# Chapter 16.10

# CRITICAL AREAS

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## 16.10.010 Purpose and intent.

A. The city of Auburn contains numerous areas that can be identified and characterized as critical or environmentally sensitive. Such areas within the city include wetlands, streams, wildlife habitat, ~~significant trees,~~ geologic hazards, ~~ground water protection~~aquifer recharge areas, and flood hazards.

B. The city finds that these critical areas perform a variety of valuable and beneficial biological and physical functions that benefit the city and its residents. Alteration of certain critical areas may also pose a threat to public safety or to public and private property or the environment. The city therefore finds that identification, regulation and protection of critical areas are necessary to protect the public health, safety and general welfare. The city further finds that the functions of critical areas and the purpose of these regulations include the following:

1. Wetlands. Wetlands perform a variety of functions that include maintaining water quality; storing and conveying storm water and flood water; recharging ground water; providing important fish and wildlife habitat; and serve as areas for recreation, education and scientific study, and aesthetic appreciation.

Wetland buffers serve to moderate runoff volume and flow rates; reduce sediment, chemical nutrient and toxic pollutants; provide shading to maintain desirable water temperatures; provide habitat for wildlife; and protect wetland resources from harmful intrusion.

The primary goals of wetland regulation are to avoid adverse effects to wetlands; to achieve no net loss of wetland function and value – acreage may also be considered in achieving the overall goal; to provide levels of protection that reflect the sensitivity of individual wetlands and the intensity of proposed land uses; and to restore and/or enhance existing wetlands, where possible.

2. Streams. Streams and their associated riparian corridors provide important fish and wildlife habitat; help to maintain water quality; store and convey storm water and flood water; recharge ground water; and serve as areas for recreation, education and scientific study and aesthetic appreciation. Stream buffers serve to moderate runoff volume and flow rates; reduce sediment, chemical nutrient and toxic pollutants; provide shading to maintain desirable water temperatures; provide habitat for wildlife; and protect stream resources from harmful intrusion.

The primary goals of stream regulation are to avoid adverse effects to streams and associated riparian corridors; to achieve no net loss of functions and values of the larger ecosystem in which the stream is located; to protect fish and wildlife resources; to protect water quality through appropriate management techniques; and, where possible, to provide for stream enhancement and rehabilitation.

3. Wildlife Habitat. Wildlife habitat provides opportunities for food, cover, nesting, breeding and movement for fish and wildlife; maintains and promotes diversity of species and habitat; coordinates habitat protection with elements of the open space system; helps to maintain air and water quality; helps control erosion; serves as areas for recreation, education, scientific study, and aesthetic appreciation; and provides neighborhood separation and visual diversity within urban areas.

The primary goals of wildlife habitat regulation are to avoid adverse effects to critical habitats for fish and wildlife; to achieve no net loss of functions and values of the larger ecosystem in which the wildlife habitat is located; to implement the goals of the Endangered Species Act; to promote connectivity between habitat areas to allow for wildlife movement; to provide multi-purpose open space corridors; and where possible to provide for fish and wildlife habitat enhancement and rehabilitation that reflect the sensitivity of the species.

4. ~~Ground Water Protection~~Aquifer Recharge Areas. ~~Ground water protection~~ Aquifer recharge areas provide a source of potable water and contribute to stream discharge/flow. Such areas contribute to the recharge of aquifers, springs and/or wells and are susceptible to contamination of water supplies through infiltration of pollutants through the soil.

The primary goals of ~~ground water~~aquifer recharge protection regulations are to protect ground water quality by maintaining the quantity of recharge; avoiding or limiting land use activities that pose potential risk of aquifer contamination; and to minimize or avoid adverse effects to ground water ~~protection areas~~ through the application of performance standards, and to comply with the requirements of the Federal Safe Drinking Water Act and Washington Administrative Code that require Group A public water systems to develop and implement a wellhead protection program.

5. Geologically Hazardous Areas. Geologically hazardous areas means ~~include lands or~~ areas that because of their susceptibility ~~characterized by geologic, hydrologic and topographic conditions that render them susceptible to varying degrees of risk of landslides,~~to erosion, sliding, ~~seismic~~ earthquake, ~~or~~ volcanic activity, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health of safety concerns.

The primary goals of regulating geologic hazards are to avoid and minimize potential impacts to life and property by regulating and/or limiting land uses where necessary, and to conduct appropriate levels of analysis and ensure sound engineering and construction practices to address identified hazards.

6. Flood Hazard Areas. Floodplains help to store and convey storm water and flood water; recharge ground water; provide important areas for riparian habitat; and serve as areas for recreation, education, and scientific study. Development within floodplain areas can be hazardous to those inhabiting such development, and to those living upstream and downstream. Floods also cause substantial damage to public and private property that results in significant costs to the public and individuals.

The primary goals of flood hazard regulations are to limit or condition development within the regulatory floodplain to avoid substantial risk of damage to public and private property and that results in significant costs to the public and individuals; to avoid significant increases in peak storm water flows or loss of flood storage capacity; to protect critical habitat for fish and wildlife, and to meet the purposes set forth in Chapter 15.68 ACC. Requirements for the identification, assessment, alteration, and mitigation of flood hazard areas are contained in Chapter 15.68 ACC.

C. This chapter of the Auburn City Code and other sections as incorporated by reference contain standards, procedures, criteria and requirements intended to identify, analyze, and mitigate potential impacts to the city's critical areas, and to enhance and restore degraded resources where possible. The general intent of these regulations is to avoid impacts to critical areas. In appropriate circumstances, impacts to specified critical areas resulting from

regulated activities may be minimized, rectified, reduced and/or compensated for, consistent with the requirements of this chapter.

D. It is the further intent of this chapter to:

1. Comply with the requirements of the Growth Management Act (Chapter 36.70A RCW) and implement rules to identify and protect critical areas and to perform the review of development regulations required by RCW 36.70A.215;

2. Develop and implement a comprehensive, balanced and fair regulatory program that avoids impacts to critical resources where possible, that requires that mitigation be performed by those affecting critical areas, and that thereby protects the public from injury, loss of life, property or financial losses due to flooding, erosion, landslide, seismic events, soil subsidence, or steep slope failure;

3. Implement the goals and policies of the Auburn comprehensive plan, including those pertaining to natural features and environmental protection, as well as goals relating to land use, housing, economic development, transportation, and adequate public facilities;

4. Serve as a basis for exercise of the city's substantive authority under the State Environmental Policy Act (SEPA) and the city's environmental review procedures, where necessary to supplement these regulations, while also reducing the city's reliance on project-level SEPA review;

5. Provide consistent standards, criteria and procedures that will enable the city to effectively manage and protect critical areas while accommodating the rights of property owners to use their property in a reasonable manner;

6. Provide greater certainty to property owners regarding uses and activities that are permitted, prohibited, and/or regulated due to the presence of critical areas;

7. Coordinate environmental review and permitting of proposals involving critical areas with existing development review and approval processes to avoid duplication and delay pursuant to the Regulatory Reform Act, Chapter 36.70B RCW;

8. Establish conservation and protection measures for threatened and endangered fish species in compliance with the requirements of the Endangered Species Act and the Growth Management Act requirements to preserve or enhance anadromous fisheries, WAC 365-195-925;

9. Alert members of the public, including appraisers, assessors, owners, potential buyers or lessees, to the development limitations of critical areas and their required buffers.

E. Best Available Science. The city has considered and included the best available science in developing these regulations, consistent with RCW 36.70A.172 and WAC 365-195-900, et seq. This has been achieved through research and identification of relevant technical sources of information, consultation with experts in the disciplines covered by this chapter, and consultation and requests for technical information regarding best available science from state and federal resource agencies.

Preparation of this chapter has included the use of relevant nonscientific information, including consideration of legal, social, policy, economic, and land use issues. This reflects the city's responsibilities under numerous laws and programs, including other provisions of the Growth Management Act, and the need to weigh and balance various factors as part of decision making to accomplish municipal objectives. This may result in some risk to the functions and values of some critical areas, however, it is recognized that the Growth Management Act requires the City to designate and protect critical areas. The city will also use its authority under the State Environmental Policy Act (SEPA) to identify, consider and mitigate, where appropriate, significant adverse effects on critical resources not otherwise addressed by the regulations of this chapter.

The city intends to review and monitor implementation of its critical areas regulations and to use an adaptive management approach. It will make adjustments to the regulations, as appropriate, in response to changing conditions, new information about best available science, or empirical data indicating the effectiveness of its

regulatory program. This will occur in the context of the city's ongoing review and revision of its comprehensive plan and development regulations pursuant to the Growth Management Act.

Additional information, both scientific and nonscientific, regarding compliance with WAC 365-195-915(c), including identification of risks to resources and Washington State Department of Ecology guidance, is contained in the findings and conclusions and the overall record supporting adoption of Auburn's critical areas regulations. (Ord. 6295 § 3, 2010; Ord. 5894 § 1, 2005.)

**16.10.020 Definitions.**
For purposes of this chapter, the following definitions shall apply:

"Anadromous fish" means fish that spawn and rear in freshwater and mature in the marine environment, such as salmon, steelhead, sea-run cutthroat, and bull trout.

"Applicant" means the person, party, firm, corporation, or other entity that proposes or has performed any activity that affects a critical area.

"Aquifer" means, generally, any water bearing soil or rock unit. Specifically, a body of soil or rock that contains sufficient saturated permeable material to conduct ground water and yield economically significant quantities of ground water to wells or springs.

"Artificially created wetlands" means wetlands created from nonwetland sites through purposeful, legally authorized human action, such as irrigation and drainage ditches, grass-lined swales, canals, retention or detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities.

"Aquifer Recharge Area" means areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge.

"Best Available Science." As defined in the Procedural Criteria for Adopting Comprehensive Plans and Development Regulations for Best Available Science at WAC 365-195-900, et seq.

"Buffer or buffer area, critical area" means a naturally vegetated, undisturbed, enhanced or revegetated zone surrounding a critical area that protects the critical area from adverse impacts to its integrity and value, and is an integral part of the resource's ecosystem.

"City" means the city of Auburn.

"Clearing" means the removal of timber, brush, grass, ground cover or other vegetative matter from a site, which exposes the earth's surface of the site, or any actions, which disturb the existing ground surface.

"Comprehensive plan" means the city of Auburn comprehensive plan as now adopted or hereafter amended.

"Critical areas" or "environmentally sensitive areas" means areas that possess important natural functions and embody a variety of important natural and community values. Such areas include wetlands, streams, fish and wildlife habitat, geologically hazardous areas, ~~ground water protection areas~~ aquifer recharge areas, and flood hazard areas. If not conducted properly, development or alteration of such areas may cause significant impacts to the valuable functions and values of these areas and/or may generate risks to the public health and general welfare, and/or to public and private property.

"Critical area report" means a report prepared by a qualified consultant to determine the presence, type, class, size, function and/or value of an area subject to these regulations. Also see "Stream and/or Wetland reconnaissance report," "Wetland impact assessment report" and "Wildlife report."

"Critical erosion hazard areas" means lands or areas underlain by soils identified by the U.S. Department of Agriculture Soil Conservation Service (SCS) (now known as the Natural Resource Conservation Service) as having "severe" or "very severe" erosion hazards. This includes, but is not limited to, the following group of soils when they occur on slopes of 15 percent or greater: Alderwood-Kitsap (AkF), Alderwood gravelly sandy loam (AgD),

Kitsap silt loam (KpD), Everett (EvD), and Indianola (InD). Additional soil groups may be identified through site-specific analysis.

"Critical geologic hazard areas" means lands or areas subject to high or severe risks of geologic hazard, including critical erosion hazard areas, critical landslide hazard areas, critical volcanic hazard areas, and critical seismic hazard areas.

"Critical habitat" or "critical wildlife habitat" means habitat areas associated with threatened, endangered, or sensitive species of plants or wildlife (pursuant to WAC 232-12-297(2.4), (2.5) and (2.6)) and which, if altered, could reduce the likelihood that the species will maintain and reproduce over the long term.

"Critical landslide hazard areas" means lands or areas where there is a high (Class III) or very high (Class IV) risk of landslide due to a combination of slope, soil permeability, and water.

"Critical seismic hazard areas" means lands or areas where there is a high risk of seismic events and damage.

"Delineation manual," "wetland delineation manual," or "wetland delineation methodology" means the ~~manual and~~ methodology used for ~~to identify wetlands in the field, as described in the Washington State Wetlands Identification and Delineation Manual (Publication No. 96-94), adopted by the Department of Ecology in 1997 (pursuant to RCW 36.70A.175 and 90.58.380), and which is based on the U.S. Corps of Engineers Wetlands Delineation Manual (1987). Use of this manual is required by RCW 36.70A.175 and 90.58.380~~identification of wetlands and delineation of their boundaries and shall be done in accordance with the approved federal wetland delineation manual and the Western Mountains, Valleys, and Coast Regional supplement, as required by WAC 173-22-035.

"Department" means the city of Auburn department of ~~planning and~~ community development ~~development~~ or successor agency, unless the context indicates a different city department.

"Director" means the director of the city of Auburn department of community development ~~department of planning and development~~ or successor agency.

"Earth/earth material" means naturally occurring rock, soil, stone, sediment, or combination thereof.

"Enhancement" means the improvement of an existing viable wetland, stream or habitat area or the buffers established for such areas, through such measures as increasing plant diversity, increasing wildlife habitat, installing environmentally-compatible erosion controls, increasing structural diversity or removing plant or animal species that are not indigenous to the area. Enhancement also includes actions performed to improve the quality of an existing degraded wetland, stream, or habitat area. See also "Restoration."

"Erosion" means a process whereby wind, rain, water, and other natural agents mobilize and transport soil particles.

"Erosion hazard areas" means lands or areas that, based on a combination of slope inclination and the characteristics of the underlying soils, are susceptible to varying degrees of risk of erosion. Erosion hazard areas are classified as "low" (areas sloping less than 15 percent) or "high" (areas sloping 15 percent or more) on the following Soil Conservation Service (SCS), now known as the Natural Resource Conservation Service (NRCS), soil types: Alderwood-Kitsap (AkF), Alderwood gravelly sandy loam (AgD), Kitsap silt loam (KpD), Everett (EvD) and Indianola (InD). Additional soil groups may be identified through site-specific analysis.

"Excavation" means the removal or displacement of earth material by human or mechanical means.

"Existing and ongoing agricultural activities" means those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops and livestock. Such activity must have been in existence as of July 1, 1990 (the effective date of the Growth Management Act). The definition includes, but is not limited to, operation and maintenance of farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities or crops, and normal operation, maintenance or repair of existing serviceable structures, facilities, or improved areas. Activities, which bring an area into agricultural use from a previous nonagricultural use, are not considered part of an ongoing activity. An operation ceases to be ongoing when the area on which it was conducted is proposed for conversion to a nonagricultural use or has lain idle for a period of longer

than five years, unless the idle land is registered in a federal or state soils conservation program. Forest practices are not included in this definition.

"Exotic" means any species of plant or animal that is foreign and not indigenous to the lower Puget Sound area.

"Fill/fill material" means a deposit of earth material placed by human or mechanical means.

"Filling" means the act of transporting and placing (by any manner or mechanism) fill material from, to, or on any surface water body or wetland, soil surface, sediment surface, or other fill material.

"Geologically hazardous areas" means ~~lands or~~ areas characterized by geologic, hydrologic, and topographic conditions that render them susceptible to ~~varying degrees of risk of landslides,~~ erosion, sliding, ~~seismic~~ earthquake, or ~~volcanic activity~~other geological events.

"Geotechnical report" means a report prepared in accordance with the City's Engineering Design Standards.

"Grading" means any excavating, filling, clearing, leveling or contouring of the ground surface by human or mechanical means.

"Ground water protection areas" means land areas designated by the city beneath which ground water occurs that is a current or potential future source of drinking water for the city. Please see the definition of "aquifer recharge areas" for additional regulated areas.

"Habitat management" means management of land and its associated resources/features to maintain species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. This does not imply maintaining all habitat or individuals of all species in all cases.

~~"Hazardous materials" means any material, either singularly or in combination, that is a physical or health hazard as defined and classified in Article 80 of the Uniform Fire Code as adopted or amended by the city, whether the materials are in usable or waste condition; and any material that may degrade ground water quality when improperly stored, handled, treated, used, produced, recycled, disposed of, or otherwise mismanaged. Hazardous materials shall also include, without exception:~~

~~1. All materials defined as or designated by rule as a dangerous waste or extremely hazardous waste under Chapter 70.105 RCW and Chapter 173-303 WAC;~~

~~2. Any substance defined as or designated by rule as a hazardous substance under Chapter 70.105 RCW and Chapter 173-303 WAC; and~~

~~3. Petroleum or petroleum products, including any waste oils or sludges.~~

~~"Hazardous materials inventory statement" means a form provided by the fire department and completed by a business owner that provides specified information regarding hazardous materials at the business.~~

"Hazardous substances" means 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 or RCW 70.105.

~~"Hydrologically isolated" means wetlands which: (1) have no surface water connection to a lake, river, or stream during any part of the year; (2) are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream; and (3) have no contiguous hydric soil between the wetland and any lake, river, or stream. May also be a pond excavated from uplands with no surface water connection to a stream, lake, or other wetland.~~

"In-kind wetland mitigation" means replacement of wetlands with wetlands whose characteristics closely approximate those destroyed or degraded by a regulated activity.

"Injection well" means a "well" that is used for the subsurface emplacement of fluids. (From WAC 173-218-030.)

"Intentionally created streams" means streams created through purposeful human action, such as irrigation and drainage ditches, grass-lined swales, and canals. This definition does not include stream modifications performed pursuant to city authorization, such as changes or redirection of stream channels.

"Lahar" means mudflows or debris flows associated with volcanic activity and which pose a threat to life, property, and structures.

"Landslide" means episodic downslope movement of a mass of soil or rock.

"Landslide hazard areas" means areas that, due to a combination of slope inclination, relative soil permeability, and hydrologic conditions are susceptible to varying degrees of risk of landsliding. Landslide hazard areas are classified as Classes I through IV based on the degree of risk as follows:

1. Class I/Low Hazard. Areas with slopes of 15 percent or less.

2. Class II/Moderate Hazard. Areas with slopes of between 15 percent and 40 percent and that are underlain by soils that consist largely of sand, gravel or glacial till.

3. Class III/High Hazard. Areas with slopes between 15 percent and 40 percent that are underlain by soils consisting largely of silt and clay.

4. Class IV/Very High Hazard. Areas with slopes steeper than 15 percent with identifiable zones of emergent water (e.g., springs or ground water seepage), areas of identifiable landslide deposits regardless of slope and all areas sloping more steeply than 40 percent.

The slopes referenced above include only those where the surface drops 10 feet or more vertically within a horizontal distance of 25 feet.

"Mature and old-growth forested wetlands" means wetlands containing mature or old-growth forested areas, generally requiring a century or more to develop. These systems represent two priority habitats, as defined by the Washington State Department of Fish and Wildlife.

"Mitigation" means activities which include:

1. Avoiding the impact altogether by not taking a certain action or parts of actions~~.~~;

2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts~~.~~;

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

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

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

6. Monitoring the impact and taking appropriate corrective measures.

While monitoring without additional actions is not considered mitigation for the purposes of these regulations, it shall be part of a comprehensive mitigation program.

"Mitigation sequencing" means considering or performing mitigation actions, as defined in the definition of "mitigation," in a preferred sequence from (1) through (5). Avoidance is preferred and must be considered prior to pursuing other forms of mitigation.

"Native" means any species of plant or animals which are or were indigenous to the lower Puget Sound area.

"Natural heritage wetlands" means wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as high quality, relatively undisturbed wetlands, or wetlands that support state-listed threatened or endangered plants.

"Off-site mitigation" means performance of mitigation actions, pursuant to standards established in this chapter, on a site or in an area other than that proposed for conduct of a regulated activity.

"Out-of-kind mitigation" means replacement of wetlands or habitat with substitute wetlands or habitat whose characteristics do not closely approximate those adversely affected, destroyed, or degraded by a regulated activity.

"Permanent erosion control" means continuous on-site and off-site control measures that are needed to control conveyance or deposition of earth, turbidity, or pollutants after development, construction, or restoration.

"Plant association of infrequent occurrence" means one or more plant species which because of the rarity of the habitat and/or the species involved, or for other botanical or environmental reasons, do not often occur in the city of Auburn. Examples include but are not limited to:

1. Wetlands with a coniferous forested class or subclass consisting of trees such as western red cedar, Sitka spruce, or lodge pole pine growing on organic soils;

2. Bogs with a predominance of sphagnum moss, or those containing sphagnum moss, and typically including one or more species such as Labrador tea, sundew, bog laurel, or cranberry.

"Qualified consultant," for purposes of these regulations, shall mean a person who has attained a degree from an accredited college or university in the subject matter necessary to evaluate the critical area in question (e.g., biology, ecology, or horticulture/arboriculture for wetlands, streams, wildlife habitat, and geology and/or civil engineering for geologic hazards, and hydrogeologist for ~~ground water protection~~aquifer recharge areas), and/or who is professionally trained and/or certified or licensed by the state of Washington to practice in the scientific disciplines necessary to identify, evaluate, manage, and mitigate impacts to the critical area in question. In addition, a qualified consultant for wetlands and streams must be a professional wetland scientist with at least two years of full-time work experience as a wetlands professional, including delineating wetlands using the federal manual and supplements, preparing wetland reports, conducting function assessments, and development and implementing mitigation plans. A qualified consultant for aquifer recharge areas must be a currently licensed Washington State geologist holding a current specialty license in hydrogeology.

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

"Regulated activities" means activities that have a potential to significantly impact a critical area that is subject to the provisions of this chapter. Regulated activities generally include, but are not limited to, any filling, dredging, dumping or stockpiling, release of contaminants to soil or water, draining, excavation, flooding, clearing or grading, construction or reconstruction, driving pilings, obstructing, clearing, or harvesting.

"Restoration" means actions taken to re-establish wetland, stream or habitat functional values, and the characteristics that have been destroyed or degraded by past alterations (e.g., filling or grading). See also "Enhancement."

"Salmonids" means the family of fish which includes salmon, trout, and char.

"Secondary habitat" means areas that offer less diversity of animal and plant species than critical habitat but are important for performing the essential functions of habitat.

"Seismic hazard areas" means areas that, due to a combination of soil and ground water conditions, are subject to risk of ground shaking, subsidence, or liquefaction of soils during earthquakes. These areas are typically underlain by soft or loose saturated soils (such as alluvium), have a shallow ground water table, and are typically located on the floors of river valleys.

"Site" means the location containing a regulated critical area and on which a regulated activity is proposed. The location may be a parcel or portion thereof, or any combination of contiguous parcels where a proposed activity may impact a critical area.

"Slope" means an inclined earth surface, the incline of which is expressed as the ratio of horizontal distance to vertical distance. The slopes referenced above includes only those where the surface drops 10 feet or more vertically within a horizontal distance of 25 feet.

"Sole source aquifer" means an area formally designated as such by the U.S. Environmental Protection Agency under the federal Safe Drinking Water Act.

"Spring" means a source of water where an aquifer comes in contact with the ground surface.

"Stream or wetland reconnaissance report" means a type of critical area report prepared by an applicant's qualified consultant to describe a stream or wetland and to characterize its conditions, source of hydrologic support, wildlife, habitat values and water quality. The report may also include~~s~~ an analysis of impacts but generally does not include adequate impact assessment and definition of a mitigation proposal sufficient to meet all the requirements of a more comprehensive critical areas report.

"Streams" means those areas where surface waters produce a defined channel or bed that demonstrates clear evidence of the passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds and defined-channel swales. The channel or bed need not contain water year-round. This definition is not intended to include artificially created irrigation ditches, canals, storm or surface water devices, or other entirely artificial watercourses unless they are used by salmonids or created for the purposes of stream mitigation.

"Structural diversity, vegetative" means the relative degree of diversity or complexity of vegetation in a wildlife habitat area as indicated by the stratification or layering of different plant communities (e.g., ground cover, shrub layer and tree canopy), the variety of plant species and the spacing or pattern of vegetation.

"Substrate" means the soil, sediment, decomposing organic matter or combination of those located on the bottom surface of the wetland, lake, stream, or river.

"Temporary erosion control" means on-site and off-site control measures that are needed to control conveyance or deposition of earth, turbidity, or pollutants during development, construction, or restoration.

"Tertiary habitat" means habitat that supports some wildlife but does not satisfy the definition of secondary or critical habitat.

"Tree" means any self-supporting perennial woody plant characterized by natural growth of one main stem or trunk with a definite crown, and maturing at a height of at least six feet above the ground.

"Tree base fee" means the current cost of the tree based on species and minimum code required installation size, installation (labor and equipment) maintenance for two years and fund administration.

"Utility" includes natural gas, electric, telephone and telecommunications, cable communications, water, sewer or storm drainage and their respective facilities, lines, pipes, mains, equipment and appurtenances.

"Variance" means permission to depart from the requirements of the specific regulations of this title for a particular piece of property.

"Volcanic hazard areas" means areas identified by the U.S. Geological Survey (maps dated 1998 or as hereafter revised) as subject to a risk of large lahars with a recurrence interval of 500 to 1,000 years.

"Water dependent use" means a principal use which can only exist when the land/water interface provides biological or physical conditions necessary for the use.

~~"Well" includes any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed when the intended use of an excavation is for the location, diversion, artificial recharge, or withdrawal of ground water.~~

"Wellhead protection area" means the portion of a well's, wellfield's or spring's zone of contribution within the ten-year time of travel boundary, or boundaries established using alternate ~~defined as such using the~~ criteria approved ~~established~~ by the ~~city~~ state Department of Health in those settings where ground water time of travel is not a reasonable delineation criterion~~.~~

"Wetland" or "wetlands" 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. ~~However, w~~Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands. (Definition taken from ~~the Washington State Wetlands Identification and Delineation Manual, Ecology Publication No. 96-94.~~RCW 36.70A.030(23))

"Wetland impact assessment report" means a report prepared by a qualified consultant that identifies, characterizes and analyzes potential impacts to wetlands consistent with applicable provisions of these regulations. A wetland impact assessment may be combined with and include a formal wetland delineation.

"Wetland mosaic" means an area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; on average, patches are less than 100 feet from each other; and areas delineated as vegetated wetland are more than 50% of the total area of the entire mosaic, including uplands and open water.

"Wildlife report" means a report prepared by a qualified consultant that evaluates plant communities and wildlife functions and values on a site, consistent with the format and requirements established by this chapter. The report also includes an analysis of impacts. (Ord. 6287 § 2, 2010; Ord. 5894 § 1, 2005.)

**16.10.030 Applicability – Regulated activities.**

A. The provisions of this chapter shall apply to any activity that potentially affects a critical area or its buffer unless otherwise exempt. Such regulated activities include but are not limited to:

1. Removing, excavating, disturbing or dredging soil, sand, gravel, minerals, organic matter, or materials of any kind;

2. Dumping, discharging or filling with any material;

3. Draining, flooding or disturbing the water level or water table, or diverting or impeding water flow;

4. Driving pilings or placing obstructions;

5. Constructing, reconstructing, demolishing, or altering the size of any structure or infrastructure;

6. Destroying or altering vegetation through clearing, grading, harvesting, shading, or planting vegetation that would alter the character of or impact a critical area;

7. Release of contaminants to soil or water;

8. Activities that result in significant changes in water temperature, physical or chemical characteristics of water sources, including quantity and pollutants; and

9. Any other activity potentially affecting a critical area or buffer not otherwise exempt from the provisions of this chapter as determined by the director.

B. To avoid duplication, the following permits and approvals shall be subject to and coordinated with the requirements of this chapter: land clearing; grading; subdivision or short subdivision; building permit; planned unit development (if permitted by the city code); shoreline substantial development; variance; conditional use permit; and any other permits that may lead to the development or alteration of land.

C. Administrative actions, such as rezones, annexations, and the adoption of plans and programs, shall be subject to the requirements of this chapter. However, the director may, using discretion, permit any studies or evaluations required by this chapter to use methodologies and provide a level of detail appropriate to the administrative action proposed. (Ord. 6187 § 3, 2008; Ord. 5991 § 3, 2006; Ord. 5894 § 1, 2005.)

**16.10.040 Exemptions and nonconforming uses.**

A. The following activities performed on sites containing critical areas as defined by this chapter shall be exempt from the provisions of this chapter:

1. Existing and ongoing agricultural activities, as defined in this chapter;

2. Activities involving artificially created wetlands or streams intentionally created from nonwetland sites, including but not limited to grass-lined swales, irrigation and drainage ditches, retention or detention facilities, and landscape features, except wetlands or streams created as mitigation or that provide critical habitat for salmonids and except when the site contains another critical area;

3. Normal and routine maintenance, operation, repair and reconstruction of existing roads, streets, utilities and associated structures; provided, that reconstruction of any structures may not increase the impervious area and may not cause further encroachment on the critical area or its buffer, and may not result in adverse impacts to surface water and ground water quality. Operation and maintenance includes vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities; 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;

4. Minor Utility and Street Projects. Utility or street projects which have minor or short duration impacts to critical areas, as determined by the director in accordance with the criteria below, and which do not significantly impact the functions or values of a critical area(s); provided, that such projects are constructed with best management practices and additional restoration measures are provided. Minor activities shall not result in the transport of sediment or increased storm water. Such allowed minor utility projects shall meet the following criteria:

a. There is no practical alternative to the proposed activity with less impact on critical areas;

b. The activity involves the placement of underground piping, conduit, traffic signal equipment, lighting equipment, utility pole(s), signs, anchor, or vault or other small component of a utility or street facility;

5. Normal maintenance, repair and reconstruction of residential or commercial structures, facilities and landscaping; provided, that reconstruction of any structures may not increase the previous floor area;

6. The addition of floor area within an existing building which does not increase the building footprint;

7. Additions to a legally established single-family residential structure in existence before May 13, 2005, located within a wetland or stream buffer may be permitted if all of the following criteria are~~a~~ met:

a. The addition is no greater than 500 square feet of building footprint over that in existence as of May 13, 2005;

b. The addition is not located closer to the critical area than the existing structure;

c. Impacts on critical area functions are avoided consistent with the purpose and intent of this title and as demonstrated in a critical areas report by a qualified consultant; and

d. There are no changes in slope stability, flood conditions or drainage;

8. Site investigative work and studies that are prerequisite to preparation of an application for development authorization including soils tests, water quality studies, wildlife studies and similar tests and investigations; provided, that any disturbance of the critical area shall be the minimum necessary to carry out the work or studies;

9. Educational activities, scientific research, and outdoor passive recreational activities, including but not limited to interpretive field trips, birdwatching and hiking, that will not have a significant effect on the critical area;

10. Emergency activities necessary to prevent an immediate threat to public health, safety, property or the environment which requires immediate action within a time too short to allow full compliance with this chapter as long as any alteration undertaken pursuant to this subsection is reported to the city as soon as possible. Only the minimum intervention necessary to reduce the risk to public health, safety or welfare and/or the imminent risk of damage to private property shall be authorized by this exemption. The director shall confirm that an emergency exists or existed and determine what, if any, additional applications and/or measures shall be required to protect the environment consistent with the provision of this section and to repair any damage to a pre-existing resource;

11. Activities affecting previously legally filled wetlands~~ or wetlands accidentally created by human actions prior to July 1, 1990 (the effective date of the Growth Management Act). The latter shall be documented through photographs, statements and/or other conclusive evidence~~;

12. Activities in storm and water quality basins and "wetlands" created by poorly maintained or plugged culverts or lines, and artificially created ditches that are not used by salmonids;

13. Minor activities not mentioned above and determined by the director to have minimal impacts to a critical area.

B. Notwithstanding the exemptions provided by this subsection, any otherwise exempt activities occurring in or near a critical area shall comply with the purpose and intent of these standards and shall consider on-site alternatives that avoid or minimize significant adverse impacts.

C. Exempt activities occurring in flood hazard areas shall not alter flood storage capacity or conveyance except in conformance with floodplain ~~drainage~~ requirements of Chapter 15.68 ACC.

D. No property owner or other entity shall undertake exempt activities in subsections (A)(2), (7) or (13) of this section without first providing 14 days' notice to the city in writing and receiving confirmation in writing that the proposed activity is exempt. In case of any question as to whether a particular activity is exempt from the provisions of this section, the director's determination shall govern and shall be confirmed in writing.

E. An established use or existing structure that was lawfully permitted prior to May 13, 2005, but which is not in compliance with this chapter, shall be deemed a nonconforming use as defined in ACC 18.04.650. Unless otherwise provided for, existing structures, which intrude into critical areas buffers, shall not be reconstructed in such a manner that results in the further intrusion into the buffer area. Structures or developments that are nonconforming solely due to being contrary to the provisions of this chapter shall not be subject to the nonconforming use provisions of Chapter 18.54 ACC. (Ord. 5894 § 1, 2005.)

**16.10.050 Critical areas maps.**

Maps have been developed by the city that show the general location of critical areas. These maps are available for reference at the city ~~planning and~~department of community development~~ department~~. These maps shall be used for informational purposes as a general guide only for the assistance of property owners and other interested parties; the boundaries and locations shown are generalized. The actual presence or absence, type, extent, boundaries and classification of critical areas on a specific site shall be identified in the field by a qualified consultant and determined by the city, according to the procedures, definitions and criteria established by this chapter. In the event of any conflict between the critical area location or designation shown on the city's maps and the criteria or

standards of this section, the criteria, definition, and standards shall prevail. (Ord. 6287 § 2, 2010; Ord. 5894 § 1, 2005.)

**16.10.060 Relationship to other regulations.**

A. These critical area regulations shall apply as an overlay and in addition to zoning, land use and other regulations established by the city of Auburn. In the event of any conflict between these regulations and any other regulations of the city, the regulations which provide greater protection to critical areas shall apply.

B. Areas characterized by particular critical areas may also be subject to other regulations established by this chapter due to the overlap or multiple functions of some sensitive or critical areas. Wetlands, for example, may be defined and regulated according to the wetland, habitat and stream management provisions of this chapter. In the event of any conflict between overlapping regulations for multiple critical areas on the same site, the regulations which provide greater protection to critical areas shall apply. (Ord. 5894 § 1, 2005.)

C. Compliance with the provisions of this Chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Shoreline Substantial Development Permits, Hydraulic Project Approval (HPA) permits, Army Corps of Engineers Section 404 permits, National Pollutant Discharge Elimination System (NPDES) permits). The applicant is responsible for complying with these requirements, apart from the process established in this Chapter. Where applicable, the director will encourage use of information such as permit applications to other agencies or special studies prepared in response to other regulatory requirements to support required documentation submitted for critical areas review.

**16.10.070 Critical area review process and application requirements.**

A. Pre-Application Conference. A pre-application conference is available and encouraged prior to submitting an application for a project permit.

B. Application Requirements.

1. Timing of Submittals. Concurrent with submittal of a State Environmental Policy Act (SEPA) checklist, or concurrent with submittal of an application for projects exempt from SEPA, a critical area report must be submitted to the city for review when the city believes that a critical area may be present. The purpose of the report is to determine the extent, characteristics and functions of any critical areas located on or potentially affected by activities on a site where regulated activities are proposed. The report will also be used by the city to determine the appropriate critical area classification and, if applicable, to establish appropriate buffer requirements.

2. Report Contents. Reports and studies required to be submitted by this chapter shall contain, at a minimum, the information indicated in the provisions of this chapter applicable to each critical area. The director may tailor the information required to reflect the complexity of the proposal and the sensitivity of critical areas that may potentially be present.

C. Consultant Qualifications and City Review. All reports and studies required of the applicant by this section shall be prepared by a qualified consultant as that term is defined in these regulations. The city may retain a qualified consultant paid for by the applicant to review and confirm the applicant's reports, studies and plans if the following circumstances exist:

1. The city has technical information that is unavailable to the applicant; or

2. The applicant has provided inaccurate or incomplete information on previous proposals or proposals currently under consideration.

D. Review Process. This section is not intended to create a separate critical area review permit for development proposals. To the extent possible, the city shall consolidate and integrate the review and processing of critical area-related aspects of proposals with other land use and environmental considerations and approvals. Any permits required by separate codes or regulations, such as floodplain development permits or shoreline substantial development permits, shall continue to be required. (Ord. 6295 § 4, 2010; Ord. 5894 § 1, 2005.)

**16.10.080 Classification and rating of critical areas.**

A. To promote consistent application of the standards and requirements of this chapter, critical areas within the city of Auburn shall be rated or classified according to their characteristics, function and value, and/or their sensitivity to disturbance.

B. Classification of critical areas shall be determined by the director based on consideration of the following factors and in the following order:

1. Consideration of the technical reports submitted by qualified consultants in connection with applications subject to these regulations;

2. Application of the criteria contained in these regulations; and

3. Critical areas maps maintained by the ~~planning and~~ department of community development ~~department~~.

C. Wetland Classification. ~~Wetlands shall be designated Category I, Category II, Category III, Category IV and as artificially created according to the criteria in this section.~~ Wetlands ~~classifications~~ shall be rated according to ~~incorporate~~ the Washington Department of Ecology ~~State~~ ~~W~~wetlands ~~R~~rating ~~S~~system, as set forth in the ~~for Western~~ *Washington State Wetland Rating System for Western Washington: 2014 Update* (~~(Department of~~ Ecology~~, 2004,~~ Publication no. 14-06-029, or as revised and approved by Ecology). ~~Publication No. 04-06-025). Wetland rating categories shall be applied as the wetland exists on the date of adoption of the rating system by the local government, as the wetland naturally changes thereafter, or as the wetland changes in accordance with permitted activities.~~ Wetland rating categories shall not change due to illegal modifications.

1. "Category I wetlands" ~~are those~~include wetlands which ~~meet any of the following criteria~~: represent unique or rare wetland types, are more sensitive to disturbance than most wetlands, are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime, or provide a high level of functions, as indicated by a rating system score of twenty-three (23) points or more on the classification system referenced above.

~~a. Represent a unique or rare wetland type; or~~

~~b. Are more sensitive to disturbance than most wetlands; or~~

~~c. Are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or~~

~~d. Are providing a high level of functions, scoring 70 points or more out of 100 (DOE Wetlands Rating System, 2004); or~~

~~e. Are characterized as a national heritage wetland; or~~

~~f. Are characterized as a bog; or~~

~~g. Are over one acre and characterized as a mature and old-growth forested wetland.~~

2. "Category II wetlands" ~~are~~: ~~those wetlands which are not Category I wetlands and which meet any of the following criteria:~~

~~a. P~~provide high levels of some functions, being difficult, though not impossible to replace, and~~;~~ have a~~or~~ a moderately high level of functions, scoring between twenty (20) and twenty-two (22) points.

~~b. Perform most functions relatively well, scoring 51-69~~20 - 22 ~~out of 100~~27 points (DOE Wetlands Rating System, 2010~~4~~).

3. "Category III wetlands" have a score between sixteen (16) and nineteen (19) points, generally have been disturbed in some way and are often less diverse or more isolated from other natural resources in the landscape

than Category II wetlands. ~~Such wetlands are: are those wetlands that are not Category I or II wetlands, and which meet the following criterion:~~

~~a. Provide moderate levels of functions, scoring between 30 – 50 out of 100 points (DOE Wetlands Rating System, 2004). Wetlands with a moderate level of functions (scoring between 16 and 19 points);~~

~~b. Can often be adequately replaced with a well-planned mitigation project;~~

~~c. Interdunal wetlands between 0.1 and 1 acre.~~

4. "Category IV wetlands" ~~are those wetlands that meet the following criterion:~~ have the lowest levels of functions, scoring fewer than sixteen (16) points and are often heavily disturbed. These are wetlands that should be able to be replaced, or in some cases be improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

~~a. Provide low levels of functions, scoring less than 30~~16 ~~out of 100~~27 ~~points (DOE Wetlands Rating System, 20~~104~~).~~

5. "Artificially created wetlands" are purposefully created landscape features, ponds and storm water detention or retention facilities. Artificially created wetlands do not include wetlands created as mitigation, and wetlands modified for approved land use activities. Purposeful creation must be demonstrated to the director through documentation, photographs, statements and/or other evidence. Artificial wetlands intentionally created from nonwetland sites are excluded from regulation under this section.

D. Stream Classification. Streams shall be classified according to the water typing system as provided in WAC 222-16-030, as amended, and designated as ~~Class I~~Type S, ~~Class II~~Type F, ~~Class III~~Type Np, and ~~Class IV~~Type Ns ~~according to the criteria in this section:~~.

1. "~~Class I~~ Type S streams" are those natural streams identified as "shorelines of the state" under Chapter 90.58 RCW and the city of Auburn shoreline master program.

2. "~~Class II~~Type F streams" are those natural streams that are not Class I streams and are either perennial or intermittent and have one of the following characteristics:

a. Contain fish habitat; or

b. Has significant recreational value, as determined by the director.

3. "~~Class III~~Type Np streams" are those natural streams with perennial (year-round) or intermittent flow and do not contain fish habitat.

4. "~~Class IV~~ Type Ns streams" are those natural streams and drainage swales with channel width less than two feet taken at the ordinary high water mark, that do not contain fish habitat.

5. "Intentionally created streams" are those manmade streams defined as such in these regulations, and do not include streams created as mitigation. Purposeful creation must be demonstrated through documentation, photographs, statements and/or other evidence. Intentionally created streams may include irrigation and drainage ditches, grass-lined swales and canals. Intentionally created streams are excluded from regulation under this section, except manmade streams that provide "critical habitat," as designated by federal or state agencies, for salmonids.

E. Wildlife Habitat Classification. Wildlife habitat areas shall be classified as critical, secondary or tertiary according to the criteria in this section:

1. "Critical habitat" are those habitat areas which meet any of the following criteria:

a. The documented presence of species or habitat listed by federal or state agencies as "endangered," "threatened," or "sensitive"; or

b. The presence of unusual nesting or resting sites such as heron rookeries;

c. Category I wetlands, as defined in these regulations; or

d. ~~Class I~~Type S streams, as defined in these regulations.

2. "Secondary habitat" is habitat which is valuable to fish and wildlife and supports a wide variety of species due to its undisturbed nature, a diversity of plant species and structure, presence of water, or the area's size, location, or seasonal importance.

3. "Tertiary habitat" is habitat which is not classified as critical or secondary. It is habitat which, while supporting some wildlife and performing other valuable functions, does not currently possess essential characteristics necessary to support diverse wildlife communities. Tertiary habitat also includes habitat which has been created purposefully by human actions to serve other or multiple purposes, such as open space areas, landscape amenities, and detention facilities.

F. Aquifer Recharge ~~Ground Water Protection~~ Areas. The following ~~Ground water protection~~ areas are hereby designated as aquifer recharge areas subject to review under this ~~in this~~ chapter. ~~correspond to water resource protection areas,~~:

Type I.

~~which are described in the "Water Resource Protection Report" prepared for the city by Pacific Groundwater Group, December 2000. Water resource protection areas are based on time-related "capture zones" also referred to as "time-of-travel zones" which are derived using a numerical ground water flow model developed for the city and upon geologic conditions. A capture zone is the area that supplies ground water recharge to a pumping well or a spring. A time-related capture zone is the area that supplies ground water recharge to a pumping well or spring within a specified period of time. The location of ground water protection areas have been revised to include all of a parcel where capture zones include a portion of the parcel.~~

~~Ground water protection areas have been divided into four zones as follows:~~

~~1. "Ground water protection zone 1" represents the land area overlying the one-year time-of-travel zone of any well or spring owned by the city.~~

~~2. "Ground water protection zone 2" represents the land area in the central part of the city beneath which the principal aquifer used by the city for water supply is overlain by highly permeable sand and gravel deposits. These geologic conditions provide a direct pathway for contaminants that may be released to the soil to reach the aquifer.~~

~~3. "Ground water protection zone 3" represents the land area overlying the region between the one-year and 10-year time-of-travel zone of any well or spring owned by the city.~~

~~4. "Ground water protection zone 4" represents the land area within the city limits not designated as water resource protection zones 1, 2 or 3.~~

1. Sole source aquifers and wellhead protection areas designated pursuant to the Federal Safe Drinking Water Act;

2. Areas established for special protection pursuant to a ground water management program as described by Chapters 90.44, 90.48 and 90.54 RCW and Chapters 173-100 and 173-200 WAC

3. Any other area meeting the definition of "areas with a critical recharging effect on aquifers used for potable water" as described in Chapter 365-190 WAC and the Auburn comprehensive plan, including ground water protection areas #1-3 as designated in the "Water Resource Protection Report" prepared for the City by the Pacific Groundwater Group, December 2000.

Type II

1. Ground water protection area #4 as designated in the "Water Resource Protection Report" prepared for the city by the Pacific Groundwater Group, December 2000.

2. Any other area within the city that is not otherwise designated or that is added to the city via annexation shall be treated as a Type II aquifer recharge area.

G. Geologically Hazardous Classifications. Geologically hazardous areas shall be classified according to the criteria in this section:

1. Critical Erosion Hazard Areas. Critical erosion hazard areas are lands or areas underlain by soils identified by the U.S. Department of Agriculture Soil Conservation Service (SCS), now known as the Natural Resource Conservation Service, as having "severe" or "very severe" erosion hazards. This includes the following group of soils when they occur on slopes of 15 percent or greater: Alderwood-Kitsap (AkF), Alderwood gravelly sandy loam (AgD), Kitsap silt loam (KpD), Everett (EvD), and Indianola (InD).

2. Landslide Hazard Areas. Landslide hazard areas are classified as Class I, Class II, Class III, or Class IV as follows:

a. Class I/Low Hazard. Areas with slopes of 15 percent or less.

b. Class II/Moderate Hazard. Areas with slopes of between 15 percent and 40 percent and that are underlain by soils that consist largely of sand, gravel, or glacial till.

c. Class III/High Hazard. Areas with slopes between 15 percent and 40 percent that are underlain by soils consisting largely of silt and clay.

d. Class IV/Very High Hazard. Areas with slopes steeper than 15 percent with mappable zones of emergent water (e.g., springs or ground water seepage), areas of known (mappable) landslide deposits regardless of slope, and all areas with slopes 40 percent or greater.

3. Seismic Hazard Areas. Seismic hazard areas are lands that, due to a combination of soil and ground water conditions, are subject to severe risk of ground shaking, subsidence, or liquefaction of soils during earthquakes. These areas are typically underlain by soft or loose saturated soils (such as alluvium), have a shallow ground water table and are typically located on the floor of river valleys. (Ord. 6287 § 2, 2010; Ord. 5894 § 1, 2005.)

**16.10.090 Buffer areas and setbacks.**

A. General Provisions. The establishment of on-site buffers, buffer areas or setbacks shall be required for all development proposals and activities in or adjacent to ~~critical areas~~wetlands, streams, wildlife habitat, and geologically hazardous areas. The purpose of the buffer shall be to protect the integrity, function, value, and resources of the subject critical area (in the case of wetlands, streams, and/or wildlife habitat areas), and/or to protect life, property and resources from risks associated with development on unstable or critical lands (in the case of geologically hazardous areas). Buffers shall typically consist of an undisturbed area of native vegetation retained or established to achieve the purpose of the buffer. No buildings or structures shall be allowed within the buffer unless as otherwise permitted by this section. If the site has previously been disturbed, the buffer area shall be revegetated pursuant to an approved enhancement plan. Buffers shall be protected during construction by placement of a temporary barricade, notice of the presence of the critical area and implementation of appropriate erosion and sedimentation controls. Restrictive covenants or conservation easements may be required to provide long-term preservation and protection of buffer areas.

B. Required buffer widths shall reflect the sensitivity of the particular critical area and resource or the risks associated with development and, in those circumstances permitted by these regulations, the type and intensity of human activity proposed to be conducted on or near the critical area.

C. Buffers shall be measured as follows:

1. Wetland buffers – the buffer shall be measured perpendicular from the wetland edge as delineated and marked in the field using the ~~1997 Washington State~~ approved federal ~~W~~wetland~~s~~ ~~Identification and D~~delineation ~~M~~manual and the Western Mountains, Valleys, and Coast Regional supplement. Wetland delineations are valid for five years; after such date the City shall determine whether a revision or additional assessment is necessary;

2. Stream buffers – the buffer shall be measured perpendicular from the ordinary high water mark;

3. Geologically hazardous area buffers shall be required for critical landslide hazard areas and shall be measured from the top and toe and along the sides of the slope.

D. Buffer Width Variances. A variance from buffer width requirements may be granted by the city subject to the variance criteria set forth in ACC 16.10.160. Minor variances, defined as up to and including 10 percent of the requirement, shall be considered by the director. Variance requests which exceed 10 percent shall be considered by the hearing examiner.

E. Buffer widths shall be established for specific critical areas according to the following standards and criteria:

1. Wetland buffers shall be established ~~as follows:~~ per the following table. Different buffer width requirements may apply to various portions of a site, without requiring averaging or variances, based on the site plan, the intensity of land uses in various locations, and differences in the category of wetland.

| **Wetland Category** | **Minimum Buffer Width (in feet) with Minimization Measures listed in ACC 16.10.090(E)(2)** | | | **Min~~ax~~imum Buffer Width (in feet) without Minimization Measures listed in ACC 16.10.090(E)(2)** ~~(see subsection (E)(1) (g) of this section)~~ | | |
|---|---|---|---|---|---|---|
| | **Habitat Score*** | | | **Habitat Score*** | | |
| | **Low (3-5)** | **Medium (6-7)** | **High (8-9)** | **Low (3-5)** | **Medium (6-7)** | **High (8-9)** |
| Category I | ~~100 feet~~75 | 110 | 225 | ~~200 feet~~100 | 150 | 300 |
| Category II | ~~50 feet~~75 | 110 | 225 | ~~100 feet~~100 | 150 | 300 |
| Category III | ~~25 feet~~60 | 110 | 225 | ~~50 feet~~80 | 150 | 300 |
| Category IV | ~~25 feet~~40 | 40 | 40 | ~~30 feet~~50 | 50 | 50 |

**As determined per ACC 16.10.080(C).*

a. Standard buffer widths as noted in subsection (E)(1) in the Table heading "Without Minimization Measures" of this section may be reduced to the buffer width in the Table heading "With Minimization Measures", if all of the following minimization measures are implemented and as follows:

i. For wetlands that score 6 points or more for habitat function, a relatively undisturbed, vegetated corridor at least 100 feet wide is protected between the wetland and any other Priority Habitats as defined by the Washington State Department of Fish and Wildlife. The corridor must be protected for the entire distance between the wetland and the Priority Habitat consistent with ACC 16.10.110(D). Presence or absence of a nearby habitat must be confirmed by a qualified biologist

ii. For wetlands that score 3-5 habitat points, on the minimization measures are required.

| **Disturbance** | **Required Measures to Minimize Impacts** |
|---|---|
| Lights | - Direct lights away from wetland |

| | |
|---|---|
| Noise | - Locate activity that generates noise away from wetland<br><br>- If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source<br><br>- For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the activity |
| Toxic runoff | - Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered<br><br>- Establish covenants limiting use of pesticides within 150 ft of wetland<br><br>- Apply integrated pest management |
| Stormwater Runoff | - Retrofit stormwater detention and treatment for roads and existing adjacent development<br><br>- Prevent channelized flow from lawns that directly enters the buffer<br><br>- Use Low Intensity 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<br><br>- Place wetland and its buffer in a separate tract or protect with a long term conservation easement |
| Dust | - Use best management practices to control dust |

~~Different buffer width requirements may apply to various portions of a site, without requiring averaging or variances, based on the site plan, the intensity of land uses in various locations, and differences in the category of wetland.~~

~~a~~b. Buffer ~~width~~ averaging to improve wetland protection may be permitted when all of ~~may be allowed where the applicant demonstrates to the director that the wetland contains variations in sensitivity due to existing physical characteristics, that lower intensity land uses would be located adjacent to areas where buffer width is reduced, that width averaging will not adversely impact the wetland functional values and/or that the total area contained within the buffer after averaging is no less in area than contained within the standard buffer prior to averaging. Buffer width averaging may be allowed only where such reduction shall not result in greater than a 35 percent reduction in the buffer width established in this section and the applicant demonstrates~~ the following conditions are met:

i. ~~The proposed buffer area is extensively vegetated and has less than 25 percent slopes, and the reduction will not result in adverse impacts to the wetland; or~~ The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a "dual-rated" wetland with a Category I area adjacent to a lower-rated area.

ii. The ~~project includes a~~ buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas report from a qualified wetland professional. ~~enhancement plan, as part of the mitigation required by this chapter and has less than 25 percent slopes. The buffer enhancement plan shall use plant species which are native to the project area, and shall substantiate that an enhanced buffer will improve the functional attributes of the buffer to provide additional protection for wetland functional values; or~~

iii. The total area of the buffer after averaging is equal to the area required without averaging ~~acreage included in the buffer would substantially exceed the size of the wetland and the reduction will not~~

~~result in adverse impacts to the wetland and the project includes a buffer enhancement plan which ensures that the reduction will not result in adverse impacts to the wetland.~~.

iv. The buffer at its narrowest point is never less than either 75% of the required width or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever buffer is greater.

~~b. Buffer width may be reduced by up to 35 percent if an applicant undertakes measures approved by the director to enhance or restore the buffer. The restoration or enhancement may include, but is not limited to, planting of native trees or shrubs, increasing the diversity of plant cover types or replacement of exotic species with native species which approximate in composition a naturally occurring plant community.~~

~~c~~b~~. Application of subsections (E)(1)(a) and (b) of this section shall not result in a buffer width less than 25 feet.~~

~~d~~c. Certain uses and activities which are consistent with the purpose and function of the wetland buffer and do not detract from its integrity may be permitted by the director within the buffer depending on the sensitivity of the wetland. Examples of uses and activities with minimal impacts which may be permitted in appropriate cases include permeable pedestrian trails, viewing platforms, and utility easements~~; provided, that any impacts to the buffer resulting from such permitted activities shall be mitigated. Uses permitted within the buffer shall generally be located as far from the wetland as possible~~. ~~Walkways and trails~~ Trails and easements should be limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent (25%) of the wetland buffer area, and located to avoid removal of significant trees. Trails ~~They~~ should be limited to pervious surfaces no more than five (5) feet in width for pedestrian use only. Raised boardwalks utilizing non-treated pilings may be acceptable.

~~e~~d. Where existing buffers are degraded, the director may allow limited filling within the buffer when the applicant demonstrates that the buffer will be enhanced according to standards of this chapter, including appropriate soil preparation, will not result in slopes exceeding 25 percent, and there will be no net loss of wetland or buffer functions and values.

~~f. Long-term protection of a regulated wetland and its associated buffer shall be provided by one of the following methods. It shall be placed in a separate tract on which development is prohibited, protected by execution of an easement dedicated to the city, a conservation organization or land trust, or similarly preserved through a permanent protective mechanism acceptable to the city. The location and limitations associated with the wetland and its buffer shall be shown on the face of the deed or plat applicable to the property and shall be recorded with the King or Pierce County recording department~~.

~~g. The director may require increased buffer widths up to the amount in this column when a larger buffer is deemed necessary to protect wetland functions and values based on site conditions, site design, intensity and operational characteristics of the development/land use. Examples where increased buffers may be required include, but are not limited to, where a larger buffer is necessary to maintain viable populations of species listed as endangered, threatened or sensitive, or when land adjacent to the buffer is susceptible to severe erosion and erosion control measures are inadequate to effectively prevent adverse wetland impacts.~~

2. Stream buffers shall be established as follows:

| **Stream ~~Class~~Type** | **Minimum Buffer Width (in feet)** |
|---|---|
| ~~Class I (see subsection (E)(2)(b) of this section)~~Type S | ~~100 feet~~Per SMP |

| **Stream ~~Class~~Type** | **Minimum Buffer Width (in feet)** |
|---|---|
| ~~Class II~~ Type F | ~~75 feet~~100 |
| ~~Class III~~Type Np | ~~25 feet~~ 50 |
| ~~Class IV~~Type Ns | ~~25 feet~~ 50 |

a. The applicable minimum buffer for ~~Class I~~Type S streams ~~shall be the larger of the buffer established by these regulations or that established by~~is listed in the city's shoreline master program (SMP).

b. The buffer widths required in this section may be increased by the director up to a maximum of 50 percent for ~~Class I, II and IV~~Type F, and Ns streams and up to 100 percent for ~~Class III~~ Type Np streams in response to site-specific conditions and based on the report information submitted to characterize the functions and values of the stream. This includes, but is not limited to, situations where the critical area serves as habitat for threatened, endangered or sensitive species. The applicant may propose to implement one or more enhancement measures, listed in order of preference below, which will be considered in establishing buffer requirements:

i. Removal of fish barriers to restore accessibility to anadromous fish.

ii. Enhancement of fish habitat using log structures incorporated as part of a fish habitat enhancement plan.

iii. Enhancement of wildlife habitat by adding structures that are likely to be used by wildlife, including wood duck houses, bat boxes, nesting platforms, snags, root wads/stumps, birdhouses, and heron nesting areas.

iv. Additional mitigating measures may include but are not limited to:

(A) Landscaping outside the buffer area with native vegetation or a reduction in the amount of clearing outside the buffer area;

(B) Planting native vegetation within the buffer area, especially vegetation that would increase value for fish and wildlife, increase stream bank or slope stability, improve water quality, or provide aesthetic/recreational value;

(C) Creating a surface channel where a stream was previously culverted or piped;

(D) Removing or modifying existing stream culverts (such as at road crossings) to improve fish passage and flow capabilities which are not detrimental to fish;

(E) Upgrading retention/detention facilities or other drainage facilities beyond required levels; or

(F) Similar measures determined applicable by the director.

c. No structures or improvements shall be permitted within the stream buffer area, including buildings, decks, docks, except as otherwise permitted or required under the city's adopted shoreline master program, or under one of the following circumstances:

i. When the improvements are part of an approved enhancement, restoration or mitigation plan; or

ii. For construction of new public roads and utilities, and accessory structures, when no feasible alternative location exists; or

iii. Construction of foot trails, according to the following criteria:

(A) Designed to minimize impact of permeable materials;

(B) Designed to minimize impact on the stream system;

(C) Of a maximum width of 12 feet;

(D) Located within the outer half of the buffer, i.e., the portion of the buffer that is farther away from the stream; or

iv. Construction of footbridges; or

v. Construction of educational facilities, such as viewing platforms and informational signs.

d. Buffer width averaging may be allowed for ~~Class II~~Type F and ~~Class III~~ Type Np streams only; provided, that all of the following are demonstrated by the applicant:

i. One or more of the enhancement measures identified in subsection (E)(2)(b)(i) through (iv) of this section is implemented;

ii. The total area contained within the buffer after averaging is no less in area than contained within the standard buffer prior to averaging;

iii. The buffer width averaging will result in stream functions and values equal or greater than before averaging; and

iv. The buffer width is not reduced by more than ~~35~~ 25 percent in any location than the buffer widths established by this chapter.

e. Stream buffer widths may be reduced by the director on a case-by-case basis by up to ~~35~~ 25 percent if an applicant demonstrates that a reduction will not result in any adverse impact to the stream. Further, if an existing buffer is vegetated, a buffer enhancement plan may be required to demonstrate how the function and values of the buffer and stream will be improved. If the existing buffer has been disturbed and/or is not vegetated, an enhancement plan shall be required that identifies measures to enhance the buffer functions and values and provide additional protection for the stream function and values. Enhancement plans are subject to approval by the ~~planning~~ director.

~~f. Long-term protection of a regulated stream and its associated buffer shall be provided by one of the following methods, except for the portion of Class I streams which are owned by the State Department of Natural Resources. The stream and buffer shall be placed in a separate tract on which development is prohibited, protected by execution of an easement dedicated to the city, a conservation organization, land trust, or similarly preserved through a permanent protective mechanism acceptable to the city. The location and limitations associated with the stream and its buffer shall be shown on the face of the deed or plat applicable to the property and shall be recorded with the King or Pierce County recording department~~.

3. Wildlife Habitat Areas.

a. Buffer widths for critical habitat areas shall be determined by the director based on consideration of the following factors: species recommendations of the Department of Fish and Wildlife; recommendations contained in the wildlife report and the nature and intensity of land uses and activities occurring on the site and on adjacent sites. Buffers shall not be required for secondary or tertiary habitat.

b. Buffer widths for critical habitat areas may be modified by averaging buffer widths or by enhancing or restoring buffer quality.

c. Certain uses and activities which are consistent with the purpose and function of the buffer for critical habitat areas and do not detract from its integrity may be permitted by the director within the buffer

depending on the sensitivity of the habitat area. Examples of uses and activities with minimal impact which may be permitted in appropriate cases include permeable pedestrian trails and viewing platforms and utility easements; provided, that any impacts to the buffer resulting from permitted facilities shall be mitigated. When permitted, such facilities shall generally be located as far from the critical habitat area as possible.

~~d. Long-term protection of critical habitat areas and their associated buffer(s) shall be provided by one of the following methods. The critical habitat area and buffer(s) shall be placed in a separate tract on which development is prohibited, protected by execution of an easement, dedicated to the city, a conservation organization, land trust, or similarly preserved through a permanent protective mechanism acceptable to the city. The location and limitations associated with the critical habitat area and its buffer(s) shall be shown on the face of the deed or plat applicable to the property and shall be recorded with the King or Pierce County recording department.~~

4. Geologically Hazardous Areas.

a. Required buffer widths for geologically hazardous areas shall reflect the sensitivity of the geologically hazardous area in question and the types and the risks associated with development and, in those circumstances permitted by these regulations, the type and intensity of human activity and site design proposed to be conducted on or near the area.

b. Required buffers may vary in width. The widths of the buffer shall reflect the sensitivity of the geologically hazardous area in question and the types and density of uses proposed on or adjacent to the geologic hazard. In determining the appropriate buffer width, the director shall consider the recommendations contained in any geotechnical~~logic hazards~~ report required by these regulations and prepared by a qualified consultant.

c. Buffers may be reduced to a minimum width of 15 feet when the applicant demonstrates through the geotechnical~~logic hazard~~ report that the reduction will adequately protect the geologic hazard and the proposed development through use of proposed engineering techniques. (Ord. 5894 § 1, 2005.)

**16.10.100 Alteration or development of critical areas – Standards and criteria – Prohibited Uses.**
Alteration of specific critical areas and/or their buffers may be allowed by the director subject to the criteria of this section. Alteration shall implement the mitigation standards as identified in ACC 16.10.110, and the performance standards of ACC 16.10.120 and the monitoring requirements of ACC 16.10.130.

A. Wetlands.

1. Category I Wetlands. Alterations of Category I wetlands shall be avoided subject to the reasonable use provisions of this chapter.

2. Category II Wetlands.

a. Alteration and mitigation shall comply with the mitigation performance standards and requirements of these regulations;

b. Where enhancement, restoration or creation is proposed, replacement ratios shall comply with the requirements of these regulations; and

c. No net loss of wetland functions and values may occur.

3. Category III and IV Wetlands.

a. Alteration and mitigation shall comply with the mitigation performance standards and requirements of these regulations;

b. Where enhancement, restoration or creation is proposed, replacement ratios shall comply with the requirements of these regulations; and

c. No net loss of wetland functions and values may occur.

d. The following wetlands may be exempt from the requirement to avoid impacts and they may be filled if the impacts are fully mitigated based on the remaining actions. If available, impacts should be mitigated through the purchase of credits from an in-lieu fee program or mitigation bank, consistent with the terms and conditions of the program or bank. Mitigation requirements may be determined using the credit/debit tool described in *Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report* (Ecology Publication #10-06-011, or as revised and approved by Ecology). In order to verify the following conditions, a critical area report for wetlands meeting the requirements in ACC 16.10.060 must be submitted.

i. All non-federally regulated Category IV wetlands less than 4,000 square feet that:

(A) Are not associated with riparian areas or their buffers

(B) Are not associated with shorelines of the state or their associated buffers

(C) Are not part of a wetland mosaic

(D) Do not score 6 or more points for habitat function based on the 2014 update to the *Washington State Wetland Rating System for Western Washington: 2014 Update* (Ecology Publication #14-06-029, or as revised and approved by Ecology).

(E) Do not contain a Priority Habitat or a Priority Area for a Priority Species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat, or species of local importance identified in ACC 16.10.080(E).

ii. Wetlands less than 1,000 square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this Chapter.

B. Streams.

1. Relocation of a ~~Class II~~Type F, ~~III~~Np and ~~IV~~Ns stream exclusively to facilitate general site design shall not be allowed. Relocation of a stream may take place only when it is part of an approved mitigation or enhancement/restoration plan, and will result in equal or better habitat and water quality, and will not diminish the flow capacity of the stream.

2. Bridges shall be used to cross ~~Class I~~Type S streams; boring/micro-tunneling may be considered for utility crossings if it would result in the same or lower impacts as bridging.

3. Culverts are allowable only under the following circumstances:

a. Only in ~~Class II, III, and IV~~Type F, Type Np, and Type Ns streams;

b. When fish passage will not be impaired;

c. When the following design criteria are met:

i. ~~Oversized~~ All new culverts ~~will~~ shall be ~~installed~~ designed following guidance provided in the Washington Department of Fish and Wildlife's document: Water Crossing Design Guidelines, 2013 (or most recent version thereof). The applicant shall obtain a HPA from the Department of Fish and Wildlife;

ii. Culverts will include gradient controls and creation of pools within the culvert for ~~Class II~~Type F streams;

iii. Gravel substrate will be placed in the bottom of the culvert to a minimum depth of one foot for ~~Class II~~Type F and ~~Class III~~ Type Np streams;

d. The applicant or successors shall, at all times, keep any culvert free of debris and sediment to allow free passage of water and, if applicable, fish. This responsibility shall be part of the required long term preservation measure and may be subject to securing all the necessary approvals for any ongoing maintenance.

4. The city may require that an existing culvert be removed from a stream as a condition of approval, unless the culvert is not detrimental to fish habitat or water quality, or removal would be a long-term detriment to fish or wildlife habitat or water quality.

C. Wildlife Habitat.

1. Critical Habitat. Alterations of critical habitat shall be avoided, subject to the reasonable use provisions of this chapter.

2. Secondary Habitat. Alterations of secondary habitat may be permitted; provided, that the applicant mitigates adverse impacts consistent with the performance standards of ACC 16.10.120, and other requirements of this chapter.

3. Tertiary Habitat. Alterations of tertiary habitat are permitted consistent with applicable provisions of these regulations and provided that no other regulated critical area is present.

D. ~~Ground Water Protection~~ Aquifer Recharge Areas. ~~Requests to establish~~ T~~t~~he following land uses and activities applied for on or after the effective date of the ordinance codified in this chapter, as amended, shall be prohibited in ~~ground water protection zones 1, 2, and 3:~~ Type I aquifer recharge areas:

1. Class V injection wells that inject industrial, municipal, or commercial waste fluids (as defined in WAC 173-218-030);

2. Surface impoundments for treating, storing and disposing of dangerous waste (as defined in WAC 173-303-040 and 173-304-100);

3. Waste piles for treating or storing solid waste (as defined in WAC 173-303-040, 173-303-660 and 173-304-420);

4. Hazardous waste treatment, storage, and disposal (as defined in WAC 173-303-040);

5. All types of solid waste landfills (as defined in WAC 173-304-100);

6. On-site sewage systems (as defined in WAC 246-272A ~~01001~~) except as related to R-~~R~~C, ~~rural~~ residential conservancy zoned properties;

7. Recycling facilities that accept, store, or use hazardous ~~materials;~~ substances as defined in WAC 173-218-030.

8. Underground storage of hazardous ~~materials~~ substances as defined in WAC 173-218-030, excluding the underground storage of petroleum and other ~~regulated~~ substances as regulated by Chapter 173-360A WAC;

9. Use, storage, treatment, or production of perchlorethylene (PCE) or tetrachloroethylene (PERC), other than in closed-loop systems that do not involve any discharge of ~~PCE~~chemicals;

10. Petroleum refining, reprocessing, and storage, excluding the underground storage of petroleum products and other substances as regulated by Chapter 173-360A WAC;

11. Petroleum-product pipelines not associated with underground storage of petroleum and other regulated substances as regulated by Chapter 173-360 WAC; and

12. Storage or distribution of gasoline treated with the additive methyl tertiary butyl ether (MTBE).

E. Geologically Hazardous Areas.

1. General Standards. The city may approve, condition or deny proposals for the alteration of geologically hazardous areas, as appropriate, based on the degree to which the significant risks posed by critical hazard areas to public and private property and to public health and safety can be mitigated. The objective of mitigation measures shall be to render a site containing a critical geologic hazard as safe as one not containing such hazard or one characterized by a low hazard. In appropriate cases, conditions may include limitations of proposed uses, modification of density, alteration of site layout and other appropriate changes to the proposal. Where potential impacts cannot be effectively mitigated or where the risk to public health, safety and welfare, public or private property, or important natural resources is significant notwithstanding mitigation, the proposal shall be denied.

2. Specific Standards.

a. Class IV Landslide Hazard Areas. Alteration shall be prohibited subject to the reasonable use provisions of this chapter.

b. Critical Seismic Hazard Areas.

i. For one-story and two-story residential structures, the applicant shall conduct an evaluation of site response and liquefaction potential based on the performance of similar structures under similar foundation conditions; or

ii. For all other proposals, the applicant shall conduct an evaluation of site response and liquefaction potential including sufficient subsurface exploration to provide a site coefficient (S) for use in the static lateral force procedure described in the International Building Code.

c. When development is permitted in geologically hazardous areas by these regulations, an applicant and/or its qualified consultant shall provide assurances which, at the city's discretion, may include one or more of the following:

i. A letter from the geotechnical engineer and/or geologist who prepared the geotechnical~~logic hazard~~ report required by these regulations, stating that the risk of damage from the proposal, both on-site and off-site, are minimal subject to the conditions set forth in the report, that the proposal will not increase the risk of occurrence of the potential geologic hazard, and that measures to eliminate or reduce risks have been incorporated into its recommendations;

ii. A letter from the applicant, or the owner of the property if not the applicant, stating its understanding and acceptance of any risk of injury or damage associated with development of the site and agreeing to notify any future purchasers of the site, portions of the site, or structures located on the site of the geologic hazard;

iii. A legally enforceable hold harmless agreement, which shall be recorded as a covenant and noted on the face of the deed or plat, and executed in a form satisfactory to the city, acknowledging that the site is located in a geologically hazardous area; the risks associated with development of such site; and a waiver and release of any and all claims of the owner(s), their directors, employees, or successors, or assigns against the city of Auburn for any loss, damage, or injury, whether direct or indirect, arising out of issuance of development permits for the proposal; and

iv. Posting of a bond, guarantee or other assurance device approved by the city to cover the cost of monitoring, maintenance and any necessary corrective actions.

F. Flood Hazard Areas. Development standards are defined by Chapter 15.68 ACC. (Ord. 5894 § 1, 2005.)

**16.10.110 Mitigation standards, location, and timing, ~~criteria~~ wetland replacement ratios, and ~~plan~~ long term protection requirements.**

A. Mitigation Standards. Adverse impacts to critical area functions and values shall be mitigated. Mitigation actions shall generally be implemented in the preferred sequence identified in this chapter. Proposals which include less preferred and/or compensatory mitigation shall demonstrate that:

1. All feasible and reasonable measures as determined by the department have been taken to reduce impacts and losses to the critical area, or to avoid impacts where avoidance is required by these regulations;

2. The restored, created or enhanced critical area or buffer will be as viable and enduring as the critical area or buffer area it replaces; and

3. No overall net loss will occur in wetland or stream functions and values. The mitigation shall be functionally equivalent to or greater than the altered wetland or stream in terms of hydrological, biological, physical, and chemical functions.

B. Location and Timing of Mitigation.

1. The preferred location of mitigation is on site when ecologically preferable to other identified alternatives. Mitigation may be allowed off site when it is determined by the ~~department~~ Director that on-site mitigation is not ecologically preferable to other identified alternatives, or, in the case of wetlands, where the affected site is identified as appropriate for off-site mitigation in the Mill Creek Special Area Management Plan (SAMP), April 2000. The burden of proof shall be on the applicant to demonstrate that mitigation cannot be provided on site or is consistent with the SAMP. If it is determined that on-site mitigation is not ecologically preferable to other identified alternatives, mitigation shall be provided in the same drainage basin as the permitted activity on property owned, secured, or controlled by the applicant, or provided by the applicant using alternative mitigation options such as mitigation banking or in-lieu fee programs. The mitigation should result in no net loss to the critical area functions impacted and associated watershed. Where mitigation is authorized to be located outside the city limits, the applicant shall assure to the satisfaction of the ~~department~~ director that other requirements of this chapter will be met, including but not limited to, monitoring and maintenance.

2. In-kind mitigation shall be provided except when the applicant demonstrates, and the ~~department~~ director concurs, that greater functional and habitat value can be achieved through out-of-kind mitigation.

3. When wetland, stream or habitat mitigation is permitted by these regulations, the mitigation project shall occur near an adequate water supply (river, stream, ground water) with a hydrologic connection to the critical area to ensure a successful mitigation or restoration. A natural hydrologic connection is preferential as compared to one which relies upon manmade or constructed features requiring routine maintenance.

4. Any mitigation plan shall be completed before initiation of other permitted activities, unless a phased or concurrent schedule that assures completion prior to occupancy has been approved by the department.

C. Wetland Replacement Ratios.

1. Where wetland alterations are permitted by the director, the applicant shall enhance or create areas of wetlands in order to compensate for wetland losses. The compensation shall be determined according to acreage, function, type, location, timing factors and projected success of enhancement or creation.

2. The following acreage replacement and enhancement ratios shall be implemented; however, the department may vary these standards if the applicant can demonstrate and the director agrees that the variation will provide adequate compensation for lost wetland area, functions and values, or if other circumstances as determined by the director justify the variation. ~~Except as provided for Category IV wetlands in subsection (C)(3) of this section, i~~In no case shall the amount of mitigation be less than the area of affected wetland. The director may at his discretion increase these standards where mitigation is to occur off-site or in other appropriate circumstances.

3. Category IV wetlands can be mitigated by either: (a) meeting one of the replacement ratios ~~(*se~~listed in the following table~~)~~; or (b) filled and ~~implementing~~ mitigated~~ion~~ consistent with 16.10.100(A)(3)(d) ~~which ensures no net loss of values and functions of the larger ecosystem in which the critical area is located~~.

| ~~Wetland~~ Category and type of Wetland | ~~Wetland~~ Creation ~~Ratio (Acres)~~or Re-establishment | | Rehabilitation | ~~Wetland~~ Enhancement ~~Ratio (Acres)~~ |
|---|---|---|---|---|
| – | ~~(Acres Created or Enhanced: Acres Impacted)~~ | | | |
| Category I: Bog, Natural Heritage Site | ~~6:1~~ Not considered possible | | Case by case | ~~12:1~~Case by case |
| Category I: Mature Forested | 6:1 | | 12:1 | 24:1 |
| Category I: Based on functions | 4:1 | | 8:1 | 16:1 |
| Category II | ~~Forested~~ 3:1 | | 6:1 | ~~6~~12:1 |
| – | ~~Scrub/Shrub~~ | ~~2:1~~ | ~~4:1~~ | |
| – | ~~Emergent~~ | ~~2:1~~ | ~~4:1~~ | |
| Category III | ~~Forested~~ 2~~3~~:1 | | 4:1 | ~~6~~8:1 |
| – | ~~Scrub/Shrub~~ | ~~2:1~~ | ~~4:1~~ | |
| – | ~~Emergent~~ | ~~2:1~~ | ~~4:1~~ | |
| Category IV~~*~~ | 1.25:1~~*~~ | | 3:1 | ~~2.5~~6:1~~*~~ |

D. Long-term protection of regulated wetlands, streams, wildlife habitat areas, geologically hazardous areas, aquifer recharge areas, and any associated buffer(s) shall be provided by one of the following methods:

1. ~~It~~ For subdivisions, short subdivisions, and binding site plans, the critical area and its buffer shall be p~~lace~~rotected long-term by one of the following measures in the following order of preference:

a. The critical area and its buffer shall be placed in a separate tract on which development is prohibited and a note shown on the face of the plat indicating that the homeowners or homeowners' association is responsible for maintenance of the tract. If the City agrees to accept dedication of the tract, a City-approved note shall be shown on the face of the plat indicating that the City is responsible for long term ownership and maintenance of the tract and there shall be adequate provisions for City access to the tract from a public street, as approved by the director.

b. The critical area and its buffer shall be protected by execution of an easement dedicated to the city, a conservation organization or land trust, or similarly preserved through a permanent protective mechanism acceptable to the city. Access to the easement must be assured from the public street.

2. For all other developments. The critical area and its buffer shall be protected by execution of an easement dedicated to the city, a conservation organization, or land trust~~,~~ or similarly preserved through a permanent protective mechanism acceptable to the city. The legal description, depicted location, ~~and~~ limitations associated with the critical area and its buffer, and access from the public street shall be ~~shown~~included within ~~on~~ the easement document.

~~face of the deed or plat applicable to the property and~~ The easement provisions shall be reviewed and acceptable to the City prior to record~~ed~~ing with the King County Recorder or Pierce County ~~recording department~~Auditor. ~~Any area in which Department of Natural Resources has jurisdiction, ownership such as Type S streams, will not be subject to this requirement.~~

(Ord. 6476 § 1, 2013; Ord. 5894 § 1, 2005.)

**16.10.120 Performance standards for mitigation planning.**
The performance standards in this section shall be incorporated into mitigation plans submitted to the city for impacts to critical areas.

A. Wetlands and Streams.

1. Use plants native to the Puget Lowlands or Pacific Northwest ecoregion; non-native, introduced plants or plants listed by the Washington State Department of Agriculture as noxious weeds (Chapter 16-750 WAC) shall not be used;

2. Use plants adapted to and appropriate for the proposed habitats and consider the ecological conditions known or expected to be present on the site. For example, plants assigned a facultative wetland (FACW) wetland indicator status should be used for sites with soils that are inundated or saturated for long periods during the growing season. Use nearby reference wetlands or aerial photos to identify plants suitable to the site conditions and hydrologic regimes planned for the mitigation site. Avoid planting significant areas of the site with species that have questionable potential for successful establishment, such as species with a narrow range of habitat tolerances;

3. Utilize plant species' heterogeneity and structural diversity that emulates native plant communities described in "Natural Vegetation of Oregon and Washington" (Franklin, J.F. and C.T. Dyrness, 1988) or other regionally recognized publications on native landscapes;

4. Specify plants that are commercially available from native-plant nurseries or available from local sources. If collecting some or all native plants from donor sites, collect in accordance with ecologically accepted methods, such as those described in the "Washington Native Plant Society's Policy on Collection and Sale of Native Plants," that do not jeopardize the survival or integrity of donor plant populations;

5. Use perennial plants in preference to annual species; the use of annuals species should be limited to a temporary basis in order to provide erosion control, support the establishment of perennial plants, or if mitigation monitoring determines that native plants are not naturally colonizing the site or if species diversity is unacceptably low compared to approved performance standards;

6. Use plant species high in food and cover value for native fish and wildlife species that are known or likely to use the mitigation site (according to reference wetlands, published information, and professional judgment);

7. Install a temporary irrigation system and specify an irrigation schedule and responsible party to maintain unless a sufficient naturally-occurring source of water is demonstrated. Temporary irrigation facilities shall be removed after the time specified by the qualified consultant;

8. Identify methods of soil preparation. For stream substrate or wetland soils, at least one foot of clean inorganic and/or organic materials, such as cobble, gravel, sand, silt, clay, muck, soil, or peat, as appropriate, shall be ensured. The stream substrate or wetland soils shall be free from solid, dangerous, or hazardous substance as defined by Chapter 70.105 RCW and implementing rules;

9. Confine temporary stockpiling of soils to upland areas. Identify construction access routes and measures to avoid resultant soil compaction. Unless otherwise approved by the director, comply with all applicable best management practices for clearing, grading, and erosion control to protect any nearby surface waters from sediment and turbidity;

10. Show densities and placement of plants; these should be based on the ecological tolerances of species proposed for planting, as determined by a qualified consultant;

11. Provide sufficient specifications and instructions to ensure proper placement and spacing of seeds, tubers, bulbs, rhizomes, springs, plugs and transplanted stock, and other habitat features, and to provide a high probability of success, and to reduce the likelihood of prolonged losses of wetland functions from proposed development;

12. Do not rely on fertilizers and herbicides to promote establishment of plantings; if fertilizers are used, they must be applied per manufacturer specifications to planting holes in organic or controlled release forms, and never broadcast on the ground surface; if herbicides are used to control invasive species or noxious weeds and to help achieve performance standards, only those approved for use in aquatic ecosystems by the Washington Department of Ecology shall be used; herbicides shall only be used in conformance with all applicable laws and regulations and be applied per manufacturer specifications by an applicator licensed in the state of Washington; and

13. Include the applicant's mitigation plan consultant in the construction process to ensure the approved mitigation plan is completed as designed. At a minimum, the consultant's participation will include site visits to inspect completed rough and final grading, installation of in-water or other habitat structures, and to verify the quality and quantity of native plant materials before and after installation;

14. Signs and Fencing of Wetlands and Streams Critical Areas.

a. Temporary Markers. The outer perimeter of the critical area or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that no unauthorized intrusion will occur, and verified by the department prior to the commencement of authorized activities. This temporary marking shall be maintained throughout construction, and shall not be removed until permanent signs, if required, are in place.

b. Permanent Signs. As a condition of any permit or authorization issued pursuant to this chapter, the department may require the applicant to install permanent signs along the boundary of a critical area or buffer. Permanent signs shall be made of metal face and attached to a metal post, firmed anchored, or other materials of equal durability approved by the director. Signs must be posted at an interval of one per lot or every 50 feet, whichever is less, and must be maintained by the property owner in perpetuity. The sign shall be worded as follows or with alternative language approved by the director:

"~~Habitat Conservation Area~~Sensitive Area Boundary~~"~~

"~~Do Not Disturb~~Help protect and care for this area. Trampling or cutting vegetation, placing fill or garbage, and any other activities that may disturb the sensitive area are prohibited, as regulated under Auburn City Code Chapter 16.10.

Please contact City of Auburn at 253-931-3090 with questions or concerns."

~~Contact the City of Auburn Planning Department regarding uses and restrictions~~

c. Fencing.

i. The director shall condition any permit or authorization issued pursuant to this chapter to require the application to install a permanent fence at the edge of the critical area or buffer, when fencing will prevent future impacts on the critical area.

ii. The applicant shall be required to install a permanent fence around the critical area or buffer when domestic grazing animals are present or may be introduced on-site.

iii. Fencing installed as part of a proposed activity or as required in this subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes habitat impacts.

iv. Fencing shall include a permanent natural wood split-rail fence, such as cedar or other non-pressure treated wood with fence posts be set in concrete footings, or similar, as approved by the director.

B. Wetlands. Do not exceed a maximum water depth of 6.6 feet (two meters) at mean low water unless approved as part of a planned interspersion of wetland vegetation classes and deep-water habitats.

1. Do not exceed a slope of 25 percent (4H:1V) in the wetland unless it can be clearly demonstrated by supporting documentation that wetland hydrology and hydric soils capable of supporting hydrophytic (wetland) vegetation will be created on steeper slopes;

2. Do not exceed a slope of 25 percent (4H:1V) in the wetland buffer; and

3. Limit deep-water habitat (greater than 6.6 feet at mean low water) in compensatory wetland to no more than 60 percent of the total area, and approach this limit only when deep-water habitat is highly interspersed with wetland vegetation classes, including aquatic bed, emergent, scrub-shrub, and forested.

C. Wildlife Habitat Conservation Areas.

1. Incorporate relevant performance standards from subsections A and B of this section, as determined by the director;

2. Include the following additional mitigation measures in mitigation planning:

a. Locate buildings and structures in a manner that minimizes adverse impacts on critical habitats used by threatened or endangered species and identified by the Washington State Department of Fish and Wildlife, NOAA Fisheries, and U.S. Fish and Wildlife Service;

b. Integrate retained habitat into open space and landscaping;

c. Wherever possible, consolidate critical habitats into larger, unfragmented, contiguous blocks;

d. Use native plant species for landscaping of disturbed or undeveloped areas and in any habitat enhancement or restoration activities;

e. Create habitat heterogeneity and structural diversity that emulates native plant communities described in Natural Vegetation of Oregon and Washington (Franklin, J.F. and C.T. Dyrness, 1988) or other regionally recognized publications on native landscapes;

f. Remove and/or control any noxious weeds or exotic animals which are problematic to the critical habitat area as determined by the director or consultant hired by the city to review the mitigation plan; and

g. Preserve significant or existing native trees, preferably in stands or groups, consistent with achieving the goals and standards of this chapter; the plan shall reflect the report prepared pursuant to ACC 16.10.070.

D. Geologically Hazardous Areas.

1. Incorporate relevant performance standards from the preceding subsections, as determined by the director;

2. The following additional performance standards shall be reflected in proposals within geologically hazardous areas:

a. A geotechnical ~~logic hazard~~ report shall be prepared to identify and evaluate potential hazards and to formulate mitigation measures;

b. Construction methods will not adversely affect geologic hazards or will reduce adverse impacts on geologic hazards;

c. Site planning shall minimize disruption of existing topography and natural vegetation;

d. Impervious surface coverage shall be minimized;

e. Disturbed areas shall be replanted with permanent vegetation as soon as feasible pursuant to a mitigation or landscape plan;

f. Clearing and grading shall be limited to between April 1st and October 31st unless the geotechnical~~logic hazard~~ report specifically addresses measures necessary to perform clearing and grading during other portions of the year;

g. The limited use of retaining walls that minimize disturbance or alteration of existing natural slope areas are preferred over graded slopes;

h. Temporary erosion and sedimentation controls, pursuant to an approved plan, shall be implemented during construction;

i. A drainage plan shall be prepared for large projects as required by the city engineer;

j. Development shall not increase instability or create a hazard to the site or adjacent properties, or result in a significant increase in sedimentation or erosion.

E. ~~Ground Water Protection~~ Aquifer Recharge Areas. ~~A mitigation plan is~~ Protective measures are required of all development except an individual single-family or two-family (duplex) dwelling unit. ~~The mitigation plans~~ Development applications shall include the following minimum measures and incorporate the appropriate responses.

1. ~~Ground Water Protection Zones 1, 2 and 3~~Type I Aquifer Recharge Areas.

a. Indicate how hazardous ~~materials~~ substances shall be stored and used such that any unauthorized release or discharge of the hazardous ~~materials~~ substances is prevented.

b. Specify that pesticides, herbicides, and fertilizers shall be applied in strict conformance with manufacturer's instructions and by persons licensed to perform such applications, if applicable.

c. Document hazardous ~~materials~~ substances management procedures, including, but not limited to, operations plans, drawings and as-built diagrams, emergency response and spill cleanup plans, and employee training documentation. This information can be provided in the form of copies of permits or other documentation required by other authorities.

d. Indicate that any fill material shall be documented to be free of contaminants that exceed Method A and Method B soil cleanup standards specified in Chapter 173-340 WAC prior to placement on the ground, if applicable.

e. Specify that any contaminant release reported to the Washington State Department of Ecology (Ecology) per Chapter 173-340 WAC shall also be reported to the city of Auburn public works department concurrent with notification of Ecology.

f. Include a provision that the implementation of the ~~mitigation plan~~ protective measures will be ~~kept up-to-date~~ maintained during the life of the project. Updates shall occur whenever there is a change in use or business occupancy or when there are significant changes in facility operations or hazardous ~~materials~~ substances management. A copy of the plan is to be available for review by city inspectors at the business or businesses within the development. The plan should cover the facility site in general as well as have a section(s) specific to any tenants within the development.

2. ~~Ground Water Protection Zone 4~~Type II Aquifer Recharge Areas. ~~Business~~ Property owners shall implement best management practices for water resource protection. (Ord. 5894 § 1, 2005.)

**16.10.130 Monitoring program and contingency plan.**

A. For all actions requiring a mitigation plan, a monitoring program shall be prepared and implemented by the applicant to evaluate the success of the mitigation project and to determine necessary corrective actions. This program shall determine if the original goals and objectives are being met. The monitoring program shall be reviewed and approved by the city prior to implementation. The monitoring program shall include a contingency plan in the event that implementation of the mitigation plan is inadequate or fails.

B. A performance and maintenance security is required to ensure the applicant's compliance with the terms of the approved mitigation plan. The amount of the performance security shall equal 125 percent of the cost of the mitigation project for the length of the monitoring period; the director may agree to reduce the security in proportion to work successfully completed over the period of the security.

C. Incorporate the following into monitoring programs prepared to comply with this chapter:

1. Appropriate, accepted, and unbiased qualitative or precise and accurate quantitative sampling methods to evaluate the success or failure of the project compared to performance standards approved by the city;

2. Quantitative sampling methods that include permanent photo points installed at the completion of construction and maintained throughout the monitoring period and shall also include permanent transects, sampling points (e.g., quadrants or water quality or quantity monitoring stations), and wildlife monitoring stations;

3. Clearly stipulated qualitative and quantitative sampling methods that are approved by the city before implementation by the project proponent;

4. Appropriate qualitative and/or quantitative performance standards that will be used to measure the success or failure of the mitigation. For wetlands, streams and habitat areas these will include, at a minimum, standards for plant survival and diversity, including structural diversity, the extent of wetland hydrology, hydric soils, and habitat types and requirements as appropriate; all proposed standards are subject to review and approval by the city or the consultant selected by the city to review the mitigation monitoring plan. The qualitative and/or quantitative performance standards shall generally address the following subject areas:

a. Requirements for survival of plantings;

b. Requirements for plant density or percent cover by plants;

c .Requirements for plant diversity (species composition diversity, structural diversity – tree, shrub, and groundcover layers, deciduous and evergreen, etc.);

d, Requirements that are staged over time so that different performance standards must be met as the mitigation area matures;

e. Measures to verify that the type and amount of functional areas that are part of the mitigation plan are successfully established (e.g. identify steps that will be implemented to confirm that the amount and type of created wetland meets the criteria of a wetland);

f. Requirements specifically limiting occurrence of exotic and nuisance plant species'

g. Requirements for ongoing preservation and protection measures such as continued existence in good condition of fencing and critical area signage. Also, avoidance of disturbance, trampling and the accumulation of litter or debris within the critical area ~~wetland~~ and its buffer.

5. Monitoring programs for a minimum period of ~~three~~ five years for buffer enhancement and ~~a minimum of five years for~~ other types of mitigation programs that include, at a minimum, preparation of an as-built plan; biannual monitoring and preparation of annual monitoring reports following implementation; and a maintenance plan. More stringent monitoring requirements or longer monitoring periods may be required on a case-by-case basis for more complex mitigation plans (e.g. ten years or more when forested or scrub-shrub wetlands are the intended result);

6. Monitoring reports shall be submitted to the director by December 1st of the year in which monitoring is conducted. The reports are to be prepared by a qualified consultant and must contain all qualitative and quantitative monitoring data, photographs, and an evaluation of each of the applicable performance standards. If performance standards are not being met, appropriate corrective or contingency measures must be identified and communicated to the director and upon concurrence, implemented to ensure that performance standards will be met;

7. Provision for the extension of the monitoring period beyond the minimum timeframe if performance standards are not being met at the end of the initial five-year period; and provision for additional financial securities or bonding to ensure that any additional monitoring and contingencies are completed to ensure the success of the mitigation. (Ord. 5894 § 1, 2005.)

**16.10.140 Procedural provisions.**

A. Interpretation and Conflicts. The director shall have the authority to administer the provisions of this chapter, to make determinations with regard to the applicability of the regulations, to interpret the intent of unclear provisions, to require additional information, to determine the level of detail and appropriate methodologies for critical area reports and studies, to prepare application forms and informational materials as required, and to promulgate procedures and rules for unique circumstances not anticipated within standards and procedures contained in this section. Administrative interpretations may be appealed to the hearing examiner as prescribed in ACC 18.70.050.

B. Penalties and Enforcement. Compliance with these regulations and penalties for their violation shall be enforced pursuant to the procedures set forth in Chapter 1.25 ACC.

C. Appeals of~~from~~ Critical Area Review Decisions. Appeals of critical area review decisions shall be governed by the procedures set forth in ACC 18.70.050. (Ord. 5894 § 1, 2005.)

**16.10.150 Reasonable use provision.**

A. The standards and requirements of these regulations are not intended, and shall not be construed or applied in a manner, to deny all reasonable use of private property. If an applicant demonstrates to the satisfaction of the hearing examiner that strict application of these standards would deny all reasonable economic use of a property, development may be permitted subject to appropriate conditions.

B. Applications for a reasonable use exception shall be processed as a Type III decision, pursuant to ACC 14.03.030 and Chapter 2.46 ACC.

C. An applicant for relief from strict application of these standards shall demonstrate that all of the following criteria are met:

1. No reasonable use with less impact on the critical area and its buffer is possible.

There is no feasible and reasonable on-site alternative to the activities proposed, considering possible changes in site layout, reductions in density and similar factors, that would allow a reasonable and economically viable use with fewer adverse impacts;

2. The proposed activities, as conditioned, will result in the minimum possible impacts to affected critical areas;

3. All reasonable mitigation measures have been implemented or assured;

4. The inability to derive reasonable use is not the result of the applicant's actions or that of a previous property owner, such as by segregating or dividing the property and creating an undevelopable condition; and

5. The applicant shall demonstrate that the use would not cause a hazard to life, health or property.

D. Any alteration of a critical area approved under this section shall be subject to appropriate conditions and will require mitigation construction authorized by ~~under~~ an approved mitigation plan.

E. The burden of proof shall be on the applicant to provide evidence in support of the application and to provide sufficient information on which any decision has to be made.

~~E~~F. Approval of a reasonable use exception shall not eliminate the need for any other permit or approval otherwise required for a proposal by applicable city codes.

~~F~~G. Except when application of this title would deny all reasonable use of a site, an applicant who seeks an exception from the regulations of the title shall pursue a variance as provided in ACC 16.10.160. (Ord. 6442 § 13, 2012; Ord. 5894 § 1, 2005.)

**16.10.160 Variances.**
Applications for variances to the strict application of the terms of this chapter to a property may be submitted to the city. Minor variances, defined as up to and including 10 percent of the requirement, may be granted by the director as a Type II decision as defined by Chapter 14.03 ACC. Variance requests which exceed 10 percent may be granted by the hearing examiner as a Type III decision, pursuant to ACC 14.03.030 and Chapter 2.46 ACC. Approval of variances from the strict application of the critical area requirements shall conform to the following criteria:

A. There are unique physical conditions peculiar and inherent to the affected property which make it difficult or infeasible to strictly comply with the provisions of this section;

B. The variance is the minimum necessary to accommodate the building footprint and access;

C. The proposed variance would preserve the functions and values of the critical area, and/or the proposal does not create or increase a risk to the public health, safety and general welfare, or to public or private property;

D. The proposed variance would not adversely affect surrounding properties adjoining;

E. Adverse impacts to critical areas resulting from the proposal are minimized; and

F. The special circumstances or conditions affecting the property are not a result of the actions of the applicant or previous owner. (Ord. 6442 § 14, 2012; Ord. 5894 § 1, 2005.)

**16.10.170 Special exception for public agencies and utilities.**
A. If the application of this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.

B. Exception Request and Review Process. An application for a public agency and utility exception shall be made to the city and shall include a critical area identification form; critical area report, including mitigation plan, if necessary; and any other related project documents such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC). The director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with public agency and utility exception review criteria in subsection D of this section.

C. Hearing Examiner Review. The hearing examiner shall review the application and director's recommendation, and conduct a public hearing pursuant to the provisions of Chapter 2.46 ACC. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the public agency and utility exception criteria in subsection D of this section.

D. Public Agency and Utility Review Criteria. The criteria for review and approval of public agency and utility exceptions follow:

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

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

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

4. ~~The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with other applicable regulations and standards.~~ The proposal protects critical area functions and values to the extent feasible and provides for mitigation in accordance with the provisions of this chapter; and

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

E. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application. (Ord. 6442 § 15, 2012; Ord. 5894 § 1, 2005.)

**16.10.180 Severability.**
If any provision of these regulations or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of these regulations or the application to other persons or circumstances shall not be affected. (Ord. 5894 § 1, 2005.)