



AMENDED AGENDA
PLANNING COMMISSION MEETING
MARCH 31, 2022, 5:00 PM

COMMISSION ATTENDANCE IN PERSON
PUBLIC MAY ATTEND IN PERSON OR REMOTELY VIA ZOOM

Topic: City of Medical Lake Planning Commission
Time: Mar 31, 2022 05:00 PM Pacific Time (US and Canada)

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1. Call to Order, Pledge of Allegiance and Roll Call

A. Introductions of Planning Commission Members

B. Appointment of Chair and Vice-Chair

C. Overview of Role, Requirements and Conduct of Planning Commission Members

D. Additions to Agenda

E. Excused Absences

2. Approval of Minutes – January 27, 2022 (continued)

3. Interested Citizens: Audience Requests and Comments

4. Scheduled Items

A. Critical Areas Ordinance Update – section reviews: approach to review, discussion and timeline ordinance amendment

- a. Definitions & Procedures
- b. Critical Aquifer Recharge Areas (CARA) & Fish and Wildlife Habitat
- c. Frequently Flooded & Geological Hazardous Areas
- d. Wetlands

5. Staff reports

6. Commission Members Comments or Concerns

7. Adjournment

Next Regular Planning Commission Meeting: April 28, 2022



City of Medical Lake
124 S. Lefevre St.
P.O. Box 369
Medical Lake, WA 99022-0369

City Hall: (509) 565-5000

Fax: (509) 565-5008

Parks & Recreation: (509) 565-5007

Police: (509) 342-1735

City of Medical Lake
Planning Commission Minutes
January 27, 2022

Chair Hudson called the meeting to order at 5:01 p.m.

Commission Present: Mark Hudson, Tammy Roberson, Marye Jorgenson, and Judy Mayulianos.

Excused Absences: Wayne Ueda

Chair Hudson moved to excuse Commissioner Ueda. Commissioner Jorgenson seconded. All voted aye.

Staff Present: Rachel Granrath, Planning Consultant and Kendel Froese, City Attorney

Approval of Minutes: Commissioner Mayulianos moved to approve the minutes from January 27, 2022. Chair Hudson seconded. All voted aye.

Scheduled Items:

Critical Areas Ordinance Update – discussion and review

Chair Hudson gave an overview of the Commission’s approach to reviewing the Critical Areas Ordinance. Grammar and formatting comments will be sent directly to Planner Granrath. Chair Hudson asked the Commission their input for the level of restriction the City should include in this ordinance update. For example, the City could be in line with the required regulations at the state level or have stricter regulations. He requested input from the Commission.

Commissioners Jorgenson, Mayulianos, and Chair Hudson all gave input that the ordinance should be in line with the states regulations and not stricter. Commissioner Roberson discussed that Medical Lake should be more restrictive than the state and suggested the city explore hiring an expert biologist in updating the Critical Areas Ordinance. Planner Granrath added that this would need to be a recommendation to City Council for consideration.

Commissioner Roberson referenced a handbook on Critical Aras Ordinances published by the Department of Commerce regarding “reasonable use.” City Attorney Froese commented that staff will research and bring this document for discussion at the next meeting.

Mayor
Shirley Maike

Administrator
Doug Ross

Finance Director
Karen Langford

Public Works Director
Doug Ross

Police
SCSO

Fire & EMS
SCFD3



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The Commission discussed options on moving forward in the ordinance review and tabling discussion until an in-person meeting can be held. Commissioner Roberson motioned to table the Definitions and Procedures section and Critical Aquifer Recharge Areas/ Fish Wildlife and Habitat sections until the next regular meeting can be in person. Commissioner Mayulianos seconded. All voted aye.

Staff Reports:

None.

Commission Members Comments or Concerns:

The Commission discussed concerns relating to the website and improvements to the Planning Commissions section. The Commission recommended that staff coordinate with Karin, Medical Lake's new Administrative Assistant to execute and update changes to have things more easily accessible.

Commissioner Mayulianos motioned for adjournment. Commissioner Roberson seconded. All voted aye. Meeting adjourned 5:30 p.m.

Mark Hudson, Planning Commission Chair

Doug Ross, City Administrator

Mayor
Shirley Maike

Administrator
Doug Ross

Finance Director
Karen Langford

Public Works Director
Doug Ross

Police
SCSO

Fire & EMS
SCFD3



Memo

To: City of Medical Lake, Planning Commission
From: Rachel Granrath, Contract Planner
Date: Thursday, February 24, 2022 **no meeting occurred - matters continued to March 31, 2022**
Subject: Medical Lake's Critical Areas Ordinance Update – Staff Memo: Definitions and Procedures

Overview:

Medical Lake Planning Commission has been reviewing the City's Critical Areas Ordinance in order to become compliant with state and federal regulations in accordance with the Growth Management Act. Recent discussions at Commission meetings included the general approach to this update, such as regulating Medical Lake at the state level or becoming more restrictive through this update.

This staff memo is a response to Commissioner Roberson's concerns, comments, edits and questions relating to the Section on Definitions and Procedures.

Additionally, staff has provided associated exhibits and an example for reasonable use definition. (Below).

Exhibits:

Exhibit A: Department of Commerce Critical Areas Handbook

Exhibit B: Definitions and Procedures CAO Draft_2022-0218 (Revised by staff per Commission input)

Exhibit C: Definitions and Procedures CAO Draft – Commissioner Roberson Input

Reasonable Use definition research:

Through research of critical area codes across the state, there are not many examples of reasonable use definitions. The following definitions are pulled from Seattle's code which is the closest example to the requested definitions. **Exhibit A** of this staff report includes the Department of Commerce Critical Areas Handbook, Reasonable Use can be found on page 9.

Seattle Municipal Code Chapter 25.09.520:

"Reasonable" or "reasonably" means its common usage except as provided below:

- 1. If the regulations of this Chapter 25.09 require that an action be reasonable in connection with determining mitigation measures, environmental impacts, other adverse impacts, or alternative development, "reasonable" means that the action will allow a proposal to attain or approximate its objectives with the least impact to ecological function in consideration of the costs and alternatives. When considering the cost of an action, the cost of the action is compared to the nature of the project not to the personal financial status of the applicant.*

2. If the regulations of this Chapter 25.09 require that an action be reasonable in determining location, "reasonable alternative location" means a location that can accommodate the proposal's objectives at the lowest level of impact to ecological function in consideration of the environmental, social, and economic impacts on the public and the cost to the applicant.

"Reasonable use of property" means the use of property to which its owner is entitled under the Constitution of the United States of America and the Washington State Constitution, as interpreted by the highest courts of those jurisdictions.

Comments and Response Matrix: Definitions and Procedures Review

Commissioner Comment/Concern	Staff Response
17.10.010 Purpose and Intent	
Comment - <i>Add objectives</i>	What objectives do you want added? The purpose and intent as revised addresses the intent of the ordinance – staff to not add objectives and maintain the purpose and intent section rather than adding a new section
Combine applicability and scope/ applicability into 1 section	Addressed
Suggested to be added back from previous code <i>"Intent of this chapter is to ensure that the city's resource lands, and critical areas are preserved and protected and that development in association with or adjacent to these areas is properly managed"</i>	Added as item #7 in 17.10.010 Purpose and Intent
Suggested to be added back from previous code <i>"Further the public's interest in the conservation use of our lands; preclude land uses and developments which are incompatible with land use areas; assure the long term conservation of resource lands; classify and designate critical areas and resource lands"</i>	proposed reword as added in #8 of 17.10.010 Purpose and intent – "8. Further the public's interest in the conservation use of public lands through precluding land uses and development that is incompatible with land use areas in order to assure long term conservation of resource lands"
Who determines minimal impacts?	Critical areas report or assessment done by a licensed professional
Include RCW 36.70A.370 (Protection of Private Property)	Where do you want this referenced? The RCW states protection of private property without a taking. – Staff proposes the following change: <i>In accordance with RCW 36.70A.370, 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.</i>
Add the statement "The Critical Areas Ordinance relates to all critical areas in and out of the shoreline"	Not needed in this code – this is explicitly stated in your SMP
17.10.020 Applicability	
Add objectives no titles with "objectives"	Removed language of objectives and kept "purposes and intent"
Delete duplicate statement	Addressed
Proposed Definitions:	
Suggested definition "appropriate development activities"	Staff concern – each project and site will have different appropriate development activities deemed appropriate by the critical areas report by a certified expert

Suggested definition “allowed uses”	This is defined in subsequent sections for each critical area and in the SMP. Adding a definition is unnecessary and muddies the waters.
Suggested definition change – “Best Available Science” Change to: means 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 professions that is consistent with WAC 365-195-900.”	The referenced WAC outlines this process and definition for qualified professionals and purposes. Staff recommends the definition as proposed by staff.
Suggested definition change – “Buffer zone” to: means an area required by this Chapter that provides a naturally vegetated, enhanced or newly vegetated zone surrounding a natural, restored or newly created critical area which serves as a buffer between the critical area and its associative upland areas and as an integral part of the habitat ecosystem.	Staff concern – be careful of getting too specific in definitions it could contradict best available science and expert recommendations
Suggested definition “Dangerous Tree”	Staff concern – dangerous tree is designated by best available science and an expert assessment
“Ecosystem” means the system of interrelationships within and between a biological community and its physical environment.	OK from staff to add but what does this actually help being in the code?
Suggested add back in “Extirpate” means to pull up by the root or destroy completely	Why add back in? What does this add to the code by defining? Extirpate is not referenced anywhere else.
Suggested definition “Extraordinary Hardship”	Staff concern – be careful of getting too specific in definitions it could contradict best available science and expert recommendations
Suggested add back in “Flood Hazard Areas”	This is defined as frequently flooded areas by the state, FEMA designates Flood Hazard areas but are considered the same in Washington State codes – we are required to update this as proposed by staff
Suggested add back in “Hydric Soil”	Staff concern – be careful of getting too specific in definitions it could contradict best available science and expert recommendations
Suggested add back in “Hydroperiod”	Staff concern – be careful of getting too specific in definitions it could contradict best available science and expert recommendations
Suggested add back in “Hydrophyte”	Staff concern – be careful of getting too specific in definitions it could contradict best available science and expert recommendations
“Impacts” means adverse effects of one thing upon another. Suggestion to reword “one thing”	What is your suggestion? What does this actually add?
Suggested definition “Limited Uses”	Staff concern – this is defined in zoning code, SMP, and further in the CAO
Suggested definition “significant local concern”. Whom determines this?	Staff concern – be careful of getting too specific in definitions it could contradict best available science and expert recommendations
Suggested definition “Minimal Impacts”	Staff concern – be careful of getting too specific in definitions it could contradict best available science and expert recommendations
Suggested deletion “Minor Development” definition – not needed because in development and building codes	Addressed

Suggested definition change - "Mitigation" means (<i>offsetting or countering the adverse environmental effects that developing the land can have on wetlands. Mitigation does not protect the wetlands; it only attempts to minimize the damages done</i>). a negotiated action involving the avoidance, reduction or compensation for possible adverse impacts. In the following order of preferences this includes: <i>Suggested edits in italics</i>	Staff recommendation – do not change per suggestion because this is specific to wetland mitigation and not all critical areas
Suggested definition change - " <i>Native Vegetation</i> " means <i>vegetation comprised of plant species which are indigenous to a wetland area.</i> "	Staff recommendation – do not change per suggestion because this is specific to a wetland area versus all critical and habitat areas
Suggested deletion – remove definition of "new construction" because referenced in building/development codes	Addressed
Suggested definition change – separate Priority Habitats and Priority Species as identified in previous code	Staff recommendation – do not change back to old code as suggested because this revision is in line with state language and we also define "Federal or State Endangered, Threatened and Candidate species which is inline with state and federal language and standards
Suggested definition - "Reasonable Use of Property", "Reasonable Use Exemption", "Reasonable Methods"	Staff concern – be careful of getting too specific in definitions it could contradict best available science and expert recommendations
Suggested definition change back to original for "Restoration" Staff proposed: "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" Old definition: "means improving, enhancing and re-establishing a once viable and now degraded wetland or stream to a state in which its stability, functions and values approach its unaltered state.	Staff recommendation – maintain staff recommended change as it streamlines and clarifies
Suggested deletion "Review Authority" – stated in development/building codes	Staff recommendation – defer to City Administrator as appropriate in code
Suggested definition "significant impact"	Staff concern – be careful of getting too specific in definitions it could contradict best available science and expert recommendations
Suggested deletion – "Start of Construction"	Ok to delete if commission agrees
Suggested deletion – "Substantial Damage"	Staff recommendation – keep this in the code as it links to nonconforming sections (replace and rebuild if damaged)
Suggested definition "Substantial Evidence"	Staff concern – be careful of getting too specific in definitions it could contradict best available science and expert recommendations
Suggested deletion – "Substantial Improvement"	Staff recommendation – keep this in the code as it links to nonconforming sections (replace and rebuild if damaged)
Suggested definition – "Specific Means	Staff concern – be careful of getting too specific in definitions it could contradict best available science and expert recommendations
Comment – "Unavoidable and necessary impacts" – <i>Do not allow it to occur in the first place, then there will be no unavoidable and necessary impacts to critical areas</i>	Commission discussion, no action needed by staff

Suggested definition – “Watershed”	Staff concern – be careful of getting too specific in definitions it could contradict best available science and expert recommendations
Suggested definition – “Wetland Biologist”	Staff concern – be careful of getting too specific in definitions it could contradict best available science and expert recommendations
Suggested definition – “Degraded Wetland”	Staff concern – wetland section identifies types and categories in line with state regulations
Suggested definition – “Depressional Wetland”	Staff concern – wetland section identifies types and categories in line with state regulations
Suggested definition – “Emergent Wetland”	Staff concern – wetland section identifies types and categories in line with state regulations
Suggested definition – “Forested Wetland”	Staff concern – wetland section identifies types and categories in line with state regulations
Suggested definition – “Riparian Habitat”	Riparian areas are already defined.
Suggested definition – “Scrub-Shrub Wetlands”	Staff concern – wetland section identifies types and categories in line with state regulations
Suggested definition – “Swamp”	Staff concern – wetland section identifies types and categories in line with state regulations
Suggested definition – “Wetlands, Nonregulatory”	Staff concern – wetland section identifies types and categories in line with state regulations
Suggested definition – “Wetlands, Regulatory”	Staff concern – wetland section identifies types and categories in line with state regulations
17.10.040 (Revised) Uses and Exemptions	
Suggested addition back in from former code 17.10.040, (b): Wetlands and Streams.	Staff suggestion – do not add back in – wetlands are streamlined in further section
Suggested addition back in from former code 17.10.040, (c): Multiple Critical Areas Located on One Site.	Staff suggestion – do not add back in – clarified in procedure section
Suggested addition back in from former code 17.10.040, (d): Maps and Inventory.	Staff suggestion – do not add back in – clarified in submittal materials
Suggested deletion of paragraph 2 under “Allowed Uses” Comment – <i>delete paragraph because wetlands/wetland buffers must not be destroyed in order to build a road/street</i>	Staff suggested – keep paragraph as proposed – expert and best available science proposes development or public improvements based on standards within this code.
“Allowed Uses” Paragraph 4 – comment <i>who determines all this?</i>	Expert who submits to City with best available science
“Allowed Uses” Paragraph 5 – question <i>“Explain this paragraph and review”</i>	This is replacement of a residential home that is considered legal-nonconforming – there is a review process for these applications depending on the critical area process in which the single family home is located
“Limited Uses” – question <i>“What is allowed and who determines this?”</i>	Limited Uses means there are processes in place (such as Subdivision or site plan review standards in other sections of the code). Meaning we review critical areas concurrently through a subdivision process. Making it a “limited use” because there are limitations on the use due to standards like zoning and subdivision regulations already in place in the code.
Limited Uses “Subdivision or short plat” question – <i>How can a subdivision or short plat be considered a limited use?</i>	See comment above
Limited Uses “Subject to Site Plan Review” question <i>Site plan review done by whom?</i>	See comment above

<i>“Exemptions” (1) Question – Who determines if it should be an administrative decision and what does that consist of? So, this is ok, if the responsible party restores/rehabilitates it as his/her expense? Deny the exemption.</i>	Administrative review is done by City Administrator
Public Agency and Utility Exception (1) (d) – question <i>Who determines this</i>	Experts submit a proposal to City in accordance with best available science. The state also sets exemptions and reasonable use for public and federal entities.
<i>“Reasonable Use Exception” – various comments and input outlined on page 14 of Commissioner Roberson’s input</i>	Comments for Commissioner discussion. No action needed by staff.
17.10.060 Procedures for critical areas permits	
Comment – <i>There is no specific paragraph for requirements to exemptions, reasonable use</i>	Reasonable use exceptions and Exemptions are processed in accordance with Section 17.10.040 both have a section for provisions
Suggested addition from previous code – paragraph on <i>“Activities requiring a permit”</i>	Staff recommendation – maintain revisions as proposed by staff – each subsequent chapter on critical area categories has the activities identified there.
Suggested addition <i>“Any wetland delineation done more than 5 years ago needs to be revisited. Although, revisiting a wetland delineation that is five or more years old does not necessarily mean a new wetland delineation needs to be done. It means it may be necessary to revisit the site to determine whether the delineation is still accurate or needs to be done based on current conditions.”</i>	Staff recommendation – not appropriate in this code section – can be discussed at wetland review
Suggested addition, <i>“Critical Area Reports are required for all proposals dealing with wetland(s) – no matter if the wetland is exempt or not. This is an easy way out for the participant to possibly do damage to the critical areas that might not be fixable for many, many years.”</i>	Staff concern – this statement does not allow for reasonable use or exemptions.
B. Critical Areas Report – <i>various comments and input outlined on page 16-17 of Commissioner Roberson’s input</i>	Staff has removed and clarified sections of the code to streamline and simplify. There are lots of duplicate and redundant statements.
2. Suggested paragraph deletion <i>“2. No Critical Areas Report is required for proposals that are exempt from the provisions of this chapter as set forth under Section 17.06.030, Exemptions herein.”</i>	Staff recommends maintaining this paragraph – you are required to allow for reasonable use and exceptions
Suggested addition from previous code <i>“showing the location, width, depth, length of all existing and proposed structures, roads, and equipment within the critical area and its buffer. Elevations of the site, North arrow and scale... Top view and typical cross section views of critical area and buffer”</i>	Staff recommends code as proposed by staff.
C. Administrative Review. Comment <i>“Who determines if the Administrator does not have adequate knowledge or not?”</i>	City Council is charged with review and hiring of the City Administrator. It is not the Planning Commission’s role to comment on the qualifications of a City employee.
Performance Standards – Mitigation sequencing – question <i>“To whom shall all reasonable efforts be demonstrated?”</i>	Submitted to the City by a licensed professional
Monitoring the hazard or other required mitigation and taking remedial action when necessary - Question – <i>“Who is going to do this?”</i>	Property owner and developer as approved in critical areas plan and permit approved and issued by the city
Comment for addition in Mitigation Pan iv. <i>“State mandatory required years of experience”</i>	Staff comment – this is redundant already defined by City and state in definitions
Question on Measurable Criteria – <i>“Measurable criteria such as? Who determines this?”</i>	State has criteria and each critical area has its own – best available science and a licensed professional make

	recommendations for project development that meets the standards
Suggested addition from previous code in Mitigation plan viii <i>“Identify potential courses of action and any corrective measures to be taken if monitoring or evaluation indicates performance standards are not being met.”</i>	Staff comment – this is redundant. The revised code addresses corrective courses and measures to be put in place.
K. Notification – proposed change – <i>remove city council and staff and replace with “Planning Commission” as governing body</i>	Staff concern/comment – this places an undue burden on procedure and response for the City to issue permits. Planning Commission is not an appropriate body for most critical area permits to be considered
L. Filing Fees – suggested revision <i>“Minimum fine of \$20,000)</i>	This amount seems unreasonable, given the majority of landowners with critical areas are existing single family homes. Examples from other jurisdictions: <ul style="list-style-type: none"> • Deer Park Municipal Code §17.10.060(H): civil infraction in accordance with DPMC §1.16.020; penalty not to exceed \$500 per day • Granite Falls Municipal Code §19.07.040: civil fine in accordance with GFMC §19.04.120(E); penalty not to exceed \$1,000 per day • Omak Municipal Code §18.20.080: civil infraction in accordance with OMC §1.16.010; penalty not to exceed \$500 per day
H. Public Hearings – suggested revision <i>“City Administrator and Planning Commission shall deem a project complete as a minor activity”</i>	Again, undue burden for minor activity permits.
J. Application Approval – question <i>“Who determines if there is an extraordinary hardship”</i>	Materials submitted to City then approval by City Administrator or City Council depending on application type
Other additions/ Revisions by staff	
Fish and wildlife habitat and conservation areas definition as revised by state	Tracked in <i>Definitions and Procedures document dated 2022-0218</i>
Minor revision to geological hazard areas as defined by the state	Tracked in <i>Definitions and Procedures document dated 2022-0218</i>



Department of Commerce

Critical Areas Handbook

Chapter 3

Structuring Critical Areas Regulations



June 2018
Brian Bonlender, Director

Chapter Contents

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Appendices

Appendix 3.A: Local Government Examples of Code Structures – City of Bellevue, City of Sumas, Yakima County, and Jefferson County

Code Applicability

Most communities have chosen to adopt stand-alone regulations to address critical areas to meet the Growth Management Act (GMA) requirement to ensure protection of critical areas. Often, such regulations are a critical areas chapter or section within the code's development regulations or environmental title.¹ This chapter focuses on critical areas regulations. However, critical areas may also be protected using other development regulations (Chapter 4) and non-regulatory programs (Chapter 6).

When to Require Critical Areas Review

The code needs to clearly specify when and where critical areas regulations are applicable, and when a permit is needed. If the critical areas regulations are integrated into existing development regulations, they may apply “automatically” to any new development similar to the manner that setbacks apply. However, if the critical areas regulations are located separately from the development regulations, such as in a critical areas chapter, the critical areas code needs to specify its applicability.

There are two basic options: (1) use code language that states that critical areas regulations are applicable to all development, or (2) specify the types of development and locations regulated by the critical areas code. In either case, critical areas regulations should always apply whenever necessary to protect critical areas from development activity. The first option, to have them always apply, cuts out the step (and relevant code language) of determining whether they apply or not. If the critical areas regulations always apply, then the review process needs to be simple enough that common permits are not unduly delayed. Limiting applicability to only specific uses or mapped locations eliminates the review process for many applicants, but depends on having sufficient information to precisely identify critical areas at the time the regulations are adopted.

The following is an example of code language that could be used to state applicability of the critical areas regulations:

The [city/county] shall regulate all uses, activities, and developments within, adjacent to, or likely to affect, one or more critical areas, consistent with the best available science and the provisions [in the critical areas chapter].

¹ See Appendix 3.A for examples of local government code structures.

The example states applicability broadly, including all “uses, activities, and developments” and it specifies that it applies whenever such activity is “likely to affect” a critical area.

Which Activities Require Review?

While development regulations typically apply to new construction activities, the code language for critical areas needs to be broad enough that it protects critical areas from all development activities, including those that do not involve new structures, such as roads. Clearing, paving, new uses (such as outdoor stages), and even storage of equipment (such as those with hazardous chemicals) need to be regulated to ensure protection. New agricultural activities and conversions from forestry to another land use may also require regulation.

Depending on how performance measures are implemented, exemptions may need to be stated so that minor passive land use activities, such as passive recreational uses, are not subject to review.

Some existing and ongoing business practices that are nonconforming may also be regulated, requiring annual reporting to the jurisdiction about operational performance, storage of hazardous materials, etc. Annual inspection programs by the jurisdiction may be another function that should be considered, especially if the nonconforming use represents a potential risk to a critical area. An example of this would be those businesses that conduct activities that handle hazardous substances or waste and that are located within a critical aquifer recharge area.

When Is an Impact Likely?

The critical areas code should state that review is required whenever the proposed development is near a critical area or whenever an impact is likely. Some codes fail to fully protect critical areas by limiting review to the following scenarios:

- “When a critical area is located on site.” – This ignores a potential critical area that might be located on the adjacent property or in the right-of-way that the proposed development may significantly impact.
- “When the development is located within a critical area.” – This protects critical areas in the most extreme cases, but fails to protect when the development is within the buffer or immediately adjacent to the critical area. Some communities have partially addressed this issue by including the buffer in the language, “when the development is located within a critical area or its buffer.” However, often the buffer distance is not known. Some critical areas do not have buffer set back requirements, and some developments will still result in significant impacts even when located beyond the buffer area. The

light, noise, and smoke from an industrial facility may have a significant impact on habitat even though it may be located beyond the buffer area.

To fully protect critical areas, the code language should include a statement that the community shall regulate development that is “likely to affect” a critical area. However, implementation of “likely to affect” can be difficult without knowing what typical impact distances are. To make the code more meaningful for both the staff and the public, it may be appropriate to include either a standard distance that includes all anticipated building activity set back distances or a list of variable buffer distances that apply depending on the type of critical areas identified.

The first “likely to affect” option can be implemented with the following language:

The [city/county] shall regulate all uses within [___ feet] of, or that are likely to affect, one or more critical areas, consistent with the best available science and the provisions herein.

Alternatively, the community could specify a list of distances based on the critical areas known to exist in their environment:

The [city/county] shall regulate all uses, activities, and developments within, adjacent to, or likely to affect, one or more critical areas, consistent with the best available science and the provisions herein. Adjacent shall mean any activity located:

1. On a site immediately adjoining a critical area;
2. A distance equal to or less than the required critical area buffer width and building setback;
3. A distance equal to or less than 2,620 feet from a peregrine falcon nest;²
4. A distance equal to or less than three hundred (300) feet upland from a stream, wetland, or water body;³
5. Within the floodway, floodplain or channel migration zone; or
6. A distance equal to or less than two hundred (200) feet from a critical aquifer recharge area.⁴

² The distance of 2,620 feet is based on the Washington Department of Fish and Wildlife *Management Recommendations for Washington’s Priority Species, Volume IV: Birds, [PHS Single Page Management Recommendations: Peregrine Falcon](#)*.

³ The distance of three hundred (300) feet is based on maximum recommended riparian habitat area width from the Washington Department of Fish and Wildlife *Management Recommendations for Washington’s Priority Habitats: Riparian*, 1997. [Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications](#)³ is a partial update of the 1997 publication. [Volume 2](#)³ of that document is WDFW’s draft management recommendations to inform local government decisions related to riparian ecosystems and aquatic resources, and is expected to be finalized in the fall of 2018.

⁴ The distance of two hundred (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.

Using broad language here means that the critical areas regulations will apply in many situations, ensuring that potentially impactful development does not escape review. However, the applicability of regulations does not mean that developments must go through a complex or lengthy review process. First, minor activities should be listed as exempt (see section on exemptions below). Additionally, a two-tiered review process may be used where a low level of review is used for common proposals that are likely to have only minor impacts and a higher level of review for larger projects and those with more direct impacts.

Clear Criteria and Standards for Protection

Development regulations should provide clear and detailed criteria so that in wielding professional judgment, administrators have regulatory “sideboards” and policy direction. Providing sufficient guidance for decision-makers is an important element of development regulations.⁵

The Western Washington Growth Management Hearings Board found that, while RCW 36.70A.172(1) does not require a new best available science investigation at the time of permitting, discretion in issuing permit decisions should be guided by specific criteria. A city’s requirements for an extensive critical areas report by a qualified biologist, coupled with the requirement that habitat alterations or mitigations must protect the quantitative and qualitative functions and values of habitat conservation areas when permits are issued, make the regulations compliant.⁶

In a challenged ordinance, the Central Puget Sound Growth Management Hearings Board found clear regulatory sideboards for approval of substitute mitigation measures were provided by the requirement of “equivalent mitigation for identified impacts.”⁷

Exemptions, Exceptions, and Allowable Uses

As recommended above, a community’s critical areas regulations should apply broadly to any development activity that might result in a detrimental impact to critical areas. However, there are several reasons why some activities should be exempt from critical areas regulations, or why they should be allowed with a lower level of review. Those reasons include:

⁵ *RE Sources v City of Blaine*, 09-2-0015, Order on Reconsideration, April 27, 2010, at 6.

⁶ *Evergreen Islands, Futurewise and Skagit County Audubon Society v. City of Anacortes*, 05-2-0016, FDO, 12/27/05.

⁷ *Shoreline Preservation Society, et al. v. City of Shoreline*, Case No. 15-3-0002, Order on Motions, September 10, 2015, at 10-11.

- Regulations should not prevent emergency actions that reduce risks of natural hazards.
- Some activities are unlikely to result in an impact.
- Additional critical areas review may not be effective in some instances.
- Appropriate uses of land should be encouraged.
- Beneficial activities, such as restoration, should be encouraged.

Minor activities, such as bird watching, pose little threat to critical areas. Other activities may have already been reviewed for critical areas impacts, or their potential critical areas impact may be limited by other regulations, such as stormwater regulations. The time and expense to review such activities would likely be excessive compared to the resulting potential impact.

Local governments use a variety of approaches in applying their critical areas regulations to uses that may have no or minimal impact to critical areas. Some use an applicability section to determine which activities are exempt. Others provide a list of allowed uses in critical areas. The sections that follow illustrate how these approaches may be used, and when they are recommended.

Local government examples in Appendix 3.A include sections for exemptions, exceptions, and allowed uses. These three categories allow varying degrees of allowed activities or uses without review or provide an exception from the regulations of the critical areas chapter.

Exemptions

If an activity or use is “exempt” from the critical areas regulations, the regulations do not apply and no review is required. Proponents of the activity or use are usually required to submit a written request or permit for an exemption that must be approved by the local government. Approval or denial may be an administrative action. If the exemption is denied, the proponent may continue in the permit review process subject to the requirements of the critical area regulations.

Being an exempt activity does not give permission to degrade critical areas or ignore the risk of natural hazards. Also, approval as an exempt activity under the critical areas regulations does not exempt the activity from other applicable local, state, and federal laws and requirements. Typical exemptions include:

- **Emergencies.** 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 the critical areas regulations. Usually, emergency actions are required to use reasonable methods to address the emergency with the least possible impact to the critical area. The local government will require review of the

emergency action to determine if it was beyond the scope of the exemption, and may require necessary permits after the fact, including any restoration or mitigation.

- **Operation, maintenance, or repair.** Operation, maintenance, repair or improvements of existing structures or infrastructure, if the activity doesn't alter or increase impacts to critical areas and there is no increased risk to life or property.
- **Passive outdoor activities.** This usually includes recreation, education, and scientific research activities that do not degrade the critical area, including fishing, hiking, and bird watching. Trail construction may be allowed except within wetlands, fish and wildlife habitat conservation areas, and their respective buffers.
- **Forest practices regulated by the state.** Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practices regulations, Title 222 WAC, are exempt, except for conversions to non-forestry uses.

Public Agency and Utility Exceptions

If the application of the critical areas regulations would prohibit a development proposal by a public agency or utility, the regulations may allow the agency or utility to apply for an exception. Criteria for review and approval may include:

- There is no other practical alternative to the proposed development with less impact on the critical areas;
- The application of the critical area regulations would unreasonably restrict the ability to provide utility services to the public;
- The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
- The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science; and
- The proposal is consistent with other applicable regulations and standards.

The Central Puget Sound Growth Management Hearings Board found that a city's record contained no scientific evidence to support an expansion of the public agency utility exception to include private utility projects. The Board concluded the city failed to demonstrate that it included best available science in violation of RCW 36.70A.172. The Board invalidated the ordinance and remanded to the City.⁸⁹

⁸ *John Hendrickson, et al. v. City of Kenmore*, Case No. 16-3-0002, Final Decision and Order, November 28, 2016, at 4.

⁹ It should be noted that the 2006 version of the ordinance included some but not all of the criteria recommended above. These criteria were included in a Sample Critical Areas Ordinance that Commerce no longer publishes. The Board chose not to accept the City's assertion that the Commerce Sample Critical Areas Ordinance is best available science because the City had deviated from it in 2006. Thus, the Board did not decide whether adopting the Commerce Sample Critical Areas Ordinance suffices to show that best available science has been included. The Board stated that Commerce's technical assistance is aimed at developing GMA-compliant critical area policies, but

Allowed Uses or Activities

“Allowed uses or activities” are those uses or activities that are unlikely to result in a critical areas impact because of other regulations or previous reviews. These activities are subject to review by the city or county, but do not require a separate critical areas review or report. Since these activities are generally not “exempt,” the critical areas standards continue to apply and the underlying permit could be conditioned to ensure that the activity complies with critical areas protection. Some jurisdictions use the term “partial exemptions” to note that these activities are exempt from the critical areas review process, but not the protection standards. Allowed uses or activities that may not need to complete a new critical review might include:

- **Projects previously reviewed for critical areas impacts.** 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), may not need to complete a new critical area review. Some jurisdictions place a time limit on how long a previous critical area review is good for, such as five years, to account for changes in codes, critical areas’ boundaries, or other factors over time.
- **Modification of existing structures.** Structural modifications or replacement of an existing legally constructed structure that doesn’t alter or increase impacts to a critical area or buffer and doesn’t increase risk to life or property.
- **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 county/city authorized private roadway. Provisions to address activities that alter a wetland or watercourse or result in the transport of sediment or increased stormwater runoff may include: (1) Increasing buffer widths equal to the width of the right-of-way improvement, including disturbed areas; and (2) Retention and replanting of native vegetation along the right-of-way and resulting disturbance.
- **Minor utility projects.** Utility projects with minor or short-duration impacts to critical areas and no significant impact on the function or values of a critical area, provided such projects are constructed with best management practices and additional restoration measures. Criteria for minor utility projects can include: (1) No practical alternative with less impact on the critical area; (2) The activity involves the placement of a small utility facility (e.g., pole, street sign, etc.); and (3) The activity involves disturbance of an area less than a certain number of square feet.
- **Public and private pedestrian trails.** Public and private pedestrian trails, except in wetlands, fish and wildlife habitat conservation areas, or their buffers. Conditions for approval can include: (1) The trail surface must meet all other requirements including stormwater regulations; (2) Critical area and/or buffer widths must be increased, where

WAC 365-195-910 does not say Commerce’s model ordinances are the best and most current science available. *Id* at 15.

possible, equal to the width of the trail corridor, including disturbed areas; and (3) Trails proposed in landslide or erosion hazard areas must be constructed so as to not increase the risk of landslide or erosion in accordance with an approved geotechnical report.

- **Minor vegetation removal.** Selective removal of invasive, noxious and non-native vegetation with hand labor and light equipment. However, removal of vegetation from a critical area or its buffer may require approval.
- **Removal of hazard trees.** Removal of trees from critical areas and buffers that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property may require a report from a certified arborist, registered landscape architect, or professional forester. The report documents the hazard and provides a replanting plan for replacement trees consistent with the jurisdiction's compensatory mitigation standards to provide for no net loss of ecosystem functions and values. Other tree pruning or cutting activities may be subject to requirements regarding tree replacement or provision for critical wildlife habitat. Measures to control a fire or halt the spread of disease or damaging insects should be consistent with the state Forest Practices Act (Chapter 76.09 RCW, and local forest regulations if adopted) with provisions for replacement.
- **Chemical applications.** The application of herbicides, pesticides, fertilizers, or other hazardous substances, as approved the city/county. Provided, their use should be restricted in accordance with state Department of Fish and Wildlife Management Recommendations and the regulations of the state Department of Agriculture and the U.S. Environmental Protection Agency.¹⁰
- **Minor site investigation work.** Work necessary for land use permit submittals, such as surveys, soil logs, percolation tests, and other related activities, can be an allowed use when they do not require construction of new roads or significant amounts of excavation. But, in every case, impacts to the critical area should be minimized and disturbed areas immediately restored.
- **Navigational aids and boundary markers.** Construction or modification of navigational aids and boundary markers.

Although exemptions are not prohibited under the GMA, the Eastern Washington Growth Management Hearings Board found that all development regulations, even those for exempt activities, must be based on best available science and tailored so as to reasonably ameliorate potential harm and address cumulative impacts. The county contended that their administrative review process would assure that functions and values of the critical area are protected. However, the Board found that it is not the review process but the inclusion of best available science that is imperative when it comes to critical areas.¹¹

¹⁰ More information on commercial and residential use of chemicals can be found in the Washington State Department of Ecology's [Critical Aquifer Recharge Areas: Guidance Document, 2005, Publication #05-10-028](#); and from the Washington State Department of Agriculture, <http://agr.wa.gov/>.

¹¹ *Hazen, et al v. Yakima County*, 08-1-0008c, FDO at 29 (April 5, 2010), at 30.

An exception from the critical areas regulations for public agencies and public/private utilities when such an entity “has difficulty” meeting protection regulations resulting in preclusion of the proposal was challenged. The Western Washington Growth Management Hearings Board responded:

The clause “would preclude a development proposal” does not include a qualifier that places the initial burden on the agency to show the location of the proposed development is necessary. . . the initial determination under the County’s system, the location of the “development proposal”, is left solely to the proponent, notwithstanding the possibility the proposal could be located in an area with fewer negative impacts to a critical area. The County has the obligation to protect critical areas and leaving the choice of location to the proponent is in effect a delegation of authority, would abrogate the duty to protect critical areas and fails to assure no net loss of ecological functions. Furthermore, there are no standards by which to determine that a project proponent would “have difficulty” meeting standard critical area regulations.¹²

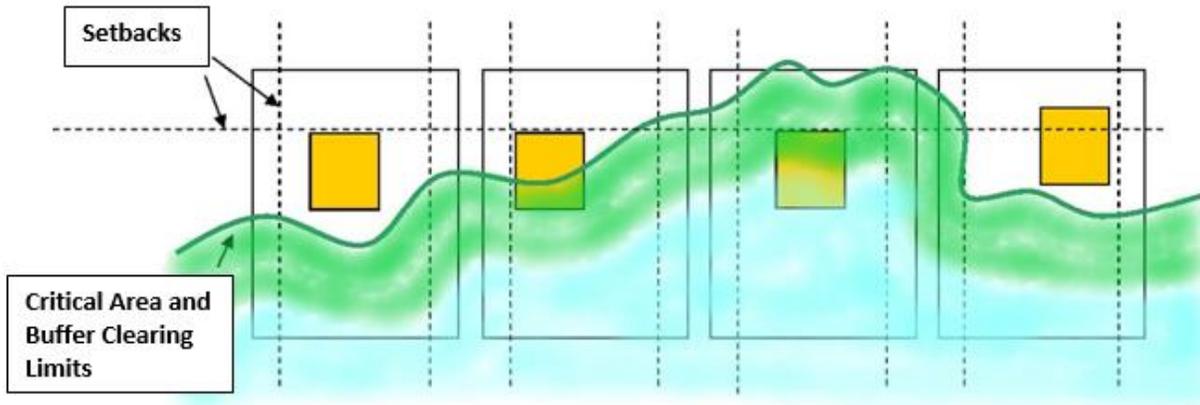
Reasonable Use Exception

In addition to exemptions and allowed uses, cities and counties must allow a minimal “reasonable use” of property even if such a use would otherwise be denied by the critical areas regulations. The Fifth Amendment and Fourteenth Amendment of the U.S. Constitution provide individuals with protection from being deprived of the use of one’s property without due process or just compensation.

If critical areas regulations denied all use of a parcel, it would typically be considered a “taking” of the property. If legally challenged and unjustified, a court could throw out the regulations, thereby jeopardizing environmental protection. To avoid a taking, cities and counties typically include a reasonable use provision that allows only the minimal “reasonable” use of a property that would otherwise be prohibited.

Unlike variances, the purpose of a reasonable use exception permit is not to allow general development within critical areas, but to allow only the minimal “reasonable” use of the property so as to avoid a constitutional taking. Four scenarios are provided to illustrate situations where a reasonable use exception might or might not be applicable:

¹² *Friends of the San Juans, et al. v. San Juan County*, 13-2-0012c, FDO, September 6, 2013, at 33, 34.



Reasonable Use Scenarios in the Diagram

- A** – No reasonable use exception would be granted because there is sufficient space outside the critical area clearing limits.
- B** – A reasonable use exception might be granted since there is insufficient space for a reasonable use. The development area would need to be limited or scaled back in size and located where the impact is minimized. The jurisdiction might consider a variance to the required setback to minimize intrusion into the protection area.
- C** – A reasonable use exception would be granted for a minimal development if the property is completely encumbered and mitigation methods are applied.
- D** – The jurisdiction might consider modifications to the required setback to prevent intrusion into the protection area.

The criteria for reasonable use permits need to be consistent with case law to reduce the potential for appeals and overturned decisions. Key to being consistent with case law is careful use of the term “reasonable.” Generally, the concept of “reasonable” has been left to the courts to decide, thereby making it difficult for cities to rule on whether or not a project qualifies. A reasonable use is often thought to be a modest single-family home, although some other structure might be “reasonable” depending on zoning, adjacent uses, and the size of the property.

The reasonable use permit criteria should allow for “reasonable” uses. If the criteria state that the applicant must demonstrate that no other use “is possible,” or that there are “no feasible alternatives,” it would conflict with the concept of a “reasonable” use as other “possible” alternatives may be so costly as to be unreasonable. “Possible” alternatives may also not meet the objectives of the property owner. For example, continued preservation of habitat is a “possible” use of property, but probably not a “reasonable” use for the owner.

Some jurisdictions have allowed a reasonable use exception in only those situations where all economic use of a property would be denied by the critical areas regulations. Criteria that might be used to allow approval of a reasonable use exception include:

- No other reasonable economic use of the property has less impact on the critical area;
- The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;
- The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this regulation, or its predecessor;
- The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
- The proposal will result in no net loss of critical area functions and values consistent with the best available science; or
- The proposal is consistent with other applicable regulations and standards.

The Western Washington Growth Management Hearings Board recognized that, although they may actually permit impacts to a critical area, reasonable use provisions are an indispensable component of critical area regulations because they address the issue of regulatory takings claims. Regulatory takings have been an element of American jurisprudence since the 1920s, and are founded on constitutional principles, seeking to provide a remedy when a regulation takes all reasonable use of a parcel of land. Given this grounding in constitutional law, the Board had no jurisdiction to determine the petitioners' claims as to whether the County's regulations exceed what is necessary to protect the County from a constitutionally-based takings claim as this is a question for the courts. However, although reasonable use provisions are necessary to prevent a constitutional takings claim, that does not mean such provisions should not prevent the protection of all the functions and values of wetlands and do not need to be supported by best available science.¹³

The Western Board found that a county failed to protect critical areas when it allowed grandfathered non-conforming uses that no longer comply with the more recently enacted, and presumably more protective land use laws, to be considered a "reasonable use" when determining whether a proposed use met the reasonable use criteria.¹⁴

¹³ *WEAN/CARE v. Island County*, 08-2-0026c, FDO, November, 17, 2008, at 23.

¹⁴ *Whidbey Environmental Action Network v. Island County*, Case No. 14-2-0009, Final Decision and Order, June 26, 2015, at 8.

Avoiding Unconstitutional Takings of Private Property

The Washington State Office of the Attorney General is directed under RCW 36.70A.370 to advise state agencies and local governments on an orderly, consistent process that better enables government to evaluate proposed regulatory or administrative actions to assure these actions do not result in unconstitutional takings of private property. The process must be used by state agencies and local governments that are required plan under the GMA. The Attorney General publishes an [Advisory Memorandum](#) to provide state agencies and local governments with a tool to help them evaluate whether proposed regulatory or administrative actions may result in an unconstitutional taking of private property or raise substantive due process concerns.

Critical Areas Review Process

Often, a determination about the likelihood of impacts to a critical area can be determined with some basic information. A critical areas identification form can ask a series of questions about the subject property. The questions can be designed to be completed by the property owner or applicant without the assistance of a technical professional. Combined with a site visit, GIS data, and aerial photography, the staff may be able to use the applicant's responses to determine whether critical areas are located nearby and whether the development is likely to result in an impact. This allows the staff to conduct a "low level" review without a lot of expense or delay. In locations where little existing information is available, the community may require the applicant to submit additional information about the site and proposal, such as site photographs.

Documenting Other Regulations

Regulations to protect critical areas often overlap with other environmental regulations, such as clearing and grading regulations and stormwater regulations. At times, regulations to protect critical areas may be superseded by more stringent zoning requirements. It is a good idea when reviewing and updating the critical areas regulations to ensure that they cross-reference these other regulations or permit requirements. When a local government is using its State Environmental Policy Act (SEPA) determination authority for programmatic or project environmental review, it should identify how these other regulations will be applied and conditioned to reflect the "protection of functions and values" requirement. For more information about critical areas and other regulations, see Chapter 4, Critical Areas Protection and Other Laws and Regulations.

Critical Areas Protection and SEPA

Cities and counties are encouraged to select certain categorized exemptions that do not apply in one or more critical areas pursuant to [WAC 197-11-908](#). SEPA review procedures should require critical areas delineation and review prior to making a threshold determination. SEPA and critical area review procedures should be evaluated to ensure consistent project review procedures. For more discussion about SEPA and the GMA, see Chapter 4, Critical Areas Protection and Other Laws and Regulations.

Reviewing Multiple Critical Areas and Local Project Review

Where there are multiple critical areas that may be impacted by development, special efforts should be made to consider the cumulative effect of the permitting decision on the different critical areas. This information should be well documented during project review using either cumulative impacts reporting requirements in the critical areas regulations, or through the SEPA environmental review process. If project mitigation is being considered that is not required by the critical areas regulation, then the SEPA documentation should identify the impacts and the decision process for avoiding or mitigating environmental impacts to the critical area(s). (See the section on SEPA in Chapter 4).

Analyzing consistency of the proposed project with the applicable development regulations is a requirement under RCW 36.70B.040 for those jurisdictions fully planning under the GMA. All local jurisdictions routinely review projects for consistency with applicable regulations. GMA counties and cities must, at a minimum, consider the following four factors in their development regulations, or in the absence of applicable development regulations, the comprehensive plan policies.¹⁵ The fourth factor is most relevant for critical areas that often have specific numerical standards, such as buffers or setbacks.

- The type of land use allowed, such as the land use designation;
- The level of development allowed, such as units per acre or other measures of density;
- Infrastructure, such as the adequacy of public facilities and services to serve the proposed project; and
- The characteristics of the proposed development, measured by the degree to which the project conforms to specific development regulations or standards.

This uniform approach is based upon existing project review practices and should not place an additional burden on applicants or local government. Consistency analysis is largely a matter of code checking for most projects that are simple or routine. More complex projects, such as those that would impact more than one critical area, may require more analysis of these

¹⁵ See Commerce's Project Consistency Rules, [Chapter 365-197 WAC](#), for more information on consistency criteria and analysis.

factors, including possible studies. If the project is not consistent with the development regulations and comprehensive plan, the project can be conditioned to make it consistent, or denied.¹⁶

Qualified Professionals

A jurisdiction is encouraged to consult with a qualified professional or a team of professionals at an early stage of critical area assessment and in the development of sound management approaches. Professionals can help the jurisdiction identify local critical areas, assemble and review the best science for understanding how the critical areas function, and help develop management recommendations.

In [WAC 365-195-905\(4\)](#), Commerce defines the role of a qualified professional and what qualifies him or her for this role. Determining whether a person is a qualified scientific expert with expertise appropriate to the relevant critical areas is determined by the person's professional credentials and/or certification. In addition, any advanced degrees earned in the pertinent scientific discipline from a recognized university, the number of years of experience in the pertinent scientific discipline, recognized leadership in the discipline of interest, formal training in the specific area of expertise, and field and/or laboratory experience with evidence of the ability to produce peer-reviewed publications or other professional literature. Where pertinent scientific information implicates multiple scientific disciplines, counties and cities are encouraged to consult a team of qualified scientific experts representing the various disciplines to ensure the identification and inclusion of the best available science.

The scientific expert or experts may rely on their professional judgment based on experience and training, but they should use the criteria set out in WAC 365-195-900 through 925 and any technical guidance provided by agencies with expertise.

¹⁶ RCW 36.70B.030 and 040, and RCW 43.21C.240.

Appendix 3.A

Local Government Examples of Code Structures

City of Bellevue

City of Sumas

Yakima County

Jefferson County

City of Bellevue

Part [20.25H](#) Critical Areas Overlay District

I. Scope and Purpose

- [20.25H.005](#) Scope
- [20.25H.010](#) Purpose
- [20.25H.015](#) Applicable procedure
- [20.25H.020](#) Submittal requirements

II. Designation of Critical Areas and Dimensional Standards

- [20.25H.025](#) Designation of critical areas
- [20.25H.030](#) Identification of critical area
- [20.25H.035](#) Critical area buffers and structure setbacks
- [20.25H.040](#) Standards for modifying non-critical area setbacks
- [20.25H.045](#) Development density/intensity

III. Use and Development in the Critical Areas Overlay District

- [20.25H.050](#) Uses and development in the Critical Areas Overlay District
- [20.25H.055](#) Uses and development allowed within critical areas – Performance standards
- [20.25H.065](#) Uses and development within critical area buffer or critical area structure setback not allowed pursuant to LUC 20.25H.055

IV. Streams

- [20.25H.075](#) Designation of critical area and buffers
- [20.25H.080](#) Performance standards
- [20.25H.085](#) Mitigation and monitoring – Additional provisions
- [20.25H.090](#) Critical areas report – Additional provisions

V. Wetlands

- [20.25H.095](#) Designation of critical area and buffers
- [20.25H.100](#) Performance standards
- [20.25H.105](#) Mitigation and monitoring – Additional provisions
- [20.25H.110](#) Critical areas report – Additional provisions

VI. Shorelines

- [20.25H.115](#) Designation of critical area and buffers

20.25H.118 Mitigation and monitoring – Additional provisions

20.25H.119 Critical areas report – Additional provisions

VII. Geologic Hazard Areas

20.25H.120 Designation of critical area and buffers

20.25H.125 Performance standards – Landslide hazards and steep slopes

20.25H.130 Performance standards – Coal mine hazard area

20.25H.135 Mitigation and monitoring – Additional provisions for landslide hazards and steep slopes

20.25H.140 Critical areas report – Additional provisions for landslide hazards and steep slopes

20.25H.145 Critical areas report – Approval of modification

VIII. Habitat Associated with Species of Local Importance

20.25H.150 Designation of critical area

20.25H.155 Uses in habitat for species of local importance

20.25H.160 Performance standards

20.25H.165 Critical areas report – Additional provisions

20.25H.170 Process to identify additional species of local importance

IX. Areas of Special Flood Hazard

20.25H.175 Designation of critical area

20.25H.177 Definitions

20.25H.180 Development in the area of special flood hazard

X. Reasonable Use Exception

20.25H.190 Reasonable use exception – Purpose

20.25H.195 Reasonable use exception – Process

20.25H.200 Reasonable use exception – Applicability

20.25H.205 Reasonable use exception – Performance standards

XI. General Mitigation and Restoration Requirements

20.25H.210 Applicability

20.25H.215 Mitigation sequencing

20.25H.220 Mitigation and restoration plan requirements

20.25H.225 Innovative mitigation

XII. Critical Areas Report

- 20.25H.230 Critical areas report – Purpose**
- 20.25H.235 Critical areas report – Review process**
- 20.25H.240 Critical areas report – Limitation on modifications**
- 20.25H.245 Incorporation of best available science**
- 20.25H.250 Critical areas report – Submittal requirements**
- 20.25H.255 Critical areas report – Decision criteria**
- 20.25H.260 Critical areas report – Assurance devices**
- 20.25H.265 Critical areas report – City technical review**
- 20.25H.270 Critical areas report – Independent third-party review**

City of Sumas

Chapter 15.20 CRITICAL AREAS

Sections:

- [15.20.010](#) Authority.
- [15.20.020](#) Purpose and intent.
- [15.20.030](#) Interpretation.
- [15.20.040](#) Relationship to other regulations.
- [15.20.050](#) Applicability and jurisdiction.
- [15.20.070](#) Authorization required.
- [15.20.080](#) Critical area review requirements.
- [15.20.090](#) Exemption from critical area review requirements.
- [15.20.100](#) Waiver for subsequent approvals.
- [15.20.105](#) Critical area maps.
- [15.20.180](#) Application and fees.
- [15.20.190](#) Threshold determination.
- [15.20.200](#) Detailed study.
- [15.20.210](#) Final determination.
- [15.20.230](#) Critical area mitigation—Generally.
- [15.20.240](#) Bonding.
- [15.20.250](#) Frequently flooded areas.
- [15.20.260](#) Wetlands—Designation and classification.
- [15.20.270](#) Wetlands indicators.
- [15.20.280](#) Wetlands—Detailed study requirements.
- [15.20.290](#) Wetlands—Performance requirements.
- [15.20.300](#) Wetlands—Mitigation requirements.
- [15.20.310](#) Allowed activities in wetlands, streams, and buffers.
- [15.20.320](#) Fish and wildlife habitat conservation areas—Designation.
- [15.20.330](#) Fish and wildlife HCA indicators.
- [15.20.340](#) Fish and wildlife habitat conservation areas—Detailed study requirements.
- [15.20.350](#) Fish and wildlife habitat conservation areas—Performance requirements.
- [15.20.360](#) Fish and wildlife habitat conservation areas—Mitigation requirements.

- [15.20.380](#) Geologically hazardous areas classification and designation.
- [15.20.390](#) Geologically hazardous areas indicators.
- [15.20.400](#) Geologically hazardous areas detailed study requirements.
- [15.20.410](#) Geologically hazardous areas performance requirements.
- [15.20.420](#) Aquifer recharge area designation.
- [15.20.430](#) Aquifer recharge area detailed study requirements.
- [15.20.440](#) Aquifer recharge area performance requirements.
- [15.20.450](#) Reasonable use exceptions.
- [15.20.460](#) Enforcement.
- [15.20.470](#) Violations and penalty.
- [15.20.480](#) Definitions.

Yakima County

TITLE 16A CRITICAL AREAS*

Chapters:

[16A.01](#) General Provisions

[16A.02](#) Definitions

[16A.03](#) Application and Review Procedures

[16A.04](#) Stream Corridor System and Other Hydrologically Related Critical Areas

[16A.05.20](#) Flood Hazard Areas – General Provisions

[16A.05.28](#) Flood Hazard Protection Standards

[16A.05.32](#) Floodway Fringe Uses

[16A.05.36](#) Floodway Uses

[16A.05.40](#) Nonconforming Uses and Structures

[16A.05.44](#) Flood Hazard Protection Administration

[16A.05.48](#) Elevation and Floodproofing Certification

[16A.05.52](#) Variances

[16A.05.72](#) Map Correction Procedures

[16A.06](#) Enforcement and Penalties

[Appx. A](#) Wetland Rating System

[Appx. B](#) Designated Shoreline Lakes, Ponds and Type 1 Streams

[Appx. C](#) Designated Type 2 Stream Corridors

Jefferson County

Chapter 18.22 CRITICAL AREAS

Sections:

Article I. Purpose

[18.22.010](#) Purpose – Generally.

Article II. Administrative Provisions

[18.22.020](#) Applicability.

[18.22.030](#) Identification and mapping of critical areas.

[18.22.050](#) Coverage.

[18.22.070](#) General exemptions.

[18.22.080](#) Nonconforming uses.

[18.22.090](#) Reasonable economic use variance.

[18.22.095](#) Physical separation – Functional isolation.

Article III. Critical Aquifer Recharge Areas

[18.22.100](#) Classification.

[18.22.110](#) Designation.

[18.22.120](#) Applicability.

[18.22.130](#) Protection standards.

[18.22.135](#) Adaptive management.

Article IV. Frequently Flooded Areas

[18.22.140](#) Incorporation by reference.

[18.22.150](#) Relationship to other regulations.

Article V. Geologically Hazardous Areas

[18.22.160](#) Classification/designation.

[18.22.170](#) Protection standards.

[18.22.180](#) Conditions.

Article VI. Fish and Wildlife Habitat Conservation Areas (FWHCAs)

[18.22.195](#) Compliance alternatives.

[18.22.200](#) Classification/designation.

[18.22.210](#) Process and requirements for designating habitats of local importance as critical areas.

[18.22.220](#) Sources used for identification.

[18.22.230](#) Fish and wildlife habitat conservation area (FWHCA) maps.

[18.22.250](#) Regulated activities.

[18.22.265](#) Habitat management plans – When required.

[18.22.270](#) Protection standards.

[18.22.280](#) Conditions.

Article VII. Wetlands

[18.22.290](#) Stewardship alternative.

[18.22.300](#) Classification/designation.

[18.22.310](#) Regulated activities.

[18.22.330](#) Protection standards.

[18.22.340](#) Noncompensatory enhancement.

[18.22.350](#) Mitigation.

Article VIII. Special Reports

[18.22.360](#) General requirements.

[18.22.370](#) Waivers.

[18.22.380](#) Retaining consultants.

[18.22.390](#) Acceptance of special reports.

[18.22.400](#) Aquifer recharge area report.

[18.22.410](#) Drainage and erosion control plan.

[18.22.420](#) Geotechnical report.

[18.22.430](#) Grading plan.

[18.22.440](#) Habitat management plan.

[18.22.450](#) Wetland delineation report.

Article IX. Alternative Protection Standards – Critical Area Stewardship Plans (CASPs)

[18.22.460](#) Critical area stewardship plans (CASPs) – Generally.

[18.22.461](#) Applicability and limitations.

[18.22.465](#) Performance standards.

[18.22.470](#) CASP contents – Existing conditions.

[18.22.480](#) Description of the management proposal.

[18.22.490](#) Maintenance.

[18.22.510](#) As-built plan requirement.

[18.22.520](#) Periodic monitoring.

[18.22.530](#) Contingency planning.

[18.22.540](#) Failure to submit required reports.

[18.22.550](#) Waiver.

EXHIBIT A

Medical Lake Critical Areas Ordinance Update – 2021

SECTION 1 Review: Definitions and Procedures

Draft date: February 18, 2022

Deleted: January 21, 2022

DRAFT

Chapter 17.10 - RESOURCE LANDS AND CRITICAL AREAS PRESERVATION

Sections:

- 17.10.010 – Purpose and Intent.
- 17.10.020 – Applicability.
- 17.10.030 - Definitions.
- 17.10.040 - Uses and Exemptions.
- 17.10.050 - Abrogation and Greater Restriction.
- 17.10.060 - Procedures for Critical Areas Permits.
- 17.10.150 - Nonconforming Uses/Structures.
- 17.10.160 - Appeals.

17.10.010 – 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 Medical Lake 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. This chapter is intended to:

1. Implement the City of Medical Lake's Comprehensive Plan (as amended) and the requirements of the Growth Management Act;
2. 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;
3. Protect the general public, resources and facilities from injury, loss of life, property damage or financial loss due to flooding, erosion, landslides, or steep slopes failure;
4. Protect unique, fragile, and valuable elements of the environment, including ground and surface waters, wetlands, and fish and wildlife and their habitats;
5. Prevent cumulative adverse environmental impacts to water quality and availability, wetlands, and fish and wildlife habitat; and
6. Provide flexibility and attention to site specific characteristics to ensure reasonable use of property.
7. Ensure that the city's resource lands and critical areas are preserved and protected and that development in association with or adjacent to these areas is properly managed.
8. Further the public's interest in the conservation use of public lands through precluding land uses and development that is incompatible with land use areas in order to assure long term conservation of resource lands.

17.10.020 - Applicability

Applicability. These critical area regulations shall apply as an overlay to zoning and other land use regulations established by the Medical Lake's Municipal Code (as amended).

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The Washington State Legislature has adopted Engrossed Substitute House Bill 2929, further amended by RSHB 1025, the Growth Management Act, which requires certain counties and cities to classify and designate critical areas and resource lands of long-term commercial significance. Local governments required to plan under RCW 36.70A.040 must further adopt regulations to ensure the conservation of agricultural, forest and mineral resource lands and development regulations precluding land uses or development that is incompatible with critical areas designated under RCW 36.70A.170. More recent amendments to the Growth Management Act require Medical Lake to consider the best available science when classifying, designating and protecting critical areas and resource lands. ¶

Findings.¶

Growth management, resource land conservation, and critical areas protection share problems related to governmental costs and efficiency.¶
Urban sprawl and the unwise development of resource lands or critical areas susceptible to natural hazards may lead to ...

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1. All land uses and/or development permit applications on all lots or parcels within the City that lie within critical areas as defined herein shall comply with the provisions of this chapter. No action shall be taken by any person that results in any alteration of any critical area except as consistent with the purposes and intent of this chapter. Where two or more types of critical areas overlap, requirements for development shall be consistent with the standards for each critical area. Where it is determined that a designated critical area is located within the shoreline jurisdiction, the provisions of the Shoreline Master Program will be used to provide protection to that particular critical area(s). If multiple protections (from CAO, other regulations, deed restrictions, covenants, etc.) apply, the most restrictive standards shall be applied.
2. Additionally, if any standards found in this chapter may also be applied to a proposal as optional and/or supplemental items to the provisions of the Shoreline Master Program. For designated critical areas outside of the shoreline jurisdiction the provisions of this chapter shall apply.
3. These Critical Areas regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as locally adopted. Any conditions required pursuant to this Chapter shall be included in the SEPA review and threshold determination.
4. General. This chapter applies only to lands designated as critical areas within the Medical Lake 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.
5. 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. In addition, this chapter applies to all public or private actions, permits and approvals in association with a resource land and/or a critical area and its buffer.
6.

17.10.030 - 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 its most reasonable application.

- 1) "Administrator" City Administrator or his/her designee.
- 2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, or livestock, and that has long-term commercial significance for agricultural production.

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Deleted: Words or phrases used in this chapter shall be interpreted as defined below. Where ambiguity exists, words or phrases shall be interpreted so as to give this chapter its most reasonable application in carrying out its regulatory purpose.

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- 3) "Alteration" means a human-induced action which affects an existing critical area. Alterations may include but are not limited to: (A) applying herbicides or pesticides or any discharge of pollutants; (B) application of gravel, paving or any construction; (C) clearing, cutting, pruning, limbing, topping, relocating or removing vegetation; (D) channelizing, draining, dredging, filling or grading; or (E) any other activity that impacts the ecosystem's hydrology, existing vegetation, wildlife or wildlife habitat.
- 4) "Applicant" means a person who files an application for permit under this chapter and who is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.
- 5) "Aquifer" refers to groundwater-bearing geologic formations that contain enough saturated permeable material to yield significant quantities of water to wells.
- 6) "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.
- 7) "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.
- 8) "Best management practices" means the utilization of methods, techniques or products which have been demonstrated to be the most effective and reliable in minimizing impacts.
- 9) "Buffer zone" means an area that surrounds and protects critical area functions from adverse impacts
- 10) "Clearing" means the destruction, disturbance or removal of logs, scrub-shrub, stumps, trees or any vegetative material by burning, chemical, mechanical or other means.
- 11) "Compensation" means replacement by creation, enhancement or restoration of a wetland, at a minimum, equivalent in size, function and value to the one being altered or lost from development. Compensation may also include the use of monetary contributions to a mitigation fund.
- 12) "Creation" means bringing a wetland or stream corridor into existence at a site in which a wetland or stream corridor did not formerly exist.
- 13) "Critical Aquifer Recharging Areas (CARA)" are locations which have the capacity to replenish the storage of underground water due to favorable hydrological and topographical conditions.
- 14) "Critical Areas" include the following areas and ecosystems:
 - a. Frequently flooded areas,
 - b. Areas with critical recharging effect on aquifers used for potable water;

Deleted: (2) **"Alluvial fan" means** the alluvial deposit of a stream where it issues from a gorge upon a plain or of a tributary stream at its junction with the main stream. ¶

Deleted: means a body of rock or soil that contains sufficient saturated permeable material to conduct groundwater and to yield economically significant quantities of groundwater to wells and springs. ¶
(6) "Aquifer critical recharging areas" means saturated geological formations with recharging areas having an effect on aquifers used for potable water where essential sources of drinking water is vulnerable to contamination. ¶

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Deleted: means an area required by this chapter that provides a naturally vegetated, enhanced or newly vegetated zone surrounding a natural, restored or newly created critical area which serves as a buffer between the critical area and its associative upland areas and as an integral part of the habitat ecosystem

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(14) .

- c. Geologically hazardous areas.
- d. Fish and wildlife habitat conservation areas and.
- e. Wetlands and Riparian Areas

15) "Disturbance" means, for purposes of this chapter, the construction, alteration or enlargement of any building or structure; excavation; grading; earthwork construction and/or the removal of vegetation.

16) "Enhancement" means a process undertaken to rehabilitate or improve an existing degraded wetland by increasing or decreasing plant diversity and increasing water quality, wildlife habitat and/or erosion controls.

17) "Erosion" means wearing away of earth's surface as a result of movement of wind, water, ice or any means.

18) "Erosion hazard areas" means areas which contain soils classified by the U.S.D.A. Soil Conservation Service that may experience severe to very severe erosion hazards.

19) "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.

20) "Fill" means dumping or placing, by any means, any material from, to or on any soil or sediment surface including temporary stockpiling of material.

21) "Fish and Wildlife Habitat and Conservation Areas"

- a. Are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species.
- b. "Habitats of local importance" designated as fish and wildlife habitat conservation areas include those areas found to be locally important by counties and cities.
- c. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure,

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 (10) "Compensation" means replacement by creation, enhancement or restoration of a wetland, at a minimum, equivalent in size, function and value to the one being altered or lost from development. Compensation may also include the use of monetary contributions to a mitigation fund. ¶
 (11) "Creation" means bringing a wetland or stream corridor into existence at a site in which a wetland or stream corridor did not formerly exist. ¶
 (12) "Critical areas" includes the following ecosystems: areas with a critical recharging effect on aquifers used for drinking water, fish and wildlife habitats, frequently flooded areas, geologically hazardous areas, wetland and streams.)

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irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company.

- 22) "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.
- 23) "Forest land" means land primarily useful for growing trees, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, for commercial purposes, and that has long-term commercial significance for growing trees commercially.
- 24) "Function" means the beneficial role critical areas serve including but not limited to fish and wildlife habitat, storage, conveyance, floodwater and stormwater retention and provision of erosion, landslide and sediment control.
- 25) "Functions and values" means beneficial roles served by critical areas; including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, protection from hazards, historical, archaeological and aesthetic value protection and recreation.
- 26) "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.
- 27) "Geotechnical engineer" means a practicing, geotechnical/civil engineer licensed as a professional civil engineer with the state of Washington with at least four years' experience in landslide evaluation, soils and soil hydrology.
- 28) "Grading" means clearing of trees, brush, scrubs or grass or excavating, filling or leveling of surface contours.
- 29) "Habitat" means the specific area or environment in which a particular type of plant or animal lives.
- 30) "Hazardous waste" for the purpose of this title, means and includes all dangerous and extremely hazardous wastes designated in WAC 173-3030-040, 173-303-070 through 173-303-103, and RCW 70.105.010.
- 31) "High-intensity land use" means uses associated with high levels of human or structural activity. These uses include residential buildings and structures, active recreational areas and facilities and commercial or industrial uses and structures.
- 32) "Impacts" means adverse effects of one thing upon another.
- 33) "In-kind replacement" means replacement of a wetland with one of equivalent characteristics and quality at a ratio equal to or greater than the existing ecosystem.
- 34) "Landslide" means an episodic downslope movement of a mass of soil, rock and/or snow.
- 35) "Landslide hazard areas" means areas based upon the combination of geologic, topographic and hydrologic factors that are subject to severe landslide risk because of the combination.
- 36) "Low-intensity land use" means uses associated with low activity or disturbance. Low-intensity land uses include passive recreation, open space and small gardens.

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37) “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.

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38) “Mineral lands” means lands that are not already characterized by urban growth and are of long-term commercial significance for the extraction of aggregate and mine resources, including sand, gravel and valuable metallic substances.

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(

39) “Mitigation” means a negotiated action involving the avoidance, reduction or compensation for possible adverse impacts. In the following order of preferences this includes:

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a) Avoiding the impacts by preservation or maintenance;

b) Reducing or eliminating impacts by preservation or maintenance;

c) Minimizing impacts by limiting degree or magnitude;

d) Rectifying impacts by repairing, rehabilitation or restoring;

e) Compensating for impacts by in-kind replacement;

f) Monitoring impacts by planned evaluation process; and

g) Mitigation for unavoidable losses (i.e. stormwater management systems).

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40) “Monitoring” means the process of collecting and evaluating data to assess the biological, hydrological or geological performance of newly created, restored, rehabilitated and/or affected wetland.

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41) “Native”, when referring to plants or plant communities, means those species or communities that are indigenous to the watershed, including extirpated species.

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42) “Open space areas” means lands of varied size which contain distinctive geologic, botanic, zoologic, historic, scenic or other critical area features. These areas are often undeveloped and serve as greenbelts and wildlife habitats. Specific types of open space include gulches, steep slopes and wetlands.

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43) “On-site” means the same, geographically contiguous, or bordering property. On-site hazardous waste treatment and storage facilities treatment and store wastes generated on the same property.

44) “Ordinary high water mark” means a mark that has been found where the presence and action of waters are common and usual and maintained in an ordinary year long enough to mark a distinct character from that of the abutting upland.

Deleted: (44) “New construction” means structures for which the “start of construction” commenced on or after the effective date of this title.

45) “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.

Deleted: means seasonal range or habitat element with which a given species is primarily associated and which, if altered, may reduce survival potential of that species over the long term. These may include: habitat areas of high relative density or species richness, breeding habitats, with high vulnerability to alteration. ¶
“Priority species” means species which are of concern due to their population status and sensitivity to habitat alteration. Priority species include those which are state listed as endangered, threatened, or sensitive species as well as other species of concern and game species.

46) “Rare, threatened or endangered species” 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 232-12011.

47) "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. (51) "Review authority" means the decision maker and/or administrator that issues the final land use decisions, not the appeal authority.

48) "Riparian Areas" are lands that occur along watercourses and water bodies. Typical examples include flood plains and streambanks.

49) "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.

50) "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.

51) "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.

52) "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.

53) "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.

54) "Seismic hazard areas" means such areas subject to severe risk of earthquake damage as a result of seismic-induced settlement or soil liquefaction.

55) "Stream corridor" means perennial, intermittent or ephemeral waters included within a channel of land and its adjacent riparian zones which serve as a buffer between the aquatic and terrestrial upland ecosystems.

56) "Streams" means lands and waters contained within a channel which support hydrophytes and/or covered by water each growing season.

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57). "Toe of slope" means a distinct topographic break in slope at the lowermost limit of an area where the ground surface drops ten feet or more vertically within a horizontal distance of twenty-five feet.

58). "Top of slope" means a distinct topographic break in slope at the uppermost limit of an area where the ground surface drops ten feet or more vertically within a horizontal distance of twenty-five feet.

59). "Unavoidable and necessary impacts" means impacts to a regulated wetland or stream and its associated buffer that will remain after it has been demonstrated that no practicable alternatives exist.

60). "Water-dependent activity" means activity or use that requires the use of surface water to fulfill the basic purpose of the proposed project.

61). "Wetland edge" means a line dividing uplands from water habitat. The line can be identified through procedures in the 1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands by examining the presence or absence of aquatic plants (hydrophyte), hydric soils and/or water table at or near the surface.

62). "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.

17.10.040 - Uses and Exemptions,

A. 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,

1. Pervious trails for non-motorized uses;
2. 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;
3. Water-dependent uses;
4. Removal of diseased or dangerous trees, or the removal of invasive or nuisance plants;
5. 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

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Deleted: "Degraded wetland" means a wetland in which the vegetation, soils, and/or hydrology have been adversely altered, resulting in lost or reduced functions and values. ¶

(B) "Emergent wetland" means a wetland with at least thirty percent of its surface covered by erect, rooted, herbaceous vegetation at the uppermost vegetative strata

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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;

- Existing agricultural practices on lands used continuously for agricultural purposes since October 1997

B. 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:

- 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.
- 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.

C. Exemptions.

- The activities listed below are exempt from the provisions of this chapter. Exempt activities shall be conducted using all reasonable methods to avoid impacts to critical areas. The decision to declare an activity exempt shall be an Administrative Decision, subject to Section 17.10.060 (C) of these regulations. Exemption from the chapter shall not be considered permission to degrade a critical area or ignore risks from natural hazards. Incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated at the responsible party's expense.
- Emergency construction necessary to protect life or property from immediate damage by the elements. An emergency is an unanticipated event or occurrence which poses an imminent threat to public health, safety, or the environment, and which requires immediate action within a time too short to allow full compliance. Once the threat to the public health, safety, or the environment has dissipated, the construction undertaken as a result of the previous emergency shall then be subject to and brought into full compliance with this title;
- Normal maintenance or repair of existing buildings, structures, roads, utilities, levees, or drainage systems, provided the activity does not further alter, encroach upon, or increase impacts to critical areas or associated buffers;
- Existing agricultural activities normal or necessary to general farming conducted according to industry-recognized best management practices, including the raising of crops or the grazing of livestock;
- Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, critical area impacts shall be minimized, and disturbed areas shall be immediately restored; and
- Passive recreational activities, including, but not limited to: fishing, bird watching, hiking, hunting, boating, horseback riding, skiing, swimming, canoeing, and bicycling

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(2) Subdivisions, short plats, boundary line adjustments and segregation or combination permits; ¶
(3) Reclassification, site plan approvals, shoreline substantial development permits and special and conditional use permits; and ¶
(4) Temporary use permits, variances and exceptions. ¶

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(b) Wetlands and Streams. For wetlands and streams, the above applicability standards are expanded to include any act or use adjacent to or within two hundred feet of a wetland or stream and its associated adjacent buffer which would destroy the natural vegetation; result in significant change in habitat, water temperature, physical or chemical characteristics; alter natural contours and/or substantially alter existing patterns of stormwater and/or groundwater flow. ¶
(c) Multiple Critical Areas Located on One Site. Where one site is classified as two or more critical areas, the project shall meet the minimum standards and requirements for each identified critical area as set forth in this chapter. ¶
(d) Maps and Inventory. Critical areas may be located through the use of the United States Department of the Interior National Wetlands Inventory Map for the City of Medical Lake, and other general resource maps available in the city planning department. Resource lands and critical areas not shown on the data maps are presumed to exist within the city and are protected under all provisions of this chapter. The exact location of resource lands and critical areas shall be determined by the applicant as a result of field investigations performed by qualified professionals using the definitions found in this chapter.

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provided the activity does not alter the critical area or its buffer by changing existing topography, water conditions or water sources.

D. Public Agency and Utility Exception

1. If application of this title would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section. To qualify for an exception the agency or utility must demonstrate the following:
 - a. That there is no other practical alternative to the proposed development which has less impact on critical areas;
 - b. The application of this title would unreasonably restrict the ability to provide utility services to the public;
 - c. That the proposed use does not pose a threat to the public health, safety or welfare;
 - d. That the proposal protects critical areas functions and values to the extent feasible and provides for mitigation in accord with the provisions of this title; and,
 - e. The proposal is consistent with other applicable regulations and standards.
2. A request for exception shall be submitted to the City with the application materials for the particular development proposal. The application shall be supplemented with an explanation as to how the public agency and utility exception criteria are satisfied. The administrator may require additional information or studies to supplement the exception request.
3. A Public Agency and Utility exception shall be processed by the administrator.

E. Reasonable Use Exception.

1. Project review: 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. To qualify for an exception the applicant must demonstrate all of the following:
 - a) That no other reasonable use can be made of the property that will have a lesser adverse impact on the critical area and adjoining and neighboring lands;
 - b) That the proposed use does not pose a threat to the public health, safety or welfare;
 - c) Any alteration is the minimum necessary to allow reasonable use of the property; and,
 - d) The inability of the proponent to derive reasonable use of the property is not the result of actions by the applicant after the effective date of this chapter.
 - e) A request for a reasonable use exception shall be submitted to the City with the application materials for the particular development proposal. The application shall be supplemented with an explanation as to how the reasonable use exception criteria are satisfied. The City may require additional information or studies to supplement the reasonable use exception request.
 - f) Where a request for a reasonable use exception is granted, impacts to critical areas and buffers shall be mitigated consistent with the purpose and standards of this Chapter to the greatest extent feasible.
 - g) A reasonable use exception shall be processed by the administrator.

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2. Public Review.

- a) The City shall process a request for a reasonable use exception to be determined by the Administrator.
- b) The City shall forward a copy of a request for reasonable use exception to the state, and federal agencies with CAO jurisdiction, tribes, and to all property owners within 300 feet of the subject property.
- c) The City shall provide public notice of the request for reasonable use exception pursuant to section 17.06.036.

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F. Reference Maps and Materials

1. The City shall maintain reference maps and materials that provide information on the general locations of critical areas. Since boundaries or the presence of critical areas are generalized, the application of this chapter and the actual type, extent and boundaries of critical areas shall be determined and governed by the classification section established for each critical area. In the event of any conflict between the critical area location or designation shown on the City's maps and the criteria and standards established in this chapter, or the site-specific conditions, the criteria, standards and/or site-specific conditions shall prevail. Reference maps and inventories shall include, but are not limited to the following (or, where applicable, any subsequent or amended version):

- a) Wetlands Map, based upon US Fish and Wildlife Service National Wetlands Inventory;
- b) Fish and Wildlife Habitat Area Maps, based upon Washington Department of Fish and Wildlife Priority Habitats and Species data;
- c) Soils Maps, based upon Spokane's County Soils Survey;
- d) Steep Slopes Map;
- e) Flood Insurance Rate Map Community 530124B, Panel #H&I-01, 1977;
- f) City of Medical Lake Comprehensive Plan;
- g) City of Medical Lake Shoreline Master Program;
- h) Washington State Wetlands Rating System for Eastern Washington (Department of Ecology Publication #4-06-15), as revised;
- i) Wetlands in Washington State, Volumes 1 and 2: Managing and Protecting Wetlands (Department of Ecology Publications #05-06-006 and #05-06-008); and
- j) Approved Critical Areas Reports, Special Studies, Geotechnical Analyses, and other special reports previously completed for a subject property; and
- k) Monitoring data

G. Designation of Critical Areas

1. The city of Medical Lake shall regulate all uses, activities, and developments within, adjacent to, or likely to affect, one or more critical areas, consistent with the best available science and the provisions herein.

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17.10.050 - Abrogation and greater restriction.

It is not intended that this chapter repeal, abrogate or impair any existing regulations, easements, covenants or deed restrictions. However, where this chapter imposes greater restrictions, provisions of this chapter shall prevail.

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17.10.060 - Procedures for critical areas permits.

- A. Application Requirements, Compliance. Except as specifically provided in this chapter, no regulated activity shall occur or be permitted to occur that may have a possible significant impact on critical areas without a critical area permit from the City. Any alteration approved by such written permit shall comply fully with the requirements and purposes of this chapter, other applicable regulations, and any terms or conditions of said permit. All activities that are not allowed or permitted shall be prohibited.

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- B. Critical Areas Report.

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If the administrator determines that the site of a proposed development potentially includes, or is adjacent to, critical area(s), a critical areas report may be required. When required, the expense of preparing the critical areas report shall be borne by the applicant. The content, format and extent of the critical areas report shall be approved by the administrator.

1. Activities Requiring a Permit. The following activities shall require a critical area permit: ¶
a. In fish and wildlife habitat conservation areas: any land use or other activity having the potential to significantly degrade the habitat or harm fish and wildlife; ¶
b. In geographically sensitive areas: any land use or other activity likely to contribute to a significant increase in geological hazards or to place people in danger; ¶
c. In wetlands (applies to within two hundred feet of the wetland and its buffer): The removal, excavation, grading or dredging of soil, sand, gravel, minerals, organic matter or material of any kind; dumping, discharging, or filling with any material; the draining, flooding, or disturbing of the water level or water table; the driving or piling; the placing of obstructions; the construction, reconstruction, or demolition or expansion of any structure; the destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland, provided that these activities are not part of a forest practice governed under Chapter 76.09 RCW and its rules; or activities that result in a significant change of physical or chemical characteristics or wetland water sources, including quantity, or the introduction of pollutants.

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 365-195900 through 365-195-925.

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1. The requirement for critical areas reports may be waived by the administrator if there is substantial evidence that:

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- i. There will be no alteration of the critical area(s) and/or the required buffer(s);
- ii. The proposal will not impact the critical area(s) in a manner contrary to the purpose, intent and requirements of this ordinance and the comprehensive plan; and,
- iii. The minimum standards of this chapter will be met.

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2. No Critical Areas Report is required for proposals that are exempt from the provisions of this chapter as set forth under Section 17.06.030, Exemptions herein.

3. Critical Area Reports shall be completed by a qualified professional who is knowledgeable about the specific critical area(s) in question and approved by the administrator.

4. At a minimum, a required Critical Areas Report shall contain the following information and be consistent with best available science:

- i. Applicant's name and contact information; permits being sought, and description of the proposal;
 - ii. A copy of the site plan for the development proposal, drawn to scale and showing:
 - 1. Identified critical areas, buffers, and the development proposal with dimensions;
 - 2. Limits of any areas to be cleared; and
 - 3. A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations;
 - iii. The names and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
 - iv. Identification and characterization of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area;
 - v. An assessment of the probable cumulative impacts to critical areas resulting from the proposed development of the site and noxious weed management;
 - vi. An analysis of site development alternatives;
 - vii. A description of reasonable efforts made to apply mitigation sequencing to avoid, minimize, and mitigate impacts to critical areas;
 - viii. A mitigation plan, as needed, in accordance with the mitigation requirements of this chapter, including, but not limited to:
 - ix. The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and
 - x. The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment.
 - xi. A discussion of the performance standards applicable to the critical area and proposed activity;
 - xii. Financial guarantees to ensure compliance; and
 - xiii. Any additional information required for specific critical areas as listed in subsequent sections of this chapter.
5. The administrator may request any other information reasonably deemed necessary to understand impacts to critical areas.

C. Administrative Review

- 1. Administrative decisions. Where these regulations call for an Administrative Decision, the administrator shall submit his or her findings and preliminary decision to the City Planning Department and relevant state and federal agencies, for review at least 15 (fifteen) days prior to making a final decision and shall consider timely comments in making a final decision.
- 2. Agency review. In any case in which the administrator does not have adequate knowledge or training to determine the sufficiency and accuracy of information contained within a critical area report or mitigation plan (whether or not an administrative decision is involved), said reports or plans shall be submitted to qualified agencies for review and recommendations prior to acceptance by the City.

D. Surety/Bonding

Deleted: Unless the city administrator waives one or more of the following information requirements, applications for a critical area permit must include a critical area report. When required, the expense of preparing the critical areas report shall be borne by the applicant. The content, format and extent of the critical areas report shall be approved by the city administrator. No critical areas report is required for proposals that are exempt from the provisions of this chapter as set forth in subsection n. herein. At a minimum a required critical areas report shall contain the following information. ¶

- a. Applicant's name and contact information; permits being sought, description of the proposal and legal description with map(s) showing the entire parcel of land owned by the applicant, with dimensions, and the exact boundary of the critical area on the parcel. ¶
- b. If the critical area is a wetland, a qualified professional shall provide a delineation report using the Washington State Wetlands Identification and Delineation Manual (Ecology Publication No. 96-94), March 1997, and as it may be amended from time to time, which classifies wetlands. Wetland scoring is based on the Washington State Wetland Rating System for Eastern Washington (Ecology Publication No. 04-06-15, or as amended). ¶
- c. A site plan for the proposed activity showing the location, width, depth and length of all existing and proposed structures, roads and equipment within the critical area and its buffer; ¶
- d. Elevations of the site and adjacent lands within the critical area and its buffers at contour intervals of no greater than five feet. ¶
- e. North arrow and scale at one of the following: ¶ 1" = 10', 1" = 20', 1" = 30', 1" = 40', 1" = 50' or 1" = 100' ¶
- f. Top view and typical cross section views of the critical area (and buffer, if applicable) to scale. ¶
- g. Names and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site. ¶
- h. Identification and characterization of all critical areas, wetlands, water bodies and buffers adjacent to the proposed project area. ¶
- i. An assessment of the probable cumulative impacts to critical areas resulting from the proposed development of the site. ¶
- j. An analysis of site development alternatives. ¶
- k. A description of reasonable efforts made to apply mitigation sequencing to avoid, minimize and mitigate impacts to critical areas. ¶
- l. A discussion of the performance standards applicable to the critical area and proposed activity. ¶
- m. Specific means to mitigate any potential adverse environmental impacts of the applicant's proposal. ¶

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If a development proposal is subject to mitigation, maintenance or monitoring plans, the City of Medical Lake, in a form acceptable to the City Attorney may require an assurance device or surety.

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E. Permitting

All applications for permits to conduct activities located on or near a project site may require a critical areas report is necessary per 17.18.120. In granting or denying a permit, Best Available Science shall be utilized per criteria set out in WAC 365-195-900 through 365-195-925 and to develop approved mitigation measures.

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F. Permit Conditions

1. Through the review process, the City of Medical Lake shall have the authority to attach such conditions to the granting of any approval under this chapter as deemed necessary to alleviate adverse impacts to critical area(s) and to carry out the provisions of this chapter. Such conditions of approval may include, but are not limited to the following:
 - i. Specification of allowable lot sizes;
 - ii. Provisions for additional buffers relative to the intensity of a use or activity (e.g. native growth protection areas);
 - iii. Requirements and/or restrictions on the construction, size, location, bulk and/or height, etc. of structure(s);
 - iv. Dedication of necessary easements for utilities, conservation, open space, etc.;
 - v. Imposition of easement agreements, sureties, deed restrictions, covenants, etc. on the future use and/or division of land;
 - vi. Limitations on the removal of existing vegetation;
 - vii. Limitations on impervious lot coverage;
 - viii. Additional measures to address issues such as erosion control, storm water management, filling, grading, etc.;
 - ix. Development of a mitigation plan to create, enhance, or restore damaged or degraded critical area(s) on and/or off site; and
 - x. Any monitoring and/or maintenance plans necessary to implement the provisions of this chapter.

G. Enforcement

Violation of the provisions of this chapter, or failure to comply with any of its requirements, shall be subject to enforcement actions by the Administrator that are authorized in the Zoning Ordinance, Subdivision Ordinance, Shoreline Master Program or any other land use regulation of the City of Medical Lake. The City Attorney, when authorized by the Mayor and Council, shall seek additional penalties, remedies, injunctions and other legal sanctions necessary for the enforcement of this title and require immediate remedial actions (e.g. restoration plans), proposed and implemented by a qualified professional, to the critical area(s) impacted by said violation. In addition to costs allowed by these regulations, the prevailing party in an enforcement action may, at the court's discretion, be allowed interest and reasonable attorney's fees. The City Attorney shall seek such costs, interest, and the reasonable attorney's fees on behalf of the City of Medical Lake when the City is the party.

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H. Criminal Penalties

As an alternative to any other judicial or administrative remedy provided in this chapter or by law or other ordinance, any person who willfully or knowingly violates any provision of this chapter, or any order issued pursuant to this chapter, or by each act of commission or omission procedures, aids, or abets such violation is guilty of a misdemeanor, with a minimum fine of \$1,000 and, upon conviction thereof, shall be punished as determined by the court.

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I. Performance Standards.

The applicant shall avoid all impacts that degrade the functions and values of critical areas. If alteration is unavoidable, all adverse impacts to critical areas and buffers resulting from the proposal shall be mitigated in accordance with an approved critical areas report and SEPA documents. Mitigation shall be 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.

1. 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:

- 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, such as project redesign, relocation, or timing, to avoid or reduce impacts;
- iii. Rectifying the impact to wetlands, critical aquifer recharge areas, flood hazard 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;
- iv. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;
- v. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
- vi. Compensating for the impact to wetlands, critical aquifer recharge areas, flood hazard areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
- vii. Monitoring the hazard or other required mitigation and taking remedial action when necessary.

2. Development standards. In addition to the development standards specific to each type of critical area, all development shall be subject to the following standards:

- i. Impervious lot coverage shall be minimized, to the extent consistent with the objectives of the development proposal; and
- ii. The applicant shall provide for adequate stormwater drainage, based on the findings of the critical areas report and the anticipated impacts of the proposed use.

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3. Mitigation plan. When mitigation is required, the applicant shall submit for approval a mitigation plan as part of the critical area report. Approval of a mitigation plan shall be

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an Administrative Decision, subject to Section 18.06.100 of these regulations. The mitigation plan shall include:

- i. A written report identifying mitigation objectives, including:
- ii. 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 objectives; identification of critical area functions and values; and dates for beginning and completion of site compensation construction activities;
- iii. A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in critical areas mitigation; and
- iv. An analysis of the likelihood of success of the compensation project.
- v. Measurable criteria for evaluating whether or not the objectives of the mitigation plan have been successfully attained and whether or not the requirements of this chapter have been met;
- vi. Written specifications and descriptions of the mitigation proposed, including, but not limited to:
 - 1. The proposed construction sequence, timing, and duration;
 - 2. Grading and excavation details;
 - 3. Erosion and sediment control features;
 - 4. A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
 - 5. Measures to protect and maintain plants until established.
- vii. A program for monitoring construction of the compensation project, and for assessing the completed project and its effectiveness over time. The program shall include a schedule for site monitoring and methods to be used in evaluating whether 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. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five (5) years from the date of planting, or ten (10) years where establishment of woody vegetation is the intended result. Where a 10-year monitoring program is required, data collection and reporting need not be completed every year. A monitoring schedule based on the findings of the critical areas report and adequate to effectively monitor canopy development shall be established in the mitigation plan.

J. Filing Fees. At the time of an application request, the applicant shall pay a filing fee as determined by the City council, by resolution. Sufficient fees shall be charged to the applicant to cover the costs of evaluation of the application. In cases where the City staff does not have adequate knowledge or training to determine the sufficiency and accuracy of information contained in the critical areas report or mitigation plan, said reports or plans shall be submitted to qualified agencies for review and recommendations prior to acceptance by the City. As deemed necessary by the administrator, the city may assess additional reasonable fees as needed to monitor and evaluate permit compliance and mitigation measures.

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1. 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 or preference: ¶

- a. Avoid 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, flood hazard 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 impacts to wetlands, critical aquifer recharge areas, flood hazard areas and habitat conservation areas by replacing, enhancing or providing substitute resources or environments. ¶
- g. Monitoring the hazard or other mitigation and taking remedial action when necessary. ¶
- h. Mitigation for unavoidable losses (i.e. stormwater management systems). ¶

C. Development Standards. In addition to the development standards specific to each type of critical area, all development shall be subject to the following standards: ¶

- 1. Impervious lot coverage shall be minimized to the extent consistent with the objectives of the development proposal. ¶

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K. Notification. Upon receipt of the completed critical areas permit application, the planning department shall notify the individuals and agencies, including federal and state agencies, having jurisdiction over or an interest in the matter to provide such individuals and agencies an opportunity to comment. The planning department shall establish a mailing list of all interested persons and agencies who wish to be notified of such applications.

L. Notice of Filing. The owner of any property with a critical area and/or critical area buffer verified on a site in relationship to a development proposal shall record a notice of presence of the critical area and/or buffer with the Spokane County Auditor. Such recording shall contain notice of the critical area and/or buffer and the application of this chapter to said property. The applicant must submit proof that the notice has been legally recorded before the final approval for development is issued. The notice shall run with the land and failure to provide such notice to any purchaser prior to transferring any interest in the property shall be in violation of this chapter.

1. Form of Notice.

CRITICAL AREA NOTICE

Note: An accurate site plan of the property with the location of the critical area and critical area buffer, drawn to scale, MUST be filed with this notice.

Present Owner _____

Notice: This property contains a critical area and/or its buffer as defined by Chapter 17.10 of the City of Medical Lake Municipal Code.

Application # _____ filed on _____ (date). Restrictions on use or alteration of the critical area and/or buffer may exist due to natural conditions of the property and the resulting regulations. Review of such application has provided information on the location of a critical area and/or its buffers and the restrictions on their use. A copy of the plan showing the critical area and/or its buffer is attached hereto.

Signature of owner(s)	
State of Washington County of _____	On this day personally appeared before me known to be the individuals(s) described in and who executed the within foregoing instrument and acknowledged that they sign the same their free and voluntary act and deed for the use and purposes therein stated.
Given under my hand and official seal this ____ day of ____	
Notary Public in and for the State of Washington,	

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H. Public Hearings. Following the submittal of an application determined to be complete by the administrator, the planning department shall hold a public hearing before the planning commission on the application, unless the administrator finds that the activity is so minor as to not affect a critical area. If a public hearing is required, notice shall be given in accordance with section 17.45.100 of this code.

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I. Permit Actions. The administrator shall approve, approve with conditions, or deny an application within thirty days of the public hearing; except that where additional information is required by the administrator the period may be extended by sixty days. In acting on the application, the administrator shall in writing grant, approve or conditionally approve the proposed activity. If a decision must be made in a ninety-day period and there is insufficient information or time to process the application, a denial will be issued.

Commented [RG14]: Add review process for agencies and certified professionals

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J. Application Approval. An application shall only be approved if the application, as conditioned, is consistent with the provisions of this chapter. Additionally, permits shall only be granted if:

1. A proposed action avoids adverse impacts to critical areas and/or their buffers or takes affirmative and appropriate measures to minimize and compensate for unavoidable impacts;
2. The proposed activity results in no net loss; or
3. Denial of an application would cause an extraordinary hardship on the applicant. Critical area applications shall not be effective and no activity thereunder shall be allowed during the time provided to file an appeal.

17.10.070 - Agricultural lands.

[Section reserved/No applicability.]

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17.10.080 - Forest lands.

[Section reserved/No applicability.]

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17.10.090 - Mineral resource lands.

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EXHIBIT C

Medical Lake Critical Areas Ordinance Update - 2021

"Once destroyed, nature's beauty cannot be repurchased at any price." – Ansel Adams

Please keep this in mind when reviewing and proposing to change Medical Lake's Critical Areas Ordinance (CAO). It is ok to be more restrictive in nature than what the State requires. Beginning with this update, Medical Lake needs to initiate more restrictive measures to ensure the City's wetlands are not being encroached upon by development.

DRAFT

Chapter 17.10 - RESOURCE LANDS AND CRITICAL AREAS PRESERVATION

Sections:

- 17.10.010 – Purpose and Intent
- 17.10.020 – Applicability.
- 17.10.030 - Definitions.
- 17.10.040 - Scope and Applicability.
- 17.10.050 - Abrogation and Greater Restriction.
- 17.10.060 - Procedures For Critical Areas Permits.
- 17.10.150 - Nonconforming Uses/Structures.
- 17.10.160 - Appeals.

Add Objectives
Combine both "applicability" into one para

Add a period "." at the end or take them all out (be consistent). Use proper sentence capitalization.

Who determines minimal impacts?

17.10.010 – 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 Medical Lake 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. This chapter is intended to:

Define: appropriate development activities, responsible manner

Include IAW 36.70A.370

1. Implement the City of Medical Lake’s Comprehensive Plan (as amended) and the requirements of the Growth Management Act;
2. 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;
3. Protect the general public, resources and facilities from injury, loss of life, property damage or financial loss due to flooding, erosion, landslides, or steep slopes failure;
4. Protect unique, fragile, and valuable elements of the environment, including ground and surface waters, wetlands, and fish and wildlife and their habitats;
5. Prevent cumulative adverse environmental impacts to water quality and availability, wetlands, and fish and wildlife habitat; and
6. Provide flexibility and attention to site specific characteristics to ensure reasonable use of property. How? By Whom?

Add back in: “Intent of this Chapter is to ensure that the City’s resource lands and critical areas are preserved and protected and that development in association with or adjacent to these areas is properly managed.”

Add back in under “Purpose” – Further the public’s interest in the conservation use of our lands; preclude land uses and developments which are incompatible with critical areas;

Deleted: Statutory authorization.¶
The Washington State Legislature has adopted Engrossed Substitute House Bill 2929, further amended by RSHB 1025, the Growth Management Act, which requires certain counties and cities to classify and designate critical areas and resource lands of long-term commercial significance. Local governments required to plan under RCW 36.70A.040 must further adopt regulations to ensure the conservation of agricultural, forest and mineral resource lands and development regulations precluding land uses or development that is incompatible with critical areas designated under RCW 36.70A.170. More recent amendments to the Growth Management Act require Medical Lake to consider the best available science when classifying, designating and protecting critical areas and resource lands. ¶
Findings:¶
Growth management, resource land conservation, and critical areas protection share problems related to governmental costs and efficiency.¶

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assure the long-term conservation of resource lands; classify and designate critical areas and resource lands

Add: The Critical Areas Ordinance relates to all critical areas in or out of the shoreline.

17.10.020 – Applicability.

Applicability. These critical area regulations shall apply as an overlay to zoning and other land use regulations established by the Medical Lake’s Municipal Code (as amended).

1. All land uses and/or development permit applications on all lots or parcels within the City that lie within critical areas as defined herein shall comply with the provisions of this chapter. No action shall be taken by any person that results in any alteration of any critical area except as consistent with the purposes, objectives and intent of this chapter. Where two or more types of critical areas overlap, requirements for development shall be consistent with the standards for each critical area. Where it is determined that a designated critical area is located within the shoreline jurisdiction, the provisions of the Shoreline Master Program will be used to provide protection to that particular critical area(s). If multiple protections (from CAO, other regulations, deed restrictions, covenants, etc.) apply, the most restrictive standards shall be applied. There are no titles with “Objectives” – add objectives.

2. Additionally, if any standards found in this chapter may also be applied to a proposal as optional and/or supplemental items to the provisions of the Shoreline Master Program. For designated critical areas outside of the shoreline jurisdiction the provisions of this chapter shall apply.

3. These Critical Areas regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as locally adopted. Any conditions required pursuant to this Chapter shall be included in the SEPA review and threshold determination. It is not the intent of this chapter 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 sensitive to the environment and resources of the community. – Delete duplicate.

17.10.030 - 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 its most reasonable application.

- 1) "Agricultural Land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, or livestock, and that has long-term commercial significance for agricultural production.

Deleted: 1. Protect human life and health;

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2. Further the public’s interest in the conservation use of our lands; ¶
3. Assure the long-term conservation of resource lands; ¶
4. Preclude land uses and developments which are incompatible with critical areas; ¶
5. Classify and designate critical areas and resource lands; and ¶
6. Develop appropriate regulatory and nonregulatory actions in response. ¶

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(Ord. No. 1004, § 1, 3-2-2010)
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Deleted: <#>Words or phrases used in this chapter shall be interpreted as defined below. Where ambiguity exists, words or phrases shall be interpreted so as to give this chapter its most reasonable application in carrying out its regulatory purpose. ¶

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Define: "Allowed Uses"

- 2) "Alteration" means a human-induced action which affects an existing critical area. Alterations may include but are not limited to: (A) applying herbicides or pesticides or any discharge of pollutants; (B) application of gravel, paving or any construction; (C) clearing, cutting, pruning, limbing, topping, relocating or removing vegetation; (D) channelizing, draining, dredging, filling or grading; or (E) any other activity that impacts the ecosystem's hydrology, existing vegetation, wildlife or wildlife habitat.
- 3) "Applicant" means a person who files an application for permit under this chapter and who is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.
- 4) "Aquifer" refers to groundwater-bearing geologic formations that contain enough saturated permeable material to yield significant quantities of water to wells.
- 5) "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.
- 6) "Best Available Science" means a valid scientific process or method of inquiry that is consistent with the criteria for establishing est available science as found in WAC 365-195-900 as amended. Change to: means 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 professions that is consistent with WAC 365-195-900.
- 7) "Best Management Practices" means the utilization of methods, techniques or products which have been demonstrated to be the most effective and reliable in minimizing impacts.
- 8) "Buffer Zone" means an area that surrounds and protects critical area functions from adverse impacts Change to: means an area required by this Chapter that provides a naturally vegetated, enhanced or newly vegetated zone surrounding a natural, restored or newly created critical area which serves as a buffer between the critical area and its associative upland areas and as an integral part of the habitat ecosystem.

Define (new): width and length in determining wetland buffers.

- 9) "Clearing" means the destruction, disturbance or removal of logs, scrub-shrub, stumps, trees or any vegetative material by burning, chemical, mechanical or other means.
- 10) "Compensation" means replacement by creation, enhancement or restoration of a wetland, at a minimum, equivalent in size, function and value to the one being altered or lost from development. Compensation may also include the use of monetary contributions to a mitigation fund.

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Deleted: (2) "Alluvial fan" means the alluvial deposit of a stream where it issues from a gorge upon a plain or of a tributary stream at its junction with the main stream.

Deleted: means a body of rock or soil that contains sufficient saturated permeable material to conduct groundwater and to yield economically significant quantities of groundwater to wells and springs. (6) "Aquifer critical recharging areas" means saturated geological formations with recharging areas having an effect on aquifers used for potable water where essential sources of drinking water is vulnerable to contamination.

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11) "Creation" means bringing a wetland or stream corridor into existence at a site in which a wetland or stream corridor did not formerly exist.

12) "Critical Aquifer Recharging Areas (CARA)" are locations which have the capacity to replenish the storage of underground water due to favorable hydrological and topographical conditions.

13) "Critical Areas" include the following areas and ecosystems:

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

Define (new): "Dangerous Tree"

14) "Disturbance" means, for purposes of this chapter, the construction, alteration or enlargement of any building or structure; excavation; grading; earthwork construction and/or the removal of vegetation.

Define (add back in): "Ecosystem" means the system of interrelationships within and between a biological community and its physical environment.

15) "Enhancement" means a process undertaken to rehabilitate or improve an existing degraded wetland by increasing or decreasing plant diversity and increasing water quality, wildlife habitat and/or erosion controls.

16) "Erosion" means wearing away of earth's surface as a result of movement of wind, water, ice or any means.

17) "Erosion Hazard Areas" means areas which contain soils classified by the U.S.D.A. Soil Conservation Service that may experience severe to very severe erosion hazards.

Define (add back in): "Extirpate" means to pull up by the root or destroy completely.

Define (new): "Extraordinary Hardship"

18) "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.

18) "Fill" means dumping or placing, by any means, any material from, to or on any soil or sediment surface including temporary stockpiling of material.

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Define (add back in): "Flood Hazard Areas"

19) "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.

20) "Forest Land" means land primarily useful for growing trees, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, for commercial purposes, and that has long-term commercial significance for growing trees commercially.

21) "Function" means the beneficial role critical areas serve including but not limited to fish and wildlife habitat, storage, conveyance, floodwater and stormwater retention and provision of erosion, landslide and sediment control.

22) "Functions and Values" means beneficial roles served by critical areas; including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, protection from hazards, historical, archaeological and aesthetic value protection and recreation.

23) "Geologically Hazardous Areas" means areas that are susceptible to erosion, sliding, earthquake or other geological events and which are not suited for development.

24) "Geotechnical Engineer" means a practicing, geotechnical/civil engineer licensed as a professional civil engineer with the state of Washington with at least four years' experience in landslide evaluation, soils and soil hydrology.

25) "Grading" means clearing of trees, brush, scrubs or grass or excavating, filling or leveling of surface contours.

26) "Habitat" means the specific area or environment in which a particular type of plant or animal lives.

27) "Hazardous Waste" for the purpose of this title, means and includes all dangerous and extremely hazardous wastes designated in WAC 173-3030-040, 173-303-070 through 173-303-103, and RCW 70.105.010.

28) "High-Intensity Land Use" means uses associated with high levels of human or structural activity. These uses include residential buildings and structures, active recreational areas and facilities and commercial or industrial uses and structures. Include: land use based on zoning designations: commercial, urban, industrial

Define (add back in): "Hydric Soil"

Define (add back in): "Hydroperiod"

Define (add back in): "Hydrophyte"

29) "Impacts" means adverse effects of one thing upon another. Reword "one thing".

30) "In-Kind Replacement" means replacement of a wetland with one of equivalent characteristics and quality at a ratio equal to or greater than the existing ecosystem.

31) "Landslide" means an episodic downslope movement of a mass of soil, rock and/or snow.

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32) "Landslide Hazard Areas" means areas based upon the combination of geologic, topographic and hydrologic factors that are subject to severe landslide risk because of the combination.

Define (new): "Limited Uses"

33) "Low-Intensity Land Use" means uses associated with low activity or disturbance. Low-intensity land uses based on zoning designations include passive recreation, open space and small gardens.

34) "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. Define "significant local concern". Whom determines this?

35) "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 WILL 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, proposed/planned residential developments, apartment complexes, shoreline substantial development permits and other similar applications. Stated in development/building codes – not needed here. Delete

36) "Mineral Lands" means lands that are not already characterized by urban growth and are of long-term commercial significance for the extraction of aggregate and mine resources, including sand, gravel and valuable metallic substances.

Define (new): "Minimal Impacts"

37) "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. Stated in development/building codes – not needed here. Delete

38) "Mitigation" means offsetting or countering the adverse environmental effects that developing the land can have on wetlands. Mitigation does not protect the wetlands; it only attempts to minimize the damages done. a negotiated action involving the avoidance, reduction or compensation for possible adverse impacts. In the following order of preferences this includes:

- a) Avoiding the impacts by preservation or maintenance;
- b) Reducing or eliminating impacts by preservation or maintenance;
- c) Minimizing impacts by limiting degree or magnitude;
- d) Rectifying impacts by repairing, rehabilitation or restoring;
- e) Compensating for impacts by in-kind replacement;

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f) Monitoring impacts by planned evaluation process; and

g) Mitigation for unavoidable losses (i.e. stormwater management systems).

39) "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. **Duplicate/delete #39**

40) "Monitoring" means the process of collecting and evaluating data to assess the biological, hydrological or geological performance of newly created, restored, rehabilitated and/or affected wetland.

41) "Native Vegetation" means vegetation comprised of plant species which are indigenous to a wetland area.

Deleted: vegetation

42) ~~44~~ "New Construction" means structures for which the "start of construction" commenced on or after the effective date of this title. Stated in development/building codes – not needed here. Delete

43) "Open Space Areas" means lands of varied size which contain distinctive geologic, botanic, zoologic, historic, scenic or other critical area features. These areas are often undeveloped and serve as greenbelts and wildlife habitats. Specific types of open space include gulches, steep slopes and wetlands.

44) "On-Site" means the same, geographically contiguous, or bordering property. On-site hazardous waste treatment and storage facilities treatment and store wastes generated on the same property.

45) "Ordinary High Water Mark" means a mark that has been found where the presence and action of waters are common and usual and maintained in an ordinary year long enough to mark a distinct character from that of the abutting upland.

46) "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. Keep old definitions for Priority Habitats and Priority Species (keep both separate).

Deleted: means seasonal range or habitat element with which a given species is primarily associated and which, if altered, may reduce survival potential of that species over the long term. These may include: habitat areas of high relative density or species richness, breeding habitats, with high vulnerability to alteration. ¶

"Priority species" means species which are of concern due to their population status and sensitivity to habitat alteration. Priority species include those which are state listed as endangered, threatened, or sensitive species as well as other species of concern and game species.

47) "Rare, Threatened Or Endangered Species" 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 232-12011. **Keep old definition**

Define (new): "Reasonable Use of Property", "Reasonable Use Exemption", "Reasonable Methods"

Deleted: means plant or animal species that are regionally relatively uncommon, are nearing endangered status, or whose existence is in immediate jeopardy and that are usually restricted to highly specific habitats. ¶ 45

48) "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. Keep old definition.

Deleted: means improving, enhancing and re-establishing a once viable and now degraded wetland or stream to a state in which its stability, functions and values approach its unaltered state.

49) ~~51~~ “Review Authority” means the decision maker and/or administrator that issues the final land use decisions, not the appeal authority. Stated in development/building codes – not needed here. Delete.

50) "Riparian Areas" are lands that occur along water courses and water bodies. Typical examples include flood plains and streambanks.

51) “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.

Define (new): “Significant Impact”

52) “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 potable/drinking water for that area and for which there is no reasonably available alternative sources should the aquifer become contaminated.

53) “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. Stated in development/building codes – not needed here. Delete.

54) “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. Stated in development/building codes – not needed here. Delete.

Define (new): “Substantial Evidence”

55) “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: Stated in development/building codes – not needed here. Delete.

- 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.

56) “Seismic Hazard Areas” means such areas subject to severe risk of earthquake damage as a result of seismic-induced settlement or soil liquefaction.

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Define (new): "Specific Means"

57) "Stream **C**orridor" means perennial, intermittent or ephemeral waters included within a channel of land and its adjacent riparian zones which serve as a buffer between the aquatic and terrestrial upland ecosystems.

58) "Streams" means lands and waters contained within a channel which support hydrophytes and/or covered by water each growing season.

59) "Toe of **S**lope" means a distinct topographic break in slope at the lowermost limit of an area where the ground surface drops ten feet or more vertically within a horizontal distance of twenty-five feet.

60) "Top of **S**lope" means a distinct topographic break in slope at the uppermost limit of an area where the ground surface drops ten feet or more vertically within a horizontal distance of twenty-five feet.

61) "Unavoidable and **N**ecessary **I**mpacts" means impacts to a regulated wetland or stream and its associated buffer that will remain after it has been demonstrated that no practicable alternatives exist. **Do not allow it to occur in the first place; then there will be NO unavoidable and necessary impacts to critical areas.**

62) "Water-**D**ependent **A**ctivity" means activity or use that requires the use of surface water to fulfill the basic purpose of the proposed project.

Define (new): "Watershed"

Define (add back in): "Wetland Biologist"

63) "Wetland **E**dge" means a line dividing uplands from water habitat. The line can be identified through procedures in the 1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands by examining the presence or absence of aquatic plants (hydrophyte), hydric soils and/or water table at or near the surface.

64) "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.

Define (add back in): "Degraded Wetland"

Define (new): "Depressional Wetland"

Define (add back in): "Emergent Wetland"

Define (add back in): "Forested Wetland"

Define (add back in): "Riparian Habitat"

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- Define (add back in): "Scrub-Shrub Wetlands"
- Define (add back in): "Swamp"
- Define (add back in): "Wetlands, Nonregulatory"
- Define (add back in): "Wetlands, Regulatory"

17.10.040 - Scope and Applicability.

A. General. This chapter applies only to lands designated as critical areas within the Medical Lake 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. What about the buffer zone? Site specific analysis is what? By Whom?

a. 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: grading, filling, building (permit), commercial or residential; binding site plan; site development permit; subdivision; reclassification; site plan approvals; shoreline substantial development permits; short plats; boundary line adjustments; and segregation or combination/special and conditional use permits; temporary use permits, variances and exceptions; or any subsequently adopted permit or required approval not expressly exempted by this title. In addition, this chapter applies to all public or private actions, permits and approvals in association with a resource land and/or a critical area and its buffer. Specifically list these requirements and their location.

Need a sub para b or get rid of "a"

- Add back in 17.10.040, (b): Wetlands and Streams.**
- Add back in 17.10.040, (c): Multiple Critical Areas Located on One Site.**
- Add back in 17.10.040, (d): Maps and Inventory.**

B. 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.

1. Pervious trails for non-motorized uses; Change "Pervious" to "open and accessible"
2. 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; Delete para 2 because wetlands/wetland buffers must not be destroyed simply in order to build a road/street, etc right through it.
3. Water-dependent uses;

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Deleted: "Degraded wetland" means a wetland in which the vegetation, soils, and/or hydrology have been adversely altered, resulting in lost or reduced functions and values. ¶
 (B) "Emergent wetland" means a wetland with at least thirty percent of its surface covered by erect, rooted, herbaceous vegetation at the uppermost vegetative strata.
 (C) "Forested wetland" means a wetland with at least thirty percent of the surface area covered by woody vegetation greater than twenty feet in height. ¶
 (D) "Marsh" means a wetland which is permanently submerged or has intermittent aquatic plant life where dominant vegetation is nonwoody plants such as grasses and sedges. ¶

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4. Removal of diseased or dangerous trees, or the removal of invasive or nuisance plants; Whom determines all this?
5. 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; Explain this para please. What does the Review Process consist of? Who does this Review Process?
6. Existing agricultural practices on lands used continuously for agricultural purposes since October 1997.

C. 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: What is allowed and whom determines this?

- 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. How can a subdivision or short plan be considered a limited use? This sounds like a back door approach...
- 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. Site Plan Review done by whom?

D. Exemptions.

1. The activities listed below are exempt from the provisions of this chapter. Exempt activities shall be conducted using all reasonable methods to avoid impacts to critical areas. The decision to declare an activity exempt shall be an Administrative Decision, subject to Section 17.10.060 (C) of these regulations. Exemption from the chapter shall not be considered permission to degrade a critical area or ignore risks from natural hazards. Incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated at the responsible party's expense. Whom determines if it should be and Administrative Decision and what does this consist of? So, this is ok, if the responsible party restores/rehabilitates it at his/her own expense? Deny the exemption.
2. Emergency construction necessary to protect life or property from immediate damage by the elements. An emergency is an unanticipated event or occurrence which poses an imminent threat to public health, safety, or the environment, and which requires immediate action within a time too short to allow full compliance. Once the threat to the public health, safety, or the environment has dissipated, the construction undertaken as a result of the previous emergency shall then be subject to and brought into full compliance with this title;

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Deleted: (1) Building, grading, filling, special stormwater and sanitary sewer permits and local improvement districts; ¶
 (2) Subdivisions, short plats, boundary line adjustments and segregation or combination permits; ¶
 (3) Reclassification, site plan approvals, shoreline substantial development permits and special and conditional use permits; and ¶
 (4) Temporary use permits, variances and exceptions. ¶

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 (b) Wetlands and Streams. For wetlands and streams, the above applicability standards are expanded to include any act or use adjacent to or within two hundred feet of a wetland or stream and its associated adjacent buffer which would destroy the natural vegetation; result in significant change in habitat, water temperature, physical or chemical characteristics; alter natural contours and/or substantially alter existing patterns of stormwater and/or groundwater flow. ¶
 (c) Multiple Critical Areas Located on One Site. Where one site is classified as two or more critical areas, the project shall meet the minimum standards and requirements for each identified critical area as set forth in this chapter. ¶
 (d) Maps and Inventory. Critical areas may be located through the use of the United States Department of the Interior National Wetlands Inventory Map for the City of Medical Lake, and other general resource maps available in the city planning department. Resource lands and critical areas not shown on the data maps are presumed to exist within the city and are protected under all provisions of this chapter. The exact location of resource lands and critical areas shall be determined by the applicant as a result of field investigations performed by qualified professionals using the definitions found in this chapter.

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3. Normal maintenance or repair of existing buildings, structures, roads, utilities, levees, or drainage systems, provided the activity does not further alter, encroach upon, or increase impacts to critical areas or associated buffers;
4. Existing agricultural activities normal or necessary to general farming conducted according to industry-recognized best management practices, including the raising of crops or the grazing of livestock;
5. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, critical area impacts shall be minimized, and disturbed areas shall be immediately restored; and
6. Passive recreational activities, including, but not limited to: fishing, bird watching, hiking, hunting, boating, horseback riding, skiing, swimming, canoeing, and bicycling provided the activity does not alter the critical area or its buffer by changing existing topography, water conditions or water sources.
7. 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. Duplicate – delete.

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E. Public Agency and Utility Exception

1. If application of this title would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section. To qualify for an exception the agency or utility must demonstrate the following:
 - a. That there is no other practical alternative to the proposed development which has less impact on critical areas;
 - b. The application of this title would unreasonably restrict the ability to provide utility services to the public;
 - c. That the proposed use does not pose a threat to the public health, safety or welfare;
 - d. That the proposal protects critical areas functions and values to the extent feasible and provides for mitigation in accord with the provisions of this title; and, Who determines this?
 - e. The proposal is consistent with other applicable regulations and standards.
2. A request for exception shall be submitted to the City with the application materials for the particular development proposal. The application shall be supplemented with an explanation as to how the public agency and utility exception criteria are satisfied. The administrator may require additional information or studies to supplement the exception request.
3. A Public Agency and Utility exception shall be processed by the administrator.

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F. Reasonable Use Exception.

1. Project review: If the application of this title would deny all reasonable use of the subject property. -- confusing the property owner may apply for an exception pursuant to this section. To qualify for an exception the applicant must demonstrate all of the following:

- a) That no other reasonable use can be made of the property that will have a lesser adverse impact on the critical area and adjoining and neighboring lands; does not sound good for the critical areas
- b) That the proposed use does not pose a threat to the public health, safety or welfare;
- c) Any alteration is the minimum necessary to allow reasonable use of the property; and, Who determines what the minimum necessary is?
- d) The inability of the proponent to derive reasonable use of the property is not the result of actions by the applicant after the effective date of this chapter. Explain
- e) A request for a reasonable use exception shall be submitted to the City with the application materials for the particular development proposal. The application shall be supplemented with an explanation as to how the reasonable use exception criteria are satisfied. The City may require additional information or studies to supplement the reasonable use exception request.
- f) Where a request for a reasonable use exception is granted, impacts to critical areas and buffers shall be mitigated consistent with the purpose and standards of this Chapter to the greatest extent feasible.
- g) A reasonable use exception shall be processed by the administrator. (not qualified)

2. Public Review.

- a) The City shall process a request for a reasonable use exception to be determined by the City Administrator. (not qualified)
- b) The City shall forward a copy of a request for reasonable use exception to the state, and federal agencies with CAO jurisdiction, tribes, and to all property owners within 300 feet of the subject property. Where did the 300ft come from?
- c) The City shall provide public notice of the request for reasonable use exception pursuant to section 17.06.036

G. Reference Maps and Materials

1. The City shall maintain reference maps and materials that provide information on the general locations of critical areas. Since boundaries or the presence of critical areas are generalized, the application of this chapter and the actual type, extent and boundaries of critical areas shall be determined and governed by the classification section established for each critical area. In the event of any conflict between the critical area location or designation shown on the City's maps and the criteria and standards established in this chapter, or the site-specific conditions, the criteria, standards and/or site-specific conditions shall prevail. Reference maps and inventories shall include, but are not limited to the following (or, where applicable, any subsequent or amended version): add a "2" or remove the "1"

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- a) Wetlands Map, based upon US Fish and Wildlife Service National Wetlands Inventory;
- b) Fish and Wildlife Habitat Area Maps, based upon Washington Department of Fish and Wildlife Priority Habitats and Species data;
- c) Soils Maps, based upon Spokane’s County Soils Survey;
- d) Steep Slopes Map;
- e) Flood Insurance Rate Map Community 530124B, Panel #H&I-01, 1977;
- f) City of Medical Lake Comprehensive Plan;
- g) City of Medical Lake Shoreline Master Program;
- h) Washington State Wetlands Rating System for Eastern Washington (Department of Ecology Publication #4-06-15), as revised;
- i) Wetlands in Washington State, Volumes 1 and 2: Managing and Protecting Wetlands (Department of Ecology Publications #05-06-006 and #05-06-008); and
- j) Approved Critical Areas Reports, Special Studies, Geotechnical Analyses, and other special reports previously completed for a subject property; and
- k) Monitoring data

H. Designation of Critical Areas

- 1. The City of Medical Lake shall regulate all uses, activities, and developments within, adjacent to, or likely to affect, one or more critical areas, consistent with the best available science and the provisions herein. Add a “2” or remove “1”

17.10.050 - Abrogation and Greater Restriction.

It is not intended that this chapter repeal, abrogate or impair any existing regulations, easements, covenants or deed restrictions. However, where this chapter imposes greater restrictions, provisions of this chapter shall prevail.

17.10.060 - Procedures For Critical Areas Permits.

- A. Application Requirements, Compliance. Except as specifically provided in this chapter, no regulated activity shall occur or be permitted to occur that may have a possible significant impact on critical areas without a critical area permit from the City. Any alteration approved by such written permit shall comply fully with the requirements, purposes and intent of this chapter, other applicable regulations, and any terms or conditions of said permit. All activities that are not allowed or permitted shall be prohibited. Any alterations such as?? Also, there is no specific para for requirements for use in exemptions, reasonable use exemptions, etc.

Add back in: Activities Requiring a Permit. Paras a, b, and c.

Add (somewhere): Any wetland delineation done more than 5 years ago needs to be revisited. Although, revisiting a wetland delineation that is five or more years old does not necessarily mean a new wetland delineation needs to be done. It means it may be necessary to revisit the site to determine whether the delineation is still accurate or needs to be done based on current conditions.

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- 1. Activities Requiring a Permit. The following activities shall require a critical area permit: ¶
 - a. In fish and wildlife habitat conservation areas: any land use or other activity having the potential to significantly degrade the habitat or harm fish and wildlife; ¶
 - b. In geographically sensitive areas: any land use or other activity likely to contribute to a significant increase in geological hazards or to place people in danger; ¶
 - c. In wetlands (applies to within two hundred feet of the wetland and its buffer): The removal, excavation, grading or dredging of soil, sand, gravel, minerals, organic matter or material of any kind; dumping, discharging, or filling with any material; the draining, flooding, or disturbing of the water level or water table; the driving or piling; the placing of obstructions; the construction, reconstruction, or demolition or expansion of any structure; the destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland, provided that these activities are not part of a forest practice governed under Chapter 76.09 RCW and its rules; or activities that result in a significant change of physical or chemical characteristics or wetland water sources, including quantity, or the introduction of pollutants....

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B. Critical Areas Report.

If the administrator determines that the site of a proposed development potentially includes, or is adjacent to, critical area(s), a critical areas report will be required. When required, the expense of preparing the critical areas report shall be borne by the applicant. The content, format and extent of the critical areas report shall be approved by the administrator.

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 365-195900 through 365-195-925.

Critical Area Reports are required for all proposals dealing with wetland(s) – no matter if the wetland is exempt or not. This is an easy way out for the participant to possibly do damage to the critical areas that might not be fixable for many, many years.

1. The requirement for critical areas reports will not be waived by the administrator regardless if there is substantial evidence that: What is considered substantial evidence?
 - i. There will be no alteration of the critical area(s) and/or the required buffer(s);
 - ii. The proposal will not impact the critical area(s) in a manner contrary to the purpose, intent and requirements of this ordinance and the comprehensive plan; and, There are no such guarantees.
 - iii. The minimum standards of this chapter will be met. The minimum standards are what? State this as a heading.
2. No Critical Areas Report is required for proposals that are exempt from the provisions of this chapter as set forth under Section 17.06.030, Exemptions herein. Delete – if it involves a critical area then a Critical Areas Report is required (no exceptions).
3. Critical Area Reports shall be completed by a qualified professional who is knowledgeable about the specific critical area(s) in question and approved by the administrator. Use Wetland Biologist.
4. At a minimum, a required Critical Areas Report shall contain the following information and be consistent with best available science: Leave in entire para 2 a-p from original, it requires more details/more specific.
 - i. Applicant's name and contact information; permits being sought, and description of the proposal;
 - ii. A copy of the site plan for the development proposal, drawn to scale and showing:
 1. Identified critical areas, buffers, and the development proposal with dimensions;
 2. Limits of any areas to be cleared; and
 3. A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations;

What happened to (add back in): showing the location, width, depth, length of all existing and proposed structures, roads, and equipment within the critical area and

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its buffer. Elevations of the site... North arrow and scale... Top view and typical cross section views of critical area and buffer -- add all this back in.

- iii. The names and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
 - iv. Identification and characterization of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area;
 - v. An assessment of the probable cumulative impacts to critical areas resulting from the proposed development of the site and noxious weed management;
 - vi. An analysis of site development alternatives;
 - vii. A description of reasonable efforts made to apply mitigation sequencing to avoid, minimize, and mitigate impacts to critical areas;
 - viii. A mitigation plan, as needed, in accordance with the mitigation requirements of this chapter, including, but not limited to:
 - ix. The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and
 - x. The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment. Do not allow
 - xii. Financial guarantees to ensure compliance; and
 - xiii. Any additional information required for specific critical areas as listed in subsequent sections of this chapter.
- Add back in: xiv. No adverse impacts will occur to the wetland or its buffer.
- xiv. The proposed use or structure is located beyond the required buffer or building setback zone based upon wetland type.
5. The administrator may request any other information reasonably deemed necessary to understand impacts to critical areas.

C. Administrative Review.

- 1. Administrative Decisions. Where these regulations call for an Administrative Decision, the administrator shall submit his or her findings and preliminary decision to the City Planning Department and relevant state and federal agencies, for review at least 30 (thirty) days prior to making a final decision and shall consider timely comments in making a final decision.
- 2. Agency Review. In any case in which the administrator does not have adequate knowledge or training to determine the sufficiency and accuracy of information contained within a critical area report or mitigation plan (whether or not an administrative decision is involved), said reports or plans shall be submitted to qualified agencies for review and recommendations prior to acceptance by the City. Whom determines if the Administrator does not have adequate knowledge or not?

D. Surety/Bonding.

If a development proposal is subject to mitigation, maintenance or monitoring plans, the City of Medical Lake, in a form acceptable to the City Attorney will require an assurance device or surety.

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- a. Applicant's name and contact information; permits being sought, description of the proposal and legal description with map(s) showing the entire parcel of land owned by the applicant, with dimensions, and the exact boundary of the critical area on the parcel. ¶
- b. If the critical area is a wetland, a qualified professional shall provide a delineation report using the Washington State Wetlands Identification and Delineation Manual (Ecology Publication No. 96-94), March 1997, and as it may be amended from time to time, which classifies wetlands. Wetland scoring is based on the Washington State Wetland Rating System for Eastern Washington (Ecology Publication No. 04-06-15, or as amended). ¶
- c. A site plan for the proposed activity showing the location, width, depth and length of all existing and proposed structures, roads and equipment within the critical area and its buffer; ¶
- d. Elevations of the site and adjacent lands within the critical area and its buffers at contour intervals of no greater than five feet. ¶
- e. North arrow and scale at one of the following: ¶
1" = 10', 1" = 20', 1" = 30', 1" = 40', 1" = 50' or 1" = 100'

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E. Permitting.

All applications for permits to conduct activities located on or near a project site may require a critical areas report as necessary per Chapter 17.18.120. In granting or denying a permit, best available science shall be utilized per criteria set out in WAC 365-195-900 through 365-195-925 and to develop approved mitigation measures.

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F. Permit Conditions.

1. Through the review process, the City Council shall have the authority to attach such conditions to the granting of any approval under this chapter as deemed necessary to alleviate adverse impacts to critical area(s) and to carry out the provisions of this chapter. Such conditions of approval may include, but are not limited to the following:

- i. Specification of allowable lot sizes;
- ii. Provisions for additional buffers relative to the intensity of a use or activity (e.g. native growth protection areas);
- iii. Requirements and/or restrictions on the construction, size, location, bulk and/or height, etc. of structure(s);
- iv. Dedication of necessary easements for utilities, conservation, open space, etc.;
- v. Imposition of easement agreements, sureties, deed restrictions, covenants, etc. on the future use and/or division of land;
- vi. Limitations on the removal of existing vegetation;
- vii. Limitations on impervious lot coverage; **reword**
- viii. Additional measures to address issues such as erosion control, storm water management, filling, grading, etc.;
- ix. Development of a mitigation plan to create, enhance, or restore damaged or degraded critical area(s) on and/or off site; and
- x. Any monitoring and/or maintenance plans necessary to implement the provisions of this chapter.

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Add para 2 or delete 1.

G. Enforcement.

Violation of the provisions of this chapter, or failure to comply with any of its requirements, shall be subject to enforcement actions by the Mayor that are authorized in the Zoning Ordinance, Subdivision Ordinance, Shoreline Master Program or any other land use regulation of the City of Medical Lake. The City Attorney, when authorized by the Mayor and Council, shall seek additional penalties, remedies, injunctions and other legal sanctions necessary for the enforcement of this title and require immediate remedial actions (e.g. restoration plans), proposed and implemented by a qualified professional, to the critical area(s) impacted by said violation. In addition to costs allowed by these regulations, the prevailing party in an enforcement action may, at the court's discretion, be allowed interest and reasonable attorney's fees. The City Attorney shall seek such costs, interest, and the reasonable attorney's fees on behalf of the City of Medical Lake when the City is the party.

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H. Criminal Penalties.

As an alternative to any other judicial or administrative remedy provided in this chapter or by law or other ordinance, any person who willfully or knowingly violates any provision of this

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chapter, or any order issued pursuant to this chapter, or by each act of commission or omission procedures, aids, or abets such violation is guilty of a misdemeanor, with a minimum fine of \$10,000 and, upon conviction thereof, shall be punished as determined by the court.

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I. Performance Standards.

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The applicant shall avoid all impacts that degrade the functions and values of critical areas. If alteration is unavoidable, all adverse impacts to critical areas and buffers resulting from the proposal shall be mitigated in accordance with an approved critical areas report and SEPA documents. Mitigation shall be 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.

1. 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: **To whom shall all reasonable efforts be demonstrated?**

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- 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, such as project redesign, relocation, or timing, to avoid or reduce impacts;
- iii. Rectifying the impact to wetlands, critical aquifer recharge areas, flood hazard 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;
- iv. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;
- v. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
- vi. Compensating for the impact to wetlands, critical aquifer recharge areas, flood hazard areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
- vii. Monitoring the hazard or other required mitigation and taking remedial action when necessary. **Who is going to do this?**

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2. Development Standards. In addition to the development standards specific to each type of critical area, all development shall be subject to the following standards:

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- i. Impervious lot coverage shall be minimized, to the extent consistent with the objectives of the development proposal; and
- ii. The applicant shall provide for adequate stormwater drainage, based on the findings of the critical areas report and the anticipated impacts of the proposed use.

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3. Mitigation Plan. When mitigation is required, the applicant shall submit for approval a mitigation plan as part of the critical area report. Approval of a mitigation plan shall be an Administrative Decision, subject to Section 18.06.100 of these regulations. **The mitigation plan shall include;**

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- i. The mitigation plan shall include: ~~delete and renumber~~
- ii. A written report identifying mitigation objectives, including:
- iii. 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 objectives; identification of critical area functions and values; and dates for beginning and completion of site compensation construction activities;
- iv. A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in critical areas mitigation; state mandatory required years of experience, and
- v. An analysis of the likelihood of success of the compensation project.
- vi. Measurable criteria for evaluating whether or not the objectives of the mitigation plan have been successfully attained and whether or not the requirements of this chapter have been met; Measurable criteria such as? Who determines this?
- vii. Written specifications and descriptions of the mitigation proposed, including, but not limited to:
 - 1. The proposed construction sequence, timing, and duration;
 - 2. Grading and excavation details;
 - 3. Erosion and sediment control features;
 - 4. A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
 - 5. Measures to protect and maintain plants until established. What measures and whom determines this?
- viii. A program for monitoring construction of the compensation project, and for assessing the completed project and its effectiveness over time. The program shall include a schedule for site monitoring and methods to be used in evaluating whether 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. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five (5) years from the date of planting, or ten (10) years where establishment of woody vegetation is the intended result. Where a 10-year monitoring program is required, data collection and reporting need not be completed every year. And this is actually going to happen? By whom? A monitoring schedule based on the findings of the critical areas report and adequate to effectively monitor canopy development shall be established in the mitigation plan. Last sentence makes no sense.
Add back in: Identify potential courses of action and any corrective measures to be taken if monitoring or evaluation indicates performance standards are not being met.

J. Filing Fees. At the time of an application request, the applicant shall pay a filing fee as determined by the City Council, by resolution. Sufficient fees shall be charged to the applicant to cover the costs of evaluation of the application. In cases where the City staff does not have adequate knowledge or training to determine the sufficiency and accuracy of information contained in the critical areas report or mitigation plan, said reports or plans

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Deleted: The applicant shall avoid all impacts that degrade the functions and values of critical areas. If alteration is unavoidable, all adverse impacts to critical areas and buffers resulting from the proposal shall be mitigated in accordance with an approved critical areas report and SEPA documents. Mitigation shall be 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. ¶

1. 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 or preference: ¶

- a. Avoid 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, flood hazard 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 impacts to wetlands, critical aquifer recharge areas, flood hazard areas and habitat conservation areas by replacing, enhancing or providing substitute resources or environments. ¶
- g. Monitoring the hazard or other mitigation and taking remedial action when necessary. ¶
- h. Mitigation for unavoidable losses (i.e. stormwater management systems). ¶

C. Development Standards. In addition to the development standards specific to each type of critical area, all development shall be subject to the following standard ...

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shall be submitted to qualified agencies for review and recommendations prior to acceptance by the City. As deemed necessary by the City administrator, the City may assess additional reasonable fees as needed to monitor and evaluate permit compliance and mitigation measures.

K. Notification. Upon receipt of the completed critical areas permit application, the Planning Department shall notify the Planning Commission, individuals and agencies, including federal and state agencies, having jurisdiction over or an interest in the matter to provide such individuals and agencies an opportunity to comment. The Planning Department shall establish a mailing list of all interested persons and agencies who wish to be notified of such applications (to include Planning Commission members).

L. Notice of Filing. The owner of any property with a critical area and/or critical area buffer verified on a site in relationship to a development proposal shall record a notice of presence of the critical area and/or buffer with the Spokane County Auditor. Such recording shall contain notice of the critical area and/or buffer and the application of this chapter to said property. The applicant must submit proof that the notice has been legally recorded before the final approval for development is issued. The notice shall run with the land and failure to provide such notice to any purchaser prior to transferring any interest in the property shall be in violation of this chapter (minimum fine \$20,000).

1. Form of Notice.

CRITICAL AREA NOTICE

Note: An accurate site plan of the property with the location of the critical area and critical area buffer, drawn to scale, MUST be filed with this notice.

Present Owner _____

Notice: This property contains a critical area and/or its buffer as defined by Chapter 17.10 of the City of Medical Lake Municipal Code.

Application # _____ filed on _____ (date). Restrictions on use or alteration of the critical area and/or buffer may exist due to natural conditions of the property and the resulting regulations. Review of such application has provided information on the location of a critical area and/or its buffers and the restrictions on their use. A copy of the plan showing the critical area and/or its buffer is attached hereto.

Signature of owner(s)	
State of Washington	On this day personally appeared before me known to be the individuals(s) described in and who executed the within foregoing instrument and

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County of _____	acknowledged that they sign the same their free and voluntary act and deed for the use and purposes therein stated.
	Given under my hand and official seal this ____ day of ____
	Notary Public in and for the State of Washington,

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H. Public Hearings. Following the submittal of an application determined to be complete by the City Administrator, the Planning Department shall hold a public hearing before the Planning Commission on the application, unless the City Administrator and the Planning Commission finds that the activity is so minor as to not affect a critical area. A public hearing shall be held regardless and notice shall be given in accordance with section 17.45.100 of this code. Define a "minor activity"

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I. Permit Actions. The City Administrator shall approve, approve with conditions, or deny an application within thirty days of the public hearing; except that where additional information is required by the City Administrator the period may be extended by sixty days. In acting on the application, the City Administrator shall in writing grant, approve or conditionally approve the proposed activity. If a decision must be made in a ninety-day period and there is insufficient information or time to process the application, a denial will be issued.

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J. Application Approval. An application shall only be approved if the application, as conditioned, is consistent with the provisions of this chapter. Additionally, permits shall only be granted if:

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1. A proposed action avoids adverse impacts to critical areas and/or their buffers or takes affirmative and appropriate measures to minimize and compensate for unavoidable impacts;
2. The proposed activity results in no net loss; or
3. Denial of an application would cause an extraordinary hardship on the applicant. Critical area applications shall not be effective and no activity thereunder shall be allowed during the time provided to file an appeal. Who determines if there is an extraordinary hardship?

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17.10.070 - Agricultural Lands.

[Section reserved/No applicability.] why N/A? – this is mentioned elsewhere

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17.10.080 - Forest Lands.

[Section reserved/No applicability.]

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17.10.090 - Mineral Resource Lands.

[Section reserved/No applicability.]

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