EXHIBIT A
CHAPTER 14.05

CRITICAL AREAS – ADMINISTRATION, GENERAL PROVISIONS AND DEFINITIONS

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14.05.010 Authority.

A. As provided herein, the director is given the authority to interpret and apply, and the responsibility to enforce, NBMC Title 14 to accomplish the stated purpose.

B. Critical area regulations (Chapters 14.05 – 14.12 NBMC) are adopted under the authority of the Revised Code of Washington (RCW), Chapter 36.70A RCW (the Growth Management Act).
C. Chapters 14.05–14.12 NBMC, commonly referred to as “critical area regulations,” shall apply concurrently with review under Chapter 14.04 RCW, State Environmental Policy Act (SEPA), and Chapter 14.20 RCW, Shoreline Management Act (SMA), if applicable.

D. Compliance with the provisions of these chapters does not constitute compliance with other local, state, or federal regulations and permit requirements.

E. Critical Areas Map Series as referenced in Chapters 14.05–14.12 NBMC are hereby adopted as critical areas inventory maps to support identification of potential critical areas and shall be on file with the city and subject to updating from time to time.

14.05.020 Purpose.

The purpose of this chapter is to:

A. Protect the public health, safety, and welfare by preventing adverse impacts of development;

B. Protect the public, and public resources and facilities, from injury, loss of life, property damage, or financial loss due to flooding, erosion, landslides, soils subsidence, or steep slope failure;

C. Implement the goals, policies, guidelines, and requirements of the city of North Bend comprehensive plan and Chapter 36.70A RCW, the Growth Management Act;

D. Preserve and protect critical areas while allowing for the reasonable use of private property. Preservation and protection shall be provided by regulating development within and adjacent to critical areas and ensuring adequate mitigation for allowable impacts consistent with best available science and mitigation sequencing, as described in NBMC 14.05.250;

E. Protect existing wetlands and maintain no net loss of their functions and values;

F. Protect groundwater quality and quantity for public water supply and maintain hydrologic functions of aquatic areas. Critical aquifer recharge areas contribute significantly to the replenishment of groundwater and due to their prevailing geologic conditions associated with infiltration rates, have a high potential for contamination of ground water resources; and

G. Preserve and protect those areas with fish habitat, threatened and endangered species, and species of local importance which have a primary association; and provide special consideration for habitats associated with resident salmonids as required by the Washington State Growth Management Act (Chapter 36.70A RCW) and resident fish habitat as directed by the North Bend comprehensive plan.

14.05.030 Jurisdiction.

A. The city shall regulate all uses, activities, and development within, adjacent to, or likely to affect one or more critical areas, consistent with best available science as provided in the Critical
Areas Ordinance Update – Gap Analysis and Best Available Science Consistency Review on file with the city, and consistent with the critical areas provisions of this title.

B. Critical areas regulated include:

1. Wetlands;
2. Critical aquifer recharge areas;
3. Streams and other fish and wildlife habitat areas;
4. Geologically hazardous areas; and
5. Frequently flooded areas.

C. All areas within the city meeting the definition of one or more critical areas are subject to the provisions of the critical area regulations.

14.05.040 Definitions.

All words herein shall be given their common meaning unless the context indicates otherwise. The definitions of the words set forth below shall be utilized in interpreting NBMC chapters 14.05-14.12.

A. “A” Definitions.

1. “Active fault” means a fault that is considered likely to undergo renewed movement within a period of concern to humans. Faults are commonly considered to be active if the fault has moved one or more times in the last 10,000 years.

2. “Addition” means an extension or increase in floor area or height of a building or structure.

3. “Adjacent” means immediately adjoining (in contact with the boundary of the influence area) or within a distance 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:
   a. On site immediately adjoining a critical area; or
   b. A distance equal to or less than the required critical area buffer width and building setback.

4. “Alteration” means any human-induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to, grading, filling, dredging, channelizing, clearing (vegetation), applying pesticides, discharging waste, construction, compaction,
excavation, modifying for stormwater management, relocating, or other activities that change
the existing landform, vegetation, hydrology, wildlife, or habitat value, of critical areas.

5. “Anadromous fish” means fish that spawn in fresh water and mature in the marine
environment.

6. “Appeal” means a request for a review of the director’s interpretation of any provision of
the critical area regulations or a request for a variance.

7. “Applicant” means a person who files an application for a permit under this chapter and who
is either the owner of the land on which that proposed activity would be located, a contract
purchaser, or the authorized agent of such a person.

8. “Aquifer recharge area” means an area that, due to the presence of certain soils, geology,
and surface water, acts to recharge ground water by percolation.

9. “Area of shallow flooding” means a designated AO or AH zone on the flood insurance rate
map (FIRM). 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.

10. “Area(s) of special flood hazard” means the land in the floodplain within a community
subject to a one percent or greater chance of flooding in any given year.

11. “Assessed value” means an assessed valuation as established by the King County
assessor’s office, unless otherwise provided by a market appraisal institute (MAI) appraisal.

B. “B” Definitions.

1. “Base flood” means a flood having a one percent chance of being equaled or exceeded in
any given year, and which may also be referred to as the “100-year flood.” “Base flood” is
designated on flood insurance rate maps with the letters A or V.

elevation” shall be referenced to the North American Vertical Datum of 1988 (NAVD).

3. “Basement” means any area of a building having its floor subgrade (below ground level) on
all sides.

4. “Best available science” means current scientific information used in the process to
designate, protect, or restore critical areas that is derived from a valid scientific process as
defined by WAC 365-195-900 through 365-195-925.

5. “Best management practices” means conservation practices or systems of practice and
management measures that:
a. Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, and sediment;

b. Minimize adverse impacts to surface water and ground water flow, circulation patterns, and the chemical, physical, and biological characteristics of wetlands;

c. Protect trees and vegetation designated to be retained during and following site construction consistent with Chapter 19.10 NBMC; and

d. Provide standards for proper use of chemical herbicides within critical areas.

6. “Buffer” means the zone contiguous with a critical area that is required for the continued maintenance, function, and structural stability of the critical area.

7. “Building setback line” or “BSBL” means a line beyond which the foundation of a structure shall not extend.

C. “C” Definitions.

1. “Channel migration zone” or “CMZ” means the lateral extent of likely movement along a stream or river during the next 100 years as determined by evidence of active stream channel migration movement over the past 100 years.

2. “City” means the city of North Bend.

3. “Clearing” means the cutting, killing, grubbing, or removing of vegetation or other organic material by physical, mechanical, chemical, or any other similar means.

4. “Compensation project” means actions specifically designed to replace project-induced critical area and buffer losses. Compensation project design elements may include, but are not limited to, land acquisition, planning, construction plans, monitoring, and contingency actions.

5. “Compensatory mitigation” means types of mitigation used to replace project-induced critical area and buffer losses or impacts.

6. “Concentrated animal feeding operation “ or “CAFO” means the Department of Ecology regulated and permitted areas where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period. The Department of Ecology CAFO permit does not automatically take effect until a facility has a certain number of nonaquatic animals (i.e., 1,000 cattle or 700 dairy cows). Smaller facilities may also be regulated if they are discharging to a waterbody.

7. “Critical aquifer recharge area” or “CARA” means areas designated by WAC 365-190-080(2) that are determined to have critical recharging effects on aquifers used for potable water as defined by WAC 365-190-030(2).
8. “Critical areas” means any of the following areas or ecosystems: wetlands; critical aquifer recharge areas; streams and other fish and wildlife habitat areas; frequently flooded areas; and geologically hazardous areas as defined by the Growth Management Act (RCW 36.70A.170).

9. “Critical facility” means a facility for which even a slight chance of flooding, inundation, or impact from a hazard event might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency installations, and installations that produce, use, or store hazardous materials or hazardous waste.

D. “D” Definitions.

1. “Designated floodway” means the regulatory floodway that has been delineated on the city’s flood insurance rate map (FIRM).

2. “Developable area” means a site or portion of a site that may be utilized as the location of development, in accordance with the provisions of this chapter.

3. “Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, storage of equipment and materials and subdivision of land. For properties within the floodplain, development also includes the removal of more than five percent of the native vegetation on the property, or alteration of natural site characteristics.

4. “Development permit” means any permit issued by the city, or other authorized agency, for construction, land use, or the alteration of land.

5. “Director” refers to the community and economic development department director for the city.

E. “E” Definitions.

1. “Elevation certificate” means the official form (FEMA Form 81-31) used to track development, provide elevation information necessary to ensure compliance with community floodplain management ordinances, and determine proper insurance premium rates.

2. “Erosion” means the process by which soil particles are mobilized and transported by natural agents such as wind, rain, frost action, or stream flow.

3. “Erosion hazard area” means those areas that, because of natural characteristics including vegetative cover, soil texture, slope gradient, and rainfall patterns, or human-induced changes to such characteristics, are vulnerable to erosion.

F. “F” Definitions.
1. “Federal Emergency Management Agency” or “FEMA” means the agency that oversees the administration of the National Flood Insurance Program (44 CFR).

2. “Streams and other fish and wildlife habitat areas” means land management for maintaining populations of species in suitable habitats within their natural geographic distribution so that the habitat available is sufficient to support viable populations over the long term and isolated subpopulations are not created. This does not mean maintaining all individuals of all species at all times, but it does mean not degrading or reducing populations or habitats so that they are no longer viable over the long term areas necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created as designated by (WAC 365-190-130(1)). These areas include:

   a. Areas with which state or federally designated endangered, threatened, and critical species have a primary association;

   b. Habitats of local importance, including, but not limited to, areas designated as Priority Habitat by the Washington State Department of Fish and Wildlife, and fish habitat associated with resident fish species within the upper Snoqualmie Watershed, including all habitats associated with the following resident native fish species likely to occur in city rivers and streams: cutthroat trout, rainbow trout, mountain whitefish, largescale sucker, longnose dace, shorthead sculpin, mottled sculpin, western brook lamprey, and three-spine stickleback;

   c. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish and wildlife habitat;

   d. Waters of the state, including lakes, rivers, ponds, and streams;

   e. State natural area preserves and natural resource conservation areas; and

   f. Land essential for preserving connections between habitat blocks and open spaces.

3. “Flood” or “flooding” means 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 or surface waters from any source.

4. “Flood hazard area” means any area subject to inundation by the base flood or risk from channel migration including, but not limited to, an aquatic area, wetland, or closed depression.

5. “Flood Insurance Rate Map” or “FIRM” means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazard and the risk premium zones applicable to the community (44 CFR Part 59).

6. “Flood Insurance Study” or “FIS” means the official report provided by the Federal Insurance Administration that includes the flood profiles, the FIRM, and the water surface elevation of the base flood (44 CFR Part 59).
7. “Flood protection elevation” means the elevation at which structures and uses regulated by Chapter 14.12 NBMC are required to be elevated or floodproofed.

8. “Floodplain” means any land area susceptible to being inundated by floodwaters from any source.

9. “Floodproofing” or “Floodproofed” means adaptations that ensure a structure is substantially resistant to the passage of water below the flood protection elevation and resists hydrostatic and hydrodynamic loads and effects of buoyancy.

10. “Floodway” means the channel of a river or other watercourse 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 one foot.

11. “Floodway-dependent structure” means structures that are floodway-dependent including, but not limited to, dams, levees and pump stations, stream bank stabilization, boat launches and related recreational structures, bridge piers and abutments, and fisheries enhancement or stream restoration projects.

12. “Formation” means an assemblage of earth materials grouped together into a unit that is convenient for description or mapping.

13. “Formation, confining” means the relatively impermeable formation immediately overlying a confined aquifer.

14. “Frequently flooded areas” means lands in the floodplain subject to a one percent or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance, and attenuation functions, as determined by the director, in accordance with WAC 365-190-080(3). Classifications of frequently flooded areas include, at a minimum, the 100-year floodplain designations of the Federal Emergency Management Agency (FEMA) and National Flood Insurance Program (NFIP).

15. “Functions and values” mean the beneficial roles served by critical areas, including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, ground water recharge and discharge, erosion control, and recreation. “Functions” and “values” may be considered independently, with functions being measured indicators such as water quality, hydrologic functions, and habitat functions and values being non-measured indicators such as local importance, potential qualities, or recreational benefits.

G. “G” Definitions.

1. “Geologically hazardous areas” means 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-
080(4). Types of geologically hazardous areas include areas with erosion, landslide, seismic, and volcanic hazards.

2. “Grading” means any excavation, clearing, filling, leveling, or contouring of the ground surface by human or mechanical means.

H. “H” Definitions.

1. “Hazard areas” means areas designated as frequently flooded or geologically hazardous areas due to potential for erosion, landslide, seismic activity, mine collapse, or other geologically hazardous conditions, including steep slopes.

2. “Hazardous substance(s)” means:
   a. A hazardous substance as defined by Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); any substance designated pursuant to Section 311(b)(2)(A) of the Clean Water Act (CWA); any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by act of Congress); any toxic pollutant listed under Section 307(a) of the CWA; or any imminently hazardous chemical substance or mixture with respect to which the United States Environmental Protection Agency has taken action pursuant to Section 7 of the Toxic Substances Control Act; and
   b. Hazardous substances include any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical, or biological properties described in WAC 173-303-090, 173-303-102, or 173-303-103.

3. “High-intensity land use” means a land use consisting of commercial, urban, industrial, institutional, retail, residential with more than one unit per acre, agricultural (such as dairies, nurseries, raising and harvesting crops, requiring annual tilling, raising and maintaining animals, and the like), high-intensity recreation (such as golf courses, ball fields, and the like), and hobby farms.

4. “Heavy equipment” means construction machinery such as backhoes, treaded tractors, dump trucks, and front-end loaders.

5. “Hydraulic project approval” or “HPA” means a permit issued by the state of Washington’s Department of Fish and Wildlife for modification to waters of the state in accordance with Chapter 75.20 RCW.

I. “I” Definitions.

1. “Impervious surface area” means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions before development; or that causes
water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development (see also “new impervious surface”). Common impervious surfaces include, but are not limited to, roofs, walkways, patios, driveways, parking lots, or storage areas, areas that are paved, graveled, or made of packed or oiled earthen materials or other surfaces that similarly impede the natural infiltration of surface and storm water. An open, uncovered flow control or water quality treatment facility shall not be considered as impervious surface.

2. “Isolated wetlands” means those wetlands and their buffers that are outside of the following critical areas and their buffers, where applicable: 100-year floodplains; lakes; rivers, streams, or wetlands. Isolated wetlands have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water.

J. “J” Definitions. Reserved.

K. “K” Definitions. Reserved.

L. “L” Definitions.

1. “Lake” means an area permanently inundated by water in excess of two meters deep and greater than 20 acres in size measured at the ordinary high water mark.

2. “Landslide” means episodic down slope movement of a mass of soil or rock that includes, but is not limited to, rock falls, slumps, mudflows, and earth flows.

3. “Landslide hazard areas” means areas that are potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.

4. “Low-intensity land use” includes, but is not limited to, forestry and open space (such as passive recreation and natural resources preservation).

5. “Lowest floor” means the lowest floor of the lowest enclosed area (including basement) of a structure. 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 nonelevation design requirements of these critical areas regulations found in Chapter 14.12 NBMC (i.e., provided there are adequate flood ventilation openings).

M. “M” Definitions.

1. “Manufactured home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include a “recreational vehicle.”
2. “Mobile home park,” “manufactured housing community,” or “manufactured/mobile home community” means any real property which is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, or park models for the primary purpose of income, except where such real property is rented or held out for rent for seasonal recreational purposes only and is not intended for year-round occupancy.

3. “Minor utility project” means the placement of a utility pole, street sign, anchor, vault, or other small component of a utility facility, where the disturbance of an area is less than 75 square feet.

4. “Mitigation” means the process of minimizing or compensating for adverse environmental impact(s) of a proposal on a critical area.

5. “Mobile home” means a structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. A mobile home is also included within the definition of manufactured homes; however, the standards relating to mobile homes shall take precedence over the standards relating to manufactured homes where such standards are more stringent.

6. “Moderate-intensity land use” includes, but is not limited to, residential at a density of up to one dwelling unit per acre, moderate intensity open space (e.g., parks), and agriculture (moderate intensity land uses such as orchards and hay fields).

7. “Monitoring” means the collection of data by various methods for the purpose of understanding natural systems and features, evaluating the impact of development proposals on such systems, and/or assessing the performance of mitigation measures imposed as conditions of development.

N. “N” Definitions.

1. “Native growth protection easement” or “NGPE” means an easement granted to the city for the protection of native vegetation within a critical area or its associated buffer.

2. “Native vegetation” means plant species that are indigenous to the region.

3. “New construction” means structures for which the start of construction commenced on or after the effective date of the ordinance codified in this chapter.

O. “O” Definitions.

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

1. “Practical alternative” means 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 having less impact to critical areas.

2. “Priority Habitat” means habitat types or elements with unique or significant value to one or more species as classified by the State Department of Fish and Wildlife.

3. “Protected area” means the floodway, riparian habitat zone and/or channel migration zone (CMZ). If no CMZ is identified in the riverine system, the protected area extends to the outer limits of the floodplain.

4. “Public agency” means every city, county, state, or federal office, every officer, every institution, whether educational, correctional, or other, and every department, division, board, and commission that provides services or recommendations to the public or other such agencies.

5. “Public utility” means a public service corporation performing some public service subject to special governmental regulations, or a governmental agency performing similar public services, either of which are paid for directly by the recipients thereof. Such services shall include, but are not limited to, water supply, electric power, gas, and transportation for persons and freight.

Q. “Q” Definitions.

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

   a. A qualified professional for streams and other fish and wildlife habitats must have a degree in wildlife, aquatic ecology or a related environmental science, and professional experience in the state of Washington related to the subject.

   b. A qualified professional for wetlands must have a degree in botany, ecology, hydrology, or a related environmental science, and should be a professional wetland scientist with work experience in delineating wetlands using federal manuals, preparing wetland reports, completing wetland ratings, and developing and implementing mitigation plans.
c. A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.

d. A qualified professional for critical aquifer recharge areas must be a hydrologist, geologist, engineer, or other scientist with experience in preparing hydrological assessments, with recent experience in the state of Washington.

e. A qualified professional with flood and CMZ expertise must be a hydrologist.

R. “R” Definitions.

1. “Reasonable use” means a legal concept articulated by federal and state courts in regulatory taking cases.

2. “Recreational vehicle” means a vehicle that is: built on a single chassis; 400 square feet or less when measured at the largest horizontal projection; designed to be self-propelled or permanently towable by an automobile or light duty truck; and designed primarily for use as temporary living quarters for recreational, camping, travel, or seasonal use, and not as a permanent dwelling.

3. “Riparian habitat” means areas adjacent to aquatic systems with flowing water that contains elements of both aquatic and terrestrial ecosystems that mutually influence each other.

4. “Riparian habitat zone” means the land adjacent to streams and other bodies of water where vegetation is strongly influenced by the presence of water. The riparian habitat zone includes lands within:

   a. 250 feet of the ordinary high-water mark of Type S Streams;

   b. 200 feet of the ordinance high-water mark of Type F Streams greater than five feet wide;

   c. 150 feet of the ordinary high-water mark of Type F streams less than five feet wide or lakes; and

   d. 150–225 feet of the ordinary high-water mark of Type N perennial and seasonal streams depending on slope stability.

S. “S” Definitions.

1. “Salmonid” means a member of the fish family Salmonidae. In King County this includes chinook, coho, chum, sockeye, and pink salmon; cutthroat, brook, brown, rainbow, and steelhead trout; kokanee; and native char (bull trout and Dolly Varden). In the city and the surrounding upper Snoqualmie River Valley, salmonids are limited to resident populations of cutthroat trout, rainbow trout, eastern brook trout, and mountain whitefish.
2. “Section 404 permit” means a permit issued by the Army Corps of Engineers for the placement of dredge or fill material waterward of the ordinary high water mark or clearing in waters of the United States, including wetlands, in accordance with 33 United States Code (USC) Section 1344.

3. “Seismic hazard areas” means areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.

4. “Special flood hazard area” or “SFHA” means an area subject to a base or 100-year flood. Areas of special flood hazard are shown on the flood insurance rate maps as Zones A, AO, AE, AH.

5. “Species and habitats of local importance” means those species that may not be endangered, threatened, or critical from a state-wide perspective, but are of local concern due to their population status, sensitivity to habitat manipulation, or other educational, cultural, or historic attributes. These species may be Priority Habitats, priority species, and those habitats and species identified in the critical areas code as having local importance (e.g., elk).

6. “Species, threatened and endangered” means those native species that are listed by the State Department of Fish and Wildlife pursuant to RCW 77.12.070 as threatened (WAC 232-12-011) or endangered (WAC 232-12-014), or that are listed as threatened or endangered under the Federal Endangered Species Act (16 U.S.C. 1533).

7. “Start of construction” means and includes substantial improvement, and means the date a building permit is issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement is within 180 days of the permit issuance date. For cumulative tracking, the permit may extend beyond the specified time frame to the time of permit completion. 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 accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the date on which the first alteration of any wall, ceiling, floor, or other structural part of a building starts, whether or not that alteration affects the external dimensions of the building.

8. “Steep slope” means a slope (excluding a city-approved geotechnical engineered slope) 40 percent or steeper within a vertical elevation change of at least 10 feet. A slope is defined by establishing its toe and top, and is measured by averaging the inclination over at least 10 feet of vertical relief.

9. “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.
10. “Stream” means any portion of a watercourse, either perennial or intermittent, where the surface water flow is sufficient to produce a defined channel or bed. Streams also include natural watercourses modified by humans. Streams do not include irrigation ditches, canals, stormwater runoff facilities, or other entirely artificial watercourses.

11. “Substantial damage” means damage of any origin sustained by 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.

12. “Substantial improvement” means any 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 identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

   b. Any alterations of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

T. “T” Definitions.

1. “Topping” means the severing of main trunks or stems of vegetation at any place above 25 percent of the vegetation height.

2. “Trees” mean any living woody plant characterized by one main stem or trunk and many branches, and having a diameter of four inches or more measured 24 inches above ground level.

U. “U” Definitions.

1. “Unavoidable” means adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved.

2. “Understory” means the vegetation layer of a forest that includes shrubs, herbs, grasses, and grass-like plants, and tree saplings having a diameter of four inches or less measured 24 inches above ground level, but excludes trees as defined in this section.

3. “Utility” means a service and/or facility that produces, transmits, carries, stores, processes, or disposes of electrical power, gas, potable water, stormwater, communications (including, but not limited to, telephone and cable), sewage, oil, and the like.

V. “V” Definitions.
1. “Variance” means a grant of relief from the requirements of this chapter that permits construction in a manner that would otherwise be prohibited by this chapter.

2. “Vegetation” means plant life growing below, at, and above the soil surface.

3. “Vegetation alteration” means any clearing, grading, cutting, topping, limbing, or pruning of vegetation.

W. “W” Definitions.

1. “Water dependent activities” means a use or portion of a use that cannot exist in a location that is not adjacent to the water, but is dependent on the water by reason of the intrinsic nature of its operations. A use that can be carried out only on, in, or adjacent to water. Examples of water dependent uses include fishing, marinas, moorage, and boat launching facilities; aquaculture; surface water intake; and sanitary sewer and storm drain outfalls.

2. “Water resources inventory area” or “WRIA” means one of 62 watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in Chapter 173-500 WAC as it existed on January 1, 1997.

3. “Water typing system” means the system used to classify freshwater surface water systems. Current regulations establish “interim” water typing (1 through 5) until fish habitat water type maps are available for permanent water typing (S, F, Np, Ns) (WAC 222-16-031).

4. “Wetland” means, as defined by Chapter 36.70 RCW or as hereafter amended, those areas that are inundated or saturated by ground or surface water 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.

   a. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway.

   b. Wetlands may include those artificial wetlands intentionally created from nonwetlands areas to mitigate conversion of wetlands.


X. “X” Definitions. Reserved.

Y. “Y” Definitions. Reserved.
Z. “Z” Definitions. Reserved.

14.05.050 Designation of critical areas.

A. The city has designated critical areas by defining their characteristics. An applicant shall determine, and the city shall verify, on a case-by-case basis, in accordance with the definitions in NBMC 14.05.040, whether a critical area exists and is regulated under this chapter, or whether a critical area is on or in close proximity to the subject property. Critical areas may also require a setback or buffer pursuant to Chapters 14.06, 14.09, and 14.11 NBMC.

B. The city has prepared a series of critical area inventory maps which show approximate boundaries for the following critical areas within the city limits: special flood hazard areas; channel migration zone; critical aquifer recharge areas; wetlands; erosion/debris flows; and streams and other fish and wildlife habitat areas. Critical areas have been determined by local studies, King County published geographic information system (GIS) data, and information provided by other federal or state agencies. These maps provide only approximate boundaries of known features and are not adequate substitutes for more detailed maps and/or studies that could identify alternative locations of known features or additional critical area features not illustrated on the maps. Copies of the maps are available for viewing at the city’s community and economic development department.

C. The city maps and data indicate where some critical areas may exist or do exist based on previous studies completed. These resources may not identify all critical areas and should only be used as a guide. Actual field observations shall supersede information in these resources.

14.05.060 Applicability.

A. The provisions of this title shall apply to all lands, all land uses, and all structures and facilities in the city, 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 has other interest in land within the city. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purpose and requirements of this title.

B. The city shall not approve any development permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated buffer, without first assuring compliance with the requirements of this title.

C. Critical areas review shall be required if a proposed development would occur within a potential critical area and/or associated buffer, and shall generally be required if a proposed development would occur within an area adjacent to an identified wetland, stream, or landslide hazard area located on an adjoining property.

D. Approval of a permit or development proposal pursuant to the provisions of this title does not discharge the obligation of an applicant to comply with other provisions of the NBMC. Types of development permits and approvals are set forth in Chapter 20.01 NBMC.
E. Compliance with the provisions of this title does not constitute compliance with other federal, state, and local regulations and permit requirements. An applicant is responsible for complying with these requirements, in addition to the process established in this title.

14.05.070 Preapplication conference.

When an applicant knows or suspects that critical areas are located on or near the subject property, the applicant is required, as set forth in Chapter 20.02 NBMC, to contact the city prior to finalizing development plans and applying for development permits. Early disclosure of critical areas will reduce delays during the permit review process.

14.05.080 Submittal requirements.

In addition to the information required for a development permit, any entity undertaking development activity that is subject to the provisions of the critical area regulations, may be required to submit a critical area report as described in NBMC 14.05.240 and/or a floodplain habitat assessment pursuant to NBMC 14.12.210; provided, that these additional requirements shall not apply to exceptions in NBMC 14.05.140.

14.05.090 Financial assurance.

A. Mitigation Performance Assurance.

1. Prior to issuance of any permit or approval that authorizes site disturbance under the provisions of NBMC Title 14, the city shall require the applicant to submit mitigation performance assurance to guarantee that all work or actions required by this title are satisfactorily completed in accordance with the approved plans, specifications, permit or approval conditions, and applicable regulations, and to assure that all work or actions not satisfactorily completed will be corrected to comply with approved plans, specifications, requirements, and regulations to eliminate hazardous conditions, to restore environmental damage or degradation, and to protect the health, safety, and general welfare of the public. Projects outside wetlands, streams, steep slopes, or erosion soil areas and their buffers shall be exempt from a bond or performance security under this title.

2. The city shall require the applicant to post a mitigation performance assurance in a form and amount acceptable to the city for completion of any work required to comply with this Title at the start of construction. The mitigation performance assurance shall be in the amount of 150 percent of the estimated cost of the completed action.

3. The mitigation performance assurance shall be in the form of a security bond, performance bond, assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the city. This may be combined with other performance bonds for the project as otherwise required by the NBMC and/or the North Bend Public Works Standards, at the discretion of the director.
4. For projects (e.g., compensatory storage) outside of a wetland or stream buffer, security shall be released upon completion and city acceptance of the work. The bond may be held for longer periods upon written finding by the city that it is necessary to continue to hold the bond to ensure the mitigation project has met all elements of the approved mitigation plan.

B. Mitigation Maintenance Assurance.

1. If a development proposal is subject to mitigation, the applicant shall post a mitigation maintenance assurance in a form and amount deemed acceptable by the city to cover long-term monitoring, maintenance, and performance for mitigation projects, and to ensure mitigation is fully functional for the duration of the monitoring period. The mitigation maintenance assurance shall be in place prior to the release of the mitigation performance assurance set forth in NBMC 14.05.090(A).

2. The mitigation maintenance assurance shall be in the amount of 20 percent of the estimated cost of the completed action.

3. Bonds or other security authorized for mitigation shall remain in effect until the city determines, in writing, that the bonded standards have been met. Bonds or other security for required mitigation projects shall be held by the city for a minimum of five years to ensure that the mitigation project has been fully implemented and demonstrated to function.

C. 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.

D. 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 30 days after it is due or to comply with other provisions of an approved mitigation plan shall constitute a default, and the city may demand payment of any financial guarantees or initiate code compliance pursuant to Chapter 1.20 NBMC.

E. Any funds recovered pursuant to this section shall be used to complete the required mitigation.

14.05.100 Inspection and enforcement.

A. The applicant consents to entry upon the site by the director or his/her designee during regular business hours for the purposes of making reasonable inspections to verify information provided by the applicant and to verify that work is being performed in accordance with the approved plans and permits and requirements of NBMC Title 14.

B. When a critical area or its buffer has been altered in violation of this title, the director may order that all ongoing development work shall stop and that the critical area be restored. Consistent with Chapters 1.20 and 19.10 NBMC, the director shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation, and/or replacement measures at the owner’s or other responsible party’s expense to compensate for violation of the
provisions of this title. The director may require work to remain stopped until approval of a restoration plan.

14.05.110 Costs.

All costs associated with an applicant’s critical area review and processing, and other services provided by the city for critical areas review, shall be paid for by the applicant and processed pursuant to NBMC 20.09.040. Unless otherwise indicated in this title, the applicant shall be responsible for the initiation, preparation, submission, and expense of all required reports, assessments, studies, plans, reconnaissance, or other work prepared in support of or necessary for the application.

14.05.120 Appeals.

Appeals of administrative decisions shall be governed by Chapter 20.06 NBMC.

14.05.130 General exemptions.

The following development, activities, and associated uses shall be exempt from the provisions of this title, provided they are consistent with the provisions of other local, state, and federal laws and regulations:

A. Emergencies:

1. Emergencies are those instances that threaten public health, safety, welfare, or risk of damage to private or public property, and that require remedial or preventative action in a time frame too short to allow for review of compliance with the requirements of this title. The director shall be notified of the emergency action within 48 hours;

2. Emergency responses must have the least possible impact on critical areas and/or their buffers;

3. Within one year after an emergency, the person or agency undertaking the emergency response action may be required by the director to fully restore and/or mitigate any impacts to critical areas and/or their buffers resulting from the emergency in accordance with an approved critical area report and mitigation plan, prepared in accordance with the procedures set forth in this chapter, for a new development permit. Restoration and/or mitigation activities shall be initiated within 90 days of the date of the emergency; and

4. Restoration may be waived by resolution of the city council in the case of natural emergencies where a state of emergency has been declared by the mayor pursuant to the city’s emergency management plan;

B. Passive recreation, including, but not limited to, hiking, fishing, river rafting, and wildlife viewing that does not involve the construction of trails;
C. Operation, maintenance, or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems that do not require construction permits, including existing platted tracts, if the activity does not further alter or increase the impact to, or encroach further into, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair. Operation and maintenance also includes normal maintenance of vegetation in existence prior to the city’s aerial photographs taken April 3, 2004, in accordance with best management practices; provided, that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species. Properties within the floodplain, critical aquifer recharge area, or seismic liquefaction area, and located outside of other critical areas, are exempted from the maintenance area expansion restriction of this subsection (C);

D. Ongoing maintenance can take place in native growth protection easements (NGPE) or tracts; provided only state-listed invasive and noxious weeds and additional aggressive nonnative species identified in NBMC 14.05.140(A)(2)(e) shall be removed or cut, hand removal is the only method utilized, and no mechanical or chemical activities are employed. Maintenance shall minimize disturbance to the critical area and/or buffer, shall not involve the use of hazardous substances, and shall be associated with subsequent enhancement, restoration, or ongoing maintenance activities. All removed plant material shall be taken away from the site and appropriately disposed of; and

E. Existing and ongoing agriculture as defined in Chapter 18.06 NBMC. Such activities shall not allow critical areas or their buffers that are not currently under agricultural use to be converted to agricultural use. Normal and routine maintenance of existing irrigation and drainage ditches, reservoirs, and ponds that do not meet the criteria for being considered a stream or other fish and wildlife habitat area shall be exempt. Agricultural activities shall not be considered ongoing when the use has become nonconforming as defined in NBMC 14.05.160.

14.05.140 Exceptions.

Except as prohibited in NBMC Chapter 14.20 the following are exceptions from the provisions of this chapter when applicable criteria, performance standards, and approvals are met.

A. Administrative Exceptions.

1. An applicant shall submit a written request for exception from the director that describes the proposed activity and exception that applies.

2. The director shall review the exception requested to verify that the proposed activity complies with Chapters 14.05–14.20 NBMC and shall approve or deny the exception. Exceptions that may be requested include:

   a. Determination of nonconforming status pursuant to NBMC 14.05.160;
b. Operation, maintenance, or repair of existing structures, infrastructure improvements, existing utilities, public or private roads, dikes, levees, or drainage systems, if the activity does not increase impacts to the critical area functions and values as a result of the proposed operation maintenance or repair;

c. Activities within an improved right-of-way. Activities within an improved right-of-way include the replacement, modification, installation or construction of utility facilities, lines, pipes, mains, streets, sidewalks, curbs, gutters, equipment or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a city-authorized private roadway, except those activities that alter a wetland or watercourse, such as new culverts or bridges, or result in the transport of sediment, subject to the following:

   i. The activity shall result in the least possible impact and have no practical alternative with less impact on the critical area and/or its buffer;

   ii. An additional, contiguous, and undisturbed critical area buffer shall be provided, equal in area to the disturbed critical area buffer; and

   iii. Retention and replanting of native vegetation shall occur wherever possible along the right-of-way improvement and resulting disturbance;

d. Minor Utility Projects. Minor utility projects are those utility projects that have minor or short-term impacts to critical areas, as determined by the director in accordance with the criteria below, and that do not significantly impact the functions and values of a critical area(s), such as the placement of a utility pole, anchor, vault, or other small component of a utility facility; provided, that such projects are constructed with best management practices and additional restoration measures are provided. Minor activities shall not interrupt the transport of sediment. Such exceptions shall meet the following criteria:

   i. There is no practical alternative to the proposed activity with less adverse impacts on critical areas and all attempts have been made first to avoid impacts, next to minimize impacts, and lastly to mitigate unavoidable impacts;

   ii. The activity will not change or diminish the overall critical area hydrology or flood storage capacity;

   iii. The minor utility project shall be designed and constructed to prevent spills and leaks into critical areas;

   iv. To the maximum extent practicable, utility corridor access for maintenance is at limited access points into the critical area buffer rather than by a parallel access road; and

   v. The site shall be revegetated to at least its former condition;
e. Nonexempt vegetation removal activities, including enhancement and restoration activities. Removal of invasive and noxious weeds that appear on the lists maintained by the Washington State Noxious Weed Control Board and King County Noxious Weed Control Board, and additional aggressive nonnative species including Japanese knotweed, scotch broom, English ivy, Himalayan blackberry, and evergreen blackberry, and enhancement and restoration activities for the purpose of restoring functions and values of critical area(s) that do not require construction permits, shall be encouraged by individual property owners. These projects shall use approved, limited-spectrum, water-safe herbicides, hand labor, and light equipment that minimize disturbance to the critical area and buffer. Nonexempt vegetation removal and enhancement and restoration activities in wetlands, streams, and wildlife habitat areas and their buffers shall be coordinated with the director to ensure revegetation of the site with native planting that will preserve or enhance the functions and values of the critical area and/or its buffer; and

f. Hazardous tree removal; provided, that the hazard is documented by a qualified professional consistent with the requirements of Chapter 19.10 NBMC, and provided that the responsible party removing the hazardous tree(s) replaces any trees that are removed with new trees at a ratio of three replacements for each tree removed (3:1). Replacement trees shall be located within critical areas and buffers, and shall be species that are native and indigenous to the site, and shall be a minimum of five gallon container plant material size.

B. Public Agency or Utility Exception. If the application of this title would prohibit a development proposal by a public agency or public utility that is essential to its ability to provide service, the agency or utility may apply for an exception pursuant to this subsection. After holding a public hearing pursuant to Chapter 20.03 NBMC, the hearing examiner may approve the exception if the hearing examiner finds that:

1. There is no other practical alternative to the proposed development with less impact on the critical areas, based on the demonstration by the applicant of the following factors:

   a. The applicant has considered all reasonably possible construction techniques based on available technology that are feasible for the proposed project and eliminated any that would result in unreasonable risk of impact to the critical area; and

   b. The applicant has considered all available sites and alignments within the range of potential sites and alignments that meet the project purpose and for which operating rights are available; and

2. The proposal minimizes and mitigates unavoidable impacts to critical areas and/or critical area buffers.

C. Reasonable Use. If the application of this title would deny all reasonable use of the property, the applicant may apply for an exception pursuant to this section. After holding a public hearing pursuant to Chapter 20.03 NBMC, the hearing examiner may approve the exception if the hearing examiner finds that:
1. The critical area regulations would otherwise deny all reasonable use of the property;

2. There is no other reasonable use consistent with the underlying zoning of the property that has less adverse impact on the critical area and/or associated buffer;

3. The proposed development does not pose an unreasonable threat to the public health, safety, or welfare on or off the property;

4. Any alteration to critical areas is the minimum necessary to allow for reasonable use of the property;

5. 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 the ordinance codified in this chapter or its predecessor;

6. Impacts to critical areas will be mitigated to the greatest extent feasible to ensure no net loss of critical area functions and values, in accordance with an approved mitigation plan; and

7. For residences within a residentially zoned area, reasonable use of the property will be granted on the basis of a finding of consistency with the minimum reasonable use for such a residence as defined by the lesser of (a) forty percent of the area of the lot, or (b) 2,550 square feet. Included in the total allowed area for a residence is:

   a. The area of the first floor of the residence;

   b. The area of any covered or uncovered decks or patios proposed, and any lawn areas proposed;

   c. The area of roof overhangs greater than two feet;

   d. The area of any living space or decks on any floor other than the first floor that extend beyond the walls of the first floor unless its area is already included in NBMC 14.05.140(C)(7)(b) or (c); and

   e. The area of any accessory structure.

The area should be the same as the area covered by structures and lawn as seen in a birds-eye view of the site looking directly down, with the exceptions of not counting the roof overhangs of not more than two feet. Application of this provision does not allow wetlands, streams and other fish and wildlife habitat areas, geologically hazardous areas, or their buffers to be converted to residential landscaping.

D. Farm Plan. A farm plan exception may be used on public open space lands designated for farm use in an adopted master plan, on lands that meet the definition of “agricultural land” in NBMC 18.06.030, or for existing and ongoing agricultural activities. A farm plan shall implement USDA Natural Resource Conservation Service (NRCS) Field Office Technical Guide Best Management
Practices and a qualified professional shall address potential impacts to critical areas from livestock, nutrients, farm chemicals, soil erosion, and sediment control and agricultural drainage infrastructure. The King County Conservation District and the city must approve a written farm plan.

E. Mitigation Required. Any authorized alteration to a wetland or stream and other fish and wildlife habitat area or its associated buffer, as approved under subsections (B) or (C) of this section, shall be subject to conditions established by the city and shall require mitigation under an approved mitigation plan pursuant to NBMC 14.05.260.

14.05.150 Variance.

Where avoidance of the impact to wetlands, streams, and other fish and wildlife habitat areas, geologically hazardous areas, and critical aquifer recharge areas is not possible consistent with requirements of Chapters 14.05–14.12 NBMC, and the proposal does not qualify for any other type of exception, a variance shall be obtained to permit the impact. The applicant for the variance shall provide a site plan and description for city review and written analysis consistent with the following requirements.

A. Variance Site Plan and Written Analysis. An applicant seeking a variance shall submit the following in support of his/her request for a variance:

1. The date the applicant acquired or leased the property and the applicable zoning in effect at that time;

2. A map of all critical areas on or adjacent to the subject property;

3. A map demonstrating zoning setbacks per NBMC;

4. A written explanation of the impact on functions and values of critical areas that will result from the proposal, including removal of large trees and existing vegetation;

5. A map showing the location of septic drainfields and reserve areas, if applicable;

6. A written explanation of the opportunity for mitigation to minimize or eliminate the adverse impacts of the proposed variance;

7. An alternative site plan and written analysis of the proposal demonstrating the practicable alternative with the least impact on the critical area and buffer;

8. A written explanation of why such variance is necessary, due to special circumstances and/or conditions relating to the size, shape, topography, critical areas, location, or surroundings of the subject property, to provide it with those relative rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located. The phrase “relative rights and privileges” is used to ensure that the property rights and privileges for the subject property are considered primarily in relation to current city land-use regulations;
9. A written demonstration that the granting of the variance will not be materially detrimental to the public welfare or injurious to the property, neighborhood, or improvements in the vicinity and zone in which the subject property is situated;

10. A demonstration that the proposed variance is the minimum necessary to provide relief to the applicant, as provided in the NBMC; and

11. Any other information determined by the director or his/her designee to be reasonably necessary to analyze the proposal.

14.05.160 Nonconforming uses and structures.

This section establishes the terms and conditions for continuing nonconforming uses, structures and lots near or in critical areas which were lawfully established prior to the effective date of the ordinance codified. For those areas not subject to critical area regulation, Chapter 18.30 NBMC applies.

A. Establishing Status.

1. A legally established nonconforming lot, use, or structure may be continued, transferred, conveyed, and/or used as if conforming.

2. The burden of establishing that any nonconforming lot, use, or structure lawfully existed as of the effective date of the ordinance codified in this chapter shall, in all cases, rest with the owner and/or applicant and not with the city.

3. A nonconforming lot, use, or structure may be deemed legally nonconforming by providing documentation that the use in question occurred prior to the CAO in 1993, or was permitted prior to the effective date of the latest Critical Area Amendments from one of the following:

   a. A local agency permit;

   b. An orthophoto, aerial photo or planimetric mapping recognized as legitimate by the agency; or

   c. Tax records.

B. Maintenance and Repair of Nonconforming Structures. Normal maintenance and incidental repair of legal nonconforming structures shall be permitted; provided, that:

1. The maintenance shall not increase the degree of nonconformity; and

2. The cumulative cost of such maintenance or repair within any 180-day period shall not exceed 50 percent of the assessed valuation of such building, structure, or land (as applicable) at the time such maintenance is completed.
C. Reconstruction or Replacement. Reconstruction, restoration, remodeling, or repair of a legal nonconforming structure damaged by fire, flood, earthquake, falling trees or limbs, or other disasters shall be permitted except where prohibited or conditioned in NBMC 14.12.170 and 14.12.180; provided, that such reconstruction shall not result in the expansion of the nonconforming structure into or towards the critical area or its buffer, or in a manner that increases the potential impact to the critical area, or cause risk of harm to public safety. Legal nonconforming status will be lost if a building permit is not secured within one year of the date damage occurred. See applicable critical area performance standards, such as NBMC 14.12.200, for structures in a floodway.

D. Expansion of Nonconforming Use or Structure. Within a critical area or its buffer, no legal nonconforming use or structure may be expanded, enlarged, extended, or intensified in any way (including extension of hours of operation) unless such modification is in full compliance with this title or the terms and conditions of approved permits pursuant to this title, or is allowed as provided below, or is considered an exception as provided in NBMC 14.05.140. Approved expansions must be consistent with the standards of the zoning code in which the building, structure, or land use lies and with limitations set forth in NBMC 14.12.170 and 14.12.180. In no case shall any prohibited uses as designated under NBMC 18.10.030 be permitted to enlarge or expand. The following legal nonconforming expansions or uses are allowed:

1. Vegetation management, including landscaping or gardening revisions on lawfully established and maintained portions of a critical area or its buffer;

2. Fences, decks, and accessory structures that are exempt from a building permit can be established or expanded on lawfully established and maintained portions of a critical area or its buffer without demonstrating full compliance with the requirements of this title;

3. Building modifications or additions that are not considered substantial improvements; and

4. Single-family residential building permits are exempt from the requirements of the critical area regulations when the development proposal involves any of the above activities and:

   a. Structural modifications to or replacement of an existing single-family residential structure with a new residential structure where construction and associated disturbance do not increase the footprint of any existing structure;

   b. The structure is not located closer to the critical area; and

   c. The existing impervious surface within the critical area or buffer is not expanded.

E. Discontinuance of Nonconforming Use or Structure. All legal nonconforming uses shall be encouraged to convert to a conforming use whenever possible. Conformance shall be required when:

1. A change of use is proposed;
2. The use is terminated or discontinued for more than one year, or the structure(s) that houses the use is vacated for more than one year; or

3. The structure(s) or activity that occurs on the land in which the use is conducted is proposed for relocation.

14.05.170 Administrative rules.

The community and economic development department shall have the authority to adopt administrative rules not inconsistent with this chapter as necessary to implement the provisions of this chapter.

14.05.180 Building setback line (BSBL).

A building setback line (BSBL) is established to reduce conflict with hazardous trees and vegetation buffers, to enhance wildfire safety, and to prevent construction intrusions into certain buffer areas. A minimum BSBL of 15 feet is required from the edge of any stream and other fish and wildlife habitat area buffer, wetland buffer, or erosion and landslide buffer. The setback shall be identified on the site plan, which is filed as an attachment to the notice on title required by NBMC 14.05.200.

14.05.190 Land segregation.

Subdivisions, short subdivisions, boundary line adjustments, and planned residential developments of land in critical areas and associated buffers are subject to the following:

A. Land that is wholly within a wetland or stream critical area or associated buffer may not be subdivided except as approved under a reasonable use exception;

B. Land that is partially within a wetland or stream critical area or associated buffer area may be subdivided or the boundary line adjusted; provided, that an accessible and contiguous portion of each new or adjusted lot is:

1. Located outside the critical area and buffer; and

2. Large enough to accommodate the intended use; and

C. Accessory roads and utilities may be permitted within the wetland or stream critical area and associated buffer only if the director determines that no other feasible alternative exists and an exception is approved as provided in NBMC 14.05.140.

14.05.200 Notice on title.

A. Purpose: To inform subsequent purchasers of real property of existing critical areas excluding soil liquefaction, Category II critical aquifer recharge areas, and floodplains outside of the
floodway or channel migration zone. The owner of any real property containing an existing critical area or buffer on which a development proposal is submitted and approved shall file a notice on title with the records division of King County.

1. The notice shall run with the property and state the following:
   a. The presence of the critical area or buffer on the property;
   b. That the use of the property is subject to the provisions of this chapter, or subsequent provisions related thereto; and
   c. That limitations on actions in or adjacent to the critical area and buffer may exist.

2. Exceptions to notice on title:
   a. Where the work on existing structures or uses is not a substantial improvement to the existing structure or use and does not increase the area of impact to the critical area or its buffer;
   b. Activities within a recorded easement or right-of-way; or
   c. Where the area has been or will be placed in a critical area tract.

B. A notice on title shall not be required for a development proposal by a public agency or public or private utility:

   1. Within a recorded easement or right-of-way;
   2. Where the agency or utility has been adjudicated the right to an easement or right-of-way; or
   3. Where the area has been or will be placed in a critical area tract.

C. The applicant shall submit proof that the notice has been filed for public record prior to issuance of a permit as specified in Chapter 18.38 NBMC.

14.05.210 Native growth protection easements.

A. As part of the implementation of approved development applications and alterations, critical areas and their buffers (except soil liquefaction seismic hazard areas, floodplains including floodways, and Category II critical aquifer recharge areas) shall remain undeveloped and shall be designated as native growth protection easements (NGPE). The City may waive NGPE designation requirements for utility projects where there will be limited or no ongoing operation impact to the adjacent critical area following construction.
B. The native growth protection easement (NGPE) is an easement granted to the city for the protection of a critical area and/or its associated buffer. NGPEs shall be required as specified in these rules and shall be recorded on final development permits and all documents of title and with the county recorder at the applicant’s expense. The required language is as follows:

Dedication of a Native Growth Protection Easement (NGPE) conveys to the public a beneficial interest in the land within the easement. This interest includes the preservation of existing vegetation for all purposes that benefit the public health, safety, and welfare, including control of surface water and erosion, maintenance of slope stability, visual and aural buffering, and protection of plant and animal habitat. The NGPE imposes upon all present and future owners and occupiers of land subject to the easement the obligation, enforceable on behalf of the public of the city of North Bend, to leave undisturbed all trees and other vegetation within the easement. The vegetation in the easement may not be cut, pruned, covered by fill, removed, or damaged without express written permission from the city of North Bend.

C. When the subject development is a formal subdivision, short subdivision (short plat), binding site plan, contract rezone, master site plan, site plan/design review, or planned residential development (PRD), the critical area and its buffers shall be placed in a critical area tract and designated as an NGPE, as described below.

D. In addition to the requirements specified in subsections (A) – (C) of this section, the following shall also apply for streams and other fish and wildlife habitat areas:

1. An NGPE shall be designated for Type S, F and N streams, unless the director has waived the NGPE requirements for Type N streams (see below). Where a stream or its buffer has been altered on the site prior to approval of the development proposal, as a result of the development proposal, the area altered shall be restored using native plants and materials. The restoration work shall be done pursuant to an approved mitigation plan.

2. Public and private trails (e.g., for educational purposes) may be allowed within all critical area buffers where it can be demonstrated in a critical area report that the buffer functions and values will not be degraded by trail construction or use. Trail planning, construction, and maintenance shall adhere to the criteria set forth in NBMC 14.06.050.

14.05.220 Critical area tracts.

A. Critical area tracts are legally created non-buildable land areas containing critical areas and their buffers that shall remain undeveloped pursuant to the critical area regulations. Separate critical area tracts are not an integral part of the lot in which they are created; are not intended for sale, lease, or transfer; and shall be incorporated in the area of the parent lot for purposes of subdivision and method of allocation and minimum lot size. The following development proposals shall identify such areas as separate tracts:
1. Subdivisions;
2. Short subdivisions;
3. Planned residential developments;
4. Contract rezones;
5. Binding site improvement plans; and
6. Master site plans.

B. Responsibility for maintaining tracts shall be held by a homeowners association, adjacent lot owners (in an undivided interest), the permit applicant or designee, or other appropriate entity as approved by the city.

C. The following note shall appear on the face of all plats, PRDs, binding site improvement plans, master site plans, site plan/design review, or contract rezones and shall be recorded on the title for all affected lots:

NOTE: All lots adjoining separate tracts identified as native growth protection easements are jointly and severally responsible for the maintenance and protection of the tracts. Maintenance includes ensuring that no alteration occurs within the separate tract and that vegetation remains undisturbed unless the express written permission of the city of North Bend has been received.

14.05.230 Marking and/or fencing.

A. Temporary Markers. The outer perimeter of a wetland, stream, and other fish and wildlife habitat area, steep slope, associated buffer, and the limits of these areas to be disturbed pursuant to an approved permit or authorization, shall be marked in the field in a manner approved by the city to notify and protect the buffer. Markers and/or fencing are subject to inspection by the director or his/her designee prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until authorized by the director, or until permanent signs and/or fencing, if required, are in place.

B. Permanent Markers. Following the implementation of an approved development plan or alteration, the outer perimeter of the critical area or buffer that is not disturbed shall be permanently identified. This identification shall include permanent wood or metal signs on treated wood or metal posts. Signs shall be worded as follows:

CRITICAL AREA BOUNDARY
Protection of this natural area is in your care. Alteration or disturbance is prohibited. Please call the city of North Bend for more information. Removal of this sign is prohibited.

The director shall approve sign locations during review of the development proposal. Along residential boundaries, the signs shall be at least four inches by six inches in size and spaced one per centerline of lot or every 75 feet for lots whose boundaries exceed 150 feet. At road endings, crossings, and other areas where public access to the critical area is allowed, the sign shall be a minimum of 18 inches by 24 inches in size and spaced one every 75 feet.

C. Permanent Fencing. The director shall require permanent fencing where the development proposal creates a substantial likelihood of intrusion into the critical area. Permanent fencing shall be required around a wetland, stream, or buffer when domestic grazing animals are present or may be introduced. Fencing shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat. The director shall also require such fencing when, subsequent to approval of the development proposal other intrusions threaten conservation of critical areas. The director may use any appropriate enforcement actions including, but not limited, to fines, abatement, or permit denial to ensure compliance.

14.05.240 Critical area reports/studies.

A. Timing of Studies. When an applicant submits an application for any development proposal, it shall indicate whether any critical area or buffers are located on or could be adjacent to the site. The presence of critical areas may require additional studies and time for review. However, disclosure of critical areas early will reduce delays during the permit review process. If the applicant discloses that there are no known critical areas, further studies may be required for verification.

B. Studies Required.

1. When sufficient information to evaluate a proposal is not available, the director shall notify the applicant that a critical area study and report is required.

2. If a critical area report is required, the director may retain independent qualified professionals, at the applicant’s expense, to assist in review of studies that are outside the range of staff expertise.

3. A qualified professional, as defined in NBMC 14.05.040, shall prepare critical area reports. A critical area report shall include all information required pursuant to subsection (C) of this section. A monitoring and maintenance program shall be required to evaluate the effectiveness of mitigating measures.

4. Studies generated as part of an expanded State Environmental Policy Act (SEPA) environmental checklist or an environmental impact statement may qualify as a critical area
report if the project is developed in enough detail to have provided an evaluation of site-specific impacts and mitigation measures.

C. General Critical Area Report Requirements.

1. A critical area report shall have three components: (a) a site analysis; (b) an impact analysis; and (c) proposed mitigation measures. More or less detail may be required for each component depending on the size, severity, and potential impacts of the project. The director may waive the requirement of any component when adequate information is otherwise available.

2. In addition to the specific requirements for each critical area as set forth in Chapters 14.06 – 14.12 NBMC, all studies shall contain, at a minimum, the following information unless it is already available in the permit application:

   a. Description of local, state, and federal regulations and permit requirements;

   b. A site map displaying all of the following features:

      i. All critical areas;

      ii. Critical area buffers;

      iii. Standard and proposed buffer widths (if different);

      iv. Existing and proposed easements, rights-of-way, trail corridors, and structures;

      v. Reference streets and property lines;

      vi. The proposed development(s);

      vii. Any areas to be cleared or altered; and

      viii. The topography of the site;

   c. Written report details, including the following:

      i. A copy of the site plan for the development proposal, including a description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations;

      ii. The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site (including methodology and techniques);

      iii. Identification and characterization of all critical areas and buffers adjacent to the proposed project area;
iv. A description of the proposal, including, but not limited to, descriptions of filling, dredging, modification for stormwater detention or discharge, clearing, grading, restoring, enhancing, grazing, or other physical activities that change the existing vegetation, hydrology, soils, or habitat;

v. An assessment of the probable cumulative impacts to critical areas resulting from development of the site;

vi. A description of reasonable efforts to apply a mitigation sequencing approach to avoid, minimize, and mitigate impacts to critical areas;

vii. Plans for any proposed mitigation measures, as needed, to offset any impacts, in accordance with mitigation plan requirements set forth in NBMC 14.05.260, including but not limited to:

   A. The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and

   B. The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment;

ix. A discussion of performance standards applicable to the critical area and proposed activity; and

x. Financial guarantees to ensure compliance.

**14.05.250 General mitigation requirements.**

This Section provides general mitigation requirements applicable to alteration of critical areas. Additional mitigation requirements specific to each type of critical area are set forth in Chapters 14.06 – 14.12 NBMC.

A. Mitigation sequencing. Consistent with Chapter 197-11-768 WAC, protection of critical areas shall observe the following sequence, unless part of a restoration plan for a significantly degraded wetland or stream buffer:

   1. Avoid impacts by refraining from certain actions or parts of an action;

   2. Where impacts to critical areas and/or their buffers cannot be avoided, the applicant shall demonstrate that the criteria for granting a variance or other applicable exception as set forth in NBMC sections 14.05.130 through 14.05.150 are met;

   3. Minimize impacts by limiting the degree or magnitude of the action, by using affirmative steps to avoid or reduce impacts, or by using appropriate technology;

   4. Rectify impacts by repairing, rehabilitating, or restoring the affected environment;
5. Reduce or eliminate impacts over time by preservation and maintenance operations;

6. Compensate for impacts by creating, replacing, enhancing, or providing substitute resources or environments; and

7. Monitor impacts and take appropriate corrective measures.

B. The buffer for a created, restored, or enhanced critical area proposed as compensation for approved alterations shall be the same as the buffer required for the category of the created, restored, or enhanced critical area. For the purposes of restoration, creation, or enhancement, buffers shall be fully vegetated and shall not include lawns, walkways, driveways, and other mowed or paved areas. Mitigation shall be completed immediately following disturbances and prior to use or occupancy of the activity or development, or when seasonally appropriate. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and water quality.

C. Restoration/rehabilitation is required when a critical area or its buffers have been altered on a site in violation of city regulations prior to development approval, and as a consequence its functions and values have been degraded. Restoration is also required when the alteration occurs in violation of city regulations during the construction of an approved development proposal. At a minimum, all impacted areas shall be restored to their previous condition pursuant to an approved mitigation plan.

D. Re-establishment/rehabilitation is required when the critical area or its buffers will be temporarily altered during the construction of an approved development proposal. At a minimum, all impacted areas shall be restored to their previous condition pursuant to an approved mitigation plan.

E. Compensatory Mitigation. The goal of compensation is no net loss of critical area and/or buffer functions on a development site. Compensation includes creation, restoration (or re-establishment, rehabilitation), enhancement, and preservation of the critical area or its buffer depending on the scope of the approved alteration and what is needed to maintain or improve the critical area and/or buffer functions. Compensation for approved critical area or buffer alterations shall meet the following minimum performance standards and shall occur pursuant to an approved mitigation plan:

1. The buffer for a created, restored, or enhanced critical area proposed as compensation for approved alterations shall be the same as the buffer required for the existing critical area. For the purposes of restoration, creation, or enhancement, buffers shall be fully vegetated and shall not include lawns, walkways, driveways, and other mowed or paved areas.

2. Mitigation Location Preference. Where on-site mitigation opportunities that result in enhancement of critical areas resources within the city are feasible, on-site approaches should be implemented. The director may facilitate and approve alternate mitigation projects based on considerations of best available science. Consistent with the following priorities for
mitigation location preference, alternate mitigation strategies may be approved by the director only where on-site approaches are documented as not feasible.

a. On-Site and In-Kind. Except where shown to be infeasible and consistent with the standards of this section, all critical area impacts shall be compensated for through restoration or creation of replacement areas that are in-kind, on-site, and of similar or better critical area category. Mitigation shall be timed prior to or concurrent with the approved alteration and shall have a high probability of success.

b. Off-Site and In-Kind. The director may consider and approve off-site compensation where the applicant demonstrates that greater biological and hydrological functions and values will be achieved than through on-site mitigation. The preferred location for off-site mitigation is within city limits, although off-site locations with the surrounding upper Snoqualmie River Valley may be approved. The compensation ratios specified under the “on-site” compensation section for each critical area shall apply for off-site compensation as well. The director may request contractual linkage to the off-site parcel to ensure its availability and landowner willingness. Use of a city approved mitigation receiving site could include either of the following approaches, provided that either off-site mitigation approach meets all state and federal permit requirements:

i. Developers may contribute payment towards an identified city mitigation project with approval from the director; or

ii. Developers may design and implement off-site mitigation at the approved mitigation receiving site with approval from the director.

process.

c. Advance mitigation, in-lieu fee programs, or mitigation banking are examples of alternative mitigation approaches allowed under the provisions of this section if it is demonstrated that all of the following circumstances exist:

i. There are no reasonable opportunities for on-site or off-site mitigation within the city or upper Snoqualmie River Valley;

ii. The off-site mitigation has a greater likelihood of providing equal or improved critical areas functions than the altered critical area, and there is a clear potential for success of the proposed mitigation at the identified mitigation site; and

iii. Credits from an approved (state-certified) wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the approved bank instrument; or, fees are paid to an approved in-lieu fee program to compensate for the impacts.

3. Increased Replacement Ratios. The director may increase the replacement ratios under the following circumstances:
a. Uncertainty exists as to the probable success of the proposed restoration or creation due to an unproven methodology or proponent; or

b. A significant period of one year or more will elapse between impact and replication of wetland functions; or

c. The impact was unauthorized.

4. Decreased Replacement Ratios. The director may decrease the replacement ratios required in the “on-site” ratios specified under the compensation section of each critical area when all of the following criteria are met:

a. A minimum replacement ratio of 1.5:1 will be maintained;

b. Documentation by a qualified professional demonstrates that the proposed mitigation actions have a very high rate of success;

c. Documentation by a qualified professional demonstrates that the proposed mitigation actions will provide functions and values that are significantly greater than the critical area being impacted; and

d. The proposed mitigation actions are conducted in advance of any anticipated impact and have been shown to be successful.

5. Critical Areas Enhancement as Mitigation.

a. Impacts to wetland and stream functions may be mitigated by enhancement of existing significantly degraded areas. Applicants proposing to use enhancement must produce a critical area report that identifies how enhancement will increase the functions of the degraded resource and how this increase will adequately mitigate for the loss of critical area and its function at the impact site. An enhancement proposal must also show whether existing critical area functions will be reduced by the enhancement actions.

b. For wetlands, minimum mitigation ratios for enhancement are provided in subsection (G) of this section. Proposals for enhancement in combination with other forms of mitigation shall implement mitigation ratios consistent with Ecology Publication #06-06-011, or as revised, or may determine mitigation requirements using Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington, Department of Ecology, Publication No. 10-06-011, or as revised.

F. Mitigation shall be completed immediately following disturbances and prior to use or occupancy of the activity or development, or as soon as seasonally appropriate. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, water quality, and vegetation.
G. Wetland Mitigation Requirements. In addition to the requirements in subsections (A) – (F) of this section, the following mitigation measures to minimize and reduce wetland impacts are required.

1. No net loss of wetland functions and values shall occur as a result of the overall project.

2. Mitigation shall achieve equivalent or greater biological functions. Mitigation plans shall be consistent with the *Wetland Mitigation in Washington State-Part 2: Developing Mitigation Plans-Version 1* (Ecology Publication #06-06-011b, or as revised) and *Selecting Wetland Mitigation Sites Using a Watershed Approach, Western Washington* (Ecology Publication #09-06-32).

3. Approaches to Compensatory Mitigation. Mitigation for lost or diminished wetland and buffer functions shall rely on the following approaches:

   a. Permittee-responsible mitigation. With this approach, the permittee performs the mitigation after the permit is issued and is ultimately responsible for implementation and success of the mitigation. Permittee-responsible mitigation shall occur at the site of the permitted alteration. Alternative mitigation strategies may be implemented only where on-site approaches are documented as not feasible. If available, city-owned or approved mitigation receiving sites within the city or upper Snoqualmie River Valley should be used as a first preference for off-site mitigation actions.

   b. Wetland mitigation banks. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the mitigation bank instrument. Use of credits from a wetland mitigation bank certified under Chapter 173-700 WAC is allowed if:

      i. The applicant demonstrates to the satisfaction of the director that there are no feasible mitigation opportunities within the city and within the upper Snoqualmie River Valley that would provide adequate compensation for proposed impacts, consistent with subsection (E) of this section;

      ii. The director determines that it would provide appropriate compensation for the proposed impacts;

      iii. The impact site is located in the service area of the bank;

      iv. The proposed use of credits is consistent with the terms and conditions of the certified mitigation bank instrument; and

      v. Replacement ratios for projects using bank credits are consistent with replacement ratios specified in the certified mitigation bank instrument.

   c. In-lieu-fee mitigation. Credits from an approved in-lieu-fee program may be used when all of the following apply:
i. The applicant demonstrates to the satisfaction of the director that there are no feasible mitigation opportunities within the city and within the upper Snoqualmie River Valley that would provide adequate compensation for proposed impacts, consistent with subsection (E) of this section;

ii. The director determines that it would provide environmentally appropriate compensation for the proposed impacts;

iii. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee program instrument;

iv. Projects using in-lieu-fee credits shall have debits associated with the proposed impacts calculated by the applicant’s qualified wetland professional using the credit assessment method specified in the approved instrument for the in-lieu-fee program; and

v. The impacts are located within the service area specified in the approved in-lieu-fee instrument.

4. Preference of Mitigation Actions. Compensatory wetland and buffer mitigation shall occur in the following order of preference.

a. Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland. For the purpose of tracking net gains in wetland acres, restoration is divided into:

i. Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in a gain in wetland acres (and functions). Examples of such activities could include removing fill material, plugging ditches, breaking drain tiles, and the like; and

ii. Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Examples of such activities could involve breaching a dike to reconnect wetlands to a floodplain or returning tidal influence to a wetland, and the like.

b. Establishment (Creation): The manipulation of the physical, chemical, or biological characteristics of a site to develop a wetland on an upland or deepwater site where a wetland did not previously exist. Establishment results in a gain in wetland acres. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species.
i. If a site is not available for wetland restoration to compensate for expected wetland and/or buffer impacts, the director may authorize creation of a wetland and/or buffer upon demonstration by the applicant’s qualified wetland professional that:

1. The hydrology and soil conditions at the proposed mitigation site are conducive for sustaining the proposed wetland and that creation of a wetland at the site will not likely cause hydrologic problems elsewhere;

2. Adjacent land uses and site conditions do not jeopardize the viability of the proposed wetland and/or buffer (e.g., due to the presence of invasive plants or noxious weeds, stormwater runoff, noise, light, or other impacts); and

3. The proposed wetland and/or buffer will eventually be self-sustaining with little or no long-term maintenance.

c. Enhancement: The manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland functions but does not result in a gain in wetland acres. Typical activities are planting vegetation, controlling non-native or invasive species, modifying site elevations or the proportion of open water to influence hydroperiods, or some combination of these activities. Applicants proposing to enhance wetlands and/or associated buffers shall demonstrate how the proposed enhancement will increase the wetland’s/buffer’s functions, how this increase in function will adequately compensate for the impacts, and how existing wetland functions at the mitigation site will be protected.

d. Protection/Maintenance (Preservation): Removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This includes the purchase of land or easements or repairing water control structures or fences. This term also includes activities commonly associated with the term “preservation.” Preservation does not result in a gain of wetland acres. Permanent protection of a Category I or II wetland and associated buffer at risk of degradation can be used only if:

i. The director determines that the proposed preservation is the best mitigation option;

ii. The proposed preservation site is under threat of undesirable ecological change due to permitted, planned, or likely actions that will not be adequately mitigated under existing regulations;

iii. The area proposed for preservation is of high quality or critical for the health of the watershed or basin due to its location. Some of the following features may be indicative of high-quality sites:
1. Category I or II wetland rating (using the Wetland Rating System for Western Washington);

2. Rare or irreplaceable wetland type (e.g., bogs, mature forested wetlands, and estuarine wetlands) or an aquatic habitat that is rare or a limited resource in the area;

3. Presence of habitat for priority or locally important wildlife species;

4. Provides biological and/or hydrological connectivity; and

5. Priority sites in an adopted watershed plan;

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

v. The director may approve other legal and administrative mechanisms in lieu of a conservation easement if it determines they are adequate to protect the site; and

vi. Ratios for preservation in combination with other forms of mitigation generally range from 10:1 to 20:1, as determined on a case-by-case basis, depending on the quality of the wetlands being impacted and the quality of the wetlands being preserved. Ratios for preservation as the sole means of mitigation generally start at 20:1.

5. Wetland Mitigation Ratios:

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

6. Credit/Debit Method. To more fully protect functions and values, and as an alternative to the mitigation ratios found in the joint guidance *Wetland Mitigation in Washington State Parts I and II* (Ecology Publication #06-06-011a-b, Olympia, WA, March 2006), the director may allow mitigation based on the “credit/debit” method developed by the Department of Ecology in *Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report*, (Ecology Publication #10-06-011, Olympia, WA, March 2012, or as revised).
H. Streams and Other Fish and Wildlife Habitat Area Mitigation Requirements. In addition to the requirements in subsections (A) – (F) of this section, the following minimum performance standards shall be met for alterations to streams and other fish and wildlife habitat areas:

1. Achieve equivalent or greater functions, including, but not limited to habitat functions and hydrologic functions;

2. Maintain or improve stream channel dimensions, including depth, length, and gradient;

3. Restore disturbed stream buffer areas with native vegetation;

4. Create an equivalent or improved channel bed;

5. Create equivalent or improved biofiltration;

6. Replace disturbed stream and stream buffer habitat features and areas;

7. Unless it is demonstrated that a higher level of stream function would result from an alternate mitigation approach, compensatory mitigation should be either in-kind and on-site, or in-kind and within the city or upper Snoqualmie River Valley. Mitigation actions should be conducted on-site and within the upper Snoqualmie River Valley, except when:
   
   a. There are no reasonable on-site or upper Snoqualmie River Valley opportunities in the affected stream with a high likelihood of success;

   b. Off-site mitigation has a greater likelihood of providing equal or improved functions; and

   c. Established watershed goals for water quality, flood, conveyance, habitat, or other functions, including priorities and recommendations set forth in the WRIA 7 Salmon Conservation Plan, justify location of mitigation at another site;

8. For temporary alterations to a stream buffer permitted by administrative exception (NBMC 14.05.140(A)), altered areas shall be restored. Restoration of other on-site areas is allowable at a 1:1 ratio if desired; and

9. Consistent with mitigation location preferences located in subsection (E)(2) of this section, stream restoration or enhancement, including illegal alterations, must attain the following ratios of area of mitigation to area of alteration for stream channel impacts:

   a. For mitigation on the site of the proposed impact, or within one half-mile upstream or downstream within the city limits:

      i. 2:1 ratio for a Type S or F stream; and

      ii. 1:1.5 ratio for a Type N stream;
b. For proposed mitigation located further off-site than as provided by subsection (H)(9)(a) of this section, and only when located at a city-owned or approved off-site location:

i. 3:1 ratio for a Type S or F stream; and

ii. 2:1 ratio for a Type N stream.

14.05.260 Mitigation plans.

A. The scope and content of a mitigation plan shall be decided on a case-by-case basis; as the impacts to the critical area increase, the mitigation measures to offset these impacts will increase in number and complexity. The city shall determine during the review of the requested studies which of the components listed in subsection (C) of this section shall be required as part of the mitigation plan. Key factors in this determination shall be the size and nature of the development proposal, the nature of the impacted critical areas, and the degree of cumulative impacts on the critical area from other development proposals.

B. At a minimum, a complete mitigation plan shall include the following:

1. Baseline Information. The mitigation plan shall provide existing conditions information for both the impacted critical areas and/or buffers, and the proposed mitigation site as described in NBMC 14.05.240;

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

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

   b. A description of how the project design has been modified to avoid, minimize, or reduce impacts to wetlands; and

   c. A review of the best available science supporting the proposed mitigation;

3. 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 title have been met. They may include water quality standards, species richness and diversity targets, habitat diversity indices, or other ecological, geological, or hydrological criteria;

4. Detailed Construction Plan. The mitigation plan shall include a detailed construction plan with written specifications and descriptions of mitigation techniques. This plan should include the proposed construction sequencing, grading and excavation details, erosion and
sedimentation control features, a native planting plan, detailed site diagrams, and any other drawings appropriate to show construction techniques or the anticipated final outcome;

5. Monitoring and/or Evaluation Program. The mitigation plan shall include a program for monitoring construction of the compensation project and for assessing a completed project, as set forth in NBMC 14.05.270; and

6. Contingency Plan. The mitigation plan shall identify potential courses of action, and any corrective measures to be taken, when monitoring or evaluation indicates that projected performance standards have not been met.

14.05.270 Monitoring.

A. The city requires long-term monitoring of development proposals, unless otherwise accepted in NBMC 14.05.090 where alteration of critical areas or their buffers are approved. Such monitoring shall be an element of the required mitigation plan and shall be required for a period necessary to establish that performance standards have been met, but generally not for a period of less than five years, with such monitoring to occur on an annual basis. Monitoring may include, but is not limited to:

1. Establishing vegetation transects or plots to track changes in plant species’ composition over time;

2. Using aerial or other photography to evaluate vegetation community response;

3. Sampling surface and ground waters to determine pollutant loading;

4. Measuring base flow rates and stormwater runoff to model and evaluate water quantity predictions;

5. Measuring sedimentation rates;

6. Sampling fish and wildlife populations to determine habitat utilization, species abundance, and diversity; and

7. Sampling water temperatures for wetlands and streams.

B. The city may require that a qualified professional, at the direction of the director and at the applicant’s expense, monitor the proposed development site during construction and for a sufficient period of time after construction to ensure satisfactory mitigation of impacts on the critical area. The qualified professional shall monitor the proposed development site pursuant to the provisions set forth in the approved mitigation plan based on the conditions or restrictions imposed by the city and such administrative rules as the director shall prescribe.

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

**14.05.290 Limited density transfer (on-site).**

A. Density Credit of Critical Areas.

1. An owner of property containing a critical area may be permitted to transfer the unusable density in the critical area to another portion of the same site or property that does not contain a critical area, subject to the limitations of this section.

2. Up to 25 percent of the density that could be achieved on the critical area and buffer portion of the site can be transferred to a portion of the site not containing a critical area, subject to the following:

   a. The density limitation of the underlying zoning classification;

   b. The minimum lot size of the underlying zoning classification may be reduced approximately 25 percent in order to accommodate the transfer in densities;

   c. Applicable bulk and dimensional standards established in NBMC Table 18.10.040 shall be reviewed by the director and may be modified subject to approval of an administrative adjustment to standards (AATs) per Chapter 18.25 NBMC; and

   d. The area to which density is transferred shall not be constrained by other critical areas regulations.

**14.05.300 Transfer of development rights (off-site).**

The city has created a transfer of development rights voluntary program (Chapter 18.36 NBMC) to aid in the preservation of lots with critical areas. Development rights may be transferred off-site so that the applicant may realize property rights from critical areas.
EXHIBIT B
Chapter 14.06
WETLAND CRITICAL AREAS

Sections:
14.06.010 Designation.
14.06.020 Buffers.
14.06.030 Permitted alterations.

14.06.010 Designation.

Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplement pursuant to RCW 36.70A.175. All areas within the city meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this chapter.

Wetlands identified by the city and King County are shown on the Map Series associated with these amendments on file with the city. The map may be periodically revised by the city to add or remove areas based on additional information. The map is not a comprehensive map of all wetlands in North Bend and is to be used as a guide for the city, project applicants, and/or property owners. It is a reference and does not provide a final critical area designation.

For the purpose of categorization, wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication No. 14-06-029), or as revised and approved by Ecology, which contains the definitions and methods for determining whether the criteria set forth in this section are met.

A. Category I. (1) relatively undisturbed estuarine wetlands larger than one acre; (2) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; (3) bogs; (4) mature and old-growth forested wetlands larger than one acre; (5) wetlands in coastal lagoons; (6) interdunal wetlands that score eight or nine habitat points and are larger than one acre; and (7) wetlands that perform many functions well (scoring 23 points or more). These wetlands: (1) represent unique or rare wetland types; (2) are more sensitive to disturbance than most wetlands; (3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (4) provide a high level of function.

B. Category II. Category II wetlands are: (1) estuarine wetlands smaller than one acre, or disturbed estuarine wetlands larger than one acre; (2) interdunal wetlands larger than one acre or those found in a mosaic of wetlands; or (3) wetlands with a moderately high level of functions (scoring between 20 and 22 points).

C. Category III. Category III wetlands are: (1) wetlands with a moderate level of functions (scoring between 16 and 19 points); (2) can often be adequately replaced with a well-planned mitigation project; and (3) interdunal wetlands between 0.1 and one acre. Wetlands scoring between 16 and
19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

D. Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that potentially could be replaced, or in some cases improved, although not guaranteed. These wetlands may provide some important functions and should be protected to the extent possible.

**14.06.020 Buffers.**

Standard buffer widths presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. If the vegetation is inadequate, then the buffer width shall be increased, or the buffer should be enhanced by planting or other means to maintain the standard functions and values for the required width. 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 Western Washington: 2014 Update* (Ecology Publication #14-06-029), or as revised and approved by Ecology. The adjacent land use intensity is assumed to be high.

A. For all wetlands, the buffers in Table 14.06.020.1 can be used only when all of the measures in Table 14.06.020.2 are implemented, where applicable and feasible, to minimize the impacts of the adjacent land uses.

B. If an applicant chooses not to apply the mitigation measures in Table 14.06.020.2 to the extent determined reasonable and necessary by the city, then a 25 percent increase in the standard buffers provided in Table 14.06.020.1 may be required.

C. The buffer widths in Table 14.06.020.1 assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community, or the buffer should be widened to ensure that adequate functions of the buffer are provided.

**Table 14.06.020.1 Wetland Buffer Requirements for Western Washington if Table 14.06.020.2 is Implemented and Corridor Provided.**

<table>
<thead>
<tr>
<th>Wetland Category</th>
<th>3-5</th>
<th>6-7</th>
<th>8-9</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Category I: Based on total score</strong></td>
<td>75</td>
<td>110</td>
<td>225</td>
</tr>
</tbody>
</table>
### Table 14.06.020.2 Required Measures to Minimize Impacts to Wetlands

<table>
<thead>
<tr>
<th>Disturbance</th>
<th>Required Measures to Minimize Impacts</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Lights</strong></td>
<td>- Direct lights away from wetland</td>
</tr>
</tbody>
</table>
| **Noise**               | - Locate activity that generates noise away from wetland  
                          - If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source immediately adjacent to the wetland buffer |
| **Toxic runoff**        | - Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered  
                          - Establish covenants limiting use of pesticides within 150 feet of wetlands  
                          - Apply integrated pest management                                                                                                                                 |
| **Stormwater runoff**   | - Retrofit stormwater detention and treatment for roads and existing adjacent development  
                          - Prevent channelized flow from lawns that directly enters the buffer  
                          - Use Low Impact Development techniques (per PSAT publication on LID techniques)                                                                                                                                 |
| **Change in water regime** | - Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns                                                                                                                                                               |
| **Pets and human disturbance** | - Use privacy fencing OR plant dense 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                                                                                                                                 |
| **Dust**                | - Use best management practices to control dust                                                                                                                                 |

### Categories

<table>
<thead>
<tr>
<th>Category</th>
<th>Score 60</th>
<th>Score 110</th>
<th>Score 225</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category I: Bogs and Wetlands of High Conservation Value</td>
<td>190</td>
<td></td>
<td>225</td>
</tr>
<tr>
<td>Category I: Forested</td>
<td>75</td>
<td>110</td>
<td>225</td>
</tr>
<tr>
<td>Category II: Based on score</td>
<td>75</td>
<td>110</td>
<td>225</td>
</tr>
<tr>
<td>Category III (all)</td>
<td>60</td>
<td>110</td>
<td>225</td>
</tr>
<tr>
<td>Category IV (all)</td>
<td>50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disturbance</td>
<td>Required Measures to Minimize Impacts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disruption of corridors or connections</td>
<td>The following measures are only required for wetlands with score for habitat functions greater than 5:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Maintain connections to offsite areas that are undisturbed</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Restore corridors or connections to offsite habitats by replanting</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Where other priority habitats as defined by the Washington State Department of Fish and Wildlife are located on the site or immediately off-site, a relatively undisturbed, vegetated corridor at least 100 feet wide must be protected between the wetland and the other Priority Habitat (required for wetlands with six or more points for habitat functions; encourage for all other wetlands)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

E. Measurement of Buffers. All buffers shall be measured from the critical area boundary as surveyed in the field. The width of the buffer shall be determined according to the category of the wetland rating and habitat score.

F. Any wetland created as compensation for an approved wetland alteration shall have the standard buffer required for the new classification of the created wetland. Wetlands to be created shall be located such that the new associated wetland buffer does not cross onto an adjacent property, unless the same property owner owns the adjacent property or secures a native growth protection easement (NGPE) for the buffer on the adjoining property.

G. Averaging Buffers. The director will consider the allowance of wetland buffer averaging only when the buffer area width after averaging will not adversely impact the critical area and/or buffer functions and values. At a minimum, any proposed buffer averaging shall meet the following criteria:

1. The buffer area after averaging is no less than that which would be contained within the standard buffer;
2. The buffer width shall not be reduced by more than 25 percent at any one point as a result of the buffer averaging;
3. The additional buffer area shall be enhanced if necessary, to achieve no net loss of the critical areas functions and values;
4. The additional buffer is contiguous with the standard buffer;
5. Encroachment into the buffer does not occur waterward of the top of an associated steep slope or into a channel migration zone;
6. Encroachment does not occur into the buffer of an associated wetland except as otherwise allowed.
H. Increased Buffers. The director may require increased buffer sizes when a critical area report shows that it is necessary to protect the function and value of the critical areas when either the critical area is particularly critical to disturbance or the development poses unusual impacts. Examples of circumstances that may require buffers beyond minimum requirements include, but are not limited to:

1. Unclassified uses;

2. The critical area is a fish and wildlife habitat area for spawning or rearing as determined by the Washington State Department of Fish and Wildlife;

3. Land located within the development proposal that is adjacent to the critical area and its associated buffer is classified as an erosion hazard area; or

4. A trail or utility corridor in excess of 10 percent of the buffer width is proposed for inclusion in the buffer.

14.06.030 Permitted alterations.

A. The requirements provided in this section supplement those identified in Chapter 14.05 NBMC. Activities and uses shall be prohibited from wetlands and wetland buffers, except that the following activities may be permitted only if the applicant can demonstrate that the activity will not degrade the functions and values of the wetland and other critical areas:

1. Conservation or preservation projects that will not change the structure or functions of the existing wetland; and

2. Projects which propose modifications to existing structures where no further alteration or increase in footprint will occur.

B. The director may require the preparation of a critical area report to confirm compliance with the requirements of this chapter.

C. Trails. Public and private trails may be allowed within wetland buffers where it can be demonstrated in a critical area report that the wetland and wetland buffer functions and values will not be degraded by trail construction or use, and that the location of the trail provides educational benefit to multiple users. Trail planning, construction, and maintenance shall adhere to the following criteria:

1. Permeable surface trail alignment generally shall be parallel to the perimeter of the wetland, located only in the outer 25 percent of the wetland buffer area, except as needed to access viewing platforms which may be located in the outer 50 percent of the wetland buffer, or as needed to cross the wetland. Trails may be placed on existing levees, railroad grades, or road grades within these limits;
2. Trails and associated viewing platforms shall be constructed of pervious materials no more than five feet in width for pedestrian use only, unless impervious surfaces are necessary for conformance to the Americans with Disabilities Act. Raised boardwalks utilizing non-treated pilings and decking may be acceptable for wildlife viewing platforms of no more than eight feet in width and totaling no more than 60 square feet of footprint, and for wetland crossings. The trail surface shall be limited to minor crossings having no adverse impact on water quality, and meet all other requirements, including water quality standards set forth in the King County Surface Water Design Manual, 2016, or as revised; and

3. Trail alignment shall avoid removal of trees to the greatest extent feasible, and shall provide mitigation for all unavoidable impacts.

D. Stormwater Management Facilities. A wetland or its buffer can be physically or hydrologically altered to meet the requirements of a LID for Runoff Treatment or Flow Control utilizing best management practices if all of the following criteria are met:

1. The wetland is classified as a Category IV or a Category III wetland with a habitat score of three – four points;

2. There will be “no net loss” of functions and values to the wetland;

3. The wetland does not contain a breeding population of any native amphibian species;

4. The hydrologic functions of the wetland can be improved as outlined in questions 3, 4, and 5 of Chart 4, and questions 2, 3, and 4 of Chart 5 in the “Guide for Selecting Mitigation Sites Using a Watershed Approach” (available at http://www.ecy.wa.gov/biblio/0906032.html); or the wetland is part of a priority restoration plan that achieves restoration goals identified in a Shoreline Master Program or other local or regional watershed plan;

5. The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing;

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

7. Modifications that alter the structure of a wetland or its soils will require permits. Existing functions and values that are lost shall be compensated/replaced.

E. Public Roads and Utilities. Normal and routine maintenance and repair of any existing public or private facility is allowed within an existing right-of-way, provided that the maintenance or repair does not expand the footprint of the facility or right-of-way.

F. All isolated Category IV wetlands less than 4,000 square feet meeting criteria included in this subsection may be exempt from the mitigation sequencing requirement to avoid impacts, and may be filled when all impacts are fully mitigated as verified by the director. In order to verify the
following conditions, a critical area report shall be required consistent with requirements in NMBC 14.05.145. An isolated Category IV wetland less than 4,000 square feet shall:

1. Not be associated with riparian areas or their buffers;

2. Not be associated with shorelines of the state or their associated buffers;

3. Not be part of a wetland mosaic;

4. Not score five or more points for habitat function based on the *Washington State Wetland Rating System for Western Washington: 2014 Update* (Ecology Publication #14-06-029, or as revised and approved by the Washington State Department of Ecology); and

5. Not contain (a) a Priority Habitat or a Priority Area for a Priority Species identified by the Washington Department of Fish and Wildlife, (b) federally listed species or their critical habitat, or (c) species of local importance as defined in Chapter 14.05 NBMC.
EXHIBIT C
Amendments to Chapter 14.07
CRITICAL AQUIFER RECHARGE AREAS

14.07.020 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). Figure 2, Critical Aquifer Recharge Area and Wellhead Protection Area Map designates CARAs in North Bend according to King County’s analysis. CARAs are areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, as defined by WAC 365-190-030(3). The Critical Aquifer Recharge Area and Wellhead Protection Area Map on file with the city designates CARAs in North Bend according to King County’s analysis. The map may be periodically revised by the city to add or remove areas based on additional information.

A. Critical aquifer recharge areas are categorized in the city as follows:

1. Category I critical aquifer recharge areas include those areas designated on the Critical Aquifer Recharge Area Map on file with the City as highly susceptible to groundwater contamination and that are located within a sole source aquifer or wellhead protection area; and

2. Category II critical aquifer recharge areas include those mapped areas designated that:

   a. Have a medium susceptibility to groundwater contamination and are located in a sole source aquifer or wellhead protection area; or

   b. Are highly susceptible to groundwater contamination and are not located in a sole source aquifer or wellhead protection area.

B. An applicant can request that the city declassify a specific area included in the map. The application must be supported by a critical area report that includes a hydrogeologic assessment demonstrating that the designation is not warranted based on the physical character of the aquifer. The application to declassify an area shall be reviewed by the city and the director shall make a determination whether made to amend the map as appropriate.

14.07.030 Prohibited uses and activities.

A. The following new uses or activities are not allowed in Category I critical aquifer recharge areas:

   1. Hazardous liquid transmission pipelines;
2. Sand, gravel, and hard rock mining on land that is not zoned for mining as of the effective date of the ordinance codified in this chapter;

3. Mining of any type below the groundwater table;

4. Processing, storage, and disposal of radioactive wastes;

5. Hydrocarbon extraction (unless part of an approved decommissioning plan);

6. Commercial wood treatment facilities on permeable surfaces;

7. Wrecking yards; and

8. Landfills for hazardous waste, municipal solid waste, or special waste, except Class A biosolids when applied pursuant to Washington State Department of Ecology (WSDOE) standards.

B. The following new uses and activities are not allowed in a Category II critical aquifer recharge area:

1. Mining of any type below the water table;

2. Processing, storage, and disposal of radioactive substances;

3. Hydrocarbon extraction (unless part of an approved decommissioning plan);

4. Commercial wood treatment facilities on permeable surfaces;

5. Wrecking yards; and

6. Landfills for hazardous waste, municipal solid waste, or special waste, except Class A biosolids when applied pursuant to WSDOE standards.

C. The activities listed below may be conditioned or allowed pending further evaluation to determine if measurable degradation in the quality of groundwater (in a critical aquifer recharge area) will occur. Applicants of development proposals or alterations involving the following types of uses or land activities shall prepare and submit, as part of their critical area study, a hydrogeologic assessment of the proposed site to determine if the development proposal or alteration will cause contaminants to enter a critical aquifer recharge area:

1. Golf courses;

2. Cemeteries;

3. Asphalt and concrete facilities; and
4. Concentrated animal feeding operations.

5. Any other similar activity that the planning official, in his or her discretion, determines does not have the potential to threaten the quality of groundwater in a critical aquifer recharge area.

**14.07.040 Performance standards.**

For all other development proposals within a critical aquifer recharge area, the director may require preparation of a critical area report as specified in NBMC 14.05.240.100. In addition, the following standards will apply:

A. Containment. Every development proposal involving hazardous substance processing or handling that is located in or adjacent to a critical aquifer recharge area shall provide on-site containment devices adequate in size to contain any unauthorized release of hazardous substances from any area where the substances are either stored, handled, treated, used, or produced. Containment devices shall prevent such substances from penetrating into the ground. This provision also applies to releases that may mix with storm runoff.

B. Hazardous Substances Management Plan. Every development proposal involving hazardous substance processing or handling that is located in or adjacent to a critical aquifer recharge area shall prepare a spill plan containing procedures to be followed to prevent, control, collect, and dispose of any unauthorized release of a hazardous substance. Individual hazardous substance waste and typical retail waste will typically not require a spill plan. A spill plan may be required for businesses holding or disposing of either bulk chemicals such as oil, anti-freeze, etc., or truly hazardous chemicals such as acids or other corrosive substances. The plan must ensure the development can maintain spill clean-up of materials in a quantity sufficient to capture the largest container if spilled.

C. Hazardous Substance Storage Tanks.

1. All hazardous substance storage tanks containing hazardous substances proposed to be located in a critical aquifer recharge area must comply with local building code requirements and must conform to the 2003 International Fire Code requirements for secondary containment.

2. Underground Tanks. No new underground storage tanks with hazardous substances shall be allowed in Category I CARAs critical aquifer recharge areas. All new underground hazardous substance tanks located in a Category II CARA critical aquifer recharge area or adjacent to a critical aquifer recharge area shall be designed and constructed so as to:

   a. Prevent releases due to corrosion or structural failure for the operational life of the tank;

   b. Be protected against corrosion, constructed of using noncorrosive material, steel clad with a noncorrosive material, or designated to include including a secondary containment system to prevent the release or threatened release of any stored substance; and
c. Use material in the construction or lining of the tank that is compatible with the substance to be stored.

3. Aboveground Tanks. No new aboveground storage tank for hazardous substances located in or adjacent to a critical aquifer recharge area shall be installed, used or maintained in any manner that may allow the release of a hazardous substance to the ground, ground waters, or surface water.

D. Agriculture. Agricultural activities in or adjacent to a critical aquifer recharge area shall use Natural Resources Conservation Service (NRCS) best management practices to prevent ground quality degradation from livestock waste.

E. Sewage Disposal. All lots of residential, commercial, or industrial development proposals located in or adjacent to a critical aquifer recharge area and within 200 150 feet of a public sewer system shall be connected to the sewer system.

F. Golf Courses. Golf course operations proposed in or adjacent to a critical aquifer recharge area shall be subject to a golf course maintenance plan using best management practices to protect ground water quality. The plan shall detail the proposed use of fertilizers, herbicides, pesticides, fungicides, or other maintenance agents, with projected application methods and schedules and measures to prevent pollution of ground water.

G. Commercial Vehicle Repair and Servicing. Commercial vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur. Proper capture and treatment of runoff per the King County Surface Water Design Manual, 2016, or as revised, should occur prior to discharge either off-site or into infiltration systems.

H. The uses listed in the table below shall be conditioned in accordance with the applicable state and federal regulations as necessary to protect critical aquifer recharge areas:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Statute – Regulation – Guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aboveground Storage Tanks</td>
<td>WAC 173-303-640</td>
</tr>
<tr>
<td>Animal Feedlots</td>
<td>Chapter 173-216 WAC, Chapter 173-220 WAC</td>
</tr>
<tr>
<td>Automobile Washers</td>
<td>Chapter 173-216 WAC, Best Management Practices for Vehicle and</td>
</tr>
<tr>
<td>Category</td>
<td>Reference</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>------------------------------------</td>
</tr>
<tr>
<td>Chemical Treatment Storage and Disposal Facilities</td>
<td>WAC 173-303-182</td>
</tr>
<tr>
<td>Hazardous Waste Generator (Boat Repair Shops, Biological Research Facility, Dry Cleaners, Furniture Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, etc.)</td>
<td>Chapter 173-303 WAC</td>
</tr>
<tr>
<td>Injection Wells</td>
<td>Federal 40 CFR Parts 144 and 146, Chapter 173-218 WAC</td>
</tr>
<tr>
<td>Junk Yards and Salvage Yards</td>
<td>Chapter 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Vehicles Recycler Facilities (WDOE 95-53)</td>
</tr>
<tr>
<td>Oil and Gas Drilling</td>
<td>WAC 332-12-450, Chapter 173-218 WAC</td>
</tr>
<tr>
<td>On-Site Sewage Systems (Large Scale)</td>
<td>Chapter 173-240 WAC</td>
</tr>
<tr>
<td>On-Site Sewage Systems (&lt; 14,500 gal/day)</td>
<td>Chapter 246-272 WAC, Local Health Ordinances</td>
</tr>
<tr>
<td>Pesticide Storage and Use</td>
<td>Chapter 15.54 RCW, Chapter 17.21 RCW</td>
</tr>
<tr>
<td>Sawmills</td>
<td>Chapter 173-303 WAC, Chapter 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Log Yards (WDOE 95-53)</td>
</tr>
<tr>
<td>Solid Waste Handling and Recycling Facilities</td>
<td>Chapter 173-304 WAC</td>
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<tr>
<td>Surface Mining</td>
<td>WAC 332-18-015</td>
</tr>
<tr>
<td>Underground Storage Tanks</td>
<td>Chapter 173-360 WAC</td>
</tr>
<tr>
<td>----------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Class A Biosolids</td>
<td>Ecology Publication Number 05-07-008, February 2005</td>
</tr>
</tbody>
</table>
Chapter 14.09
STREAMS AND OTHER FISH AND WILDLIFE HABITAT AREAS

Sections:
14.09.010 Designation.
14.09.020 Stream typing.
14.09.030 Buffers.
14.09.040 Permitted alterations
14.09.060 Special provisions – Fish habitat
14.09.080 Habitat management plans.

14.09.010 Designation.

A. For purposes of these regulations, streams and other fish and wildlife habitat areas are those that meet any of the following criteria:

1. Areas with which state or federally designated endangered, threatened, and critical sensitive species have a primary association;

2. Habitats of local importance, including, but not limited to, areas designated as Priority Habitat by the Washington State Department of Fish and Wildlife and fish habitat associated with resident fish species within the upper Snoqualmie Watershed, including all habitats associated with the following resident native fish species likely to occur in North Bend rivers and streams: cutthroat trout; rainbow trout; mountain whitefish; largescale sucker; longnose dace; shorthead sculpin; mottled sculpin; western brook lamprey; and threespine stickleback;

3. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish and or wildlife habitat;

4. Waters of the state, including lakes, rivers, ponds, streams, and rivers;

5. State natural area preserves and natural resource conservation areas; and

6. Land essential for preserving connections between habitat blocks and open spaces.

B. All areas within the city meeting one or more of the above criteria, regardless of any formal identification, are designated critical areas and are subject to the provisions of this chapter. The approximate location and extent of known streams and other fish and wildlife habitat areas are depicted within the map series on file with the city. These mapped areas are comprised of Type S and F streams and their buffers, and associated wetlands. Associated wetlands may be partially or fully within a neighboring wetland, stream, and their buffers, or adjacent to designated fish and wildlife habitat areas. The map may be periodically revised by the city to add or remove areas based on additional information.

14.09.020 Stream typing.
A. Streams within the city shall be classified by the following stream typing system, as defined in WAC 222-16-030:

1. Type S (shorelines): All waters designated as “Shorelines of the State” (according to Chapter 14.20 NBMC, Shoreline Regulations);

2. Type F (fish): Segments of natural waters other than Type S waters that are within the bankfull widths of defined channels and periodically inundated areas of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of one-half acre or greater at seasonal low water that in any case contain fish habitat or are described by one of the four categories in WAC 222-16-030(2);

3. Type Np (non-fish perennial): All segments of natural waters within the bankfull width of defined channels that are perennial non-fish-habitat streams. Perennial streams are waters that do not go dry at any time during a year of normal rainfall. However, for the purpose of water typing, Type Np waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow;

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

B. Streams and other fish and wildlife habitat areas are shown in the city’s map series on file and identify the approximate locations of rivers and streams in the North Bend vicinity and is intended to be used as a guide for development proposals. Those streams that have not been classified will be typed according to the system summarized in subsection (A) of this section on the characteristics observed in the field. The map and/or map series may be periodically revised by the city to add or remove areas based on additional information.

14.09.030 Buffers.

The following buffers are the minimum requirements for streams. Some existing developments are vested and do not meet these buffers. All buffers shall be measured from the ordinary high water mark (OHWM) as surveyed in the field.

A. Aquatic Buffers for Streams.

1. Buffers for Types S streams shall be determined according to Chapter 14.20 NBMC.

2. Type F streams shall have a 115-foot buffer on each side of the channel.

3. Type Np streams shall have a 65-foot buffer on each side of the channel.

4. Type Ns streams in open space or undeveloped shall have a 65-foot buffer on each side of the channel, unless otherwise noted in NBMC 14.09.030(A)(5).
5. Type Ns streams in existing built out developed areas as depicted within the map series on file with the city shall have a 25-foot buffer on each side of the channel. These areas are primarily existing single-family residential lots in the Silver Creek neighborhood east of Ballarat. No reduction in this 25-foot buffer is allowed.

B. Terrestrial Buffers. Buffer widths and setbacks for the protection of listed species outside of streams and stream buffers shall be determined on a site-specific basis. Appropriate buffers shall be documented in an approved habitat management plan.

C. Averaging Buffers and Reducing Buffers. The director will consider the allowance of stream buffer averaging and reduction only when any reductions in buffer area width would not adversely impact the critical area and/or buffer functions and values. At a minimum, any proposed buffer averaging or buffer reduction shall meet the following criteria:

1. Buffer averaging shall be preferred over buffer reduction; proposals for buffer reduction shall only be approved on a case-by-case basis, and only where the existing buffer condition is degraded (due to existing development within the prescribed buffer width, the presence of significant amount of invasive vegetation that impairs buffer function, and/or lack of native vegetation), provided that the following criteria are met:

   a. Any buffer reduction proposal must demonstrate to the satisfaction of the director that it will not result in direct, indirect or long-term adverse impacts to watercourses; and

   b. The remaining buffer is enhanced in accordance with an approved buffer enhancement plan, prepared by a qualified professional, to retain existing native vegetation and install additional native vegetation in order to improve the buffer function;

2. Wherever buffer averaging is proposed, the buffer area after averaging shall be no less than that which would be contained within the standard buffer, and shall demonstrate how variations in the existing function of the buffer are integrated into the averaging proposal to maximize retention of forest canopy and native vegetation;

3. The approved Type F and Type Np buffer widths shall not be reduced by more than 25 percent at any one point as a result of the buffer averaging or reduction, and Type Ns buffer widths shall not be reduced by more than 50 percent at any one point as a result of the buffer averaging or reduction;

4. For buffer averaging proposals, the additional buffer area shall be enhanced if necessary, to achieve no net loss of the critical areas functions and values;

5. For buffer averaging proposals, the additional buffer is contiguous with the standard buffer; and

6. For any buffer averaging or reduction proposal, encroachment into the buffer does not occur waterward of the top of an associated steep slope or into a channel migration zone;

D. Increased Buffers. The director may require increased buffer sizes when a critical area report shows that it is necessary to protect the function and value of the critical area when either the
critical area is particularly critical to disturbance or the development poses unusual impacts. Examples of circumstances that may require buffers beyond minimum requirements include, but are not limited to:

1. Unclassified uses;

2. The critical area is a fish and wildlife habitat area for spawning or rearing as determined by the Washington State Department of Fish and Wildlife;

3. Land located within the development proposal that is adjacent to the critical area and its associated buffer is classified as an erosion hazard area; or

4. A trail or utility corridor in excess of 10 percent of the buffer width is proposed for inclusion in the buffer.

14.09.040 Permitted alterations.

A. Applicability – No Degradation. The requirements provided in this section supplement those identified in Chapter 14.05 NBMC. The following activities or uses may be permitted in streams and/or their buffers when the mitigation sequencing requirements of NBMC 14.05.250 are followed, and the applicant can show that the proposed activity will not degrade the functions and values of the stream, stream buffer, or other critical area.

1. Stream Crossings. Stream crossings shall be minimized, but when necessary they shall conform to the following standards as well as other applicable laws (see 2013 Washington State Department of Fish and Wildlife (WDFW) Water Crossing Design Guidelines along with consideration of NMFS’s 2011 Anadromous Salmonid Passage Facility Design):

   a. The stream crossing is the only reasonable alternative that has the least impact;

   b. It has been shown in the critical area report that the proposed crossing will not decrease the stream and associated buffer functions and values;

   c. The stream crossing shall use bridges instead of pipe or box culverts unless it can be demonstrated that a pipe or box culvert would result in equal or less ecological impacts;

   d. All stream crossings using pipe culverts shall use super span or oversized culverts with appropriate fish enhancement measures. Culverts shall not obstruct fish passage;

   e. Stream crossings shall be designed according to the Washington Department of Fish and Wildlife Fish Passage Design at Road Culverts, 1999, and the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings, 2000;

   f. All stream crossings shall be constructed during the summer low flow period between June 15th and September 15th or as specified by the State Department of Fish and Wildlife in the hydraulic project approval;
g. Stream crossings shall not occur through fish spawning areas unless no other feasible crossing site exists;

h. Bridge piers or abutments shall not be placed in either the floodway or between the ordinary high water marks unless no other feasible alternative placement exists;

i. The natural drainage pattern and discharges of the upstream drainage basin, up to the runoff event having an exceedance probability of 0.01, shall not be altered or diminished by a stream crossing;

j. Stream crossings shall minimize interruption of downstream movement of wood and gravel;

k. Stream crossings shall be designed to facilitate routine maintenance of culverts and bridges; and

l. Stream crossings shall be minimized by serving multiple properties whenever possible.

2. Trails. The criteria for alignment, construction, and maintenance of trails within wetlands and their buffers shall apply to trails within stream buffers. Fishing platforms or docks shall be included in the list of permitted trail improvements for streams, subject to shoreline regulations.

3. Utilities. The criteria for alignment, construction, and maintenance within wetland buffers shall apply to utility corridors within stream buffers. In addition, corridors shall not be aligned parallel with any stream channel unless the corridor is outside the buffer, and crossings shall be minimized. Installation shall be accomplished by boring beneath the scour depth and hyporheic zone of the water body where feasible. Crossings shall be contained within the existing footprint of an existing or new road or utility crossing where possible. Otherwise, crossings shall be at an angle greater than 60 degrees to the centerline of the channel. The criteria for stream crossing shall also apply.

4. Stormwater conveyance facilities; provided, that they are only located in the buffer when no practicable alternative exists outside the buffer. Stormwater facilities shall be planted with native plantings where feasible to provide habitat, and/or less intrusive facilities should be used.

5. Septic Systems. New septic systems are prohibited in the inner stream buffers.

6. Stream bank stabilization shall only be allowed when it is shown, through a stream bank stability assessment conducted by a qualified fluvial geomorphologist or hydraulic engineer, that such stabilization is required for public safety reasons, that no other less intrusive actions are possible, and that the stabilization will not degrade instream or downstream channel stability. Stream bank stabilization shall utilize bioengineering or soft armoring techniques unless otherwise demonstrated. Stream bank stabilization shall conform to the Integrated Streambank Protection Guidelines developed by the Washington State Department of Fish and Wildlife, 2002, or as revised. Stabilization measures must demonstrate the following:
a. Natural shoreline processes will be maintained. The project will not result in increased erosion or alterations to, or loss of, shoreline substrate within one-quarter mile of the project area;

b. The stabilization measures will not degrade streams and other fish or wildlife habitat areas or associated wetlands; and

c. Adequate mitigation measures ensure that there is no net loss of the functions or values of riparian habitat.

7. Maintenance, repair, or replacement of lawfully established existing bank stabilization is allowed, provided it does not increase the height or linear amount of bank and does not expand waterward or into aquatic habitat landward.

8. Activities and uses as allowed under Chapter 14.05 NBMC.


The requirements provided in this section supplement those identified in NBMC 14.05.240, Critical area reports/studies. Streams and other fish and wildlife habitat areas may be altered only if the proposed alteration or the mitigation proposed does not degrade the qualitative functions and values of the habitat. All new structures and land alterations shall be prohibited from streams and other fish and wildlife habitat areas, except in accordance with this chapter. Additional standards follow:

A. No development shall be allowed within a stream or other fish and wildlife habitat area or any associated buffer with which state or federally endangered, threatened, priority, or critical species have a primary association.

B. Whenever development is proposed adjacent to a stream or other fish and wildlife habitat area with which state or federally endangered, threatened, or critical species have a primary association, such areas shall be protected through the application of protection measures in accordance with a critical area report prepared by a qualified professional and approved by the director.

C. Habitat Assessment. An Applicant of a development proposal or alteration in or adjacent to a stream or other fish and wildlife habitat area shall prepare and submit, as part of its critical areas study, a habitat study that identifies which, if any, listed species are using that stream or other fish and wildlife habitat area. If one or more listed species are using stream or other fish and wildlife habitat area, the following additional requirements shall apply:

1. An applicant shall include in its critical area study a habitat management plan that identifies the qualities that are essential to maintain feeding, breeding, and nesting of listed species using the stream or other fish and wildlife habitat area and that identifies measures to minimize the impact on these ecological processes from proposed activities. The applicant shall be guided by the document Management Recommendations for Washington’s Priority Habitats and Species, issued by the Washington State Department of Wildlife, May 1991, and as may be
amended, and by any recovery and management plans prepared by the Washington State Department of Fish and Wildlife for the listed species pursuant to WAC 232-12-297(11); and

2. Conditions shall be imposed, as necessary, based on the measures identified in the habitat management plan.

D. Consultation with the State Department of Fish and Wildlife and the appropriate federal agency for approval of alteration of land in streams or other fish and wildlife habitat areas, buffers, or any associated setback zones is encouraged and required only in specific circumstances at the discretion of the director.

E. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a stream or other fish and wildlife habitat area unless authorized by a state or federal permit or approval.

F. Alteration of natural watercourses shall be avoided, if feasible. If unavoidable, the following provisions shall apply to the alteration:

1. Watercourse alteration projects shall not result in blockage of side channels. Known fish barriers into side channels shall be removed as part of an approved watercourse alteration project;

2. Removal of large woody debris (LWD) and vegetation, including salvage logging, shall be avoided or minimized unless it is demonstrated that the LWD poses an imminent safety hazard to the public, property, or structures, or when it is part of a larger restoration project. Any removal that is unavoidable shall be mitigated by replanting with native vegetation and by augmenting lost LWD where LWD can be anchored in such a way to provide fisheries, riparian, or shoreline erosion benefits, and to avoid safety hazards where recreational boating and swimming are expected; and

3. The applicant shall maintain the altered or relocated portion of the watercourse to ensure that the flood carrying capacity is not diminished. Maintenance shall be bonded for a period of five years and be in accordance with an approved maintenance program.

G. The director shall condition approval of activities allowed within a stream or other fish and wildlife habitat area or its buffer, as necessary, pursuant to the approved critical area report and habitat management plan to minimize or mitigate any potential adverse impacts. Conditions may include:

1. Establishment of buffer zones outside of the required stream and wetland buffers, on a case-by-case basis, as may be necessary to retain adequate natural habitat for listed species;

2. Preservation of critical, important vegetation and/or habitat features (e.g., snags);

3. Limitation of access to the habitat area, including fencing (on a case-by-case basis) to deter unauthorized access (note: fencing shall not create a barrier to habitat function);

4. Seasonal restrictions 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 successful completion.

14.09.060 Special provisions – Resident fish species of importance.

A. Activities, uses, and alterations proposed to be located in water bodies used by resident fish species of local importance, including cutthroat trout, rainbow trout, mountain whitefish, largescale sucker, longnose dace, shorthead sculpin, mottled sculpin, western brook lamprey, and threespine stickleback, or in areas that affect such water bodies, shall give special consideration to the preservation and enhancement of fish habitat, including, but not limited to, the following:

1. Activities shall be timed to occur only during the allowable work window as designated by the State Department of Fish and Wildlife;

2. An alternative alignment or location for the activity is not feasible;

3. The activity is designed so that it will minimize the degradation of the functions or values of the fish habitat or other critical areas; and

4. Any impact to the functions and values of the stream or other fish and wildlife habitat area are mitigated in accordance with an approved critical area report.

B. Structures that prevent the migration of resident fish species shall not be allowed in the portion of water bodies currently or historically used by resident fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent juveniles migrating downstream from being trapped or harmed.

C. Fills, when authorized, shall minimize the adverse impacts to fish habitat, shall mitigate any unavoidable impacts, and shall only be allowed for water-dependent uses.


Project applicants shall certify that development proposals are in compliance with federal bald eagle guidelines as a condition of local permit approval.

14.09.080 Habitat management plans.

A. A habitat management plan may be required by the director when the critical area review of a development proposal determines that the proposed activity will have an adverse impact on a stream or other fish and wildlife habitat area.

B. A habitat management plan shall be prepared by Washington State Department of Fish and Wildlife (WDFW) or by a qualified biologist consistent with WDFW management recommendations. The director may require consultation with WDFW to evaluate habitat management plans for complicated or controversial projects. A habitat management plan shall address the following mitigation measures:
1. Reduction or limitation of development activities within the critical area and buffers;

2. Use of low impact development techniques or clustering of development on the subject property to locate structures in a manner that preserves and minimizes the adverse effects to habitat areas;

3. Seasonal restrictions on construction activities on the subject property;

4. Preservation and retention of habitat and vegetation on the subject property in contiguous blocks or with connection to other habitats that have a primary association with a listed species;

5. Establishment of expanded buffers around the critical area;

6. Limitation of access to the critical area and buffer; and

7. The creation or restoration of a habitat area for listed species.