CHAPTER 18.05

CRITICAL AREAS

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18.05.010 - Purpose and Intent.

The purpose of this section is to protect and preserve critical areas while allowing appropriate development activities when carried out in a responsible manner with minimal impacts on the environmental resources. In addition, the purpose is to protect the public health, welfare and safety of residents of Kettle Falls from development in areas associated with critical areas. This ordinance shall also comply with the State of Washington Growth Management Act. It is not the intent of this ordinance to deny a reasonable use of private property, but to assure that development on or near resource lands or critical areas is accomplished in a manner that is environmentally sensitive to the resources of the community.

18.05.020 - Definitions.

The following definitions are provided to aid in the understanding and interpretation of the provisions of this title. Unless specifically defined in this title, words or phrases used in this title shall be interpreted so as to give them the meaning they have in common usage and to give this title it's most reasonable application.

1. "Aquifers" refer to groundwater-bearing geologic formations that contain enough saturated permeable material to yield significant quantities of water to wells.

2. "Aquifer Recharge" means the process of infiltration and migration by which ground water is replenished.

3. "Artificial wetlands intentionally created from non-wetland sites" are only those wetlands, which upon examination using best available science, are found to have two of the following criteria:

(a) The wetland is sustained by water that has been intentionally pumped or piped for irrigation or disposal and if the pumping or piped flow ceased, the wetland would naturally disappear.

(b) The wetland was created by water that was intentionally applied to land for irrigation, disposal, or seeped from water in reservoirs, canals, drains, retention or treatment facilities.

4. "Best available science" means a valid scientific process or method of inquiry that is consistent with the criteria for establishing best available science as found in WAC 365-195-900, as amended.

5. "Best Management Practices" means conservation practices or systems of practices and management measures that promotes the intent of this title.

6. "Buffer" means an area that surrounds and protects critical area functions from adverse impacts.

7. "Buffer Management" means actions and practices conducted for the purpose of protection and enhancement of critical areas by moderating or eliminating adverse impacts from adjacent land(s) or areas to create a buffer from encroachment by urban growth areas.

8. "Critical Recharging Areas" are locations which have the capacity to replenish the storage of underground water due to favorable hydrological and topographical conditions.

9 "Critical Areas" include the following areas and ecosystems:

(a) Frequently flooded areas,
(b) Areas with critical recharging effect on aquifers used for potable water;
(c) Geologically hazardous areas,
(d) Fish and wildlife habitat conservation areas and,
(e) Wetlands.

10. "Federal or State Endangered, Threatened, Candidate Species":

(a) "Endangered Species" means a native species that is seriously threatened with extinction throughout all or a significant portion of its range.
(b) "Threatened Species" means a native species that is likely to become endangered within the foreseeable future throughout all or a significant portion of its range without cooperative management or removal of threats.
(c) "Candidate Species" means a native species under review for possible listing as endangered, threatened, or sensitive. A species will be considered for candidate designation if sufficient scientific evidence suggests that its status may meet criteria defined for "endangered", "threatened" or "sensitive". Currently listed State Threatened or State Sensitive species may also be designated as State Candidate species if their status is in question.

11. "Frequently Flooded Areas" include lands in the floodplain subject to a one-percent or greater chance of flooding in any given year. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands and other natural water sources.

12. "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

13. "Groundwater Management Program" means a comprehensive program designed to protect groundwater quality, to assure groundwater quantity, and to provide for efficient management of water resources while recognizing existing groundwater rights and meeting future needs consistent with local and state objectives, policies and authorities within a designated groundwater management area or sub-area developed pursuant to WAC 173-100.

14. "Habitat" means the environment occupied by individuals of a particular species, populations or community.

15. "Impacts" means adverse effects of one thing upon another.

16. "Local habitat area" means an area that contains sufficient food, water, or cover for native terrestrial or aquatic species that the city has identified in this title as being of significant local concern.

17. "Long Term Commercial Significance" means the capacity, productivity and soil composition of 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.

18. "Major Development" includes proposed development projects that are subject to objective and subjective standards that require the exercise of limited discretion about non-technical issues and which may require a public hearing. The proposed development may or may not be subject to SEPA review, however any project action not listed as categorically exempt from SEPA review shall be considered a "major development" for the purposes of this title. Included within this type of development are subdivisions, conditional use permits, planned residential developments, shoreline substantial development permits and other similar applications.

19. "Minor Development" includes proposed development projects that are subject to clear, objective and non-discretionary standards that require the exercise of professional judgment about technical issues and the proposed development is exempt from the State Environmental Policy Act (SEPA). Included within this type of development are single-family building permits, temporary use permits, boundary line adjustments, short subdivisions, home occupations, and accessory uses and/or structures.

20. "Mitigation" means actions that the approving agency shall require so as to avoid or compensate for impacts to critical areas resulting from the proposed project activity. The type(s) of mitigation required shall be considered and implemented, where feasible, in the following sequential order of

(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;

I Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
(e) Compensating for the impact by replacing or providing substitute resources or environments; or
(f) Monitoring the impact and taking appropriate corrective measures to achieve the identified goal.

21. "Native," when referring to plants or plant communities, means those species or communities that are indigenous to the watershed, including extirpated species.

22. "New construction" means structures for which the "start of construction" commenced on or after the effective date of this title.

23. "Primary Association" means key habitat components that are critical to the life cycle of native wildlife species, i.e., nesting sites, wintering areas, and migration corridors. Loss of these values will result in fragmentation into sub-populations or extinction of populations from local areas.

24. "Priority Habitats and Species Program" means Washington Department of Wildlife's system of classifying habitats and associated species that are of specific concern due to population status and/or sensitivity to habitat manipulation.

25. "Regulated activities" include land clearing, grading, placement of fill or waste material, removal of protected native vegetation, construction, platting, zone changes and other habitat altering activities.

26. "Restoration" means actions performed to reestablish wetland functional characteristics and processes which have been lost by alterations, activities or catastrophic events within an area which no longer meets the definition of a wetland.

27. "Review authority" means the decision maker that issues the final land use order, not the appeal authority.

28. "Sensitive species" are species native to Washington that are vulnerable or declining, and are preference: likely to become endangered or threatened in a significant portion of their ranges within the state, without cooperative management or the removal of the threats. These species are designated in WAC 232-12-011.

29. "SEPA" means State Environmental Policy Act, Chapter 42.21C RCW and Chapter 197-11 WAC.

30. "Sole Source Aquifer" means an aquifer designated by EPA as the sole or principal source of drinking water for a given aquifer service area; that is, an aquifer which is needed to supply 50% or more of the drinking water for that area and for which there is no reasonably available alternative sources should the aquifer become contaminated.

31. "Start of construction" means the date the building permit was issued, provided the actual start of construction, placement of a manufactured home on a foundation or other permanent construction beyond the stage of excavation was within 180 days of the permit date.

(a) The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation.

(b) Permanent construction does not include:
(i) Land preparation, such as clearing, grading and filling;
(ii) Installation of streets and/or walkways;
(iii) Excavation for a basement, footings, piers, or foundation or the erection of temporary forms;

32. "State Listed Monitor Species" means native species that:
(a) Were at one time classified as endangered, threatened, or sensitive;
(b) Require habitat that has limited availability during some portion of its life cycle;
(c) Are indicators of environmental quality;
(d) Require further field investigations to determine population status;
(e) Have unresolved taxonomy which may bear upon their status classification;
(f) May be competing with and having impacts on other species of concern or;
(g) Have significant popular appeal.

33. "Substantial damage" means damage of any origin sustained by a structure whereby the costs of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

34. "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:
(a) Before the improvement or repair is started; or
(b) If the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

35. "Threatened" species are native to the state of Washington and likely to become endangered in the foreseeable future throughout a significant portion of their ranges within the state without cooperative management or the removal of threats. Threatened species are legally designated in WAC 232-12-011.

36. "Triggering application" means an application for one of the permits or approvals listed in this title.

37. "Wetland" or "Wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from 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 created to mitigate conversion of wetlands.

18.05.030 - General Provisions.

1. Applicability. The provisions of this title apply only to lands designated as critical areas within the Kettle Falls corporate limits. The City's Critical Areas Map provides generalized information on the location of critical areas, including wetlands, habitat conservation areas, frequent flooded areas, geologically hazardous areas and aquifer recharge areas. A site specific analysis which indicates that any critical area regulated by this title exists on a lot will result in that portion of the lot being classified as a critical area.

2. Critical Areas. Critical Areas potentially located within the city include:

(a) Wetland
(b) Fish and Wildlife habitat conservation areas
(c) Geologically hazardous areas
(d) Aquifer recharge areas
(e) Frequently Flooded Areas

3. Buffers. Critical areas include protective buffers to lands identified as critical areas.

4. Jurisdiction. If a critical resource area on property that is being developed in the City crosses a jurisdictional line, the City of Kettle Falls shall coordinate with Stevens County in the review of the project.

18.05.040 - Uses.

1. Approval Required. Unless the requirements of this title are met, 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 regulated through the following: building permit, commercial or residential; binding site plan; site development permit; subdivision; use permit; or any subsequently adopted permit or required approval not expressly exempted by this title.

2. Allowed Uses. The city may allow the following uses on critical areas and within buffer areas subject to the review and mitigation requirements of this chapter:

(a) Pervious trails for non-motorized uses;
(b) Below, or above ground public utilities, facilities and improvements, initiated by the city, where necessary to serve development consistent with the Comprehensive Plan, including: streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, open space, and parks and recreational facilities, anticipated in the capital facilities plan, where there is no other reasonable alternative, based on topographic and environmental conditions;
© Water-dependent uses;
(d) Removal of diseased or dangerous trees, or the removal of invasive or nuisance plants;

(e) Construction, replacement, or alteration of a single-family dwelling unit in a residential zoning district on a legal lot of record, created prior to the effective date of this chapter so long as the replacement or expansion conforms to the height regulations, lot coverage and dimension standards and other design provisions for the zone in which the residence is located. The dwelling unit shall be used solely for single-family purposes. Approval is subject to a review process. The city may modify underlying zoning district dimensional standards applicable by up to a 50 percent adjustment, if necessary to protect critical areas;

(f) Existing agricultural practices on lands used continuously for agricultural purposes since October 1997 (adoption of the Comprehensive Plan);

3. Limited Uses. Limited uses shall avoid critical areas, and where allowed within buffer areas shall be subject to the mitigation measures and implementation of a monitoring plan. All limited uses shall be consistent with the provisions of this title and SEPA. Limited uses include:

(a) Subdivision or Short Plat. The subdivision or short plat process may be used when there are provisions (e.g., dedication of land/or conservation easements) that prohibit building construction on critical areas.

(b) Development Subject to Site Plan Review. Any new building or structure affecting critical areas shall be subject to site plan review, unless otherwise exempted in this title.

18.05.050 - Exemptions.

Exempt Activities in All Critical Areas. The following developments, activities and associated uses shall be exempt from the provisions of this chapter; provided that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements, and a written request for exemption has been filed with and approved by the City Planner.

1. 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 preventive action in a timeframe too short to allow for compliance with the requirements of this chapter. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address that emergency; in addition, they must have the least possible impact to the critical area or its buffer.

2. Be limited in duration to the time required to complete the authorized emergency activity, not to exceed 90 days.

3. All exempt activities shall use reasonable methods to avoid potential adverse impacts to critical areas. To be exempt from this chapter does not give permission to degrade a critical area or ignore risk from natural hazards. 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.

18.05.060 - Reasonable Use Exception.

1. General Requirements.

(a) If the application of this chapter would deny all reasonable use of a legal lot, development may be allowed that is consistent with the

general purposes of this chapter and the public interest. Nothing in this chapter is intended to preclude all reasonable use of property.

(b) Except when application of this chapter would deny all reasonable use of a legal lot, an applicant who seeks a modification from the regulations of this chapter may pursue a variance.

2. Application Requirements.
An applicant for a development proposal may file a request for a reasonable use exception which shall include the following information:

(a) A description of the areas of the site which are critical areas or within setbacks required under this chapter;
(b) A description of the amount of the site which is within setbacks;
© A description of the proposed development, including a site plan;
(d) An analysis of the impact that the amount of development would have on the critical area(s);
(e) An analysis of whether any other reasonable use is possible that would result in less impact on the critical area(s) and associated buffer(s);
(f) A design of the proposal so that the amount of development proposed as reasonable use will have the least impact practicable on the critical area(s);
(g) An analysis of the modifications needed to the standards of this chapter to accommodate the proposed development;
(h) A description of any modifications needed to the required front, side, and rear setbacks; building height; and buffer widths to provide for a reasonable use of the site while providing greater protection to the critical area(s); and
(i) Such other information as the city determines is reasonably necessary to evaluate the issue of reasonable use as it relates to the proposed development.

3. Public Review.
(a) The city shall process a request for a reasonable use exception as a conditional use permit procedure pursuant to section 17.05.020.

(b) The city shall forward a copy of a request for reasonable use exception to the state and federal agencies with jurisdiction over the resource at issue and to all property owners within 300 feet of the subject property.

© The city shall provide public notice of the request for reasonable use exception pursuant to section 17.06.036.

4. Reasonable Use Exception Decision Criteria. The review authority shall approve a reasonable use exception if the authority determines the following criteria are met:

(a) There is no other reasonable use or feasible alternative to the proposed development with less impact on the critical area(s);
(b) The proposed development does not pose a threat to the public health, safety, or welfare on or off the site;
© Any alteration of the critical area(s) shall be the minimum necessary to allow for reasonable use of the property;
(d) The proposed development will not result in a "take" of a threatened or endangered species;
(e) The inability of the applicant to derive reasonable economic use of the property is not the result of actions taken by the applicant or immediate predecessor in interest, after the effective date of this

chapter, in subdividing the property or adjusting a boundary line, or otherwise creating the undevelopable condition; and

(f) The proposal mitigates the impacts on the critical area(s) to the maximum extent possible, while still allowing reasonable use of the site. The applicant shall prepare and implement a mitigation and monitoring plan consistent with this chapter.

18.05.070 - Critical Area - Critical Aquifer Recharge Area.

1. Purpose. It is the intent of the City to promote public health and safety by acknowledging the importance of preserving critical aquifer recharge areas that are located within the City boundaries or that may annex into the City. These areas serve the vital function of replenishing groundwater resources. Potable water is an essential to life-sustaining element.

2. Goals and Policies. The following reflect the goals and policies of the community:

(a) Goal: The City seeks to protect the public health, safety and welfare of its residents by providing protection of potable water sources.

(b) Policies:

(i) As data becomes available, identify, map and maintain critical groundwater supply areas, aquifer recharge areas, and/or unconfined aquifers used for potable water.

(ii) Prohibit the placement, storage generation and/or disposal of hazardous materials, including fuel within a Critical Aquifer Recharge Area.

(iii) Divisions of land within aquifer recharge areas will be evaluated for their impact on groundwater quality.

(iv) The City will support and encourage the Washington State Department of Ecology efforts to enforce the decommissioning for unused wells.

3. Management Recommendation and Standards. The following management recommendations and standards will apply to development proposals determined to be located within critical aquifer recharge areas, as defined and described herein:

(a) The appropriate agencies will develop educational information to assist with informing people with shallow wells how to best manage and protect their potable water source.

(b) Development activities within a critical aquifer recharge area and Wellhead Protection Zones that have a high potential for contamination shall be required to do a hydrological study using best available science and shall develop and implement protection measures to prevent contamination.

(c) Any changes in land use or type of new facilities where substances of moderate risk are used, stored, treated or handled; or which produce moderate risk waste shall be designed to prevent the release of any such materials into the groundwater.

(d) Parks, Schools and Recreation Facilities. Fertilizer and pesticide management practices of schools, parks, other recreation facilities and similar uses shall use best management practices as prescribed by the Washington State University Cooperative Extension Services.

18.05.080 - Critical Area - Fish and Wildlife Habitat Conservation Areas.

1. Purpose and Objectives. The City of Kettle Falls recognizes the importance of protecting Fish and Wildlife Habitat Conservation Areas that are located within the city boundaries or that may annex into the City while at the same time encouraging continued economic development of the City, including the continuation of agriculture. Implementation of this section is directed toward preserving resources by steering incompatible development away from these areas and/or by providing adequate appropriate mitigation measures to development that alleviate negative impacts. The following reflect the goals and policies of the community:

2. Goal. Protect fish and wildlife habitat areas as important natural resource areas.

3. Policies:
   (a) The City will consider the impacts of new development on the quality of land, wildlife and vegetative resources as part of its environmental review process and require any appropriate mitigation measures.
   (b) Land uses adjacent to naturally occurring ponds and other fish and wildlife habitat areas will not negatively impact the habitat areas. If a change in land use occurs, adequate buffers based on the best available science will be provided to protect the habitat areas.

4. Objectives:
   (a) The following objectives are guiding factors in the application of this section to the future development in the City of Kettle Falls.
   (b) Identify and map categories of fish and wildlife habitat conservation areas, based in part on information supplied by Washington Department of Wildlife's Priority Habitat and Species Program, and other sources.
   (c) Use best available science.
   (d) Cooperate with federal, state and private agencies, and individuals who have primary authority to manage specific fish and wildlife habitat conservation areas within certain parts of the City.
   (e) Encourage preservation of adequate size blocks of land necessary for species survival and corridor areas that allow for migratory travel.
   (f) The City recognizes that species of wildlife in this locality are in a state of continuing flux, and a prudent understanding of this phenomenon is vital guiding decision makers to balance conservation of wildlife species with promotion of wise, desirable growth.
   (g) Development decisions will serve to protect local wildlife needs and reflect the values and desires of the public.
   (h) The City recognizes the need for a degree of flexibility in weighing the significance of different areas of fish and wildlife habitat conservation. Specifically, the magnitude of protection for "Priority Habitat Areas" is anticipated to be more pronounced than that which addresses "Important Habitat Area".

5. Identification. According to WAC 365-190-130, Fish and Wildlife Habitat Conservation means "land management for maintaining populations of species in suitable habitats within their natural geographic distribution so that the habitat available is sufficient to support viable populations over the long term and isolated subpopulations are not created. This does

not mean maintaining all individuals of all species at all times, but it does mean not degrading or reducing populations or habitats so that they are no longer viable over the long term. Counties and cities should engage in cooperative planning and coordination to help assure long term population viability."

(a) Areas of Fish and Wildlife Habitat Conservation are defined as:

(i) Areas with which federal or state endangered, threatened and sensitive species of fish, wildlife or plants have a primary association; or

(ii) Habitats and species of local importance, which could include areas with state listed monitor or candidate species, or federally listed candidate species, or species with high recreational value (game, etc.) that have primary association; or

(iii) Naturally occurring ponds under twenty (20) acres and their submerged aquatic beds that provide fish or wildlife habitat; or

(iv) Waters of the state; or

(v) Lakes, ponds, streams and rivers planted with game fish by a government entity; (these include water bodies planted under auspices of a federal, state or local program, or which support important fish species as identified by Washington Department of Wildlife); or

(vi) Federal, state and private natural area preserves and natural resource conservation areas.

(b) The City of Kettle Falls allows for the nomination of "Species/Habitat of Local Importance". In order to nominate "Species/Habitat of Local Importance" as candidates for designation within the category of Important Habitat Areas, an individual or organization must:

(i) Demonstrate a need for special consideration;

(ii) Propose relevant management strategies considered effective and within the scope of this chapter;

(iii) Provide species habitat location(s) on a map (scale 1:24,000).

© In order to accommodate the needs and desires of the residents, public input shall be required to include species and/or habitats in the "Important Habitat Area" classification identified in this section. Where the habitats and species classified as "Priority Habitat Area" are responsive, concurrently, with official changes in federal and/or state threatened or endangered listings/de-listings, to include or un-include species and/or habitats in the "Important Habitat Area" classification, these regulations must be amended through a formal process for nomination.

(d) There are no known "anadromous fisheries" within the City of Kettle Falls.

6. Classification.

Fish and wildlife habitat conservation areas will be classified and designated as follows, based on a variety of data sources as identified herein:

(a) Priority Habitat Areas - seasonal ranges and habitat elements with which federal and/or state listed sensitive, endangered or threatened species have a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

(b) Important Habitat Areas - habitat areas that are associated with and actively utilized by federal and/or state candidate species and species designated as being of local importance according to the nomination process.

7. Determination Process.
The City of Kettle Falls will review each development permit application if the provisions of this section will be applied to the project. In making the determination, the City may use any of the reference maps and/or inventories referenced in this regulation. The following progressive steps will occur upon a determination by the City that a fish and/or wildlife habitat conservation area may exist on a site proposed for a development permit.
   (a) Step One: Staff will determine if there are any possible fish and/or wildlife habitat conservation areas on-site. This determination shall be made following a review and site inspection and/or a consultation with a qualified fish and/or wildlife biologist, if deemed necessary by the City. If no fish and/or wildlife habitat conservation area is determined to be present, this section shall not apply to the review of the proposed development.
   (b) Step Two: If it is determined by staff that a fish and/or wildlife habitat conservation area may be present, a site inspection and consultation with federal and/or state wildlife agency personnel shall be conducted to more definitively determine if a fish and/or wildlife habitat conservation area exists on the site. If no, this section shall not apply to the review of the proposed development. If yes, the applicant shall submit a habitat boundary survey and a habitat management and mitigation plan.

8. Designation.
   (a) If an area that is subject to a development permit application is determined to be a Priority Habitat Area after going through the determination process described herein, it shall be designated as such, and a habitat boundary survey and a habitat management and a mitigation plan shall be developed as provided for in this section.
   (b) If an area that is subject to a development permit application is determined to be an Important Habitat Area after going through the determination process described herein, it shall be designated as such, and habitat boundary survey and a habitat management and a mitigation plan may be required as provided for in this section. Designation as either a Priority or Important Habitat Area is NOT intended to deny development opportunities; rather, it is aimed at either steering growth to more suitable areas where fish and wildlife values will not be unduly compromised, or developing appropriate and adequate mitigation measures to alleviate potential negative impacts.

9. Fish/Wildlife Habitat Boundary Survey.
   (a) If it is determined through the process identified herein that a Priority Habitat Area exists on a site that is the subject of a development permit application, a fish/wildlife habitat boundary survey and evaluation shall be conducted by a fish or wildlife biologist, as appropriate, who is knowledgeable of wildlife habitat within Stevens County. The wildlife habitat boundary shall be field staked by the biologist and surveyed by a land surveyor for disclosure on all final plats, maps, etc.
   (b) The director may waive the requirement for the survey for minor development if:
      (i) The proposed development is not within the proximity of the associated habitat;
      (ii) There is adequate information available on the area proposed for development to determine the impacts of the proposed development and appropriate mitigating measures; and;

(iii) The applicant provides voluntary deed restrictions that are approved by the City.

(c) The fish/wildlife habitat boundary and any associated buffer shall be identified on all plats, maps, plans and specifications submitted for the project.

10. Fish/Wildlife Habitat Management and Mitigation Plan.
A fish/wildlife habitat management and mitigation plan is required for all proposed developments determined to be within a "Priority Habitat Area". For those proposed developments determined to be within "Important Habitat Area", a fish/wildlife habitat management and mitigation plan may be required if it is determined by the City that the proposal will have probable adverse impacts on the habitat area.

(a) When required, a fish/wildlife habitat management and mitigation plan shall be prepared by a biologist who is knowledgeable of wildlife habitat within Stevens County.

(b) The fish/wildlife habitat management and mitigation plan shall demonstrate, when implemented, that the net loss of ecological function of habitat is minimal.

(c) Based on the best available science, the fish/wildlife habitat management and mitigation plan shall identify how impacts from the proposed project shall be mitigated, as well as the necessary monitoring and contingency actions for the continued maintenance of the habitat conservation area and any associated buffer.

(d) The fish/wildlife habitat management and mitigation plan shall include maps and narrative descriptions that address at least the following items:

(i) Avoiding the impact altogether by not taking a certain action or parts of an action;

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

(iii) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;

(iv) Compensating for the impact by replacing, enhancing or providing substitute resources or environments.

(e) A plan by the applicant that explains how any adverse impacts created by the proposed development will be mitigated, including without limitation the following techniques:

(i) Use of any federal, state or local management recommendations which have been developed for the species or habitats in the area;

(ii) Establishment of appropriate and adequate buffer zones;

(iii) Preservation of critically important plants and trees;

(iv) Limitation of access to the habitat conservation area;

(v) Seasonal restriction of construction activities;

(vi) Establishment of a timetable for periodic review of the plan.

(f) A detailed discussion of on-going management practices which will protect the habitat conservation area after the project site has been fully developed, including proposed monitoring, contingency, maintenance and surety programs.

(g) Activities or uses which would strip the shoreline of vegetative cover, cause substantial erosion or sedimentation or affect aquatic life, should be prohibited.

(h) The director may waive the requirement for the habitat management and mitigation plan for minor development if:
(i) The proposed development is not within 25′ of the associated habitat;
(ii) There is adequate information available on the area proposed for development to determine the impacts of the proposed development and appropriate mitigating measures; and
(iii) The applicant provides voluntary deed restrictions that are approved by the City.

18.05.090 - Critical Area - Frequently Flooded Areas.

1. Purpose and Objectives.
It is the intent of the City to recognize and diminish potential hazards that are located within the city boundaries or that may annex into the City in areas where severe and costly flooding is anticipated to occur.

2. The following reflect the goals and policies of the community:
(a) Goals.
(i) Protect the frequently flooded areas that are known to be critical parts of the natural drainage system by limiting and controlling potential alterations and/or obstructions to those areas.

(b) Policies.
(i) Discourage land use practices that may impede the flow of floodwater or cause danger to life or property. This includes, but not limited to, filling, dumping, storage of materials, structures, buildings, and any other works which, when acting alone or in combination with other existing or future uses, would cause damaging flood heights and velocities by obstructing floodwater flows.
(ii) Maintain and add catch basins or similar measures, as needed to protect the health, safety and welfare of residents and the environment.

3. Classification of frequently flooded areas should include, at a minimum, the 100 year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program. The following categories of frequently flooded areas established for the purpose of classification are:
(a) Floodways - The channel of a stream, plus any adjacent floodplain areas, that must be kept free of encroachment in order that the base flood is carried without substantial increases in flood heights.
(b) Floodplains - The floodway and special flood hazard areas.
© Special Flood Hazard Areas - The area adjoining the floodway which is subject to a one percent or greater chance of flooding in any given year, as identified in the Stevens County Flood Insurance Study and determined by the Federal Insurance Administration.

4. Designation.
A. All lands, shorelines and waters which are currently identified within the 100 year floodplain in the Federal Emergency Management Agency entitled "The Flood Insurance Study for the County of Stevens", with accompanying Flood Insurance Rate and Boundary Maps, are designated as frequently flooded areas. If and when this study becomes updated to reflect new conditions, designation of frequently flooded areas will include the changes.

18.05.100 - Critical Area - Geologically Hazardous Areas.

1. Purposes.
It is the intent of the City to reduce the threat posed to the health and safety of its citizens from commercial, residential or industrial development that may be sited in areas of significant geologic hazard. In some cases, it is recognized that risks from geologic hazards can be reduced or mitigated to acceptable levels through engineering design or modified construction practices. In other cases where technological efforts are not sufficient to reduce associated risks, building is best avoided. The following reflect the goals and policies of the community:
   (a) Goal: Provide appropriate measures to either avoid or mitigate significant risks that are posed by geologic hazard areas to public and private property and to public health and safety.
   (b) Policies: When probable significant adverse impacts from geologically hazardous areas are identified during the review of a development application, documentation that fully addresses these potential impacts and identifies alternative mitigation measures to eliminate or minimize the impacts will be required.

2. Identification.
Geological Hazards pose a threat to public health and safety. Adequate identification and development standards reduce these risks. Hazards of concern that exist in the City include any land containing soils, geology or slopes that meet any of the following criteria:
   (a) Areas with slopes in excess of 45%
   (b) Soils within the City that are especially subject to wind erosion.
   (c) Slopes having gradients steeper than eighty percent (80%) subject to rock falling during seismic shaking; and/or:
   (d) Areas highly susceptible to liquefaction from seismic activity.

3. Classification and Designation.
   (a) All geologically hazardous areas shall be classified and designated according to the level of risk associated with the hazardous area as established through an approved geologic hazard risk assessment and/or geotechnical report submitted by the applicant in accordance with this chapter.

4. Determination Process.
The City will review each development permit application to determine if the provisions of this section will be applied to the project. In making the determination, the City may use any reference maps and/or inventories identified in the Comprehensive Land Use Plan.
   (a) Step One: Staff will determine if there are any possible geologically hazardous areas on-site as defined herein. This determination will be made following a review of information available and a site inspection if appropriate. If no hazard area is determined to be present, this section shall not apply to the review of the proposed development.
   (b) Step Two: If it is determined that a geologically hazardous area may be present, the applicant shall submit a geologic hazard area risk assessment prepared by a licensed engineer or licensed geologist. The risk assessment will include a description of the geology of the site and the proposed development; an assessment of the potential impact the project may have on the geologic hazard; an assessment of what potential impact the geologic hazard may have on the project;

appropriate mitigation measures, if any; and a conclusion as to whether further analysis is necessary. The assessment will be signed by and bear the seal of the engineer or geologist that prepared it. No further analysis shall be required if the geologic hazard area risk assessment concludes that there is no geologic hazard present on the site, nor will the project affect or be affected by any potential geologic hazards that may be nearby.

(c) Step Three. If the professional preparing the risk assessment in step two concludes that further analysis is necessary, the applicant shall submit a geotechnical report as provided for herein.

(d) A proposed development cannot be approved if it is determined by the geotechnical report that either the proposed development or adjacent properties will be at risk of damage from the geologic hazard, or that the project will increase the risk of occurrence of the hazard and there are no adequate mitigation measures to alleviate the risks.

5. Geotechnical Report

(a) All geotechnical reports shall be prepared by a civil engineer licensed to practice in the State of Washington.

(b) A geotechnical report shall include a description of geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and the options and recommendations on the suitability of the site to be developed. The report shall evaluate the actual presence of the geologic conditions giving rise to the geologic hazard and an evaluation of the safety of the proposed project and identification of construction practices, monitoring programs and other mitigation measures necessary. A bibliography of scientific citations shall be included as necessary.

(c) The geotechnical report shall include a certification from the engineer preparing the report, including the engineer's professional stamp and signature, stating all of the following:

(i) The risk of damage from the project, both on and off-site is minimal;

(ii) The project will not materially increase the risk of occurrence of the hazard;

(iii) The specific measures incorporated into the design and operation plan of the project to eliminate or reduce the risk of damage due to the hazard; and

(iv) Mitigation of adverse site conditions including slope stabilization measures and seismically unstable soils, if applicable.

(d) All mitigation measures, construction techniques, recommendations and technical specifications provided in the geotechnical report shall be applied during the implementation of the proposal. The engineer of record shall submit sealed verification at the conclusion of construction that development occurred in conformance with the approved plans.

18.05.110 - Critical Area - Wetlands.

1. Purpose and Objectives.

It is the intent of the of the City of Kettle Falls to promote public health and welfare by instituting local measures to preserve naturally occurring wetlands that exist within the current city boundaries or that may be annexed in the future. These areas may already serve a variety of vital

functions, including, but not limited to: flood storage and conveyance, water quality protection, recharge and discharge areas for groundwater, erosion control, sediment control, fish and wildlife habitat, recreation, education and scientific research.

Protection measures should strive to spare identified value and function of wetlands that may be in jeopardy from new development proposals. However, regulations shall not prohibit uses legally existing on any parcel prior to their adoption.

The City recognized that various legal means and levels of government already address protection of wetlands. Effort will be made to avoid unnecessary duplication and to promote cooperation and coordination whenever possible. The following reflect the goals and policies of the community:

(a) Goal: The City's wetlands will be protected to the greatest extent possible because they provide important functions that protect and improve the quality of life.

(b) Policies:

(i) Use of innovative techniques should be encouraged to protect wetlands.

(ii) For development proposals which encompass wetland areas or their buffers there will be a site-specific review process required to determine impacts of development.

2. Classification and Designation.
Wetlands shall be identified and delineated using best available science, such as the Washington State Wetlands Identification and Delineation Manual. Classification and rating of wetlands will be done using the Washington State Wetlands Rating System for Eastern Washington.

Category I wetlands are: 1) alkali wetlands; 2) wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as high quality wetlands; 3) bogs; 4) mature and old-growth forested wetlands over ¼ acre with slow-growing trees; 5) forests with stands of aspen; and 6) wetlands that perform many functions very well (scores of 70 points or more). These wetlands are those that 1) represent a unique or rare wetland type; or 2) are more sensitive to disturbance than most wetlands; or 3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or 4) provide a high level of function.

Category II wetlands are: 1) forested wetlands in the floodplains of rivers; 2) mature and old-growth forested wetlands over ¼ acre with fast-growing trees; 3) vernal pools; and 4) wetlands that perform functions well (scores between 51-69 points).

Category III wetlands are 1) vernal pools that are isolated and 2) wetlands with a moderate level of functions (scores between 30-50 points). Wetlands scoring between 30 and 50 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

Category IV wetlands have the lowest level of functions (scores fewer than 30 points) and are often heavily disturbed. These are wetlands that we should be able to replace, and in some cases be able to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions and also need to be protected.

3. Determination Process.
The City will review each development permit application to determine if the provisions of this section will be applied to the project. In making the determination, the City may use any of the reference maps and/or inventories identified in this Chapter. The following progressive steps will occur upon a determination that a wetland may exist on a site proposed for a development permit.

(b) Step One: City staff will determine if there are any possible wetland areas on-site. This determination shall be made following a review of information available, as well as a site inspection and/or a consultation with a qualified wetland biologist, if deemed necessary by the City. If no regulated wetland is determined to be present, this section shall not apply to the review of the proposed development.

(c) Step Two: If it is determined that wetland areas may be present, a site inspection and consultation with a qualified wetland biologist shall be conducted to more definitively determine if a regulated wetland area exists on the site. If no, this section shall not apply to the review of the proposed development. If yes, the applicant shall conduct a wetland delineation and shall submit a wetland management and mitigation plan, as provided for in this section.

4. Wetland Management and Mitigation Plan.

(a) As determined necessary as provided for in this section, a wetland management and mitigation plan shall be required when impacts to a wetland are unavoidable during project development.

(b) "Vernal Pools" are wetlands that are less than 4,000 square feet and meet at least two of the following criteria:

(i) Its only source of water is rainfall or snowmelt from a small contributing basin and has no groundwater input.

(ii) Wetland plants are typically present only in the spring and the summer vegetation is typically upland annuals.

(iii) The soils in the wetland are shallow (less than 30 cm or 1 foot deep) and are underlain by an impermeable layer such as basalt or clay.

(iv) Surface water is present for less than 120 days during the wet season.

(v) Vernal pools that are both near other aquatic resources and relatively undisturbed during February and March are considered Category 2 wetlands.

(c) Wetland management and mitigation plans shall be prepared by a professional wetland scientist with sufficient experience as a wetland professional including delineating wetlands using the state or federal manuals, preparing wetland reports, conducting function assessments and developing and implementing mitigation plans.

(d) The wetland management and mitigation plan shall demonstrate, when implemented, that there shall be no net loss of the ecological function or acreage of the wetland.

(e) The wetland management and mitigation plan shall identify how impacts from the proposed project shall be mitigated, as well as the necessary monitoring and contingency actions for the continued maintenance of the wetland and its associated buffer.

(f) The wetland management and mitigation plan shall contain a report that includes, but is not limited to, the following information:

(i) Location maps, regional 1:24,000 and local 1:4,800;

(ii) A map or maps indicating the boundary delineation of the wetland; the width and length of all existing and proposed structures, utilities, roads, easements; wastewater and stormwater facilities; adjacent land uses, zoning districts and comprehensive plan designations;

(iii) A description of the proposed project including the nature, density and intensity of the proposed development and associated grading, structures, utilities, stormwater facilities, etc., in sufficient detail to allow analysis of such land use change upon the identified wetland;

(iv) A detailed description of vegetative, faunal and hydrologic conditions, soil and substrate characteristics, and topographic features within and surrounding the wetland;

(v) A detailed description of vegetative, faunal and hydrological conditions, soil and substrate characteristics, and topographic features within any compensation site;

(vi) A detailed description of the proposed project's effects on the wetland, and a discussion of any federal, state or local management recommendations which have been developed for the area;

(vii) A discussion of the following mitigation alternatives as they relate to the proposal. The mitigation alternatives shall be proposed in a manner that considers the following in order of priority from (a) through (d):

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 to avoid or reduce impacts;
c. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
d. Compensating for the impact by replacing, enhancing or providing substitute resources or environments.

(viii) A plan which explains how any adverse impacts created by the proposed development will be mitigated, including without limitation the following techniques:

a. Establishment of buffer zones;
b. Preservation of critically important plants and trees;
c. Limitation of access to the wetland area;
d. Seasonal restriction of construction activities;
e. Establishment of a monitoring program within the plan;
f. Drainage and erosion control techniques.

(ix) A detailed discussion of on-going management practices which will protect the wetland after the project site has been fully developed, including proposed monitoring, contingency, maintenance and surety programs for the time period necessary to establish that the performance standards have been met, but for not less than five years.

(x) All reports will be provided in an electronic format (word processor) and all geographic entities (maps etc.) will be provided in a geo-code format for use in GIS systems (ArcView, MapInfo, AutoCAD, etc.)

(g) Mitigation ratios shall be used when impacts to wetlands cannot be avoided. As identified below, the first number specifies the acreage of replacement wetlands and the second number specifies the acreage of wetlands altered. The mitigation ratios by wetland types are as follows:

(i) Wetland Category I- 6:1
(ii) Wetland Category II- 3:1
(iii) Wetland Category III- 2:1
(iv) Wetland Category IV- 1.5:1

(h) Wetlands Enhancement as Mitigation

(i) Impacts to wetlands may be mitigated by enhancement of existing wetlands and must be accomplished in a manner consistent with the requirements of Section 18.05.140. Applicants proposing to enhance wetland must produce a critical area report that identifies how enhancement will increase the functions of the wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site.

(ii) The ratios identified above, shall be at a minimum four times the required acreage where the enhancement proposal would result in minimal gain in the performance of wetland functions and/or result in the reduction of other wetland functions currently being provided in the wetland.

5. Management Recommendations and Standards.
The following management recommendations and standards will apply to development proposals determined to be located within wetland areas, as defined and described herein:

(a) Wetlands shall be protected, based on their quality established from the rating system, and from alterations which may create adverse impacts. The greatest protection shall be provided to Category I and II Wetlands.

(b) Alteration shall NOT mean best management practices for agriculture which by design could not be considered a change in land use, including but not limited to, improved chemical application or practice, which are intended to improve crop production and enhance areas adjacent to wetlands.

(c) Activities conducted by public agencies to control mosquitoes in compliance with state and federal laws shall be exempt from City wetland regulations.

(d) Activities and construction necessary on an emergency basis to prevent threats to public health and safety may be allowed if reasonable justification warrants cause for a waiver.

(e) The City will coordinate wetland preservation strategy and effort with appropriate state and federal agencies, and private conservation organizations, to take advantage of both technical and financial assistance, and to avoid duplication of efforts.

(f) A wetland buffer area of adequate width shall be maintained between wetlands and adjacent new development to protect the function and integrity of wetlands. The ultimate width of the established buffer shall be dependent upon functioning and sensitivity of the wetland; characteristics of the existing buffer, potential impacts associated with adjacent and proposed land use, and other existing regulation which may control the proposed activity. Extension or reduction in required buffer widths may be imposed according to these factors. Minimum buffer widths are:

Land Use Intensity	Category I Wetland	Category II Wetland	Category III Wetland	Category IV Wetland
Major Development (SEPA Required)	190 ft	150 ft	60 ft	40 ft
Minor Development (SEPA not Required)	75 ft	75 ft	60 ft	40 ft

(g) Wetland buffers shall be retained in their natural conditions unless change in a portion of a wetland buffer is proposed that will not have an adverse impact on the wetland, or adequate mitigation cannot or will not be provided by natural conditions. Integrity of the wetland shall be maintained as a function of the buffer.

(h) Buffer Averaging:

(i) Standard buffer widths may be modified by the Planning Director for an averaging to improve wetland protection and may be permitted when all of the following conditions are met:

a. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a "dual-rated" wetland with a Category I area adjacent to a lower rated area.
b. The buffer is increased adjacent to the higher-functioning area of habitat or more sensitive portion of the wetland and decreased adjacent to the lower-functioning or less sensitive portion.
c. The total area of the buffer after averaging is equal to the area required without averaging.
d. The buffer at its narrowest point is never less than ¾ of the required width and/or 25 feet.

(ii) Averaging to allow reasonable use of a parcel may be permitted when all of the following are met:

a. There are no feasible alternatives to the site design that could be accomplished without buffer averaging.
b. The averaged buffer will not result in degradation of the wetland's functions and values as demonstrated by a report from a qualified wetland professional.
c. The total buffer area after averaging is equal to the area required without averaging.
d. The buffer at its narrowest point is never less than ¾ of the required width.

(i) Activities or uses which would strip the shoreline of vegetative cover, cause substantial erosion or sedimentation or affect aquatic life, should be prohibited.

(j) Construction of structural shoreline stabilization and flood control works should be minimized. New developments should be designed to preclude need for such works and should be compatible with shoreline characteristics and limitations.

(k) Wetland alteration shall not cause significant adverse impact to wetland ecosystems or surrounding areas.

(l) Encourage development of an education program promoting the value of wetlands, and that promotes private stewardship of wetland areas.

18.05.120 - Best Available Science.

Critical area reports and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat. 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 365-195-900 through 365-195-925. The City of Kettle Falls adopts the following publications and references as field guides to assist in establishing best available science: *Washington State Wetlands Rating System for Eastern Washington (2004), Wetlands in Washington State Vols. 1 & 2 (2005), Wetland Mitigation in Washington State, Parts 1 and 2 (2006), Priority Habitats & Species, Washington Department of Fish & Wildlife Management Recommendations for habitat and species for Kettle Falls and Stevens County, Selecting Wetland Mitigation Sites Using a Watershed Approach (2009), Department of Natural Resources Water Typing System for Fish Habitat in the Colville River (WAC 222-16-030), and Department of Natural Resources Interim Watery Types (WAC 222-16-031).*

18.05.130 - Development Standards.

Within critical areas, the city shall prohibit soil excavation, grading, removal of native vegetation species, draining, intentional burning, planting of invasive or nuisance vegetation, placement of structures and new construction on critical areas unless otherwise authorized in this chapter.

1. Applicability. These development standards apply to uses on critical areas and within buffers unless otherwise exempted in this chapter.
2. Performance Standards. In order to approve application for development on lands subject to this chapter, the Planning Director shall find that the following standards have been met:
   - (a) All reasonable alternatives for locating the development activity in such a way so as to avoid critical areas have been considered and the development activity will be located in the least environmentally sensitive area as practicable and the purpose of this chapter is fulfilled.
   - (b) The City has approved the vegetation removal methods and the removal of native plants has been avoided, to the extent practicable.
   - (c) All adverse impacts to all affected critical areas and buffers are either avoided or fully mitigated.
   - (d) The plan minimizes cuts and fills.
   - (e) The Planning Director has reviewed and approved an erosion control plan, grading plan, and vegetation removal and replanting plan prior to construction activity.
   - (f) All activities have received applicable state and federal permits, and comply with SEPA requirements if the "lead agency" makes a threshold determination of significance (DS), or a mitigated determination of non-significance (MDNS).
   - (g) Compliance with this chapter does not constitute compliance with state and federal environmental standards. The applicant shall be responsible for demonstrating such compliance.

3. Review Process.
   - (a) The review process shall be the type specified in Title 17 for each particular land use action unless otherwise specified in this chapter.

4. SEPA Review. On a case-by-case basis, the responsible official may issue a determination of non-significance (DNS) if:

(a) The application for development review contains all requested information, including reports, maps and other documents relevant to the proposed activity; and

(b) The proposed activity complies with all applicable development review and performance standards; and

(c) Compliance with all applicable development standards and performance standards is made a binding condition of the land use approval.

18.05.140 - Mitigation.

1. Approval. City approval of a mitigation plan is a prerequisite for approval of any development activities in critical areas.

(a) The applicant shall submit a written request describing the extent and nature of the proposed development activity on critical areas and buffers. The request shall include boundary locations of all critical areas and buffers.

(b) The application for development shall include a mitigation plan prepared in compliance with this section. Mitigation plans shall be developed utilizing the guidelines found in *Wetland Mitigation in Washington State, Part 1, Agency Policies and Guidance (version 1, Publication #06-06-011a, March 2006)* and *Wetland Mitigation in Washington State, Part 2, Developing Mitigation Plans (Version 1, Publication #06-06-011b, March 2006)*

(c) The City may require the applicant to prepare special reports evaluating potential adverse impacts upon critical areas and potential mitigation measures as part of the land use application process. These reports may include, but are not limited to, the following: storm water management plan; hydrology, geology, and soils report; grading and erosion control plan; native vegetation report; fish and wildlife assessment and impact report; water quality report; wetlands delineation; and other reports determined necessary by the city.

(d) The City shall consult with state and federal resource management agencies and, in order to protect wildlife habitat or natural resource values, shall attach such conditions as may be necessary to effectively mitigate identified adverse impacts of the proposed development activity.

(e) The City may request third party "peer review" of an application by a qualified professional and may incorporate recommendations from such third party reports in findings approving or denying the application.

(f) All reports recommending mitigation shall include provisions for monitoring of programs and replacement of improvements, on an annual basis, consistent with report recommendations and at one, three, five, and seven-year intervals.

(g) The City may require replacement mitigation to be established and functional prior to project construction.

2. No Net Loss.

(a) Mitigation efforts, when allowed, shall ensure that development activity does not yield a net loss of the area or function of the critical areas. No net loss shall be measured by:

(i) Avoidance or mitigation of adverse impacts to fish life; or

(ii) Avoidance or mitigation of net loss of habitat functions necessary to sustain fish life; or

(iii) Avoidance or mitigation of loss of area by habitat type.

(b) Mitigation to achieve no net loss should benefit those organisms being impacted.

(c) Where development results in a loss of wetland area, the mitigation plan shall demonstrate that wetland area is replaced consistent with the ratios described in section 18.05.110-4(g).

18.05.150 - Methods and Techniques.

The created or enhanced wetland shall be, acre for acre, of equal or greater biological values, including habitat value, and with equivalent hydrological values including storage capacity.

1. Mitigation Plan. A mitigation plan shall provide for the design, implementation, maintenance, and monitoring of mitigation measures. A mitigation plan shall include but is not limited to the following:

(a) Methods and techniques to be used to mitigate impacts to critical areas;

(b) Explanation of methods and techniques for monitoring said mitigation and a proposed timeframe for such monitoring. Monitoring periods shall be a minimum of 5 years.

18.05.160 - Modification to Overlay Zone.

The City may modify the boundaries of the critical areas overlay district based upon expert studies.

1. Land to be conserved as public or private open space, through dedication, conservation easements or other appropriate means, shall retain a critical areas overlay designation.

2. Land approved for private building construction shall be removed from this overlay district.

3. The City shall maintain a record of all administrative amendments to the critical areas overlay district, including findings in support of the decision to modify the boundaries of the overlay district.

18.05.170 - Bonds to Ensure Mitigation, Maintenance and Monitoring.

1. When mitigation required pursuant to a development proposal is not completed prior to the city final permit approval, such as final plat approval or final building inspection, the city shall require the applicant to post a performance bond or other security in a form and amount deemed acceptable by the city. If the development proposal is subject to mitigation, the applicant shall post a mitigation bond or other security in a form and amount deemed acceptable by the city to ensure mitigation is fully functional.

2. The bond shall be in the amount of 125 percent of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater, and the cost of maintenance and monitoring for a 10-year period.

3. The bond shall be in the form of an assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the city attorney or other method acceptable to the City Planner.

4. Bonds or other security authorized by this section shall remain in effect until the city determines, in writing, that the standards bonded for have been met. Bonds or other security shall be held by the city for a minimum of

10 years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.
5. Depletion, failure, or collection of bond funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring or restoration.
6. Public development proposals shall be relieved from having to comply with bonding requirements of this section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.
7. Any failure to satisfy critical area requirements established by law or conditions including, but not limited to, the failure to provide a monitoring report within 30 days after it is due or comply with other provisions of an approved 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 of any other law.
8. Any funds recovered pursuant to this section shall be used to complete the required mitigation maintenance or monitoring.

18.05.180 - Critical Area Inspections.

Reasonable access to the site shall be provided to the city, state and federal agency review for the purpose of inspections during any proposal review, restoration, emergency action or monitoring period.

18.05.190 - Agricultural Lands.

No agricultural land located within the City's urban growth area shall be designated as agricultural land of long-term commercial significance under RCW 36.70A.170.

18.05.200 - Enforcement.

This chapter shall be enforced in the same manner as provided in Title 17 of this code for the enforcement of the zoning code. (Ord. 1704, 2011)