

**CHAPTER 15.14****FISH AND WILDLIFE HABITAT CONSERVATION AREAS****SECTIONS:**

15.14.010	Designation of Fish and Wildlife Habitat Conservation Areas
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**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.

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 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.

[Ord. 609 (2018) § 51]

**15.14.020 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]

**15.14.030 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 buffers within three-hundred (300) feet; and
- (3) All shoreline areas, floodplains, other critical areas, and related 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 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;
- (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]

#### **15.14.040 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 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 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 or greater biologic and hydrologic functions and shall include mitigation for adverse impacts upstream or downstream of the development proposal site. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per-function basis.

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

(g) Buffers.

(1) Establishment of Buffers. Required buffer areas for activities adjacent to habitat conservation areas to protect habitat conservation areas are as set forth in this section (g). Buffers shall consist of an undisturbed area of native vegetation or areas identified for restoration established to protect the integrity, functions, and values of the affected habitat. Required buffer widths 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.

(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 consistent with State Department of Fish and Wildlife recommendations:

(i) Type S (Shorelines of the State) Standard Buffer Width: Type S waters are protected by the Benton County Shoreline Master Program, as existing and hereafter amended, rather than this chapter.

(ii) Type F (Fish) Standard Buffer Width: Seventy-five (75) 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 Averaging. With written approval of the Planning Administrator, riparian buffer 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 be applied on an averaging basis. Averaging of buffer widths 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 in places and would not be adversely impacted by a narrower buffer in other places;

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

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

(4) Measurement.

(i) Buffers for rivers, lakes, ponds, and streams shall be measured in all directions from the ordinary high-water mark (OHWM) as identified in the field; and

(ii) Buffers 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).

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

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

**15.14.050 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]

**15.14.060 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]

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