Chapter 15.20
CRITICAL AREAS

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15.20.010 Authority.

This chapter is adopted under the authority of Chapters 36.70 and 36.70A RCW. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.020 Purpose and intent.

A. The intent of this chapter is to identify and define the types and qualities of certain critical areas within the Sumas community which contribute to or affect public health, safety and general welfare; and to protect those critical areas deemed important by the citizens of Sumas, the state of Washington, and the federal government. Critical areas addressed in this chapter include:

1. Geologically hazardous areas;

2. Fish and wildlife habitat conservation areas;

3. Aquifer recharge areas;

4. Frequently flooded areas; and

5. Wetlands.

B. The purpose of this chapter is to provide understandable and reasonable requirements for the use and development of land in proximity to critical areas, while protecting such critical areas based on the best available science. The requirements set forth herein are adopted in order to:

1. Minimize development impacts and protect the beneficial uses, natural functions and values of critical areas;

2. Prevent erosion and loss of slope and soil stability caused by grading or alteration of earth surfaces and removal of trees, shrubs and root systems of vegetative cover;

3. Protect the public against potentially avoidable losses from landslide, subsidence, and erosion; and

4. Meet the requirements of the Washington Growth Management Act (Chapter 36.70A RCW) with respect to the protection of critical areas. (Ord. 1687 § 1, 2016: Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.030 Interpretation.

In the interpretation and application of this chapter, all provisions shall be considered to be the minimum necessary and shall be liberally construed to serve the purposes of this chapter. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.040 Relationship to other regulations.

A. The regulations contained in this chapter shall apply as an overlay to other regulations established by the city. In the event of any conflict between these regulations and any other regulations, the more restrictive shall apply.

B. Regulation of frequently flooded areas as required by Chapter 36.70A RCW and Chapter 365-190 WAC is primarily provided through the flood damage prevention ordinance codified in Chapter 14.30 of the Sumas Municipal Code. See Section 15.20.250 for additional regulations applicable within frequently flooded areas.

C. Regulation of most wetlands is provided through the shoreline master program codified in Chapter 15.04. See Section 15.20.050, which addresses applicability of this chapter within shoreline jurisdiction.

D. Regulation of most fish and wildlife habitat conservation areas and riparian wildlife habitat conservation areas is provided through the shoreline master program codified in Chapter 15.04. See Section 15.20.050, which addresses applicability of this chapter within shoreline jurisdiction.

E. Compliance with the provisions of this chapter shall not be construed as constituting compliance with any other applicable regulation.

F. These regulations are additional to, and coordinate with, the Sumas comprehensive plan, the shoreline master program, the flood damage prevention ordinance, and other applicable regulations adopted by the city of Sumas. (Ord. 1687 § 2, 2016: Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.050 Applicability and jurisdiction.

This chapter shall apply to all land and water areas, all land uses and development, and all structures and facilities within the city of Sumas, except as specifically exempted under Section 15.20.090; provided, that upon the effective date of an updated shoreline master program adopted by the city and approved by the Washington Department of Ecology pursuant to Chapter 90.58 RCW and Chapter 173-26 WAC, this chapter shall only apply to those areas within the city lying outside of shoreline jurisdiction as established in Chapter 15.04, except to the extent that specific provisions contained herein have been incorporated by reference into the updated shoreline master program. (Ord. 1687 § 3, 2016: Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.070 Authorization required.

A. No development activity or alteration of land, water or vegetation within a critical area or its standard buffer, except as specifically allowed under Section 15.20.090, shall be allowed without prior authorization from the zoning administrator. Said authorization shall document compliance with the procedural and substantive requirements of this chapter.

B. The city of Sumas shall ensure that the provisions of this chapter are applied in conjunction with review of applications for the following permits and approvals:

1. Building permit;

2. Conditional use permit;

3. Fill and grade permit;

4. SEPA determination;

5. Shoreline conditional use permit;

6. Shoreline substantial development permit;

7. Shoreline variance;

8. Short subdivision;

9. Subdivision;

10. Zoning variance;

11. Zoning code amendment. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.080 Critical area review requirements.

A. Unless otherwise provided in this chapter, the city of Sumas shall complete a critical areas review prior to granting any permit or approval for a development activity or other alteration which is found likely to include, be adjacent to, or likely to affect the function of one or more critical areas.

B. As part of this review, the zoning administrator shall:

1. Verify the information provided by the applicant;

2. Confirm the nature, extent and type of any critical area identified;

3. Evaluate any required detailed studies;

4. Assess the impacts to critical areas likely to result from the proposed activity;

5. Determine whether the proposed activity is consistent with the purposes of this chapter;

6. Determine whether the proposed activity conforms to the applicable performance requirements included in this chapter; and

7. Determine whether the mitigation proposed by the applicant is sufficient to protect critical areas or adequately mitigate for potential impacts to critical area functions, and address public health, safety and welfare concerns consistent with the purpose and intent of this chapter.

C. Unless otherwise indicated, the applicant shall be responsible for the preparation, submission and expense

of any required assessments, reconnaissances, studies, plans and all other work in support of the application.

D. Any proposed activity requiring critical area review shall be conditioned as necessary to mitigate impacts to critical areas and conform to the applicable performance requirements.

E. Any project that cannot adequately mitigate its impacts to critical areas shall be denied.

F. In circumstances where the protective provisions for more than one critical area apply to a specific location, the most restrictive regulations shall apply. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.090 Exemption from critical area review requirements.

A. Subject to the limitations established in subsections (B), (C), (D) and (E) of this section, the following developments, associated uses and activities shall be exempt from the critical area review procedures established in this chapter:

1. Emergency activities necessary to reduce or prevent an immediate threat to public health, safety and welfare. An emergency is an unanticipated and imminent threat to the public health or safety or to the environment which requires immediate action within a period of time too short to allow full compliance with this chapter. The person or agency undertaking such emergency action shall notify the zoning administrator within one working day or as soon as practical following commencement of the emergency activity. Following such notification, the zoning administrator shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the zoning administrator determines that the action taken or any part of the action taken was beyond the scope of allowed emergency actions, then the enforcement provisions of Section 15.20.460 shall apply. The approval of an exemption for an emergency activity does not eliminate the need for later mitigation to offset the impacts of the activity. Once the immediate threat has been addressed, any adverse impacts on critical areas must be minimized and mitigated.

2. Existing activities defined as ongoing agriculture, including related development and activities which do not result in expansion into a critical area or its standard buffer.

3. Normal and routine maintenance or repair of existing structures, utilities, sewage disposal systems, potable water systems, drainage facilities, ponds, or public and private roads and driveways associated with existing residential or commercial development.

4. Normal maintenance, repair, or operation of existing structures, facilities, and improved areas accessory to a single-family residential use.

5. Modification of any existing residence that does not add to or alter the existing use and does not expand the building footprint or increase septic effluent.

6. Construction of a residential structure upon the following soil classifications is exempt from review as a geologically hazardous area; provided, that the structure is designed in accordance with the Sumas building code as adopted in Chapter 14.02: 107 Mt. Vernon fine sandy loam, 123 Puget silt loam, 22 Briscot silt loam, 115 Oridia silt loam, 162 Sumas silt loam.

7. Activities involving artificially created wetlands or artificial watercourses intentionally created from nonwetland sites, including, but not limited to, grass-lined swales, irrigation and drainage ditches, stormwater detention facilities, and landscape features, except those features which were created as mitigation pursuant to city, state, or federal regulations.

8. Outdoor recreational activities which do not adversely impact critical areas or their buffers.

9. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling soil, planting crops, or changing existing topography, water conditions or water sources.

10. The lawful operation and maintenance of public and private diking and drainage systems which protect life and property; provided, that the activity does not further drain wetlands or further encroach on critical areas or their buffer. Maintenance of agricultural ditches should be limited to removing sediment in existing ditches to a depth equal to the depth at date of last maintenance.

11. Education and scientific research activities which do not adversely impact critical areas or their buffers.

12. Site investigation work necessary for land use applications such as surveys, soil logs, percolation tests and other related activities which do not adversely impact critical areas or their buffers. In every case, critical area impacts shall be minimized and disturbed areas shall be immediately restored.

13. Maintenance activities such as mowing and normal pruning; provided, that such maintenance activities are limited to existing landscaping improvements and do not expand into critical areas or associated buffers, do not expose soils, do not alter topography, do not destroy or clear native vegetation, and do not diminish water quality or quantity.

14. Habitat enhancement activities not required as mitigation; provided, that the project is approved by the U.S. Department of Fish and Wildlife, the U.S. Army Corps of Engineers, the U.S. Department of Agriculture, the Washington State Department of Fish and Wildlife or the Washington State Department of Ecology.

B. Exemption from critical areas review shall not constitute exemption from any other applicable provision of the Sumas Municipal Code.

C. Exempt activities shall use reasonable methods or accepted best management practices to reduce potential impacts to critical areas and/or to restore impacted critical areas to the extent feasible following completion of exempt activities. To be exempt does not give permission to destroy a critical area or critical area buffer or to ignore risk from a natural hazard.

D. If a nondevelopment activity (not otherwise requiring a development permit or approval) meets any of the exemption criteria listed under subsection A of this section and adheres to the requirements established under subsection C of this section, then critical area review shall not be required and the activity may proceed without action by the zoning administrator.

E. If a proposed development activity meets any of the listed exemption criteria, then exemption from critical areas review shall be established through the following procedure:

1. The applicant shall submit an exemption request to the zoning administrator. The request shall describe the proposed project in writing and state the criteria listed in this section which apply.

2. The zoning administrator shall review the exemption request for compliance with this chapter and make a determination, in writing, either certifying or rejecting the exemption.

3. A copy of the exemption request and subsequent determination shall be included in the file for the proposed development activity. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.100 Waiver for subsequent approvals.

A. Critical area review requirements may be waived in conjunction with review of a building permit application when all of the following conditions are met:

1. The provisions of this chapter have been addressed fully through previous critical areas review of a development approval (such as a subdivision, conditional use, or other permit identified under Section 15.20.070(B));

2. The subsequent construction activity complies fully with the conditions established as part of the initial land use approval; and

3. No substantial changes in the nature or extent of the approved activity have been made.

B. Requests for such waivers shall be submitted in writing to the zoning administrator and shall include the following:

1. Description of the proposed activity and citation of the previous approval;

2. Identification of any changes in the nature or extent of the proposed activity subsequent to the previous

approval; and

3. Documentation of compliance or substantiation of plans for compliance with all critical areas conditions imposed as part of the previous approval.

C. The zoning administrator shall review the waiver request and shall certify or reject the request based on demonstration of compliance with this chapter.

D. A copy of the waiver request and subsequent determination shall be included in the file for the proposed construction activity. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.105 Critical area maps.

A. In conjunction with adoption of this chapter, the city council shall adopt maps indicating the locations of known or potential aquifer protection areas, geologically hazardous areas, and upland wildlife habitat conservation areas within the city of Sumas. These maps shall be based on the best available scientific information and shall include natural resource information gathered through field inventory, as well as information prepared by state and federal natural resource agencies. These maps shall be hereafter referred to as the "critical area maps" of the city of Sumas. These maps shall be updated periodically to reflect new information and shall be made available to the public upon request.

B. The critical area maps shall be utilized as a source of generalized information and shall not be considered as absolute regulatory standards or as substitutes for site-specific assessment. The actual type, extent and boundaries of critical areas shall be determined by a qualified consultant on a site-specific basis according to the provisions established in this chapter. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.180 Application and fees.

For any proposed activity not found to be exempt pursuant to Section 15.20.090, the applicant shall provide critical areas information in conjunction with an application for any of the permits or approvals identified under Section 15.20.070(B). Such information shall be submitted on forms provided by the city. Minimum fees for processing of critical areas review and other services provided pursuant to this chapter shall be as established in Chapter 20.108. In addition to the established minimum fees, the applicant shall pay any cost incurred by the city for services provided by a qualified consultant retained by the city to perform critical areas review. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.190 Threshold determination.

A. Upon receipt and review of a properly completed application, the zoning administrator shall visit the subject property and make a threshold determination.

B. If the zoning administrator finds either that the project site includes or is adjacent to a known or potential critical area, or that the project could affect a critical area or critical area buffer, then the zoning administrator

shall issue a written determination that a detailed study is required for each of the critical areas indicated.

C. If the zoning administrator finds substantial evidence that:

1. There will be no alteration of a critical area or its standard buffer; and

2. The development proposal and its likely impacts are consistent with the purpose, intent and requirements of this chapter; and

3. The performance requirements established by this chapter will be met;

then the zoning administrator may issue a written determination, including substantiating findings, that no detailed study is required. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.200 Detailed study.

A. If a detailed study is determined to be necessary, the applicant shall be responsible for making arrangements for preparation of the study by a qualified consultant for the type of critical area(s) involved.

B. The detailed study shall include a thorough investigation of the identified critical area(s), resulting in the submission of a report which, at a minimum, shall include the following:

1. Complete description of the proposed development;

2. Site plan of existing conditions at the project site, drawn accurately to scale, showing the type, location, boundary, and extent of critical areas and critical area buffers (the plan must show property boundaries, north arrow, topography, and the environs within two hundred feet of the project parcel);

3. Description of the surrounding properties and uses;

4. Detailed description of each critical area, its functions, values and/or associated hazard;

5. Discussion of the impacts likely to result from the project, including probable impact on the function, value or hazard associated with the critical area resulting from the proposal;

6. Proposed mitigation measures or a mitigation plan consistent with Section 15.20.230(B);

7. Site plan of proposed conditions at the project site, using the existing-conditions plan described above as a base map; and

8. Qualifications of consultant(s) who prepared the study along with a description of the methods used.

C. The zoning administrator may approve modifications to the content requirements of the study where the

administrator makes a finding that more or less information is deemed necessary to adequately address the critical area, the project's potential impacts, and proposed mitigation. Furthermore, the zoning administrator may waive the requirement for preparation of a detailed study when the administrator makes a finding, based on review of information available from reliable sources, that no critical area or critical area buffer or setback will be impacted by the proposed activity. All such findings shall be made in writing and shall be included in the project file. (Ord. 1687 § 4, 2016: Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.210 Final determination.

A. Following submission of a detailed study that is both complete and accurate, the zoning administrator shall make a final written determination. The determination shall address the adequacy of the project, as proposed, to mitigate potential effects on the critical areas in question and to comply with applicable performance requirements. The determination shall be either favorable or unfavorable.

B. A favorable determination shall be issued only if the proposed project is found to adequately mitigate its impacts on the critical areas and to comply with applicable performance requirements.

C. An unfavorable determination shall be issued if it is found that the proposed project does not adequately mitigate its impacts to critical areas and/or does not comply with applicable performance requirements. The determination shall indicate the reasons for the finding and the areas of noncompliance. This determination may (at the zoning administrator's discretion) include recommendations for bringing the proposal into compliance. In response to an unfavorable determination, the applicant may request reconsideration of a revised mitigation plan. If the revisions are found to be substantial and relevant to the critical area review, the zoning administrator may reopen the review and make a new determination.

D. If at any time prior to issuance by the city of an associated permit or approval, the zoning administrator receives reliable new information that a critical area may be impacted by the proposed activity, then the critical area review process shall be reopened pursuant to this chapter.

E. Once all associated permits and approvals have been issued by the city, the final determination may not be reopened by the city and shall be considered final unless appealed pursuant to Section 20.08.150. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.230 Critical area mitigation—Generally.

A. All proposed critical area alterations shall include mitigation: (a) necessary to prevent or reduce risk from a hazard posed by a critical area; or (b) sufficient to maintain the functions and values of the critical area or compensate for the lost functions and values. Mitigation shall include avoiding, minimizing, and/or compensating for adverse impacts to regulated critical areas through the following methods, and in the following order of priority:

1. Avoiding the impact altogether by not taking a certain action;

2. Minimizing the impacts by limiting the degree or magnitude of an action or by otherwise adjusting the action so as to reduce or avoid impacts;

3. Rectifying the impact by repairing, rehabilitating or restoring the affected critical area to the conditions in existence prior to the start of the project;

4. Reducing or eliminating the impact over time through preservation and/or maintenance through the course of the action; and

5. Compensating for the impact by replacing impacted areas, or by creating or enhancing substitute resources including city-approved mitigation banks.

B. All proposed mitigation shall be contained in a proposed mitigation plan which shall be included as part of the detailed study. The mitigation plan shall describe the following:

1. The mitigation being proposed;

2. How the proposed mitigation will either maintain the functions and values of the critical area or compensate for any losses to critical area functions and values, or reduce potential risks posed by the critical area;

3. Monitoring and/or inspections that are deemed necessary to ensure the adequacy of the proposed mitigation;

4. Remedial measures that may be necessary based on the results of monitoring and/or inspection;

5. Professional expertise necessary to install, maintain, monitor or inspect proposed mitigation measures; and

6. Any bonding deemed necessary to ensure performance and/or maintenance of the proposed mitigation. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.240 Bonding.

A. The zoning administrator shall have the authority to require a bond in cases where components of the mitigation plan, such as restoration, monitoring or maintenance, are likely to take place after issuance of the associated permit or approval by the city.

B. The bond shall be in the form of either a surety bond, performance bond, assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the city attorney.

C. The bond shall be in the amount of one hundred twenty-five percent of either the estimated cost of the uncompleted mitigation measures, or the estimated cost of restoring the functions and values of the critical areas at risk, whichever is greater.

D. The period of the bond shall be three years, or until the additional activity or construction has been completed and passed the necessary inspections, whichever is longer. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.250 Frequently flooded areas.

A. Designation. Frequently flooded areas shall include those areas mapped by the Federal Emergency Management Agency (FEMA) as being within the one-hundred-year floodplain as shown on the adopted flood insurance rate maps prepared by FEMA. Such areas are also referred to as areas of special flood hazard.

B. Regulation. Development within frequently flooded areas shall be pursuant to the flood damage prevention ordinance now codified as Chapter 14.30.

C. Notification. All documents recorded with the county auditor in conjunction with subdivisions or other developments approved within frequently flooded areas shall include the following notification:

> This property is located in an area that may be subject to inundation by floodwaters. For further information regarding this hazard, contact the Federal Emergency Management Agency, the Whatcom County Emergency Management Division or the City of Sumas.

(Ord. 1687 § 5, 2016)

15.20.260 Wetlands—Designation and classification.

A. Designation. Wetlands shall be identified and delineated according to the Corps of Engineers Wetlands Delineation Manual (Environmental Laboratory 1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0, 2010 or as revised) or currently approved federal manual and supplements.

B. Rating (Classification). Wetlands shall be rated (classified) as Category I, Category II, Category III, or Category IV based upon Washington State Department of Ecology's Wetlands Rating System for Western Washington (2014) or most recent update. (Ord. 1687 § 6, 2016)

15.20.270 Wetlands indicators.

The administrator shall use the following as indicators of the need for a wetland detailed study:

A. The site is located within an area listed as a wetland in the city critical areas inventory or critical area maps;

B. Documentation through any public resource information source that a wetland exists on or adjacent to the

site;

C. A finding by a qualified wetland biologist that the presence of a wetland is likely;

D. A reasonable belief by the zoning administrator based on local information that a wetland may exist on or adjacent to the site. Such a belief shall be supported through consultation with a qualified consultant. (Ord. 1687 § 7, 2016)

15.20.280 Wetlands—Detailed study requirements.

A. All development subject to the provisions of this chapter that is within a designated wetland area or within an area about which the administrator has information indicating that a wetland may be present or within a distance of three hundred feet of any such area shall be required to submit a detailed study report prepared by a qualified wetland biologist.

B. Detailed study reports, when required, shall include the following information:

1. Project description.

2. Site plan or plans identifying the extent and boundaries of all wetlands as determined according to the methodology identified in Section 15.20.260(A) and identifying the location of the proposed activity. The administrator may require that the delineated wetland boundaries be surveyed by a professional land surveyor and the results of said survey be provided to the city in a digital format acceptable to the city.

3. A wetland community description and classification (rating) prepared according to the classification system identified in Section 15.20.260(B).

4. An assessment of wetland functions and values which addresses the following: soils, vegetation, hydrology, fish and wildlife habitat, and aesthetics.

5. Mitigation plan demonstrating how the proposed project (including any proposed mitigation) is able to mitigate impacts to wetlands in conformance with the mitigation sequence outlined in Section 15.20.300(A), the performance requirements set forth in Section 15.20.290, and the mitigation requirements set forth at Section 15.20.300, including demonstrating how the proposal will result in no net loss of ecological functions and values.

C. The administrator may request additional information regarding the proposed development or activity if deemed necessary to determine the project's impacts and sufficiency of any proposed mitigation. (Ord. 1687 § 8, 2016)

15.20.290 Wetlands—Performance requirements.

A. Basic Requirement. Except as otherwise allowed pursuant to this chapter, development or other regulated

activities are prohibited within a regulated wetland or its standard buffer unless the detailed study report demonstrates that the proposal will not degrade the functions and values of the subject wetland and buffer or that all impacts to these areas will be fully mitigated. The following requirements shall apply:

1. Category I Wetlands. Regulated activities are prohibited within a Category I wetland and its standard buffer. Buffer reductions are prohibited.

2. Category II Wetlands. Regulated activities are prohibited within a Category II wetland and its standard buffer. Reduction of the standard buffer adjacent to a Category II wetland shall be permitted only where consistent with subsection E of this section, and only when all impacts are compensated at the expense of the developer through implementation of a mitigation plan prepared by a qualified wetland biologist consistent with the requirements set forth in Section 15.20.300.

3. Category III Wetlands. Regulated activities are prohibited within a Category III wetland and its standard buffer, except as follows. Filling of a Category III wetland or reduction of the standard buffer adjacent to a Category III wetland shall only be permitted where consistent with subsection E of this section, and only when all impacts are compensated at the expense of the developer through implementation of a mitigation plan prepared by a qualified wetland biologist consistent with the requirements set forth in Section 15.20.300.

4. Category IV Wetlands. Regulated activities are prohibited within a Category IV wetland and its standard buffer, except as follows. Filling of a Category IV wetland or reduction of the standard buffer adjacent to a Category IV wetland shall only be permitted where consistent with subsection E of this section, and only when all impacts are compensated at the expense of the developer through implementation of a mitigation plan prepared by a qualified wetland biologist consistent with the requirements set forth in Section 15.20.300.

B. Buffers. Buffers are upland areas adjacent to wetlands that are intended to provide sufficient separation between the aquatic feature and the surrounding areas and uses to protect the wetlands from disturbance from human activities. Buffers also provide vital upland habitat for wildlife species that require wetlands as part of their life cycle. Buffers shall be measured horizontally in a landward direction from the delineated wetland edge; provided, that wetland buffers shall not extend into and beyond substantially improved surfaces, such as lawfully established structures and impervious surfaces.

C. Standard Buffers.

1. Standard Buffers Where No Minimizing Measures Are Required. The following standard buffers shall be established for all wetlands where no minimizing measures are required based on classification (rating) and level of function for wildlife habitat. Standard buffers are assumed to be comprised of an intact native vegetation community.

	Buffer width (in feet) based on habitat score			
Wetland Category	**3 – 4**	**5**	**6 – 7**	**8 – 9**
Category I (based on total score)	100	140	220	300
Category II (based on total score)	100	140	220	300
Category III (based on total score)	80	140	220	300
Category IV (based on total score)	50	50	50	50

2. Standard Buffers Where Minimizing Measures Are Required. The following standard buffers shall be established for all wetlands where minimizing measures as set forth under subsection (C)(3) of this section are required and buffers are based on classification (rating) and level of function for wildlife habitat. Standard buffers are assumed to be comprised of an intact native vegetation community.

	Buffer width (in feet) based on habitat score			
Wetland Category	**3 – 4**	**5**	**6 – 7**	**8 – 9**
Category I (based on total score)	75	105	165	225
Category II (based on total score)	75	105	165	225
Category III (based on total score)	60	105	165	225
Category IV (based on total score)	40	40	40	40

3. Minimizing Measures. The smaller standard buffers set forth under subsection (C)(2) of this section shall be applicable where the minimizing measures established in the following table are required and in those cases where the wetland has a habitat score of five or more, an undisturbed vegetated corridor at least one hundred feet wide is provided between the wetland and another priority habitat:

Disturbance	Required Measure to Minimize Impacts
Lights	• Direct lights away from wetland
Noise	• Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source

	• For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10-foot heavily vegetated buffer strip immediately adjacent to the outer edge of 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 wetland • 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
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

D. Increased Buffers. If the standard buffer is not comprised of an intact native vegetation community sufficient to protect the functions and values of the wetland, the administrator shall increase the standard buffer or the applicant may choose to enhance the standard buffer to meet the above standard. Any such buffer enhancement shall be undertaken at the sole expense of the applicant and shall be based on and incorporated into a mitigation plan prepared by a qualified biologist consistent with the requirements established at Section 15.20.300(G). The administrator shall also increase the required buffer above the standard buffer width if it is determined that unique circumstances exist, either in terms of the sensitivity of the wetland or the intensity of the proposed land use, such that an increased buffer is necessary to protect the functions and values of the wetland.

E. Buffer Reductions.

1. Buffer Reduction Based on Mitigation. Where compensatory mitigation is provided at a 1:1 ratio, standard buffers for Category II, III and IV wetlands may be reduced; provided, that the standard buffer is not reduced by more than twenty-five percent. Reduction of the standard buffer of a Category I wetland is

prohibited. Buffer reductions shall only be permitted when all impacts to wetlands and their required buffers are compensated at the expense of the applicant through implementation of a mitigation plan prepared by a qualified wetland biologist consistent with Section 15.20.300(G). Except as otherwise allowed pursuant to this chapter, filling of any wetland, except a Category III or IV wetland, or reduction of a wetland buffer by more than the percentages stated above, shall require approval of a critical areas variance.

2. Buffer Averaging. Standard buffers may be reduced through the use of buffer averaging; provided, that the total buffer area is not reduced below the area that would result from use of the standard buffer; and provided, further, that the standard buffer, at its narrowest point, is not reduced by more than twenty-five percent for Category II, III and IV wetlands, and the use of buffer averaging will improve the overall protection of the wetland, and increase the buffer adjacent to the higher functioning area of habitat or the more sensitive portion of the wetland and decrease the buffer adjacent to the lesser functioning or less sensitive portion of the wetland. Reduction of the standard buffer of a Category I wetland is prohibited. Buffer averaging may not be utilized in combination with buffer reductions based on mitigation.

F. Limitation on Subdivision. Properties located partially or wholly within a wetland or wetland buffer shall not be subdivided in such a way that would increase the impacts to the resource that would result from development of the proposed lots or parcels. (Ord. 1687 § 9, 2016)

15.20.300 Wetlands—Mitigation requirements.

A. When a regulated activity is proposed within a wetland or wetland buffer, the applicant shall demonstrate to the satisfaction of the administrator that all reasonable efforts have been made to avoid, minimize and/or compensate for potential impacts consistent with the following mitigation sequence:

1. Avoiding the impact altogether by not taking a certain action;

2. Minimizing the impacts by limiting the degree or magnitude of an action or by otherwise adjusting the action so as to reduce or avoid impacts;

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

4. Reducing or eliminating the impact over time through preservation and/or maintenance through the course of the action; and

5. Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and monitoring the adverse impact and the mitigation project and taking appropriate corrective measures.

B. Except as otherwise allowed in this chapter, all projects that result in permanent loss or degradation of wetland functions and values due to a proposed reduction in wetland or buffer area shall provide compensatory

mitigation to offset proposed actions.

C. Mitigation Ratios. The following ratios shall be used as a guide to determine the acreage of wetland or buffer to be created, restored or enhanced in relation to the acreage of wetland or buffer area lost:

Mitigation Ratio			
Wetland Category	**Creation or Re-establishment**	**Rehabilitation**	**Enhancement**
Category I	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

D. Compensatory mitigation shall be provided on site or off site in the location that will provide the greatest ecological benefit and have the greatest likelihood of success; provided, that mitigation occurs as close as possible to the impact area and within the same watershed as the permitted alteration. This provision may be waived upon demonstration through a watershed- or landscape-based analysis that mitigation within an alternative sub-basin of the same basin or within an approved mitigation bank would have the greatest ecological benefit and the greatest likelihood of success.

E. All wetlands created, restored or enhanced as part of compensatory mitigation required pursuant to this chapter shall be provided with buffers of sufficient size to protect their functions and values.

F. All mitigation areas shall be protected and managed to prevent degradation and ensure long-term protection of critical area functions and values. Permanent protection shall be achieved through deed restriction, protective covenant or other protective measure.

G. Mitigation Plan. Where preparation of a mitigation plan is required, said plan shall be prepared by a qualified wetland biologist consistent with the Department of Ecology guidance document, Guidance on Wetland Mitigation in Washington State, and shall be approved by the administrator. The mitigation plan shall be prepared based on the best available science and shall address the following:

1. The characteristics of the wetland;

2. The characteristics of the watershed contributing to the wetland;

3. The functions and values of the wetland to be protected by the buffer;

4. The characteristics of the buffer;

5. The intensity of the proposed adjacent land use;

6. The functions that the standard buffer is intended to provide at the specific location;

7. Proposed measures to reduce the adverse effects of adjacent land uses, such as lighting and noise restrictions, buffer fencing and signage, conservation easements, use of integrated pest management and limitations on application of pesticides, and use of low impact development techniques;

8. Proposed mitigation measures together with an analysis of the anticipated effectiveness of the proposed mitigation measures to protect the functions and values of the affected wetland and wetland buffer. Such mitigation shall include compensation for lost time when the wetland is unavailable to perform its function;

9. Proposed monitoring requirements to ensure the effectiveness of the proposed mitigation; and

10. Proposed bonding to insure the completion and effectiveness of the proposed mitigation.

H. Completion of Mitigation. Where feasible, mitigation projects shall be completed prior to activities that will disturb wetland or buffer areas. In all other cases, mitigation shall be completed as quickly as possible following disturbance and prior to use or occupancy of the activity or development unless such timing is found to be infeasible due to factors such as the optimal time of year for planting. The administrator may require the posting of a performance bond or other form of surety to insure that all required mitigation, including required monitoring and repair, is completed in a timely fashion and consistent with the approved mitigation plan. (Ord. 1687 § 10, 2016)

15.20.310 Allowed activities in wetlands, streams, and buffers.

The following activities may be permitted as specified without the issuance of a critical areas variance when all reasonable measures have been taken to avoid adverse effects on functions and values, compensatory mitigation is provided for all unavoidable adverse impacts, and the amount and degree of alteration are limited to the minimum needed to accomplish the project purpose:

A. Surface water discharge into a wetland buffer and/or streams and their buffers when no other alternatives for discharge are feasible and the discharge is designed to minimize physical, hydrologic and ecological impacts to the wetland or stream.

B. Utility lines in Category II, III, and IV wetlands and their buffers, Category I wetland buffers, and/or streams and their buffers when the following criteria are met:

1. No feasible conveyance alternative is available;

2. The project is designed and constructed to minimize physical, hydrologic and ecological impacts;

3. The utility line is located as far from the wetland or stream edge as possible and in a manner that minimizes disturbance of soils and vegetation;

4. Clearing, grading, and excavation activities are limited to the minimum necessary to install the utility line and the area is restored following utility installation; and

5. Buried utility lines are constructed in a manner that prevents adverse impacts to subsurface drainage, such as through the use of trench plugs; and provided, that the construction does not interrupt the ground water connection or percolation of surface water down through the soil column as demonstrated in a special study prepared by a hydrologist.

C. Public roads, bridges, and trails in Category II, III, and IV wetlands and their buffers, Category I wetland buffers, and streams and their buffers when no feasible alternative alignment is available and the facility is designed and constructed to minimize physical, hydrologic and ecological impacts, including placement on elevated structures as an alternative to fill, where feasible.

D. Stormwater management facilities, limited to detention/retention/treatment ponds, media filtration facilities, and lagoons or infiltration basins, within a Category II, III or IV wetland buffer or stream buffer where the following criteria are met:

1. No other feasible alternative location exists;

2. The width of the buffer between the stormwater facility and the wetland or stream edge is not less than twenty-five feet;

3. The facility is located, constructed, and maintained in a manner that minimizes adverse effects on the buffer and adjacent wetland or stream;

4. The stormwater facility meets applicable county or state stormwater management standards; and

5. Low impact development approaches have been considered and implemented to the maximum extent feasible.

E. Stormwater conveyance or discharge facilities such as dispersion trenches, level spreaders, and outfalls within a Category III or IV wetland buffer or stream buffer where the following criteria are met:

1. Due to topographic or other physical constraints, there is no feasible location for the facility outside the buffer;

2. The discharge facility is located as far from the wetland or stream edge as possible and is designed and constructed in a manner that minimizes disturbance of soils and vegetation;

3. The discharge outlet is designed to prevent erosion and promote infiltration where feasible;

4. The discharge water meets state water quality standards; and

5. Low impact development approaches have been considered and implemented to the maximum extent feasible.

F. A detailed study may not be required for stormwater management facilities within a wetland or wetland buffer that meet the following conditions. A wetland or its buffer can be physically or hydrologically altered to meet the requirements of an LID, runoff treatment or flow control BMP if all of the following criteria are met:

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

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

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

4. The hydrologic functions of the wetland can be improved as outlined in questions 3, 4, 5 of Chart 4 and questions 2, 3, 4 of Chart 5 in the “Guide for Selecting Mitigation Sites Using a Watershed Approach” (available here: 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; and

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

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. Proposed modifications that alter the structure of a wetland or its soils include preparation of a detailed study, and existing functions and values that are lost are compensated/replaced.

G. Passive recreation facilities that are part of a non-motorized trail system or environmental education program including walkways, wildlife viewing structures, and trails, in wetland and stream buffers; provided, that all of the following criteria are met:

1. Trails shall not exceed ten feet in width and shall be made of pervious material where feasible;

2. A minimum buffer of fifteen feet is maintained between the trail or facility and the wetland or stream edge; and

3. The trail is constructed and will be maintained in a manner that minimizes disturbance of the buffer and the adjacent wetland or stream. (Ord. 1687 § 11, 2016)

15.20.320 Fish and wildlife habitat conservation areas—Designation.

Areas that meet any of the following criteria shall be designated as fish and wildlife habitat conservation areas (HCA) and shall be subject to the provisions of this chapter:

A. Rivers, streams and creeks identified as waters of the state pursuant to WAC Title 222.

B. Areas with which federally and/or state listed species have a primary association.

C. State priority habitats and areas with which state priority species have a primary association.

D. Naturally occurring ponds under twenty acres in size.

The foregoing notwithstanding, HCAs shall not include drainage ditches, irrigation canals and other similar artificial features that are within the boundaries of and maintained by a drainage improvement district, irrigation district or other similar agency. (Ord. 1687 § 12, 2016: Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.330 Fish and wildlife HCA indicators.

The zoning administrator shall use the following as indicators of the need for a fish and wildlife HCA detailed study:

A. The site is located within an area listed as a fish and wildlife HCA in the city critical areas inventory or critical area maps;

B. Documentation through any public resource information source that a fish and wildlife HCA exists on or adjacent to the site;

C. A finding by a qualified biologist that the presence of a fish and wildlife HCA is likely;

D. A reasonable belief by the zoning administrator based on local information that a fish and wildlife HCA may exist on or adjacent to the site. Such a belief shall be supported through consultation with a qualified consultant. (Ord. 1687 § 13, 2016)

15.20.340 Fish and wildlife habitat conservation areas—Detailed study requirements.

A. All development subject to the provisions of this chapter that is within a designated HCA or within an area about which the administrator has information indicating that a HCA may be present or within a distance of two hundred feet of any such area shall be required to submit a detailed study report prepared by a qualified biologist.

B. A fish and wildlife HCA detailed study report shall be prepared by a qualified fish and/or wildlife biologist and shall include the following:

1. Identification of the type, location and extent of the habitat area on the project site;

2. A habitat description and assessment of the functions and values of the habitat area, including a discussion of the species in question and the related plant and animal species, soils and hydrology;

3. A regulatory analysis, including a discussion of any federal, state, tribal and/or local requirements or management recommendations that have been developed for the species and/or habitats in question;

4. A mitigation plan, including a discussion of how the proposal and any proposed mitigation measures is sufficient to avoid or minimize adverse impacts to identified species and habitats. (Ord. 1687 § 14, 2016: Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.350 Fish and wildlife habitat conservation areas—Performance requirements.

A. Basic Requirement. A regulated fish and wildlife HCA or its standard buffer shall only be altered if the detailed study demonstrates that the proposal will not degrade the functions and values of the subject habitat.

B. Buffers. Buffers are upland areas adjacent to fish and wildlife HCAs that are intended to provide sufficient separation between the habitat feature and the surrounding areas and uses to protect the habitat from disturbance from human activities. Buffers also provide vital upland habitat for wildlife species that require stream habitat as part of their life cycle. Buffers shall be measured horizontally in a landward direction from the ordinary high water mark (OHWM), or top of bank where noted, for stream habitats and from the outermost edge of upland habitat areas; provided, that HCA buffers shall not extend into and beyond substantially improved surfaces, such as lawfully established structures and impervious surfaces.

C. Standard Buffers.

1. The following standard buffers shall be established for the following fish and wildlife HCAs based on designation and classification. Standard buffers are assumed to be comprised of a moderately intact native vegetation community that is adequate to protect the functions and values of the resource at the time of the proposed activity.

a. Stream Habitat—Standard Buffers. The following standard buffers shall be established for all stream habitats based on their classification:

River/Stream	Standard Buffer
Sumas River/Johnson	100 feet from the OHWM

Creek	
Sumas Creek	50 feet from the top of bank
Bone Creek	50 feet from the top of bank

2. Non-Stream Habitats. The administrator shall determine the appropriate buffer widths for other habitat conservation areas based on the best available information. Buffer widths for non-stream habitat conservation areas shall be as set forth in the following table:

Areas with which federally listed species have a primary association; and state priority habitats and areas with which priority species have a primary association	Buffers shall be based on recommendations provided by the Washington Department of Fish and Wildlife PHS Program; provided, that local and site specific factors shall be taken into consideration and the buffer width based on the best available information concerning the species/habitat(s) in question and/or the opinions and recommendations of a qualified professional with appropriate expertise
Natural ponds	Buffers shall extend 50 feet landward from the ordinary high water mark (OHWM) of ponds under 20 acres in size

D. Increased Buffers. If the standard buffer is not comprised of a moderately intact native vegetation community, the administrator shall increase the standard buffer to protect the functions and values of the resource and buffer areas or the applicant may choose to enhance the standard buffer to meet the above standard. Any such buffer enhancement shall be undertaken at the sole expense of the applicant and shall be based on and incorporated into a mitigation plan prepared by a qualified biologist consistent with the requirements established at Section 15.20.360. The administrator shall also increase the required buffer above the standard buffer width if it is determined that unique circumstances exist, either in terms of the sensitivity of the habitat or the intensity of the proposed land use, such that an increased buffer is necessary to protect the functions and values of the resource.

E. Buffer Reductions.

1. Buffer Reduction Based on Mitigation. Where compensatory mitigation is provided, standard buffers may be reduced; provided, that the standard buffer is not reduced by more than twenty-five percent. Buffer reductions shall only be permitted when all impacts to the habitat and their required buffers are compensated at the expense of the developer through implementation of a mitigation plan prepared by a qualified biologist consistent with Section 15.20.360. Except as otherwise allowed pursuant to this chapter, reduction of a HCA buffer by greater than the percentage stated above, shall require approval of a critical areas variance.

2. Buffer Averaging. Standard buffers may be reduced through the use of buffer averaging; provided, that the total buffer area is not reduced below the area that would result from use of the standard buffer, and provided, further, that the standard buffer is not reduced by more than twenty-five percent, and the use of buffer averaging will improve the overall protection of the resource. Buffer averaging may not be utilized in combination with buffer reductions based on mitigation.

F. Limitation on Subdivision. Properties located partially or wholly within a fish and wildlife habitat conservation area shall not be subdivided in such a way that would increase the impacts to the resource that would result from development of the proposed lots or parcels. (Ord. 1687 § 15, 2016: Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.360 Fish and wildlife habitat conservation areas—Mitigation requirements.

A. When a regulated activity is proposed within a fish and wildlife habitat conservation area or its associated buffer, the applicant shall demonstrate to the satisfaction of the administrator that all reasonable efforts have been made to avoid, minimize and/or compensate for potential impacts consistent with the mitigation sequence established at Section 15.20.300(A).

B. All projects that result in permanent loss or degradation of habitat functions and values due to a proposed reduction in a habitat conservation area or buffer area shall provide compensatory mitigation to offset proposed actions.

C. Compensatory mitigation shall be provided on site or off site in the location that will provide the greatest ecological benefit and have the greatest likelihood of success; provided, that mitigation occurs as close as possible to the impact area and within the same watershed as the permitted alteration. This provision may be waived upon demonstration through a watershed- or landscape-based analysis that mitigation within an alternative sub-basin of the same basin or within an approved mitigation bank would have the greatest ecological benefit and the greatest likelihood of success.

D. All habitat conservation areas created, restored or enhanced as part of compensatory mitigation required pursuant to this chapter shall be provided with buffers of sufficient size to protect their functions and values.

E. All mitigation areas shall be protected and managed to prevent degradation and ensure long-term protection of critical area functions and values. Permanent protection shall be achieved through deed restriction,

conservation easement, protective covenant or other protective measure.

F. Mitigation Plan. Where preparation of a mitigation plan is required, said plan shall be prepared by a qualified fisheries, wildlife or natural resource biologist and shall be approved by the administrator. The mitigation plan shall be prepared based on the best available science and shall address the following:

1. The characteristics of the habitat conservation area;

2. The characteristics of the watershed within which the habitat area is located;

3. The functions and values of the habitat conservation area to be protected by the buffer;

4. The characteristics of the buffer;

5. The functions that the standard buffer is intended to provide at the specific location;

6. The intensity of the proposed adjacent land use;

7. Proposed measures to reduce the adverse effects of adjacent land uses, such as lighting and noise restrictions, buffer fencing and signage, conservation easements, use of integrated pest management and limitations on application of pesticides, and use of low impact development techniques;

8. Proposed mitigation measures together with an analysis of the anticipated effectiveness of the proposed mitigation measures to protect the functions and values of the affected habitat conservation area and buffer;

9. Proposed monitoring requirements to ensure the effectiveness of the proposed mitigation; and

10. Proposed bonding to insure the completion and effectiveness of the proposed mitigation.

G. Completion of Mitigation. Where feasible, mitigation projects shall be completed prior to activities that will disturb habitat conservation areas or buffers. In all other cases, mitigation shall be completed as quickly as possible following disturbance and prior to use or occupancy of the activity or development unless such timing is found to be infeasible due to factors such as the optimal time of year for planting. The administrator may require the posting of a performance bond or other form of surety to insure that all required mitigation, including required monitoring and repair, is completed in a timely fashion and consistent with the approved mitigation plan. (Ord. 1687 § 16, 2016: Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.380 Geologically hazardous areas classification and designation.

Geologically hazard areas shall be classified as steep slopes, earthquake-sensitive areas and volcanic debris flow areas based on the following criteria:

A. Steep Slopes. Steep slopes shall include all areas with a slope inclination greater than or equal to thirty-five percent with a vertical relief of ten or more feet. Steep slopes shall include, but not be limited to, areas shown as being underlain by the following soil type, as defined in the U.S.D.A. Natural Resource Conservation Service's Soil Survey of Whatcom County Area, Washington: 157 Squalicum gravelly loam.

B. Earthquake-Sensitive Areas. Earthquake-sensitive areas shall include all areas underlain by the following soil types, as defined in the U.S.D.A. Natural Resource Conservation Service's Soil Survey of Whatcom County Area, Washington: 144 Shalcar soil, 116 Pangborn muck, 107 Mt. Vernon fine sandy loam, 123 Puget silt loam, 22 Briscot silt loam, 115 Oridia silt loam, 162 Sumas silt loam.

C. Volcanic Debris Flow Areas. Volcanic debris flow areas shall include all areas within the one-hundred-year floodplain as designated in Chapter 14.30, Flood Damage Prevention. Due to the relatively low frequency of catastrophic volcanic debris flow events, the protective measures contained in Chapter 14.30 are deemed sufficient to reduce potential risks from such events to acceptable levels, and no further study shall be required.

Areas that meet any of the classification criteria established above shall be designated as geologic hazard areas and shall be subject to the provisions of this chapter. (Ord. 1687 § 17, 2016: Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.390 Geologically hazardous areas indicators.

The zoning administrator shall use the following as indicators of the need for a geologically hazardous area detailed study:

A. The site is located within fifty feet of an area shown as steep slope or as an earthquake-sensitive area on the city critical area maps.

B. The administrator makes a determination based on a site visit or other documentation that the site, although not shown as such on the city critical area maps, has the potential to meet the criteria established under subsection A of this section. (Ord. 1687 § 18, 2016: Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.400 Geologically hazardous areas detailed study requirements.

A geologically hazardous area detailed study shall be prepared by a professional geologist or geotechnical engineer or other professional with similar training and experience and shall include the following, in addition to the minimum requirements established in Section 15.20.200(B):

A. An assessment of the geologic and, where applicable, the engineering characteristics of the proposed site.

B. A geologic and, where applicable, geotechnical analysis of the project in relation to the proposed site, including discussion of potential impacts on the hazard area, the project site and adjacent properties. (Ord. 1687 § 19, 2016: Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.410 Geologically hazardous areas performance requirements.

Alteration of a steep slope or earthquake-sensitive area or a site within fifty feet of such area shall only be permitted if the detailed study indicates that the project has been designed such that the risks associated with the hazard area have been reduced to within acceptable levels. Where determined to be necessary based on the nature of the proposed activity and the site characteristics, any such mitigation of risks of a geotechnical nature shall be certified by a geotechnical engineer. (Ord. 1687 § 20, 2016: Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.420 Aquifer recharge area designation.

Aquifer recharge areas shall be designated based on meeting any one of the following criteria:

A. Wellhead protection areas designated per Chapter 246-290 WAC, including, but not limited to, the Sumas wellhead protection area as established through the City of Sumas Wellhead Protection Program adopted on May 28, 1996;

B. Sole source aquifers designated by the U.S. EPA per the Federal Safe Drinking Water Act;

C. Areas designated for special protection as part of a groundwater management program per Chapter 90.44, 90.48 or 90.58 RCW or Chapter 173-100 or 173-200 WAC. (Ord. 1687 § 21, 2016: Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.430 Aquifer recharge area detailed study requirements.

All proposals that require SEPA review and are located within a designated aquifer recharge area shall be reviewed by the zoning administrator to determine the potential for adverse impacts to groundwater resources. If the potential for significant adverse impacts is present, then the zoning administrator shall require preparation of an aquifer recharge area detailed study. The detailed study shall be prepared by a qualified consultant with experience in preparing hydrogeologic site assessments. Evidence of these qualifications shall be included within the study. The detailed study shall include the following, in addition to the minimum requirements established in Section 15.20.200(B):

A. A description of the existing hydrogeologic conditions of the project site and the proposed activity's potential to result in contamination of groundwater resources. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.440 Aquifer recharge area performance requirements.

Activities requiring preparation of an aquifer recharge area detailed study shall only be permitted if the detailed study indicates that the activity does not pose a significant threat to the underlying aquifer system. The zoning administrator shall establish mitigating conditions necessary to ensure protection of groundwater resources. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.450 Reasonable use exceptions.

A. An exception from the provisions of this chapter may be granted by the city council. An application for an exception shall be processed as a Class III action pursuant to the provisions of Chapter 20.08. A filing fee as

established in Chapter 20.108 shall be paid to the city clerk-treasurer at the time of application.

B. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision on the application will be made. The city council shall grant such an exception only when the applicant demonstrates that the requested exception is consistent with all of the following criteria:

1. Special circumstances and conditions exist which are peculiar to the land or lot, and which are not applicable to other lands or lots;

2. The special conditions or circumstances are not the result of actions taken by the applicant;

3. Literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties under the terms of this chapter;

4. The granting of the exception requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures under similar circumstances;

5. The granting of the exception is consistent with the general purpose and intent of this chapter and will not create significant adverse impacts to the identified critical areas or otherwise be detrimental to public health, safety, or welfare.

C. In granting any exception, the city council may prescribe such conditions and safeguards as are deemed necessary to secure adequate protection of critical areas, public health, safety and welfare, and to ensure conformity with this chapter.

D. If the city council decides to grant the exception, the city council shall make a finding that the reasons set forth by the applicant justify the granting of the exception, and that the exception granted is the minimum necessary to allow reasonable use of land, buildings or structures.

E. In granting any exception, the city council may prescribe time limits within which the action for which the exception is requested shall commence or be completed or both. Failure to conform to any such time limits shall void the exception. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.460 Enforcement.

The zoning administrator is authorized to make site inspections and take such actions as necessary to administer and enforce this chapter. City representatives shall make a reasonable effort to contact the property owner before entering onto private property. Activities found to be not in compliance with this chapter or any applicable performance requirements or any conditions established through the critical areas review and approval process, such as required mitigation, shall be subject to enforcement actions necessary to bring the activity into compliance. The city shall have the authority to require restoration, rehabilitation or replacement

measures to compensate for violations of this chapter which result in destruction, degradation, or reduction in function of critical areas or required buffer areas. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.470 Violations and penalty.

A. Violation—Penalty. Each day that a violation of this chapter continues shall constitute a separate offense and be punishable as such. Any violation of this chapter shall be punished as follows:

1. First Offense. The first offense shall be punished by a penalty of not more than two hundred fifty dollars, including all costs and assessments, and not less than one hundred fifty dollars, which minimum amount shall not be suspended or deferred.

2. Second Offense. The second offense within a five-year period shall be punished by a penalty of not more than five hundred dollars, including all costs and assessments, and not less than two hundred dollars, which minimum amount shall not be suspended or deferred.

3. Third or Subsequent Offense. A person committing a third or subsequent offense within a five-year period shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed one thousand dollars or imprisonment in jail not to exceed ninety days or by both such fine and imprisonment. The minimum sentence shall be two hundred fifty dollars, which amount shall not be suspended or deferred.

Law enforcement officers commissioned by the city are authorized to issue a notice of infraction upon certification that the officer has probable cause to believe, and does believe, that a person has committed an infraction contrary to the provisions of this chapter. The infraction need not have been committed in the issuing officer's presence except as otherwise provided by law.

B. Additional Remedies. In addition to the penalties provided in this section and any other remedy allowed by law, the city may bring an action to enjoin a violation of any provision of this chapter. In any action or suit brought under this section, the city, if it prevails, shall recover reasonable attorney's fees to be set by the court, in addition to its costs and disbursements. (Ord. 1400 § 1 (Exh. A) (part), 2004)

15.20.480 Definitions.

"Adjacent" or "adjacent to" generally means within a distance of two hundred feet from a critical area or, in some circumstances involving fish and wildlife habitat conservation areas, within a greater distance within which the project is likely to impact the critical area.

"Agriculture" or "agricultural activities" means those activities directly pertaining to the production of crops or livestock including but not limited to cultivation, harvest, grazing, animal waste storage and disposal, fertilization, the operation and maintenance of farm and stock ponds, drainage ditches, irrigation systems and canals, and normal maintenance, operation and repair of existing serviceable structures, facilities, or improved areas.

“Aquifer” means any geologic formation capable of yielding a significant amount of ground water to a well, spring or other withdrawal works in sufficient quantity for beneficial use.

“Aquifer recharge areas” means areas where the prevailing geologic conditions allow infiltration rates which contribute significantly to the replacement of groundwater and which create a high potential for contamination of groundwater resources that serve as a source of potable water supplies.

“Artificial watercourse” means ditches and other water conveyance systems, not constructed from natural watercourses, which are artificially constructed and actively maintained for irrigation and drainage by an irrigation or drainage district. Artificial watercourses include lateral field ditches used to drain farmland where the ditch did not replace a natural watercourse. Artificial watercourses shall not be considered fish and wildlife habitat conservation areas.

“Biologist” means a person having specific relevant expertise who has a minimum of a bachelor of science degree in biological sciences or a related field from an accredited college or university or equivalent relevant training in wildlife biology and substantial demonstrated experience as a practicing biologist.

“Buffer” or “buffer area” means a naturally vegetated, undisturbed or revegetated zone immediately adjacent to a critical area that helps protect the critical area from adverse impacts to its functions and values or that helps provide the margin of safety necessary to minimize risk to the public.

“Critical areas” means the following areas as defined and regulated in this chapter: wetlands, geologically hazardous areas, fish and wildlife habitat conservation areas, and aquifer recharge areas.

“Endangered species” means a species, native to the state of Washington, that is designated by the responsible state or federal fish or wildlife agency as endangered.

“Frequently flooded areas” means areas within the one-hundred-year floodplain as established by the Federal Emergency Management Agency (FEMA) and identified as areas of special flood hazard on FEMA flood insurance rate maps.

“Geologically hazardous areas” means areas that, because of their susceptibility to erosion, sliding, earthquake, or other geologic events, may not be suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

“Geologist” means a person who has received a degree in geology from an accredited college or university, or a person who has equivalent education and training and substantial demonstrated experience as a practicing geologist.

“Geotechnical engineer” means a person who is licensed as a civil engineer with the state of Washington and

who has recent, related experience as a professional geotechnical engineer.

“Groundwater” means all waters that exist beneath the land surface or beneath the bed of any body of surface water, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves.

“Habitats of local importance” means a seasonal range or habitat element with which a designated species of local importance has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

“Native vegetation” means plant species which are indigenous to the area.

“Natural watercourse” means any stream in existence prior to settlement that originated from a natural source.

“Ongoing agriculture” means the continuation of any existing agricultural activity as defined in this section, including crop rotations.

“Primary association” means habitat used by a plant or animal species that is necessary for survival, but does not include incidental use areas.

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

“Zoning administrator” means the Sumas zoning administrator and/or their duly authorized agent. (Ord. 1687 § 22, 2016: Ord. 1400 § 1 (Exh. A) (part), 2004)