

**CITY OF MEDICAL LAKE  
SPOKANE COUNTY, WASHINGTON  
ORDINANCE NO. 1108**

**AN ORDINANCE OF THE CITY OF MEDICAL LAKE, WASHINGTON RELATING  
TO CRITICAL AREAS AND AMENDING AND REPEALING VARIOUS SECTIONS  
AND SUBSECTIONS AND ADDING NEW SECTIONS TO TITLE 17, CHAPTER 17.10  
OF THE MEDICAL LAKE MUNICIPAL CODE.**

WHEREAS, City of Medical Lake Municipal Code (MLMC) 17.10 contains the City development regulations pertaining to the protection of critical areas within the City; and

WHEREAS, the Growth Management Act (GMA) requires the City of Medical Lake to review and update its' Critical Areas Regulations pursuant to RCW 36.70A.130; and

WHEREAS, the environmental impacts of the amendments to the critical areas regulations resulted in the issuance of a Determination of Non-Significance (DNS) on October 6, 2022; and

WHEREAS, the City of Medical Lake Planning Commission (Planning Commission) considered the proposed Critical Areas Regulations amendments at a properly noticed public hearing on September 22, 2022, so as to receive public testimony; and

WHEREAS, at its December 15, 2022, meeting, the Planning Commission voted to recommend approval of the amendments to the Critical Areas Regulations; and

WHEREAS, on February 7, 2023, the City Council discussed the proposed Critical Areas Regulations amendments at a properly noticed open public meeting; and

WHEREAS, pursuant to RCW 36.70A.370, the City used the process established by the Washington State Attorney General to assure the protection of private property rights; and

WHEREAS, pursuant to RCW 36.70A.106, on September 21, 2022, the City provided the Washington State Department of Commerce with a sixty (60) day notice of its intent to adopt the amendment(s) to the MLMC; and

WHEREAS, the City Council considered the entire public record, public comments, written and oral, and the Planning Commission's recommendation; and

WHEREAS, this Ordinance is supported by the staff report and materials associated with this Ordinance, including documents on file with the City of Medical Lake; and

WHEREAS, this Ordinance is also supported by the professional judgment and experience of the City staff who have worked on this proposal; and

WHEREAS, RCW 35A.63 and RCW 36.70A and Article 11 of the Washington State Constitution authorize and permit the City to adopt this Ordinance; and

WHEREAS, the City Council determined that the proposed amendments are in accord with the Comprehensive Plan, will not adversely affect the public health, safety, or general welfare, and are in the best interest of the citizens and property owners of the City; and

WHEREAS, the City Council determined that the proposed amendments are consistent with the goals and requirements of the GMA; and

WHEREAS, it is the City Council expectation that this Ordinance will not be published as required by law until it is approved by the Washington State Department of Ecology; and

WHEREAS, once the Department of Ecology approves the Ordinance, then it may be published as required by law.

NOW, THEREFORE, the City Council of the City of Medical Lake, Washington does ordain as follows:


**Section 1.** Amendment. MLMC 17.10 Resource Lands and Critical Areas Preservation is amended and repealed, where applicable, as set forth in Exhibit A to this Ordinance.

**Section 2.** Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

**Section 3.** Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

**Section 4.** Effective Date. This Ordinance shall be in full force and effect five (5) days after publication of this Ordinance or a summary thereof in the official newspaper of the City as provided by law.


PASSED by the City Council this 7<sup>th</sup> day of March, 2023.

  
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Mayor, Terri Cooper

ATTEST:

  
\_\_\_\_\_  
Finance Director/City Clerk Koss Ronholt

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney, Sean P. Boutz

Date of Publication: 23 March 2023

Effective Date: 28 March 2023

## Chapter 17.10 CRITICAL AREAS

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## Chapter 17.10 CRITICAL AREAS

17.10.010 - Purpose.

A. The purpose of this chapter is to designate and protect critical areas and their functions and values, while also allowing for reasonable use of property.

B. As mandated by the Growth Management Act (RCW 36.70A), this chapter provides protection for the critical areas of wetlands, fish and wildlife habitat conservation areas, and frequently flooded areas.

C. This chapter implements the goals and policies of the Medical Lake Comprehensive Plan, under the Washington Growth Management Act and other related state and federal laws.

17.10.020 - General Provisions.

A. *No Net Loss of Functions.* Activity shall result in no net loss of functions and values in the critical areas. Since values are difficult to measure, no net loss of functions and values means no net loss of functions. The beneficial functions provided by critical areas include, but are not limited to, water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage; conveyance and attenuation of flood waters; ground water recharge and discharge; and erosion control. These beneficial functions are not listed in order of priority. This chapter is also intended to protect residents from hazards and minimize risk of injury or property damage.

B. *Relationship to Other Regulations.*

1. These critical areas regulations shall apply in addition to zoning and other regulations adopted by the city.
2. Any individual critical area that overlaps another type of critical area shall meet the requirements that provide the most protection to the critical areas involved.
3. When there is a conflict between any provisions of this chapter or any other regulations, that which provides the most protection to the subject critical area shall apply.
4. Conditions of approval of a project affecting critical areas may be supplemented by a review under the State Environmental Policy Act (SEPA), as locally adopted.
5. Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements. The applicant is responsible for complying with other state and federal requirements in addition to the requirements of this chapter. Obtaining all applicable state and federal permits shall be made a condition of a Critical Areas Permit. Such permits shall be obtained prior to issuance of permits for development, construction or site disturbance.

C. *Jurisdiction.* All areas within the city meeting the definition of one or more critical areas, whether mapped or not, are hereby designated critical areas and with their buffers are subject to the provisions of this chapter.

D. *Abrogation and Greater Restrictions.* This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

E. *Severability.* This chapter and the various parts thereof are hereby declared to be severable. Should any section of this chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

F. *Warning and Disclaimer of Liability.* The standards established herein are minimum standards. The standards are established for regulatory purposes only. Minimum compliance with these standards may not be sufficient protection from identified or unidentified hazards. City establishment of these minimum standards is not a representation that these standards are sufficient protection from any hazard. Critical areas development should be based on sound scientific and engineering considerations that may be more stringent than this chapter. The city assumes no liability if these established standards prove to be insufficient protection.

G. *Interpretation of Critical Area Boundaries.* The planning official shall be authorized to interpret the exact location of the mapped critical area boundary. Final designations shall be based on site conditions and other available data or information.

H. *Exceptions.* Where the applicant seeks an exception to any requirement imposed by this code, or believes said requirement denies all reasonable economic use of the subject property, justification in support of an exception must be clear and convincing. Grant of an exception, on the other hand, must not be unreasonably withheld.

### 17.10.030 - Applicability and Exemptions from Requirement to Obtain Permit.

#### A. *Applicability.*

1. Unless exempted by this chapter the provisions of this chapter shall apply to all lands, all land uses, clearing and development activity, and all structures and facilities in the city located within a critical area or buffer or on a site containing a critical area or buffer including single-family residential lots platted before July 19, 1994, and developments such as play structures that require no other permits.

The following are examples of activities regulated within a critical area or its buffer:

- a. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind.
- b. The dumping of, discharging of, or filling with any material.
- c. The draining, flooding, or disturbing the water level or water table.
- d. Pile driving.
- e. The placing of obstructions.
- f. The construction, reconstruction, demolition, or expansion of any structure.
- g. The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland.
- h. Activities that result in:
  - i. A significant change of water temperature.
  - ii. A significant change of physical or chemical characteristics of the sources of water.
  - iii. A significant change in the quantity, timing, or duration of the water.
  - iv. The introduction of pollutants.

2. The provisions of this chapter shall apply whether or not a permit or authorization is required.

3. No person, company, agency, or applicant shall alter a critical area or buffer (including removal of downed woody vegetation or application of chemicals harmful to fish and wildlife) except as consistent with the requirements of this chapter.

4. The Critical Areas Permit required pursuant to this chapter shall be obtained prior to undertaking any activity or development regulated by this chapter, unless exempted by this chapter.

5. Land that is located wholly within a wetland or its buffer may not be subdivided.

B. *Exemptions.* Reasonable methods shall be used to avoid potential impacts to critical areas. Any damage to, or alteration of, a critical area that is not a necessary outcome of the exempt activity shall be corrected at the property owner's expense.

The following activities are exempt from needing a Critical Areas Permit:

1. *Emergencies.* Those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of property damage and that require remedial or preventative action in a time frame too short to allow for compliance with the requirements of this chapter, so long as all of the following apply:
  - a. The emergency action uses reasonable methods to address the emergency.
  - b. The emergency action must have the minimum possible impact to the critical area or its buffer.
  - c. The property owner, person or agency undertaking such action shall notify the city within one working day following commencement of the emergency activity.
  - d. After the emergency, the property owner, person or agency undertaking the action shall fully fund and conduct necessary restoration and/or mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved Critical Areas Report and mitigation plan. The property owner, person or agency undertaking the action must apply for a critical areas permit. The alteration, Critical Areas Report, and mitigation plan shall be reviewed by the city in accordance with the review procedures contained in this chapter.
  - e. Restoration and/or mitigation activities must be initiated within three months of the date of the emergency or as otherwise determined by the planning official, and completed in a timely manner.
2. *Valid Critical Areas Permit.* Any development proposed on property pursuant to a currently valid Critical Areas Permit, provided all conditions and requirements of the Critical Areas Permit are met and the proposed activity is within the scope of the original permit.
3. *Hazard Tree.* Emergency or hazard tree removal conducted so that critical area impacts are minimized.
4. *Landscape Maintenance.* Landscape maintenance (other than tree removal or use of pesticides, herbicides, fungicides or fertilizers) consistent with accepted horticultural practices, such as those recommended by the Washington State University Extension Service, within the boundaries of an existing lawn, garden or landscaped area and not associated with development.
5. *Noxious or Invasive Plants.* Clearing of noxious or invasive plants using hand-held equipment such as a weed-whacker, provided (1) fueling and maintenance take place outside the critical area and buffer; (2) all cleared vegetation is taken away and disposed of properly; and (3) denuded soils are stabilized with native vegetation.

6. *State or Federally Approved Conservation or Preservation.* State or federally approved conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife that does not entail changing the structure or functions of the existing critical area or buffer.
7. *Harvesting Wild Crops.* The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops or other native vegetation and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the critical area or buffer by changing existing topography, water conditions or water sources.
8. *Passive Activities.* Passive outdoor recreation, education, and scientific research activities such as fishing, hiking, and bird watching that do not degrade the critical area or buffer.
9. *Land surveys, soil sampling, percolation tests, and other related activities.* In every case, impacts to the critical area or buffer shall be minimized and disturbed areas shall be stabilized immediately.
10. *Navigational Aids and Boundary Markers.* Construction or modification of navigational aids and boundary markers. Impacts to the critical area or buffer shall be minimized and disturbed areas shall be restored within 72 hours.
11. *Agricultural Activities.* Existing and ongoing agricultural activities conducted on lands defined in RCW 84.34.020(2).
12. *State or Federally Approved Restoration or Enhancement Project.* Implementation of a state or federally approved restoration or enhancement project not related to any development project.
13. *Operation, Repair and Maintenance.* Operation, repair, and maintenance of existing structures, infrastructure, roads, sidewalks, railroads, trails, water, sewer, stormwater, power, gas, telephone, cable, or fiber optic facilities if the activity does not further increase the impact to, or encroach farther within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, repair, or maintenance.
14. *Fence Repair.* Maintenance, repair, and in-kind replacement of existing fences.
15. Those activities and uses conducted pursuant to the Washington State Forest Practices Act and its rules and regulations, WAC 222-12-030.
16. Repair and maintenance of legally established non-conforming uses or structures, provided they do not increase the degree of nonconformity.

## 17.10.040 - Approval Process.

### A. *Critical Areas Permit Process.*

1. Consolidated reviews. Applications for more than one project on a site may be consolidated into a single application. When more than one review is requested and the reviews have different procedures, the application is processed using the most comprehensive review process.
2. Timeline. A final decision should be made within 120 days from the date the application was deemed complete or a written notice given to the applicant specifying the reasons why the time limits will not be met and an estimated date of issuance.
3. Application. The applicant must submit an application on a city form, to include three paper copies and one electronic copy of the following: 1) a written description of the proposal; 2) a site plan; 3) all required reports and mitigation plans; and 4) a written response to all applicable approval criteria, and the correct fee.
4. Environmental checklist. A completed environmental checklist as specified in Chapter 16.10, may be required with a land use application.
5. Completeness check. Upon receipt of an application it shall be routed to other departments for a determination of completeness under RCW 36.70B.070. Within 28 days the city shall provide written notice that: (a) the application is complete or (b) additional information is required. Once the applicant supplies the additional information, the planning official has 14 days to determine if the application is complete or request further information. If the requested information is not received within 60 days of notice of an incomplete application, the application will be considered abandoned and the city will not refund the application fee.
6. Additional governmental authority. The planning official must notify the applicant of any other governmental authority that may have jurisdiction over some aspect of the proposed project within 28 days of submittal.
7. Notice of application. Following the determination of completeness, the city shall, within 14 days, provide the applicant and the public with a notice of application. Once the applicant receives the notice of application, the applicant shall within 14 days of receipt and 15 days prior to the public hearing, place a public notice in the local newspaper, mail a public notice to all property owners within 300 linear feet of the subject site, and post a public notice on the site. The notice shall include the time, place, and purpose of the of the public hearing.
8. Public comment period. The public may provide written comment for a period of no fewer than 14 days and no greater than 30 days as specified in the public notice, provided public comment may be accepted prior to closing the record where there is an open record hearing or the decision.
9. Department responses. City department directors notified of the application must provide a written response to the planning official within 14 days of the notice.
10. Concurrency determination. The public works director will issue a concurrency determination no more than 14 days after receiving the notice of application per Chapter 16.02



11. SEPA threshold determination. The planning official will issue a SEPA threshold determination no fewer than 15 days prior to a hearing.

12. Review. The planning official must provide a single report stating the approval criteria, findings and a recommendation to the Planning Commission prior to the hearing.

13. Hearing. An open record hearing will be conducted by the Planning Commission. The Planning Commission must recommend approval, approval with conditions, or denial to the City Council based on information presented at the hearing and in the record.

14. Final Decision Authority. The City Council has final decision authority preceded by the recommendation of the Planning Commission.

15. Notice of decision. Within seven days of the decision the planning official will mail notice of the review body's decision (pending appeal) to the applicant, the owner and all recognized organizations or persons who responded in writing to the public notice, testified at the hearing, or requested a notice of decision.

16. Ability to appeal. A decision may be appealed to Superior Court pursuant to the review process in RCW 36.70C.

17. Recording. All decisions of approval, including conditions, shall be recorded with Spokane County Auditor. The applicant is responsible for recording the decision against the property and must provide a copy of the recorded decision to the planning department. The decision must be recorded before the approved use is permitted and/or permits are issued, but no later than 30 days from the final decision.

18. Effective date. The effective date is the day the decision is signed.

19. Expiration. The critical areas permit expires 5 years after the approval date.

*B. Notice on Title – Covenant and Tracts.*

1. *Covenants.* This section applies to all nonexempt projects that involve critical areas and buffers.

a. In order to inform subsequent purchasers of real property of the existence of critical areas, the owner of any property containing a critical area or buffer on which a development proposal is approved shall file a covenant with the county records and elections division according to the direction of the city. The covenant shall state the presence of the critical area or buffer on the property, the application of this chapter to the property, and the fact that limitations on actions in or affecting the critical area or buffer may exist. The covenant shall “run with the land.”

b. The applicant shall submit proof that the covenant has been filed for public record before the city approves any site development or construction for the property or, in the case of subdivisions, short subdivisions, planned unit developments, binding site plans, and other developments that involve platting, at or before recording of the plat.

2. *Tracts*. This section applies in addition to subsection (B)(1) of this section to projects that involve platting on properties containing fish and wildlife habitat conservation areas, wetlands, and their buffers. The location of the tract, critical area(s), and buffer(s) shall be shown on the face of the plat. See subsection (B)(2)(b) of this section for exceptions.

a. The property owner shall place the subject critical areas and buffers in one or more nondevelopable tracts except when:

- i. Creation of a nonbuildable tract would result in violation of minimum lot depth standards; or
- ii. The responsible official determines a tract is impractical.

b. When an exception in subsection (B)(2)(a) of this section applies, residential lots may extend into the critical area(s) or buffer(s) provided:

- i. The location of the outer perimeter of the critical area(s) and buffer(s) is marked in the field and approved by the planning official prior to the commencement of permitted activities and maintained throughout the duration of the permit.
- ii. A permanent physical demarcation along the outer/upland boundary of the critical area buffer(s) is installed and thereafter maintained. Such demarcation may consist of fencing, hedging or other prominent physical marking that allows wildlife passage, blends with the critical area environment, and is approved by the planning official.
- iii. Permanent signs are posted at an interval of one per lot for single-family residential uses or at a maximum interval of 200 feet, or as otherwise determined by the planning official, and must be perpetually maintained by the property owner. The sign shall be worded as follows or with alternative language approved by the planning official: "Protected Natural Resource. Call 509-565-5000 for more information."

C. *Financial Assurances*.

1. When mitigation required pursuant to a development proposal is not completed prior to the city final permit approval, such as final plat approval or final building inspection, the city shall require the applicant to provide security in a form and amount deemed acceptable by the city. If the development proposal is subject to mitigation, the applicant shall provide security in a form and amount deemed acceptable by the city to ensure mitigation is fully functional (including but not limited to construction, maintenance, and monitoring). The security shall be in the amount of 125 percent of the estimated cost of restoring the functions of the critical area that are at risk.

2. The security shall remain in effect for a minimum of 5 years or until the city determines, in writing, that the standards have been met.

3. Depletion, failure, or collection of bond funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.
4. Public development proposals shall be relieved from having to comply with the bonding requirements of this section if public funds have previously been committed in the project budget or capital improvement budget for mitigation, maintenance, monitoring, or restoration.
5. Failure to satisfy any critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within 30 days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default, and the city may demand payment of any financial guarantees or require other action authorized by the city code or any other law.
6. Any funds recovered pursuant to this section shall be used to complete the required mitigation. Excess funds shall be returned to the applicant.

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

E. *Appeals.* Any decision to approve, condition, or deny a development proposal or other activity based on the requirements of this chapter may be appealed according to Section 17.10.040.A.16.

### 17.10.050 - Submittal Requirements.

A. *Preparation by Qualified Professional.* Any required Critical Areas Report shall be prepared by a qualified professional as defined herein.

B. *General Critical Areas Report Contents.* At a minimum, the Critical Areas Report shall contain the following:

1. The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;
2. A copy of the site plan for the development proposal including:
  - a. A map to scale depicting critical areas, buffers, the development proposal, and any areas to be cleared; and
  - b. Estimate of conditions of all critical areas within 250 feet of the project boundaries using best available information.
  - c. Proposed stormwater management and sediment control plan for the development including a description of any impacts to drainage alterations; and

d. A digital map of the geographic information required pursuant to the applicable provisions of this chapter for each critical area and buffer on site.

3. The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;

4. *Identification and scientific characterization of all critical areas and buffers.* The scientific characterization shall include a detailed assessment of the functional characteristics of the critical areas;

5. An assessment of the probable impacts to critical areas and buffers and risk of injury or property damage including permanent, temporary, temporal, and indirect impacts resulting from development of the site and the operations of the proposed development;

6. A written response to each of the approval criteria in section 17.10.060 Approval Criteria;

7. Plans for adequate mitigation, as needed, to offset any impacts, in accordance with the Mitigation Plan Requirements below.

C. *Additional Information.* Any additional information required for the specific critical areas and buffers as specified in Section 17.10.070 Fish and Wildlife Habitat Conservation Area, Section 17.10.080 Frequently Flooded Areas, and Section 17.10.090 Wetlands.

D. *Other Reports or Studies.* Unless otherwise provided, a Critical Areas Report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the planning official, provided, the site conditions have not changed since the earlier report or study was completed.

E. *Critical Areas Report – Modifications to Requirements.* Modifications to Required Contents. The applicant may consult with the planning official prior to or during preparation of the Critical Areas Report to obtain city approval of modifications to the required contents of the report where, in the judgment of a qualified professional, more or less information is required to adequately address the potential impacts to any critical areas or buffers and the required mitigation. The planning official may also initiate a modification to the required report contents by requiring either additional or less information, when determined to be necessary to the review of the proposed activity in accordance with this chapter.

F. *Mitigation Plan Requirements.* When mitigation is required, the applicant shall submit a mitigation plan as part of the Critical Areas Report. The mitigation plan shall include:

1. *Detailed Construction Plans.* The mitigation plan shall include descriptions of the mitigation proposed, such as:

a. The proposed construction sequence, timing, and duration;

b. Grading and excavation details;

- c. Erosion and sediment control features;
- d. A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
- e. Measures to protect and maintain plants until established.
- f. Surface and subsurface hydrological conditions unless hydrological conditions are not applicable to the subject critical area.

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

2. *Monitoring Program.* The mitigation plan shall include a program for monitoring construction of the mitigation project and for assessing a completed project. A protocol shall be included, outlining the schedule for site monitoring, and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the mitigation project. The mitigation 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.

When the applicant believes that the conditions of the monitoring plan are met, the applicant shall contact the City and request that the City verify and certify so in writing. The City shall conduct an on-site assessment as part of the verification process. The applicant shall provide reasonable access to the property as necessary for verification and certification.

When the City has verified and certified that the conditions of the monitoring plan have been met, the critical area shall no longer be considered as mitigation, but as a naturally-occurring critical area when processing a future development permit application(s).

3. *Adaptive Management.* The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.

### 17.10.060 - Approval Criteria.

Any activity or development subject to this chapter, unless otherwise provided for in this chapter, shall be reviewed and approved, approved with conditions, or denied based on the proposal's ability to comply with all of the following criteria. The city may condition the proposed activity as necessary to mitigate impacts to critical areas and their buffers and to conform to the standards required by this chapter. Activities shall protect the functions of the critical areas and buffers on the site.

- A. *Avoid Impacts.* The Applicant shall first seek to avoid all impacts that degrade the functions and values of critical area(s). This may necessitate a redesign of the proposal.
- B. *Minimize Impacts.* Where avoidance is not feasible, the applicant shall minimize the impact of the activity and mitigate to the extent necessary to achieve the activity's purpose and the purpose of this ordinance. The applicant shall seek to minimize the fragmentation of the resource to the greatest extent possible.
- C. *Compensatory Mitigation.* The applicant shall compensate for the unavoidable impacts by replacing each of the affected functions to the extent feasible. The compensatory mitigation shall be designed to achieve the functions as soon as practicable. Compensatory mitigation shall be in-kind and on-site, when feasible, and sufficient to maintain the functions of the critical area, and to prevent risk from a hazard posed by a critical area to a development or by a development to a critical area.
- D. *No Net Loss.* The proposal protects the critical area functions and values and results in no net loss of critical area functions and values.
- E. *Consistency with General Purposes.* The proposal is consistent with the general purposes of this chapter and does not pose a significant threat to the public health, safety, or welfare on or off the development proposal site;
- F. *Performance Standards.* The proposal meets the specific performance standards of Fish and Wildlife Habitat Conservation Areas section 17.10.070.C, Frequently Flooded Areas section 17.10.080.D, and Wetlands section 17.10.090.F, as applicable.

## 17.10.070 - Fish and Wildlife Habitat Conservation Areas.

### A. *Designation.*

1. Final designations shall be based on site conditions and other available data or information. There are established in the city the following identified Fish and Wildlife Habitat Conservation Areas:
  - a. Habitat used by any life stage of state or federally designated endangered, threatened, and sensitive fish or wildlife species. A current list of federally and state identified species is available from the Washington State Department of Fish and Wildlife.
  - b. *Priority Habitats and areas associated with Priority Species.* Current maps and lists of Priority Habitats and Species and applicable management recommendations are available from the Washington Department of Fish and Wildlife.
  - c. Water bodies including lakes, streams, rivers, and naturally occurring ponds.

d. Riparian Management Zones. Riparian management zones shall be determined using the best available science, including the Washington Department of Fish and Wildlife publication Riparian Ecosystems: Volumes 1 & 2 (updated July 2020 or as revised).

When impervious surfaces from previous development completely functionally isolate the Riparian Management Zone from the waterbody, the regulated riparian area shall extend from the ordinary high water mark to the impervious surfaces. If the waterbody is not completely physically isolated, but is completely functionally isolated, the Planning Official may adjust the regulated riparian area to reflect site conditions and sound science.

2. *Habitat Location Information.* Information on the approximate location and extent of Habitat Conservation Areas is available from the planning official.

The habitat location information is based on:

- a. Washington Department of Fish and Wildlife Priority Habitat and Species Maps;
- b. Washington Department of Natural Resources Official Water Type Reference Maps;

B. *Additional Critical Areas Report Requirements.*

1. A Critical Areas Report for a Riparian Management Area or Riparian Buffer shall include evaluation of the habitat functions using a habitat evaluation tool approved by the Washington Department of Fish and Wildlife.

In addition to the standards of Section 17.10.050.B, where a mitigation plan is required as part of the Critical Areas Report for a fish and wildlife habitat conservation area that involves a water body, Riparian Management Area or Riparian Buffer, the monitoring program protocol shall include where relevant to the impacted functions:

- a. Observations and measurements of riparian integrity and quality (buffer width, riparian corridor continuity or fragmentation, species diversity, stand age, plant survival rates)
- b. Large woody debris surveys
- c. Streamflow monitoring
- d. Water quality monitoring to detect pollution impacts
- e. Biological monitoring (including fish surveys and benthic macroinvertebrate sampling)

2. If the clearing or development activity is in the Riparian Management Area, the Critical Areas Report shall contain the following information, if applicable, in addition to the general Critical Areas Report requirements of Section 17.10.050.B:

- a. How the clearing or development activity constitutes a water-dependent, water-related or water-enjoyment use; or
- b. How the clearing or development activity cannot feasibly be located on the site outside of the Riparian Management Area; and
- c. How the proposal will not adversely affect the connectivity of habitat functions.

C. *Performance Standards.*

1. *General.*

- a. Development or clearing activities shall protect the functions of the Habitat Conservation Areas on the site. The activity shall result in no net loss of functions. Protection can be provided by avoiding (the preferred protection) or minimizing and mitigating as described in the general critical areas approval criteria in Section 17.10.060. Functions include:
  - i. Providing habitat for breeding, rearing, foraging, protection and escape, migration, and overwintering; and
  - ii. Providing complexity of physical structure, supporting biological diversity, regulating stormwater runoff and infiltration, removing pollutants from water, and maintaining appropriate temperatures.
- b. An applicant shall replace any lost functions preferably by restoring or if not, then by enhancing other habitat functions, so long as the applicant demonstrates that enhancement of the other functions provides no net loss in overall functions and maintains habitat connectivity. An example of unavoidable loss of function would be interruption of a travel corridor in a Riparian Management Zone. To the maximum extent feasible, enhancement shall be undertaken on-site.
- c. If development or clearing activity is within a Priority Habitat and Species area, the applicant shall follow Washington Department of Fish and Wildlife Management Guidelines, Management Recommendations or other standards approved by the Washington Department of Fish and Wildlife. Where there are no guidelines, recommendations or other standards, development or clearing may occur provided that:
  - i. The development or clearing results in no net loss of habitat function on the site; and
  - ii. Functionally significant habitat, defined as habitat that cannot be replaced or restored within 20 years, shall be preserved.
- d. Signs for Fish and Wildlife Conservation Areas
  - i. *Temporary markers.* The location of the outer perimeter of the fish and wildlife habitat conservation area shall be marked in the field, and such marking shall be approved by the



planning official prior to the commencement of permitted activities. Such field markings shall be maintained throughout the duration of the permit.

ii. *Permanent signs.* Permanent signs shall be posted on public and private properties at an interval of one per lot for single family residential uses or at a maximum interval of 200 feet or as otherwise determined by the planning official, and must be perpetually maintained by the property owner. The sign shall be worded as follows or with alternative language approved by the planning official: "Natural Resource Area. Call 509-565-5000 for information."

## 2. Riparian Management Zones.

In addition to the standards in Section 17.10.070.C.1 the standards in this section shall apply in Riparian Management Areas and Buffers.

a. *Riparian Management Zone.* No development or clearing activity is allowed within the Riparian Management Zone unless such activity is:

i. A water-dependent, water-related or water-enjoyment activity where there are no feasible alternatives that would have a less adverse impact on the Riparian Management Area or Riparian Buffer. The applicant shall minimize the impact and mitigate for any unavoidable impact to functions; Cost may be considered, but shall not be overriding; or

ii. A road, railroad, trail, or a water, sewer, stormwater conveyance, gas, power, cable, fiber optic, or telephone facility that cannot feasibly be located outside of the Riparian Management Area, that minimizes impacts, and that mitigates for any unavoidable impact to functions. Cost may be considered, but shall not be overriding; or

iii. Mitigation for activities allowed by this chapter, providing the activity provides no net loss of riparian habitat functions on the site.

b. Owners of developed properties within the Riparian Management Zone are encouraged to enhance the area by planting native plants and to apply integrated pest management.

## 17.10.080 - Frequently Flooded Areas.

This section shall apply to all special flood hazard areas within the boundaries of the city of Medical Lake.

A. *Designation.* Frequently flooded areas are the areas of special flood hazards identified by the Federal Insurance Administration and the Federal Emergency Management Agency (FEMA)

When base flood elevation (BFE) data has not been provided in frequently flooded areas, the planning official shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source in order to administer the provisions of this chapter

B. *Warning and Disclaimer of Liability.* The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city of Medical Lake, any officer or employee thereof, or the Federal Insurance Administration for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

C. *Additional Critical Areas Report Requirements.* In addition to the Critical Areas Report requirements in Section 17.10.050 Submittal Requirements, the following information shall be submitted. Elevation data shall reference the NAVD 1988 Datum.

1. Base (100-year) flood elevation in relation to mean sea level. When base flood elevation has not been provided or is not available from an authoritative source, it shall be generated by the applicant for developments which contain at least 50 lots or 5 acres, whichever is less.
2. Elevation in relation to mean sea level, of the lowest floor (including basement) of all existing and proposed structures.
3. Elevation in relation to mean sea level to which any structure's lowest floor (including basement) is raised to be at least 1 foot above the base flood elevation or for nonresidential flood-proofed structures, the elevation in relation to mean sea level to which any structure is flood-proofed.
4. *Description of strategies taken to avoid, minimize, and mitigate unavoidable impacts to public safety.* When the base flood elevation has not been provided, the Critical Areas Report shall include a discussion of how and whether the proposed development would be reasonably safe from flooding. Historical data, high water marks, photographs of past flooding and other available information will be used as the basis for this discussion and conclusion.
5. Certification, documentation, and demonstration by a qualified professional of how the applicable performance standards will be met.

D. *Performance Standards.* Except as noted, the following standards apply to all structures and development (including but not limited to the placement of manufactured homes, substantial improvement, roads, railroads, trails, water, sewer, stormwater conveyance, gas, power, cable, fiber optic or telephone facilities) in all areas of special flood hazards and channel migration zones.

1. *Prohibited Encroachments.* The following are prohibited in the floodway:
  - a. Water wells.
  - b. On-site waste disposal systems.
  - c. Residential structures or other structures for human habitation including but not limited to:

- i. Building envelopes within subdivisions;
- ii. New construction or reconstruction of residential structures;
- iii. Placement or replacement of manufactured homes (all types);
- iv. Critical facilities housing vulnerable populations and emergency services; and
- v. Recreational vehicles.

2. *Property Damage.* Development shall not result in adverse impacts to other properties either upstream or downstream.

3. *Drainage.* Drainage paths around structures and on slopes shall be adequate to guide floodwaters around and away from proposed structures and adjacent properties.

#### 17.10.090 – Wetlands.

A. *Purpose.* Wetlands provide beneficial functions which include, but are not limited to, providing food, breeding nesting and/or rearing habitat for fish and wildlife; recharging and discharging ground water; contributing to stream flow during low flow periods; stabilizing stream banks and shorelines; storing storm and flood waters to reduce flooding and erosion; and improving water quality through biofiltration, adsorption, and retention and transformation of sediments, nutrients, and toxicants.

B. *Designation.* Wetlands are those areas, designated in accordance with the 1987 Federal Wetland Delineation Manual and applicable regional supplements. All areas meeting the wetland definition, mapped or not, are hereby designated critical areas and subject to this chapter.

C. *Delineation.* Wetland delineations are valid for five years; after such date a qualified professional must determine whether a revision or additional assessment is necessary.

D. *Wetland Ratings.* Wetlands shall be rated according to the Washington State Department of Ecology (Ecology) wetland rating system, as set forth in the Washington State Wetland Rating System for Eastern Washington: 2014 Update (Ecology Publication #14-06-030, or as revised). The rating system document contains the definitions and methods for determining if the criteria below are met. The most recent version of the rating system form must be used. Wetland Rating Categories are as follows:

1. Category I wetlands are: 1) alkali wetlands; 2) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; 3) bogs and calcareous fens; 4) mature and old-growth forested wetlands over ¼ acre with slow-growing trees; 5) forests with stands of aspen; and 6) wetlands that perform many functions well (scores between 22-27). These wetlands are those that 1) represent a unique or rare wetland type; or 2) are more sensitive to

disturbance than most wetlands; or 3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or 4) provide a high level of function.

2. Category II wetlands are: 1) forested wetlands in the floodplains of rivers; 2) mature and old-growth forested wetlands over ¼ acre with fast-growing trees; 3) vernal pools; and 4) wetlands that perform functions well (scores between 19-21 points). These wetlands are difficult, though not impossible, to replace and provide high levels of some functions.

3. Category III wetlands have a moderate level of functions (scores between 16-18 points). They generally have been disturbed in some way and are less diverse or more isolated from other natural resources. These wetlands can be often adequately replaced with well-planned mitigation.

4. Category IV wetlands have the lowest levels of functions (scores fewer than 16 points) and are often heavily disturbed. These are wetlands that should be able to be replaced, or in some cases improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions and also need to be protected.

E. *Additional Critical Areas Report Requirements.* A critical areas report for wetlands shall be prepared according to the Washington State Wetland Rating System for Eastern Washington. The critical areas report shall contain an analysis of the wetlands including the following site- and proposal-related information:

1. A written assessment, data sheets and accompanying maps of any wetlands or buffers on the site including the following information:
  - a. Hydrogeomorphic (HGM) subclassification and Cowardin class;
  - b. Wetland category;
  - c. Wetland delineation and required buffers;
  - d. Existing wetland acreage;
  - e. Vegetative, faunal, and hydrologic characteristics;
  - f. Soil types and substrate conditions;
  - g. Topographic elevations, at one-foot contours; and
  - h. A discussion of the water sources supplying the wetland and documentation of hydrologic regime (locations of inlet and outlet features, water depths throughout the wetland, evidence of recharge or discharge, evidence of water depths throughout the year – drift lines, algal layers, moss lines, and sediment deposits).
2. Functional evaluation for the wetland and buffer using Ecology’s most current approved method and including the reference of the method and all data sheets.

3. Proposed mitigation, if needed, including a discussion of alternatives and trade-offs inherent in the various alternatives (for example, where enhancement for one function would adversely affect another), a written description and accompanying maps of the mitigation area, including the following information:

- a. Existing and proposed wetland acreage;
- b. Existing and proposed vegetative and faunal conditions;
- c. Surface and subsurface hydrological conditions of existing and proposed wetlands and hydrologically associated wetlands including an analysis of existing hydrologic regime and proposed hydrologic regime for enhanced, created, or restored mitigation areas;
- d. Relationship to lakes, streams and rivers in the watershed;
- e. Soil type and substrate conditions;
- f. Topographic elevations, at one-foot contours;
- g. Required wetland buffers including existing and proposed vegetation;
- h. Identification of the wetland's contributing area; and
- i. A functional assessment of proposed mitigation to ensure no net loss of shoreline ecological function.

F. *Performance Standards.* Development or clearing activities shall protect the functions of wetlands and wetland buffers on the site. Activities shall result in no net loss of wetland or buffer functions. Protection may be provided by avoiding (the preferred protection) or minimizing and mitigating as described in the general critical areas performance standards.

1. *Wetlands.*

- a. In Category I wetlands only the following activities may be allowed:
  - i. A road, railroad, trail, water, sewer, stormwater conveyance, gas, power, cable, fiber optic or telephone facility that cannot feasibly be located outside of the wetland, that minimizes the impact, and that mitigates for any unavoidable impact to functions. Cost may be considered, but shall not be overriding; or
  - ii. Trails and wildlife viewing structures; provided, that the trails and structures minimize the impact and are constructed so that they do not interfere with wetland hydrology and do not result in increased sediment entering the wetland.
- b. In Category II wetlands only the following activities may be allowed:
  - i. Activities allowed in Category I wetlands.

- ii. Enhancement and restoration activities aimed at protecting the soil, water, vegetation or wildlife.
  - iii. Within shoreline jurisdiction, water-dependent, water-related or water-enjoyment activities where there are no feasible alternatives that would have a less adverse impact on the wetland, its buffers and other critical areas.
  - iv. Where non-water dependent, related or enjoyment activities are proposed, it shall be presumed that alternative locations are available, and activities and uses shall be prohibited unless the applicant demonstrates that the basic project purpose cannot reasonably be accomplished and successfully avoid or result in less adverse impacts on a wetland on another site or sites in the city of Medical Lake.
- c. In Category III wetlands only the following activities may be allowed:
- i. Activities allowed in Category II wetlands.
  - ii. Other activities may be allowed if the applicant demonstrates that the basic project purpose cannot reasonably be accomplished and avoid or result in less adverse impacts on a wetland or its buffer than alternative uses or designs (including reduction in the size, scope, configuration or density of the project).
  - iii. Stormwater management facilities. A wetland or its buffer can be physically or hydrologically altered if: 1) there will be no net loss of functions and values of the wetland; 2) the wetland does not contain a breeding population of any native amphibian species; 3) the wetland lies in the natural routing of the runoff, and the discharge follows the natural routing; 4) all local and state stormwater regulations, codes, manuals, and permits are being followed; and 5) all functions and values that are lost will be compensated.
- d. In Category IV wetlands only the following activities may be allowed:
- i. Activities allowed in Category III wetlands.
  - ii. Activities and uses that result in impacts may be permitted in accordance with an approved critical areas report and mitigation plan if the proposed activity is the only reasonable alternative that will accomplish the applicant's objectives. Full mitigation for the loss of acreage and functions shall be provided under the terms established pursuant to Section 17.10.090.F.2.

## 2. *Wetland Buffers.*

- a. **Buffer Requirements.** The following buffer widths have been established in accordance with the best available science. They are based on the land use intensity, the category of wetland, and the habitat score as determined by a qualified wetland professional using the *Washington State Wetland*

*Rating System for Eastern Washington; 2014 Update* (Ecology Publication #14-060-030, or as revised).

b. For high intensity uses, the buffers in Table 17.10.090(3) can be used if the impact measures of Table 17.10.090(5) are implemented.

c. If an applicant chooses not to, or are unable to apply the impact measures of Table 17.10.090(5), then Table 17.10.090(4) must be used.

d. The buffer widths in Tables 17.10.090(2-4) assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

e. Buffer widths are measured horizontally from the edge of the wetland:

f. All buffers shall be measured from the wetland boundary as surveyed in the field.

g. Areas which are completely functionally separated from a wetland and do not protect the wetland from adverse impacts may be excluded from buffers otherwise required.

Table 17.10.090(1) LAND USE INTENSITIES

Land Use Intensity	Land Use
High	Commercial, industrial, and institutional uses. Residential uses greater than 1 unit per acre. High-intensity recreation such as golf courses, playgrounds, and ball fields.
Moderate	Residential uses equal to or less than 1 unit per acre. Moderate-intensity recreation such as paved trails. Utility corridors without a maintenance road.
Low	Low-intensity open space including unpaved trails.

Table 17.10.090(2) Buffer widths for Low Intensity Uses

Wetland Category	Buffer width (in feet) based on habitat score			
	3-4	5	6-7	8-9
Category I: Based on total score or Forested	50	60	75	125
Category I: Bogs and Wetlands of	175			

High Conservation Value				
Category I: Alkali	125			
Category II: Based on total score or Forested	50	60	75	125
Category II: Vernal pool	125			
Category III	40	60	75	125
Category IV	25			

Table 17.10.090(3) Buffer Widths for Medium Intensity Uses or High Intensity Uses that have minimized impacts via Table 17.10.090(5)

	<b>Buffer width (in feet) based on habitat score</b>			
<b>Wetland Category</b>	<b>3-4</b>	<b>5</b>	<b>6-7</b>	<b>8-9</b>
Category I: Based on total score or Forested	75	90	120	150
Category I: Bogs and Wetlands of High Conservation Value	190			
Category I: Alkali	150			
Category II: Based on total score or Forested	75	90	120	150
Category II: Vernal pool	150			
Category III	60	90	120	150
Category IV	40			

Table 17.10.090(4) Buffer Widths for High Intensity Uses

	<b>Buffer width (in feet) based on habitat score</b>			
<b>Wetland Category</b>	<b>3-4</b>	<b>5</b>	<b>6-7</b>	<b>8-9</b>
Category I: Based on total score or Forested	100	130	180	200



Category I: Bogs and Wetlands of High Conservation Value	250			
Category I: Alkali	200			
Category II: Based on total score or Forested	100	130	180	200
Category II: Vernal pool	200			
Category III	80	130	180	200
Category IV	50			

Table 17.10.090(5) Measures to Minimize Impacts on Wetlands

Disturbance	Required Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> <li>• Direct lights away from wetland</li> </ul>
Noise	<ul style="list-style-type: none"> <li>• Locate activity that generates noise away from wetland</li> <li>• If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</li> <li>• For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer</li> </ul>
Toxic runoff	<ul style="list-style-type: none"> <li>• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</li> <li>• Establish covenants limiting use of pesticides within 150' of wetland</li> <li>• Apply integrated pest management</li> </ul>
Stormwater runoff	<ul style="list-style-type: none"> <li>• Retrofit stormwater detention and treatment for roads and existing adjacent development</li> <li>• Prevent channelized flow from lawns that directly enters the buffer</li> <li>• Use Low Intensity Development techniques</li> </ul>
Change in water regime	<ul style="list-style-type: none"> <li>• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</li> </ul>
Pets and human disturbance	<ul style="list-style-type: none"> <li>• Use privacy fencing or plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion</li> <li>• Place wetland and its buffer in a separate tract or protect with a conservation easement</li> </ul>
Dust	<ul style="list-style-type: none"> <li>• Use best management practices to control dust</li> </ul>

h. *Wetland Buffer Width Averaging.* The buffer width may be modified in accordance with an approved critical areas report on a case-by-case basis by averaging buffer widths. Buffer width averaging shall not be used in combination with a minor exception. Averaging of buffer widths may only be allowed where a qualified professional wetland scientist demonstrates that:

- i. Such averaging will not reduce wetland functions or functional performance; and
- ii. The wetland varies in sensitivity due to existing physical characteristics, or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places; and
- iii. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and
- iv. The buffer width is reduced by no more than twenty-five percent of the standard width and at no point to less than twenty-five feet.

i. *Buffer Maintenance.* Except as otherwise specified or allowed in accordance with this chapter, wetland buffers shall be maintained according to the approved critical areas permit.

G. *Signs and Fencing of Wetlands.*

1. The location of the outer perimeter of the wetland and buffer shall be marked in the field, and such marking shall be approved by the planning official prior to the commencement of permitted activities. Such field markings shall be maintained throughout the duration of the permit.
2. A permanent physical demarcation along the upland boundary of the wetland buffer shall be installed and thereafter maintained. Such demarcation may consist of fencing, hedging or other prominent physical marking that allows wildlife passage, blends with the wetland environment, and is approved by the planning official.
3. Permanent fencing of the wetland buffer on the outer perimeter shall be erected and thereafter maintained when there is a substantial likelihood of the presence of domestic grazing animals within the property unless the planning official determines that the animals would not degrade the functions of the wetland or buffer.
4. Permanent signs shall be posted at an interval of one per lot for single-family residential uses or at a maximum interval of two hundred feet, or as otherwise determined by the planning official, and must be perpetually maintained by the property owner. The sign shall be worded as follows or with alternative language approved by the planning official: "Protected Natural Resource. Call 509-565-5000 for more information."

H. *Compensatory Mitigation.* Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized, and shall achieve equivalent or greater biologic functions.

Compensatory mitigation plans shall be consistent with *Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans – Version 1*, (Ecology Publication #06-06-011b, March 2006 or as revised), and *Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington)* (Publication #10-06-015, August 2012 or as revised).

1. *Mitigation for Lost or Affected Functions.* Compensatory mitigation actions shall address functions affected by the alteration to achieve functional equivalency or improvement, and shall provide similar wetland or buffer functions as those lost, except when:

- a. The lost wetland or buffer provides minimal functions as determined by a site-specific function assessment, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limited within a watershed through a formal Washington State watershed assessment plan or protocol; or
- b. Out-of-kind replacement will best meet formally identified watershed goals, such as replacement of historically diminished wetland types.

2. *Mitigation Actions.*

- a. *Creation.* The manipulation of the physical, chemical or biological characteristics present to develop a wetland on an upland or deepwater site where a biological wetland did not previously exist. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, hydric soils, and support the growth of hydrophytic plant species. Creation results in a gain in wetland acres and functions.
- b. *Reestablishment.* The manipulation of the physical, chemical or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Activities could include removing fill material, plugging ditches or breaking drain tiles. Reestablishment results in a gain in wetland acres and functions.
- c. *Rehabilitation.* The manipulation of the physical, chemical or biological characteristics of a site with the goal of repairing natural or historic functions and processes of a degraded wetland. Activities could involve breaching a dike to reconnect wetlands to a floodplain, restoring tidal influence to a wetland, or breaking drain tiles and plugging drainage ditches. Rehabilitation results in a gain in wetland functions but not in wetland acres.
- d. *Enhancement.* The manipulation of the physical, chemical or biological characteristics of a biological wetland to increase or improve specific functions or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention or wildlife habitat. Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying site elevations to result in open water ponds, or some combination of these. Enhancement results in a change in certain wetland

functions and can lead to a decline in other wetland functions. It does not result in a gain in wetland acres.

3. *Type and Location of Mitigation.* Compensatory mitigation for ecological functions shall be in kind. Compensatory mitigation shall be on site or within the impacted wetland's: (i) contributing area; (ii) stream reach; (iii) sub-watershed; or (iv) watershed. The mitigation site shall be where the greatest level of wetland functions can be achieved. Mitigation actions may be conducted in a different watershed when:

- a. Based on a determination of the natural capacity of the potential mitigation sites to mitigate for the impacts, there are no reasonable on-site or in-watershed opportunities, or those opportunities do not have a high likelihood of success. Consideration shall include: anticipated wetland mitigation replacement ratios, buffer conditions and proposed widths, hydrogeomorphic classes of on-site wetlands when restored, proposed flood storage capacity, and potential to impact riparian fish and wildlife habitat including connectivity; or
- b. Watershed goals for water quality, flood or conveyance, habitat or other wetland functions have been established and strongly justify location of mitigation at another site; or

4. *Mitigation Ratios.*

a. *Replacement Ratios.*

- i. The replacement ratios shall apply to wetland mitigation that: (1) is for the same hydrogeomorphic subclass (e.g., riverine flow-through, depressional outflow or flats), and Cowardin class (e.g., palustrine emergent, palustrine forested or estuarine wetlands); (2) is on site; (3) is in the same category; (4) is implemented prior to or concurrent with alteration; and (5) has a high probability of success.
- ii. The replacement ratios are based on replacing the affected wetland with a compensation wetland of the same category, and hydrogeomorphic (HGM) subclass and Cowardin class.
- iii. The replacement ratios do not apply to the use of credits from a state-certified wetland mitigation bank. When credits from a certified bank are used, replacement ratios should be consistent with the requirements of the bank's certification.
- iv. *Mitigation Ratios.* Mitigation ratios are as follows (see Section 17.10.090.H.2 for definitions of mitigation actions):

Table 17.10.090(6) Wetland Mitigation Ratios

<b>Category and Type of Wetland</b>	<b>Creation or Re-establishment</b>	<b>Rehabilitation</b>	<b>Enhancement</b>
Category I: Bog, Natural Heritage Site	Not considered possible	Case by Case	Case by Case

Category I: Mature Forest	6:1	12:1	24:1
Category I: Based on Functions	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

5. *Mitigation Timing.* The mitigation shall be implemented prior to or concurrent with alterations. If mitigation is implemented after alteration is allowed, the planning official may require additional mitigation to compensate for temporal losses of wetland functions.

6. *Buffers for Mitigation Wetlands.* Refer to Wetland Buffer Tables 17.10.090(2-4).

#### 17.10.100 - Reasonable Use Exceptions.

A. *Exception Request and Review Process.* If the application of this chapter would deny all reasonable economic use of the subject property, the property owner may apply for an exception pursuant to this section through the Critical Areas Permit Process of Section 17.10.040.A.

An application for a reasonable use exception shall be made to the city and shall include a Critical Areas Report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (RCW 43.21C).

B. *Reasonable Use Review Criteria.* The city shall approve Critical Areas Permits for reasonable use exceptions when all of the following criteria are met:

1. The application of this chapter would deny all reasonable economic use of the property;
2. No other reasonable economic use of the property has less impact on the critical area;
3. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;
4. 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 chapter, or its predecessor;

5. The proposal does not pose a significant threat to the public health, safety, or welfare on or off the development proposal site;
6. The proposal mitigates for the loss of critical area functions to the greatest extent feasible; and
7. The proposal is consistent with other applicable regulations and standards.

C. *Burden of Proof.* The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

#### 17.10.110 - Minor Exceptions.

A. *Minor Exceptions Authorized.* Minor exceptions of no greater than 10% from the standards of this chapter may be authorized through the critical area permit process.

B. *Minor Exception Criteria.* A minor exception from the standards of this chapter may be granted only if the applicant demonstrates that the requested action conforms to all of the following criteria.

1. Unusual conditions or circumstances exist that are peculiar to the intended use, the land, the lot, or something inherent in the land, and that are not applicable to all other lands in the city;
2. The unusual conditions or circumstances do not result from the actions of the applicant;
3. Granting the minor exception requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings under similar circumstances;
4. The minor exception is necessary for the preservation and enjoyment of a substantial property right of the applicant such as is possessed by the owners of other properties in the city;
5. Degradation of the functions (including public health and safety) of the subject critical areas and any other adverse impacts resulting from granting the minor exception will be minimized and mitigated to the extent feasible in accordance with the provision of this chapter;
6. Granting the minor exception will not otherwise be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the subject property;
7. The proposed development complies with all other applicable standards.

C. *Conditions May Be Required.* In granting any minor exception, the city may attach such conditions and safeguards as are necessary to secure adequate protection of critical areas and developments from adverse impacts, and to ensure conformity with this chapter.

D. *Time Limit.* The city shall prescribe a time limit within which the action for which the minor exception is required shall be begun, completed, or both. Failure to begin or complete such action within the established time limit shall void the minor exception.

E. *Burden of Proof.* The burden of proof shall be on the applicant to bring forth evidence in support of the application and upon which any decision has to be made on the application.

#### 17.10.120 - Unauthorized Alterations and Enforcement.

A. *Enforcement.* When a critical area or its buffer has been altered in violation of this Chapter, all ongoing development work shall stop and the critical area shall be restored. The city shall have the authority to issue a “stop-work” order to cease all ongoing development work and order restoration, rehabilitation, or replacement measures at the owner’s or other responsible party’s expense to compensate for violation of this chapter.

B. *Requirement for Restoration Plan.* In the event the city initiates enforcement action or files a complaint in court, the city may require a restoration plan consistent with the requirements of this chapter. Such a plan shall be prepared by a qualified professional using the best available science and shall describe how the actions proposed meet the minimum requirements described below. The planning official shall, at the violator’s expense, seek expert advice in determining whether the plan restores the affected area to its pre-existing condition or, where that is not possible, restores the functions of the affected area. Inadequate plans shall be returned to the applicant or violator for revision and re-submittal.

C. *Minimum Performance Standards for Restoration.* For alterations to frequently flooded areas, wetlands, and fish and wildlife habitat conservation areas, the following minimum performance standards shall be met for the restoration of a critical area, provided that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:

1. The structure and functions of the critical area or buffer prior to violation shall be restored, including water quality and habitat functions;
2. The soil types and configuration prior to violation shall be replicated;
3. The critical area and buffers shall be replanted with native vegetation;
4. Drainage patterns shall be resorted to those existing before the alteration; and
5. Information demonstrating compliance with the requirements in Section 17.10.050.F Mitigation Plan Requirements shall be submitted to the planning official.

D. *Site Investigations.* The planning official is authorized to make site inspections and take such actions as are necessary to enforce this chapter. As a condition of the restoration plan, the applicant shall grant reasonable access to the property.

E. *Noncompliance in Frequently Flooded Areas.* No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violations of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction, be subject to enforcement under this section. Nothing herein contained shall prevent the city of Medical Lake from taking such other lawful action as is necessary to prevent or remedy any violation.

### 17.10.130 - Definitions.

Alkali Wetland – A wetland characterized by the presence of shallow saline water with a high PH, as described in *Washington State Wetland Rating System for Eastern Washington: 2014 Update* (Ecology publication #14-06-30, or as revised).

Alteration – Any human-induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to, grading, filling, channelizing, dredging, clearing of vegetation, construction, compaction, excavation, or any other activity that changes the character of the critical area.

Best Available Science – Current scientific information used in the process to designate, protect, or restore critical areas that is derived from valid scientific process as defined by WAC 365-195-900 through 925.

Best Management Practices – The utilization of methods, techniques, or products which have been demonstrated to be the most effective and reliable for minimizing impacts.

Bog – A low-nutrient, acidic wetland with organic soils and characteristic bog plants, as described in *Washington State Wetland Rating System for Eastern Washington: 2014 Update* (Ecology publication #14-06-30, or as revised).

Buffer – The area contiguous with a critical area that maintains the functions and/or structural stability of the critical area.

Calcareous Fen – An alkaline peat wetland in which the groundwater is typically rich in calcium and magnesium sulfates, as described in *Washington State Wetland Rating System for Eastern Washington: 2014 Update* (Ecology publication #14-06-30, or as revised).

Channel Migration Zone – The area within which a river channel is likely to migrate and occupy over a specified time period (e.g., 100 years).

Clearing – The destruction, disturbance, or removal of logs, scrub-shrub, stumps, trees, or any vegetative material by burning, chemical, mechanical, or other means.

Critical Areas – Critical areas include any of the following areas or ecosystems: fish and wildlife habitat conservation areas, frequently flooded areas, and wetlands, as defined in RCW 36.70A and this chapter.

Creation – The manipulation of the physical, chemical, or biological characteristics to develop a wetland on an upland or deepwater site, where a wetland did not previously exist. Creation results in a gain in wetland acreage and function. A typical action is the excavation of upland soils to elevations that will produce a wetland hydroperiod and hydric soils, and support the growth of hydrophytic species.



Development – A land use consisting of the construction or exterior alteration of structures; grading, dredging, drilling, or dumping; filling; removal of sand, gravel, or minerals; bulk heading; driving of pilings; or any project of a temporary or permanent nature which modifies structures, land, or shorelines.

Enhancement – The manipulation of the physical, chemical, or biological characteristics of a critical area to heighten, intensify or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a change in critical area function(s) and can lead to a decline in other critical area functions, but does not result in the gain of critical area acres. Examples are planting vegetation, controlling non-native or invasive species, and modifying site elevations to alter hydroperiods.

Fish and Wildlife Habitat Conservation Areas – 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. Fish and wildlife habitat conservation areas do not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company.

Flood Hazard Area – The lands listed in a floodplain which are areas adjacent to a lake, stream, ocean or other body of water lying outside the ordinary band of the water body and periodically inundated by flood flow subject to a one percent or greater expectancy of flooding in any given year.

Floodway – Is the area that has been established in federal emergency management agency flood insurance rate maps or floodway maps.

Frequently Flooded Areas - Lands in the flood plain subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high groundwater. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and areas where high groundwater forms ponds on the ground surface.

Functions and Values – The services provided by critical areas to society, including, but not limited to, improving and maintaining water quality, providing fish and wildlife habitat, supporting terrestrial and aquatic food chains, reducing flooding and erosive flows, wave attenuation, historical or archaeological importance, educational opportunities, and recreation.

Hydric Soil – The soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

Hydroperiod – The seasonal occurrence of flooding and/or soil saturation which encompasses the depth, frequency, duration and seasonal pattern of inundation.

Hydrophyte – An aquatic plant growing in water or on a substrate (hydric soil) that is at least periodically deficient in oxygen where the saturated soil is too wet for most plants to survive. Examples of these plants are cattails, sedges and bulrush.

Impervious Surface – A surface area which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A non-vegetated surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under pre-development or pre-developed conditions. Common impervious surfaces include, but are limited to, rooftops, walkways,

patios, driveways, parking lots, storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater.

In-Kind Compensation – To replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by regulated activity.

Infiltration – The downward entry of water into the immediate surface of soil.

Isolated Wetland – A wetland that is hydrologically isolated from other aquatic resources.

Mature and Old-Growth Forested Wetland – As defined by *Washington State Wetland Rating System for Eastern Washington: 2014 Update* (Ecology publication #14-06-30, or as revised).

Mitigation – Avoiding, minimizing, or compensating for adverse critical area impacts.

Monitoring – Evaluating the impacts of development proposals on the biological, hydrological, and geological elements of such systems, and assessing the performance of required mitigation measures through the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features. Monitoring includes gathering baseline data.

Native Vegetation – Plant species that occur naturally in a particular region or environment and were present before European colonization.

Ordinary High Water Mark – That mark which is found by examining the bed and banks of water bodies and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, that the soil has a character distinct from that of the abutting upland in the respect to vegetation.

Planning Official – The city official appointed or retained by the city to administer to administer and enforce zoning and planning regulations.

Priority Habitat – The 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 – 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.

Qualified Professional – A person with expertise in the pertinent scientific discipline directly related to the critical area in question. The qualified professional shall have a minimum of a B.S. or B.A., or equivalent certification, and a minimum of two years of directly related work experience.

Qualified Professional, Wetlands – A qualified professional for wetlands must be a professional wetland scientist with at least two years of full-time work experience as wetland professional, including delineating wetlands using the federal manual and supplements, preparing wetlands reports, conducting function assessments, and developing implementing mitigation plans.

Rare, Threatened, or Endangered species - 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.

Reestablishment – The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former critical area. Reestablishment results in rebuilding a former critical area and results in a gain in critical area acres and functions. Activities could include removing fill, plugging ditches, or breaking drain tiles.

Rehabilitation – The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions and processes of a degraded critical area. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or returning tidal influence to a wetland.

Repair or Maintenance – An activity that restores the character, scope, size, and design of serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.

Restoration – Measures taken to restore an altered or damaged natural feature, including: 1) active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and 2) actions performed to reestablish structural and functional characteristics of the critical area that have been lost by alteration, past management activities, or catastrophic events.

Riparian - Relating to or living or located on the bank of a natural watercourse (such as a river) or sometimes of a lake or a tidewater.

Riparian Management Zone – The riparian management zone is defined by the greater of the outermost point of the riparian vegetative community or the pollution removal function, at 100-feet.

Species – Any group of animals or plants classified as a species or subspecies as commonly accepted by the scientific community.

Stream – An area where open surface water produces a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devise, or other entirely artificial watercourses, unless they are used by salmonids or are used to convey a watercourse naturally occurring prior to construction. A channel or bed need not contain water year-round, provided there is evidence of at least intermittent flow during years of normal rainfall.

Unavoidable Impacts – Adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

Vernal Pool – Small depressions in scabrock or in shallow soils that fill with snowmelt or spring rains as described in *Washington State Wetland Rating System for Eastern Washington: 2014 Update* (Ecology publication #14-06-30, or as revised).

Water-Dependent Activity – An activity or use that requires the use of surface water to fulfill the basic purpose of the proposed project.

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

Wetland of High Conservation Value – A wetland that has been identified by scientists from the Washington Natural Heritage Program as an important ecosystem for maintaining plant diversity in Washington State.