

**TITLE 15  
TOWN OF LYMAN CODE**

**CHAPTER 15.15**

**CRITICAL AREAS ORDINANCE**

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**15.15.010 Introduction.**

The ordinance codified in this Chapter was developed under the directives of the Growth Management Act to conserve and protect critical areas. Critical areas are defined as wetlands, aquifer recharge areas, flood hazard areas, geologically hazardous areas, and fish and wildlife habitat conservation areas. Some of these areas, such as geologic hazards and flood hazard areas are critical because of the hazard they represent to public health. Others, such as fish and wildlife habitats and wetlands are critical because of their public value.

Critical areas defined and identified in this chapter shall be mapped whenever possible. These maps shall be advisory and used by the Administrative Official to provide guidance in determining applicability of the standards to a property. Sites which include critical areas that are not mapped shall be subject to the provisions of this chapter.

Maps are useful primarily as an indicator of the distribution and extent of critical areas. Maps will be used wherever possible as part of the screening process for evaluating individual permits applications. Although a number of map resources are utilized in this Chapter, regulatory measures such as buffer requirements are based upon the identification of critical areas during the permit, development authorization, or other approval processes.

Critical areas will be designated by definition and then classified through site assessments so that they can be identified using scientifically based criteria and protected. The use of site assessments to confirm the actual presence and classification of critical areas is central to the management approach developed under this Chapter.

The ordinance codified in this Chapter was drafted to provide a regulatory structure for identification, designation and protection of critical areas. This Chapter allows staff to provide site visits, preliminary reviews, and pre-application meetings to assist in the identification of critical areas.

**15.15.020 Title and Purpose.**

This Chapter shall be known as the Critical Area Ordinance of Lyman, Washington and is adopted to assist in orderly development, conserve the value of property, safeguard the public welfare, and provide for the protection of the quality and quantity of groundwater used for public water supplies (RCW 36.70A.070(1)) and provide protection for the following critical areas:

- A. Wetlands: Wetlands serve many important ecological and environmental functions and help to protect public health, safety and welfare by providing flood storage and conveyance, erosion control, fish and shellfish production, fish and wildlife habitat, recreation, water quality protection, water storage, education, scientific research and other public benefits. It is the purpose of this Chapter to protect these functions to prevent the continual loss of wetlands, and where practical to enhance or restore wetlands functions and values.

- B. Flood Hazard Areas: It is the purpose of this Chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas according to the provisions established under this code.
- C. Aquifer Recharge Areas: Potable water is an essential life-sustaining element. Lyman's drinking water comes from groundwater supplies. Once groundwater is contaminated, it is difficult, costly, and sometimes impossible to clean up. It is the purpose of this Chapter to prevent contamination and depletion, avoid exorbitant clean up costs, hardships and potential physical harm to people.
- D. Geologically hazardous areas include areas susceptible to the effects of erosion, sliding, earthquake, or other geologic events. They pose a threat to the health and safety of citizens when incompatible residential, commercial, industrial, or infrastructure development is sited in areas of a hazard. Geologic hazards pose a risk to life, property, and resources when steep slopes are destabilized by inappropriate activities and development or when structures or facilities are sited in areas susceptible to natural or human caused geologic events. Some geologic hazards can be reduced or mitigated by engineering, design, or modified construction practices so that risks to health and safety are acceptable. When technology cannot reduce risks to acceptable levels, building and other construction within identified geologically hazardous areas shall be prohibited.
- E. Fish and Wildlife Habitat Conservation Areas: In addition to their intrinsic value, certain species of fish and wildlife represent important historic, cultural, recreational and economic resources. Many species serve as indicators of the condition of the environment and the quality of life that local residents have invested in, enjoy and respect. It is the purpose of this Chapter to protect, restore where practical, and enhance fish and wildlife populations and their associated habitats.

**15.15.030 Authority.**

The ordinance codified in this Chapter is adopted under the authority of RCW 36.70 and RCW 36.70A, and Article 11 of the Washington State Constitution.

**15.15.040 Applicability, Jurisdiction and Coordination.**

- A. Applicability. This Chapter shall be consistently applied to any land use or development in the Town of Lyman within the geographical areas that meet the definitions and criteria for critical areas regulation as set forth in this Chapter.
- B. Relationship To Other Federal, State and County Jurisdictional Agencies' Regulations. Many State, Federal and regional regulations apply to projects conducted within critical areas. Uses otherwise allowed by local codes do not eliminate other agency regulatory requirements.

1. Federal regulations include:

- a. Clean Water Act, Section 404, 401
- b. Coastal Zone Management Act
- c. Endangered Species Act
- d. Federal Water Pollution Control Act
- e. Food Security Act - Swampbuster
- f. National Environmental Policy Act

- g. National Floodplain Insurance Program
- h. River and Harbor Act, Section 10

2. State regulations include:

- A. RCW 43.21C State Environmental Policy Act
- b. RCW 75.20 Hydraulic Project Approval
- c. RCW 76.09 Forest Practices Regulations
- d. RCW 77.12 Bald Eagle Protection Rules
- e. RCW 78.44 Surface Mining Act
- f. RCW 90.03 State Water Code
- g. RCW 90.48 State Water Pollution Control Act
- h. RCW 90.58 Shoreline Management Act

3. Local regulations include:

- a. SEPA review
- b. Skagit County Shoreline Management Program
- c. On-Site Sewage Disposal Permits (septic systems)

- C. Jurisdictional Substitution. In cases where other agencies possess jurisdictional control over critical areas and it is determined by the Administrative Official that the permit conditions satisfy the requirements of this Chapter, those requirements may substitute for the requirements of this Chapter. Such requirements shall be a condition of critical area approval and be enforceable under this Chapter. Such agencies may include, but are not limited to, the United States Army Corps of Engineers, Environmental Protection Agency, and Fish and Wildlife Service; the Swinomish Tribe, and the Washington State Department of Ecology, Department of Natural Resources and Department of Fish and Wildlife. The Applicant shall be notified in writing when any such substitution is made.

**15.15.050 Resource Information and Maps.**

- A. Recognizing the necessity for accurate geographic information, a comprehensive inventory identifying the location, size, and other characteristics of critical areas shall be compiled as new data is available.
- B. The results of the inventory shall be transferred to maps and published. These maps shall be available for public inspection.
- C. When completed, critical area maps shall serve as guides to the location and extent of such critical areas.

In the interim, critical areas preliminary inventory maps shall be used to alert the public and responsible officials to the potential presence of critical areas on the site of proposed projects.

- D. The Town of Lyman's critical area maps, with the exception of the Flood Insurance Rate Map used to designate certain flood hazard areas, are provided only as a general guide to alert the user to the possible distribution, location and extent of critical areas. Map identification of critical areas provides only approximate boundaries and locations. The actual locations and boundaries of critical areas, as well as their quality and quantity, shall be based upon the

presence of the features applicable to each critical area element in this Chapter. Maps shall not be considered a regulatory standard or substitute for site specific assessments. The application of definitions, methodologies and performance standards pursuant to the site specific assessment requirements provided in this Chapter is the controlling factor in determining the actual presence and extent of critical areas.

- E. The Town of Lyman critical area maps utilize the best information currently available and will be updated on a continual basis.
- F. On a regular basis, formal requests shall be made for updated information to the resource agencies responsible for updating the map information contained in Appendix B. The updated information shall be incorporated into the critical areas map.
- G. Critical areas mapped under the site assessment requirements of this Chapter shall be compiled in a database and incorporated into critical area maps. This map information shall be utilized to facilitate tracking of compliance with the requirements of this Chapter to ensure long-term protection of critical areas.

#### **15.15.060 Authorizations Required.**

With the exception of activities identified as Allowed without Standard Review under Section 15.15.100, any land-use activity that can impair the functions and values of critical areas or their buffers through a development activity or by disturbance of the soil or water, and/or by removal of, or damage to, existing vegetation shall require critical areas review and written authorization pursuant to this Chapter. Vegetation destruction or removal, other than the normal maintenance of existing landscaping identified as Allowed without Standard Review under Section 15.15.100(14), shall be prohibited within a critical area or its required buffer, unless there is an approved a buffer management plan pursuant to the requirements of the particular critical area that demonstrates there will be no adverse impact to the critical area with the proposed vegetation removal and disturbance of the soil or water and includes any mitigation or buffer enhancement necessary to address critical areas impacts. Authorizations required under this Chapter overlay other permit and approval requirements. Regardless of whether a development permit or approval is required, any proposed alteration that can adversely affect a critical area or its standard buffers' functions must comply with the substantive and procedural requirements of this Chapter. Critical areas review pursuant to this Chapter shall be conducted as part of the underlying permit or approval, where applicable. It is the responsibility of the landowner, or designee, who conducts or proposes to undertake land use activities that can adversely impact critical areas or their buffers to obtain authorization prior to commencing such activities. In some cases, the typical thresholds that trigger review and permits have been reduced to zero for any development activity located within a critical area or its required buffer.

- A. Procedures: No land use development permit, land division, development approval, or other authorization required shall be granted until the Applicant has demonstrated compliance with the applicable provisions of this Chapter.
  - 1. The Applicant shall demonstrate that the proposal submitted conforms to the purposes and standards of this Chapter, assesses impacts on the critical area from activities and uses proposed, and identifies protective mechanisms adequate to meet the requirements of this Chapter.

2. The Administrative Official or designee shall review each proposal and determine if the proposal is consistent with applicable regulations of this Chapter and if the protective mechanisms proposed are sufficient to protect the critical area, public health, safety and welfare, and if so, shall condition approval accordingly. If not, the Administrative Official shall specify conditions of approval. If the Administrative Official determines that there are no conditions under which the proposal could be approved, then the Administrative Official shall deny the proposal.
3. Takings, hardships associated with dimensional requirements, and grievances are addressed through the reasonable use exception ( Section 15.15.150). Any proposed development or land division shall be conditioned as necessary to mitigate impacts to critical areas as required by this Chapter and, subject to the reasonable use exception of Section 15.15.150, any project that cannot adequately mitigate its impacts to critical areas shall be denied.

- B. Conflicts with Other Provisions: If any provision of this Chapter conflicts with any other applicable code provision, the more restrictive shall apply unless specifically excepted in this Chapter.
- C. Satisfaction of the requirements of this Chapter shall also be sufficient to satisfy the requirement for critical areas analysis and mitigation pursuant to RCW 43.21C and the State Environmental Policy Act (SEPA).
- D. Other Permits Required: It is recognized that many local, State, and/or Federal permit conditions may apply to the proposed action, and that compliance with the provisions of the Chapter may not necessarily constitute compliance with other such requirements.

**15.15.070 Public Notice and Records.**

- A. Public notice for projects subject to the provisions of this Chapter shall be provided pursuant to the requirements of the permit process as applicable.
- B. Records of all critical area assessments and related land use approvals and conditioning shall be maintained and be made available to the public upon request.

**15.15.080 Critical Area Review Procedures Generally.**

The administrative procedure for critical areas review shall be as follows:

- A. Determination that an activity requires standard review: All applications for approval of activities requiring written authorization pursuant to Section 15.15.060 of this Chapter shall require the submission of critical areas checklist completed and filed by the Applicant on the forms provided. If not otherwise required, all applications for critical areas review shall include a description of the proposed activity and a site plan showing the location of the proposed activity and associated area of disturbance in relation to all known critical areas or critical area indicators. Upon receipt of the application, the Administrative Official shall determine whether the proposed activity fits within any of the Activities Allowed without Standard Review found in Section 15.15.100. If the proposed activity is so allowed and meets the associated conditions for such an allowance, no other critical areas review shall be required, except as necessary for the Administrative Official to ensure that any conditions for such an allowance are met in practice. The Administrative Official shall note this determination in the

application file and provide written authorization for the project or activity to proceed as proposed in the application when undertaken in accordance with any conditions for such an allowance.

Proposed activities identified under Section 15.15.100 that do not meet the conditions for such an allowance or that the Administrative Official determines may result in significant adverse impacts to a critical area or its buffer shall be subject to standard critical areas review.

- B. Method for Initial Determination of Critical Areas: Upon determination that the proposed activity is not allowed without standard review, and upon receipt of a completed critical areas checklist, the Administrative Official shall use the following method to determine whether critical areas or their required buffers will possibly be affected by the proposed activity:
1. Review the critical areas checklist together with the maps and other critical areas resources identified in the relevant sections of this Chapter, and
  2. Complete the Critical Areas Staff Checklist; and
  3. Inspect the site; and
  4. Complete the Critical Areas Field Indicator form.
- C. Determination that Critical Areas are not Affected: If the Administrative Official determines that critical area indicators are not present within a distance specified in this Chapter, then the review required pursuant to this Chapter is complete, except as necessary for the Administrative Official to ensure that the proposed activity is undertaken as described in the application and as shown on the site plan. The Administrative Official shall note this determination in the application file and provide written authorization for the project or activity to proceed as proposed in the application or, where applicable, with any specific conditions of approval. This determination shall not constitute approval of any use or activity nor its compliance with the requirements of this Chapter, outside the scope of that stated in the application. Any proposed change in use or scope of activity from that contained in the application shall be subject to further review under this Chapter. The Applicant shall acknowledge in writing that this determination by the Administrative Official regarding the apparent absence of critical area indicators and the likelihood that critical areas will not be affected is not intended as an expert certification regarding the presence or absence of critical areas and that the critical areas review process is subject to possible reopening if new information is received as described in Subsection (4) below. If the Applicant wants greater assurance of the accuracy of any such critical area indicators determination, the Applicant shall hire a qualified critical areas expert to provide such assurances.
- D. Re-opening of review process.
1. If at any time prior to completion of the public input process on the associated permit or approval, the Administrative Official receives new evidence that a critical area may be present within a distance specified in this Chapter, then the Administrative Official shall reopen the critical areas review process pursuant to this Chapter and shall require whatever level of critical areas review and mitigation as is required by this Chapter.

2. Once the public input process on the associated permit or approval is completed and the record is closed, then the Administrative Official's determination regarding critical areas pursuant to this Chapter shall be final; provided, however, that the Administrative Official shall not be prevented from reopening the critical areas review process if County staff relied on misinformation provided by the Applicant in the application or checklist. For the purposes of this Subsection, "misinformation" means information regarding the nature and/or location of the proposed activity as presented in the application or regarding the presence of a critical area or critical area indicators on the subject property which the Applicant knew or should have known was relevant at the time of the submittal of the checklist. Prior to reopening a critical areas review under this Subsection, the Administrative Official shall make a site visit. No critical areas review shall be reopened under this Section unless the Administrative Official determines, after the site visit, that the Applicant provided misinformation.
  3. If a critical areas review is reopened under this Subsection after a permit or approval is granted, the burden of proof on whether the Applicant submitted "misinformation" at the time of the submittal of the checklist shall be on the Administrative Official. The fact that the Applicant no longer owns the subject property at the time the Administrative Official discovers the misinformation shall not be a bar to reopening critical areas review. The Applicant or landowner who submitted the critical areas checklist upon which the misinformation was discovered shall be the responsible party for compliance with this Chapter, including any necessary mitigation.
- E. Determination that Critical Areas are affected: If the Administrative Official determines that critical area indicators are present within a distance specified in this Chapter, then the Administrative Official shall note this determination in the application file and the Applicant shall be required to provide the critical areas site assessment specified in this Chapter. Development of a Site Assessment may precede a site visit, provided that no disturbance of vegetation or land surface occurs prior to authorization.
1. Such Plans must be sufficient to meet the environmental quality standards of the State of Washington established pursuant to RCW 90.48 Water Pollution Control, WAC 173-201 Water Quality Standards for Surface Waters of the State of Washington, and WAC 173-200 Water Quality Standards for Ground Waters of the State of Washington.
  2. Plans shall include Best Management Practices, including Riparian buffers, sufficient to ensure long-term protection of anadromous fish and their habitats.
- F. Critical Areas Determination and Conditions of Approval: Based on the critical areas site assessment report and other available critical areas information, the Administrative Official shall make a determination on the proposed activity. A determination to approve a proposed activity shall include designation of Protected Critical Areas (PCAs) pursuant to Section 15.15.170 and stipulation of binding conditions and required mitigation, monitoring, maintenance or other conditions of approval pursuant to this Chapter. If the Administrative Official determines that there are no conditions under which the proposed activity could be approved, then the Administrative Official shall deny the proposal.
- G. Option to apply for a reasonable use exception: If, as a result of the critical areas site assessment and determination, the Applicant believes that the requirements of this Chapter,

including any request for a variance from the requirements of this Chapter, still leave the Applicant with no reasonable economically viable use of his or her property, then the Applicant may apply for a reasonable use exception pursuant to Section 15.15.150 of this Chapter.

**15.15.090 Critical Areas Checklist, Site Assessment and Conditions of Approval.**

- A. Critical areas checklist. Pursuant to Section 15.15.060 and .080 of this Chapter, every application for an activity that might alter or adversely affect a critical area or associated buffer shall include a critical area checklist on a form provided by the Administrative Official. The checklist shall identify all critical area indicators and/or all known critical areas within a distance specified in this Chapter. The checklist shall be signed by the Applicant and shall inform the Applicant that if the information on the checklist is later determined incorrect, then any permit or approval issued based on misinformation (as described in Section 15.15.080(4)) could be rescinded and the site required to be restored to its original condition prior to disturbance.
- B. Site assessment required. If, after the site visit, the Administrative Official determines that the proposed activity area is within a distance specified in this Chapter, of an area that may contain critical area indicators, or if the Administrative Official determines that the proposed activity will adversely impact a critical area or its associated buffer, then a complete critical areas Site Assessment shall be required. Critical areas site assessments, as described in more detail in the various Sections for each type of critical area, shall be submitted as part of a complete application for a development permit or other approval of land use activities having the potential to impact critical areas or their buffers, by a qualified expert.
- C. Site assessment preparation. The critical area site assessment shall be prepared by a qualified expert for the type of critical area or areas involved and shall contain the information specified for each type of critical area. In general, the site assessment shall include critical area inventory, assessment of impacts and, where applicable, proposed mitigation, land-use restrictions and landowner management, maintenance and monitoring responsibilities. The qualified expert may consult with the Administrative Official prior to or during preparation of the site assessment to obtain approval of modifications to the contents of the site assessment where, in the judgment of the qualified expert, more or less information is required to adequately address the critical area impacts and required mitigation. The Administrative Official shall allow for peer review and receipt of recommendations from qualified resource agency personnel as part of the process for approval of qualified experts.
- D. Any site plans required by this Chapter may be combined into a single site plan wherever possible.
- E. Critical areas determination and conditions of approval. Upon receipt of a properly completed site assessment report, the Administrative Official shall make a formal determination on the proposed activity as to whether it meets the requirements of this Chapter and under what conditions. In making this determination, the Administrative Official shall utilize the information provided in the site assessment report and all other resource information available to the County. If the Administrative Official determines that additional technical information or input is necessary or warranted, the Administrative Official shall contact appropriate Federal, State or Tribal agencies to provide review and comment on the proposed activity. Formal determinations made by the Administrative Official shall include the basis and rationale

for the determination, as well as detailed specification of related conditions of approval, land use prohibitions, and required landowner mitigation, management, monitoring and/or maintenance. All such requirements shall be clearly shown on plans filed with the Administrative Official.

- F. Complete record. A complete record of all formal determinations by the Administrative Official, along with related critical areas checklists, site assessments, binding agreements, conditions of approval, land use prohibitions, required mitigation and a full record of comments received from Federal, State or Tribal agencies, shall be maintained and made available to the public upon request.

#### **15.15.100 Activities Allowed Without Standard Review.**

The following developments, land-use activities and associated uses occurring in critical areas and their buffers are allowed without standard critical areas review, provided that they are consistent with other applicable provisions of this Chapter. All such activities shall be carried out in ways that cause the least impact to critical areas and their buffers. If any damage is caused to a critical area or buffer in connection with such activity, the critical area and its buffer must be restored to the extent feasible.

To be allowed without standard review does not give permission to destroy a critical area or ignore risk. Proponents of such activities shall be responsible for notifying the Administrative Official if any damage occurs and shall provide all necessary restoration or mitigation. For information on identifying, protecting or mitigating adverse impacts to critical areas, refer to sections in this Chapter on wetlands, aquifer recharge areas, geologically hazardous areas, fish and wildlife habitat conservation areas, and flood hazard areas.

- A. Emergencies that threaten the public health, safety and welfare. An emergency is an unanticipated and imminent threat to the public health or safety or to the environment which requires immediate action within a period of time too short to allow full compliance with this Chapter. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods that can address the emergency but also that have the least possible impact to the critical area or its buffer. The responsible party shall restore the critical area and buffer after the emergency to the extent feasible. The person or agency undertaking such action shall notify the Administrative Official within 1 working day or as soon as practical following commencement of the emergency activity. Following such notification, the Administrative Official shall determine if the action taken was within the scope of the emergency actions allowed in this Subsection. If the Administrative Official determines that the action taken or any part of the action taken was beyond the scope of allowed emergency actions, then the enforcement provisions shall apply.
- B. Normal and routine maintenance or repair of existing structures, utilities, sewage disposal systems, potable water systems, drainage facilities, ponds, or public and private roads and driveways associated with pre-existing residential or commercial development, provided any maintenance or repair activities shall use reasonable methods with the least amount of potential impact to the critical areas and any impact to a critical area or its buffer shall be restored after the maintenance to the extent feasible.
- C. Normal maintenance, repair, or operation of existing structures, facilities, and improved areas accessory to a single-family residential use, provided any maintenance or repair activities shall

use reasonable methods with the least amount of potential impact to the critical area and any impact to a critical area or its buffer shall be restored after the maintenance to the extent feasible.

- D. Modification of an existing single-family residence that does not change the use from residential, does not expand the building footprint or increase septic effluent, and does not adversely impact critical areas or their buffers.
- E. Modification of other than a single-family use which does not expand the building footprint, alter the use or increase septic effluent, pursuant to the requirements of the nonconforming use and structure provisions, and does not adversely impact critical areas or their buffers.
- F. Outdoor recreational activities which do not adversely impact critical areas or their buffers.
- G. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling soil, planting crops, or changing existing topography, water conditions or water sources and provided further that the activity does not adversely impact critical areas or their buffers.
- H. The lawful operation and maintenance of public and private diking and drainage systems which protect life and property along the Skagit River. This exemption shall apply to the existing structures and design prism of levees, dikes, and artificial watercourses.
- I. Education and scientific research activities which do not adversely impact critical areas or their buffers.
- J. Construction or modification of navigational aids and channels markers.
- K. Site investigation work necessary for land use applications such as surveys, soil logs, percolation tests and other related activities which do not adversely impact critical areas or their buffers. In every case, critical area impacts shall be minimized and disturbed areas shall be immediately restored.
- L. Maintenance activities such as mowing and normal pruning, provided that such maintenance activities are limited to existing landscaping improvements and do not expand into critical areas or associated buffers, do not expose soils, do not alter topography, do not destroy or clear native vegetation, and do not diminish water quality or quantity.
- M. Fish, wildlife, wetland and/or riparian enhancement activities not required as mitigation provided that the project is approved by the U.S. Department of Fish and Wildlife, the Washington State Department of Fish and Wildlife or the Washington State Department of Ecology.

#### **15.15.110 Adoption of Surface Water Management Regulations**

All drainage associated with development shall be connected to approved drainage control systems with approved discharge points in compliance with the requirements of the Washington State Department of Ecology's Western Washington Storm Water Manual or approved alternate.

**15.15.150 Reasonable Use Exception.**

If the application of this Chapter would result in denial of reasonable and economically viable use of a property, then a landowner may seek a reasonable use exception from the standards of this Chapter. Reasonable use exceptions shall only apply to legal lots of record established prior to the effective date of this Chapter. Reasonable use exceptions are intended as a "last resort" when no plan for mitigation can meet the requirements of this Chapter and allow the Applicant a reasonable economically viable use of his or her property. The reasonable use exception shall only be granted under the following conditions:

- A. The application of this Chapter would deny all reasonable and economically viable use of the property so that there is no reasonable and economically viable use with a lesser impact on the critical area than that proposed; and
- B. The proposed development does not pose a threat to the public health and safety; and any proposed modification to a critical area will be evaluated by the Town Council through consideration of a Site Assessment and mitigation plan prepared by the Applicant's qualified consultant pursuant to the requirements of this Chapter, and will be the minimum necessary to allow reasonable and economically viable use of the property; and
- C. The Town Council may issue, as part of the findings in any decision made under this Subsection, conditions of approval, including modifications to the size and placement of structures and facilities to minimize impacts to critical areas and associated buffers. As part of the findings, the Town Council may also specify mitigation requirements that ensure that all impacts are mitigated to the maximum extent feasible; and
- D. The Town Council shall provide opportunity for public comment before a decision on a request for a reasonable use exception is made, including comments from appropriate Federal, State and Tribal natural resource agencies. The Town shall maintain a record of all information, including public comments, which were used in making a decision on a request for a reasonable use exception. This record shall be made available to the public upon request.

**15.15.160 Critical Area and Buffer Mitigation Requirements - General Provisions.**

- A. Buffers.
  - 1. As described in more detail in each relevant section, buffers have in some cases been determined necessary and appropriate to protect critical areas and their functions or to prevent risk from a critical area hazard. In those sections of this Chapter where specific buffers are identified, those buffers are deemed "required" or "standard" buffers. If a project or activity does not propose any alteration of those buffers or of the associated critical area and the Administrative Official determines that these buffers are adequate to protect the critical area or to prevent risk of a hazard from the critical area, then subject to the provisions of Section 15.15.170, no additional mitigation will be required. Once the critical area and its buffer have properly been delineated through a critical areas assessment and any-conditions of approval have been established, no further critical areas mitigation assessment is required, except as necessary to ensure that long-term protection of critical areas and buffers is met in practice through compliance with Section 15.15.170(1).

2. If, however, based on a site assessment by a qualified expert, unique features of the particular critical area or its buffer or of the proposed development, the qualified expert determines that additional buffers and/or mitigation measures beyond these buffers are necessary to adequately protect the function of the critical area or to prevent risk of a hazard from the critical area, the Administrative Official may impose such additional mitigation requirements, provided the qualified expert can demonstrate, based on best available science, why that additional mitigation or buffering is required to adequately protect the critical area function or to prevent hazard from a critical area.
3. Further, if the Applicant proposes to reduce these buffers or to alter the critical area or its required buffer, then the Applicant shall demonstrate pursuant to Section 15.15.140, based on best available science, why such buffer and/or critical area modification, together with such alternative mitigation proposed in the critical areas assessment, is sufficient to provide equal or better protection of the critical area function or provide no increased risk of a hazard from the critical area.
4. The critical areas assessment and the conditions of approval shall make adequate provision for long-term protection related to critical areas and buffers, and shall include the requirements established in Section 15.15.170.

However, critical areas and/or buffers identified as Protected Critical Areas (PCAs) as defined in this Chapter do not require any provisions for public access, and appropriate restrictions may be included in the easement or title documents. Critical areas and/or buffers identified as PCAs are however subject to periodic inspection by the Administrative Official, upon prior notification to the landowner, to ensure long-term protection.

5. Protected critical areas (PCAs).
  - a. For proposed land divisions, critical areas and their associated buffers identified through the site assessment and County review process shall be designated as PCAs and placed in separate tracts or easements and protected through protective covenants shown on the face of the recorded plat. (*See* Protected Critical Area Requirements, Section 15.15.170.)
  - b. For development projects or land use activities not involving a new land division, the critical area and its associated buffer identified through the site assessment process shall instead be identified as a PCA by either easement, open space designation or permit conditions, all including restrictive covenants and recorded with the Auditor on a site plan to insure long term protection. Critical areas and/or buffers identified as PCAs are subject to periodic inspection, upon prior notification to the landowner, to ensure long term protection.
6. Open Space - Protected Area. If a portion of a parcel contains a proposed development project that triggers a development permit, and has not had its critical areas and associated buffers delineated because it was outside the project or area affected by the project, then further critical areas assessment may be required in the future prior to any change of use, or new development permit for that portion of the site. *See* Section 15.15.080.

- B. Mitigation. All proposed alterations to critical areas or associated buffers shall require mitigation sufficient to provide for and maintain the functional values of the critical area or to prevent risk from a critical area hazard and shall give adequate consideration to the reasonable economically viable use of the property. Mitigation of one critical area impact should not result in unmitigated impacts to another critical area. Mitigation may include, but is not limited to: buffers, setbacks, limits on clearing and grading, best management practices for erosion control and maintenance of water quality, or other conditions appropriate to avoid or mitigate identified adverse impacts. Subject to the reasonable use exception provisions of Section 15.15.150, any proposed critical area alteration that cannot adequately mitigate its impacts to a critical area shall be denied.
- C. Preferred mitigation sequence. Mitigation includes avoiding, minimizing or compensating for adverse impacts to regulated critical areas or their buffers. The preferred sequence of mitigation is defined below:
1. Avoid the impact altogether by not taking a certain action or parts of an action;
  2. Minimize the 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;
  3. Rectify the impact by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project or activity;
  4. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action;
  5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.
- D. All proposed mitigation shall be included in the critical areas assessment. The critical areas mitigation shall include the following:
1. Description of proposed mitigations (critical areas lost/critical areas gained);
  2. Analysis of avoidance, minimization, reduction, and compensation;
  3. Functional analysis of mitigation/analysis of prevention of risk hazard;
  4. Proposed Applicant or landowner monitoring or inspection measures and schedule, including specification of method and frequency of submittal of reports on results; and
  5. Contingency plan.
- E. The Administrative Official shall make the final determination regarding required mitigation. Required mitigation shall be included in an approved mitigation plan.
- F. Financial Assurance. The Administrative Official or his/her designee shall require the complete mitigation proposed in the site assessment to be completed prior to final approval of

the development permit. For all projects with an estimated mitigation cost of \$4,000 or over, the Administrative Official shall require financial assurance which will assure compliance with the mitigation plan if the complete mitigation proposed in the site assessment cannot be completed prior to final approval of the development permit. Financial assurance shall be in the form of either a surety bond, performance bond, assignment of savings account or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the Town Attorney, shall be in the amount of 125% of the estimated cost of the uncompleted actions or construction, and shall be assigned in favor of the Town. The term of the financial assurance shall remain in place until the required mitigation is complete.

- G. Monitoring of critical areas mitigation. On a regular basis, but no longer than once every two years, the Administrative Official shall make a significant sampling of projects and activities for which critical area site assessments were required, including mitigation plans, potentially impacting fish-bearing streams and/or Category I, II or III wetlands. The sample shall be taken from permits or approvals issued more than 10 months prior to the sampling date. The selected sites shall be inspected for critical area and buffer size and condition and for compliance with any required mitigation or other conditions of approval. Results of such sampling shall be included in the permanent record for the project or activity, shall be reported to the Town Council, and shall also be utilized for enforcement purposes.

**15.15.170 Protected Critical Area (PCA) Requirements.**

A. PCA identification and recording.

1. PCA identification. Approval of development projects which trigger a development permit and other land-use activities that can cause adverse impacts to critical areas and/or their buffers shall require the identification and designation of PCAs by the Administrative Official. PCAs shall include all critical areas and associated buffers on the proposed project site which have been identified through the site assessment process.
2. PCA recording. All PCAs shall be recorded with the County Auditor in accordance with the procedures established under this Section. The Applicant shall be responsible for all fees and other costs associated with recording of PCAs.
3. Binding agreements. For each project or activity that requires recording of PCAs, the following information shall be recorded with the Auditor as part of a binding agreement between the landowner and the County which shall run with the land and be readily available to the public upon request:
  - a. Binding agreement signed by the landowner and the Administrative Official or designee which stipulates any special conditions of approval, protective covenants, binding conditions, or other requirements such as use restrictions, required mitigation, and/or landowner maintenance or monitoring requirements established at the time of approval;
  - b. Required final plat map or site plan clearly showing the locations of PCAs, existing vegetation and permanent buffer edge markers;

c. Additional information necessary to document the critical areas inventory at the time of approval, including descriptions of identified critical areas, their locations, functions and values, and existing critical areas or buffer vegetation;

d. Identification of any local responsibilities beyond those required by this Chapter;

e. Reference to the file containing the complete record of information pertaining to approval of the project or activity.

4. Permanent buffer edge markers. Except as provided under Subsection (i) below, the outer edges of all PCAs, with the exception of aquifer recharge areas, shall be clearly marked on-site by the Applicant or landowner with permanent rebar stakes and critical area markers. Critical area markers may be either approved critical area signs or inexpensive steel posts painted a standard color approved by the Administrative Official that is clearly identifiable as a critical area marker. Installation of permanent markers shall be the responsibility of the landowner.

a. The Administrative Official may waive or modify the requirement for permanent buffer edge markers provided that any such decision shall be based on a site-specific determination that future verification of PCA locations will not be substantially more difficult without the placement of permanent markers and that such waiver or modification will not result in reduced long-term protection of critical areas. Prior to approving any such waiver or modification, the Administrative Official shall provide the opportunity for review and comment from appropriate Federal, State and Tribal natural resource agencies. The comments shall be included in the permanent record and made available to the public upon request.

b. Where such permanent markers are required, the Administrative Official shall specify their frequency of placement and general location. Permanent markers shall be placed to locate the edge of the PCA to an approximate accuracy of within 5% of the specified buffer width or within 5 feet, whichever is larger. The spacing intervals of the markers shall be such as to provide comparable accuracy of line-of-sight determination of buffer edges. The locations of all required stakes/ markers shall be shown on the plat map or site map recorded with the Auditor.

B. Protected Critical Area (PCA) Designations for New Land Divisions:

1. For land divisions where site assessments have occurred pursuant to Section 15.15.170(1)(a), all PCAs shall be placed into separate tracts or easements, whose uses shall be regulated by the provisions of this Chapter and any conditions of approval, including protective covenants and binding agreements as provided for under Subsection (1) above. Area within a PCA can be included in total acreage for development purposes and may be used in lot area or density calculations. PCAs may be owned and maintained by the owner of the lot of which they are a part or transferred to the homeowners association or land trust.

2. Recording. PCA designations shall be recorded with the Auditor as part of the plat approval process. The Auditor file number referencing the agreement shall be on the face of the plat and its provisions shall run with the land.

3. PCA descriptions. The location of PCAs shall be clearly identified on site plans and on preliminary and final plat maps. PCAs shall be labeled using the letters A through Z, or another labeling system approved by the Administrative Official. Where more than 1 lot is involved, each lot shall carry independent labeling as described in subsection (4)(a) below.
4. Ingress, egress and use. Owners of PCAs shall grant ingress and egress by the Administrative Official or his or her agent for monitoring and evaluation of compliance with established conditions of approval, binding conditions or any required mitigation. As part of an approved land division, the use limitations required of a designated and regulated critical area according to the provisions of this Chapter, including the conclusions of the critical areas site assessment report and any conditions of approval, protective covenants and other binding conditions, shall be clearly stated on the face of the recorded plat.

C. PCAs on Pre-Existing Lots.

1. For development proposals and other land use activities that can adversely impact critical areas on pre-existing lots, not part of a proposed land division or other form of multiple lot development, PCAs shall be identified on a scaled site plan showing the location of the PCA, structures (existing and proposed) and their distances from the PCA and lot lines to show relative location within the subject parcel(s). The project or activity shall be conditioned for critical area protection and the resulting information recorded with the Auditor as defined under Subsection (1) above. The site plan may be prepared by the Applicant and all distances and locations of structures may be measured from the established PCA boundary to within plus or minus 5 feet.
2. Ingress and egress. Owners of PCAs shall grant ingress and egress by the Administrative Official or designee for monitoring and evaluation of compliance with established conditions of approval, binding conditions or any required mitigation.

D. PCA Mapping, Labeling, and Area Calculations.

1. All PCAs or OS-PAs shall be mapped. The area shall be delineated on the final plat map or on a site plan to an accuracy of plus or minus 5 feet horizontal and monumented in the field by a qualified expert pursuant to Section 15.15.170(1)(d). If a survey was not used to map the critical area, a note on the final plat map shall be recorded stating that a legal survey was not performed to delineate the critical area and that the surveyor is not incurring liability for the exact boundaries of the critical area on the plat map.
2. During construction phases of development, clear temporary marking using flagging and staking shall be maintained along the outer limits of the delineated PCA or the limits of the proposed site disturbance outside of the PCA. Prior to the start of construction activity, and as necessary during construction, temporary markings shall be inspected and approved by the Administrative Official or designee. The person responsible for inspecting the temporary flagging shall provide written confirmation to be included in the record as to whether or not the flagging has been installed consistent with the permit requirements prior to commencement of the permitted activity.

3. All PCAs shall include the necessary labeling to show calculated area (in square feet or acreage), and type and/or class of critical area within each lot. This information shall be noted on the face of the approved plat or site plan.
4. Signs or fencing required as part of critical area mitigation. The Administrative Official shall require permanent signs or fencing where the Administrative Official determines that it is a necessary component of a mitigation plan. Examples include situations where variances to the dimensional requirement of this Chapter have been granted and the development will occur within a PCA; or where the sensitivity of the PCA will be impacted unless access to the PCA is limited (such as changes of use to farming where livestock is involved).

The intent is to provide clear and sufficient notice, identification and protection of critical areas on-site where damage to a critical area or buffer by humans or livestock is probable due to the proximity of the adjacent activity.

5. Sign, marker and fence maintenance. It is the responsibility of the landowner, or any subsequent landowner, to maintain the required PCA markers, signs or fences in working order throughout the duration of the development project or land use activity. Maintenance includes any necessary replacement. Removal of required signs, markers or fences without prior written approval of the Administrative Official shall be considered a violation of this Chapter.

#### **15.15.180 Incentives.**

A. The following incentives are intended to minimize the burden to individual property owners from application of the provisions of this Chapter and assist the County in achieving the goals of this Chapter:

1. **Open Space.** Any property owner on whose property a critical area or its associated buffer is located and who proposes to put the critical area and buffer in a separate open space tract may apply for current use property tax assessment on that separate tract pursuant to RCW 84.34.
2. **Conservation Easement.** Any person who owns an identified critical area or its associated buffer may place a conservation easement over that portion of the property by naming a qualified designee under RCW 64.04.130 as beneficiary of the conservation easement. This conservation easement can be used in lieu of the creation of a separate critical areas tract to qualify for open space tax assessment described in Subsection (1) above.

The purpose of the easement shall be to preserve, protect, maintain, restore and limit future use of the property affected. The terms of the conservation easement may include prohibitions or restrictions on access and shall be approved by the property owner and the qualified designee.

## **ARTICLE 2 WETLANDS**

**15.15.200 Wetlands Designations.**

Wetlands shall be identified and designated through a site visit and/or a site assessment utilizing the definitions, methods and standards set forth in the Washington State Wetland Identification and Delineation Manual, Department of Ecology publication # 96-94.

**15.15.210 Wetlands Initial Project Review.**

- A. A site visit shall be conducted to confirm the presence of wetland indicators listed in the critical areas checklist or identified on critical areas map references as being within 200 feet of a proposed project or activity. A positive confirmation by the Administrative Official that site indicators are present or that the proposed project may impact the wetland area will then require a professional site assessment.
- B. The Administrative Official shall use the following map references to assist in making a determination:
  - 1. Wetlands mapped under the National Wetland Inventory by the U.S. Department of Interior; Fish and Wildlife Service;
  - 2. Areas mapped as hydric soils under the Soil Survey of Skagit County Area, Washington by the United States Department of Agriculture; Soil Conservation Service;
  - 3. A water of the State as defined under WAC 222-16-030 and maintained in the Washington State Department of Natural Resources Stream Type Maps; and
  - 4. Wetlands previously identified through the methodology specified under Section 15.15.200 for another project.

**15.15.220 Wetlands Site Assessment Requirements.**

If a wetlands site assessment is required, it shall meet the following requirements:

- A. A wetland reconnaissance shall be performed by a qualified wetlands professional. The reconnaissance shall identify the presence of wetlands within 200 feet of the project or activity area. If this wetland reconnaissance demonstrates no wetlands within 200 feet of the activity area, then no further study is required.
- B. A wetland delineation shall be performed as part of a site assessment where a wetland reconnaissance confirms the presence of a wetland or the Applicant chooses to perform delineation instead of a Wetland Reconnaissance. The delineation shall be performed by a qualified wetland professional trained in conducting delineations in accordance with the methodology specified under Section 15.15.200 above.
- C. Wetlands site assessment: The site assessment shall be prepared by a qualified wetland professional consistent with this Section and Section 15.15.200 above. The site assessment shall include the following:
  - 1. Site plan prepared in accordance with the requirements of this code indicating the presence of wetlands within 200 feet of the project or activity area. This site plan information may be prepared by the Applicant with review by the qualified wetlands professional. If the Applicant

together with assistance from the Administrative Official cannot obtain permission for access to properties within 200 feet of the activity area then an approximation of the extent of off-site wetlands within 200 feet of the area may be completed based on aerial interpretation and/or visual observation from nearby vantage points;

2. Wetland community description including Cowardian classification and wetland rating based upon Washington State Department of Ecology's Washington State Wetland Rating System (1993);

3. Delineation report including a site map indicating wetland boundaries and the locations of all data points;

4. Values and functions assessments shall include but not be limited to discussion of water quality, fish and wildlife habitat, flood and stream flow attenuation, recreation and aesthetics;

5. Project description and impact assessment shall include a detailed narrative describing the project, its relationship to the wetland and its potential impact to the wetland; and

6. Any proposed mitigation plan shall include a discussion on how the project has been designed to avoid and minimize adverse impacts to wetlands and should follow the general mitigation plan requirements described in Section 15.15.240 below and Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals, Department of Ecology, March 1994.

7. Approval of any activity that can adversely affect regulated wetlands shall conform to the requirements set forth in Section 15.15.170(1).

#### **15.15.230 Alteration of Wetlands.**

A. A regulated wetland or its required buffer can only be altered if the wetlands site assessment shows that the proposed alteration does not degrade the quantitative and qualitative functioning of the wetland, or any degradation can be adequately mitigated to protect the wetland function. Any alteration approved pursuant to this Section shall include mitigation necessary to mitigate the impacts of the proposed alteration on the wetland as described in Section 15.15.240 (Mitigation) below.

B. Storm water discharge.

1. Storm water discharges to wetlands shall be controlled and treated to provide all known and reasonable methods of prevention, control, and treatment as mandated in the State Water Quality Standards, WAC 173-201A, as required by State law.

#### **15.15.240 Wetland Mitigation Standards.**

A. Mitigation Plan Requirements: Along with the other provisions of the other subsections below, the following items are required as part of a mitigation plan:

1. Description of Project or Activity and Impact Assessment shall include a detailed narrative describing the project or activity, its relationship to the wetland and its potential impact to the wetland.

2. Any proposed mitigation plan shall include a discussion on how the project or activity has been designed to avoid and minimize adverse impacts to wetlands and should follow the general mitigation plan requirements described in Section 15.15.240 below and Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals, Department of Ecology, March 1994.

B. Standard Wetland Buffers Requirements: Buffers satisfy the first step in the mitigation sequence set forth in this Section. They are necessary in order to avoid potential project generated impacts. Buffers help maintain water quality and habitat diversity while stabilizing hydrology and minimizing direct human disturbance to wetlands. Buffer widths are based on wetland rating, the functions that the buffer is expected to perform, and the intensity of the proposed land use. The following standard buffers shall be required for regulated wetlands unless otherwise provided for in this Section:

CATEGORY I 150
CATEGORY II 100
CATEGORY III 50
CATEGORY IV 25

1. Wetland buffers shall be measured horizontally in a landward direction from the wetland edge, as delineated in the field, pursuant to the requirements of Section 15.15.220. Where lands adjacent to a wetland display a continuous slope of 25% or greater, the buffer shall include such sloping areas. Where the horizontal distance of the sloping area is greater than the required standard buffer, the buffer shall be extended to a point 25 feet beyond the top of the bank of the sloping area.

2. Except as otherwise specified, wetland buffers shall be retained in their natural condition.

3. Where buffer disturbance or alteration has or will occur in conjunction with regulated activities, re-vegetation with native vegetation shall be required and completed 1 month before the end of the growing season.

4. Any wetland created, restored or enhanced as compensation for approved wetland alterations shall also include the standard buffer required for the category of the created, restored, or enhanced wetland.

C. As described generally in subsection (1) above, if an Applicant does not propose to alter the required buffer, then no additional wetland impact mitigation shall be required.

D. If an Applicant proposes to decrease or alter a required buffer or alter a wetland pursuant to Section 15.15.150, the Applicant shall demonstrate why such buffer and/or wetland modification, together with such alternative mitigation proposed in the wetland area assessment is sufficient to adequately protect the wetland functions and values.

E. Performance Based Buffer Alternatives: Buffer widths may be increased, decreased or averaged in accordance with the following provisions. In implementing alternative buffer widths, the Administrative Official shall provide opportunity for review and comment from appropriate Federal, State and Tribal natural resource agencies to ensure the use of best available science. These comments shall be included in the public record along with the basis and rationale for requirement or approval of any such alternative buffer widths.

1. Buffer Width Increasing: Standard buffers may be increased upon a determination by the qualified wetland expert with confirmation from the Washington State Departments of Ecology and/or Fish and Wildlife that buffer width averaging is not adequate to protect the functions and values of the wetland and increased buffer widths are necessary to:

- a. Maintain viable populations of existing species listed by the Federal or State government as endangered, threatened or sensitive; or,
- b. Maintain critical habitat for those species referenced in Subsection (i) above;
- c. Protect wetlands against severe erosion that standard erosion control measures will not effectively address;
- d. If the wetland contains variations in sensitivity, increasing the buffer widths will only be done where necessary to preserve the structure, function and value of the wetland.

2. Buffer Width Decreasing: Decreasing of standard buffer widths will be allowed pursuant to Section 15.15.150 only if the Applicant demonstrates that all of the following criteria are met:

- a. A decrease is necessary to accomplish the purposes of the proposal and no reasonable alternative is available; and
- b. Decreasing width will not adversely affect the wetland functions and values; and
- c. If a portion of a buffer is to be reduced, the remaining buffer area will be enhanced, using native vegetation, artificial habitat features, vegetative screening and/or barrier fencing as appropriate to improve the functional attributes of the buffer and to provide adequate protection for wetland functions and values; and
- d. The buffer width shall not be reduced below 50% of the standard buffer width or 25 feet, whichever is greater.

F. Allowed uses in buffers: Low impact uses and activities which are consistent with the purpose and function of the habitat buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the habitat involved provided, that such activity shall not result in a decrease in wetland functional values and shall not prevent or inhibit the buffer's recovery to at least pre-altered condition or function. Examples of uses and activities which may be permitted in appropriate cases, as long as the activity does not retard the overall recovery of the buffer, include removal of noxious vegetation, pedestrian trails, viewing platforms, and storm water management facilities such as grass-lined swales.

G. Establishment of Limits of Clearing: The location of the outer extent of the wetland buffer and the limits of the areas to be disturbed shall be marked in the field and be included as a condition of a development permit or approval. Such field markings may be field-approved by the Administrative Official prior to the commencement of permitted activities. Markings shall be maintained throughout the duration of any construction activities.

H. Exceptions to Mitigation Requirements: Requirements for mitigation do not apply under the following circumstances:

1. When a wetland alteration is intended exclusively for the enhancement or restoration of an existing regulated wetland and the proposal will not result in a loss of wetland function and value, subject to the following conditions:

a. The enhancement or restoration project shall not be associated with a development activity.

b. An enhancement or restoration plan shall be submitted for site plan review. The restoration or enhancement plan must include the information required under Section 15.15.220.

2. When a wetland is a part of a development activity that is permitted by the Corp of Engineers NWP 14 permitting crossing of wetlands as part of road construction.

I. Compensatory Mitigation.

1. General Provisions:

a. Compensatory mitigation shall be conducted on property which shall be protected and managed to avoid further loss or degradation. The Applicant shall provide for long term preservation of the compensation area.

b. Compensatory mitigation shall follow an approved Compensatory Mitigation Plan pursuant to Section 15.15.230 and reflect the restoration/creation ratios specified in Subsection (b) below.

c. Enhancement of existing wetlands, other than Category I and Category II wetlands, may be considered for compensation.

d. Compensation shall be completed prior to, or concurrently with, wetland loss, or, in the case of an enforcement action, prior to further development of the site.

2. On-Site Compensation: As a condition of any development permit or approval which results in on-site loss or degradation of regulated wetlands and/or wetland buffers, the Administrative Official shall require of the Applicant compensatory mitigation to offset impacts resulting from the actions of the Applicant. On-site compensation is generally preferred over off-site compensation.

Except under Section 15.15.240(9) (Exceptions), any person who alters or proposes to alter regulated wetlands shall restore or create areas of wetland in order to compensate for wetland

losses. The following ratios in the table below apply to creation or restoration which is in-kind (*i.e.*, the same type of wetland), on-site, and is accomplished prior to or concurrently with loss. The first number specifies the acreage of wetlands to be restored or created and the second specifies the acreage of wetlands lost:

**Wetland On-Site Restoration/Creation Ratios:**  
**Wetland Created: Wetland Area Lost**

Category I 4:1

Category II or Category III

Forested 3:1

Scrub/shrub 2:1

Emergent 2:1

Category IV 1.25:1

3. Off-Site Compensation: Off-site compensation allows replacement of wetlands away from the site on which the wetland has been impacted by a regulated activity. Off-site compensation will be conducted in accordance with the restoration/creation ratios described in Subsection 15.15.240(10)(b) and selecting compensation sites in Subsection 15.15.240(10)(e). Off-site compensation shall occur within the same drainage basin of the same watershed where the wetland loss occurs. In such instances, the storm water storage function provided by Category IV Wetlands must be provided for within the design of the development project. Off-site compensation can be allowed only under one or more of the following circumstances:

- a. On-site compensation is not feasible due to hydrology, soils, or other factors;
- b. On-site compensation is not practical due to probable adverse impacts from surrounding land uses or would conflict with a Federal, State or County public safety directive;
- c. Potential functional values at the site of the proposed restoration are greater than the lost wetland functional values;
- d. When the wetland to be altered is of a limited functional value and is degraded, compensation shall be of the wetland community types needed most in the location of compensation and those most likely to succeed with the highest functional value possible.

4. Out-of-kind compensation can be allowed when out-of-kind replacement will best meet the provisions of Subsection (10)(e) of this Section and the mitigation sequence outlined in this Section.

5. Selecting Compensation Sites: General Provisions.

- a. Except in the case of cooperative compensation projects in selecting compensation sites, Applicants shall pursue locations in the following order of preference:

1) Filled, drained, or cleared sites which were formerly wetlands and where appropriate hydrology exists;

2) Upland sites, adjacent to wetlands, if the upland is significantly disturbed and does not contain a mature forested or shrub community of native species, and where the appropriate natural hydrology exists.

b. Where out-of-kind replacement is accepted, greater restoration/creation ratios may be required.

J. Timing: Construction of compensation projects shall be timed to reduce impacts to existing wildlife and plants. Construction shall be timed to assure that grading and soil movement occurs during the dry season and planting of vegetation shall be specifically timed to needs of the target species.

K. Alternative Compensation Projects: The Administrative Official may encourage, facilitate and approve innovative wetland mitigation projects. Advance compensation or mitigation banking are examples of alternative compensation projects allowed under the provisions of this Section wherein one or more Applicant(s), or an organization with demonstrated capability, may undertake a compensation project together if it is demonstrated that all of the following circumstances exist:

1. Creation of one or several larger wetlands may be preferable to many small wetlands;

2. The group demonstrates the organizational and fiscal capability to act cooperatively;

3. The group demonstrates that long term management of the compensation area will be provided;

4. There is a clear potential for success of the proposed compensation at the identified compensation site;

5. Conducting compensation as part of a cooperative process does not reduce or eliminate the required replacement ratios outlined in Section 15.15.240 (10). Exception: where a compensatory mitigation plan including a 5 year monitoring agreement is included as a condition of approval, such plan shall allow for 1:1 replacement ratios upon successful completion of the monitoring agreement;

6. Wetland mitigation banking programs consistent with the provisions outlined in the Department of Ecology's publication 92-12 (Wetland Mitigation Banking) and publication 94-29 (Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals) will be considered as a method of compensation for unavoidable, adverse wetland impacts associated with future development.

## **ARTICLE 3 AQUIFER RECHARGE AREAS**

### **15.15.300 Aquifer Recharge Areas.**

- A. Intent. This Section establishes areas determined to be critical in maintaining both groundwater quantity and quality. This Section specifies regulatory requirements to be enacted when development within these areas is proposed to occur and provides a methodology by which the level of review and any mitigation required is determined. The intent of this Section is to:
1. Define minimum regulatory requirements to protect groundwater quality and quantity for existing and future use; and
  2. Identify the practices, alternatives, or mitigations that can minimize the adverse impacts of proposed projects; and
  3. Insure adequate design, construction, management, and operations to protect groundwater quality and quantity.
- B. Existing and future beneficial uses of groundwater shall be maintained and protected and degradation of groundwater quality that would interfere with or become injurious to beneficial uses shall be avoided or minimized.
- C. Wherever groundwater's are determined to be of a higher quality than the criteria established for said waters under this Section, the existing water quality shall be protected, and contaminants that will reduce the existing quality thereof shall not be allowed to enter such waters, except in those instances where it can be demonstrated that:
1. An overriding consideration of the public interest will be served; and
  2. All contaminants proposed for entry into said groundwater(s) shall be provided with all known, available, and reasonable methods of prevention, control, and treatment prior to entry.
- D. It is the intent of this regulation to be consistent with and implement the requirements of RCW 90.48, RCW 90.54, WAC 173-200, WAC 173-201A, WAC 173-160, WAC 246-290, and WAC 246-291, as the same may hereafter be amended.

#### **15.15.310 Aquifer Recharge Area Designations.**

Two categories are designated for aquifer recharge areas. These categories are designated to assist the Administrative Official in determining the level of assessment necessary to evaluate specific land use proposals. The categories are based on the determination that certain areas require additional scrutiny of the potential impacts of a proposed land use with consideration given to hydro geologic vulnerability. All designated areas are subject to change as data and information are updated or become available.

- A. Designation categories.
1. Category I areas are those so designated because of the need to provide them special protection due to a specific pre-existing land use, or because they are identified by the local, State or Federal government as areas in need of special aquifer protection where a proposed land use may pose a potential risk which increases aquifer vulnerability.

Category I includes areas served by groundwater which have been designated as a “Sole Source Aquifer Area” under the Federal Safe Drinking Water Act; areas identified within a “closed” or “low-flow” stream watershed designated by the Department of Ecology pursuant to RCW 90.22; areas identified by the Department of Ecology as sea water intrusion areas; and areas designated as “Wellhead Protection Areas” pursuant to WAC 246-290-135(4) and the groundwater contribution area in WAC 246-291-100 (2)(e). Wellhead protection areas shall, for the purpose of this regulation, include the identified recharge areas associated with either Group A public water supply wells, those Group B wells with a wellhead protection plan filed with the Skagit County Health Department, or plats served by 5 or more individual wells where the average lot size is equal to or less than 2 acres for which a well head protection plan has been completed and filed with the Skagit County Health Department. Category I areas are shown on the Aquifer Recharge Area map.

2. Category II is designated as areas not identified as Category I areas.

3. When any portion of the proposed project area lies partly within a Category I area, the proposed project shall be subject to the level of scrutiny provided for Category I area.

**15.15.320 Aquifer Recharge Applicability and Prohibited Activities.**

- A. Applicability: All development projects are subject to the provisions of this Section except for the following:
1. Existing activities that currently and legally exist at the time this Chapter became effective. However, expansions or changes in use are subject to this Section and the review process contained herein.
  2. Single family residential building permits, including accessory building permits, which are outside Category I areas.
  3. Residential short plats outside Category I areas where each lot is 2.5 acres or greater.
  4. Single family residential building permits where a site assessment report was required to be completed for the land division, in which case, to meet the conditions of this exemption, the Applicant must comply with the recorded plat notes and the applicable mitigations contained in the site assessment report.
- B. Prohibited activities: The following activities are prohibited in Category I areas due to the probability and/or potential magnitude of their adverse effects on groundwater:
1. Landfill activities as defined in WAC 173-304 and WAC 173-351.
  2. Class V injection wells, including:
    - a. Agricultural drainage wells;
    - b. Untreated sewage waste disposal wells;
    - c. Cesspools;

- d. Industrial process water and disposal wells; and
- e. Radioactive waste disposal.

3. Radioactive disposal sites.

**15.15.330 Aquifer Recharge Initial Project Review.**

- A. General Procedures: Applicants for all development projects not allowed under Section 15.15.100 or Section 15.15.320 of this Chapter shall be required, through a site assessment report prepared pursuant to Section 15.15.340, to evaluate potential impacts to aquifer recharge areas, and appropriate mitigation measures to reduce or eliminate the potential for adversely impacting aquifer recharge areas shall be identified. The level of study and report detail required will be determined by the Administrative Official based on the type of land use being proposed, the designated aquifer recharge area category, and the vulnerability of the underlying aquifer(s) to contamination. The goal of this Section is to require Applicants to identify and characterize vulnerability only to the level necessary to determine appropriate mitigation measures necessary, to either reduce potential adverse impacts to established parameters or eliminate potential adverse impacts to underlying aquifer(s).
- B. Scoping: The level of study which will be required of the Applicant by the Administrative Official for a given development will be based on an initial project review that may include staff from the Planning and Health Departments, and a Hydro geologist.

Elements for the report that are required at a minimum and other elements that may be required as part of the scope for the study are listed in Section 15.15.340. Subsequent findings from the study or other information made available after the initial project review may obligate the Applicant to additional evaluation, development of a mitigation plan, and/or development of a groundwater monitoring plan. The following outlines the review process:

1. The Administrative Official and Health Officer shall review the project and determine the required scope of the Site Assessment Report. The scope of site assessment required shall be conveyed to the Applicant and/or his or her representative in writing. The Applicant may present evidence to the Administrative Official and Health Officer to justify reduction in the scope for the Site Assessment Report.
2. The Site Assessment Report shall be submitted to the Town for review. The Administrative Official and/or Health Officer shall approve the Site Assessment Report as submitted, require additional evaluation, or require development of a Mitigation Plan. If additional information is required beyond the initial Site Assessment Report, the Applicant and/or his or her representative shall be notified in writing of the specifics of the information required. The Applicant may present evidence to the reviewing official to justify modification of the requirement for additional information or present alternative or additional mitigation measures in lieu of further study.
3. When, to the satisfaction of the Administrative Official, all information is provided and mitigation(s) established as being in compliance with this Section, the Administrative Official shall make appropriate recommendations for project permit approval.

### **15.15.340 Aquifer Recharge Site Assessment Report.**

- A. The scope of the Site Assessment Report shall be determined based on the initial project review specified in Section 15.15.330. The scope of the report may be reduced by utilizing appropriate mitigation measures, or if the water quality or quantity issue(s) are already known.
  
- B. The Site Assessment Report shall be prepared by, or under the direction of, and signed by a professional engineer, licensed in the State of Washington, trained and qualified to analyze geologic, hydrologic, and groundwater flow systems; or by a geologist or hydro geologist who earns his or her livelihood from the field of geology and/or hydrogeology and has received a degree in geological sciences from an accredited 4 year institution of higher education and who has relevant training and experience analyzing geologic, hydrologic, and groundwater flow systems.
  
- C. Site assessment report requirements: A site plan shall be prepared in accordance with the requirements of this code. In addition, a site assessment report shall include:
  - 1. A description of the project including those activities, practices, materials, or chemicals that have a potential to adversely affect the quantity or quality of underlying aquifer(s).
  - 2. Identification of appropriate mitigation measures and description of how they will prevent degradation of underlying aquifer(s).
  - 3. A site plan or another appropriately scaled map showing the approximate location of known or geologically representative well(s) (abandoned and active), spring(s), and surface watercourses within 1,000 feet of the subject project property. All well logs available through the Health Department for identified wells within 1000 feet of the project property shall be included.
  - 4. A description of the site-specific hydro geologic characteristics regarding impact to the quantity or quality of underlying aquifer(s). At a minimum this will include a description of the lithology, depth to and static water level of known underlying aquifer(s), and depiction of groundwater flow direction and patterns on the appropriate map.
  - 5. Identification of the initial receptors of potential adverse impacts located hydraulically down-gradient from the project within 1,000 feet or as otherwise directed by the Administrative Official and/or Health Officer.
  
- D. Additional site assessment elements: After the initial project review, one or more of the site assessment elements listed below may be required based upon the proposed project activity, aquifer recharge area classification, complexity of underlying hydro geologic conditions, and/or the perceived potential to adversely impact hydraulically down gradient receptors. One or more of these additional elements may also be required if the Applicant chooses to demonstrate that certain mitigation measures are not necessary to protect the quantity or quality of the underlying aquifer(s), or that the project does not pose a detrimental risk to hydraulically down gradient receptors.
  - 1. Lithologic characteristics and stratigraphic relationships of the affected aquifer(s) and overlying geologic units (includes soil types) including thickness, horizontal and vertical extent, permeability, and infiltration rates of surface soils.

2. Delineation of identified structural features such as faults, fractures, and fissures.
3. Aquifer characteristics including determination of recharge and discharge areas, transmissivity, storage, hydraulic conductivity, porosity, and estimate of groundwater flow direction, velocity and patterns for the affected aquifer(s).
4. Estimate of precipitation, evaporation, and evapotranspiration rates for the project area.
5. Preparation of appropriate hydro geologic cross sections depicting at a minimum underlying lithology and stratigraphy, aquifer(s), and potential or probable contaminant pathways from a chemical release.
6. Contaminant fate and transport including probable migration pathways and travel time of potential contaminant release(s) from the site through the unsaturated zone to the aquifer(s) and through the aquifer(s), and how the contaminant(s) may be attenuated within the unsaturated zone and the aquifer(s). Includes consideration of advection, dispersion, and diffusion of contaminants in the groundwater.
7. Delineation of areas potentially affected by contaminant migration on the ground surface and/or through the affected aquifer(s).
8. Determination of background or existing groundwater quality underlying the project area.
9. Development of a groundwater monitoring program to measure potential impacts of the development to underlying aquifer(s).
10. Development of a spill plan and/or contingency plan describing the specific actions, which will be taken if a release of a contaminant(s) occurs, or if groundwater monitoring results indicate a contaminant(s) from the site has entered the underlying aquifer(s).
11. The degree of continuity between groundwater and nearby surface water including potential impact to “closed” or “low-flow” streams (as described in Section 15.15.350) from proposed groundwater withdrawals, and potential impacts to surface water quality from site runoff or contaminated groundwater discharge.
12. In conjunction with the Department of Ecology Seawater Intrusion Policy and subsequent policies or ordinances, applicable projects shall be required to determine appropriate pumping rates and schedules that maintain dynamic drawdown levels above mean sea level.
13. Applicable projects such as special use permits, short plats, or long plats shall test existing and/or test wells for nitrate levels and where appropriate calculate the nitrate loading rate at full build-out of the project. If the calculated nitrate loading in the intended water supply equals or exceeds 5 mg/L nitrate as nitrogen, the proposal will need to develop a mitigation plan. The point of compliance shall be determined based on project specifics.

**15.15.350 Aquifer Recharge Area Mitigation.**

The Health Department shall review development proposals to assess aquifer(s) vulnerability and establish needed mitigation. Where determined to be necessary through the site assessment

process, development approvals shall include conditions designed to prevent significant degradation of water quality or reduction in water quantity in aquifer recharge areas. The project shall not cause degradation of the groundwater quality below the standards described in WAC 173-200 or Department of Ecology's seawater intrusion policy.

Wellhead protection mitigation: Where a wellhead protection plan that addresses the project area exists, the Administrative Official and/or Health Officer shall use the recommendations contained in the wellhead protection plan as a basis for formulating mitigations. In the absence of such a mitigation plan, the Health Department and the Town that is the Public Water System Water Purveyor shall jointly develop mitigations, a summary of which shall be signed by the Applicant and recorded with the Applicant's property title.

All new development shall be required to connect to the Public Water System.

#### **15.15.360 Aquifer Recharge Public Notice and Review.**

In addition to the provisions for public notice provided under Section 15.15.070 of this Chapter, the Administrative Official shall make the site assessment report available for public review upon approval of the following projects which have undergone critical areas review pursuant to this Chapter:

- A. All projects occurring in Category I areas, except single-family residence or accessory building permits, and short subdivisions;
- B. All activities identified under Section 15.15.320(2), regardless of location; and
- C. Commercial or industrial projects or subdivisions that have the potential to adversely affect the quality or availability of potable water.

### **ARTICLE 4. GEOLOGICALLY HAZARDOUS AREAS**

#### **15.15.400 Geologically Hazardous Area Designations.**

Geologically Hazardous Areas include erosion hazards, landslide hazards, mine hazards, volcanic hazards and seismic hazards, and shall be designated consistent with the definitions provided in WAC 365-190-080(4).

Geologically Hazardous Areas shall be classified as "known or suspected risk," or "unknown risk."

#### **15.15.410 Geologically Hazardous Area Initial Project Review.**

A site visit shall be conducted by the Administrative Official to determine whether: 1) "Areas of Known or Suspected Risk" identified below are or may be present within 200 feet of the project or activity; 2) the proposed project or activity is or may be within a distance from the base of an adjacent landslide hazard area equal to the vertical relief of said hazard area; 3) the proposed activity may result in or contribute to an increase in hazard; and 4) whether the project or hazard areas pose a risk to life, property, or other critical areas on or off the project area sufficient to require a site assessment. Areas of known or suspected risk:

- A. Erosion Hazard Indicators:

1. Those project areas located within 200 feet of map unit delineations #51 Distich Xerorthents, #99 Mundt and #117 Saxon or mapped as moderate to severe, severe or very severe erosion hazard or as having severe rill and inter-rill erosion hazard as identified in the *U. S. Department of Agriculture Natural Resources Conservation Service Soil Survey of Skagit County Area, WA.* (1989).
2. Those project areas that fall within any soil sloping greater than or equal to 30%.
3. The project area falls within areas designated in the Department of Ecology, *Coastal Zone Atlas, Washington, Volume Two Skagit County* (1978) as U (Unstable), UB (Unstable Bluff), URS (Unstable Recent Slide), or UOS (Unstable Old Slide);
4. Those project areas that may be considered to have an erosion hazard as a result of rapid stream incision or stream bank erosion.

B. Landslide Hazards Indicators:

1. The project area falls within or 200 feet from areas designated in the Department of Ecology, *Coastal Zone Atlas, Washington, Volume Two, Skagit County* (1978) as U (Unstable), UB (Unstable Bluff), URS (Unstable Recent Slide), or UOS (Unstable Old Slide);
2. The project area falls within or 200 feet from slopes having the following characteristics: Gradients of 15% or greater intersecting geologic contacts with permeable sediments overlying low permeability sediment or bedrock and springs or groundwater seepage are present;
3. The project area falls within or 200 feet from any area having a 40% slope or steeper and with a vertical relief of 10 feet or more;
4. The project area falls within or 200 feet from any areas of historic failure such as areas designated as quaternary earth slumps, earth flows, mudflows, lahars, debris flows, rock slides, landslides or other slope failures on maps or technical reports published by the U. S. Geological Survey such as topographic or geologic maps, or the Geology and Earth Resources Division of the Washington Department of Natural Resources, or other documents authorized by government agencies;
5. The project area falls within or 200 feet from any areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action shall be addressed as a flood hazard consistent with this Chapter;
6. Areas that have shown movement during the Holocene epoch or which are underlain or covered by wastage debris of that epoch;
7. The project area falls within or 200 feet from any slopes that are parallel or sub-parallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;
8. The project area falls within or 200 feet from any slopes with a gradient greater than 80% and subject to rock fall during seismic shaking;

9. The project area falls within or 200 feet from any areas that show evidence of or are at risk from snow avalanches.

C. Seismic Hazards: Seismic hazard areas shall include areas that are subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction or surface faulting.

1. The project includes structures (as defined in the Uniform Building Code) proposed to be located in any of the areas described in items (i) or (ii) of this Subsection or located in areas to have a potential for soil liquefaction and soil strength loss during ground shaking as identified on the *U. S. Geologic Survey Relative Slope Stability Map of the Port Townsend Quadrangle, Puget Sound Region, Washington*, (1985), or as identified in the field. A geologic hazard site assessment is not required for soil liquefaction and soil strength loss resulting from seismic activity unless other criteria provided in this Section apply. The Building Official shall require evaluation using the provisions set forth in the adopted building code.

2. The structures or critical facilities are proposed to be located on a Holocene fault line. (No critical facilities shall be located on a Holocene fault line as indicated on investigative maps or described in studies by the United States Geologic Survey, Geology and Earth Resources Division of the Washington Department of Natural Resources, or other documents authorized by government agencies, or as identified in the field.) All developments on a Holocene fault line shall require a disclosure statement indicating the property is located on an active fault and may be geologically hazardous.

D. Volcanic Hazards: The project area is located in a volcanic hazard zone for Glacier Peak, Washington (Open-File Report 95-499); or in a volcanic hazard area of Mount Baker, Washington (Open-File Report 95-498). A site assessment is not required for volcanic hazard areas unless other criteria provided in this Section apply.

E. Other Geologic Hazard Indicators:

1. The project area falls within or 200 feet from an alluvial fan as designated on the *Skagit County Alluvial Fan Study Orthophoto Maps*;

2. The project area falls within or 200 feet from a mine hazard area as designated on the *Department of Natural Resources Map: Coal Measures of Skagit County*, (1924) or within 200 feet of any other current or historic mine operations determined to be geologic hazards as described by the Title and Purpose of the Critical Areas Ordinance 15.15.020(4) Geologically Hazardous Areas;

3. Areas of Unknown Geologic Hazards: As part of any development application where no current information is available to confirm that the items identified in this Section are present on the project area, the critical areas review required by Section 15.15.060 of this Chapter will provide a description of the known and visible site features and be used by the Administrative Official in evaluating whether a geologically hazardous area site assessment is required pursuant to this Section.

#### **15.15.420 Geologically Hazardous Area Site Assessment Requirements.**

A. Site Visit Determination: The Administrative Official shall make a determination using the following progressive order:

1. No Site Assessment: Where the Administrative Official determines that the project or activity area has no potential for impacting adjacent ownership and property, other types of critical areas, public property (such as roads and other facilities) or living quarters of any kind, including any existing or proposed off-site, the Administrative Official shall not require additional site assessments prior to approval under the provisions of this Chapter.

2. Site Assessment Required: If the Administrative Official determines during the site visit described in Section 15.15.410 that the proposed development activity falls within 200 feet of an "Area of Known or Suspected Risk" and the geologic condition may pose a risk to life and property on or off the project area, then a geologically hazardous area site assessment of the project area by a qualified professional as described in Subsection (2) below shall be required as part of the complete development permit application.

B. Geologically Hazardous Area Site Assessment: When required by the Administrative Official, a site assessment report shall be prepared by a qualified professional. Portions of the report relating to recommended design or mitigation shall be prepared under supervision of a licensed professional engineer. A qualified professional shall mean an engineer, licensed in the State of Washington, with training and experience analyzing geologic, hydrologic, and groundwater flow systems in Washington State; or by a geologist who earns his or her livelihood from the field of geology and/or geotechnical analysis, with training and experience analyzing geologic, hydrologic and groundwater flow systems in Washington State, who has received a relevant degree from an accredited 4-year institution of higher education.

The Geologically Hazardous Area Site Assessment report shall classify the type of hazard in accordance with Sections 15.15.400 and 15.15.410. The site assessment report shall include the following as appropriate:

1. A site plan must be prepared in accordance with the development permit requirements.

The site plan shall depict the height of slope, slope gradient and cross section of the site. The site plan shall indicate the location of all existing structures, proposed structures and any significant known geologic features on the subject site. The site plan shall also include the location of springs, seeps, or other surface expressions of groundwater. The site plan shall also depict any evidence of surface or storm water runoff;

2. A detailed description of the project, its relationship to potential geologic hazard(s), and its potential impact upon the hazard area(s), the subject property and adjacent properties. The description shall make a determination if a geologically hazardous area(s), as described in Section 15.15.020(4), is present on the subject site.

The narrative shall include a full discussion of the geologic factors and conditions on the subject site resulting in the qualified professionals conclusions;

3. An assessment of the geologic characteristics and engineering properties of the soils, sediments, and/or rock of the subject property and potentially affected adjacent properties. Soils analysis shall be accomplished in accordance with the Unified Soil Classification System;

4. A description of load intensity including surface and groundwater conditions, public and private sewage disposal systems, fills and excavations and all structural development;
5. An assessment describing the extent and type of vegetative cover to include tree attitude;
6. For Potential Landslide Hazards: Estimate slope stability and the effect construction and placement of structures will have on the slope over the estimated life of the structure. Quantitative analysis of slope stability or slope stability modeling may be required by the Administrative Official;
7. Additional site assessment standards may be required by the Administrative Official.

C. Site Assessment Conclusions:

1. Where the qualified professional determines that a geologically hazardous condition is not present on the subject site and/or will not occur as a result of the proposed project, will have no potential for impacting adjacent ownership and property, other types of critical areas, public property (such as roads and other facilities) or living quarters of any kind, including any existing or proposed off-site, the Administrative Official shall not require additional site assessments prior to approval under the provisions of this Chapter. The qualified professional shall be required to certify that a geologic hazard is not present on the subject parcel as described in Section 15.15.020(4).
2. Properties identified by the Administrative Official and the qualified professional containing geologically hazardous conditions shall require a geologically hazardous area mitigation plan. Critical facilities as defined under Section 14.04 shall not be sited within designated geologically hazardous areas (Exception: volcanic hazard areas). No residential structures shall be located in Geologically Hazardous Areas or their buffers that cannot be fully mitigated.

**15.15.430 Geologically Hazardous Area Mitigation Standards.**

The mitigation plan shall be prepared by a professional engineer or geologist under supervision of a professional engineer and include a discussion on how the project has been designed to avoid and minimize the impacts discussed under item (2). The plan shall also make a recommendation for the minimum building setback from any bluff or slope edge and/or other geologic hazard shall be based upon the geotechnical analysis under items (2) and (3) above required. Mitigation plans shall include the location and methods of drainage, locations and methods of erosion control, a vegetation management and/or restoration plan and/or other means for maintaining long-term stability of geologic hazards. The plan shall also address the potential impact of mitigation on the hazard area, the subject property and affected adjacent properties. The mitigation plan must be approved by the Administrative Official and be implemented as a condition of project approval.

Within designated geologic hazards, mitigation plans shall address the appropriate items listed below as required by the site assessment. One or more of the following mitigation standards, as required by the Administrative Official, shall be included as components of a mitigation plan pursuant to the requirements of Section 15.15.420, (Site Assessment Report). Other mitigation standards, other than those listed below, may be required by the Administrative Official depending on the geologic hazard and the site conditions.

A. Mitigation Standards.

1. A temporary erosion and sedimentation control plan prepared in accordance with the requirements of the Western Washington Storm water Manual or approved alternate.
2. A drainage plan for the collection, transport, treatment, discharge and/or recycle of water in accordance with the requirements of the Western Washington Storm water Manual or approved alternate.
3. All proposals involving excavations and placement of fills shall be subject to structural review under the appropriate provisions as found in the Uniform Building Code.
4. Critical Facilities as defined under Chapter 14.04 shall not be sited within designated geologically hazardous areas. (Exception: volcanic hazard areas).
5. Surface drainage shall not be directed across the face of a landslide hazard (including ravines). If drainage must be discharged from the hazard area into adjacent waters, it shall be collected above the hazard and directed to the water by tight line drain and provided with an energy dissipating device at the point of discharge.
6. All infiltration systems such as, storm water detention and retention facilities, and curtain drains utilizing buried pipe or French drain, are prohibited in geologically hazardous areas and their buffers unless a site assessment report indicates such facilities or systems will not affect slope stability and the systems are designed by a licensed civil engineer. The engineer shall also certify that the system and/or facilities are installed as designed.
7. Vegetation Removal and Replanting: Removal of vegetation in landslide hazard, erosion hazard and coastal bluff hazard areas shall be minimized. Any replanting that occurs shall consist of trees, shrubs, and ground cover that is compatible with the existing surrounding vegetation, meets the objectives of erosion prevention and site stabilization, and does not require permanent irrigation for long-term survival.
8. A minimum buffer with a width of 30 feet shall be established from the top, toe and all edges of all landslide hazardous areas. Existing native vegetation shall be maintained in accordance with mitigation recommendations within the buffer area. Any modifications to the buffer requirement shall be based on the report and recommendations of the professional geologist under supervision of a licensed professional engineer. The buffer may be reduced to a minimum of 10 feet when an applicant demonstrates to the Administrative Official that the reduction will adequately protect the proposed development, adjacent developments and uses and the subject critical area. The buffer may be increased by the Administrative Official for development adjacent to a ravine which is designated as unstable on the *Coastal Zone Atlas, Washington, Volume Two Skagit County* (1978) or where the Administrative Official determines a larger buffer is necessary to prevent risk of damage to proposed and existing development (as in the case where the area potentially impacted by a landslide exceeds 30 feet). Normal non-destructive pruning and trimming of vegetation for maintenance purposes; or thinning of limbs of individual trees to provide a view corridor, shall not be subject to these buffer requirements.

9. Seismic Hazard Areas: Structural development proposals shall meet all applicable provisions of the Uniform Building Code.

The Administrative Official shall evaluate documentation submitted pursuant to Section 15.15.420(2) (Site Assessment Report) and condition permit approvals to minimize the risk on both the subject property and affected adjacent properties. All conditions on approvals shall be based on known, available, and reasonable methods of prevention, control and treatment. Evaluation of geotechnical reports may also constitute grounds for denial of the proposal.

B. Alterations of the buffer and/or geologically hazardous area. Alterations of the buffer and/or geologically hazardous area may occur for development meeting the following criteria:

1. No reasonable alternative exists; and

2. A site assessment report is submitted and certifies that:

a. There is a minimal hazard as proven by evidence of no landslide activity in the past in the vicinity of the proposed development and a qualitative analysis of slope stability indicates no significant risk to the development proposal and adjacent properties; or the geologically hazardous area can be modified or the development proposal can be designed so that the hazard is eliminated or mitigated so that the site is as safe as a site without a geologically hazardous area;

b. The development will not significantly increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions;

c. The development will not decrease slope stability on adjacent properties; and

d. Such alterations will not adversely impact other critical areas.

C. Non-Compliance and Failed Mitigation Plans.

1. Projects found to be in non-compliance with the mitigation conditions issued as part of the development approval are subject to enforcement actions necessary to bring the development into compliance with this Chapter.

2. Mitigation plans which do not fulfill the performance required based on the site assessment/geotechnical report findings or otherwise fail to meet the intent of this Chapter shall be revised and the subject development brought into compliance with the revised mitigation plan.

D. Mitigation Plan Certification: Upon completion of the project, a qualified professional shall certify that the mitigation plan has been properly implemented. The certification shall be required prior to final approval of the project by the Administrative Official.

#### **15.15.440 Geologically Hazardous Area Public Review and Record.**

In addition to the provisions for public notice provided under Section 15.15.070 of this Chapter, the Administrative Official shall provide official Notice of Decision and make the site assessment report available for public review upon approval of any project requiring a Geologically

Hazardous Area site assessment pursuant to Section 15.15.420(2) and shall maintain a public record of all materials pertinent to approval decisions.

## **ARTICLE 5 – FISH AND WILDLIFE HABITAT CONSERVATION AREAS**

### **15.15.500 Fish and Wildlife Habitat Conservation Area Designations.**

- A. Fish and Wildlife Habitat Conservation Areas (HCA) shall be designated and classified as provided for in the definition Section of this Chapter. The map and species references indicated are intended to serve only as a guide during development review. In all cases, actual presence or absence for the listed species or habitat shall prevail.
- B. In addition to the HCAs identified in Subsection (1), additional species and habitats of local importance may be designated by the Administrative Official based on declining populations, sensitivity to habitat manipulation or special value including but not limited to commercial, game or public appeal.
- C. In order to nominate an area or a species to the category of Habitats and Species of local Importance, an individual or organization must:
  1. Demonstrate a need for special consideration based on:
    - a. Declining population,
    - b. Sensitivity to habitat manipulation, or
    - c. Commercial or game value or other special value, such as public appeal;
  2. Propose relevant management strategies considered effective and within the scope of this Chapter;
  3. Provide species habitat location(s) on a map (scale 1:800). Submitted proposals will be reviewed by the Administrative Official and forwarded to the Departments of Fish and Wildlife, Natural Resources, and/or other County and State agencies or experts for comments and recommendations regarding accuracy of data and effectiveness of proposed management strategies. A public hearing will be held for proposals found to be complete, accurate, and potentially effective and within the scope of this Chapter. Approved nominations will become designated "Habitats/Species of Local Importance" and will be subject to the provisions of this Chapter.
- D. The following species and habitats have been designated on a site-specific basis according to the official Species and Habitats of Local Significance Map.
  1. Great Blue Heron nest sites
  2. Vauxs Swifts Communal Roosts
  3. Pileated Woodpecker nest sites
  4. Osprey nest sites
  5. Townsend Big-eared Bat communal roosts
  6. Cavity Nesting Ducks breeding areas
  7. Trumpeter Swan concentrations
  8. Harlequin Duck breeding areas

## 9. Waterfowl Concentrations

### **15.15.510 Fish and Wildlife Habitat Conservation Areas Initial Project Review.**

- A. A site visit shall be conducted by the Administrative Official to determine whether HCAs identified on a critical area checklist or on available map resources or whether HCAs not previously identified are present within 200 feet of the project or activity site.
- B. Habitat Conservation Areas are designated by definition in Section 15.15.04 and are referenced as follows:
  - 1. An area with which anadromous fish, endangered, threatened or sensitive species have a primary association and/or their habitat such as those designated and mapped by the Washington State Department of Fish and Wildlife, Priority Habitats and Species Program.
  - 2. A water of the State as defined under WAC 222-16-030.
  - 3. A Critical Biological Area as designated and mapped by the Department of Ecology Coastal Zone Atlas dated June 1978 and/or the maps.
  - 4. Designated species and habitats of local importance pursuant to Section 15.15.500.
  - 5. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat.
  - 6. Lakes, ponds, streams, and rivers planted with game fish by a government or Tribal entity;
  - 7. Areas with which anadromous fish species have a primary association; and State Natural Area Preserves and Natural Resource Conservation Areas.
- C. If the Administrative Official determines through the site visit described in Section (1) above that a Fish and Wildlife Habitat Conservation Area (HCA) may be present within 200 feet of the proposed project or activity area, then a site assessment/habitat management plan as described in Section 15.15.520 below shall be required as part of the complete application.

### **15.15.520 Fish and Wildlife Habitat Conservation Area Site Assessment Requirements.**

Site Assessment/Habitat Management Plans shall be prepared by a qualified fish and wildlife biologist with experience assessing the relevant species and habitats and include at a minimum, the following requirements:

- A. Site Plan prepared in accordance with the permit requirements indicating all Fish and Wildlife Habitat Conservation Areas falling within 200 feet of the subject property. This site plan may be prepared by the Applicant subject to review by the qualified fish and wildlife biologist;
- B. Project narrative describing the proposal including, but not limited to, associated grading and filling, structures, utilities, adjacent land uses, description of vegetation both within and adjacent to the habitat conservation area, and when deemed necessary by the Administrative Officer, surface and subsurface hydrologic analysis;

- C. Impact analysis identifying and documenting the presence of all habitat conservation areas and discussing the project's affects on the Fish and Wildlife Habitat Conservation Areas;
- D. Regulatory analysis including a discussion of any Federal, State, Tribal, and/or local requirements or special management recommendations which have been developed for species and/or habitats located on the site;
- E. Mitigation report including a discussion of proposed measures of mitigating adverse impacts of the project and an evaluation of their potential effectiveness. Measures may include but are not limited to: establishment of buffer zones, preservation of critically important plants, and trees, limitation of access to habitat areas, seasonal restrictions of construction activities, establishment of a timetable for periodic review of the plan and/or establishment of performance or maintenance bonds;
- F. Management and maintenance practices including a discussion of ongoing maintenance practices that will assure protection of all fish and wildlife habitat conservation areas on-site after the project has been completed. This Section should include a discussion of proposed monitoring criteria, methods and schedule.
- G. Approval of any activity that can adversely affect fish and wildlife habitat conservation areas shall conform to the requirements set forth in Section 15.15.170(1).

**15.15.530 Fish and Wildlife Habitat Conservation Area Mitigation Standards.**

Fish and wildlife habitat conservation areas shall be protected in accordance with the Town’s determination of appropriate conditions considering the site-specific recommendations from agencies with jurisdictions over the specific area, which may include but not be limited to the Washington State Department of Fish and Wildlife, Department of Ecology, Federally recognized Indian Tribes located within Skagit County, WDFW Management Recommendations for Washington Priority Habitats and Species, and site-specific information supplied by the Applicant.

Development proposals shall be reviewed for potential impacts to fish and wildlife habitat conservation areas. The determination of potential impacts shall be dictated by site conditions and made by the Administrative Official in consultation with the Washington State Departments of Ecology, Fish and Wildlife and Natural Resources and Federally recognized Indian Tribes located in Skagit County. If it is determined that a proposed project may have an adverse effect on a Fish and Wildlife Habitat Conservation Area, the Applicant shall implement a Habitat Management Plan including mitigation measures in conformity with the performance standards outlined below.

- A. Riparian Performance Standards: Riparian buffer areas shall be established from the ordinary high water mark. The intent of riparian buffers is to protect 5 basic riparian forest functions that influence in-stream and near-stream habitat quality. These are:
  1. Recruitment of large woody debris (LWD) to the stream: LWD recruitment creates habitat structures necessary to maintain salmon/trout productive capacity and species diversity.
  2. Shade: Shading by the forest canopy maintains cooler water temperatures and influences the availability of oxygen for salmon/trout.

3. Bank integrity (root reinforcement): Bank integrity helps maintain habitat quality and water quality by reducing bank erosion and creating habitat structure and in stream hiding cover for salmon and trout.

4. Runoff filtration: Filtration of nutrients and sediments in runoff (surface and shallow subsurface flows) helps maintain water quality.

5. Wildlife habitat: Functional wildlife habitat for riparian-dependent species is based on sufficient amounts of riparian vegetation to provide protection for nesting and feeding.

B. Standard Riparian Buffers. Riparian areas have the following standard buffer requirements (Note: riparian areas do not extend beyond the toe of the slope on the landward side of existing dikes or levees. See also Section 15.15.100 for list of activities allowed within critical areas, including riparian areas.):

WATER TYPE RIPARIAN BUFFER	
TYPE 1 AND 2	200 FEET
TYPE 3	100 FEET
TYPE 4 AND 5	50 FEET

In areas adjacent to lakes having Urban or Rural Residential designations under the Skagit County Shorelines Master Program, the standard riparian buffer shall be consistent with the standard setback associated with that Shorelines designation. Once buffers are established, they shall not be altered except as allowed below. Riparian buffers not currently meeting the minimum standards shall be restored; provided, that such restoration does not conflict with other provisions of this Chapter. In implementing buffer widths other than the standard riparian buffers identified above, the Administrative Official shall provide opportunity for review and comment from appropriate Federal, State or Tribal natural resource agencies to ensure the use of best available science. These comments shall be included in the public record along with the basis and rationale for requirement or approval of any such non-standard buffers.

1. Increasing Buffer Widths. The Administrative Official has the authority to increase the standard buffer widths on a case-by-case basis, or to establish non-riparian buffer widths, when such buffers are necessary to protect priority fish or wildlife (*e.g.*, great blue heron nesting colonies, osprey or cavity nesting ducks) using the HCA. This determination shall be supported by appropriate documentation from the Departments of Ecology and Fish and Wildlife, showing that the increased buffer width is reasonably related to the protection of the fish and/or wildlife using the HCA.

2. Decreasing Buffer Widths. Decreasing standard buffers will be allowed only if the Applicant demonstrates that all of the following criteria are met:

a. A decrease is necessary to accomplish the purposes of the proposal and no reasonable alternative is available; and

b. Decreasing width will not adversely affect the fish and wildlife habitat functions and values; and

c. If a portion of a buffer is to be reduced, the remaining buffer area will be enhanced, using native vegetation, artificial habitat features, vegetative screening and/or barrier fencing as appropriate to improve the functional attributes of the buffer and to provide equivalent or better protection for fish and wildlife habitat functions and values; and

d. The buffer width shall not be reduced below 50% of the standard buffer width unless the Administrative Official determines that no other reasonable alternative exists and that no net loss of HCA riparian functional values will result, based on a functional assessment provided by the Applicant utilizing a methodology approved by the Administrative Official.

### C. Allowed Uses in HCAs or Buffers.

1. Roads, bridges and utilities: Road, bridge and utility construction may be permitted across Fish and Wildlife Habitat Conservation Area and/or its buffer under the following conditions:

a. It is demonstrated to the Administrative Official that there are no alternative routes that can be reasonably used to achieve the proposed development;

b. The activity will have minimum adverse impact to the Fish and Wildlife Habitat Conservation Area;

c. The activity will not significantly degrade surface or groundwater;

d. The intrusion into the Fish and Wildlife Habitat Conservation Area and its buffers is fully mitigated; and

e. The Administrative Official shall provide opportunity for review and comment by a Technical Team in which participation has been solicited from Federal, State and Tribal natural resource agencies.

2. Limited park or recreational access to a fish and wildlife habitat area or its required buffer provided that all of the following are satisfied:

a. The access is part of a public park or a recreational resort development that is dependent on the access for its location and recreational function;

b. The access is limited to the minimum necessary to accomplish the recreational function;

c. The access and the balance of the development is consistent with other requirements of Title 14 and the Skagit County Shoreline Management Master Program; and

d. The proponent obtains a written approval from the Town Council for the limited access and associated mitigation.

3. Low impact uses and activities which are consistent with the purpose and function of the habitat buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the habitat involved provided, that such activity shall not result in a decrease in riparian functional values and shall not prevent or inhibit the buffer's recovery to at least pre-altered condition or function. Examples of uses and activities which may be permitted in appropriate cases, as long as the activity does not retard the overall recovery of the buffer, include removal of noxious vegetation, pedestrian trails, viewing platforms, and storm water management facilities such as grass-lined swales.

4. In the riparian buffer, removal of hazardous, diseased or dead trees and vegetation when necessary to control fire, or to halt the spread of disease or damaging insects consistent with the State Forest Practices Act, RCW 76.09, or when the removal is necessary to avoid a hazard such as landslides or pose a threat to existing structures may be permitted with prior written approval. Any removed tree or vegetation shall be replaced with appropriate species. Replacement shall be performed consistent with accepted restoration standards for riparian areas within 1 calendar year. The Administrative Official may approve alternative tree species to promote fish and wildlife habitat.

Prior to commencement of tree or vegetation removal and/or replacement, the landowner must obtain written approval.

5. To allow for greater flexibility in a development proposal, an Applicant has the opportunity to remove timber within standard buffer widths shown above if the Applicant's mitigation measures incorporate all of the performance standards based upon water type listed in the table below. In conformance with professional standards used by the Washington Department of Natural Resources for forest practices in sensitive areas, all removal of timber within HCA buffers shall be subject to conditioning specified by the Administrative Official in conjunction with an on-site review in which participation by representatives of the proponent, Ecology, WDFW, WDNR and natural resource representatives of affected Indian tribes is solicited.

The intent of this Section is to provide an additional opportunity for an Applicant to propose some level of timber removal within the riparian habitat zone as long as it can be demonstrated that the function of the buffer can be maintained at the levels described below. If the buffer, in its current state, cannot meet these standards, then the Administrative Official will not be able to give its approval for any activity which would inhibit recovery of or degrade the current buffer.

The current performance of a given buffer area is compared to its potential performance as rated by the Soil Conservation Service, Soil Survey of Skagit County, 1989. In consultation with a representative from the Natural Resource Conservation Service, Soil Conservation District or professional forester, the Applicant will determine the capability of the site for woodland management using the most suitable tree species according to the Soil Survey and establish the stand characteristics that would be expected from a mature stand of those species established on-site. If the current stand can exceed the riparian protection that could be expected based on site potential, then additional activity may be allowed provided the following performance standards can be met. For type 1 and 2 streams, an alternative method may be utilized to allow limited timber harvest within the outer 100 feet of a buffer:

#### **PERFORMANCE-BASED RIPARIAN STANDARDS\***

**(THESE STANDARDS MUST BE EXCEEDED BEFORE ADDITIONAL ACTIVITY CAN BE PERMITTED WITHIN THE RIPARIAN ZONE)**

Water type Performance standards

Type 1 & 2

(Fish Bearing)

Maintain 95% of total LWD recruitment expected to enter the stream from a mature stand; and  
Maintain 85% of the trees which are greater than 24" DBH within 100' of stream; and  
Maintain an average of 75% canopy cover (based on canopy densitometer readings at stream edge)

The Applicant may further request some limited timber harvest of up to 30% of the merchantable timber within the outer 100 feet of any 200 foot required buffer provided the harvest:

- a. does not reduce the LWD and canopy requirements; and
- b. the Applicant will increase the total buffer size by 50 feet to mitigate for the limited timber harvest in the required buffer to provide additional wildlife habitat. The additional 50 foot buffer shall retain a minimum of 50% of the total number of trees with 25% of the total trees left having a diameter at breast height (DBH - 4 1/2 feet) greater than 12 inches; and
- c. no more than 50% of the dominant trees in the outer 100 feet may be harvested.

Type 3

(Fish Bearing)

Maintain 85% of total LWD recruitment expected to enter the stream from a mature stand; and  
Maintain 85% of the trees which are greater than 18" DBH within 100' of stream; and  
Maintain an average of 75% canopy cover (based on canopy densitometer readings at stream edge).

Type 4 & 5

(Non-fish Bearing)

Maintain 50% of total LWD recruitment expected to enter the stream from a mature stand; and  
Maintain 85% of the trees which are greater than 24" DBH within 50' of stream; and  
Maintain an average of 75% canopy cover (based on canopy densitometer readings at stream edge).

\*Note: Applicants electing to employ performance based mitigation in accordance with the above matrix shall include appropriate analysis and justification in their Site Assessment/Habitat Management Plan.

- D. Bald eagle habitats shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292), a cooperative Habitat Management Plan shall be developed in coordination with the Department of Fish and Wildlife whenever activities that alter habitat are proposed near a verified nest territory or communal roost.
- E. Wetlands that are identified as a fish and wildlife habitat conservation area shall be protected according to the provisions in 15.15.530(2)(a), Increasing Buffer Width. If the wetland buffer

widths called for under 15.15.530(2), Standard Buffer Widths conflict with this Section, the buffer widths providing the greatest protection shall apply.

- F. All other fish and wildlife habitat conservation area, including Habitats/Species of County Significance, shall be protected on a case by case basis by means of a Habitat Management Plan based on the PHS program, as set forth in 15.15.510 and 15.15.520, Initial Project Review and Site Assessment/Habitat Management Plan.
- G. Approval of any activity that can adversely affect fish and wildlife habitat conservation areas shall conform to the requirements set forth in Section 15.15.170(1).

## **ARTICLE 6 FLOOD HAZARD AREA**

### **15.15.600 Flood Hazard Area Designations.**

Flood Hazard Areas shall be designated as those areas identified as A, AO, AH, A1-10, A12, A14, A16, A 18, A21-22, V1 and V4 zones on the Official Flood Insurance Rate Map for the Town of Lyman as amended. Cumulatively these zones represent the floodway and 100-year floodplain. All of the Flood Hazard Areas in the Town of Lyman are located adjacent to the Skagit River and have been classified as open space in the Zoning Code, and development is prohibited. See FIRM Map Community Panel Number 530157 0001 B, Effective Date July 19, 1982.

### **15.15.610 Flood Hazard Area Initial Project Review.**

All projects shall be reviewed for location on the Flood Insurance Rate Map and no development other than the following activities shall be permitted:

1. Maintenance and repair of existing trails, access ways, dikes and levees.
2. Installation of minor structures, such as picnic benches.

### **15.15.700 Enforcement of the Critical Areas regulations.**

#### **1. Violations.**

- A. It is a violation of Chapter 15.15 for any person to initiate or maintain or cause to be initiated or maintained the use of any structure, land or property within the city without first obtaining the permits or authorization required for the use by Chapter 15.15.
- B. It is a violation of Chapter 15.15 for any person to use, construct, locate, demolish or cause to be used, constructed, located, or demolished any structure, land or property within the city in any manner that is not permitted by the terms of any permit or authorization issued pursuant to Chapter 15.15, provided that the terms or conditions are explicitly stated on the permit or the approved plans.
- C. It is a violation of Chapter 15.15 to remove or deface any sign, notice, complaint or orders required by or posted in accordance with Chapter 15.15.

- D. It is a violation of Chapter 15.15 to misrepresent any material fact in any application, plans or other information submitted to obtain any critical areas authorization.
- E. It is a violation of Chapter 15.15 for anyone to fail to comply with the requirements of Chapter 15.15.

**2. Duty to enforce.**

- A. It shall be the duty of the Administrative Official to enforce Chapter 15.15. The Administrative Official may call upon the police, fire, health or other appropriate city departments to assist in enforcement.
- B. Upon presentation of proper credentials, the Administrative Official or duly authorized representative of the Administrative Official may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or premises subject to the consent or warrant to perform the duties imposed by the critical areas code.
- C. The critical areas code shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.
- D. It is the intent of this critical areas code to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land, wetlands, shorelines, and buildings within the scope of this code.
- E. No provision of or term used in this code is intended to impose any duty upon the city or any of its officers or employees which would subject them to damages in a civil action.

**3. Investigation and notice of violation.**

- A. The Administrative Official shall investigate any structure or use which the Administrative Official reasonably believes does not comply with the standards and requirements of the critical areas code.
- B. If after investigation the Administrative Official determines that the standards or requirements have been violated, the Administrative Official shall serve a notice of violation upon the owner, tenant or other person responsible for the condition. The notice of violation shall state separately each standard or requirement violated shall state what corrective action, if any, is necessary to comply with the standards or requirements; and shall set a reasonable time for compliance. The notice shall state that any subsequent violation may result in criminal prosecution as provided in Section 15.15.170 Subsection 10. In the event of violation of the standards or requirements of Chapter 15.15 required corrective action shall include, if appropriate, but shall not be limited to, mitigating measures such as restoration of the area and replacement of damaged or destroyed trees.
- C. The notice shall be served upon the owner, tenant or other person responsible for the condition by personal service, registered mail, or certified mail with return receipt requested, addressed to the last known address of such person. If, after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person or persons is unknown or service cannot be

accomplished and the Administrative Official makes an affidavit to that effect, then service of the notice upon such person or persons may be made by:

1. Publishing the notice once each week for two consecutive weeks in the city official newspaper; and
  2. Mailing a copy of the notice to each person named on the notice of violation by first class mail to the last known address if known, or if unknown, to the address of the property involved in the proceedings.
- D. A copy of the notice shall be posted at a conspicuous place on the property, unless posting the notice is not physically possible.
- E. Nothing in this section shall be deemed to limit or preclude any action or proceeding pursuant to 15.15.170 Subsection 10.
- F. The Administrative Official may mail, or cause to be delivered to all residential and/or nonresidential rental units in the structure or post at a conspicuous place on the property, a notice which informs each recipient or resident about the notice of violation, stop work order or emergency order and the applicable requirements and procedures.
- G. A notice or an order may be amended at any time in order to:
1. Correct clerical errors; or
  2. Cite additional authority for a stated violation.

#### **4. Time to comply.**

- A. When calculating a reasonable time for compliance, the Administrative Official shall consider the following criteria:
1. The type and degree of violation cited in the notice;
  2. The stated intent, if any, of a responsible party to take steps to comply;
  3. The procedural requirements for obtaining a permit to carry out corrective action;
  4. The complexity of the corrective action, including seasonal considerations, construction requirements and the legal prerogatives of landlords and tenants; and
  5. Any other circumstances beyond the control of the responsible party.
- B. Unless a request for review before the Administrative Official is made in accordance with Section 15.15.170 Subsection 7, the notice of violation shall become the final order of the Administrative Official. A copy of the notice shall be filed with the Skagit County auditor. The Administrative Official may choose not to file a copy of the notice or order if the notice or order is directed only to a responsible person other than the owner of the property.

#### **5. Stop work order.**

Whenever a continuing violation of this code will materially impair the Administrative Official's ability to secure compliance with this code, or when the continuing violation threatens the health or

safety of the public, the Administrative Official may issue a stop work order specifying the violation and prohibiting any work or other activity at the site. A failure to comply with a stop work order shall constitute a violation of this land use code.

**6. Emergency order.**

- A. Whenever any use or activity in violation of this code threatens the health and safety of the occupants of the premises or any member of the public, the Administrative Official may issue an emergency order directing that the use or activity be discontinued and the condition causing the threat to the public health and safety be corrected. The emergency order shall specify the time for compliance and shall be posted in a conspicuous place on the property, if posting is physically possible. A failure to comply with an emergency order shall constitute a violation of this land use code.
- B. Any condition described in the emergency order which is not corrected within the time specified is declared to be a public nuisance and the Administrative Official is authorized to abate such nuisance summarily by such means as may be available. The cost of such abatement shall be recovered from the owner or person responsible or both in the manner provided by law.

**7. Review by the Administrative Official.**

- A. Any person significantly affected by or interested in a notice of violation issued by the Administrative Official pursuant to Section 15.15.170 Subsection 3 may obtain a review of the notice by requesting such review within 15 days after service of the notice. When the last day of the period so computed is a Saturday, Sunday or federal or city holiday, the period shall run until 5:00 p.m. on the next business day. The request shall be in writing, and upon receipt of the request, the Administrative Official shall notify any persons served the notice of violation and the complainant, if any, of the date, time and place set for the review, which shall be not less than 10 nor more than 20 days after the request is received, unless otherwise agreed by all persons served with the notice of violation. Before the date set for the review, any person significantly affected by or interested in the notice of violation may submit any written material to the Administrative Official for consideration at the review.
- B. The review will consist of an informal review meeting held at the department. A representative of the Administrative Official who is familiar with the case and the applicable ordinances will attend. The Administrative Official's representative will explain the reasons for the Administrative Official's issuance of the notice and will listen to any additional information presented by the persons attending. At or after the review, the Administrative Official may:
  - 1. Sustain the notice of violation;
  - 2. Withdraw the notice of violation;
  - 3. Continue the review to a date certain for receipt of additional information; or
  - 4. Modify the notice of violation, which may include an extension of the compliance date.
- C. The Administrative Official shall issue an order of the Administrative Official containing the decision within seven days of the date of completion of the review and shall cause the same to be mailed by regular first class mail to the person or persons named on the notice of violation, mailed to the complainant, if possible, and filed with Skagit County auditor.

**8. Extension of compliance date.**

- A. The Administrative Official may grant an extension of time for compliance with any notice or order, whether pending or final, upon the Administrative Official's finding that substantial progress toward compliance has been made and that the public will not be adversely affected by the extension.
- B. An extension of time may be revoked by the Administrative Official if it is shown that the conditions at the time the extension was granted have changed, the Administrative Official determines that the conditions at the time the extension was granted have changed, the Administrative Official determines that a party is not performing corrective actions as agreed, or if the extension creates an adverse effect on the public. The date of revocation shall then be considered as the compliance date. The procedures for revocation, notification of parties, and appeal of the revocation shall be established by rule.

**9. Civil penalty.**

- A. In addition to any other sanction or remedial procedure which may be available, any person violating or failing to comply with any of the provisions of Chapter 15.15 shall be subject to a cumulative penalty in the amount of \$75.00 per day for each violation from the date set for compliance until the order is complied with.
- B. The penalty imposed by this section shall be collected by civil action brought in the name of the city. The Administrative Official shall notify the Town Attorney in writing of the name of any person subject to the penalty, and the Town Attorney shall, with the assistance of the Administrative Official, take appropriate action to collect the penalty.
- C. The violator may show as full or partial mitigation of liability:
  - 1. That the violation giving rise to the action was caused by the willful act, or neglect, or abuse of another; or
  - 2. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to gain access to the subject structure, or other condition or circumstance beyond the control of the defendant.

**10. Criminal penalties.**

- A. Any person violating or failing to comply with any of the provisions of this critical areas code and who has had a judgment entered against him or her pursuant to 15.15.170 Subsection 9 or its predecessors within the past five years shall be subject to criminal prosecution and upon conviction of a subsequent violation shall be fined in a sum not exceeding \$5,000 or be imprisoned in the city jail for a term not exceeding one year or be both fined and imprisoned. Each day of noncompliance with any of the provisions of this critical areas code shall constitute a separate offense.
- B. A criminal penalty, not to exceed \$5,000 per occurrence, may be imposed:

1. for violations of Section 15.15.170 Subsection 1 D.
2. for any other violation of this code for which corrective action is not possible;
3. For any willful, intentional, or bad faith failure or refusal to comply with the standards or requirements of this code.

**11. Additional relief.**

The Administrative Official may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of this critical areas code when civil or criminal penalties are inadequate to effect compliance.

