3.26.070.

(g) Variances may be issued for agricultural structures of any size which are not used by the public or for human habitation, or the process, treating or packing of agricultural products and for accessory structures subject to the following:

(i) the structure must be anchored to resist flotation, collapse, and lateral movement;

(ii) the portions of the structure located below the BFE must be constructed with flood-resistant materials;

(iii) mechanical and utility equipment for the accessory structure must be elevated and floodproofed to or above the BFE;

(iv) the structure shall not be located in or encroach into a floodway;

(v) the structure shall be floodproofed in a manner to protect the structure from hydrostatic pressure by allowing for the automatic entry and exit of floodwaters, including providing a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters;

(vi) the structure must be located in an A Zone (A, AE, AH, A1-A30, AR or A99) as reflected in the Flood Insurance Rate Map (FIRM); and

(vii) compliance with variance criteria in BCC 3.26.170(c) and 3.26.170 (d).

(h) Any applicant to whom a variance is granted shall be given written notice over the signature of the Floodplain Administrator that the issuance of a variance to construct a structure with a lowest floor elevation below the base flood elevation will result in increased premium rates for flood insurance and that such construction below the base flood elevation increases risks to life and property.
[Ord. 208 (1987) § 17; Ord. 295 (1996) § 2; Ord. 627 (2020) § 11]

3.26.180 APPLICATIONS FOR VARIANCES. All variance applications must be made in writing and submitted to the Floodplain Administrator. Applications must be made on the form provided, with all information filled in and the necessary signatures obtained. A non-refundable application fee as established by resolution of the Board of Benton County Commissioners must be submitted with the application.
[Ord. 208 (1987) § 18; Ord. 376 (2001) § 10; Ord. 539 (2014) § 4; Ord. 627 (2020) § 12]

3.26.190 HEARINGS, DATES, AND NOTICE OF VARIANCES. When an application has been filed in proper form and with the required information, the Planning Department shall present the application to the Hearing Examiner. The Hearing Examiner shall set the time and place for a public hearing. Notification of hearing shall be made in the following ways:

(a) A written notice of hearing shall be sent by United States mail to all property owners of record within a radius of three-hundred (300) feet of the exterior boundary of the subject property. The written notice shall be mailed not less than ten (10) days prior to the hearing. The County Assessors' records shall be used to determine property owners of record, and

(b) A legal notice shall be placed in the official county newspaper as designated by the Hearing Examiner at least ten (10) days prior to the hearing date.
[Ord. 208 (1987) § 19; Ord. 376 (2001) § 11; Ord. 539 (2014) § 5]

3.26.195 FLOODPLAIN ADMINISTRATOR APPROVAL OF VARIANCES. (a) When the Benton County Board of Commissioners has declared a state of emergency as a result of a major flood within Benton County, the Floodplain Administrator or his/her designee is authorized to approve requests for variances to the requirements of this chapter relating to the replacement or reconstruction of dwellings within a floodway in unincorporated Benton County, provided the replacement or reconstruction shall not increase the footprint of the previous structure and is not considered a substantial improvement.

(b) The Floodplain Administrator or his/her designee may issue such a variance without a public hearing, but only after considering the factors set forth in BCC 3.26.160(d) and in accordance with the conditions set forth in BCC 3.26.170.

(c) The decision of the Floodplain Administrator or his/her designee to issue or deny a variance is appealable to the Hearing Examiner within ten (10) days from the date of the decision. A written request for appeal shall be submitted to the Hearing Examiner who will then hold a public hearing and review the decision of the Floodplain Administrator.
[Ord. 295 (1996) § 3; Ord. 376 (2001) § 12; Ord. 539 (2014) § 6; Ord. 627 (2020) § 13]

3.26.200 VIOLATIONS - PENALTIES. (a) Upon a finding of a first violation of any provision of this chapter, any person or contractor shall be punished by a civil penalty not to exceed five hundred dollars ($500) for said violation, shall be responsible for court costs, if applicable, and shall be ordered to pay restitution for any damages caused by said violation.

(b) Upon the court's finding of a second or subsequent violation of the same provision of this chapter, any person or contractor and shall be found guilty of a misdemeanor.
[Ord. 208 (1987) §20; Ord. 224 (1988) § 4; Ord. 304 (1997) § 10]

3.26.210 INJUNCTIVE RELIEF. Notwithstanding the existence or use of any other remedy or means of enforcement of the provisions hereof, Benton County may seek legal or equitable relief to enjoin any acts or practices which constitute a violation of any of the provisions hereof and compel compliance with all provisions of this chapter. The costs of such action shall be taxed against the person violating the provisions of this chapter. The Planning Department may accept a written assurance of discontinuance of any act in violation of this chapter from any person who has engaged in such act. Failure to comply with the assurance of discontinuance shall be a further violation of this chapter.
[Ord. 208 (1987) § 21; Ord. 376 (2001) § 13; Ord. 627 (2020) § 14]

3.26.220 SEVERABILITY. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. [Ord. 208 (1987) § 22]

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]

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]

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

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

(178) 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.

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

(1920) Erosion-The process whereby wind, rain, water, and other natural agents mobilize and transport particles.

(201) 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.

(212) Exotic-Any species of plants or animals, which are

foreign to the County.

(22~~3~~) 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]

(23~~4~~) 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.

(24~~5~~) 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.

(25~~6~~) Floodplain-The total land area adjoining a river, stream, watercourse, or lake subject to inundation by the base flood.

(26~~7~~) 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]

(27~~8~~) 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.~~

(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~~

~~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.~~

(4~~3~~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.

(4~~4~~5) Native vegetation-Plant species that are indigenous to the area in question.

(4~~5~~6) Nonindigenous-See "Exotic."

(4~~6~~7) Off-site compensation-To replace critical areas away from the site on which a critical area has been impacted.

(4~~7~~8) On-site compensation-To replace critical areas at or adjacent to the site on which a critical area has been impacted.

(4~~8~~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.

(4~~9~~50) Out-of-kind compensation-To replace critical areas with substitute critical areas whose characteristics do not closely approximate those destroyed or degraded.

(50~~1~~) Planning Administrator-The Benton County Planning Department Manager, Director, or designated representative who shall be responsible for the administration of this chapter.

(51~~2~~) Potable water-Water that is safe and palatable for human use.

(52~~3~~) 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.

(53~~4~~) 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.

(54~~5~~) 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.

(55~~6~~) 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.

(56~~7~~) 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.

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]

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

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

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

~~.~~

(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.

(3)

~~(1)~~

(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;

(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

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.

(he) 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]

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]

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:

(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]

CHAPTER 15.04

WETLANDS

SECTIONS:

15.04.010 DESIGNATION, RATING, AND MAPPING OF WETLANDS.

(a) Designating Wetlands. Wetlands are those areas, designated in accordance with WAC 173-22-035 and the Federal Wetlands Delineation Manual (1987, as now existing and hereafter amended) 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. All areas meeting the wetland designation criteria in the Federal Wetlands Delineation Manual and applicable regional supplements, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter. Wetland delineations are valid for five years; after such date the County shall determine whether a revision or additional assessment is necessary.

(b) Wetlands Rating Categories: Wetlands shall be rated according to Ecology's Washington State Wetland Rating System for Eastern Washington: 2014 Update ~~- Revised~~ (Ecology Publication #14-06-030), or as revised by the Washington State Department of Ecology. Wetland rating categories shall be applied as the wetland exists at the time of the adoption of this chapter or as it exists at the time of an associated permit application. Wetland rating categories shall not change due to illegal modifications. Wetlands shall be rated according to the following categories:

(1) Category I Wetlands. Those wetlands scoring a "Category I" rating ~~under the Ecology Wetlands Rating System~~;~~.~~

(2) Category II Wetlands: Those wetlands scoring a "Category II" rating ~~under the Ecology Wetlands Rating System~~;

(3) Category III Wetlands: Those wetlands scoring a "Category III" ~~rating under the Ecology Wetlands Rating System~~; and

(4) Category IV Wetlands: Those wetlands scoring a "Category IV"~~" rating under the Ecology Wetlands Rating System~~.

(c) Mapping: The approximate location and extent of critical areas are displayed on various inventory maps available at the Planning Department. These maps will be updated as inventories are completed in compliance with the requirements of the Growth Management Act, and additional maps may be added as appropriate. Benton County's critical areas maps depict the approximate location and extent of known or suspected wetlands, and are hereby adopted.

(1) These maps are to be used as a guide for the County, project applicants, and/or property owners, and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.

(2) The exact location of a wetland's boundary shall be determined through the performance of a field investigation by a qualified professional wetland scientist applying the approved Federal Wetlands Delineation Manual (1987, as now existing and hereafter amended) and applicable regional supplements. Wetland delineations will be documented on a ground-verified map using either professional surveying methods or an equivalent professional method using GPS with sub-meter accuracy.

[Ord. 609 (2018) § 31]

15.04.020 ACTIVITIES ALLOWED IN WETLANDS.

The activities listed below are allowed in wetlands, in addition to those activities listed in, and consistent with, the provisions established in allowed activities (BCC 15.02.160), and do not require submission of a critical area report, except where such activities result in a loss to the functions and values of a wetland or wetland buffer. These activities include:

(a) Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife that does not entail changing the structure or functions of the existing wetland.

(b) Enhancement of a wetland through the removal of non-native invasive species. Weeding shall be restricted to hand removal and weed material shall be removed from the site. Bare areas that remain after weed removal shall be revegetated with native shrubs and trees at natural densities. Some hand seeding may also be done over the bare areas with native herbs.
[Ord. 609 (2018) § 32]

(c) Agricultural activities in and around critical areas that are addressed by the implementation of the VSP work plan.

(d) The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.

(e) Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer, provided that the drilling does not alter the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column will be altered. Trenching is not allowed by this provision.

(f) Enhancement of a wetland through the removal of non-native, invasive plant species. Removal shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments or mechanical methods. All removed plant material shall be taken away from the site and disposed of properly. Plants that are on the Washington State Noxious Weed Control Board list of noxious weeds should be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species to achieve natural densities is allowed and encouraged in conjunction with removal of invasive plants.

15.04.030 CRITICAL AREA REPORT—ADDITIONAL REQUIREMENTS FOR WETLANDS.

In addition to the general critical area report requirements of BCC 15.02.190, critical area reports for wetlands must meet the requirements of this section.

(a) Preparation by a Qualified Professional. A critical area report for wetlands shall be prepared by a qualified professional who has training and experience in preparing wetland reports. A qualified professional shall meet the standard specified in BCC 15.02.070(57).

(b) Area Addressed in Critical Area Report. The following areas shall be addressed in a critical area report for wetlands:

(1) The project area of the proposed activity;

(2) All wetlands, shoreline areas, water features, floodplains, and other critical areas, and related buffers within two-hundred fifty (250) feet of the project area.

(c) Wetland analysis. In addition to the minimum required contents of critical area reports—requirements (BCC 15.02.190), a critical area report for wetlands may, upon the determination of the Planning Administrator, contain an analysis of the wetlands including the following site and proposal related information:

(1) A written assessment and accompanying maps of the wetlands and buffers within two hundred fifty (250) feet of the project area, including the following information at a minimum:

(i) Wetland delineation and required buffers;

(ii) Estimated wetland acreage;

(iii) Wetland category;

(iv) Vegetative, faunal, and hydrologic characteristics;

(v) Soil and substrate conditions; and

(vi) Topographic elevations.

(2) A discussion of the water sources supplying the wetland and documentation of hydrologic regime (locations of inlet and outlet features, water depths throughout the wetland, evidence of recharge or discharge, evidence of water depths throughout the year).

(3) A description of the functions provided by the wetland and discussion of the relative degree to which the wetland is capable of providing the identified functions.

(4) A scale map of the development proposal site and adjacent area.

(5) As appropriate, a discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing wetlands, habitat and native vegetation and restore any wetlands that were degraded prior to the current proposed land use activity.

(6) Proposed mitigation, if needed, including a written assessment and accompanying maps of the mitigation area, including the following information at a minimum:

(i) Existing and proposed wetland acreage;

(ii) Vegetative and faunal conditions;

(iii) Surface and subsurface hydrologic conditions including an analysis of existing and future hydrologic regime and proposed hydrologic regime for enhanced, created, or restored mitigation areas;

(iv) Relationship within watershed and to existing waterbodies;

(v) Soil and substrate conditions, topographic elevations;

(vi) Existing and proposed adjacent site conditions;

(vii) Required wetland buffers (including any buffer reduction and mitigation proposed to increase the plant densities, remove weedy vegetation, and replant the buffers);

(viii) A description of the nature and timing of any previous alterations to the wetland and buffer;

(ix) Property ownership; and

(x) Other wetlands and critical areas that may be functionally related to or associated with the subject wetland.

(7) A discussion of any ongoing management practices that will protect wetlands after the project site has been developed, including proposed monitoring and maintenance programs.

(8) A bond estimate for any installation (including site preparation, plant materials and installation, fertilizers, mulch, stakes) and the proposed monitoring and maintenance work for the required number of years.

d) When appropriate, the Planning Administrator may also require the critical area report to include an evaluation by the Washington State Department of Ecology or an independent qualified expert regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, and to include any recommendations as appropriate.

(e) The Planning Administrator shall determine if the mitigation and monitoring plans and bonding measures proposed by the applicant are sufficient to protect the public health, safety, and welfare, consistent with the goals, purposes, objectives and requirements of this chapter.
[Ord. 609 (2018) § 33]

15.04.040 PERFORMANCE STANDARDS—GENERAL REQUIREMENTS.

(a) Activities may only be permitted in a wetland or wetland

buffer if the applicant can show that the proposed activity will not degrade the functions and functional performance of the wetland and other critical areas.

(b) Wetland Buffers. The following buffer widths have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington State Wetland Rating System for Eastern Washington (Ecology Publication #14-06-030, or as revised and approved by Ecology). The standard buffer widths are provided in Table 15.04.040-1 below.

(1) The use of the standard buffer widths requires providing:

a) a minimum 100 foot protected habitat corridor to connect wetlands that score 6 or more habitat points with any of the following:

i. A legally protected, relatively undisturbed and vegetated area (e.g., Priority Habitats, other compensation sites, wildlife areas/refuges, or national, county and state parks where they have management plans with identified areas designated as Natural, Natural Forest, or Natural Area Preserve)

ii. An area that is the site of a Watershed Project identified within and fully consistent with a Watershed Plan, as these terms are defined by RCW 89-08-460

iii. An area where development is prohibited per the provisions of the local shoreline master program

iv. An area with equivalent habitat quality that has conservation status in perpetuity, in consultation with WDFW.

b) The corridor is permanently protected for the entire distance between the wetland and the shoreline or legally protected area by a conservation easement, deed restriction, or other legal means.

c) Presence or absence of the shoreline or Priority Habitat must be confirmed by a qualified biologist or shoreline Administrator.

d) The measures in Table 15.04.040-2 are implemented, as applicable, to minimize the impacts of the adjacent land uses.

(2) For wetlands that score 5 or fewer habitat points, only the measures in Table 15.04.040-2 are required for the use of the buffers in Table 15.04.040-1.

(3) If an applicant does not apply the mitigation measures in Table 15.04.040-2 or is unable to provide a protected corridor, then the buffers in Table 15.04.040-3 shall be used.

(4) The buffer widths in Tables 15.04.040-1 and 15.04.040-3 assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is un-vegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer must either be planted to create the appropriate native plant community or be widened to ensure that the buffer provides adequate functions to protect the wetland.
~~(1) The use of the standard buffer widths requires the implementation of the measures in Table 15.04.040-2, where applicable, to minimize the impacts of the adjacent land uses.~~

~~(2) If an applicant chooses not to apply the minimization measures in Table 15.04.040-2, then a 33% increase in the width of all buffers is required. For example, a 75-foot standard buffer would become a 100 foot buffer if the minimization measures are not implemented.~~

~~(3) The standard buffer widths assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community in accordance with subsection (i) below, or the buffer should be widened to ensure that adequate functions of the buffer are provided.~~

~~(i) In lieu of increasing the buffer width where existing buffer vegetation is inadequate to protect the wetland functions and values, implementation of a buffer planting plan may substitute. Existing buffer vegetation~~

~~is considered "inadequate" and will need to be enhanced through additional native plantings and (if appropriate) removal of non-native plants when: (1) non-native or invasive plant species provide the dominant cover, (2) vegetation is lacking due to disturbance and wetland resources could be adversely affected, or (3) enhancement plantings in the buffer could significantly improve buffer functions~~

(54) Measurement of Wetland Buffers. All buffers shall be measured from the wetland boundary as surveyed in the field.

(65) Increased Wetland Buffer Widths. The Planning Administrator may require increased buffer widths in accordance with the recommendations of an experienced, qualified professional wetland scientist, and the best available science on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values based on site-specific characteristics. The documentation shall include but not be limited to the following criteria:

a. The wetland is used by a state or federally listed plant or animal species. These species would be those listed under WAC 220-610-010, 50 CFR 17-11, 50 CFR 17-12, or other state or federal regulations.

b. The wetland has critical habitat; or a priority area for a priority species as defined by WDFW; or Wetlands of High Conservation Value as defined by the Washington Department of Natural Resources' Natural Heritage Program.

c. The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts.

d. The adjacent land has minimal vegetative cover.

e. The land has slopes greater than 30 percent.

~~[NOTE: This chapter is continued on the following page.]~~

Table 15.04.040-1. Wetland Buffer Width Requirements, in feet

Wetland Category	~~Standard Buffer Width~~ Habitat Score 3-~~5~~4 ~~habitat points~~ (Corridor not required)*	~~Additional buffer width if wetland scores 5 habitat points~~Habitat Score 6 - 7 points*	Habitat Score 8 - 9 points ~~Additional buffer width if wetland scores 6-7 habitat points~~*	~~Additional buffer width if wetland scores 8-9 habitat points*~~Buffer width based on special characteristics
Category I and II: Based on rating of wetland functions (and not listed below) ~~total score~~	75 ~~ft~~	~~Add 15 ft~~110	~~Add 45 ft~~150	~~Add 75 ft~~NA
Category I & II: Forested	75 ~~75 ft~~	110 ~~Add 15 ft~~	150 ~~Add 45 ft~~	NA ~~Add 75 ft~~
Category I: Bogs, calcareous fens, and Wetlands of High Conservation Value	~~190 ft~~NA	NA	NA	~~NA~~ 190
Category I: Alkali	~~150 ft~~NA	N~~/~~A	NA	~~NA~~ 150
~~Category I: Natural~~	~~190 ft~~	~~N/A~~	~~NA~~	~~NA~~

Wetland Category	~~Standard Buffer Width~~ Habitat Score 3-~~5~~4 ~~habitat points~~ (Corridor not required)*	~~Additional buffer width if wetland scores 5 habitat points~~ Habitat Score 6 - 7 points*	Habitat Score 8 - 9 points ~~Additional buffer width if wetland scores 6-7 habitat points~~*	~~Additional buffer width if wetland scores 8-9 habitat points*~~ Buffer width based on special characteristics
~~Heritage Wetlands~~				
~~Category II:~~ ~~Based on total score~~	~~75 ft~~	~~Add 15 ft~~	~~Add 45 ft~~	~~Add 75 ft~~
Category II: Vernal pool	~~150~~ NA	NA	NA	~~NA~~ 150
~~Category II:~~ ~~Forested~~	~~75 ft~~	~~Add 15 ft~~	~~Add 45 ft~~	~~Add 75 ft~~
Category III (all)	60~~ ft~~	~~Add 30 ft~~110	~~Add 60 ft~~150	~~Add 90 ft~~NA
Category IV (all)	40 ~~ft~~	~~NA~~ 40	40~~NA~~	NA

*Or latest method of scoring, ~~I~~if the Department of Ecology updates its Wetland Rating

Forms, these point ranges should be modified using Ecology's conversion table once updated.

Table 15.04.040-2. Required measures to minimize impacts to wetlands

(Measures are required, where applicable to a specific proposal)

Disturbance	Required Measures to Minimize Impacts
Lights (from parking lots, Commercial/industrial uses, residential uses, agricultural buildings	▪ Direct lights away from wetland ▪ Only use lighting where necessary for public safety and keep lights off when not needed ▪ Use motion-activated lights ▪ Use full cut-off filters to cover light bulbs and direct light only where needed ▪ Limit use of blue-white colored lights in favor of red-amber hues ▪ Use lower-intensity LED lighting ▪ Dim light to the lowest acceptable intensity
Noise (from parking lots, Commercial/industrial uses, residential uses, recreation and agriculture)	▪ Locate activity that generates noise away from wetland ▪ Construct a fence to reduce noise impacts on adjacent wetland and buffer ▪ Plant a strip of dense shrub vegetation adjacent to wetland buffer ~~▪ If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source~~ ~~▪ For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer~~
Toxic runoff (from parking lots, Commercial/industrial uses, residential uses, pesticide application, landscaping and agriculture)	▪ Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered ▪ Establish covenants limiting use of pesticides within 150 ft of wetland ▪ Apply integrated pest management (Note: These examples are not necessarily adequate for minimizing toxic runoff if threatened or endangered species are present at the site.)

Disturbance	Required Measures to Minimize Impacts
Stormwater runoff (from parking lots and roads, Commercial/industrial, recreation and residential areas and uses, landscaping and other impermeable surfaces)	▪ Retrofit stormwater detention and treatment for roads and existing adjacent development ▪ Prevent channelized or sheet flow from lawns that directly enters the buffer ▪ ~~Use Low Intensity Development techniques (per PSAT publication on LID techniques~~Infiltrate or treat, detain and disperse new runoff from impervious surfaces and lawns~~)~~
~~Change in water regime~~	~~Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns~~
Pets and human disturbance (from residential areas and recreation)	▪ Use privacy fencing ▪ ~~OR p~~Plant dense native vegetation to delineate buffer edge and to discourage disturbance ~~using vegetation appropriate for the ecoregion.~~ ▪ Place wetland and its buffer in a separate tract or protect with a conservation easement ▪ Place signs around the wetland buffer every 50-200 ft., and for subdivisions place signs at the back of each residential lot ▪ When platting new subdivisions, locate greenbelts, stormwater facilities, or other lower-intensity land uses adjacent to wetland buffers
Dust (from tilled fields, lands without vegetation and roads)	Use best management practices to control dust
~~Disruption of corridors or connections~~	~~▪ Maintain connections to offsite areas that are undisturbed~~ ~~▪ Restore corridors or connections to offsite habitats by replanting~~

Table 15.04.040-3. Wetland Buffer Width Requirements, in feet not providing a habitat corridor or implementing measures in Table 15.04.040-2.

Wetland Category	Habitat Score 3-5 (Corridor not required*	Habitat Score 6 – 7 points*	Habitat Score 8 – 9 points *	Buffer width based on special characteristics
Category I and II: Based on rating of wetland functions (and not listed below)	100	150	200	NA
Category I & II: Forested	100	150	200	NA
Category I: Bogs, calcareous fens, and Wetlands of High Conservation Value	NA	NA	NA	250
Category I: Alkali	NA	NA	NA	200
Category II: Vernal pool	NA	NA	NA	200
Category III (all)	80	150	200	NA

Wetland Category	Habitat Score 3-5 (Corridor not required*	Habitat Score 6 – 7 points*	Habitat Score 8 – 9 points *	Buffer width based on special characteristics
Category IV (all)	50	50	50	NA

*Or latest method of scoring, if the Department of Ecology updates its Wetland Rating

(c) Wetland Buffer Width Averaging. The Planning Administrator may allow modification of the standard wetland buffer width in accordance with an approved critical area report and the best available science on a case-by-case basis by averaging buffer widths. Averaging of buffer widths may only be allowed where a qualified professional wetland scientist demonstrates that:

(1) It will not reduce wetland functions or functional performance;

(2) The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;

(3) The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and

(4) The buffer width is not reduced to less than seventy-five (75) percent of the standard width or thirty-five (35) feet whichever is less.

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

(1) Conservation and Restoration Activities. Conservation or

restoration activities aimed at protecting the soil, water, vegetation, or wildlife.

(2) Passive Recreation. In the outer twenty-five (25) percent of wetland buffers, passive recreation facilities designed and in accordance with an approved critical area report, including pedestrian-only walkways, trails and wildlife viewing structures constructed with a surface that does not interfere with the permeability.

~~(3) Stormwater Management Facilities. Stormwater management facilities, limited to stormwater dispersion outfalls and bioswales, may be allowed within the outer twenty-five (25) percent of the buffer of Category III or IV wetlands, provided that:~~

~~(i) No other location is feasible; and~~

~~*(ii) The location of such facilities will not degrade the functions or values of the wetland.*~~

~~[Ord. 609 (2018) § 34]~~

(3)Stormwater management facilities. A wetland or its buffer can be physically or hydrologically altered to meet the requirements of a Low Impact Development (LID) methodology or Flow Control BMP if ALL of the following criteria are met:

a) The wetland is classified as a Category IV or a Category III wetland with a habitat score of 3-5 points.

b) There will be no net loss of functions and values of the wetland.

c) The wetland does not contain a breeding population of any native amphibian species.

d) The hydrologic functions of the wetland can be improved as outlined in questions 3, 4, and 5 of Chart 4 and questions 2, 3, and 4 of Chart 5 in Selecting Mitigation Sites Using a Watershed Approach, [Eastern Washington] (Ecology Publication [#09-06-032 or #10-06-007], or as revised); or the wetland is part of a restoration plan intended to achieve restoration goals identified in a shoreline master program or a local or regional watershed plan.

e) The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing.

f) All regulations regarding stormwater and wetland management are followed, including but not limited to local and state wetland and stormwater codes, manuals, and permits.

g) Modifications that alter the structure of a wetland or its soils will require permits. Existing functions and values that are lost will need to be compensated.

(4) Stormwater LID BMPs required as part of new and redevelopment projects may potentially be authorized within wetlands and their buffers. However, these areas may contain features that render LID BMPs infeasible. A site-specific characterization is required to determine whether an LID BMP is feasible at the project site.

15.04.050 PERFORMANCE STANDARDS-COMPENSATORY MITIGATION REQUIREMENTS.

Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater ~~biologic~~ functions. Compensatory mitigation plans shall be consistent with ~~the following: Washington State Department of Ecology's Guidance on~~ Wetland Mitigation in Washington State, Part ~~1~~2: ~~Agency Policies and Guidance and Part 2:~~ Developing Mitigation Plans (Version 1, Ecology Publication #06-06-011b~~a~~, March 2006), or as revised, and selecting Wetland Mitigation Sites Using a Watershed Approach [Eastern Washington, (Ecology Publication #10-06-007), or as revised].~~as now existing and hereafter amended~~.

(a) Mitigation for Lost or Affected Functions. Compensatory mitigation actions shall address functions affected by the alteration, with an intention to achieve functional equivalency or improvement and shall provide similar wetland functions as those lost, except when out-of-kind replacement will best meet formally identified watershed goals, such as replacement of historically diminished wetland types.

(b) Mitigation requirements may be determined using the Credit-Debit Method described in Calculating Credits and Debits for

Compensatory Mitigation in Wetlands of Eastern Washington (Ecology Publication #10-06-015), or as revised.

(c) Plantings used in mitigation actions shall be native species appropriate to Benton County.

(d~~b~~) Preference of Mitigation Actions. Mitigation actions that require compensation by replacing, enhancing, or substitution shall occur in the following order of preference:

(1) Restoring wetlands on upland sites that were formerly wetlands.

(2) Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of non-native introduced species. This should only be attempted when there is a consistent source of hydrology and it can be shown that the ~~suubdrface~~surface and subsurface hydrologic regime is conducive for the wetland community that is being designed.

(3) Enhancing significantly degraded wetlands in combination with restoration or creation. Such enhancement should be part sof a mitigation package that includes replacing the impacted area meeting appropriate ratio requirements.

(c) Mitigation shall focus on the best possible outcome for compensating for impacts to functions and values within the wetland environment. The location of the compensatory 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 compensatory mitigation located in the same watershed and that addresses limiting factors or identified critical needs for Water Resource Inventory Area (WRIA) or comprehensive resource management plans, as applicable.

3) Alternative off-site mitigation programs such as mitigation banks or in-lieu fee programs as established by the county or city. This includes future mitigation banking opportunities, developed in coordination with the county.

(dc) Type and Location of Mitigation. Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach, compensatory mitigation for ecological functions shall be either in-kind and on-site, or in-kind and within the same sub-basin. Mitigation actions shall be conducted within the same subdrainage basin and on the site as the alteration except when all of the following apply:

(1) There are no reasonable on-site or in-subdrainage basin opportunities or on-site and in-subdrainage basin opportunities do not have a high likelihood of success, after a determination of the natural capacity of the site to mitigate for the impacts. Consideration should include: anticipated wetland mitigation replacement ratios, buffer conditions and proposed widths, hydrogeomorphic classes of on-site wetlands when restored, proposed flood storage capacity, potential to mitigate riparian fish and wildlife impacts (such as connectivity);

(2) Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and

(3) Off-site locations shall be in the same subdrainage basin.

(ed) Mitigation Timing. Mitigation projects shall be completed with an approved monitoring plan prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

(fe) Mitigation Ratios. Ratios for compensatory mitigation shall be

as specified in Table 15.04.050-1~~3~~ for wetlands without special characteristics and Table 15.04.050-2 for wetlands with special characteristics[1]. The ratios shall apply to creation, restoration, rehabilitation, or enhancement that is in-kind, is on-site, is the same category, is timed prior to or concurrent with alteration, and has a high probability of success. Greater ratios may apply in those cases of remedial actions resulting from unauthorized alterations. The first number specifies the

1 Some types of wetlands have special characteristics that determine their rating category according to Ecology's rating system (see Hruby, 2014a; Hruby, 2014b). The Washington wetland rating system was designed to differentiate between wetlands based on their sensitivity to disturbance, their significance, their rarity, our ability to replace them, and the functions they provide. The first four criteria can be considered as values that are somewhat independent of the functions provided by a wetland. Wetlands with Special Characteristics (as identified in Ecology's rating system) have an importance or value that may supersede their functions or that is not addressed by the rating of functions.

~~the~~ acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

Table 15.04.050-~~13~~. Wetland Mitigation Ratios

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

[Ord. 609 (2018) § 35]

Notes:

- Ratios for rehabilitation, preservation, and enhancement may be reduced when combined with 1:1 replacement through re-establishment or creation. See Table 6B-2 in Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance –Version 2 (Ecology et al., 2021 or as revised).
- All proposed preservation sites need to be consistent with the following preservation criteria:

  a. The Planning Administrator determines that the proposed preservation is the best mitigation option;
  b. The proposed preservation site is under threat of undesirable ecological change due to permitted, planned, or likely actions that will not be adequately mitigated under existing regulations;

c. The area proposed for preservation is of high quality or critical for the health and ecological sustainability of the watershed or sub-basin. Some of the following features may be indicative of high-quality sites:

i. Category I or II wetland rating

ii. Rare or irreplaceable wetland type [e.g, vernal pools, alkali wetlands] or aquatic habitat that is rare or a limited resource in the area

iii. The presence of habitat for threatened or endangered species (state, federal, or both)

iv. Provides biological and/or hydrological connectivity to other habitats

v. Priority sites identified in an adopted watershed plan.

d. Permanent preservation of the wetland and buffer shall be provided through a legal mechanism such as a conservation easement or tract held by an appropriate natural land resource manager/land trust.

e. The Planning Administrator may approve another legal and administrative mechanism in lieu of a conservation easement if it is determined to be adequate to protect the site.

- The ratios provided in Table 15.04.050 -1 are for permanent, direct impacts to wetlands. For recommended ratios for other types of impacts (e.g., long-term temporary, conversions), see Chapters 6B4.4 through 6B4.8 of Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance – Version 2 (Ecology et al., 2021 or as revised).
- The category of impacted wetland is based on scores for functions. Compensation ratios in this table generally do not apply when impacts involve a wetland whose category is based on special characteristics. Compensation ratios for impacts to wetlands with special characteristics are provided in Table 15.04.050-2 below.

Table 15.04.050-2. Compensation Ratios for Wetlands with Special Characteristics

Category and Type of Wetland	Re-establishment or Creation	Re-habilitation	Preservation ~~/Enhancement~~	Enhancement

Category and Type of Wetland	Re-establishment or Creation	Re-habilitation	Preservation ~~/Enhancement~~	Enhancement
Category I forested	6:1	12:1	24~~16~~:1	24:1
Category II forested	3:1	6:1	12:1	12:1
Bogs and calcareous fens	NA	NA	24:1	NA
Wetlands of High Conservation Value	Consult with WA DNR	Consult with WA DNR	24:1	Consult with WA DNR
Alkali wetlands	NA ~~2:1~~	NA ~~4:1~~	24:1	NA~~8:1~~
Vernal pools	Case by case or 3:1 for re-establishment of a seasonally ponded wetland	Case by case or 6:1 for re-establishment of a seasonally ponded wetland	16:1 (preservation of a vernal pool complex)	16:1(enhancement of both wetlands and uplands within a vernal pool complex)

Note: Methods of compensation are limited for certain wetlands with special characteristics. Some of these wetland types only occur naturally and have never been successfully created or rehabilitated. Some may take more than a lifetime to reestablish. Thus, avoidance is the best regulatory approach when addressing these wetlands. Refer to Chapter 6B.5 of Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance –Version 2 (Ecology et al., 2021 or as revised) for more information on methods of compensation and ratios for wetlands with special characteristics.

15.04.060 PERFORMANCE STANDARDS-SUBDIVISIONS.

The subdivision and short subdivision of land in wetlands and associated buffers is subject to the following:

(a) Land that is located wholly within a wetland or its buffer may not be subdivided.

(b) Land that is located partially within a wetland or its buffer may be subdivided provided that an accessible and contiguous portion of each new lot is:

(1) Located outside of the wetland and its buffer; and

(2) Meets the minimum lot size requirements of the applicable zoning designation.

(c) Access roads and utilities serving the proposed subdivision may be permitted within the wetland and associated buffers only if the County determines that no other feasible alternative exists and when consistent with this chapter.
[Ord. 609 (2018) § 36]

15.04.070 SEVERABILITY. If any provision of this Chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.
[Ord. 609 (2018) § 64]

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

CHAPTER 15.06

CRITICAL AQUIFER RECHARGE AREAS

SECTIONS:

15.06.010 CRITICAL AQUIFER RECHARGE AREAS-CLASSIFICATION AND DESIGNATION.

Critical aquifer recharge areas (CARAs) are those areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2), as it now exists or may be hereinafter amended.

(a) Classification: Lands shall be classified as having either a high, moderate, or low susceptibility as determined by local conditions and the criteria provided in WAC 365-190-100, as it now exits or may hereafter amended.

(b) Designation: All lands classified as having moderate to high susceptibility are hereby designated as critical aquifer recharge areas. Critical aquifer recharge areas in Benton County include:

(1) Areas with high susceptibility:

(i) All floodplains and floodways for all rivers, creeks and wetlands mapped by local, state, and federal agencies; or

(ii) Areas of high groundwater identified by the Benton Franklin Health District where there exists inadequate depth to groundwater for the placement of a waste

drainfield.

(2) Areas with moderate susceptibility:

(i) Any areas with both of the following characteristics: Hydrologic A soils as identified in the Natural Resource Conservation Service Benton County Soil Survey and irrigated lands;

(ii) Designated wellhead protection areas. Includes Group A public water supply wells and those Group B wells with a wellhead protection plan filed with the Benton Franklin Health District;

(iii) Areas within one hundred (100) feet of all irrigation district main canals (one hundred (100) feet from edge of canal); or

(iv) Areas with alluvial soils.

[Ord. 609 (2018) § 37]

15.06.020 MAPPING OF CRITICAL AQUIFER RECHARGE AREAS.

(a) The approximate location and extent of critical areas are displayed on various inventory maps available at the Planning Department. These maps will be updated as inventories are completed in compliance with the requirements of the Growth Management Act, and additional maps may be added as appropriate. Benton County's critical areas maps depict the approximate location and extent of known critical aquifer recharge areas, and are hereby adopted.

(1) These maps are to be used as a guide for the County, project applicants, and/or property owners, and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.

[Ord. 609 (2018) § 38]

15.06.030 ACTIVITIES REQUIRING A CRITICAL AREA REPORT.

(a) Critical area reports are required for the following activities and similar activities as determined by the Planning Administrator when these activities are proposed to be located in a critical aquifer recharge area:

(1) Biosolids land application;

(2) Critical material handling, generating, or use;

(3) Dairy operation;

(4) Feedlot or livestock/animal operation;

(5) Landfill;

(6) Mining and/or gravel pits;

(7) Sanitary waste discharge;

(8) Wood treatment facilities;

(9) Storage, processing, or disposal of radioactive substances;

(10) Above ground storage tanks, subject to WAC 173-303-640 as it now exists or may be hereinafter amended;

(11) Below ground storage tanks, subject to WAC 173-360 as it now exists or may be hereinafter amended;

(12) Hazardous waste generator (such as Boat or Motor Vehicle Repair Shops);

(13) Junk yards and salvage yards;

(14) Waste water application to land surface;

(15) Commercial fertilizer storage;

(16) Injection wells;

(17) Sawmill;

(18) Solid waste handling and recycling facility;

(19) Cement and/or concrete plants;

(20) Machine shops;

(21) Chemical treatment and disposal facility; or

(22) Any activities, particularly municipal, industrial, and commercial that involve the collection and storage of substances that, in sufficient quantity during an accidental or intentional release, would result in the impairment of the aquifer water to be used as potable drinking water liquids shall be regulated by this chapter.

[Ord. 609 (2018) § 39]

15.06.040 CRITICAL AREA REPORT-ADDITIONAL REQUIREMENTS FOR CRITICAL AQUIFER RECHARGE AREAS.

In addition to the general critical area report requirements of BCC 15.02.190, critical area reports for critical aquifer recharge areas must meet the requirements of this section.

(a) Preparation by a Qualified Professional. A critical area report for critical aquifer recharge areas shall be prepared by a qualified professional who has training and experience in preparing hydrogeological reports. A qualified professional shall meet the standard specified in BCC 15.02.070(57).

(b) Area Addressed in Critical Area Report. The following areas shall be addressed in a critical area report for critical aquifer recharge areas:

(1) A detailed narrative describing the project, including, but not limited to, associated grading and filling, structures, utilities, and those activities, practices, materials, or chemicals that have a potential to adversely affect the quantity or quality of underlying aquifers;

(2) Site plan indicating the location of all proposed improvements and aquifer recharge areas;

(3) A hydrogeological evaluation that includes at a minimum, a description and/or evaluation of the following:

(i) Site location, topography, drainage and surface water bodies;

(ii) Soils and geologic units underlying the site;

(iii) Groundwater characteristics of the area, including flow direction, gradient, and existing groundwater quality;

(iv) Location and characteristics of wells and springs within 300 feet of the perimeter of the property;

(v) Evaluation of existing on-site groundwater recharge;

(vi) Evaluation of the potential impact of the proposed development on groundwater quality, both short and long term, based on an assessment of the cumulative impacts of the proposal in combination with existing and potential future land use activities; and

(vii) A proposed mitigation plan.
[Ord. 609 (2018) § 40]

15.06.050 PERFORMANCE STANDARDS-GENERAL REQUIREMENTS.

(a) Activities may only be permitted in a critical aquifer recharge area if the applicant can show that the proposed activity will not cause contaminants to enter the aquifer and that the proposed activity will not adversely affect the recharging of the aquifer.

(b) Proposed groundwater uses must provide evidence that the proposed water source is physically and legally available and meets drinking water standards.

(c) Groundwater uses, withdrawals, and recharge must be consistent with RCW 90.44.050 and with applicable rules adopted pursuant to RCW 90.22 and 90.54 when making decisions under RCW 19.27.097 and RCW 58.17.110.
[Ord. 609 (2018) § 41]

15.06.060 SEVERABILITY. If any provision of this Chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.
[Ord. 609 (2018) § 64]

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

CHAPTER 15.08

FREQUENTLY FLOODED AREAS

SECTIONS:

15.08.010 FREQUENTLY FLOODED AREAS—DESIGNATION.

Frequently flooded areas shall be those floodways and associated floodplains designated by the Federal Emergency Management Agency (FEMA) flood hazard classifications as delineated on the most current available Flood Insurance Rate Maps (FIRM) for Benton County, or as subsequently revised by FEMA, as being within the 100-year flood plain.
[Ord. 609 (2018) § 42]

15.08.020 MAPPING OF FREQUENTLY FLOODED AREAS.

(a) The approximate location and extent of critical areas are displayed on various inventory maps available at the Planning Department. These maps will be updated as inventories are completed in compliance with the requirements of the Growth Management Act, and additional maps may be added as appropriate. Benton County's critical areas maps depict the approximate location and extent of known frequently flooded areas, and are hereby adopted.

(1) Benton County's critical areas maps and the Federal Emergency Management Agency (FEMA) flood hazard classifications as delineated on the most current available Flood Insurance Rate Maps (FIRM) for Benton County depict the approximate location and extent of frequently flooded areas, and are hereby adopted.

[Ord. 609 (2018) § 43]

15.08.030 FREQUENTLY FLOODED AREAS—REGULATION.

Frequently flooded areas are those same areas regulated by the Flood Damage Prevention Ordinance, Chapter 3.26 of the Benton

County Code, as it now exists or may be hereinafter amended, and are protected through regulations provided in that Chapter.
[Ord. 609 (2018) § 44]

15.08.040 SEVERABILITY. If any provision of this Chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.
[Ord. 609 (2018) § 64]

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

CHAPTER 15.12

GEOLOGICALLY HAZARDOUS AREAS

SECTIONS:

15.12.010 GEOLOGICALLY HAZARDOUS AREAS.

Geologically hazardous areas include areas susceptible to erosion, land sliding, bluff failures, or other geological events. Such areas pose a threat to the health and safety of citizens when incompatible development is sited in areas of significant hazard. Such incompatible development may not only place itself at risk, but also may increase the hazard to surrounding development and use.
[Ord. 609 (2018) § 45]

15.12.020 DESIGNATION OF SPECIFIC HAZARD AREAS.

Geologically hazardous areas are designated as those areas that are susceptible to one or more of the following types of hazards:

(a) Erosion Hazard Areas.

(1) Slopes between 15 percent and 39 percent;

(2) Slopes 40 percent or greater; or

(3) Slopes 15 percent or greater that contain soils or soils complexes identified by the U.S. Department of Agriculture's Natural Resource Conservation Service or the Soil Survey for Benton County as having, "severe" or "very severe" erosion hazard potential.

(b) Landslide Hazard Areas.

(1) Slopes 15 percent or greater that have a relatively permeable geologic unit overlying a relatively impermeable unit and have springs or ground water seeps;

(2) Slopes 40 percent or greater with a vertical relief of 10 or more feet except areas composed of competent rock and properly engineered slopes designed and approved by a geotechnical engineer licensed in the state of Washington and experienced with the site;

(3) Potentially unstable slopes resulting from rapid river or stream incision, river or stream bank erosion, or undercutting by wave action. These include slopes exceeding 10 feet in height adjacent to rivers, streams, lakes and shorelines with more than a 35 percent gradient;

(4) Areas that have shown evidence of historic failure or instability, including, but not limited to, back-rotated benches on slopes; areas with structures that exhibit structural damage such as settling and racking of building foundations; and areas that have toppling, leaning, or bowed trees caused by ground surface movement;

(5) Slopes having gradients steeper than 80 percent subject to rock fall during seismic shaking;

(6) Areas that are at risk of mass wasting due to seismic forces;

(7) Areas of historical landslide movement; or

(8) Areas mapped by the State of Washington Department of Natural Resources as landslides or landslide deposits.

(9) Areas identified as landslide runout areas or areas at the top and sides of landslide hazards likely to slide.

(c) Seismic hazard areas shall include areas subject to a severe risk of earthquake damage as a result of seismically induced ground shaking, differential settlement, slope failure, settlement, lateral spreading, mass wasting, surface faulting or soil liquefaction. They include areas identified by the State of Washington Department of Natural Resources as having liquefaction susceptibility of moderate, moderate to high, and/or high.

(d) Other Hazard Areas. Geologically hazard areas shall include those areas subject to severe risk of damage as a result of other geological events including mass wasting, debris flows, rock falls and differential settlement.
[Ord. 609 (2018) § 46]

15.12.030 MAPPING OF GEOLOGICALLY HAZARDOUS AREAS.

(a) The approximate location and extent of critical areas are displayed on various inventory maps available at the Planning Department. These maps will be updated as inventories are completed in compliance with the requirements of the Growth Management Act, and additional maps may be added as appropriate. Benton County's critical areas maps depict the approximate location and extent of known or suspected geologically hazardous areas, and are hereby adopted.

(1) These maps are to be used as a guide for the County, project applicants, and/or property owners, and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.
[Ord. 609 (2018) § 47]

15.12.040 CRITICAL AREA REPORT-ADDITIONAL REQUIREMENTS FOR GEOLOGICALLY HAZARDOUS AREAS-GEOTECHNICAL ENGINEERING REPORT.

In addition to the general critical area report requirements of BCC 15.02.190, critical area reports for geologically hazardous areas shall meet the requirements of this section. This section shall apply to those hazards identified in BCC 15.12.020(a)(2), (b), (c), and (d).

(a) Preparation by a Qualified Professional. A critical area report for geologically hazardous areas shall be prepared by a qualified professional who has training and experience in preparing reports for the relevant type of hazard. A qualified professional shall meet the standard specified in BCC 15.02.070(57).

(b) Geotechnical Engineering Report. The technical information for a project which has the potential to be damaged by a geologically hazardous area shall include a geotechnical engineering report,

prepared by a qualified professional as described in subsection (a). The qualified professional shall present and include the following information:

(1) Site Plan. The report shall include a copy of the site plan for the proposal showing:

(i) The height of slope, slope gradient, and cross section of the project area;

(ii) The location and description of surface water runoff;

(iii) The location of springs, seeps, or other surface expressions of ground water on or within two hundred feet of the project area or that have potential to be affected by the proposal;

(iv) Proposed development, including the location of existing and proposed structures, fill, storage of materials, and drainage facilities, with dimensions indicating distances to the floodplain, if available;

(v) Clearing limits; and

(vi) The topography, in five-foot contours, or as deemed appropriate by the Planning Administrator, of the project area and all hazard areas addressed in the report.

(2) Geotechnical Analysis. The geotechnical analysis shall specifically include:

(i) A description of the extent and type of vegetative cover;

(ii) A description of subsurface conditions based on data from site-specific explorations;

(iii) An estimate of load capacity including surface and ground water conditions, public and private sewage disposal systems, fills and excavations and all structural development;

(iv) An estimate of slope stability and the effect

construction and placement of structures will have on the slope over the estimated life of the structure;

(v) An estimate of the bluff retreat rate that recognizes and reflects potential catastrophic events such as seismic activity or a one hundred year storm event;

(vi) Consideration of the run-out hazard of landslide debris and/or the impacts of landslide run-out on down slope properties;

(vii) A study of slope stability including an analysis of proposed angles of cut and fill and site grading;

(viii) Recommendations for building limitations, structural foundations, and an estimate of foundation settlement; and

(ix) An analysis of proposed surface and subsurface drainage, and the vulnerability of the site to erosion.

(3) Geotechnical Engineering Report. The qualified professional shall provide engineering recommendations for the following:

(i) Parameters for design of site improvements including appropriate foundations and retaining structures. These should include allowable load and resistance capacities for bearing and lateral loads, installation considerations, and estimates of settlement performance;

(ii) Recommendations for drainage and subdrainage improvements;

(iii) Earthwork recommendations including clearing and site preparation criteria, fill placement and compaction criteria, temporary and permanent slope inclinations and protection, and temporary excavation support, if necessary;

(iv) Mitigation of adverse site conditions including slope stabilization measures and seismically unstable soils, if appropriate; and

(v) The report shall make a recommendation for the minimum building setback from any geologic hazard based upon the geotechnical analysis.

(4) Seismic Hazard Areas. A critical area report for a seismic hazard area shall also meet the following requirements:

(i) The site map shall show all known and mapped faults within two hundred feet of the project area or that have potential to be affected by the proposal;

(ii) The analysis shall include a complete discussion of the potential impacts of seismic activity on the site (for example, forces generated, fault displacement and liquefaction potential); and

(iii) Where liquefaction risks of high, moderate to high or moderate exist, the report shall address soil and structural mitigation measures.

[Ord. 609 (2018) § 48]

15.12.050 CRITICAL AREA REPORT-ADDITIONAL REQUIREMENTS FOR GEOLOGICALLY HAZARDOUS AREAS-GEOTECHNICAL ENGINEERING RISK ASSESSMENT.

In addition to the general critical area report requirements of BCC 15.02.190, critical area reports for those hazards in BCC 15.12.020(a)(1), must meet the requirements of this section.

(a) Preparation by a Qualified Professional. A critical area report for geologically hazardous areas shall be prepared by a qualified professional who has training and experience in preparing reports for the relevant type of hazard. A qualified professional shall meet the standard specified in BCC 15.02.070(57).

(b) Geotechnical Engineering Risk Assessment: The technical information for a project shall include a geotechnical engineering risk assessment, prepared by a qualified professional as described in Subsection (a). The qualified professional shall present and include the following information:

(1) Site Plan. The assessment shall include a copy of the site plan for the proposal showing:

(i) The height of slope and slope gradient of the project area;

(ii) The location of springs, seeps, or other surface expressions of ground water on or within two hundred feet of the project area or that have potential to be affected by the proposal;

(iii) The location and description of surface water runoff;

(iv) The top and toe of all unstable slopes and locations of erosion hazard areas;

(vi) Proposed development, including the location of existing and proposed structures, fill, storage of materials, and drainage facilities, with dimensions indicating distances to the floodplain, if available; and

(vii) Clearing limits.

(2) A description of the geology of the site and the proposed development;

(3) An assessment of the potential impact the project may have on the hazard area;

(4) An assessment of what potential impact the hazard area may have on the project;

(5) Appropriate mitigation measures, if any;

(6) A determination by the qualified professional as to whether further analysis is necessary. If further analysis is necessary, a geotechnical engineering report, pursuant to BCC 15.12.040 is required; and

(7) The assessment must be signed by and bear the seal of the engineer or geologist that prepared it.

(c) If additional hazards are identified at the activity site, a geotechnical engineering report, pursuant to BCC 15.12.040 is required.

[Ord. 609 (2018) § 49]

15.12.060 PERFORMANCE STANDARDS-GENERAL REQUIREMENTS.

(a) If it is determined by the geotechnical engineering report that either the proposed development or adjacent properties will be at risk of damage from the geologic hazard, or that the project will increase the risk of occurrence of the hazard, and there are no adequate mitigation measures to alleviate the risks, the proposed development cannot be approved by the Planning Administrator.

(b) Development and grading plans shall comply with Benton County Building Department and Benton-Franklin Health District requirements. Additional permits may apply.

(c) Development activities within seismic hazard areas shall comply with the following:

(1) All new development shall conform to the applicable provisions of the International Building Code (Benton County Building Code, BCC 3.04), as existing and hereafter amended by Benton County, which contains structural standards and safeguards to reduce risks from seismic activity.

(2) Construction of commercial, industrial, public assembly, or any publicly owned building shall comply with the requirements of BCC 15.12.040 which includes the submittal of a geotechnical report. The results or conclusions of the evaluation shall be considered a condition of development approval.

[Ord. 609 (2018) § 50]

15.12.070 SEVERABILITY. If any provision of this Chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.
[Ord. 609 (2018) § 64]

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

CHAPTER 15.14

FISH AND WILDLIFE HABITAT CONSERVATION AREAS

SECTIONS:

15.14.010 DESIGNATION OF FISH AND WILDLIFE HABITAT CONSERVATION AREAS.

(a) Fish and wildlife habitat conservation areas include:

(1) Areas where federal or state designated endangered, threatened, and sensitive species have a primary association.

(i) Federal designated endangered and threatened species are those fish, wildlife, and plant species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted as necessary for current federal listing status.

(ii) State designated endangered, threatened, and sensitive species are those fish, wildlife and plant species identified by the Washington State Department of Fish and Wildlife and/or State of Washington Natural Heritage Program. The State of Washington's Department of Fish and Wildlife and/or Natural Heritage Program maintains the most current listing and should be consulted as necessary for current state listing status.

(2) State priority habitats and areas associated with state priority species.

(i) State of Washington Priority Habitats and Species are considered priorities for conservation and management.

(ii) The State of Washington's Department of Fish and Wildlife should be consulted for current listing of priority habitats and species.

(3) Habitats and species of local importance. Benton County designates the following as a habitat and species of local importance:

(i) Shrub-steppe habitat. Critical to supporting priority species in Benton County, shrub-steppe habitat as identified by the Washington State Department of Fish and Wildlife and included in the State Priority Habitats and Species List.

(4) Waters of the state, as defined in RCW 90.48.020, as it now exists or may be hereinafter amended, and include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and water courses in Washington State.

(i) For the purposes of this chapter, Benton County hereby adopts the water typing system specified in WAC 222-16-030 as existing and hereafter amended.

(5) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat. These do not include ponds deliberately designed and created from dry sites such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds (of less than three years duration) and landscape amenities. However, naturally occurring ponds may include those artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority;

(6) Lakes, ponds, streams and rivers planted with native fish populations, including fish planted under the auspices of federal, state, local or tribal programs or which supports priority fish species as identified by the Washington State Department of Fish and Wildlife;

(7) Washington State Wildlife Areas are defined, established,

and managed by the Washington State Department of Fish and Wildlife;

(8) Washington State Natural Area Preserves and Natural Resource Conservation Areas are defined, established, and managed by the Washington State Department of Natural Resources; and

(b) All areas meeting one or more of these criteria, regardless of any formal identification, are hereby designated fish and wildlife habitat conservation areas and are subject to the provisions of this chapter and shall be managed consistent with the best available science.

(c) Fish and wildlife habitat conservation areas does not include wholly~~such~~ man-made 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.
[Ord. 609 (2018) § 51]

15.14.020 DESIGNATION OF HABITATS AND SPECIES OF LOCAL IMPORTANCE.

(a) When presented with supporting evidence, the Planning Administrator may recommend designating or de-designating a habitat or species of local importance. Recommendations for designating or de-designating habitats or species of local importance must meet the definitions in Chapter 15.02.070.

(b) Recommendations for habitats or species of local importance shall include the following:

(1) Identification of the habitat or species being nominated. Identification shall include, at a minimum, the following information:

(i)A legible map or maps of species and/or habitat location(s).

(ii) Specific features to be protected (for example, nest sites, breeding areas, nurseries, vegetation communities) or, if a habitat is being nominated in its entirety, a description of the habitat, its structure, function,

species, and geographic boundaries of the habitat(s) encompassed, and any other relevant attributes.

(iii) An analysis of the habitat and hydrological functions and location of the area relative to already designated critical areas and the nearest similar habitat if known.

The Planning Administrator has the authority to alter these requirements if he/she determines that alternative methods of identification or characterization are more accurate or reliable.

(2) A demonstrated need for special consideration based on:

(i) Habitat or species rarity or vulnerability to rarity as evidenced by restricted, small or declining species population and habitats or community loss or degradation; or

(ii) Vulnerability to habitat perturbation, including a discussion of and the potential cause of that perturbation; or

(iii) The need for protection, maintenance, and/or restoration of the nominated habitat to ensure the long term persistence of a species; or

(iv) The ability of the site to disproportionately contribute to regional biodiversity as evidenced by species use, richness, abundance, and/or rarity; or

(v) The commercial, recreational, cultural, or other special value; or

(vi) The need for maintaining connectivity between habitat areas.

(3) An explanation of why special protection is needed and how existing County, state, and federal programs and regulations do not provide adequate protection.

(4) Proposed management strategies for the species or habitats. Management strategies must be supported by best available science.

(5) Identification of effects on property ownership and use.

(6) The Planning Director may, on a case-by-case basis require additional information needed to evaluate the resource being proposed.

(c) Proposals shall be reviewed by the County and may be forwarded to the State Departments of Fish and Wildlife, Natural Resources, and/or other local, state, federal, and/or tribal agencies, or experts for comments and recommendations.

(d) The Planning Director shall evaluate the supporting evidence according to the characteristics enumerated in this section and make a recommendation to the Planning Commission based on those findings.

(e) The Planning Commission shall hold a public hearing for proposals recommended for action by the Planning Administrator and make a recommendation to the Board of Commissioners to approve or deny the recommendation based on the standards enumerated in subsection b.

(f) The Board of Commissioners shall take action to approve or deny the proposal to designate a habitat or species of local importance. Action to approve will be based on all of the following:

(1) Satisfies the criteria and includes the information required in subsection b

(2) Best available science supports the subject species or habitat of local importance

(3) Management strategies are practicable

(4) Without protection, there is a likelihood that the species or habitat will not persist over the long term.

15.14.0320 MAPPING OF FISH AND WILDLIFE HABITAT CONSERVATION AREAS.

(a) Mapping. The approximate location and extent of critical areas are displayed on various inventory maps available at the Planning Department. These maps will be updated as inventories are completed in compliance with the requirements of the Growth Management Act,

and additional maps may be added as appropriate. Benton County's critical areas maps depict the approximate location and extent of known or suspected fish and wildlife habitat conservation areas, and are hereby adopted.

(1) These maps are to be used as a guide for the County, project applicants, and/or property owners, and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.

[Ord. 609 (2018) § 52]

15.14.043~~0~~0 CRITICAL AREA REPORT-ADDITIONAL REQUIREMENTS FOR HABITAT CONSERVATION AREAS.

In addition to the general critical area report requirements of BCC 15.02.190, critical area reports for fish and wildlife habitat conservation areas must meet the requirements of this section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

(a) Preparation by a Qualified Professional. A critical areas report for a fish and wildlife habitat conservation area shall be prepared by a qualified professional with experience preparing reports for the relevant type of habitat. A qualified professional shall meet the standard specified in BCC 15.02.070(57).

(b) Areas Addressed in Critical Area Report. The following areas shall be addressed in a critical area report for habitat conservation areas:

(1) The project area of the proposed activity;

(2) All habitat conservation areas and recommended riparian management zones (RMZ)or other habitat buffers~~buffers~~ within three-hundred (300) feet; and

(3) All shoreline areas, floodplains, other critical areas, and related RMZs or other habitat buffers~~buffers~~ within three-hundred (300) feet.

(c) Habitat Assessment. A habitat assessment is an investigation of the project area to evaluate the potential presence or absence of designated critical fish or wildlife species or habitat. A

critical area report for a habitat conservation area shall be submitted as part of a complete application and included in SEPA review. It must contain an assessment of habitats including the following site and proposal related information at a minimum:

(1) Detailed description of vegetation on and adjacent to the project area and its associated ~~buffer~~RMZ or other habitat buffer;

(2) Identification of any species of local importance, priority species, or endangered, threatened, sensitive, or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;

(3) A discussion of any federal, state, or local special management recommendations, including Washington Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;

(4) A detailed discussion of the direct and indirect potential impacts on habitat by the project, including potential impacts to water quality;

(5) A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity and to be conducted in accordance with mitigation sequencing BCC 15.02.220;

(6) A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs; and

(7) Agency Consultation May Be Required. When appropriate due to the type of habitat or species present or the project area conditions, the Planning Administrator may also require the critical area report/habitat assessment to include a request for consultation with the Washington State Department of Fish and Wildlife or the local Confederated Indian Tribe or other appropriate agency.

[Ord. 609 (2018) § 53]

15.14.0540 PERFORMANCE STANDARDS—GENERAL REQUIREMENTS.

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

(b) Nonindigenous Species. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a habitat conservation area unless authorized by a state or federal permit or approval.

(c) Mitigation and Contiguous Corridors. Mitigation sites shall be located to preserve or achieve contiguous wildlife habitat corridors in accordance with a mitigation plan that is part of an approved critical area report to minimize the isolating effects of development on habitat areas, so long as mitigation of aquatic habitat is located within the same aquatic ecosystem as the area disturbed.

(d) Approvals of Activities. The Planning Administrator shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its ~~buffer~~RMZ or other habitat buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions shall be based on the best available science and may include, but are not limited to, the following:

(1) Establishment of ~~buffer~~RMZ or other habitat buffer zones;

(2) Preservation of critically important vegetation and/or habitat features such as snags and downed wood;

(3) Limitation of access to the habitat area, including fencing to deter unauthorized access;

(4) Seasonal restriction of construction activities;

(5) Establishment of a duration and timetable for periodic review of mitigation activities; and

(6) Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation.

(e) Mitigation and Equivalent or Greater Biological Functions. Mitigation of alterations to habitat conservation areas shall achieve ~~equivalent~~ no-net loss or greater biologic and hydrologic functions and shall include mitigation for adverse impacts upstream or downstream of the development proposal site. Mitigation shall address each function affected by the alteration to achieve ~~functional~~ no-net loss equivalency or functional improvement on a per-function basis.

(f) Approvals and the Best Available Science. Any approval of alterations or impacts to a habitat conservation area shall be supported by the best available science.

(g) ~~Buffers~~Riparian Management Zones (RMZs).

(1) Establishment of RMZs~~Buffers~~. ~~Required buffer areas for activities adjacent to habitat conservation areas to~~RMZs protect habitat conservation areas are as set forth in this section (g). ~~Buffers~~ RMZs shall consist of an undisturbed area of native vegetation or areas identified for restoration established to protect the integrity, all key riparian functions, and values of the affected habitat. Required ~~buffer widths~~RMZs reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby and shall be consistent with the management recommendations issued by the Washington State Department of Fish and Wildlife and local conditions as documented through site-specific or river/ stream area specific conditions as established through local studies that meet BAS criteria.

(2) Rivers, Lakes, Ponds, and Streams. Waterbodies classified by the water typing system specified in WAC 222-16-030 have the following ~~minimum riparian buffer requirements~~RMZs consistent with State Department of Fish and Wildlife recommendations and local studies characterizing existing conditions:

(i) Type S (Shorelines of the State) ~~Standard Buffer Width~~RMZ: Type S water RMZs and associated Channel Migration Zones are protected by the Benton County Shoreline Master Program, as existing and hereafter amended, rather than this chapter.

(ii) Type F (Fish), Type Np (Non-Fish Perennial) and type Ns (Non-Fish Seasonal) RMZ~~Standard Buffer Width~~: ~~Seventy-five~~One hundred (100~~75~~) feet~~ feet on parcels without streams with adjacent slopes of ten percent (10%) or greater. For parcels that have streams with adjacent slopes of ten percent (10%) or greater the buffer shall be one hundred (100) feet~~.

~~(iii) Type Np (Non-Fish Perennial) and type Ns (Non-Fish Seasonal) Standard Buffer Width: Fifty (50) feet on parcels without streams with adjacent slopes of ten percent (10%) or greater. For parcels that have streams with adjacent slopes of ten percent (10%) or greater the buffer shall be one hundred (100) feet.~~

(3) ~~Buffer Width~~RMZ Averaging. With written approval of the Planning Administrator, ~~riparian buffer~~RMZ widths may be modified at various points in accordance with an approved critical area report and the best available science on a case-by-case basis by requesting ~~buffer widths~~RMZs be applied on an averaging basis. Averaging of ~~buffer widths~~RMZ area may only be allowed where a qualified professional demonstrates that:

(i) It will not reduce riparian functions or functional performance;

(ii) The riparian area contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the riparian area would benefit from a wider ~~buffer~~ RMZ in places and would not be adversely impacted by a

narrower ~~buffer~~ RMZ in other places;

(iii) The total area contained in the ~~buffer~~ RMZ area after averaging is no less than that which would be contained within the standard ~~buffer~~ RMZ under subsection (g)(2) above; and

(iv) The ~~buffer~~ RMZ width is not reduced more than twenty five percent of the standard width or fifteen (15) feet, whichever is less.

(4) Measurement and Protection.

(i) ~~Buffers~~ RMZs for rivers, lakes, ponds, and streams shall be measured in all directions from the ordinary high-water mark (OHWM) as identified in the field; or in the case where waterbody is adjacent to a steep slope or bluff (slope greater than 15 percent), the RMZ would extend to a geologically safe distance away from the edge of the steep slope or bluff to prevent erosion or sloughing, as determined by a qualified professional (licensed geologist or geotechnical engineer) ~~and~~

(ii) ~~Buffers~~ Management zones for other habitat types shall be measured in all directions from the habitat boundary, as mapped by the Washington State Department of Fish and Wildlife or a qualified professional pursuant to BCC 15.14.030(a).

(iii) RMZs shall be delineated on official County parcel mapping and establishing deed restrictions or conservation easement as permanent protection mechanisms are also encouraged.

iv. Onsite sewage systems must be located outside of RMZs.

(5) Seasonal Restrictions. When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger ~~buffers~~ management zones may be required and activities may be further restricted during the specified season.

[Ord. 609 (2018) § 54; Ord. 637 (2021) § 2]

15.14.06~~5~~0 PERFORMANCE STANDARDS-SPECIFIC HABITATS.

(a) Endangered, threatened, and sensitive species.

(1) No development shall be allowed within a habitat conservation area or buffer with which state or federal endangered, threatened, or sensitive species have a primary association, unless provided for through a federal or state permit, or other approval.

(2) Whenever activities are proposed adjacent to a habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with a critical area report prepared by a qualified professional and submitted to the county. Approval for alteration of land adjacent to the habitat conservation area or its buffer shall not occur prior to consultation with the Washington State Department of Fish and Wildlife and the appropriate federal agency.

[Ord. 609 (2018) § 55]

(b) Shrubsteppe Habitat Protection and Mitigation

(1) The County and cities in Benton County require mitigation to offset impacts from removal or degradation of shrubsteppe habitat when developed. If mitigation cannot be accomplished through mitigation sequencing and associated onsite actions then offsite, compensatory mitigation is required.

(2) Impacts and mitigation shall be applied with a consistent and transparent method as described in the Benton County Shrubsteppe Mitigation Program document to achieve no net loss of ecological function.

(3) At the time of a development application in the County or cities, if critical areas are present, then a critical areas (CA) report would be prepared by a qualified professional. The report would document observed shrubsteppe species and habitat features and confirm shrubsteppe habitat quantity and quality and Washington Shrubsteppe Restoration and Resilience Initiative (WSRRI) and PHS spatial priority ratings, as applicable, and include a calculation of the number of debits/impacts to mitigation for habitat loss. A mitigation report would also be prepared identifying the preferred mitigation strategies to achieve no net loss of ecological

function. If offsite mitigation is part of the strategy, and the applicant would like to take advantage of the County mitigation program then the steps outlined below would be followed.

(4) The County would use the CA report/ mitigation report and calculated debits/impacts and assign the required credits (with associated cost) from the mitigation bank as part of the permit condition.

(5) Once the mitigation obligation is determined, the developer satisfies the requirement by purchasing the prescribed number of credits from the mitigation bank and the County receives purchase verification.

(6) Credits/debits are assigned based on ratios provided in Table 6. An area of impacted shrubsteppe proposed for development is documented for habitat extent, quality and spatial priority through a qualified professional's CA report including associated WSRRI and PHS mapping (note: some properties may have a range of quality or even spatial priorities, and these would be separated into sub-areas with varied ratios applied). The CA report would also identify the ratio(s) that would be applied from the anticipated impact (vertical column in Table 1), and the required credit as determined in advance for the banked mitigation property with restoration plan that is being permanently protected and enhanced to offset impacts, with its habitat quality and spatial priority (horizontal column in Table 1).

Table 1 - Mitigation Impact and Compensation Ratios, by Habitat Quality and Spatial Priority

Impact - Quality	Mitigation Area (with assumed restoration to High reference quality)			
	Core	GOA	Corridor	Other
Core - High/ Good	2:1	3:1	4:1	6:1
Core - Moderate/Poor	1:1	1.5:1	2:1	3:1
GOA - High/ Good	1:1	2:1	3:1	4:1
GOA - Moderate/Poor	.5:1	1:1	1.5:1	2:1
Corridor -	.7:1	1.3:1	2:1	2.7:1

High/ Good				
Corridor – Moderate/Poor	.3:1	.5:1	1:1	1.5:1
Other – High/ Good	.5:1	.7:1	1:1	2:1
Other – Moderate/Poor	.25:1	.3:1	.5:1	1:1

15.14.07~~6~~0 SEVERABILITY. If any provision of this Chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.
[Ord. 609 (2018) § 64]

~~———~~**15.14.08~~7~~0 EFFECTIVE DATE** This Chapter shall take effect and be in full force upon its passage and adoption.
[Ord. 609 (2018) § 65]