



**AGENDA
PLANNING COMMISSION
MEETING and PUBLIC
HEARING
September 22, 2022, 5:00 PM**

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

Join Zoom Meeting

<https://us06web.zoom.us/j/83001743646?pwd=M25NSkFCY3FyZlpkNlJncnpyRjl2UT09>

Meeting ID: 830 0174 3646

Passcode: 951296

One tap mobile

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- 1) **CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND ROLL CALL**
 - a) Additions to Agenda
 - b) Excused Absences
- 2) **APPROVAL OF MINUTES**
 - a) August 25, 2022, Regular Meeting, and September 8, 2022, Special Meeting
- 3) **INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS**
- 4) **STAFF REPORTS**
- 5) **PUBLIC HEARING – Critical Areas Ordinance Update**
- 6) **COMMISSION MEMBERS' COMMENTS OR CONCERNS**
- 7) **INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS**
- 8) **CONCLUSION**

City of Medical Lake
124 S. Lefevre Street – City Council Chambers
Planning Commission Meeting
August 25, 2022, Minutes

NOTE: This is not a verbatim transcript. Minutes contain only a summary of the discussion. A recording of the meeting is on file and available from City Hall.

1) CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND ROLL CALL

- i) Commissioner Hudson called the meeting to order at 5:00 pm, led the pledge of allegiance, and did roll call. All commissioners were present apart from Commissioner Munson who participated via Zoom. He joined the meeting at 5:05 pm.

2) INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS

- a) Tammy Roberson – commented on the first draft of CAO and expressed her concerns. Handed out written commentary. See attachment A.
- b) Commissioner Hudson asked Elisa Rodriguez for clarification on comments from Ms. Roberson. Ms. Rodriguez will review documents and address any discrepancies at the next meeting.

3) APPROVAL OF MINUTES

- a) Added review of the August 11, 2022, minutes to the agenda
 - i) August 11, 2022, Minutes
 - (1) Corrections:
 - (a) Add that the motion to conclude the meeting was made by Commissioner Munson, seconded by Commissioner Mayulianos, and carried 5-0.
 - (b) Since the commissioners could not recall who had made the motion to add a staff report to the agenda, they agreed to simply state that the motion was made, seconded, and carried.
 - (c) Motion to approve the August 11, 2022, minutes as amended made by Commissioner Mayulianos, seconded by Commissioner Mark, motion carried 4-0 with Commissioner Munson’s vote not being noted via Zoom.
 - ii) July 28, 2022, Minutes
 - (a) Motion to approve minutes made by Commissioner Jorgenson, seconded by Commissioner Mayulianos, motion carried 4-0 with Commissioner Munson’s vote not being noted via Zoom.

4) SCHEDULED ITEMS

- a) Critical Areas Ordinance Work Session Section 7-13 – City Planner, Elisa Rodriguez
 - i) Commissioner Mayulianos brought concerns about changes of definitions and using west side criteria rather than the east side of the state. Suggested using the Wetland Guidance CAO for Eastern WA from the Department of Ecology. Ms. Rodriguez will review.
 - ii) Reviewed sections 7-13 noting necessary corrections.
 - iii) Discussed how to proceed now that there is another document to review as well as additional meetings.
 - (1) Commissioner Hudson motioned to hold a special meeting for an additional work session on September 8, 2022, at 5 pm. Seconded by Commissioner Mayulianos, carried 4-0 with Commissioner Munson’s vote not being noted via Zoom.

5) STAFF REPORTS – Elisa Rodriguez, City Planner

- a) Update on Ring Lake Subdivision proposal. Sent letter of incompleteness to the developer.

6) ADDITIONAL COMMUNITY MEMBER COMMENTS

- a) Tammy Roberson – commented on items discussed by the commission and provided additional information.

7) CONCLUSION

- a) Motion to conclude meeting made by Commissioner Mayulianos, seconded by Commissioner Mark, motion carried 4-0 with Commissioner Munson’s vote not being noted via Zoom. Meeting concluded at 6:31pm.

PLANNING COMMISSION
AUGUST 25, 2022, MINUTES

ATTACHMENT A

COMMENTARY FROM TAMMY ROBERSON

Talking Paper for Planning Commission Meeting on 25 Aug 2022

Mayor, City Planner, Chair, Commissioners, Interim City Administrator, City Officials, and City Residents:

This is a decent first draft, but there are some significant issues that the Commission needs to address. My foremost concern is that significant portions of this draft rely on guidance that is either old, directed to the western half of the state, or both. The draft ordinance is in desperate need of a review that captures more up to date and geographically appropriate guidance from the State.

The four major problems of this proposed wetland section draft includes:

- 1) The definition of "wetlands" is not in accordance with WA State law (RCW 37.70A030 (31)). The Growth Management Act does not allow flexibility in adopting a modified definition of wetlands.
- 2) Wetland categories (I, II, III, and IV) definitions are wrong. Definitions were used from Western Washington Guidance versus using the definitions in Eastern Washington Guidance.
- 3) Proposed buffer guidelines rely on out-of-date guidance. As it is written, it wrongly limits buffer analysis to only habitat scores and also fails to protect wetlands based on other things (i.e., "water quality", "hydrologic", etc).
- 4) Recommended requirements are grossly out of step with the recommended requirements for exemptions and allowed uses in wetlands (pg 24 of the Eastern WA guidance). All wetlands (especially Category I) are directly regulated by DOE and Medical Lake does NOT have the power to allow roads, sewer lines, etc to be built through wetlands. This is totally unacceptable.

Thank you for your patience, time, and assistance in helping to preserve our City wetlands.

Tammy M. Roberson
Concerned ML City Resident
424 W Brooks Rd, Medical Lake
SMSgt USAF Retired/Disabled Veteran

Roxanne Wright

From: Tammy Roberson <tmroberson61@gmail.com>
Sent: Friday, August 26, 2022 3:27 AM
To: Roxanne Wright
Cc: Elisa Rodriguez
Subject: UPDATE Re: Remarks for the 2nd portion of the Interested Citizens Comments - 25 Aug 2022 Planning Commission Meeting

Good morning Roxanne,

Oops, I just remembered another important remark I had made (please also include this one with the below list) or better yet, if possible please attach this email to the Minutes.

10) I have a statement, "Pay me now or pay me later. If its later, it will always cost more in time, money, etc". Therefore, Commissioners please do your required homework.

Thank you once again,
Tammy

----- Original Message -----

From "Tammy Roberson" <tmroberson61@gmail.com>

To "Roxanne Wright" <rwright@medical-lake.org>

Cc "Elisa Rodriguez" <ERodriguez@medical-lake.org>

Date 8/25/2022 8:19:37 PM

Subject Remarks for the 2nd portion of the Interested Citizens Comments - 25 Aug 2022 Planning Commission Meeting

Roxanne,

These are the remarks I had stated during the 2nd Interested Citizens Comments portion (to assist you with the 25 Aug Minutes):

1) The Chair had incorrectly stated that "designation" and "definition" did not mean the same (located on page 7 of the draft) regarding the wetland definition - should not be used in the same sentence. Per Wetland Guidance for CAO Updates (Eastern WA version), page 5, "In designating wetlands for regulatory purposes, counties, and cities are required to use the definition of wetlands in RCW 36.70A.030 (31)."

2) Per page 2 of the draft, "sound science" should be "best available science".

3) Question was asked if ML has riparian areas and buffers? The answer was yes.

4) Page 5 of draft, stated, "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..." may be allowed. This presents significant cross regulation problems for the City by purporting to allow activities that state law would forbid. Medical Lake does not have the power to allow roads to be built through wetlands.

5) Definition of "hydroperiod" is "the number of days per year that an area of land is wet or length of time that there is standing water."

6) Page 11 of the Wetland Guidance for CAO Updates (Eastern WA version), states "The scientific literature is unequivocal that buffers are necessary to protect wetland functions and values. The literature consistently reports that the primary factors to evaluate in determining appropriate buffer widths are:

a) The wetland type and functions needing protection (buffers filter sediment, nutrients, or toxics; screen noise and light; provide forage, nesting, or resting habitat for wetland-dependent species; etc)

b) The types of adjacent land use and their expected impacts.

c) The characteristics of the buffer area (slope, soils, vegetation).

7) The Wetland Guidance for CAO Updates (Eastern WA version) provides an easy, understandable Sample Wetland Chapter. Start with this and then "tweak" it to Medical Lake.

8) The wetland located on N Martin and Brooks has not been inventoried by the City, not on the map. It is a Category III when the Wetland Report was done.

9) Commissioners please do your required homework and save our City's wetlands.

Thank you very much and take care,
Tammy

City of Medical Lake
124 S. Lefevre Street – City Council Chambers
Planning Commission Special Meeting
September 8, 2022, Minutes

NOTE: This is not a verbatim transcript. Minutes contain only a summary of the discussion. A recording of the meeting is on file and available from City Hall.

1) CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND ROLL CALL

- a) Commissioner Hudson called the meeting to order at 5:01 pm, led the Pledge of Allegiance, and roll call.
 - i) Commissioners Mayulianos and Mark were not present due to emergency reasons. Commissioner Hudson entertained a motion to excuse them. Motion made by Commissioner Munson, seconded by Commissioner Jorgenson, motion carried 3-0.

2) INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS

- a) Tammy Roberson 424 W. Brooks Road, Medical Lake – shared comments on CAO-Wetlands. See Attachment A.

3) SCHEDULED ITEMS

- a) Work Session – Critical Areas Ordinance
 - i) City Planner, Elisa Rodriguez reviewed edits, discussed a proposal for signage, and led the discussion regarding the Critical Areas Ordinance. Distributed examples of possible signage.
 - ii) Discussed Public Hearing on September 22, 2022, at 5 pm and the SEPA determination.

4) INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS

- a) Dale Southwick 111 S. Silverlake Avenue, Medical Lake – asked for clarification on whether this discussion is regarding wetlands in general or a current project.

5) CONCLUSION

- a) Motion to conclude meeting made by Commissioner Jorgenson, seconded by Commissioner Munson, motion carried 3-0 and meeting concluded at 5:37 pm.

PLANNING COMMISSION

SEPTEMBER 8, 2022, MINUTES

ATTACHMENT A

COMMENTARY FROM TAMMY ROBERSON

Talking Paper for Planning Commission Meeting on 8 Sep 2022

Mayor, City Planner, Chair, Commissioners, Interim City Administrator, City Officials, and City Residents:

This draft is much improved. I am grateful for your work on this process. On the handout you will be receiving, I have annotated a lot of simply small errors but there are still several important issues that need to be addressed here.

One of the most important things a government can do for the citizens it governs is to leave a clear record of what it has done and why it has done it. Because environmental regulation is one of the most important things the City of Medical Lake does, a clear record is important for government accountability and meaningful citizen involvement. I propose adding the following new section **17.10.020**:

H. Written findings required

Written findings Required: all permitting decisions (as defined in Section 17.10.120 -Definitions) made by the City Administrator or other City Official and regulated by this chapter shall be supported by written findings expressly stating:

- a. The decision;
- b. The information considered;
- c. The information relied upon; and
- d. The basis for decision;

To the maximum extent permitted by the terms of this Code, these written findings shall be a public record of the City of Medical Lake and shall be included in any public notice required under this Chapter as well as included as an addendum to the City Council agenda for the City Council meeting next following the decision. When the City Administrator or other City Official makes multiple permitting decisions pursuant to a single permit requested by a single applicant, those decisions may be consolidated into a single document for ratification as a whole.

17.10.100(B) Reasonable Use Exceptions

This Chapter should require the person to prove by clear and convincing evidence that their loss of “all reasonable economic use” is the result of a *change in the law* from *this version of the code*. The previous version of the code was in effect for more than a decade. It’s too late for land use exceptions based on restrictions that have been in place for 10 years or more. Thus, the application of reasonable use exceptions should be explicitly limited to the very narrow case where new regulations are the root cause of the loss, or significant changes in the land resulting in *new* critical areas cause such a loss.

17.10.040(A) Approval Process

(8) Append the following sentence: “Public comments submitted in connection with the proposal must be considered as part of the review process.”

Thank you for your patience, time, and assistance in helping to preserve our City wetlands.

Tammy M. Roberson
Concerned ML City Resident

Dear Members of City Government and the Planning Commission,

Below are my comments to the most recent draft of the CAO. This draft is much improved. I am grateful for your work on this process. There are still several important issues that need to be addressed here.

I have tried to organize my comments in accord with the present format of the draft code. If you have questions or concerns, please reach out to me. Many of my comments draw from the guidance I cited to in my previous letter.

I am grateful for your time, attention, and service throughout this important process.

Please have these comments (8 pages in total), Dated September 8, 2022 included with the Planning Commission Minutes for today's meeting. I can provide an electronic version of these comments, with clickable links, upon request.

(Comments begin on the next page)

17.10.020(E) Burden of Proof.

Append the following sentence: “Where the applicant seeks exceptions to requirements imposed by this code, or seeks to show that these regulations deny them “all reasonable economic use of the subject property,” such proof must be clear and convincing evidence.

17.10.020 –

Add new Section

One of the most important things a government can do for the citizens it governs is to leave a clear record of what it has done and why it has done it. Because environmental regulation is one of the most important things the City of Medical Lake does, a clear record is important for government accountability and meaningful citizen involvement. I propose adding the following section:

H. Written findings required

Written findings Required: all permitting decisions (as defined in Section 17.10.120 - Definitions) made by the City Administrator or other City Official and regulated by this chapter shall be supported by written findings expressly stating:

- a. The decision;
- b. The information considered;
- c. The information relied upon; and
- d. The basis for decision;

To the maximum extent permitted by the terms of this Code, these written findings shall be a public record of the City of Medical Lake and shall be included in any public notice required under this Chapter as well as included as an addendum to the City Council agenda for the City Council meeting next following the decision. When the City Administrator or other City Official makes multiple permitting decisions pursuant to a single permit requested by a single applicant, those decisions may be consolidated into a single document for ratification as a whole.

17.10.030(A)

The formatting of (A)(1)(h) is misaligned

17.10.030(A)(3)

I propose we alter the parenthetical of this paragraph in the following manner:

“(including removal of downed woody vegetation, ~~or~~ application of chemicals harmful to fish and wildlife, or soil excavation, grading, and removal of native vegetation)”

17.10.030 (B)

Append the following sentence: “Reasonable methods must be supported by the scientific literature and be carefully crafted to minimize the potential for adverse impact. The exemptions provided herein are to be construed narrowly. The provisions of Section 17.10.120, as well as

any other enforcement mechanism contained in this code, including the power to issue fines, shall apply to wrongfully claimed exemptions.”

17.10.040(A)

The following paragraphs need the following changes:

- (5) Add a comma in the following way “Within 28 days, the city shall ...”
- (7) Delete the repeated “of the”
- (8) Append the following sentence: “Public comments submitted in connection with the proposal must be considered as part of the review process.”
- (12) This paragraph should provide a deadline for the report so that the commission has time to review the report in advance. Thus, amend the sentence to read “... to the planning commission five days prior to the hearing.”
- (13) Interlineate the following sentence after the sentence ending “by the planning commission.” “Public comments submitted in connection with the proposal must be considered as part of the hearing.”
- (14) Replace “review body” with “planning commission.”
- (15) I propose the following changes:
 - Appeal deadlines should be altered such that the timeline to appeal is triggered by the City’s mailing of the notice *not* the signing of the order.
 - In addition, Amend the words “legal holiday” to read “legal holiday or weekend day.”
 - It appears this section erroneously refers to a “hearing examiner” rather than the “planning commission.” I propose that the word hearing examiner be replaced.
 - Amend this section to explicitly acknowledge further appeal pursuant to LUPA (RCW 36.70C). LUPA explicitly allows for appeal to the Superior Court, and the code should reflect that fact.

17.10.040(C)(6)

Append the words “less any fines assessed by the city” to the end of the sentence.

17.10.050(B)(2)

The following subparagraphs should receive the following changes:

- (a) Append the following sentence:
“This map shall also show the location, width, depth and length of all existing and proposed structures, roads, and equipment within the critical area and its buffer and depict any site development alternatives.”

(b) replace the word “information” with “science and information”

17.10.050(E)

This section should be modified to exclude references to “less information.” The City should never sign off on being *less* informed about a project before approving it.

In the alternative, this section should expressly state that the decision to require less information must be supported by written findings and that the decision to require less information is subject to appellate review.

17.10.050(F)(1)

I propose we add the following information to the list:

- e. Assessment of existing conditions;
- f. Surface and subsurface hydrologic conditions;
- g. Overall goals of proposed mitigation; and
- h. Performance Standards

(This information is drawn from the Eastern Washington CAO Update Guidance)

17.10.050(F)(1)

Amend the last sentence of this section in the following manner: “... shall be accompanied by detailed site diagrams that depict the boundaries of the wetland and its buffer as well as the work to be done, scaled cross sectional ...”

17.10.050(F)(2)

Append the following sentence: “If the mitigation goals are not obtained within the initial five-year period, the applicant remains responsible for restoration of the natural resource values and functions until the mitigation goals agreed to in the mitigation plan are achieved.” This text is drawn from the DOE’s CAO update manual.

17.10.060(C)

Append the following sentence, “Compensatory mitigation shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions.” This is pulled from page 37 of the Eastern WA CAO Update Guidance.

17.10.070(A)(1)(d)

P.2 instead of “sound science” should say best available science. That is the term of art for these issues.

17.10.070(C)(1)(d)

This line is missing a period at end of line.

17.10.070(C)(1)(d)(i)

Append “by the applicant” to the end of the final sentence.

17.10.070(C)(2)

Add a comma in the following manner, “... in Section 17.10.070.c.1_the standards...”

17.10.080(A)

There are missing periods from the end of both paragraphs.

17.010.090

I propose we add a paragraph to this section “wetland goals” that states what our goals are in making these rules. The Spokane County Critical Areas Ordinance, 11.20.050 is a great example.

17.10.090(C)

Amend this paragraph to read, “... after such a date the City shall require the applicant to do the following: 1) Have a qualified professional to update the delineation report or 2) Have a qualified professional submit a report that shows that an update is unnecessary.”

17.10.090(E)(1)

Add the following subparagraph:

“i. For critical areas off site of the project site, estimate conditions within 250 feet of the project boundaries using the best available information.”

17.10.090(F)

Section .090(F)(1)(a) is grossly out of step with the recommended requirements for activities allowed in Wetlands. In addition, it presents significant cross regulation problems for the City by purporting to allow activities that state law would likely forbid. For example, Category I wetlands are directly regulated by Ecology. Medical Lake does not have the power to allow roads to be built through wetlands because the work would result in.

The entire section should be deleted and replaced with the model section from “Wetland Guidance for CAO Updates Eastern Washington Version.” It is found on page 24 of the guide and is titled “XX.040 Exemptions and Allowed Uses in Wetlands.”

That section reads: “Activities allowed in Wetlands, ... feasible at the project site.” (found at: <https://apps.ecology.wa.gov/publications/documents/1606002.pdf>)

17.10.090(F)

I propose to add the following new subparagraphs:

“j. *Buffer Setback.* A minimum building setback of fifteen feet is required from the edge of a wetland buffer. The City Planner may allow intrusions into this setback on a case-by-case basis if it can be demonstrated by clear and convincing evidence that impacts can be satisfactorily mitigated. This building setback from the buffer shall be identified on the site plan.”

“k. *Extra Buffer Width for Isolated Wetlands:* The City of Medical Lake recognizes that isolated depressional wetlands are more sensitive to degradation and/or accumulation of sediment and/or contaminants. Therefore, isolated wetlands benefit from larger buffers. If

a wetland is isolated, meaning it lacks an outlet, its buffer width shall be increased by twenty-five (25) feet.”

(This suggestion comes from the The Planner’s Guide to Wetland Buffers for Local Government, page 13. The document is available online here: <https://www.eli.org/research-report/planners-guide-wetland-buffers-local-governments#:~:text=The%20upland%20area%20surrounding%20a,friendly%20land%20use%20and%20development.>)

17.10.090(F)(2)

I propose we add the following statement after “*Wetland Buffers*”: “Scientific literature is unequivocal that buffers are necessary to protect wetland functions and values.”

17.10.090(F)(2)(a)

Append the following sentence: “In the absent of contrary evidence, adjacent land use is assumed to be high.”

17.10.090(F)(2)(h)

I proposed we add a paragraph that requires the applicant to prove that buffer averaging will “*improve wetland protection.*” (from pg 13, Wetland Guidance for CAO Updates (Eastern Washington Version))

17.10.090(H)(2)

Propose to add the following enhancement activity from the 2018 Wetland update appendix “Protection/Maintenance (Preservation): Removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This includes the purchase of land or easements, repairing water control structures or fences, or structural protection such as repairing a barrier island. This term also includes activities commonly associated with the term preservation. Preservation does not result in a gain of wetland acres, may result in a gain in functions, and will be used only in exceptional circumstances.”

17.10.100(B)

This Chapter should require the person to prove by clear and convincing evidence that their loss of “all reasonable economic use” is the result of a *change in the law* from *this version of the code*. The previous version of the code was in effect for more than a decade. It’s too late for land use exceptions based on restrictions that have been in place for 10 years or more. Thus, the application of reasonable use exceptions should be explicitly limited to the very narrow case where new regulations are the root cause of the loss, or significant changes in the land resulting in *new* critical areas cause such a loss.

17.10.110

The big problem with this section is that it presents an expertise problem for the City. Who is qualified to adjudicate these issues and let someone violate the ordinances. Minor use exceptions should require public notice and a chance for citizens to comment.

17.10.120(C)(2)

The word “areas” is missing from the middle of the first sentence.

13 Definitions

This should be renumbered to 17.10.130.

In addition, I propose adding the following definition:

Permitting Decision – discretionary decisions made by the City Administrator or other City officials pursuant to the terms of Chapter 17.10 in connection with a permit application. This definition includes but is not limited to:

- a. Decisions to grant or deny a permit;
- b. Decisions to waive or not require a critical areas report;
- c. Decisions to waive public hearing;
- d. Decisions to permit a reasonable use exception;
- e. Decisions to exempt an applicant from further review;
- f. Decisions to modify setback requirements;
- g. Decisions to allow and approve mitigation plans;
- h. Decisions to permit buffer averaging; and/or
- i. Any Decision resulting from the discretion of a city official where the applicant is required to show or prove some fact upon which the decision is contingent.

I propose the following changes to currently-existing definitions:

Best Management Practices should be amended to add the following:

“Such practices:

- (a) Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, or sediment;
- (b) Minimize adverse impacts to surface water and ground water flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;
- (c) Protect trees, vegetation and soils designated to be retained during and following site construction and use native plant species appropriate to the site for re-vegetation of disturbed areas; and
- (d) Provide standards for proper use of chemical herbicides within critical areas.”

(From the Eastern Washington CAO Update Manual)

Mitigation should be amended to add the following:

“Mitigation, in the following sequential order of preference, is:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

- (c) Rectifying the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project;
- (d) Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
- (e) Compensating for the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
- (f) Monitoring the hazard or other required mitigation and taking remedial action when necessary.

Mitigation for individual actions may include a combination of the above measures.”
(From the Eastern Washington CAO Update Manual)

Qualified Professional

Appears to be missing the word “a” in the following place: “...work experiences as a wetland professional...”

Other General Comments:

I propose we add a provision requiring the city to begin to seek funding for wetlands mapping no later than 2023.

Best,

Tammy M. Roberson
Concerned ML City Resident
SMSgt USAF Retired/Disabled Veteran

PO Box 1696
424 W Brooks Rd
Medical Lake, WA 99022
tmroberson61@gmail.com



City of Medical Lake Planning Department
124 S. Lefevre St.
Medical Lake, WA 99022
509-565-5000
www.medical-lake.org

STAFF REPORT AND RECOMMENDATION TO THE PLANNING COMMISSION

Date of Hearing: September 22, 2022

Date of Staff Report: September 15, 2022

Staff Planner: Elisa Rodriguez 509-565-5019 or erodriguez@medical-lake.org

Proposal: Critical Areas Ordinance Update

SEPA: A Determination of Non-Significance was made on September 7, 2022.

PROPOSAL

The City of Medical Lake is proposing an update to the Critical Areas Ordinance. First adopted in 1994 and updated in 2010, the current code is out of compliance with the Washington State Growth Management Act. (RCW 36.70A) and the Department of Ecology's best available science recommendations.

RELEVANT APPROVAL CRITERIA

To be approved, this proposal must comply with the criteria of Chapter 17 of the Medical Lake Municipal Code (MLMC). Amendments to development regulations can be approved if the review body finds that the criteria of MLMC Chapter 17.56.100 have been met.

PROCEDURAL HISTORY

June 24, 2021, Planning Commission (PC) introduction to a critical areas ordinance (CAO) update. (consultant)

November 18, 2021, PC CAO work session to review and discuss proposed ordinance language. (consultant)

December 30, 2021, PC CAO work session to review and discuss proposed ordinance language. (consultant)

March 31, 2022, PC CAO work session to review and discuss proposed ordinance language. (consultant)

April 28, 2022, PC CAO work session to review and discuss proposed ordinance language. (consultant)

May 26, 2022, PC CAO work session to review and discuss proposed ordinance language. (consultant)

June 30, 2022, PC CAO work session to review and discuss proposed ordinance language. (consultant)

July 28, 2022, PC CAO work session to discuss process and potential for replacing proposed ordinance language. (City Planner)

August 11, 2022, PC special meeting CAO work session to review and discuss proposed ordinance language.
(City Planner)

August 25, 2022, PC CAO work session to review and discuss proposed ordinance language. (City Planner)

September 7, 2022, SEPA Determination of Non-Significance issued.

September 8, 2022, Public Notice in Cheney Free Press.

September 8, 2022, PC special meeting CAO work session to review and discuss proposed ordinance language.
(City Planner)

ANALYSIS

The proposed critical areas ordinance has a primary goal of no net loss of functions for those critical areas within the city limits of Medical Lake. The critical areas being protected are wetlands, fish and wildlife habitat conservation areas, and frequently flooded areas. The critical areas ordinance provides development regulations for those properties containing critical areas. These regulations do not override any other local, state, or federal regulations or requirements, but rather work in conjunction with them. If the critical area does not allow reasonable use of the property, the owner may apply for an exception. In most instances, a critical areas permit will be required for development. The ordinance does list some minor exceptions to this requirement. When development is proposed, the owner or representative must submit an application that includes detailed identification and analysis of the critical area on the site. The delineation and analysis must be performed by a qualified professional. This qualified professional must also propose mitigation for the impacts of the proposed development. Any activity or development that is subject to this ordinance must first try to avoid impacts to the critical area. If that cannot be done, the applicant must try to minimize impacts and compensate for those impacts with mitigation. Generally, the performance standards require the identified critical area to be protected with a buffer that limits human activity. When a critical areas permit is required, the Planning Commission will hold a public hearing before deciding on the application.

ZONING CODE APPROVAL CRITERIA

17.56.020 - Purpose.

This section shall apply to the initial adoption of the comprehensive plan and subsequent adoption of amendments or additional elements to the comprehensive plan. The purpose of this chapter is to establish a procedure pursuant to the requirements of RCW 36.70A of the Growth Management Act for the amendment or revision of the city's comprehensive plan and development regulations.

17.56.100 – Criteria for Regulation of Plan Amendments.

Recognizing that the comprehensive plan was developed and adopted after significant study and public participation, the principles, goals, objectives, and policies contained therein shall be granted substantial weight when considering any proposed amendment. Therefore, the burden of proof for justifying a proposed amendment rests with the applicant. The approval, modification, or denial of an amendment application by the Planning Commission shall be evaluated on the following criteria:

- 1.** The amendment is necessary to resolve inconsistencies between the comprehensive plan and implementing ordinances, or inconsistencies between the plan or ordinances and local, state, or federal mandates.

Findings: The Washington State Legislature adopted amendments to the Growth Management Act, effective in 2018, that affect critical areas ordinances. The Department of Commerce provides a *Critical Areas Checklist* (updated January 2020) to give guidance for updates. The backbone of critical area ordinances is using the best available science to designate, define, and protect critical areas.

The proposed ordinance update mimics the structure of the City of Vancouver municipal code section 20.740. The regulations are based on the *Critical Areas Assistance Handbook* (revised January 2007) and the *Wetland Guidance to CAO Updates: Eastern Washington Version* (June 2016).

The proposed sources and maps proposed for adoption are the Department of Ecology Washington Water Data – Hydrology, the Department of Natural Resources Forest Practices Mapping Tool (fpamt.dnr.wa.gov), the Department of Fish and Wildlife Priority Habitat and Species Map (geodataservices.wdfw.wa.gov/hp/phs), and the FEMA Flood Insurance Rate Map.

For the above reasons, the proposed ordinance update fixes inconsistencies with state regulations. Therefore, this criterion is met.

2. The amendment of the plan and/or the development regulations will further the implementation of the comprehensive plan and resolve inconsistency between the two in a manner that will not adversely impact the general public health, safety, and/or welfare.

Findings: Action Item #5 of the Medical Lake Comprehensive Plan 2019 Update (MLCP) states, “Update critical areas ordinances as appropriate and keep track of “best available science”. This proposal is fulfilling this action item.

In addition, the MLCP has the following policies that directly pertain to critical areas:

61. Maintain the quantity and quality of wetlands, riparian areas, and critical areas within the jurisdiction of, adopting stormwater and critical areas ordinances as appropriate.
69. Limit development in or adjacent to fish and wildlife habitat areas that diminish indicator species.
70. Develop guidelines for critical areas and natural lands that minimize species and habitat fragmentation due to development.

Goal #29 of the MLCP states, “Limit development activities within critical areas or adjacent to resource land to minimize impacts to the natural environment, as well as protect the public health, safety, and general welfare of the community.”

The proposed critical areas ordinance update is written to maintain the quantity and quality of critical areas by buffering development near them and creating guidelines for limiting the impacts of development. For these reasons, the proposed amendments further the implementation of the MLCP. Therefore, this criterion is met.

3. Conditions have changed so much since the adoption of the comprehensive plan on factors such as, but not limited to population, employment, housing, transportation, capital facilities, or economic conditions that the existing goals, policies, objectives, and/or map classifications of the comprehensive plan or development regulations are inappropriate.

Findings: The Medical Lake Comprehensive Plan was updated in 2019 and the conditions in Medical Lake have not changed to an extent where the existing goals, policies, objectives, and/or map classifications are inappropriate. The proposed ordinance update aligns with and carries out the intent of the MLCP. Therefore, this criterion is met.

4. Substantial conditions exist where the available supply of forecasted lands for residential, commercial, industrial, recreation, or agriculture has been absorbed and there is insufficient land available for a twenty-year supply.

Findings: The proposed critical areas ordinance update does not include provisions for expanding the City of Medical Lake's Urban Growth Area. The Medical Lake Municipal Code (MLMC) currently has a chapter addressing development in or near critical areas. The proposed ordinance update is not decreasing the amount of buildable land within the city. For these reasons, the proposal is not affecting the supply of land. Therefore, this criterion is met.

5. If the comprehensive plan amendment proposal involves extension of water and/or sewer services outside of the urban growth boundary, the following additional criteria must be met:
 - a. The proposal must be in response to an immediate threat to public health or safety;
 - b. The proposal is necessary for the protection of the aquifer(s) designated pursuant to RCW 36.70.A170;
 - c. The proposal is necessary to maintain existing levels of service in existing urban or suburban developments.

Findings: The proposed critical areas ordinance update does not involve the extension of water and/or sewer services outside of the urban growth boundary, therefore, this criterion is not applicable.

6. The proposed amendment is consistent with the overall intent of the goals of the comprehensive plan.

Findings: The Medical Lake Comprehensive Plan 2019 Update has 30 goals. Goal #29 speaks directly to critical areas. It states, "Limit development activities within critical areas or adjacent to resource land to minimize impacts to the natural environment, as well as protect the public health, safety, and general welfare of the community." The proposed critical areas ordinance update limits and mitigates for development and activities in and around critical areas. By preventing degradation of the quality and quantity of critical areas, the regulations are protecting the public health, safety, and general welfare of the community. For these reasons, this criterion is met.

7. The proposed amendment is consistent with RCW 36.70A, the Growth Management Act, the county-wide planning policies, and applicable multicounty planning policies.

Findings: The Growth Management Act (GMA) requires all cities and counties in Washington to adopt regulations protecting "critical areas" to preserve the natural environment, wildlife habitats, and sources of fresh drinking water. Critical area regulations also encourage public safety by limiting development in areas prone to natural hazards like floods and landslides.

RCW 36.70A.030(5) defines five types of critical areas:

Wetlands

Areas with a critical recharging effect on aquifers used for potable water

Fish and wildlife habitat conservation areas

Frequently flooded areas

Geologically hazardous areas

The proposed critical areas ordinance update includes development regulations for wetlands, fish and wildlife habitat conservation areas, and frequently flooded areas. The land within the city limits of Medical Lake does not contain any geologically hazardous areas. In addition, the City of Medical Lake supplies its water system from an aquifer several hundred feet below the surface, and groundwater within the city is not recharging this aquifer, therefore protecting the groundwater, for this reason, is not necessary. Finally, there are no city wells within the city limits of Medical Lake, therefore, there are no wellheads to be protected.

The County Wide Policies for Spokane County (2011 printing) has 19 goals. Goal #12 states, “Jurisdictions should work together to protect natural resource lands outside of Urban Growth Areas (UGAs) and to protect critical areas and open space within Urban Growth Areas (UGAs)”. The City of Medical Lake is within a UGA. The proposed critical areas ordinance update protects critical areas within the City of Medical Lake.

For the above reasons the proposed update is consistent with state and county policies. Therefore, this criterion is met.

8. Where an amendment to the comprehensive plan map is proposed, the proposed designation is adjacent to property having a similar and compatible designation.

Findings: The proposal does not include amendments to the comprehensive plan map; therefore, this criterion is not applicable.

9. Public facilities, infrastructure, and transportation systems are present to serve the intended amendment or provisions have been made in accordance with the comprehensive plan to provide the necessary facilities.

Findings: The proposed critical areas ordinance update is to regulate development in or near critical areas. The city has an adopted critical areas ordinance. This proposal is to update that ordinance to meet the current requirements of the state under the GMA. The update does not increase the potential for development within the City of Medical Lake, hence, there will not be an increased need for public facilities, infrastructure, and transportation systems. For these reasons, the criterion is met.

10. The proposed amendment is complimentary and compatible with adjacent land uses and the surrounding environment.

Findings: The ordinance update compliments the Medical Lake Shoreline Management Plan. The purpose of the proposed critical areas ordinance update is to protect critical areas and their functions and values, while also allowing for reasonable use of property. This proposal affects all land with critical areas within the City of Medical Lake and does not prevent development. These regulations

require development to try to avoid critical areas and or mitigate for any impacts created by the development. For these reasons, the proposed amendment is complimentary and compatible with all land uses and environmentally sensitive areas, including shorelines. Therefore, this criterion is met.

11. The proposed amendment does not adversely affect lands designated as agricultural and/or resource lands of long-term commercial significance or critical areas.

Findings: The proposed critical areas ordinance update was written to protect critical areas by limiting development and mitigating for impacts, therefore, they will not adversely affect them. In addition, the proposed amendments do not affect agricultural land of long-term commercial significance because “Existing and ongoing agricultural activities protected under the federal Food Security Act” are exempted from these regulations. For these reasons, this criterion is met.

CONCLUSION

The proposed critical areas ordinance update will replace the current Chapter 17.10 of the Medical Lake Municipal Code. The ordinance contains development regulations to protect critical areas within the city limits of Medical Lake. The critical areas being protected are wetlands, fish and wildlife habitat conservation areas, and frequently flooded areas. The proposed ordinance update works in concert with the Shoreline Master Plan. These regulations strive to protect the values and functions of critical areas by restricting the location of development and requiring mitigation for any impacts of that development on the critical area. The proposed ordinance update is consistent with the Medical Lake Comprehensive Plan and the requirements of the Washington State Growth Management Act.

RECOMMENDATION

The approval criteria set out in MLMC 17.56.100 have been met. Therefore, the planning official recommends that the Planning Commission approve the proposed critical areas ordinance update.

The Planning Commission may choose to do one of the following:

Recommend approval of the proposed critical areas ordinance as presented in the staff report.

Recommend approval of the proposed critical areas ordinance with amendments or conditions.

Recommend denial of the proposed critical areas ordinance.

EXHIBITS

Proposed Critical Areas Ordinance, September 15, 2022

Proposed Wetland Map (not attached)

Proposed Fish and Wildlife Habitat Map (not attached)

Proposed Frequently Flooded Areas Map (not attached)

SEPA Checklist, September 7, 2022

SEPA DNS, September 7, 2022

Notice of Publication, Legal Notice, Published in Cheney Free Press on September 8, 2022 (not attached)

Notice of Public Hearing and
Determination of Non-Significance (DNS)

Description of Proposal: Notice of Hearing is issued for the Update to the Critical Area Ordinance. The proposed non-project legislative action is to amend the Critical Area regulations in accordance with the Growth Management Act requirements. The critical areas ordinance regulates certain activities and development in and near wetlands, fish & wildlife habitat conservation areas, and frequently flooded areas. The draft includes updates in accordance with state law and best available science, reorganization, and functional changes to certain requirements.

Proponent: City of Medical Lake 124 S Lefevre Street, P.O. Box 369, Medical Lake, WA 99022

Location of Proposal: City limits of the City of Medical Lake

Lead Agency: City of Medical Lake, Planning Department

Threshold Determination: The lead agency has determined that this non-project action proposal does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This DNS is issued under WAC 197-11-340(2); the City of Medical Lake will not act on this proposal for 14 days from the date of this notice. **Written comments on this threshold determination must be submitted on or before 4:00 p.m., September 22, 2022** to the project contact listed below.

Appeals: Appeals of this environmental determination may be made per the procedures outlined in MLMC 16.10.420.

Public Hearing: A public hearing is scheduled before the Planning Commission on **Thursday, September 22, 2022 at 5 p.m.**

To View Documents: Documents associated with this proposal can be viewed on the City of Medical Lake website, at: www.medical-lake.org, or may be reviewed at the City of Medical Planning Department.

Contact Person: Please direct any comments concerning this threshold determination to: Elisa Rodriguez, City Planner P.O. Box 369, Medical Lake, WA 990022; 509-565-5019; erodriguez@medical-lake.org.

SEPA Responsible Official: Elisa Rodriguez

Date of Issuance: September 7, 2022

SEPA ENVIRONMENTAL CHECKLIST

Purpose of checklist:

Governmental agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

Instructions for applicants:

This environmental checklist asks you to describe some basic information about your proposal. Please answer each question accurately and carefully, to the best of your knowledge. You may need to consult with an agency specialist or private consultant for some questions. You may use "not applicable" or "does not apply" only when you can explain why it does not apply and not when the answer is unknown. You may also attach or incorporate by reference additional studies reports. Complete and accurate answers to these questions often avoid delays with the SEPA process as well as later in the decision-making process.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Instructions for Lead Agencies:

Please adjust the format of this template as needed. Additional information may be necessary to evaluate the existing environment, all interrelated aspects of the proposal and an analysis of adverse impacts. The checklist is considered the first but not necessarily the only source of information needed to make an adequate threshold determination. Once a threshold determination is made, the lead agency is responsible for the completeness and accuracy of the checklist and other supporting documents.

Use of checklist for nonproject proposals:

For nonproject proposals (such as ordinances, regulations, plans and programs), complete the applicable parts of sections A and B plus the [SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS \(part D\)](#). Please completely answer all questions that apply and note that the words "project," "applicant," and "property or site" should be read as "proposal," "proponent," and "affected geographic area," respectively. The lead agency may exclude (for non-projects) questions in Part B - Environmental Elements –that do not contribute meaningfully to the analysis of the proposal.

A. Background [\[HELP\]](#)

1. Name of proposed project, if applicable: Critical Areas Ordinance Update
2. Name of applicant: City of Medical Lake

3. Address and phone number of applicant and contact person: Elisa Rodriguez, City Planner, 124 Levferve Street, Medical Lake, WA 99022, 509-565-5019

4. Date checklist prepared: 6 September 2022

5. Agency requesting checklist: City of Medical Lake

6. Proposed timing or schedule (including phasing, if applicable): There will be a public hearing held by the Planning Commission on Thursday, September 22, 2022. The ordinance is expected to be adopted by the end of the calendar year.

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain. No.

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal. The city is following the guidance of the Washington State Departments of Ecology and Commerce on updating critical area ordinances. This includes, but is not limited to the *Critical Areas Assistance Handbook* (revised January 2007) and the *Wetland Guidance to CAO Updates: Eastern Washington Version* (June 2016).

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain. No.

10. List any government approvals or permits that will be needed for your proposal, if known. Department of Ecology must approve updates to Critical Area Ordinances.

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.) The City of Medical Lake with a population of 4,950 and an area of 3.58 square miles contains critical areas required to be regulated by the state. The city has a critical area ordinance that was originally adopted in 1994 and updated in 2010. The proposal is to update the ordinance to meet current state requirements. The critical area ordinance regulates wetlands, fish and wildlife habitats, and frequently flooded areas. The city does not have any geographically hazardous areas. The city water supply comes from an aquifer deep below the surface, therefore, it does not have a critical aquifer recharge area. All well heads are outside city limits.

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist. The proposed critical areas ordinance update encompasses all for the City of Medical Lake incorporated area.

B. Environmental Elements [\[HELP\]](#)

1. **Earth** [\[help\]](#)

- a. **General description of the site:** The city has unique geological features and natural resources as the regional landscape, known as the West Plains, rises in elevation above the City of Spokane. The land in and around Medical Lake, geologically known as the Channeled Scablands, is its own micro-region with geologic characteristics not found anywhere else in the world. This area is characterized by the hilly terrain, exposed basalt outcroppings, and a large number of small ponds and lakes and the ecosystems that support them. The City of Medical Lake shares its name with the lake that is central to the community. The city limits also about West Medical Lake and Silver Lake. The foundation material of these lakes and the adjoining community is basalt bedrock. The soil consists of unconsolidated silty-clay alluvium to the north and south of the lakes. Ground water, rain and snow are the primary sources of recharge for the lakes, while evaporation, groundwater, and irrigation are primary discharges. A transition point from the scabland ecosystem and the forests to the east creates a blending of high desert plants and Ponderosa pines. The wildlife that is found in the area is also consistent with this edge ecology including whitetail deer, birds, and fish.

(circle one): Flat, rolling, hilly, steep slopes, mountainous, other _____

- b. What is the steepest slope on the site (approximate percent slope)?
- c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.
- d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.
- e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill.
- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.
- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?
- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

2. **Air** [\[help\]](#)

- a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known.
- b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

c. Proposed measures to reduce or control emissions or other impacts to air, if any:

3. **Water** [\[help\]](#)

a. Surface Water: [\[help\]](#)

- 1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

- 2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

- 3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

- 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

- 5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

- 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

b. Ground Water: [\[help\]](#)

- 1) Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well. Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.

- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals. . . ; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

c. Water runoff (including stormwater):

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

- 2) Could waste materials enter ground or surface waters? If so, generally describe.

- 3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe.

d. Proposed measures to reduce or control surface, ground, and runoff water, and drainage

pattern impacts, if any:

4. **Plants** [\[help\]](#)

a. Check the types of vegetation found on the site:

- deciduous tree: alder, maple, aspen, other
- evergreen tree: fir, cedar, pine, other
- shrubs
- grass
- pasture
- crop or grain
- Orchards, vineyards or other permanent crops.
- wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
- water plants: water lily, eelgrass, milfoil, other
- other types of vegetation

b. What kind and amount of vegetation will be removed or altered?

c. List threatened and endangered species known to be on or near the site.

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

e. List all noxious weeds and invasive species known to be on or near the site.

5. **Animals** [\[help\]](#)

a. List any birds and other animals which have been observed on or near the site or are known to be on or near the site.

Examples include:

- birds: hawk, heron, eagle, songbirds, other:
- mammals: deer, bear, elk, beaver, other:
- fish: bass, salmon, trout, herring, shellfish, other _____

b. List any threatened and endangered species known to be on or near the site.

c. Is the site part of a migration route? If so, explain.

d. Proposed measures to preserve or enhance wildlife, if any:

e. List any invasive animal species known to be on or near the site.

6. **Energy and Natural Resources** [\[help\]](#)

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.
- b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.
- c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

7. Environmental Health [\[help\]](#)

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.
 - 1) Describe any known or possible contamination at the site from present or past uses.
 - 2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.
 - 3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.
 - 4) Describe special emergency services that might be required.
 - 5) Proposed measures to reduce or control environmental health hazards, if any:

b. Noise

- 1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?
- 2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.
- 3) Proposed measures to reduce or control noise impacts, if any:

8. Land and Shoreline Use [\[help\]](#)

- a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.

- b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use?
 - 1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversize equipment access, the application of pesticides, tilling, and harvesting? If so, how:
- c. Describe any structures on the site.
- d. Will any structures be demolished? If so, what?
- e. What is the current zoning classification of the site?
- f. What is the current comprehensive plan designation of the site?
- g. If applicable, what is the current shoreline master program designation of the site?
- h. Has any part of the site been classified as a critical area by the city or county? If so, specify.
- i. Approximately how many people would reside or work in the completed project?
- j. Approximately how many people would the completed project displace?
- k. Proposed measures to avoid or reduce displacement impacts, if any:
- l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:
- m. Proposed measures to reduce or control impacts to agricultural and forest lands of long-term commercial significance, if any:

9. Housing [\[help\]](#)

- a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.
- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.
- c. Proposed measures to reduce or control housing impacts, if any:

10. Aesthetics [\[help\]](#)

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?
- b. What views in the immediate vicinity would be altered or obstructed?

- b. Proposed measures to reduce or control aesthetic impacts, if any:

11. Light and Glare [\[help\]](#)

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur?
- b. Could light or glare from the finished project be a safety hazard or interfere with views?
- c. What existing off-site sources of light or glare may affect your proposal?
- d. Proposed measures to reduce or control light and glare impacts, if any:

12. Recreation [\[help\]](#)

- a. What designated and informal recreational opportunities are in the immediate vicinity?
- b. Would the proposed project displace any existing recreational uses? If so, describe.
- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

13. Historic and cultural preservation [\[help\]](#)

- a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers ? If so, specifically describe.
- b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources.
- c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc.
- d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.

14. Transportation [\[help\]](#)

- a. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any.
- b. Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?

- c. How many additional parking spaces would the completed project or non-project proposal have? How many would the project or proposal eliminate?
- d. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private).
- e. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.
- f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and nonpassenger vehicles). What data or transportation models were used to make these estimates?
- g. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe.
- h. Proposed measures to reduce or control transportation impacts, if any:

15. Public Services [\[help\]](#)

- a. Would the project result in an increased need for public services (for example: fire protection, police protection, public transit, health care, schools, other)? If so, generally describe.
- b. Proposed measures to reduce or control direct impacts on public services, if any.

16. Utilities [\[help\]](#)

- a. Circle utilities currently available at the site:
 electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system,
 other _____
- b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

C. Signature [\[HELP\]](#)

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: _____

Name of signee Elisa Rodriguez

Position and Agency/Organization City Planner, City of Medical Lake

Date Submitted: September 7, 2022

D. Supplemental sheet for nonproject actions [\[HELP\]](#)

(IT IS NOT NECESSARY to use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

Proposed measures to avoid or reduce such increases are: The critical areas ordinance has a primary goal of preventing net loss to the values and functions of the critical areas being protected.

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

Proposed measures to protect or conserve plants, animals, fish, or marine life are: The critical areas ordinance exists to protect critical areas and their functions and values. This includes plants, animals, and fish. This is done by seeking to avoid all impacts that degrade the functions and values of the critical area. Where avoidance is not feasible, the impact of the activity shall be minimized and mitigated for.

3. How would the proposal be likely to deplete energy or natural resources?

Proposed measures to protect or conserve energy and natural resources are: The purpose of the critical areas ordinance is to protect natural resources. This is done by seeking to avoid all impacts that degrade the functions and values of the critical area. Where avoidance is not feasible, the impact of the activity shall be minimized and mitigated for.

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

Proposed measures to protect such resources or to avoid or reduce impacts are: The critical areas ordinance main purpose is to avoid or reduce impacts from development. Any development, requiring a permit or not, will be regulated by the ordinance.

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

Proposed measures to avoid or reduce shoreline and land use impacts are: The critical areas ordinance complements the Shoreline Master Program. The ordinance also contains provisions for reasonable use, meaning that if a property would not otherwise be developable due

to the amount of critical areas on the site, the owner would still be allowed reasonable use of the property.

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

Proposed measures to reduce or respond to such demand(s) are: The critical areas ordinance should not increase the demands on transportation, public services, or utilities.

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

Protection of critical areas is mandated by the Growth Management Act. This ordinance was developed using guidance from the Washington State departments of Commerce and Ecology and the best available science.

Critical Areas Ordinance 2022 Update

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.

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.

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 place a public notice in the local newspaper. 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 may adopt the planning official's report and recommendation, modify or reject it based on information presented at the hearing and in the record.

14. 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.

15. Ability to appeal. A decision may be appealed within 14 calendar days of the signed written decision. Appeals must be submitted by 5:00 p.m. on the 14th day of the appeal period. If the 14th day is a legal holiday, the period ends the next business day. On appeal, the City Council shall conduct a closed record hearing. At the appeal hearing, the appellant, applicant and the city may present written and oral argument limited to matters within the record. The city council may affirm, reverse, modify or remand the decision of the Planning Commission. If the City Council modifies the Planning Commission's decision, it may add new or different conditions as supported by the record, city ordinance or adopted policies/standards. The City Council action shall be passed by a majority vote and set forth in the resolution or ordinance that accompanies the recommendation.

16. Recording. All decisions of approval, including conditions, shall be recorded with Spokane County Auditor. The applicant is responsible for the 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.

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

18. 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.

F. *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.15.

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.

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 meets the Riparian Management Area width averaging standard in Section 17.10.070.C.3.c; and

d. 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)

	Buffer width (in feet) based on habitat score			
Wetland Category	3-4	5	6-7	8-9
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

	Buffer width (in feet) based on habitat score			
Wetland Category	3-4	5	6-7	8-9
Category I: Based on total score or Forested	100	130	180	200
Category I: Bogs and Wetlands of	250			

High Conservation Value				
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"> • Direct lights away from wetland
Noise	<ul style="list-style-type: none"> • Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • 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
Toxic runoff	<ul style="list-style-type: none"> • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150' of wetland • Apply integrated pest management
Stormwater runoff	<ul style="list-style-type: none"> • Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use Low Intensity Development techniques
Change in water regime	<ul style="list-style-type: none"> • Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	<ul style="list-style-type: none"> • Use privacy fencing or plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion • Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	<ul style="list-style-type: none"> • Use best management practices to control dust

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

Category and Type of Wetland	Creation or Re-establishment	Rehabilitation	Enhancement
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.

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 wetland 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

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 subsection A of 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).

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.

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.

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 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.

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.