

Chapter 18.04

CRITICAL AREAS

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18.04.010 Definitions.

- A. Words not defined in this Title shall be as defined in the City of Benton City Code, the Washington Administrative Code, or the Revised Code of Washington. Words not found in either code shall be as defined in the Webster's Third New International Dictionary, latest edition.
 - 1. Adaptive Management. Adaptive management relies on scientific methods to evaluate how well regulatory and non-regulatory actions protect the critical area. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty.
 - 2. Adjacent. Immediately adjoining (in contact with the boundary of the influence area) or within a distance that is less than that needed to separate activities from critical areas to ensure protection of the functions and values

of the critical areas. Adjacent shall mean any activity or development located:

- a. On a site immediately adjoining a critical area;
 - b. A distance equal to or less than the required critical area buffer width and building setback;
 - c. A distance equal to or less than one-half mile (2,640 feet)¹ from a bald eagle nest;
 - d. A distance equal to or less than two hundred (200) feet² upland from a stream, wetland or water body;
 - e. Bordering or within the floodway, floodplain or channel migration zone; or
 - f. A distance equal to or less than two hundred (200) feet³ from a critical aquifer recharge area.
3. Advance Mitigation. Mitigation of an anticipated critical area impact or hazard completed according to an approved critical area report and prior to site development.
 4. Agricultural Activities. Those activities conducted on lands defined in RCW 84.34.080 (2), and those existing activities involved in the production of crops or livestock. Activities may include the operation and maintenance of farm and stock ponds or drainage ditches; operation and maintenance of existing ditches or irrigation systems; changes from one type of agricultural activity to another agricultural activity; normal maintenance, repair, and operation of existing serviceable structures, facilities or improved areas. Activities that bring a non-agricultural area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a non-agricultural use or has lain idle for more than five (5) years.
 5. Alteration. Any human induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to grading, filling, channelizing, dredging, clearing (vegetation), construction, compaction, excavation or any other activity that changes the character or the critical area.
 6. Andromous Fish. Fish that spawn and rear in freshwater and mature in the marine environment. While Pacific salmon die after their first spawning, adult char (bull trout) can live for many years, moving in and out of saltwater and

¹ Distance of 2,640 feet is based on Department of Fish and Wildlife "Management Recommendations for Washington's Priority Species, Volume IV: Birds."

² Distance of 200 feet was established based upon a review of Department of Fish and Wildlife "Management Recommendations for Washington's Priority Habitats: Riparian," 1997; and Department of Ecology "Wetland Buffers: Use and Effectiveness," 1992.

³ Distance of 200 feet is a suggested distance to ensure that activities within the critical aquifer recharge area are included under this Chapter, even when the exact boundaries of the critical aquifer recharge area are not known at the time of application.

spawning each year. The life history of Pacific salmon and char contains critical periods of time when these fish are more susceptible to environmental and physical damage than at other times. The life history of salmon, for example, contains the following stages: upstream migration of adults, spawning, inter-gravel incubation, rearing, smoltification (the time period needed for juveniles to adjust their body functions to live in the marine environment), downstream migration, and ocean rearing to adults.

7. Applicant. A person who files an application for permit under this Title and who is either the owner of the land on which that proposed activity would be located, a contract purchaser, or the authorized agent of such a person.
8. Aquifer. A geological formation, group of formations or part of formation that is capable of yielding a significant amount of water to a well or spring.
9. Aquifer, Confined. An aquifer bounded above and below by beds of distinctly lower permeability than that of the aquifer itself and that contains ground water under sufficient pressure for the water to rise above the top of the aquifer.
10. Aquifer Recharge Areas. Areas that, due to the presence of certain soils, geology, and surface water, act to recharge ground water by percolation.
11. Aquifer, Sole Source. An area designated by the U.S. Environment Protection Agency under the Safe Drinking Water Act of 1974, Section 1424(e). The aquifer(s) must supply fifty percent (50%) or more of the drinking water for an area without a sufficient replacement available.
12. Aquifer Susceptibility. The ease with which contaminants can move from the land surface to the aquifer based solely on the types of surface and subsurface materials in the area. Susceptibility usually defines the rate at which a contaminant will reach an aquifer unimpeded by chemical interactions with the vadose zone media.
13. Aquifer, Unconfined. An aquifer not bounded above by a bed of distinctly lower permeability than that of the aquifer itself and containing ground water under pressure approximately equal to that of the atmosphere. This term is synonymous with the term "water table aquifer."
14. Area of Shallow Flooding. An area designated AO, AH Zone of the flood insurance map(s). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.
15. Base Flood. A flood event having a one percent (1%) chance of being equaled or exceeded in any given year, also referred to as the 100-year flood. Designations of base flood areas on flood insurance map(s) always include the letters A or V.
16. Basement. Any area of the building having its floor below ground level on all sides.

17. Best Available Science (BAS). Current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 925. Sources of best available science are include in “Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas” published by the Washington Department of Commerce.
18. Best Management Practices (BMPs). Conservation practices or systems of practices and management measures that:
 - a. Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, and sediments;
 - b. Minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical, and biological characteristics of wetlands;
 - c. Protect trees and vegetation designed to be retained during and following site construction; and
 - d. Provide standards for proper use of chemical herbicides within critical areas.
19. Bog. A low-nutrient, acidic wetland with organic soils and characteristic bog plants, which is sensitive to disturbance and impossible to re-create through compensatory mitigation.
20. Breakaway Wall. A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.
21. Buffer or Buffer Zone. An area contiguous to and protects a critical area that is required for the continued maintenance, functioning, and/or structural stability of a critical area.
22. Channel Migration Zone (CMZ). The lateral extent of likely movement along a stream or river during the next one hundred years as determined by evidence of active stream channel movement over the past one hundred (100) years. Evidence of active movement of the one hundred (100) year time frame can be inferred from aerial photos or from specific channel and valley bottom characteristics. The time span typically represents the time it takes to grow mature trees that can provide functional large woody debris to streams. A CMZ is not typically present if the valley width is generally less than two (2) bankfull widths, is confined by terraces, no current or historical aerial photographic evidence exists of significant channel movement, and there is not field evidence or secondary channels with recent scour from stream flow or progressive bank erosion at meander bends. Areas separated from the active channel by legally existing artificial channel constraints that limit bank erosion and channel avulsion without hydraulic connections shall not be considered within the CMZ.

23. Compensation Project. Actions necessary to replace project-induced critical area and buffer losses, including land acquisition, planning, construction plans, monitoring and contingency actions.
24. Compensatory Mitigation. Replacing project-induced wetland losses or impacts, and includes, but is not limited to, the following:
 - a. Restoration. Actions performed to reestablish wetland functional characteristics and processes that have been lost by alterations, activities, or catastrophic events within an area that no longer meets the definition of a wetland.
 - b. Creation. Actions performed to intentionally establish a wetland at a site where it did not formerly exist.
 - c. Enhancement. Actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality.
 - d. Preservation. Actions taken to ensure the permanent protection of existing, high-quality wetlands.
25. Conservation Easement. A legal agreement that the property owner enters into to restrict uses of the land. Such restrictions can include, but are not limited to, passive recreation uses such as trails or scientific uses and fences or other barriers to protect habitat. The easement is recorded on a property deed, runs with the land, and is legally binding on all present and future owners of the property, therefore, providing permanent or long-term protection.
26. Creation. The manipulation of the physical, chemical, or biological characteristics to develop a wetland on an upland or deepwater site, where a wetland did not previously exist. Creation results in a gain in wetland acreage and function. A typical action is the excavation of upland soils to elevations that will produce a wetland hydroperiod and hydric soils, and support the growth of hydrophytic plant species.
27. Critical Aquifer Recharge Area. Areas designated by WAC 365-190-080(2) that are determined to have a critical recharging effect on aquifers for potable water as defined by WAC 365-190-030(2).
28. Critical Areas. Critical areas include any of the following areas or ecosystems; Aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, and wetlands, as defined in RCW 36.70A and this Title.
29. Critical Facility. A facility for which even a slight chance of flooding, inundation, or impact from a hazard event might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, and installations that produce, use or store hazardous materials or hazardous waste.
30. Designated Official. The Mayor of the City of Benton City, City staff operating as the Mayor's designee, or other contract staff or agencies granted the authority to act on behalf of the City for the enforcement of this Title.

31. Developable Area. A site or portion of a site that may be utilized as the location of development, in accordance with the rules of this Title.
32. Development. Any activity upon the land consisting of construction or alteration of structures, earth movement, dredging, dumping, grading, filling, mining, removal of any sand, gravel, or minerals, driving of piles, drilling operations, bulkheading, driving of pilings, clearing of vegetation, or other land disturbance. Development includes the storage or use of equipment or materials inconsistent with the existing use. Development also includes approvals issued by the City of Benton City that bind land to specific patterns or use, including but not limited to, subdivision, short subdivision, zone changes, conditional use permits, and binding site plans. Development activity does not include the following activities:
 - a. Interior building improvements.
 - b. Exterior structure maintenance activities, including painting and roofing.
 - c. Routine landscape maintenance or established, ornamental landscaping, such as lawn mowing, pruning and weeding.
 - d. Maintenance of the following *existing* facilities that does not expand the affected area; septic tanks (routine cleaning); wells; individual utility service connections; and individual cemetery plots in established and approved cemeteries.
 - e. Any temporary or permanent project which modifies structures, land, or shorelines and which does not fall within the allowable exemptions contained in this Code.
33. Development Permit. Any permit issued by the City of Benton City, or other authorized agency, for construction, land use, or the alteration of land.
34. Elevated Building. A building that has no basement and its lowest elevated floor is raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.
35. Emergent Wetland. A wetland with at least thirty percent (30%) of the surface area covered by erect, rooted, herbaceous vegetation extending above the water surface as the uppermost vegetative strata.
36. Enhancement. The manipulation of the physical, chemical, or biological characteristics of a wetland to heighten, intensify or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a change in wetland function(s) and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Examples are planting vegetation, controlling non-native or invasive species, and modifying site elevations to alter hydroperiods.
37. Erosion. The process whereby wind, rain, water, and other natural agents mobilize and transport particles.

38. Erosion Hazard Areas. At least those areas identified by the United State Department of Agriculture National Resources Conservation Service as have a “severe” rill and inter-rill erosion hazard.
39. Exotic. Any species of plants or animals, which are foreign to the planning area.
40. Fish and Wildlife Habitat Conservation Areas. Areas necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created as designated by WAC 365-190-080(5). These areas include:
 - a. Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association;
 - b. Habitats of local importance, including but not limited to areas designated as priority habitat by the Department of Fish and Wildlife;
 - c. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds;
 - d. Waters of the state, including lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington;
 - e. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;
 - f. State natural area preserves and natural resource conservation areas; and
 - g. Land essential for preserving connections between habitat blocks and open spaces.
41. Fish Habitat. Habitat that is used by fish at any life stage at any time of the year, including potential habitat likely to be used by fish that could be recovered by restoration or management and includes off-channel habitat.⁴
42. Flood or Flooding. A general and temporary condition or partial or complete inundation of normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation of runoff of surface waters from any source.
43. Flood Insurance Map. The official map on which the Federal Insurance Administration has delineated the areas of special flood hazards and include the risk premium zones applicable to the community. Also known as “flood insurance rate map” or “FIRM.”
44. Flood Insurance Study. The official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.
45. Floodplain. The total land area adjoining a river, stream, watercourse or lake subject to inundation by the base flood.

⁴ See WAC 222-16-030(5)(h).

46. Flood Protection Elevation. The elevation that is one (1) foot above the base flood elevation.
47. Flood Resistant Material. Materials designed to be resistant to the impacts associated with flooding and defined and described in detail in FEMA Technical Bulletin #2-93, dated April 1993 and FEMA publication FEMA-348, "*Protecting Building Utilities from Flood Damage*."
48. Floodway. The channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood without cumulatively increasing the surface water elevation more than one (1) foot. Also known as the "zero rise floodway."
49. Forest Land. Land primarily useful for growing trees, including Christmas trees subject to the excise tax imposed under R.C.W. 84.33.100 through 84.33.140, for commercial purposes, and that has long-term commercial significance for growing commercially. (.C.W. 36.70A.030(8); W.A.C. 365.191.030(6)).
50. Forested Wetland. A wetland with at least thirty percent (30%) of the surface area covered by woody vegetation greater than twenty (20) feet in height that is at least partially rooted within the wetland.
51. Formation. An assemblage of earth materials grouped together into a unit that is convenient for description or mapping.
52. Formation, Confining. The relatively impermeable formation immediately overlying a confined aquifer.
53. Functions and Values. The beneficial roles served by critical areas including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, ground water recharge and discharge, erosion control, wave attenuation, protection from hazards, historical and archaeological and aesthetic value protection, and recreation. These beneficial roles are not listed in order of priority.
54. Geologically Hazardous Areas. Areas that may not be suited to development consistent with public health, safety or environmental standards, because of their susceptibility to erosion, sliding, earthquake, or other geological events as designated by WAC 365-190-080(4). Types of geologically hazardous areas include: erosion, landslide, seismic, mine, and volcanic hazards.
55. Ground Water. Water in a saturated zone or stratum beneath the surface of land or a surface water body.
56. Ground Water, Perched. Ground water in a saturated zone is separated from the underlying main body of ground water by an unsaturated rock zone.
57. Growth Management Act. RCW 36.70A, and 36.70B, as amended.
58. Habitat Conservation Areas. Areas designated as fish and wildlife habitat conservation areas.

59. Hazard Areas. Areas designated as frequently flooded areas or geologically hazardous areas due to potential for erosion, landslide, seismic activity, mine collapse, or other geological condition.
60. Hazardous Substances. Any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC 173-303-090 or 173-303-100.
61. High Intensity Land Use. Land uses which are associated with high levels of human disturbance or substantial habitat impacts including, but not limited to, commercial uses, industrial uses, and residential uses with five (5) or more units per acre.
62. High Quality Wetlands. Those wetlands that meet the following criteria:
 - a. No, or isolated, human alteration of the wetland topography;
 - b. No human-caused alteration of the hydrology or the wetland appears to have recovered from the alteration;
 - c. Low cover and frequency of exotic plant species;
 - d. Relatively little human related disturbance of the native vegetation, or recovery from past disturbance;
 - e. If the wetland system is degraded, it still contains a viable and high quality example of a native wetland community; and
 - f. No known major water quality problems.
63. Historic Condition. Condition of the land, including flora, fauna, soil, topography, and hydrology that existed before the area and vicinity were developed or altered by human activity.
64. Hydraulic Project Approval (HPA). A permit issued by the state Department of Fish and Wildlife for modifications to waters of the state in accordance with Chapter 75.20 RCW.
65. Hydric Soil. A soil that saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the *Washington State Wetland Identification and Delineation Manual*.
66. Hydrologic Soil Groups. Soils grouped according to their runoff-producing characteristics under similar storm and cover conditions. Properties that influence runoff potential are depth to seasonally high water table, intake rate and permeability after prolonged wetting, and depth to a low permeable layer. Hydrologic soil groups are normally used in equations that estimate runoff from rainfall, but can be used to estimate a rate of water transmission in soil. There are four hydrologic soil groups:
 - a. Low runoff potential and a high rate of infiltration potential;
 - b. Moderate infiltration potential and a moderate rate of runoff potential;

- c. Slow infiltration potential and a moderate to high rate of runoff potential; and
 - d. High runoff potential and very slow infiltration and water transmission rates.
67. Hydrophytic Vegetation. Macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the *Washington State Wetland Identification and Delineation Manual*.
68. Hyporheic Zone. The saturated zone located beneath and adjacent to streams that contains some portion of surface waters, serves as a filter for nutrients, and maintains water quality.
69. Impervious Surface. A hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development or that causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces includes, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater.
70. In-kind Compensation. To replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement "in-category."
71. Infiltration. The downward entry of water into the immediate surface of soil.
72. Injection well(s).
- a. Class I. A well used to inject industrial, commercial, or municipal waste fluids beneath the lowermost formation containing, within one quarter (1/4) mile of the well bore, an underground source of drinking water.
 - b. Class II. A well used to inject fluids:
 - 1) Brought to the surface in connection with conventional oil or natural gas exploration or production and may be commingled with wastewaters from gas plants that are an integral part of production operations, unless those waters are classifieds dangerous wastes at the time of injection;
 - 2) For enhanced recovery of oil or natural gas; or
 - 3) For storage of hydrocarbons that are liquid at standard temperature and pressure.
 - c. Class III. A well used for extraction of minerals, including but not limited to the injection of fluids for:
 - 1) In-situ production of uranium or other metals that have not been conventionally mined;
 - 2) Mining of sulfur by Frasch process; or

3) Solution mining of salts or potash.

d. Class IV. A well used to inject dangerous or radioactive waste fluids.

73. Isolated Wetlands. Those wetlands that are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream, and have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water, including other wetlands.
74. Joint Aquatic Resource Permits Application (JARPA). A single application form that may be used to apply for hydraulic project approvals, shoreline management permits, approvals of exceedance of water quality standards, water quality certifications, coast guard bridge permits, Department of Natural Resources use authorization, and Army Corps of Engineers permits.
75. Land Use, High Intensity. See "High intensity land use."
76. Land Use, Low Intensity. See "Low intensity land use."
77. Land Use, Moderate Intensity. See "Moderate intensity land use."
78. Landslide Hazard Areas. Areas that are potentially subject to risk of mass movement due to a combination of geologic landslide resulting from a combination of geologic, topographic, and hydrologic factors. These areas are typically susceptible to landslides because of a combination of factors including: bedrock, soil, slope gradient, slope aspect, geologic structure, ground water, or other factors.
79. Long-Term Commercial Significance. Includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land. [R.C.W. 36.70A.030(10); W.A.C. 365-190-0303(11)].
80. Low Intensity Land Use. Land uses which are associated with low levels of human disturbance or low habitat impacts, including, but not limited, passive recreation uses, open space uses, and residential uses with four (4) or fewer units per acre.
81. Lowest Floor. The lowest floor of the lowest enclosed area, including the basement. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable requirements of this Title.
82. Mine Hazard Areas. Areas that are underlain by, adjacent to, or affected by mine workings such as adits, gangways, tunnels, drifts, or airshafts, and those areas of probable sink holes, gas releases, or subsidence due to mine workings. Factors that should be considered include: Proximity to development, depth from ground surface to the mine working, and geologic material.

83. Minerals. Gravel, sand, and valuable metallic substances (R.C.W. 36.70A.030(11); W.A.C 365-190-030(12)).
84. Minerals Resource Lands. Lands primarily devoted to the extraction of minerals or that have known potential long-term commercial significance for the extraction of minerals. [W.A.C. 365-191-040(14)]
85. Mitigation. Avoiding, minimizing or compensating for adverse critical areas impact. Mitigation, in the following order of preference, is:
 - a. Avoiding the impact altogether by not taking a certain action or parts of an action;
 - b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
 - c. Rectifying the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project;
 - d. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;
 - e. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
 - f. Compensating for the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
 - g. Monitoring the hazard or other required mitigation and taking remedial action when necessary. Mitigation for individual actions may include a combination of the above measures.
86. Moderate Intensity Land Use. Land uses which are associated with moderate levels of human disturbance or substantial habitat impacts including, but not limited to, low density residential (no more than 1 home per 5 acres), active recreation, and moderate agricultural land uses.
87. Monitoring. Evaluating the impacts of development proposals on the biological, hydrological, and geological elements of such systems and assessing the performance of required mitigation measures throughout the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features, and includes gathering baseline data.
88. Native Growth Habitat Area. An area where native vegetation is preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering and protecting plants and animal habitat;

89. Native Vegetation. Plant species that are indigenous to the area in question.
90. Natural Waters. Waters, excluding water conveyance systems that are artificially constructed and actively maintained for irrigation.⁵
91. Non-conformity. A legally established existing use or legally constructed structure that is not in compliance with current regulations.
92. Non-indigenous. See “exotic.”
93. Off-site Compensation. To replace critical areas away from the site on which a critical area has been impacted.
94. On-site Compensation. To replace critical areas at or adjacent to the site on which a critical areas has been impacted.
95. Ordinary High Water Mark (OHM). That mark which is found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, that the soil has a character distinct from that of the abutting upland in respect to vegetation.
96. Out-of-kind Compensation. To replace critical areas with substitute critical areas whose characteristics do not closely approximate those destroyed or degraded. It does not refer to replacement “out-of-category.”
97. Perched Ground Water. See “Ground water, perched.”
98. Permeability. The capacity of an aquifer or confining bed to transmit water. It is a property of the aquifer or confining bed and is independent of the force causing movement.
99. Porous Soil Types. Soils, as identified by the National Resources Conservation Service, U.S. Department of Agriculture, that contain voids, pores, interstices or other openings which allow that passing of water.
100. Potable Water. Water that is safe and palatable for human use.
101. Practical Alternative. An alternative that is available and capable of being carried out after taking into consideration, cost, existing technology, and logistics in light of overall project purposes, and having less impact to critical areas.
102. Preservation. The removal of a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This term includes the purchase of land or easements, repairing water control structures or fences, or structural protection. Preservation does not result in a gain of wetland acres but may result in a gain in functions over the long term.
103. Priority Habitat. Habitat type or elements with unique or significant value to one or more species as classified by the Department of Fish and Wildlife. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. (WC 173-26-020(34))

⁵ See WAC 222-16-030(5)(d) and WAC 222-16-031 (6)(d)

104. Prior Converted Croplands. Prior converted croplands (PCCs) are defined in federal law as wetlands that were drained, dredged, filled, leveled or otherwise manipulated, including the removal of woody vegetation, before December 23, 1985, to enable production of an agricultural commodity, and that:
- 1) Have had an agricultural commodity planted or produced at least once prior to December 23, 1985;
 - 2) Do not have standing water for more than 14 consecutive days during the growing season, and
 - 3) Have not since been abandoned.
105. Project Area. All areas within fifty (50) feet of the area proposed to be disturbed, altered, or used by the proposed activity of the construction of any proposed structures. When the action binds the land, such as a subdivision, short subdivision, binding site plan, planned unit development, or rezone, the project area shall include the entire parcel, at a minimum.
106. Qualified Professional. A person with expertise through training and/or experience in the area cited who is capable of performing the required services. A person having a Bachelor or Science degree in the appropriate critical areas section with at least two years minimum experience in identifying and delineating critical areas, utilizing local, state, federal manuals and other sources of current Best Available Science to prepare assessments, reports, and mitigation plans for implementing provision of this Ordinance shall be presumed a qualified professional for the purpose of this Ordinance.
107. Recharge. The process involved in the absorption and addition of water to ground water.
108. Reclaimed Water. Municipal wastewater effluent that has been adequately and reliability treated so that it is suitable for beneficial use. Following treatment it is no longer considered wastewater (treatment levels and water quality requirements are given in the water reclamation and reuse standards adopted by the state Departments of Ecology and Health).
109. Re-establishment. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in rebuilding a former wetland and results in a gain in wetland acres and functions. Activities could include removing fill, plugging ditches, or breaking drain tiles.
110. Rehabilitation. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions and processes of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or returning tidal influence to a wetland.

111. Repair or Maintenance. An activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.
112. Restoration. Measures taken to restore an altered or damaged natural feature including:
- a. Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and
 - b. Actions performed to reestablish structural and functional characteristics of the critical area that have been lost by alteration, past management activities, or catastrophic events.
113. Rills. Steep-sided channels resulting from accelerated erosion. A rill is generally a few inches deep and not wide enough to be an obstacle to farm machinery. Rill erosion tends to occur on slopes, particularly steep slopes with poor vegetative cover.
114. Riparian Habitat. Areas adjacent to aquatic systems with flowing water that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other. The width of these areas extends to that portion of the terrestrial landscape that directly influences that aquatic ecosystem by providing shade, fine or large woody material, nutrients, organic and inorganic debris, terrestrial insects, or habitat for riparian-associated wildlife. Widths shall be measured from the ordinary high water mark or from the top of bank if the ordinary high water mark cannot be identified. It includes the entire extent of the floodplain and the extent of vegetation adapted to wet conditions as well as adjacent upland plant communities that directly influence the stream system. Riparian habitat areas include those riparian areas severely altered or damaged due to human development activities.⁶
115. Scientific Process. A valid scientific process is one that produces reliable information useful in understanding the consequences of a decision. The characteristics of a valid scientific process are as follows:
- a. Peer review. The information has been critically reviewed by other qualified scientific experts in that scientific discipline.
 - b. Methods. The methods that were used are standardized in the pertinent scientific discipline or the methods have been appropriately peer-reviewed to assure their reliability and validity.
 - c. Logical conclusions and reasonable inferences. The conclusions presented are based on reasonable assumptions supported by other studies and are

⁶ See Department of Fish and Wildlife "Management Recommendations for Washington's Priority Habitats – Riparian," page 4, 1997.

logically and reasonably derived from the assumptions and supported by the data presented.

- d. Quantitative analysis. The data have been analyzed using appropriate statistical or quantitative methods.
 - e. Context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.
 - f. References. The assumptions, techniques, and conclusions are well referenced with citations to pertinent existing information.
116. Scrub-shrub Wetland. A wetland with at least thirty percent (30%) of its surface area covered by woody vegetation less than twenty (20) feet in height as the uppermost strata.
117. Section 404 Permit. A permit issued by the Corps of Engineers for the placement of dredge or fill material or clearing in waters of the U.S., including wetlands, in accordance with 33 USC § 1344.
118. Seeps. A spot where water oozes from the earth, often forming the source of a small stream.
119. Seismic Hazard Areas. Areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.
120. SEPA. Washington State Environmental Policy Act, Chapter 43.21C RCW.
121. Serviceable. Presently usable.
122. Shorelands or Shoreland Areas. Those lands extending landward for two hundred feet (200 feet) in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred (200) feet from such floodways; and all wetlands and river deltas associated with the streams, lakes and tidal waters which are subject to the provisions of Chapter 90.58 RCW.
123. Shorelines. All of the water areas of the state of defined in RCW 90.58.030, including reservoirs and their associated shorelands, together with the lands underlying them except:
- a. Shorelines of statewide significance;
 - b. Shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second (20 cfps) or less and the wetlands associated with such upstream segments; and
 - c. Shorelines on lakes less than twenty (20) acres in size and wetlands associated with such small lakes.
124. Shorelines of Statewide Significance. Those areas defined in RCW 90.58.030(2)(e).

125. Shorelines of the State. The total of all “shorelines” as defined in RCW 90.58.030(2)(d), and “shorelines of statewide significance” within the state, as defined in RCW 90.58.030(2)(c).
126. Significant Portion of its Range. That portion of a species range likely to be essential to the long-term survival of the population in Washington.
127. Soil Survey. The most recent soil survey for the local area or county by the National Resources Conservation Service, U.S. Department of Agriculture.
128. Sole Source Aquifer. See “aquifer, sole source.”
129. Special Protection Areas. Aquifer recharge areas defined by WAC 173-200-090 that require special consideration or increased protection because of unique characteristics, including, but not limited to:
 - a. Ground waters that support an ecological system requiring more stringent criteria than drinking water standards;
 - b. Ground water recharge areas and wellhead protection areas, that are vulnerable to pollution because of hydrogeologic characteristics; and
 - c. Sole source aquifer status.
130. Species. Any group of animals classified as a species or subspecies as commonly accepted by the scientific community.
131. Species, Endangered. Any fish or wildlife species that is threatened with extinction throughout all or a significant portion of its range and is listed by the state or federal government as endangered species.
132. Species of Local Importance. Those species of local concern due to their population status or their sensitivity to habitat manipulation, or that are game species, or as otherwise specifically designated in this Code
133. Species, Priority. Any fish or wildlife species requiring protective measures and/or management guidelines to ensure their persistence as genetically viable population levels as classified by the Department of Fish and Wildlife, including endangered, threatened, sensitive, candidate and monitor species, and those of recreational, commercial, or tribal importance.
134. Species, Sensitive. Any wildlife species native to the state of Washington that is vulnerable or declining and is likely to become endangered or threatened throughout a significant portion of its range within the state without cooperative management or removal of threats.
135. Species, Threatened. Any fish or wildlife species that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range without cooperative management or removal of threats, and is listed by the state or federal government as a threatened species.
136. Stream. An area where open surface water produces a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devices, or other entirely artificial watercourses, unless they are used by

salmonids or are used to convey a watercourse naturally occurring prior to construction. A channel or bed need not contain water year-round, provided there is evidence of at least intermittent flow during years of normal rainfall.

137. Sub-Drainage Basin or Sub Basin. The drainage area of the highest order stream containing the subject property impact area. Stream order is the term used to define the position of a stream in the hierarchy of tributaries in the watershed. The smallest streams are the highest order (first order) tributaries. These are the upper watershed streams and have no tributaries of their own. When two first order streams meet, they form a second order stream, and when two second order streams meet they become a third order stream, and so on.
138. Substantial Damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.
139. Substantial Improvement. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either before the improvement or repair is started; or if the structure has been damaged and is being restored, before the damage occurred.
140. Unavoidable Impacts. Adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved.⁷
141. Vulnerability. The combined effect of susceptibility to contamination and the presence of potential contaminants.
142. Water Dependent. A use or portion of a use that cannot exist in a location that is not adjacent to the water, but is dependent on the water by reason of the intrinsic nature of its operations. A use that can be carried out only on, in, or adjacent to water. Examples of water dependent uses include ship cargo terminal loading areas; fishing,; ferry and passenger terminals; barge loading, ship building, and dry docking facilities; marinas, moorage, and boat launching facilities; aquaculture; float plane operations; surface water intake; and sanitary sewer and storm drain outfalls.
143. Water Resource Inventory Area (WRIA). One of sixty-two (62) watershed in the State of Washington, each composed of the drainage areas of a stream or streams, as established in Chapter 173-500 WAC as it existed on January 1, 1997.
144. Water Table. That surface in an unconfined aquifer at which the pressure is atmospheric. It is defined by the levels at which water stands in wells that penetrate the aquifer just far enough to hold standing water.
145. Water Table Aquifer. See "Aquifer, unconfined."

⁷ See RCW 90.84.010(9).

146. Water Typing System. Waters classified according to WAC 222-16-031 as follows:

- a. Type 1 Water. All waters, within their ordinary high-water mark, as inventories as “shorelines of the state” under Chapter 90.58 RCW and the rules promulgated pursuant to Chapter 90.58 RCW, but not including those waters’ associated wetlands as defined in Chapter 90.58 RCW.
- b. Type 2 Water. Segments of natural waters that are not classified as Type 1 Water and have a high fish, wildlife, or human use. These are segments or natural waters and periodically inundated areas of their associated wetlands, which:
 - 1) Are diverted for domestic use by more than one hundred (100) residential or camping units or by a public accommodation facility licensed to serve more than ten (10) persons, where such diversion is determined by the Department of Natural Resources to be a valid appropriation of water and only considered Type 2 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by fifty percent (50%), or whichever is less;
 - 2) Are diverted for use by federal, state, tribal or private fish hatcheries. Such waters shall be considered Type 2 Water upstream from the point of diversion for 1,500 feet, including tributaries if highly significant for protection of downstream water quality
 - 3) Are within a federal, state, local or private campground having more than thirty (30) camping units: Provided, That the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within one hundred (100) feet of a camping unit.
 - 4) Are used by fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have highly significant fish populations:
 - a) Stream segments having a defined channel twenty (20) feet or greater within the bankfull width and having a gradient of less than four percent (4%).
 - b) Lakes, ponds, or impoundments having a surface area of one (1) acre or greater at seasonal low water; or
 - 5) Are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria:
 - a) The site must be connected to a fish bearing stream and be accessible during some period of the year; and
 - b) The off-channel water must be accessible to fish through a drainage with less than a five percent (5%) gradient.

- c. Type 3 Water. Segments of natural waters that are not classified as Type 1 or 2 Waters and have a moderate to slight fish, wildlife, and human use. These area segments of natural waters and periodically inundated areas of their associated wetlands which:
- 1) Are diverted for domestic use by more than ten (10) residential or camping units or by a public accommodation facility licensed to serve more than ten (10) persons, where such diversion is determined by The Department of Natural Resources to be a valid appropriation of water and the only practical water source for such users. Such water shall be considered to be Type 3 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by fifty percent (50%), whichever is less.
 - 2) Are used by fish for spawning, rearing or migration. The requirements for determining fish use are described in the State Forest Practices Board Manual, Section 13. If fish use has not been determined:
 - a) Waters having the following characteristics are presumed to have fish use:
 - i. Stream segments having a defined channel of two (2) feet or greater within the bankfull width in Western Washington; or three (3) feet or greater in width in Eastern Washington; and having a gradient of sixteen percent (16%) or less.
 - ii. Stream segments having a defined channel or two (2) feet or greater within the bankfull width in Western Washington; or three (3) feet or greater within the bankfull width in Eastern Washington, and having a gradient greater than sixteen percent (16%) and less than or equal to twenty percent (20%), and having greater than fifty (50) acres in contributing basin size in Western Washington or greater than 175 acres contributing basin size in Eastern Washington. Based on hydrographic boundaries.
 - iii. Ponds or impoundments having a surface area of less than one (1) acre at seasonal low water and having an outlet to a fish stream.
 - iv. Ponds or impoundments having a surface area greater than one half (0.5) acre at seasonal low water.
 - b) The Department of Natural Resources shall waive or modify the characteristics in (a) of this Subsection where:
 - i. Waters have confirmed, long term, naturally occurring water quality parameters incapable of supporting fish;
 - ii. Snowmelt streams have short flow cycles that do not support successful life history phases of fish. These

streams typically have no flow in the winter months and discontinue flow by June 1; or

- iii. Sufficient information about a geomorphic region is available to support a departure from the characteristics in (a) of this Subsection, as determined in consultation with the Department of Fish and Wildlife, Department of Ecology, affected tribes and interested parties.
 - d. Type 4 Water. All segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are waters that do not go dry any time of a year of normal rainfall. However, for the purpose of water typing, Type 4 Waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow. If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see State Forest Practices Board Manual, Section 230, then Type 4 Waters begin at a point along the channel where the contributing basin area is:
 - 1) At least thirteen (13) acres in the Western Washington coastal zone (which corresponds to the Sitka spruce zone defined in Franklin and Dryness, 1973).
 - 2) At least fifty two (52) acres in other locations in Western Washington.
 - 3) At least three hundred (300) acres in Eastern Washington.
 - e. Type 5 Waters. All segments of natural waters within the bankfull width of the defined channels that are not Type 1, 2, 3, or 4 Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of the year and are not located downstream from any stream reach that is a Type 4 Water. Type 5 Waters must be physically connected by an above-ground channel system to Type 1, 2, 3, or 4 Waters.
147. Well. A bored, drilled or driven shaft, or a dug hole whose depth is greater than the largest surface dimension for the purpose of withdrawing or injecting water or other liquids.
148. Wellhead Protection Area (WHPA). The portion of a zone of contribution for a well, wellfield or spring, as defined using criteria established by the state Department of Ecology.
149. Wetlands. Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater

treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

150. Wetland Classes, Classes of Wetlands, or Wetland Types. The descriptive classes of the wetlands taxonomic classification system of the U.S. Fish and Wildlife Service (Cowardin, et al, 1979).
151. Wetland Edge. The boundary of a wetland as delineated based on the definitions contained in this Title.
152. Wetlands Mitigation Bank. A site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.⁸
153. Wetland Mosaic. 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.
154. Zone of Contribution. The area surrounding a well or spring that encompasses all areas or features that supply ground water recharge to the well or spring. (Ord 874, December 2010)

18.04.020 Purpose.

- A. The purpose of the Title is to designate and classify ecologically sensitive and hazardous areas and to protect these areas and their functions and values, while also allowing for reasonable use of private property.
- B. This Title is to implement the goals, policies, guidelines, and requirements of the City of Benton City (City) Comprehensive Plan and the Growth Management Act.
- C. The City finds that critical areas to provide a variety of valuable and beneficial biological and physical functions that benefit the City and its residents, and/or may pose a threat to human safety or to public and private property. The beneficial functions and values provided by critical areas include, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, ground water recharge and discharge, erosion control, wave attenuation, protection from hazards, historical and archaeological and aesthetic value protection, and recreation. These beneficial functions are not listed in orders of priority.
- D. Goals. By identifying development impacts to critical areas, this Title seeks to:

⁸ See RCW 90.84.010(5).

1. Protect members of the public and public resources and facilities from injury, loss of life, or property damage due to landslides and steep slope failures, erosion, seismic events, volcanic eruptions, or flooding;
 2. Protect unique, fragile, and valuable elements of the environment, including ground and surface waters, wetlands, and fish and wildlife and their habitats;
 3. Direct activities not dependent on critical area resources to less ecologically sensitive sites and mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to critical areas; and
 4. Prevent cumulative adverse environmental impacts to water quality, wetlands, and fish and wildlife habitat, and the overall net loss of wetlands, frequently flooded areas and habitat conservation areas.
- E. This Title is intended to protect critical areas in accordance with the Growth Management Act and through the application of best available science, as determined according to WAC 365-195-900 through 365-195-925, and in consultation with state and federal agencies and other qualified professionals
- F. This Title is to be administered with flexibility and attention to site-specific characteristics. It is not the intent of this Title to make a parcel of property unusable by denying its owner reasonable economic use of the property.
- G. The City's enactment of enforcement of this Title shall not be construed for the benefit of any individual person or group of persons other than the general public. (Ord 874, December 2010)

18.04.030 Authority and Applicability.

- A. As provided herein, the designated official is given the authority to interpret and apply, and the responsibility to enforce this Title to accomplish the stated purpose.
- B. The City shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated buffer, without first assuring compliance with the requirements of this Title.
- C. The provisions of this Title shall apply to all lands, all land uses and development activities, and all structure and facilities in the City, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the City. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purposes and requirements of this Title.
- D. Approval of a permit or development proposal pursuant to the provisions of this Title does not discharge the obligation of the applicant to comply with the provision of the Title. (Ord 874, December 2010)

18.04.040 Relationship to other regulations.

- A. These critical area regulations shall apply as an overlay to the City's Zoning Code (Title 20), Building Code (Title 15), Sewer Regulations (Title 13A), Adoption of the Environmental Policy and Rules (Title 16), Administrative Permitting and Appeals (Chapter 2.70), and other applicable regulations adopted by the City, including but not limited to design standards, building codes, shorelines management program, and environmental review (SEPA) procedures.
- B. These critical area regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as locally adopted.
- C. Any individual critical area adjoined by another type of critical area shall meet the requirements that provide the most protection to the critical areas involved. When any provision of this Title or any existing regulation, easement, covenant, or deed restriction, conflicts with this Title, that which provides more protection to the critical areas shall apply.
- D. Compliance with the provisions of the Title does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Shoreline Substantial Development Permits, HPA permits, Army Corps of Engineers Section 404 permits, NPDES permits). The applicant is responsible for complying with these requirements, apart from the process established in this Title. Where applicable, the Designated official 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. (Ord 874, December 2010)

18.04.050 Administrative procedures. The administrative procedures followed during the critical area review process shall conform to the standards and requirements of the City's Zoning Code (Title 20) and Administrative Permitting Procedures and Appeals (Chapter 2.70). This shall include, but not be limited to timing and appeals associated with applications covered by this Title. (Ord 874, December 2010)

18.04.060 Interpretation. In the interpretation and application of this ordinance, the provision of this Title shall be considered to be the minimum requirements necessary, shall be liberally construed to serve the purpose of this ordinance, and shall be deemed to neither limit nor repeal any other provision under state statute. (Ord 874, December 2010)

18.04.070 Jurisdiction – Critical areas.

- A. The City shall regulate all uses within 200⁹ feet of, or that are likely to affect, one or more critical areas, consistent with the best available science and the provisions herein.
- B. Critical areas regulated by this Title include:
 - 1. Wetlands as designated in Chapter 18.08.

⁹ Based on the maximum buffer size recommended for wetlands. See Section 18.08.050 for additional information.

2. Critical aquifer recharge areas as designated in Chapter 18.12.
3. Frequently flooded areas as designated in Chapter 18.16.
4. Geologically hazardous areas as designated in Chapter 18.20.
5. Fish and wildlife habitat conservation areas as designated in Chapter 18.24.

C. All areas within the City meeting the definition of one or more critical area, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this Title. (Ord 874, December 2010)

18.04.080 Protection of critical areas. Any action taken pursuant to this Title shall result in equivalent or greater functions and values of the critical areas associated with the proposed action, as determined by the best available science. All actions and developments shall be designed and constructed in accordance with Mitigation sequencing requirements in Section 16.10.170 to avoid, minimize and restore all adverse impacts. Applications must first demonstrate an inability to avoid or reduce impacts, before restoration and compensation of impacts will be allowed. No activity or use shall be allowed that results in a net loss of the functions or values of critical areas. (Ord 874, December 2010)

18.04.090 Authorizations Required. The City shall not grant any approval or permission to alter the condition of any land, water or vegetation, or to construct or alter any structure or improvement located within a designated critical area, or that may affect a designated critical area, without fulfillment of the requirements of this Title. Such permits shall include, but are not limited to the following:

- A. Building Permit;
- B. Conditional Use Permit;
- C. Shoreline Conditional Use Permit;
- D. Shoreline Substantial Development Permit;
- E. Shoreline Variance;
- F. Binding Site Plan;
- G. Short Subdivision;
- H. Subdivisions;
- I. Zoning Variance;
- J. Rezone; and
- K. Any other adopted permit or required approval not expressly exempted by this Title. (Ord 874, December 2010)

18.04.100 Best available science.

- A. Best available science to be used must be consistent with criteria. The best available science is that scientific information applicable to the critical area prepared by local, state or federal natural resource agencies, a qualified scientific professional or team of qualified scientific professionals that is consistent with criteria established in WAC 365-105-905. Critical area reports and decisions to alter critical areas must give special consideration to conservation or protection measure necessary to preserve or enhance anadromous fish and their habitat.
- B. Absence of valid scientific information. Where there is an absence of valid scientific information or incomplete scientific information relating to a critical area, leading to uncertainty about the specific boundary of a critical area, and risk to critical area function of permitting an alteration of or impact to the critical area, the designated official shall:
 - 1. Take a “precautionary or a no-risk approach” that strictly limits development and land use activities until the uncertainty is sufficiently resolved; and
 - 2. Require an effective adaptive management program that relies on scientific methods to evaluate how well the applicant’s actions protect the critical area. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. An adaptive management program shall:
 - a. Address funding for the research component of the adaptive management program;
 - b. Change course based on the results and interpretation of new information that resolves uncertainties; and
 - c. Commit to the appropriate timeframe and scale necessary to reliably evaluate regulatory and non-regulatory actions affecting protection of critical areas and anadromous fisheries. (Ord 874, December 2010)

18.04.110 Allowed activities.

- A. Process. The designated official shall allow activities that are verified to comply with this Title. Documentation of allowed activities shall be maintained on file at the Planning Department.
- B. Allowed activities shall avoid impacts to critical areas. All allowed activities shall use reasonable methods to avoid potential impacts to critical areas, using best management practices that result in the least amount of impact to the critical areas where practicable. Designation as an allowed activity does not give permission to degrade a critical area or ignore risk from natural hazards. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The City shall observe the use of best management practices to ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of, a

critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense.

C. Allowed activities. The following development, activities, and associated uses are allowed and shall be exempt from the provisions of this Title except as noted in provisions below, provided that they are otherwise consistent with the provisions of other local, state and federal laws and requirements:

1. **Emergencies.** Emergency activities are those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of this Title.

Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. The person or agency undertaking such action shall notify the City within one (1) working day following commencement of the emergency activity. Within thirty (30) days, the designated official shall determine if the action taken was within the scope of the emergency actions allowed in this Subsection. If the designated official determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions of Section 18.04.200 shall apply.

After the emergency, the person or agency undertaking the action shall fully restore and/or mitigate any impacts to the critical area and buffers resulting from the emergency action in accordance with the report or other applicable information and mitigation plan. The person or agency undertaking the action shall apply for review, and the alteration, report or other applicable information, and mitigation plan shall be reviewed by the City in accordance with the review procedures contained herein. Restoration and/or mitigation activities must be initiated within one (1) year of the date of the emergency, and completed in a timely manner.

2. **Operation, maintenance or repair.** Operation, maintenance or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees or drainage systems, that do not require a permit, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair;
3. **Passive outdoor activities.** Recreation, education, and scientific research activities that do not degrade the critical area, including fishing, hiking, and bird watching. Trails must be constructed pursuant to Section 18.04.110.
4. **Permit request subsequent to previous critical area review.** Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits), and

construction approvals (such as building permits) if all of the following conditions has been met:

- a. The provisions of this Title have been previously addressed as part of another approval;
 - b. There have been not material changes in the potential impact to the critical area or buffer since the prior review;
 - c. There is no new information available that is applicable to any critical area review of the site or particular critical area;
 - d. The permit or approval has not expired or, if no expiration date, no more than five years has elapsed since the issuance of that permit of approval; and
 - e. Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured;
5. Modification to existing structures. Structural modification of, addition to, or replacement of an existing legally constructed structure that does not further alter or increase the impact to the critical area or buffer and there is no increased risk to life or property as a result of the proposed modification or replacement, provided that restoration or structure substantially damaged by fire, flood, or act of nature must be initiated within one (1) year of the date of such damage, as evidenced by the issuance of a valid building permit, and diligently pursued to completion;
 6. Activities within the improved right-of-way. Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a City authorized private roadway except those activities that alter a wetland or watercourse, such as culverts or bridges, or results in the transport of sediment or increased stormwater;
 7. Public or private pedestrian trails. Public or private pedestrian trails not in wetlands, fish and wildlife habitat conservation areas, where the trail surface meets all other requirements;
 8. Select vegetation removal activities. Select vegetation removal activities are allowed. Accepted vegetation removal activities include: a) removing and controlling invasive or noxious weeds; b) removal of trees that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property and measures to control a fire or halt the spread of disease or damaging insects consistent with the State Forest Practices Act; Chapter 76.09 RCW Unless otherwise provided or as a necessary part of an approved alteration, removal of any vegetation or woody debris from a habitat conservation area or wetland shall be prohibited;
 9. Chemical applications. The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary,

provided that their use shall be conducted in accordance with applicable state and federal law.;¹⁰

10. Minor site investigative work. Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored; and
11. Navigational aids and boundary markers. Construction or modification of navigational aids and boundary markers. (Ord 874, December 2010)

18.04.120 Exception – Reasonable use.

- A. If the application of this Title would deny all reasonable use of the subject property, the property owner may apply for an exception pursuant to this Section.
- B. Exception request and review process. An application for a reasonable use exception shall be made to the City and shall include a report of other applicable information, 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 43.21 RCW) (SEPA documents). The designating official shall determine whether an exception request shall be granted based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria. The designating official shall approve with conditions, including the application of appropriate conditions consistent with an approved mitigation plan, or deny the request based on the proposal's ability to comply with the following reasonable use exception review criteria:
 1. The application of this Title would deny all reasonable use of the property;
 2. No other reasonable use of the property has less impact on the critical area;
 3. Any alteration is the minimum necessary to allow for reasonable use of the property;
 4. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant after the effective date of this Title; and
 5. The proposal meets the requirements set forth in this Title, including the application of appropriate mitigating conditions consistent with an approved mitigation plan.
- C. 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

¹⁰ More information on commercial and residential use of chemicals can be found in Department of Ecology "Guidance Document for Establishment of Critical Aquifer Recharge Areas Ordinances" Version 3.0, Publication #97-30; and from the state Department of Agriculture, <http://www.wa.gov/agr/>.

which any decision has to be made on the application. (Ord 874, December 2010)

18.04.130 General review process.

A. The City review shall consist of the following:

1. Verify the information submitted by the applicant for the applicable permit;
2. Evaluate the project area and vicinity for critical areas;
3. For wetland, geologically hazardous and/or fish and wildlife habitat conservation areas the City shall require that boundaries be verified and mapped by a qualified professional, and such boundaries be submitted to the City as part of the application for the applicable permit if the project is:
 - a. Within 200 feet of a wetland or fish and wildlife critical area for which the boundaries have not been certified and depicted by the City on the critical areas map; and
 - b. Will not be receiving a no impact-waiver as provided in Section 18.04.130.B below.

The scale of the boundary information shall be the same as the City maps.
4. Determine whether the proposed project is likely to impact the functions or values of critical areas; and
5. Determine if the proposed project adequately addresses the impacts and avoids impacts to the critical area associated with the project.

B. Critical areas present, but no impact – waiver. If the designating official determines that there are critical areas within or adjacent to the project area, but that the proposed activity is unlikely to degrade the functions or values of the critical area, the designating official may waive the requirement for a report or other applicable information. A waiver may be granted if there is substantial evidence that all of the following requirement will be met:

1. There will be no alteration of the critical area or buffer;
2. The development proposal will not impact the critical area in a manner contrary to the purpose, intent, and requirements of this Title; and
3. The proposal is consistent with other applicable regulations and standards.

A summary of this analysis and the findings shall be included in any staff report or decision on the underlying permit.

C. Critical Areas Present and Potential Impact Likely. If the designating official determines that the proposed project is within, adjacent to, or is likely to impact the critical area, the designating official shall:

1. Notify the applicant that a critical area report or other applicable information must be submitted prior to further review of the project, and indicate each of the critical area types that should be addressed;

2. Require a critical area report or other applicable information from the applicant that has been prepared by a qualified professional;
3. Review and evaluate the critical area report and other applicable information to determine whether the development proposal conforms to the purpose and performance standards of this Title;
4. Assess potential impacts to the critical area and determine if they are necessary and unavoidable;
5. Determine if any mitigation proposed by the applicant is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of this Title; and
6. A summary of this analysis and the findings shall be included in any decision on the underlying permit(s). Critical area review findings may result in: a) no adverse impacts to critical area(s), b) list of applicable critical area(s) protection conditions for the underlying permit(s), or c) denial of permit based upon unavoidable impacts to critical area(s) functions and values. (Ord 874, December 2010)

**18.04.140 Wetland, geologically hazardous and habitat conservation areas –
General report requirements.**

- A. Prepared by qualified professional. If required by Section 18.04.130.C, the applicant shall submit a report prepared by a qualified professional as defined herein.
- B. Incorporating best available science. The report shall use scientifically valid methods and studies in the analysis of data and field reconnaissance and reference the source of science used. The report shall evaluate the proposal and all probable impacts to critical areas in accordance with the provisions of this Title.
- C. Minimum report contents. At a minimum, the report shall contain the following:
 1. The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;
 2. A copy of the site plan for the development proposal showing:
 - a. Identified critical areas, buffers, and the development proposal with dimensions;
 - b. Limits of any areas to be cleared; and
 - c. A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations, consistent with the current edition of the Benton City Design Standards;

3. The names and professional qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
 4. Identification and characterization of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area;
 5. A statement specifying the accuracy of the report, and all assumptions made and relied upon;
 6. An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;
 7. An analysis of site development alternatives;
 8. A description of reasonable efforts made to apply mitigation sequencing pursuant to Section 18.04.170 to avoid, minimize, and mitigate impacts to critical areas;
 9. Plans for adequate mitigation, as needed, to offset any impacts, in accordance with Section 18.04.160 through 18.04.190, including, but not limited to:
 - a. The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and
 - b. The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment;
 10. A discussion of the performance standards applicable to the critical area and proposed activity; and
 11. Financial guarantees to ensure compliance, if applicable.
- D. Unless otherwise provided, a report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the designating official. (Ord 874, December 2010)

**18.04.150 Wetland, geologically hazardous and habitat conservation areas –
Modifications to report requirements.**

- A. Limitations to study area. The designating official may limit the required geographic area of the report as appropriate if:
 1. The applicant, with assistance from the City, cannot obtain permission to access properties adjacent to the project area; or
 2. The proposed activity will affect only a limited part of the subject site.
- B. Critical Areas Present and Potential Impact Likely. If the designating official determines that the proposed project is within, adjacent to, or is likely to impact a critical area, the designating official shall:
 1. Notify the applicant that a critical area report or other applicable information must be submitted prior to further review of the project, and indicate each of the critical area types that should be addressed;

2. Require a critical area report or other applicable information from the applicant that has been prepared by a qualified professional;
3. Review and evaluate the critical area report and other applicable information to determine whether the development proposal conforms to the purpose and performance standards of this Title;
4. Assess potential impacts to the critical area and determine if they are necessary and unavoidable;
5. Determine if any mitigation proposed by the applicant is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of this Title; and
6. A summary of this analysis and the findings shall be included in any decision on the underlying permit(s). Critical area review findings may result in:
 - a) No adverse impacts to critical area(s);
 - b) List of applicable critical area(s) protection conditions for the underlying permit(s); and
 - c) Denial of permit based upon unavoidable impacts to critical area(s) functions and values. (Ord 874, December 2010)

18.04.160 Mitigation requirements.

- A. The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas. Unless otherwise provided in this Title, if alteration to the critical area is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a development proposal or alteration shall be mitigated in accordance with the critical area report and SEPA documents.
- B. Mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.
- C. Mitigation shall not be implemented until a) after City receipt of a report or other applicable information that includes a mitigation plan, and mitigation shall be in accordance with the provisions of the report or other applicable information; and b) city approval of the underlying permit(s). (Ord 874, December 2010)

18.04.170 Mitigation sequencing. Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following order of preference:

- A. Avoiding the impact altogether by not taking a certain action or parts of an action.

- B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts.
- C. Rectifying the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project.
- D. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods.
- E. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action.
- F. Compensating for the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments.
- G. Monitoring the hazard or other required mitigation and taking remedial action when necessary.

Mitigation for individual actions may include a combination of the above measures. (Ord 874, December 2010)

18.04.180 **Mitigation plan requirements.** When mitigation is required, the applicant shall submit to the City a mitigation plan as part of the critical area report or other applicable information. The mitigation plan shall include:

- A. Environmental goals and objectives. The mitigation plan shall include a written report identifying environmental goals and objectives of the compensation proposed and including:
 - 1. A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area;
 - 2. A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed; and
 - 3. An analysis of the likelihood of success of the compensation project.
- B. Performance standards. The mitigation plan shall address the applicable performance standards identified in this Title.
- C. Detailed construction plans. The mitigation plan shall include written specifications and descriptions of the mitigation proposed, such as:
 - 1. The proposed construction sequence, timing, and duration;

2. Grading and excavation details;
3. Erosion and sediment control features;
4. A vegetation planting plan specifying plant species, quantities, locations, size, spacing, and density; and
5. Measures to protect and maintain plants until established.

These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentages and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.

- D. Monitoring program. The mitigation plan shall include a program for monitoring construction of the compensation project, and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring in years 1, 3 and 5 after site construction, and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. At a minimum, a monitoring report shall be submitted to document mitigation performance in year 5 after site construction.
- E. Contingency plan. The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.
- F. Financial guarantees. The mitigation plan shall include financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures shall be posted in accordance with Section 16.10.240. (Ord 874, December 2010)

18.04.190 Innovation mitigation.

- A. The City may encourage and facilitate innovative mitigation projects. Advance mitigation or mitigation banking are examples of alternative mitigation projects allowed under the provisions of this Section where one or more applicants, or an organization with demonstrated capability, may undertake a mitigation project together if it is demonstrated that all the following circumstances exist:
 1. Creation or enhancement of a larger system of critical areas and open spaces is preferable to the preservation of many individual habitat areas;
 2. The group demonstrates the organizational and fiscal capability to act cooperatively;
 3. The group demonstrates that long-term management of the habitat area will be provided; and,
 4. There is a clear potential for success of the proposed mitigation at the identified mitigation site.

- B. Conducting mitigation as part of a cooperative process does not reduce or eliminate the required replacement ratios. (Ord 874, December 2010)

18.04.200 **Unauthorized critical area alterations and enforcement.**

- A. When a critical area or its buffer has been altered in violation of this Title, all ongoing development work shall cease and the critical area shall be restored. The City shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation, replacement or where determined appropriate by the designating official, mitigation measures at the owner's or other responsible party's expense to compensate for violation of provisions of the Title and other applicable City code governing the underlying permit(s). Administrative procedures including but not limited to review and appeal of City actions related to unauthorized critical area alterations see Section 18.04.050.
- B. Restoration/mitigation plan required. All development work shall remain stopped until a restoration/mitigation plan is prepared and approved by City. Such a plan shall be prepared by a qualified professional and shall describe how the actions proposed meet the minimum requirements described in Subsection C and/or mitigation requirements outlined in Sections 18.04.160, 170, 180 and 190, if mitigation is determined to be appropriate by the designating official. The designating official shall, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.
- C. Minimum performance standards for restoration or mitigation.
 - 1. For alterations to critical aquifer recharge areas, frequently flooded areas, wetlands, and habitat conservation areas the following minimum performance standards shall be met for the restoration or mitigation of impacts to a critical area, provided that if the violator can demonstrate in a restoration/mitigation plan that greater functional and habitat values can be obtained, these standards may be modified by the Mayor:
 - a. The historic structural and functional values shall be restored, including water quality and habitat functions;
 - b. The historic soil types and configuration shall be replicated;
 - c. The critical area and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities; and
 - d. The historic functions and values should be replicated at the location of the alteration.
 - 2. For alterations to flood and geological hazards, the following minimum performance standards shall be met for the restoration of a critical area, provided that, if the violator can demonstrate that greater safety can be obtained, these standards may be modified:

- a. The hazard shall be reduced to a level equal to, or less than, the pre-development hazard;
 - b. Any risk of personal injury resulting from the alteration shall be eliminated or minimized; and
 - c. The hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.
- D. **Penalties.** Any person, party, firm, corporation, or other legal entity convicted of violating any of the provisions of the Title shall be guilty of a misdemeanor. Each day or portion of a day during which a violation of this Title is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of this Title shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington. The City may levy civil infraction penalties against any person, party, firm, corporation, or other legal entity for violation of any of the provisions of this Title. The civil penalty shall be assessed at the rate provided in the Chapter 1.60 of this Code. Daily fines shall not be levied until after a violator has received a notice of violation and shall not be levied while the violator is making a good faith and diligent effort to correct the violation in cooperation with City enforcement personnel nor while a notice a violation is under appeal through the applicable appeal process. (Ord 874, December 2010)

18.04.210 Critical area markers and signs. The critical area or buffer shall be identified with temporary signs prior to any site alteration. Such temporary signs may be replaced with permanent signs, as determined appropriate by the designating official. (Ord 874, December 2010)

18.04.220 Native growth habitat areas. Unless otherwise required in this Title, native growth habitat areas shall be used in development proposals for subdivisions, short subdivisions, planned unit developments, and binding site plans to delineate and protect those contiguous critical areas and buffers listed below:

- A. All landslide hazard areas and buffers.
- B. All wetlands and buffers.
- C. All habitat conservation areas.
- D. All other lands to be protected from alterations as conditioned by project approval. (Ord 874, December 2010)

18.04.230 Building setbacks. Unless otherwise provided, buildings and other structures shall be set back a distance of fifteen (15) feet from the edges of all critical area buffers or from the edges of all critical areas, if no buffers are required. The following may be allowed in the building setback area:

- A. Landscaping.
- B. Uncovered decks.

- C. Building overhangs if such overhangs do not extend more than eighteen (18) inches into the setback area.
- D. Impervious ground surfaces, such as driveway and patios, provided that such improvements may be subject to requirements provided in the most current edition of City's Design Standards. (Ord 874, December 2010)

18.04.240 **Bonds to ensure mitigation, maintenance, and monitoring**

- A. Mitigation required pursuant to a development proposal should be completed prior to City final permit approval. When it is not feasible for mitigation to be completed prior to City final permit approval, such as final plat approval or final building inspection, the City shall require the applicant to post a performance bond in a form and amount deemed acceptable by the City.
- B. The bond shall be in the amount of one hundred and twenty-five percent (125%) of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that at risk, whichever is greater.
- C. The performance bonds shall remain in effect until the City determines, in writing, that the standards bonded for have been met. Bonds shall be held by the City for a minimum of five (5) years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.
- D. Depletion, failure, or collection of bonds funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.
- E. Public development proposals shall be relieved from having to comply with the bonding requirements of this Section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.
- F. Any failure to satisfy critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within thirty (30) days after it is due or comply with other provisions of a mitigation plan shall constitute a default, and the City may demand payment of any financial guarantees or require other action authorized by the City code or any other law.
- G. Any funds recovered pursuant to this Section shall be used to complete the required mitigation. (Ord 874, December 2010)

18.04.250 **Critical area inspections.** Reasonable access to the site shall be provided to the City, state, and federal agency review staff for the purposes of inspections during any proposal review, restoration, emergency action, or monitoring period. Additionally, the City or its agent shall have reasonable access to the site for completing necessary remediation work in the event of noncompliance. (Ord 874, December 2010)