



PLANNING COMMISSION
SPECIAL MEETING
THURSDAY, JUNE 1, 2017
6:00 – 9:00 PM
COUNCIL CHAMBER
280 MADISON AVE N
BAINBRIDGE ISLAND, WA 98110

AGENDA

- 6:00 PM CALL TO ORDER
 Call to Order, Agenda Review, Conflict Disclosure
- 6:05 PM PUBLIC COMMENT
 Accept public comment on off agenda items.
- 6:20 PM CRITICAL AREAS ORDINANCE
 Christy Carr, Senior City Planner
- 7:45 PM BREAK
- 7:55 PM RESUME CRITICAL AREAS ORDINANCE
- 8:55 PM NEW/OLD BUSINESS
- 9:00 PM ADJOURN

***** TIMES ARE ESTIMATES****

Public comment time at meeting may be limited to allow time for Commissioners to deliberate. To provide additional comment to the City outside of this meeting, e-mail us at pcd@bainbridgewa.gov or write us at Planning and Community Development, 280 Madison Avenue, Bainbridge Island, WA 98110

**For special accommodations, please contact Jane Rasely, Planning & Community
Development 206-780-3758 or at jrasely@bainbridgewa.gov**



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

MEMORANDUM

Date: June 1, 2017
To: Planning Commission
From: Christy Carr, AICP
Senior Planner
Subject: Critical Areas Ordinance Update

1. Discussion on critical aquifer recharge areas will be continued. Staff will provide proposed revisions to BIMC Section 16.20.120 (Aquifer Recharge Areas).

Planning Commission Action: Review the Critical Areas Ordinance, Section 16.20.120 (Aquifer Recharge Areas).

2. Geologically hazardous areas will be introduced. Staff will present best available science and discuss potential revisions.

Planning Commission Action: Review the Critical Areas Ordinance, Section 16.20.150 (Geologically Hazardous Areas).

3. Time allowing, commission members will have the opportunity to provide input on the sections previously discussed, including “general,” fish and wildlife habitat conservation areas, frequently flooded areas and wetlands. The current working draft of these sections was provided at the May 25, 2017 meeting. Future working drafts will highlight any changes.

Planning Commission Action: Review the Planning Commission Review Package from May 25, 2017 meeting and be prepared to provide input on specific topics or language, as needed.

4. Schedule update:

June 1:	Aquifer recharge areas, geologically hazardous areas
June 8:	Geologically hazardous areas, review (document provided in its entirety)
June 9:	Public hearing notice published
June 15:	Review/discussion
June 19:	Public hearing/discussion
June 22:	Recommendation

Staff will provide review material for each meeting; however, it may not be included in the advance agenda packet.

Standards for Existing Development -- Options

Standard:

- No increase in the footprint of the structure or use within the critical area or buffer
- Expansion of footprint allowed to increase by percentage (20-25 percent range)
- Expansion of footprint allowed to increase by square footage by use (e.g.; 500 sf residential, 1000 commercial, 2000 sf industrial/institutional)
- Same as new construction – mitigation sequencing used and all impacts mitigated
- Same as new construction – buffer modification or RUE request

Location:

- Expansion allowed anywhere within critical area or buffer
- Expansion allowed only within buffer (not critical area itself – face of slopes, historic landslides, wetlands)
- Expansion allowed no closer to the critical area than the existing structure (cannot extend existing ground coverage toward the critical area)

Criteria:

- Expansion allowed only if there is no increased risk to life or property due to geological hazard
- Expansion allowed only if historic site impacts are mitigated
- One-time expansion only

Buffers – Options

- Current buffer scheme uses function (water quality and habitat – based on score from rating form) and impact of land use (high, moderate, and low)
- Ecology considers this the most flexible scheme since it acknowledges the function of the wetland and the type of proposed land use. Other schemes are considered less flexible because the widest buffer is applied to be the most protective absent knowing the type of land use and its potential impacts.
- Only 45 wetlands (less than 9 percent) are located in land use designations considered to have a high impact of land use if R-2 is switched to moderate. The majority of R-2 parcels are shoreline parcels, or within close proximity to the shoreline.
- Current proposed revisions include a new provision to allow buffer width reduction from high impact to moderate impact if any PHS present is protected with vegetated corridor and measures to reduce typical impacts are applied. This is supported by Ecology in their guidance for CAO updates.
- Recommendations:
 - Keep flexible buffer scheme using function and impact of land use.
 - Consider R-2 designation “moderate” impact of land use.
 - Include proposed provision to allow buffer width reduction from high impact to moderate impact

Chapter 16.20

16.20.140110 Frequently flooded areas.

~~A. Classification. Classification for frequently flooded areas shall be consistent with the 100-year floodplain designation of the Federal Emergency Management Agency and the National Flood Insurance Program. In addition the following criteria shall be considered when designating and classifying these areas:~~

- ~~1. Flooding impact to human health, safety, and welfare and to public facilities and services;~~
- ~~2. Available documentation including federal, state, and local laws, regulations and programs, local maps, and federally subsidized flood insurance programs;~~
- ~~3. The future floodplain defined as a channel of the stream and that portion of the adjoining floodplain which is necessary to contain and discharge the base flood flow at build-out without any measurable increase in flood heights; and~~
- ~~4. The effect of high tides with strong winds, and greater surface runoff caused by increasing impervious surfaces.~~

~~B. Standards:~~

- ~~1. Development shall not reduce the effective base flood storage volume. Effective storage capacity shall be maintained.~~
- ~~2. Grading or other regulated activities which would reduce the flood water storage volume shall be mitigated by creating compensatory storage on or off site. Applicants must provide mitigation plans pursuant to this chapter.~~
- ~~3. Base flood data and flood hazard notes shall be on the face of any recorded plat or site plan including, but not limited to, base flood elevations, flood protection elevation, boundary of floodplain, and zero rise floodway.~~
- ~~4. Applicants for development in low lying shoreline areas and other areas where flood elevation is controlled by tide level shall be provided with information on sea level rise.~~

A. Designation and mapping. Frequently flooded areas include all areas of special flood hazard as mapped within the city, and other areas that could be threatened by flooding. The city uses Chapter 15.16, Flood Damage Prevention, adopted herein by reference, which provides the basis for establishing areas of special flood hazard.

B. Development in frequently flooded areas shall be subject to the provisions in Chapter 15.16, Flood Damage Prevention. Areas within the city's shoreline jurisdiction are regulated by the city's shoreline master program (Chapter 16.12).

Chapter 16.20

CRITICAL AREAS

16.20.100 Fish and wildlife habitat conservation areas

~~A. Purpose. This section applies to all Fish and Wildlife Habitat Conservation Areas, as categorized in Section 16.20.130(B) below. The intent of this Section is to:~~

- ~~1. Preserve natural flood control, stormwater storage, and drainage or stream flow patterns;~~
- ~~2. Control siltation, protect nutrient reserves, and maintain stream flows and stream quality for fish and marine shellfish;~~
- ~~3. Prevent turbidity and pollution of streams and fish or shellfish bearing waters;~~
- ~~4. Preserve and protect habitat adequate to support viable populations of native wildlife and fish on Bainbridge Island; and,~~
- ~~5. Encourage non-regulatory methods of habitat retention whenever practical, through education and the Open Space Tax Program.~~

A. Applicability

This section applies to all Fish and Wildlife Habitat Conservation Areas as classified in BIMC 16.20.130.XX except those located within the city's shoreline jurisdiction, which are regulated by the city's shoreline master program (BIMC 16.12).

B. Fish and Wildlife Habitat Conservation Areas Categories. include:

1. Streams. Within the city of Bainbridge Island streams shall include those areas which meet the definitions in BIMC 16.20.XX (Definitions). Streams shall be classified in accordance with the Washington Department of Natural Resources water typing system (WAC 222-16-030) hereby adopted in its entirety by reference and summarized as follows:

a. Type F: streams which contain fish habitat pursuant to BIMC 16.20.XX (Definitions);

- i. Anadromous fish-bearing streams: streams in which anadromous fish are known to occur. As of 2017, anadromous fish-bearing streams are known to include Springbrook Creek, Dripping Water Creek, Manzanita Creek, Murden Creek/Woodward Creek, Cooper Creek, The Ravine, Mac's Dam Creek, and two unnamed streams (Blakely Harbor and Schel Scheb/Pleasant Beach); and
- ii. Non-anadromous fish-bearing streams: streams which do not support anadromous fish populations and do not have the potential for anadromous fish occurrence because of natural barriers to fish passage or lack of suitable habitat. These streams may be re-classified to anadromous fish-

bearing streams if anadromous fish presence is documented in the future due to change in conditions (e.g.; blockage removed).

b. Type Np: perennial non-fish habitat streams; and

c. Type Ns: seasonal non-fish habitat streams.

2. Habitats recognized by federal or state agencies for federal- and/or state-listed endangered, threatened, sensitive and candidate/monitored species which presence is documented in maps or databases available to City of Bainbridge Island.

3. Areas that contain habitats and species of local importance.

4. Biodiversity areas and corridors as defined in the 2008 Washington Department of Fish and Wildlife Priority Habitat and Species List, or as amended.

5. Areas targeted for preservation by federal, state and/or local government which provide fish and wildlife habitat benefits, such as important waterfowl areas identified by the U.S. Fish and Wildlife Service or Washington Department of Fish and Wildlife.

6. All areas within the city of Bainbridge Island meeting one or more of these criteria, regardless of any formal identification or mapping, are hereby designated critical areas and are subject to the provisions of this chapter and shall be managed consistent with the best available science, such as the Washington Department of Fish and Wildlife's most recent Management Recommendations for Priority Habitat and Species.

C. Mapping

The location and extent of all mapped critical areas shown on the city of Bainbridge Island critical area maps are approximate and shall be used as a general guide only. The type, extent and boundaries shall be determined in the field by a qualified professional according to the requirements of this chapter. The critical area maps (provide hyperlink) are adopted as part of this chapter and are incorporated herein by this reference. Washington Department of Natural Resource (DNR) and Washington Department of Fish and Wildlife maps are not the only source of data. Any request to change the city's existing map shall be accompanied by a report from a qualified professional that includes a description of the critical area and a summary of how it meets the definitions in BIMC 16.20.XX. The inventory and cited resources are to be used as a guide for the city, project applicants, and/or property owners, and may be continuously updated as new or altered critical areas are identified

D. Permit and review procedures

1. Any development, use or activity within any fish and wildlife habitat conservation area shall require a critical area permit unless it qualifies as an exempt activity, as provided in BIMC [16.20.160.XX](#).

2. Critical area permits shall be reviewed pursuant to the criteria in BIMC 16.20.XX and any applicable state or federal management recommendations.

3. Applications for critical area permits for fish and wildlife habitat conservation areas shall include:

- a. City of Bainbridge Island Master Land Use Application (hyperlink); and
- b. Habitat Management Plan (HMP) prepared in accordance with BIMC 16.20.XX.

4. The City may request technical review of a HMP from other agencies to ensure consistency with state, federal or tribal management recommendations.

E. Development Standards – Streams

1. All designated streams require a buffer pursuant to Table X. Buffers shall remain as undisturbed native vegetation areas for the purpose of protecting the integrity, function, and value of stream resources. Any buffer modification proposed shall be through an approved Buffer Enhancement Plan. No uses or activities shall be allowed within the buffer unless allowed by this section. If the buffer has previously been disturbed, the director may require the disturbed buffer area be revegetated pursuant to an approved Buffer Enhancement Plan meeting the requirements of BIMC 16.20.160.XX. No refuse, including but not limited to household trash, yard waste and commercial/industrial refuse, shall be placed in the buffer.

2. The required minimum buffers listed in Table X are based on the assumption that the buffer is well vegetated with native species appropriate to the site. If the buffer does not consist of vegetation adequate to provide stream protection and buffer functions, the director may require that the buffer be planted to achieve such protection and function.

Table X. Stream Buffers

<u>Stream Type</u>	<u>Buffer Width</u>
<u>F (anadromous)</u>	<u>200</u>
<u>F (non-anadromous)</u>	<u>150</u>
<u>Np</u>	<u>100</u>
<u>Ns (connected to F or Np)</u>	<u>75</u>
<u>Ns (not connected to F, Np)</u>	<u>50</u>

3. Buffer distances shall be measured from the ordinary high water mark (OHWM) or from the top of the bank where the OHWM cannot be identified. ~~Buffers shall be retained in their natural condition.~~

4. The buffer width shall be increased to include streamside wetlands which provide overflow storage for stormwater, feed water back to the stream during low flow, or provide shelter and food for fish. In braided channels, the ordinary high water mark or top of bank shall be defined so as to include the entire stream feature.

5. Streams in Ravines - Buffers. For streams in ravines outside the Mixed Use Town Center with ravine sides 10 feet or greater in height, the buffer width shall be the greater of:

- i. The buffer width required for the stream type; or
- ii. A buffer width which extends 25 feet beyond the top of the ravine.

6. Increased buffer provisions. The director may increase buffer widths, up to 50 percent greater than the applicable buffer set in this chapter for critical areas with known locations of endangered, threatened, or state monitor or priority species for which a habitat management plan indicates a larger buffer is necessary to protect habitat values for such species. Such determination shall be based on site-specific and project-related conditions.

7. Structure or hard surface setback. A structure or hard surface setback line of fifteen feet is required from the edge of any stream buffer. Minor structural or impervious surface intrusions into the areas of the setback, such as but not limited to fire escapes, open/uncovered porches, landing places, outside walkways, outside stairways, retaining walls, fences and patios, may be permitted if the department determines upon review of an analysis of buffer functions submitted by the applicant, that such intrusions will not adversely impact the stream. The functional analysis shall include a functional methodology supported by best available science. The setback shall be identified on a site plan and filed as an attachment to the notice on title as required by Section 16.20.XX (Notice on Title).

8. Buffer Modification. On each site, only one of the following modifications to buffer widths may be allowed provided the applicant demonstrates the need for modification through mitigation sequencing pursuant to BIMC 16.20.XX.

a. Buffer Width Averaging. The width of a required buffer may be averaged if the applicant can demonstrate that averaging can provide equal or greater functions and values as would be provided under the required buffer this will improve the protection of stream functions and all of the following conditions are met:

- i. The total area of buffer after averaging is equal to the area required without averaging.
- ii. The buffer at its narrowest point is never less than 75 percent of the required width.

b. Buffer Width Reduction. The width of a required buffer may be reduced if the applicant can demonstrate that the reduction will provide equal or greater functions and values as would be provided under the required buffer this will improve the protection of stream functions and all of the following conditions are met:

- i. The buffer may not be reduced more than 25 percent of its required width.
- ii. Native vegetation on other portions of the site is retained in order to offset habitat loss from buffer reduction.

c. Any request for buffer modification outlined above (BIMC 16.20.160.XX-XX) shall be reviewed in conjunction with the underlying land use or construction permit. A critical area permit is not required. Requests for buffer averaging or buffer reduction shall include a buffer enhancement plan prepared by a qualified consultant that meets the requirements of BIMC 16.20.XX. Buffer enhancement plans shall be reviewed pursuant to the criteria in BIMC 16.20.XX.

d. The City may request technical review of a HMP from other agencies to ensure consistency with state, federal or tribal management recommendations.

e. Any other buffer modification, other than non-compensatory enhancement, requires a Reasonable Use Exception pursuant to BIMC 16.20.XX.

E. Development Standards – Fish and Wildlife Habitat Conservation Areas

1. All uses and activities within known fish and wildlife habitat conservation areas require submittal and approval of a Habitat Management Plan (HMP) as specified in BIMC 16.20.XX (Critical area reports). The HMP shall consider measures to retain and protect the wildlife habitat and shall consider the effects of land use intensity, buffers, setbacks, impervious surfaces, erosion control and retention of existing native vegetation.

2. In the case of bald eagles, the HMP shall comply with the federal Bald and Golden Eagle Protection Act (16 USC 668) to avoid impacting eagles and their habitat.

F. Development standards for specific development, uses and activities. The following development, uses and activities may be allowed within fish and wildlife habitat conservation areas and their buffers. Any proposal for the following development, uses and activities requires a critical area permit pursuant to BIMC 16.20.XX and shall comply with the standards of this section and other applicable state, federal and local regulations. The Director may waive the requirement for a HMP when project impacts are demonstrated to be de minimis through mitigation sequencing pursuant to BIMC 16.20.XX.

1. Stream Crossings. Any private or public road or driveway expansion or construction which is allowed and must proposed to cross streams classified within this chapter, shall

comply with the following minimum development standards. All other state and local regulations regarding water crossing structures shall apply, and the use of the *Water Crossing Design Guidelines* (WDFW, 2013), or as amended, is encouraged.

a. Bridges or bottomless culverts shall be required for all Type F streams ~~which have *Salmonid* breeding habitat~~. Other alternatives may be allowed upon submittal of a Habitat Management Plan which demonstrates that other alternatives would not result in significant impacts to the ~~Fish and Wildlife Conservation Area~~, and as determined appropriate through the Washington State Department of Fish and Wildlife, Hydraulics Project Approval (HPA) process administered by the Washington Department of Fish and Wildlife. The plan must demonstrate that salmon habitat will be ~~replaced on a 1:1 ratio~~ not be reduced in area or function.

b. Crossings shall not occur in ~~*Salmonid* spawning areas~~ anadromous fish-bearing streams unless no other feasible crossing site exists. For new development proposals, if existing crossings are determined to adversely impact salmon spawning or passage areas, new or upgraded crossings shall be located as determined necessary through coordination with ~~the Washington State Department of Fish and Wildlife;~~

c. Bridge piers or abutments shall not be placed in either the floodway or between the ordinary, high water marks unless no other feasible alternative placement exists;

d. Crossings shall not diminish flood carrying capacity;

e. Crossings shall serve multiple properties whenever possible;

f. Where there is no reasonable alternative to providing a conventional culvert, the culvert shall be the minimum length necessary to accommodate the permitted activity.

2. Stream Relocations. Stream relocations shall not be allowed unless for the purpose of flood protection and/or fisheries restoration shall only be permitted when adhering to the following minimum performance standards and and only when consistent with a Washington State Department of Fish and Wildlife Hydraulic Project Approval (HPA) process and the following minimum performance standards:

a. The channel, bank, and buffer areas ~~should~~ are be replanted with native or equivalent vegetation that replicates a natural, undisturbed riparian condition;

b. For those ~~shorelands and~~ waters designated as Frequently Flooded Areas pursuant to BIMC 16.20.1420, a professional engineer licensed in the State of Washington shall provide information demonstrating that the equivalent base flood storage volume and function will be maintained; and

c. Relocated stream channels shall be designed to meet or exceed the functions and values of the stream to be relocated.

3. Pesticides, Fertilizers and Herbicides. No pesticides, herbicides or fertilizers may be used in Fish and Wildlife Conservation Areas or their buffers, except those approved by the U.S. Environmental Protection Agency (EPA) and approved under a Washington Department of Ecology DOE Water Quality Modification Permit for use in Fish and Wildlife Habitat Conservation Area environments. ~~Where approved, herbicides must be~~ and applied by a licensed applicator in accordance with the safe application practices on the label.

4. Land Divisions and Land Use Permits. All land divisions and land uses proposed on a site that includes Fish and Wildlife Habitat Conservation Areas shall comply with the following procedures and development standards:

a. The open water area of lakes, streams, and tidal lands shall not be permitted for use in calculating minimum lot area.

b. Land division approvals shall be conditioned so that all required buffers are designated as an easement or covenant encumbering the buffer. Such easement or covenant shall be recorded together with the land division and represented on the final plat, short plat or binding site plan.

c. In order to avoid the creation of non-conforming lots, each new lot shall contain at least one building site that meets the requirements of this chapter, including buffer requirements for fish and wildlife habitat conservation areas. Each lot must also have access and a sewage disposal system location that are suitable for development which do not adversely impact the Fish and Wildlife Conservation Area.

d. After preliminary approval and prior to final land division approval, the Director may require that the common boundary between a required buffer and the adjacent lands be identified using permanent signs. In lieu of signs, alternative methods of buffer identification may be approved when such methods are determined by the Director to provide adequate protection to the aquatic buffer.

45. Agricultural Restrictions. ~~In all development proposals which would permit introduction of agriculture to Fish and Wildlife Habitat Conservation Areas, damage to the area shall be avoided by one of the following methods:~~ New agricultural activities and new structures accessory to agriculture use are prohibited in fish and wildlife habitat conservation areas and their buffers. Existing, ongoing agricultural shall utilize best management practices so as to not result in a net loss of the functions and values of wetlands. Existing, ongoing agriculture shall avoid impacts to wetlands by either:

a. Implementation of a farm resource conservation and management plan agreed upon by the Kitsap Conservation District and agriculture operator to protect and enhance water quality; or

b. Installation of fencing no closer to the stream than the outer edge of its required buffer.

~~a. Implementation of the farm conservation plan agreed upon by the Kitsap Conservation District and the applicant, to protect and enhance the water quality of the aquatic area; and/or,~~

~~b. Fencing located not closer than the outer buffer edge.~~

56. Trails and Trail-Related Facilities. Construction of public and private trails and trail-related facilities, such as benches, interpretive centers, and viewing platforms, may be allowed in Fish and Wildlife Habitat Conservation Areas or their buffers pursuant to the following standards:

a. Trails and related facilities shall, to the extent feasible, be placed on existing road grades, utility corridors, or other such previously disturbed areas;

b. Trails and related facilities shall be planned to minimize removal of trees, shrubs, snags and important wildlife habitat;

c. Viewing platforms, interpretive centers, benches and access to them, shall be designed and located to minimize disturbance of wildlife habitat and/or critical characteristics of the affected conservation area;

d. Trails, in general, shall be set back from streams so that there will be no or minimal impact to the stream from trail use or maintenance. Trails shall be constructed with pervious surfaces when feasible.

67. Utilities. Placement of utilities within designated Fish and Wildlife Habitat Conservation Areas may be allowed pursuant to the following standards:

~~a. The minor utility maintenance authorized in BMC 16.20.040(C) shall be allowed within designated Fish and Wildlife Habitat Conservation areas, subject to best management practices.~~

~~ab. Construction of utilities may be permitted in Fish and Wildlife Habitat Conservation Areas or their buffers, only when no practicable or reasonable alternative location is available and the utility corridor meets the requirements for installation, replacement of vegetation and maintenance outlined below, and as required pursuant to BMC 16.20.160(G) (Special Use Review), which may be required by this Chapter.~~

~~be. Sewer or on-site Sewage Utility. Construction of sewer lines or on-site sewage systems may be permitted in Fish and Wildlife Habitat Conservation Areas or their buffers when the applicant demonstrates it is necessary to meet state and/or local health code requirements; there are no other practicable alternatives available; and construction meets the requirement of this section. Joint use of the sewer utility corridor by other utilities may be allowed.~~

~~cd. New utilitiesy corridors shall not be allowed in Fish and Wildlife Habitat Conservation Areas with known locations of federal or state listed endangered, threatened or sensitive species, heron rookeries or nesting sites of raptors which are listed as state candidates except in those circumstances where an approved Habitat Management Plan indicates that the utility corridor will not significantly impact the conservation area;~~

~~de. New Utility Corridor Construction. Utility corridor construction and maintenance shall protect the environment of Fish and Wildlife Habitat Conservation Areas and their buffers.~~

i. ~~New utilitiesy corridors~~ shall be aligned whenever possible to avoid cutting or root damage to trees greater than 12 inches in diameter at breast height (four and one-half feet) measured on the uphill side.

ii. ~~New utility corridors~~ Any area of disturbance shall be revegetated with appropriate native or equivalent vegetation at not less than pre-construction vegetation densities or greater, immediately upon completion of construction or as soon thereafter as possible due to seasonal growing constraints. The utility or landowner responsible for installation shall ensure that such vegetation survives.

iii. Any additional ~~corridor~~ access for maintenance shall be provided wherever possible at specific points rather than by parallel roads. If parallel roads are necessary, they shall be of a minimum width but no greater than 15 feet; and shall be contiguous to the location of the utility corridor on the side away from the conservation area.

f. Utility ~~corridor~~ maintenance shall include the following measures to protect the environment of regulated Fish and Wildlife Habitat Conservation Areas.

i. Utility towers ~~should be painted with brush, pad or roller and should shall not be sandblasted or spray-painted, nor should lead base paints be used.~~ Lead-based paint is prohibited.

ii. Pesticides, fertilizers and herbicides: No pesticides or fertilizers may be used in Fish and Wildlife Conservation Areas or their buffers, except those ~~herbicides~~ applied by a licensed applicator in accordance with the safe application practices on the label.

78. Bank Stabilization.

a. A stream channel and bank may be stabilized when naturally occurring earth movement threatens existing structures (defined as requiring a Building Permit pursuant to the applicable building code), public improvements, unique natural resources, public health, safety or welfare, or the only feasible access to property, and, in the case of streams, when such stabilization results in maintenance of Fish and Wildlife Habitat, flood control, and improved water quality.

b. Where bank stabilization is determined to be necessary, bioengineering or other non-structural methods should be the first option for protection. ~~Bulkheads and retaining walls~~ Structural methods, or hard stabilization, may only be utilized ~~as an engineering solution~~ where it can be demonstrated that an existing primary residential structure cannot be safely maintained without such measures, and that the resulting ~~retaining wall~~ hard stabilization is the minimum length necessary to provide a stable building area for the structure. The Director may require that bank stabilization be designed by a professional engineer licensed in the State of Washington with demonstrated expertise in hydraulic actions of shorelines. Bank stabilization projects may also require a City of Bainbridge Island clearing or grading permit and Hydraulic Project Approval from the Washington Department of Fish and Wildlife.

c. Nonstructural streambank protective techniques are preferred to bulkheads or other types of streambank armoring. Nonstructural techniques include but are not limited to vegetation plantings and bioengineering.

8. Fencing and Signs. Prior to approval or issuance of permits for land divisions or other new development, the Director may require that the common boundary between a required buffer and the adjacent lands be identified using fencing or permanent signs. In lieu of fencing or signs, alternative methods of buffer identification may be approved when such methods are determined by the Director to provide adequate protection ~~to~~ for the buffer.

14. Forest Practice, Class IV General and Conversion Option Harvest Plans (COHPs). All timber harvesting and associated development activity, such as construction of roads, shall comply with the provisions of this chapter, and the Stormwater Management standards in Chapters 15.20 and 15.21 BIMC, including the maintenance of buffers, where required.

15. Road/Street Repair ~~&~~ and Construction. Any private or public road or street expansion or construction which may be allowed in a Fish and Wildlife Habitat Conservation Area or its buffer shall comply with the following minimum development standards:

- a. No other reasonable or practicable alternative exists and the road or street crossing serves multiple properties whenever possible;
- b. Expansion or construction of any private or public road shall only be allowed when adverse impacts ~~cannot~~ be avoided;
- c. Public and private roads should provide for other purposes, such as utility crossings, pedestrian or bicycle easements, viewing points, etc.; and
- d. The road or street construction is the minimum necessary, as required by the Department of Public Works, and shall comply with the Department of Public Works' guidelines to provide public safety and mitigated stormwater impacts.
- e. Construction time limits shall be determined in consultation with ~~the~~ Washington State Department of Fish and Wildlife in order to ensure habitat protection.

~~16. Other allowed Uses in Fish and Wildlife Conservation Areas. Other activities may be allowed using the standard for a category II wetland buffer in BIMC 16.20.160(E), Table 4.~~

~~C. Development Standards. Regulated uses in designated Fish and Wildlife Habitat Conservation Areas and/or buffers shall comply with the performance standards outlined in this Section.~~

~~1. Development standards for Marine Critical Areas are defined in the City's Shoreline Master Program, Chapter 16.12 BIMC. The shoreline studies that are currently required from all applicants under the Shoreline Master Program, Chapter 16.12 BIMC, are summarized in Exhibit A. Marine Critical Areas are not subject to Development Standards 2-16 of this Subsection C.~~

~~2. Development standards—streams:~~

- a. ~~Water quality buffers—An applicant shall provide the prescribed water quality buffers in Table 2 unless a Reasonable Use Exception is granted pursuant to BIMC 16.20.080.~~
- b. ~~Habitat buffers—An applicant shall provide either:~~
- ~~i. The prescribed habitat buffers in Table 2; or~~
 - ~~ii. An approved Habitat Management Plan, pursuant to BIMC 16.20.060, that clearly provides greater habitat functions and values in perpetuity than the prescribed habitat buffers in Table 2.~~
- c. ~~Buffer distances shall be measured from the ordinary high water mark (OHM) or from the top of the bank where the OHM cannot be identified. Buffers shall be retained in their natural condition. It is acceptable, however, to enhance the buffer by planting native or equivalent vegetation as approved by the Director.~~
- d. ~~Alteration of habitat buffer areas may be allowed for water dependent and water related activities and for development authorized by BIMC 16.20.040.C (Exemptions), or BIMC 16.20.040.D (Standards for Existing Development), or BIMC 16.20.050.B (Buffer Averaging), or BIMC 16.20.070 (Variances), or BIMC 16.20.080 (Reasonable Use Exception).~~
- e. ~~The buffer width shall be increased to include streamside wetlands which provide overflow storage for stormwater, feed water back to the stream during low flow, or provide shelter and food for fish. In braided channels, the ordinary high water mark or top of bank shall be defined so as to include the entire stream feature.~~
- f. ~~Refuse and landscaping debris shall not be placed in buffers.~~
- g. ~~Streams in Ravines—Buffers. For streams in ravines outside the Mixed Use Town Center with ravine sides 10 feet or greater in height, the buffer width shall be the greater of:~~
- ~~i. The buffer width required for the stream type; or~~
 - ~~ii. A buffer width which extends 25 feet beyond the top of the ravine.~~
- h. ~~Building Setback Line. A building surface setback line of 15 feet is required from the edge of any fish and wildlife habitat conservation area buffer except as provided for in BIMC 16.20.170. Minor structures such as decks or impervious surfaces such as driveways may be permitted if the Director determines that such intrusions will not adversely impact the fish and wildlife habitat conservation area. The setback shall be identified on the site plan and filed as an attachment to the notice on title as required by BIMC 16.20.190.~~

Table 2: Stream Buffers

Stream Category	Water Quality Buffer	Habitat Buffer	Total Buffer
Fish Bearing (F)	100 ft	50 ft	150 ft
Non Fish Perennial (Np)	40 ft	10 ft	50 ft
Non Fish Seasonal (Ns)	40 ft	10 ft	50 ft

~~3. Class I Fish and Wildlife Conservation Areas Development Standards. All development as described within this chapter or within 200 feet of designated Class I Wildlife Conservation Areas, except Marine Critical Areas, shall adhere to the following standards:~~

~~a. The applicant shall submit a Habitat Management Plan as specified in BIMC 16.20.060 for approval by the Director. If a wildlife conservation area designation is based on the presence of bald eagles, a Bald Eagle Management Plan, approved by the Washington State Department of Fish and Wildlife and meeting the requirements and guidelines of the bald eagle protection rules, WAC 232-12-292, as now or hereafter amended, shall satisfy the requirements for a Habitat Management Plan (HMP).~~

~~b. All new development within ranges and habitat elements with which Class I Fish and Wildlife have a significant relationship may require the submittal of a Habitat Management Plan (HMP) as specified in BIMC 16.20.060. The requirement for an HMP shall be determined during the SEPA/Critical Areas review on the project.~~

~~c. An HMP required pursuant to this section shall consider measures to retain and protect the wildlife habitat and shall consider effects of land use intensity, buffers, setbacks, impervious surfaces, erosion control and retention of native or equivalent vegetation.~~

~~d. Increased Buffer Provisions. The Director may increase buffer widths, up to 50% greater than the applicable buffer set in this chapter for critical areas with known locations of endangered, threatened, or state monitor or priority species for which a habitat management plan indicates a larger buffer is necessary to protect habitat values for such species. Such determination shall be based on site specific and project related conditions.~~

~~4. Class II Fish and Wildlife Conservation Area Development Standards. All development within designated Class II Wildlife Conservation Areas shall adhere to the following standards:~~

~~a. An HMP may be required for any proposed development within designated Class II Fish and Wildlife Conservation Areas. The HMP shall consider measures to retain and protect the wildlife habitat and shall consider effects of land use intensity, buffers, setbacks, impervious surfaces, erosion control and retention of native or equivalent vegetation. The requirement for an HMP shall be determined during the SEPA/Critical Areas review on the project.~~

~~b. Increased Buffer Provisions. The Director may increase buffer widths, up to 50% greater than the applicable buffer set in this chapter for critical areas with known locations of endangered, threatened, or state monitor or priority species for which a habitat management plan indicates a larger buffer is necessary to protect habitat values for such species. Such determination shall be based on site specific and project related conditions.~~

~~5. Stream Crossings. Any private or public road expansion or construction which is allowed and must cross streams classified within this chapter, shall comply with the following minimum development standards:~~

~~a. Bridges or bottomless culverts shall be required for all streams which have Salmonid breeding habitat. Other alternatives may be allowed upon submittal of a Habitat~~

~~Management Plan which demonstrates that other alternatives would not result in significant impacts to the Fish and Wildlife Conservation Area, as determined appropriate through the Washington State Department of Fish and Wildlife, Hydraulics Project Approval process. The plan must demonstrate that salmon habitat will be replaced on a 1:1 ratio.~~

~~b. Crossings shall not occur in Salmonid spawning areas unless no other feasible crossing site exists. For new development proposals, if existing crossings are determined to adversely impact salmon spawning or passage areas, new or upgraded crossings shall be located as determined necessary through coordination with the Washington State Department of Fish and Wildlife;~~

~~c. Bridge piers or abutments shall not be placed in either the floodway or between the ordinary, high water marks unless no other feasible alternative placement exists;~~

~~d. Crossings shall not diminish flood carrying capacity;~~

~~e. Crossings shall serve multiple properties whenever possible;~~

~~f. Where there is no reasonable alternative to providing a conventional culvert, the culvert shall be the minimum length necessary to accommodate the permitted activity.~~

~~6. Stream Relocations. Stream relocations for the purpose of flood protection and/or fisheries restoration shall only be permitted when adhering to the following minimum performance standards and when consistent with Washington State Department of Fish and Wildlife Hydraulic Project Approval:~~

~~a. The channel, bank, and buffer areas should be replanted with native or equivalent vegetation that replicates a natural, undisturbed riparian condition;~~

~~b. For those shorelands and waters designated as Frequently Flooded Areas pursuant to BIMC 16.20.140, a professional engineer licensed in the State of Washington shall provide information demonstrating that the equivalent base flood storage volume and function will be maintained; and~~

~~c. Relocated stream channels shall be designed to meet or exceed the functions and values of the stream to be relocated.~~

~~7. Pesticides, Fertilizers and Herbicides. No pesticides, herbicides or fertilizers may be used in Fish and Wildlife Conservation Areas or their buffers, except those approved by the EPA and approved under a DOE Water Quality Modification Permit for use in Fish and Wildlife Habitat Conservation Area environments. Where approved, herbicides must be applied by a licensed applicator in accordance with the safe application practices on the label.~~

~~8. Land Divisions and Land Use Permits. All land divisions and land uses proposed on a site that includes Fish and Wildlife Habitat Conservation Areas shall comply with the following procedures and development standards:~~

~~a. The open water area of lakes, streams, and tidal lands shall not be permitted for use in calculating minimum lot area.~~

~~b. Land division approvals shall be conditioned so that all required buffers are designated as an easement or covenant encumbering the buffer. Such easement or~~

covenant shall be recorded together with the land division and represented on the final plat, short plat or binding site plan.

c. In order to avoid the creation of non-conforming lots, each new lot shall contain at least one building site that meets the requirements of this chapter, including buffer requirements for habitat conservation areas. Each lot must also have access and a sewage disposal system location that are suitable for development which do not adversely impact the Fish and Wildlife Conservation Area.

d. After preliminary approval and prior to final land division approval, the Director may require that the common boundary between a required buffer and the adjacent lands be identified using permanent signs. In lieu of signs, alternative methods of buffer identification may be approved when such methods are determined by the Director to provide adequate protection to the aquatic buffer.

9. Agricultural Restrictions. In all development proposals which would permit introduction of agriculture to Fish and Wildlife Habitat Conservation Areas, damage to the area shall be avoided by one of the following methods:

a. Implementation of the farm conservation plan agreed upon by the Kitsap Conservation District and the applicant, to protect and enhance the water quality of the aquatic area; and/or,

b. Fencing located not closer than the outer buffer edge.

10. Trails and Trail-Related Facilities. Construction of public and private trails and trail-related facilities, such as benches, interpretive centers, and viewing platforms, may be allowed in Fish and Wildlife Habitat Conservation Areas or their buffers pursuant to the following standards:

a. Trails and related facilities shall, to the extent feasible, be placed on existing road grades, utility corridors, or other such previously disturbed areas;

b. Trails and related facilities shall be planned to minimize removal of trees, shrubs, snags and important wildlife habitat;

c. Viewing platforms, interpretive centers, benches and access to them, shall be designed and located to minimize disturbance of wildlife habitat and/or critical characteristics of the affected conservation area;

d. Trails, in general, shall be set back from streams so that there will be no or minimal impact to the stream from trail use or maintenance. Trails shall be constructed with pervious surfaces when feasible.

11. Utilities. Placement of utilities within designated Fish and Wildlife Habitat Conservation Areas may be allowed pursuant to the following standards:

a. The minor utility maintenance authorized in BMC 16.20.040(C) shall be allowed within designated Fish and Wildlife Habitat Conservation areas, subject to best management practices.

b. Construction of utilities may be permitted in Fish and Wildlife Habitat Conservation Areas or their buffers, only when no practicable or reasonable alternative location is available and the utility corridor meets the requirements for installation, replacement of vegetation and maintenance outlined below, and as required pursuant to BMC 16.20.160(G) (Special Use Review), which may be required by this Chapter.

~~e. Sewer or on-site Sewage Utility. Construction of sewer lines or on-site sewage systems may be permitted in Fish and Wildlife Habitat Conservation Areas or their buffers when the applicant demonstrates it is necessary to meet State and/or local health code requirements; there are no other practicable alternatives available; and construction meets the requirement of this section. Joint use of the sewer utility corridor by other utilities may be allowed.~~

~~d. New utility corridors shall not be allowed in Fish and Wildlife Habitat Conservation Areas with known locations of federal or state listed endangered, threatened or sensitive species, heron rookeries or nesting sites of raptors which are listed as state candidates except in those circumstances where an approved Habitat Management Plan indicates that the utility corridor will not significantly impact the conservation area;~~

~~e. New Utility Corridor Construction. Utility corridor construction and maintenance shall protect the environment of Fish and Wildlife Habitat Conservation Areas and their buffers.~~

~~i. New utility corridors shall be aligned whenever possible to avoid cutting or root damage to trees greater than 12 inches in diameter at breast height (four and one-half feet) measured on the uphill side.~~

~~ii. New utility corridors shall be revegetated with appropriate native or equivalent vegetation at not less than pre-construction vegetation densities or greater, immediately upon completion of construction or as soon thereafter as possible due to seasonal growing constraints. The utility shall ensure that such vegetation survives.~~

~~iii. Any additional corridor access for maintenance shall be provided wherever possible at specific points rather than by parallel roads. If parallel roads are necessary, they shall be of a minimum width but no greater than 15 feet; and shall be contiguous to the location of the utility corridor on the side away from the conservation area.~~

~~f. Utility corridor maintenance shall include the following measures to protect the environment of regulated Fish and Wildlife Habitat Conservation Areas.~~

~~i. Utility towers should be painted with brush, pad or roller and should not be sandblasted or spray painted, nor should lead base paints be used.~~

~~ii. Pesticides, fertilizers and herbicides: No pesticides or fertilizers may be used in Fish and Wildlife Conservation Areas or their buffers, except those herbicides applied by a licensed applicator in accordance with the safe application practices on the label.~~

~~12. Bank Stabilization:~~

~~a. A stream channel and bank may be stabilized when naturally occurring earth movement threatens existing structures (defined as requiring a Building Permit pursuant to the applicable building code), public improvements, unique natural resources, public health, safety or welfare, or the only feasible access to property, and, in the case of streams, when such stabilization results in maintenance of Fish and Wildlife Habitat, flood control, and improved water quality.~~

~~b. Where bank stabilization is determined to be necessary, bioengineering or other non-structural methods should be the first option for protection. Bulkheads and retaining walls may only be utilized as an engineering solution where it can be~~

demonstrated that an existing residential structure cannot be safely maintained without such measures, and that the resulting retaining wall is the minimum length necessary to provide a stable building area for the structure. The Director may require that bank stabilization be designed by a professional engineer licensed in the State of Washington with demonstrated expertise in hydraulic actions of shorelines. Bank stabilization projects may also require a City of Bainbridge Island clearing or grading permit and Hydraulic Project Approval from the Washington Department of Fish and Wildlife.

e. Nonstructural streambank protective techniques are preferred to bulkheads or other types of streambank armoring. Nonstructural techniques include but are not limited to vegetation plantings and bioengineering.

13. Fencing and Signs. Prior to approval or issuance of permits for land divisions or other new development, the Director may require that the common boundary between a required buffer and the adjacent lands be identified using fencing or permanent signs. In lieu of fencing or signs, alternative methods of buffer identification may be approved when such methods are determined by the Director to provide adequate protection to the buffer.

14. Forest Practice, Class IV General and Conversion Option Harvest Plans (COHPs). All timber harvesting and associated development activity, such as construction of roads, shall comply with the provisions of this chapter, and the Stormwater Management standards in Chapters 15.20 and 15.21 BIMC, including the maintenance of buffers, where required.

15. Road/Street Repair & Construction. Any private or public road or street expansion or construction which may be allowed in a Fish and Wildlife Habitat Conservation Area or its buffer shall comply with the following minimum development standards:

a. No other reasonable or practicable alternative exists and the road or street crossing serves multiple properties whenever possible;

b. Expansion or construction of any private or public road shall only be allowed when adverse impacts cannot be avoided;

c. Public and private roads should provide for other purposes, such as utility crossings, pedestrian or bicycle easements, viewing points, etc.; and

d. The road or street construction is the minimum necessary, as required by the Department of Public Works, and shall comply with the Department of Public Works' guidelines to provide public safety and mitigated stormwater impacts.

e. Construction time limits shall be determined in consultation with the Washington State Department of Fish and Wildlife in order to ensure habitat protection.

16. Other allowed Uses in Fish and Wildlife Conservation Areas. Other activities may be allowed using the standard for a category II wetland buffer in BIMC 16.20.160(E), Table 4.

Chapter 16.20

CRITICAL AREAS

Sections:

- 16.20.010 Purpose and intent
- 16.20.020 ~~Applicability Interpretation, procedures, and program review~~
- 16.20.030 ~~Mitigation sequencing Definitions~~
- 16.20.040 ~~Exemptions Applicability, exemptions, and prior development activity~~
- 16.20.050 ~~Standards for existing development Alternatives to prescriptive buffers~~
- 16.20.060 ~~Administration Habitat management plans~~
- 16.20.070 ~~Review procedures Variances~~
- 16.20.080 Reasonable use exceptions

- 16.20.090 ~~Aquifer recharge areas Application requirements~~
- 16.20.100 ~~Fish and wildlife habitat conservation areas Minimizing impacts to critical areas~~
- 16.20.110 ~~Frequently flooded areas Mitigation plan requirements~~
- 16.20.120 ~~Geologically hazardous areas Aquifer recharge areas~~
- 16.20.130 ~~Wetlands Fish and wildlife habitat conservation areas~~
- 16.20.140 ~~The Winslow Ravine Frequently flooded areas~~

16.20.1850 Performance and maintenance surety

- ~~16.20.190 Notice on title~~
- 16.20.20160 Compliance and enforcement
- ~~16.20.210 Suspension Revocation~~
- ~~16.20.220 Assessment relief~~
- ~~16.20.230 Other laws and regulations~~
- ~~16.20.240 Conflict~~
- ~~16.20.250 Severability~~

16.20.170 Critical area reports

16.20.180 Definitions

Commented [CC1]: See separate, specific critical area sections.

Commented [CC2]: Move to review procedures, above.

Commented [CC3]: Move above under administration.

Commented [CC4]: New section.

Commented [CC5]: Moved and revised section.

16.20.010 Purpose and intent.

The City Council finds that aquifer recharge areas, frequently flooded areas, geologically hazardous areas, wetlands, and fish and wildlife habitat conservation areas constitute critical areas that are of special concern to the City. The City's policies in regard to the natural systems and environment of Bainbridge Island, as well as the Washington Growth Management Act, Chapter 36.70 RCW, require that critical areas of Bainbridge Island be protected by establishing minimum standards for the impact of development of properties which contain or adjoin critical areas. Cumulative impacts to critical areas shall be addressed in the administration of this chapter by assuring there is

no net loss of the function and values of the critical areas. It is the intent of this chapter to protect the public health, safety, and welfare by:

- A. Avoiding the impact;
- B. Minimizing or limiting the degree or magnitude of the impact of an action by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
- C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- D. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- E. Compensating for unavoidable impacts by replacing, enhancing or providing substitute resources or environments;
- F. Reducing the potential for personal injury, loss of life, or property damage due to flooding, erosion, landslides, seismic events, or soil subsidence;
- G. Protecting against publicly financed expenditures due to the misuse of critical areas which cause:
 - 1. Unnecessary maintenance and replacement of public facilities;
 - 2. Public funding of mitigation for avoidable impacts;
 - 3. Cost for public emergency rescue and relief operations where the causes are avoidable; or
 - 4. Degradation of the natural environment;
- H. Preserving aquatic resources by ensuring that development activities maintain and protect aquatic resources, natural drainage systems, and water quality;
- I. Protecting unique, fragile, and valuable elements of the environment, including wildlife and its habitat;
- J. Alerting appraisers, assessors, owners, potential buyers, or lessees to the development limitations of critical areas; and
- K. Providing City officials with sufficient information to adequately protect critical areas when approving, conditioning, or denying public or private development proposals.

A. The purpose of this chapter is to designate and classify ecologically sensitive and hazardous areas as critical areas and to protect, maintain and restore these areas and their functions and values, while also allowing for reasonable use of public and private property.

B. This chapter is to implement the goals, policies, guidelines, and requirements of the city comprehensive plan and the Growth Management Act (Chapter 36.70A RCW).

C. Critical areas provide a variety of valuable and beneficial biological and physical functions that benefit the city and its residents, and/or may pose a threat to human safety or to public and private property. The beneficial functions and values provided by critical areas include, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation of flood

waters, ground water recharge and discharge, erosion control, wave attenuation, and protection from hazards.

D. By limiting adverse impacts to and alteration of critical areas, this chapter seeks to accomplish the following goals:

1. Protect, maintain and restore healthy, functioning ecosystems through the protection of unique, fragile, and valuable elements of the environment, including, but not limited to, ground and surface waters, wetlands, fish and wildlife and their habitats; and to conserve the biodiversity of plant and animal species;
2. Direct activities to less environmentally sensitive sites and mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to critical areas;
3. Prevent cumulative adverse environmental impacts to water quality, wetlands, and fish and wildlife habitat, and the overall net loss of wetlands, frequently flooded areas, and habitat conservation areas;
4. Protect members of the public and public resources and facilities from injury, loss of life, or property damage due to landslides and steep slope failures, erosion, seismic events, or flooding; and
5. Alert owners, potential purchasers, real estate agents, appraisers, lenders, builders, developers and other members of the public to natural conditions that pose a hazard or otherwise limit development.

E. This chapter is to be administered with flexibility and attention to site-specific characteristics. It is not the intent of this chapter to make a parcel of property unusable by denying its owner reasonable use of the property, or to prevent the provision of public facilities and services necessary to support existing development.

~~16.20.020 Interpretation, procedures, and program review.~~

~~A. Interpretation. The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter.~~

~~B. Procedures. The Director is authorized to adopt written procedures for the purpose of carrying out the provisions of this chapter.~~

~~C. Non Regulatory Program Review. Annually, the City Council shall review the status of the non regulatory program and adopt a resolution implementing appropriate elements that help landowners comply with the critical areas ordinance. Elements that shall be reviewed include but are not limited to:~~

- ~~1. Education and Outreach Measures.~~
 - ~~a. Develop or provide clear and understandable manuals explaining recommended best management practices for typical land owner activities;~~

Commented [CC6]: These sections moved to Administration, below.

Commented [CC7]: The City does not have a non-regulatory program.

- b. ~~Conduct seminars and presentations for interested owners and groups;~~
 - e. ~~Coordinate efforts with existing conservation, stewardship, or small resource user groups with expertise in wildlife or habitat area land management issues;~~
 - d. ~~Expand local wildlife inventory information through baseline survey of local habitats and species; and~~
 - e. ~~Perform outreach to individual property owners in critical areas who wish to develop stewardship plans to establish parameters for future activities.~~
 - 2. ~~Tax Incentive Measures. Coordinate with Kitsap County to provide incentives through the current use taxation program, and encourage land owners with critical areas to enroll their property in open space tax status and/or conservation easements.~~
 - D. Regulatory Program Review.** ~~The City Council shall review, on an annual basis, the implementation of this ordinance. The public shall be involved in the review.~~
- Elements that shall be reviewed include, but are not limited to:
- 1. ~~Administration of its provisions;~~
 - 2. ~~Impact upon critical areas protection; and~~
 - 3. ~~Collection of scientific data of local conditions.~~

Commented [CC8]: GMA requires periodic updates based on best available science. Implementation review can be done as needed. Annual review may not be necessary or fit into Department workplan and should not be codified.

16.20.020 Applicability

Existing language from 16.20.040:

~~A. Applicability. This chapter establishes regulations for the protection of sites which contain critical areas or are adjacent to sites which contain critical areas. Development and land use activities proposed on critical area sites shall comply with the provisions of this chapter. This chapter applies to all development, uses and activities within areas or adjacent to areas designated as critical areas unless identified as exempt in BIMC~~
16.20.040. No action shall be taken by any person, company, agency, governmental body (including the City), or applicant, which results in any alteration of a critical area except as consistent with the purposes, intent, requirements, development standards objectives, and goals of this chapter.

16.20.030 Definitions:

Commented [CC9]: Moved to end of chapter.

16.20.030 Protection of Critical Areas

Commented [CC10]: Adds policy language from Comprehensive Plan.

A. All proposed development, uses and activities subject to this chapter shall utilize mitigation sequencing as follows:

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

3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments, and;
6. Monitoring the impact and taking appropriate corrective measures.

B. The precautionary principle shall be applied in the review of any action, taken or proposed, that does not conform to the requirements of this chapter. The burden of proof that the action will cause no net loss falls on the applicant or the property owner.

16.20.040 Applicability, exemptions, and prior development activity.

A. Applicability. This chapter establishes regulations for the protection of sites which contain critical areas or are adjacent to sites which contain critical areas. Development and land use activities proposed on critical area sites shall comply with the provisions of this chapter. No action shall be taken by any person, company, agency, governmental body (including the City), or applicant, which results in any alteration of a critical area except as consistent with the purposes, requirements, objectives, and goals of this chapter.

B. Inventory of Critical Areas. This chapter shall apply to all critical areas located within the jurisdiction of the city. The approximate location and extent of these areas on Bainbridge Island is displayed on various inventory maps available at the city's Department of Planning and Community Development. Maps and inventory lists are guides to the general location and extent of critical areas. Critical areas not shown are presumed to exist on Bainbridge Island and are protected under all the provisions of this chapter. In the event that any of the designations shown on the maps or inventory lists conflict with the site specific conditions, site specific conditions shall control.

Commented [CC11]: Moved to separate section, above.

Commented [CC12]: Moved to Administration, below.

16.20.040 Exemptions

A.C. Exemptions. Exempt activities are those that will not have a significant impact on a critical area's structure and function and are expected to be very short term. All exempt activities shall use reasonable methods to avoid potential impacts to critical areas. Exempt activities do not grant permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempt activity shall be considered a violation of this chapter and subject to enforcement and restoration under BIMC 16.20.XX.

Commented [CC13]: Strikethrough/underline from existing language in 16.20.040.C.

The following activities are exempt from the requirements of this chapter and do not require a critical areas permit and are not subject to any review or approval process except where noted:

1. Emergency activities necessary to prevent an unanticipated and immediate threat to ~~that threaten the public health, safety and or welfare or that poses an immediate risk of danger to property and that~~ An "emergency" is an unanticipated and immediate threat to public health, safety, or the environment which requires action within a time frame too short to allow compliance with this chapter. The person or agency undertaking such action shall notify the director within one working day following commencement of the emergency activity. Within 30 days, the director shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the director determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions of BIMC 16.20.XX shall apply.

After the emergency, the person or agency undertaking the action shall fully fund and conduct necessary restoration and/or mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved critical areas report and mitigation plan. Restoration and/or mitigation activities must be initiated within one year of the date of the emergency and completed in a timely manner.

2. Existing and ongoing agricultural activities using best management practices as included in a farm management plan developed by the Kitsap Conservation District. For the purpose of this chapter, "existing and ongoing" means the activity has been conducted and/or maintained within the past five years under a farm management plan or other best management practices not resulting in a net loss of critical area functions and values.

3. Normal and routine maintenance of existing structures, landscaping and vegetation that will not further impact or alter critical areas or buffers.

4. Normal and routine maintenance and operation of ~~pre-existing~~ retention/detention facilities, biofilters and other stormwater management facilities, irrigation and drainage ditches, fish ponds; provided, that such activities shall not involve conversion of any wetland not currently being used for such activity. Any maintenance of ponds located in stream habitat areas shall require approval from the Washington Department of Fish and Wildlife.

5. ~~Structural~~ Alterations to existing legally constructed buildings and structures that do not increase the ~~structural~~ footprint within a critical area or its buffer, do not increase risk to life or property, and do not introduce new adverse impacts to ~~an adjacent~~ any critical area or its buffer.

6. Normal and routine maintenance or repair of existing utility structures within a right-of-way or existing utility corridor or easements, including the cutting, removal and/or mowing of vegetation above the ground that utilizes best management practices and does not expand the use, activity or structure further into the any critical area.

7. Forest practices conducted pursuant to Chapter 76.09 RCW, except Class IV (general conversions) and Conversion Option Harvest Plans (COHP).

8. Chemical Applications. The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary, provided, that their use shall be restricted in accordance with Washington Department of Fish and Wildlife Management Recommendations and the regulations of the Washington Department of Agriculture, the U.S. Environmental Protection Agency, and Washington Department of Ecology.

9. Minor Site Investigative Work. Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored. Minor site investigative work may include educational and scientific research activities.

10. Activities within the Improved Right-of-Way. Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, when such facilities are located within the improved portion of the public right-of-way or a city-authorized private roadway, except those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased storm water.

12. The construction of fences within critical area buffers provided the location does not result in restricting wildlife movement, the location is the least impactful to the critical area as possible, and there is no alternative to fencing to achieve the purpose of the fence.

13. Signs for marking critical area boundaries or hazards, interpretive signs and survey markers.

B. The following uses and activities qualify as exempt activities only after review and authorization by the city. These exempt activities do not require a critical areas permit. Review and authorization may occur over-the-counter and requires a written letter of approval.

1. Activities within a portion of a wetland buffer or fish and wildlife habitat conservation area buffer separated from the critical area by an existing permanent substantial improvement which serves to eliminate or greatly reduce the impact of the proposed

activity on the critical area are exempt from establishing the full required buffer width; provided, that impacts to the critical area do not increase. The director shall review the proposal to determine the likelihood of associated impacts. The director may require the applicant to provide a critical areas report by a qualified professional that demonstrates through a site assessment or functional analysis the interrupted buffer area is functionally isolated from the critical area. The director shall consider the hydrologic, geologic, and/or biological habitat connection potential and the extent and permanence of the physical separation.

2. Select Vegetation Removal Activities

a. The removal of the following vegetation with hand labor or hand-held equipment when the area of work is under 2,500 square feet in area and on slopes less than 15 percent:

- i. Plants on the Washington State Noxious Weed Control Board list of noxious weeds;
- ii. English ivy (*Hedera helix*);
- iii. Himalayan blackberry (*Rubus discolor*, *R. procerus*);
- iv. Evergreen blackberry (*Rubus laciniatus*);
- v. English/Portuguese laurel (*Prunus laurocerasus/ lusitanica*)
- vi. English holly (*Ilex aquifolium*); and
- vii. Scot's broom (*Cytisus scoparius*).

Removal of these invasive and noxious plant species shall be restricted to hand removal or hand-held equipment unless permits or approval from the city or other appropriate regulatory agencies have been obtained for approved biological or chemical treatments or other removal techniques. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. All removed plant material shall be taken away from the site and appropriately disposed of except for large shrub or tree species which may be left on site.

b. The removal of trees from critical areas and buffers that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property; provided, that:

- i. The applicant submits a report from an International Society of Arboriculture (ISA) Tree Risk Assessment Qualified (TRAQ) arborist that documents the hazard and provides a replanting plan for replacement trees;
- ii. Tree cutting shall be limited to pruning and crown thinning, unless otherwise justified by a qualified professional. Where pruning or crown thinning is not sufficient to address the hazard, trees should be removed or converted to wildlife snags;
- iii. All vegetation cut (tree stems, branches, etc.) shall be left within the critical area or buffer unless removal is warranted due to the potential for disease or pest

transmittal to other healthy vegetation or unless removal is warranted to maintain slope stability;

iv. The land owner shall replace any trees that are removed with new trees at a minimum ratio of two replacement trees for each tree removed (2:1) within one year in accordance with an approved planting plan. Replacement trees may be planted at a different, nearby location if it can be determined that planting in the same location would create a new hazard or potentially damage the critical area. Replacement trees shall be species that are native and indigenous to the site and a minimum of one to two inches in diameter at breast height (dbh) for deciduous trees and a minimum of six feet in height for evergreen trees as measured from the top of the root ball;

v. If a tree to be removed provides critical habitat, such as an eagle perch, a qualified wildlife biologist shall be consulted to determine timing and methods of removal that will minimize impacts;

vi. Hazard trees determined to pose an imminent threat or danger to public health or safety, to public or private property, or of serious environmental degradation may be removed or pruned by the land owner prior to receiving written approval from the city; provided, that within 14 days following such action, the land owner shall submit a planting plan that demonstrates compliance with the provisions of this title; and

vii. The applicant submits a statement from a geotechnical engineer that the proposed tree(s) removal shall not create a net increase in geological instability, either on- or off-site, as defined in BIMC 16.20.XX, if the tree(s) to be removed are located within a landslide hazard area or its buffer.

c. Pruning of trees is exempt provided pruning operations remove no more living material than what is necessary to achieve pruning objectives specified in a report by an International Society of Arboriculture (ISA) certified arborist that documents conformance with professional criteria for performing pruning operations as described in ANSI A300 (Part 1 – 2017) Tree, Shrub and Other Woody Plant Management – Standard Practices (Pruning), as amended. Species, size, age, condition, and site shall be considered and provided in the arborist report when specifying the location and amount of live branches to be removed. The practice known as topping – the reduction of tree size by cutting live branches and leaders to stubs, without regard to long-term tree health or structural integrity – is prohibited.

3. Fish, Wildlife and Wetland Restoration Activities. Fish, wildlife, and/or wetland restoration or enhancement activities not required as project mitigation; provided, that the project is approved by the jurisdictional agency (Washington State Department of Fish and Wildlife, U.S. Army Corps of Engineers, or other appropriate local, state, federal, or tribal jurisdiction).

1. Emergencies that threaten the public health, safety and welfare. An "emergency" is an unanticipated and immediate threat to public health, safety, or the environment which requires action within a time too short to allow compliance with this

chapter. Restoration or mitigation of critical areas and buffers impacted by emergency action shall be required in a timely matter.

2. Ongoing agricultural activities using best management practices as included in a farm management plan developed by the Kitsap Conservation District.

3. Normal and routine maintenance of structures, landscaping and vegetation that will not further impact or alter critical areas or buffers.

4. Normal and routine maintenance and operation of pre-existing retention/detention facilities, biofilters and other stormwater management facilities; irrigation and drainage ditches, farm ponds, fish ponds, manure lagoons, and livestock water ponds; provided, that such activities shall not involve conversion of any wetland not currently being used for such activity. Any maintenance of ponds located in stream habitat areas shall require appropriate approval from the Washington Department of Fish and Wildlife.

5. Structural alterations to buildings that do not increase the structural footprint or introduce new adverse impacts to an adjacent critical area, except for structures located on geologically hazardous areas which are not exempt.

6. Normal and routine maintenance or repair of existing utility structures within a right-of-way or existing utility corridor or easements, including the cutting, removal and/or mowing of vegetation.

7. Forest practices conducted pursuant to Chapter 76.09 RCW, except Class IV (general conversions) and Conversion Option Harvest Plans (COHP).

8. Activities within a portion of a wetland buffer or fish and wildlife habitat area buffer located landward of an existing, substantially developed area, such as a paved area, or permanent structure, which eliminates or greatly reduces the impact of the proposed activities on the wetland or fish and wildlife habitat area. The Director shall review the proposal to determine the likelihood of associated impacts.

9. Hazard Tree Removal. Where a threat to human life, property, or slope stability is demonstrated, the Director may allow removal of danger or hazard trees subject to the following criteria:

a. Tree removal is the minimum necessary to balance protection of the critical area and its buffer with protection of life and property; and

b. The critical area or its buffer shall be replanted as determined by the Director.

The Director shall coordinate review with the Washington State Department of Fish and Wildlife as determined necessary to assure habitat protection. The Director may require the applicant to consult with a professional forester or a certified arborist prior to tree removal. Hazard tree abatement can sometimes be achieved by felling the tree or trimming the tree. Habitat needs may require leaving the fallen tree in the riparian corridor or maintaining a high stump for wildlife habitat.

10. Aquifer recharge areas. A person, or property, shall be exempt from the provisions of this chapter unless either of the following is true:

a. The property is located in a fish and wildlife habitat conservation area, frequently flooded area, geologically hazardous area, and/or wetland; or

b. One of more of the uses identified in BIMC 16.20.120.B-E are proposed.

16.20.050 Standards for existing development

A. Existing structures and related improvements. Structures and related improvements that were legally built or vested prior to the effective date of Ordinance No. ~~2005-03~~ 2017-XX that do not meet the ~~setback or buffer~~ requirements of this chapter may continue to exist in their present form, and may be altered, including remodeled, reconstructed, or expanded, if such alteration complies with the provisions of this Section.

B. Existing structures, ~~not located in a geologically hazardous area,~~ that were legally built or vested prior to the effective date of Ordinance No. ~~2005-03~~ 2017-XX may be altered if:

1. There is no change in the footprint of the ~~building structure~~;
2. ~~The remodel~~ Any interior work is entirely inside the existing ~~building structure~~;
3. There is no further encroachment into the ~~critical area or its required buffers~~ ~~required~~ pursuant to this chapter unless a ~~Variance~~ Reasonable Use Exemption is first approved; ~~or~~ and
4. Any expansion of the ~~building footprint~~ is ~~exclusively on the sides that do not touch the buffers~~ outside the critical area and its required buffer.

C. Existing property improvements other than structures, including driveways, parking areas, yards ~~and landscaped areas~~, play areas, storage areas, and similar improvements that were legally established or vested prior to the effective date of Ordinance No. ~~2005-03~~ 2017-XX may be altered if:

1. There is no change in the location of the improvement;
2. Any alteration of the improvement is entirely inside of the existing boundaries of the improvement;
3. There is no further encroachment into the ~~critical area or its required buffers~~ unless a ~~Variance~~ Reasonable Use Exemption is first approved; or
4. Any ~~increase in expansion of the area footprint of the improvement~~ is ~~exclusively on the sides that do not touch the buffers~~ outside the critical area and its required buffer.

D. Alterations permitted by this Section ~~shall not be exempt from applicable City review or permit requirements or must comply with other applicable City codes or land use review requirements.~~

~~E. Conservation Agreements. The City will honor conservation agreements on regulated wetlands that were improved as a result of collaborative enhancement, restoration, or conservation projects. Where enhancements or restorations are made to wetlands for purposes other than mitigation, the original wetland rating shall be maintained, even if the changes result in a higher classification.~~

Commented [CC14]: Moved to 16.20.160, specific to wetlands.

~~16.20.050 Prescriptive buffers variations.~~

Commented [CC15]: Section deleted.

~~A. Intent. The City recognizes that in some cases it may not be possible to avoid impacts to critical areas and their buffers provide a critical area buffer that meets the dimensions prescribed by this ordinance, due to land area or other constraints. The City further recognizes that in some cases the desired or better critical area protection can be achieved through alternative approaches.~~

~~This section provides alternatives that can be pursued in lieu of the prescribed development standards buffers when warranted by site specific conditions. In considering an application for any of these alternatives, it shall always be the primary intent of the City to protect the functions and values of the critical areas. It is further the intent of the City to ensure that the application of the provisions of this chapter does not deprive an owner from reasonable use of their property.~~

~~Any proposed use of the following alternatives shall be supported by analysis utilizing best available science, to determine and minimize the impacts of the alternative:~~

~~B. Buffer Averaging. If characteristics of the property do not allow reasonable use with prescribed buffers, the Director may allow wetland and/or fish and wildlife conservation area buffer widths to be averaged. It is intended that the process for reviewing a buffer averaging proposal be as simple as possible, while ensuring that the following criteria are met:~~

~~1. The total area contained within the buffer after averaging shall be no less than that contained within the standard buffer prior to averaging;~~

~~2. The applicant demonstrates that such averaging will clearly provide greater protection of the functions and values of critical areas than would be provided by the prescribed habitat buffers.~~

~~3. The averaging will not result in reduced buffers next to highly sensitive habitat areas; and~~

~~4. The applicant demonstrates one or more of the following:~~

~~a. That the wetland contains variations in sensitivity due to existing physical characteristics;~~

~~b. That only low intensity uses would be located within 200 feet of areas where the buffer width is reduced, and that such low intensity uses restrictions are guaranteed in perpetuity by covenant, deed restriction, easement, or other legally binding mechanism; or~~

e. That buffer averaging is necessary to avoid an extraordinary hardship to the applicant caused by circumstances peculiar to the property.

~~CB. Habitat Management Plan. A Habitat Management Plan may be prepared pursuant to BIMC 16.20.060 when it can clearly be demonstrated that greater protection of the functions and values of critical areas can be achieved through the HMP than could be achieved through providing the prescribed habitat buffers. A Habitat Management Plan may be used as a means to protect wetland and/or fish and wildlife habitat conservation area buffers. Habitat Management Plans may not be used to reduce the water quality buffers for wetlands and/or fish and wildlife habitat conservation areas.~~

~~D. Variances. Variances to reduce the prescribed habitat buffers for wetlands and/or fish and wildlife habitat conservation areas may be pursued pursuant to BIMC 16.20.070. Variances may not be used to reduce the prescribed water quality buffers for wetlands and/or fish and wildlife habitat conservation areas.~~

~~EC. Reasonable Use Exceptions. If the application of this chapter would deny all reasonable use of the subject property, the property owner may apply for an exception pursuant to BIMC 16.20.080.~~

~~FD. Pilot Projects. The City Council may, by Resolution, establish a site specific pilot project in partnership with an applicant that encourages the applicant to undertake creative, non-standard efforts that were not envisioned during the development of this chapter, but through which a greater conservation of critical areas will be achieved; provided that such project will satisfy the intent of this chapter as expressed in BIMC 16.20.010, and will provide greater protection of the functions and values of affected critical areas and their buffers. The applicant will cooperate with the City through the permitting and SEPA review process, and the Council will develop criteria for its review as well as a public process for the Council Resolution.~~

~~GE. Public notice. Appropriate notice of, and opportunity to comment on, the proposed use of any of the foregoing alternatives shall be given to surrounding property owners and the general public, in a manner to be established by the Director.~~

16.20.060 Habitat management plan.

A. General. A Habitat Management Plan shall comply with the requirements of this Section, and shall clearly demonstrate that greater protection of the functions and values of critical areas can be achieved through the HMP than could be achieved through providing the prescribed habitat buffers. The Director shall prepare performance standards and monitoring guidelines for Habitat Management Plans, including a program for City oversight of such plans. Once the standards and guidelines are in place, an applicant may propose to implement an HMP as a means to protect habitat buffers associated with wetlands and/or fish and wildlife conservation areas.

B. Intent. HMPs are primarily intended as a means to restore or improve buffers that have been degraded by past activity, and should preserve, and not reduce, existing high quality habitat buffers. While not primarily intended as a means to reduce buffers, the HMP may propose a reduction of the habitat buffer width where it is shown that the HMP will comply with the other requirements of this Section. An HMP shall not reduce the

Commented [CC16]: Moved to Critical Area Reports.

prescribed water quality buffer width as listed in BIMC 16.20.130 and 16.20.160 under any circumstance.

C. **Effect of buffers.** An HMP shall provide habitat functions and values that are greater than would be provided by the prescribed habitat buffers. When habitat buffers are a component of an HMP, they shall be at least the minimum size necessary to accomplish the objectives of the HMP. The HMP may propose, but the City shall not require, a habitat buffer containing a greater area than is required by the prescribed habitat buffer.

D. **Impact mitigation—general.** The HMP shall encompass an area large enough to provide mitigation for buffer reduction below the standard required buffers, and shall identify how the development impacts resulting from the proposed project will be mitigated. The developer of the plan shall use the best available science in all facets of the analyses. The Washington Department of Fish and Wildlife Priority Habitat and Species Management Recommendations, dated May 1991, and/or bald eagle protection rules outlined in WAC 232-12-292, as now or hereafter amended, may serve as guidance for this report. For Habitat Management Plans addressing wetland buffers, *Method for Assessing Wetland Functions*, Ecology Publication #99-116 shall be used for guidance in determining function equivalency.

E. **HMP review.** All Habitat Management Plans shall be submitted to the Washington State Department of Fish and Wildlife habitat biologist and to the Suquamish Tribe for review and comment. Within that same time frame, the City's Environmental Technical Advisory Committee shall be asked to review the HMP and provide comments.

F. **Map.** The Habitat Management Plan shall contain a map prepared at an easily readable scale, showing:

1. The location of the proposed development site;
2. Property boundaries;
3. The relationship of the site to surrounding topographic, water features, and cultural features;
4. Proposed building locations and arrangements;
5. A legend which includes a complete legal description, acreage of the parcel, scale, north arrow, and date of map revision.

G. **Report.** The Habitat Management Plan shall also contain a report which contains:

1. A description of the nature and intensity of the proposed development;
2. An analysis of the effect of the proposed development, activity or land use change upon the wildlife species and habitat identified for protection. If the Habitat Management Plan is addressing wetland habitat, the analysis shall compare an assessment of wildlife habitat suitability of the wetland applying standard buffers with an assessment of habitat suitability as proposed using *Method for Assessing Wetland Functions*, *Washington State Department of Ecology* (if available for the specific Hydrogeomorphic classification); and
3. A plan which identifies how the applicant proposes to mitigate any adverse impacts to wildlife habitats created by the proposed development. For wetland or other habitats protected by this chapter, the application shall show, using the appropriate function assessment methodology, that habitat functions and values are greater after the

development than would occur had the prescribed buffers been provided (see Mitigation Plan requirements, Section 16.20.110).

4. All review comments received from a habitat biologist from the Washington State Department of Fish and Wildlife (WDFW) and the Suquamish Tribe. If the HMP recommends mitigation involving federally listed threatened or endangered species, migratory waterfowl or wetlands, the U.S. Fish and Wildlife Service shall receive a copy of the draft HMP.

5. For properties subject to the provisions of the City's Shoreline Master Program, Chapter 16.12 BMC, a site specific analysis of the project's impact on shoreline fish and wildlife habitat, as currently required by the SMMP, utilizing the provisions for environmentally sensitive areas as provided in Exhibit A.

6. The HMP shall specifically address, as appropriate, the following:

- a. Enhancement of existing degraded buffer area and replanting of the disturbed buffer area with native or equivalent vegetation;
- b. The use of alternative on-site wastewater systems in order to minimize site clearing;
- c. Infiltration of stormwater where soils permit;
- d. Retention of existing native or equivalent vegetation on other portions of the site in order to offset habitat loss from buffer reduction; and
- e. The need for fencing and signage along the buffer edge.

H. Mitigation measures. Possible mitigation measures to be included in the report, or required by the Director, could include, but are not limited to:

- 1. Establishment of buffer zones;
- 2. Preservation of critically important plants and trees;
- 3. Limitation of access to habitat areas;
- 4. Seasonal restriction of construction activities;
- 5. Establishing phased development requirements; and
- 6. Monitoring plan for a period necessary to establish that performance standards have been met. Generally this will be for a period of seven to ten years.

I. HMP adequacy. The HMP shall demonstrate to the satisfaction of the Director that the habitat functions and values are improved by implementation of the HMP. If there is a disagreement between the Director and the applicant as to the adequacy of the HMP, the issue of plan adequacy shall be resolved by consulting with the Washington Department of Fish and Wildlife for HMPs relating to streams or the Washington Department of Ecology for HMPs relating to wetlands. If the State agencies are not available in a timely manner, the applicant may choose to have the City refer the HMPs to a third party consultant at the expense of the applicant. After consultation with such State departments or third party consultant, the Director shall make a final decision on the adequacy of the HMP.

J. Timing. An HMP must be developed and approved either prior to preliminary plat approval or issuance of the building permit, as applicable, and must be implemented before the City grants either final plat approval or an occupancy permit, as applicable.

K. Performance Surety. The Director may require that the applicant provide a performance surety to ensure conformance with mitigation requirements of the habitat management plan pursuant to BIMC 16.20.180.

16.20.070 Variances

A. Applicability. An applicant may seek a variance from habitat buffer standards for wetlands or fish and wildlife habitat conservation areas, or provisions of section 16.20.150(E)(2)(a) pertaining to setbacks from slopes classified as a geologically hazardous area, where application of the standards renders compliance with these provisions an unnecessary hardship. A variance is authorized primarily for relief from wetland and stream habitat buffer standards that result in greater reduction than can be achieved through the buffer averaging in Subsection 16.20.050(B) above. A variance will not be allowed for reduction of the water quality buffers. Alterations specific to wetlands and streams and their water quality buffers are processed pursuant to a reasonable use exception, BIMC 16.20.080.

B. A variance may be granted by the Director when it can be shown that the application meets all of the following criteria:

1. Special circumstances applicable to the subject property, including size, shape, or topography, and the strict application of this chapter is found to deprive the subject property of rights and privileges enjoyed by other properties in the vicinity; provided, however, the fact that those surrounding properties have been developed under regulations in force prior to the adoption of Ordinance No. 2005-03 shall not be the sole basis for the granting of a variance; and
2. The special circumstances referred to in Subsection (a) above are not the result of the actions of the current or previous owner; and
3. The granting of the variance will not result in substantial detrimental impact to the critical area, public welfare or injurious to the property or improvements in the vicinity and area in which the property is situated; and
4. The granting of the variance is the minimum necessary to accommodate the permitted use; and
5. No other practicable or reasonable alternative exists; and
6. A mitigation plan has been submitted and is approved for the proposed use of the critical area; and
7. If structures are the approved use for which the variance is applied, the structures shall be no greater than the minimum size necessary to accommodate the permitted use; and
8. Retention of existing native or equivalent vegetation in other portions of the site is provided in order to offset habitat loss from buffer reduction; and
9. A Habitat Management Plan has been prepared pursuant to BIMC 16.20.060, unless it is determined through the applicable review process that such a plan is unnecessary.

C. Requests for variances shall include the application requirements of BIMC 16.20.060, 16.20.090, 16.20.110, or 16.20.150, whichever is applicable, and payment of an appropriate application fee.

Commented [CC17]: Section deleted. No variances permitted to deviate from critical areas regulations. RUEs granted to allow reasonable use (see below).

~~D. The Director shall administratively review variances based on the criteria and standards referenced in this Section.~~

~~E. The Director may grant a variance from the substantive or procedural requirements of this chapter for the development of public utilities when:~~

- ~~1. The application of the requirements of this chapter would be inconsistent with the Comprehensive Plan or the utility's public service obligations; and,~~
- ~~2. The proposed utility activity does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site; and,~~
- ~~3. Any alterations to critical areas and buffers are the minimum necessary to reasonably accommodate the proposed utility activity and any impacts are mitigated.~~

16.20.060 Administration

A. Interpretation. The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter.

B. Procedures. The Director is authorized to adopt written procedures for the purpose of carrying out the provisions of this chapter.

C. Inventory of Critical Areas. This chapter shall apply to all critical areas located within the jurisdiction of the city. The approximate location and extent of these areas on Bainbridge Island is displayed on various inventory maps available at the city's Department of Planning and Community Development. Maps and inventory lists are guides to the general location and extent of critical areas. Critical areas not shown are presumed to exist on Bainbridge Island and are protected under all the provisions of this chapter. In the event that any of the designations shown on the maps or inventory lists conflict with the site-specific conditions, site-specific conditions shall control.

D. Suspension – Revocation. In addition to other penalties provided for elsewhere, the Director may suspend or revoke a permit if it is found that the applicant or permittee has not complied with any or all of the conditions or limitations set forth in accordance with this chapter, has exceeded the scope of work set forth in the permit, or has failed to undertake the project in the manner set forth in the approved application.

E. Assessment relief. The City of Bainbridge Island, in imposing special assessments, shall take into account the easements or perpetual conservation restrictions in critical areas.

F. Other laws and regulations. No permit granted pursuant to this chapter shall remove an applicant's obligation to comply in all respects with the applicable provisions of any other federal, state, or local law or regulation.

G. Conflict.

Commented [CC18]: These sections moved from existing 16.20.020 and 040 and 16.20.210-250. No change to existing language.

1. General. When any provision of any other chapter of the BIMC conflicts with this chapter (or any existing regulations, easements, covenants, or deed restrictions), that which provides more protection to critical areas shall apply.

2. Shoreline Master Program. In case of conflict between the provisions of this chapter and the provisions of the Shoreline Master Program, Chapter 16.12 BIMC, the provisions of the Shoreline Master Program, Chapter 16.12 BIMC, shall prevail unless the Critical Areas Ordinance provides greater protection for critical areas. However, the classification or designation of any of the shoreline of Bainbridge Island shall not change from what it is under the Shoreline Master Program as a result of any provisions of the Critical Areas Ordinance.

H. Severability. If any clause, sentence, paragraph, section or part of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part thereof to any other person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable.

16.20.070 Review procedures

A. Permit required. Any proposal to alter any critical area and/or required buffer including, but not limited to, earthwork including grade and fill activity, alteration of site hydrology including water temperature and characteristics of water sources, removal or alteration of vegetation, and construction or siting of buildings, structures, facilities, utilities, hard surfaces and other related infrastructure, shall require a critical area permit unless it qualifies as an exempt activity, as provided in BIMC 16.20.160.XX.

B. Critical area permits, unless otherwise provided for in this chapter, shall be reviewed and approved, approved with conditions, or denied pursuant to the administrative review procedures in BIMC 2.16.030 unless a Reasonable Use Exception is requested. Critical area permits shall be reviewed based on the proposal's ability to comply with all of the following criteria:

1. The proposal minimizes the impact on critical areas in accordance with mitigation sequencing (BIMC 16.20.XX);
2. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
3. The proposal is consistent with the general purposes of this chapter and the public interest;

Commented [CC19]: These sections moved from 16.20.090 and .190.

4. Any alterations permitted to the critical area are mitigated in accordance with mitigation requirements in BIMC 16.20.XX and 16.20.XX;

5. The proposal protects the critical area functions and values consistent with the best available science and results in no net loss of critical area functions and values;

6. The proposal addresses cumulative impacts of the action; and

7. The proposal is consistent with other applicable regulations and standards.

C. The city may condition the proposed activity as necessary to mitigate impacts to critical areas and to conform to the standards required by this chapter.

D. Except as provided for by this chapter, any project that cannot adequately mitigate its impacts to critical areas in the sequencing order of preferences in BIMC 16.20.XX shall be denied.

E. Application required. Submittal Requirements. Any Applications for land use or development proposals within critical areas or their buffers requires submittal of the city's Master Land Use Application (P100) to the Department of Planning and Community Development in accordance with the requirements outlined in the city's Administrative Manual for Land Use Permits. shall be filed with the information requested on the application forms available from the Department of Planning and Community Development. The applicant shall not be granted any approval or permission to conduct development or land use in a critical area and/or its buffer prior to fulfilling the requirements of this chapter.

BF. Support Information Requirements. A critical area permit application shall include the following: When support information is required by the Director it shall contain the following and be prepared by one or more of the experts listed in Subsection B.4 of this section:

1. A site plan drawn to scale identifying locations of critical areas and their buffers, location of proposed development, uses and activities, location and estimated quantity of earthwork and vegetation clearing and location and type of drainage features or infrastructure. A description of the critical areas on or adjoining the site and how the proposed development will or will not impact critical areas, their buffers, and adjoining properties, including:

- a. Drainage, surface and subsurface hydrology, and water quality;
- b. Existing vegetation as it relates to wetlands, steep slopes, soil stability, and fish and wildlife habitat value; and
- e. Other critical area characteristics and functions.

2. Recommended methods for mitigating impacts and a description of how these methods may impact adjacent properties;

42. Any critical area report or study required by this chapter. Such reports or studies shall be prepared by qualified professionals in the area of concern as defined in BIMC 16.20.XX (Definitions), and in accordance with the requirements provided in BIMC 16.20.XX (Critical Areas Reports) who shall be selected from a list of approved consultants prepared by the Director, as follows:

a. Aquifer recharge study: Hydrogeologist;

Commented [CC20]: To be confirmed as part of CARA review.

b. Flood hazard area study: Professional civil engineer; hydro-geologist;

c. Geologically hazardous area study: Engineering geologist; geotechnical engineer, provided that:

Commented [CC21]: To be confirmed as part of geologically hazardous areas review.

i. An engineering geologist may provide a study, including interpretation, evaluation, analysis, and application of geological information and data and may predict potential or likely changes in types and rates of surficial geologic processes due to proposed changes to a location, provided it does not contain recommended methods for mitigating identified impacts, other than avoidance, structural impacts to, or suitability of civil works; and

ii. Engineering geologists may not provide engineering recommendations or design recommendations, but may contribute to a complete geotechnical report that is co-sealed by a geotechnical engineer.

d. Stream buffer enhancement plan~~Stream, riparian area, drainage corridor study~~: Biologist with stream ecology expertise; fish or wildlife biologist; a civil engineer may provide studies for drainage, surface and subsurface hydrology, and water quality;

e. Wetland buffer enhancement plan, wetland critical area report, wetland mitigation plan~~Wetland report~~: Wetlands specialist.

f. Habitat Management Plans: Wildlife biologist and/or fisheries biologist.

g. The Director is authorized to ~~may in some cases~~ retain experts at the applicant's expense and request review from other jurisdictional agencies to assist in the review of application materials~~studies; and~~

3. Any additional information determined as relevant by the Director;~~;~~ ~~and~~

~~5. The Director may in some cases retain experts at the applicant's expense to assist in the review of studies; and~~

~~6. Such studies shall be prepared in accordance with procedures established by the Director or City Engineer as specified.~~

G. Notice on Title

Commented [CC22]: This section moved from 16.20.190. No changes to existing language.

1. The owner of any property with field-verified presence of critical area or buffer on which a development proposal is submitted shall file for record with the Kitsap County auditor a notice approved by the Director in a form substantially as set forth in Subsection ~~B~~ 2 of this Section. Such notice shall provide notice in the public record of the presence of a critical area and buffer, the application of this chapter to the property, and that limitations on actions in or affecting such areas may exist. The applicant shall submit proof that the notice has been filed for record before the City shall approve any development proposal for such site. The notice shall run with the land and failure to provide such notice to any purchaser prior to transferring any interest in the property shall be in violation of this chapter.

2. Form of Notice.

Critical Areas
and/or
Critical Areas Buffer Notice

Legal

Description: _____

Present owner: _____

NOTICE: This property contains critical areas or their buffers as defined by the City of Bainbridge Island Ordinance No. _____. The property

_____ was the subject of a development proposal for

_____ (type of permit) application # _____ filed on _____ (date) _____.

Restrictions on use or alteration of the critical areas or their buffers may exist due to natural conditions of the property and resulting regulations. Review of such application has provided information on the location of critical areas or critical area buffers and restrictions on their use through setback areas. A copy of the plan showing such setback areas and other restrictions or required enhancements is attached hereto.

Signature of owner _____

STATE OF WASHINGTON)

COUNTY OF _____)

On this day personally appeared before me to me known to be the individual(s) described in and who executed the within and foregoing instrument and acknowledged that they signed the same as their free and voluntary act and deed for the uses and purposes therein stated.

Given under my hand and official seal this ____ day of _____,
_____. NOTARY PUBLIC in and for the state of Washington, residing
at _____.

16.20.080 Reasonable use exceptions

A. Applicability and Intent. The purpose of a reasonable use exception (RUE) is to allow the minimum reasonable use of property. ~~A reasonable use exception (RUE) is intended to ensure reasonable use of a property~~ when reasonable use of that property cannot be achieved through application of this chapter ~~any other means~~. An applicant may request an RUE pursuant to this Section if the applicant demonstrates that:

1. The subject property is encumbered to such an extent by critical areas and/or ~~water quality~~ critical area buffers that application of this chapter would deny all reasonable use of the subject property; and
2. Reasonable use of the subject property cannot be achieved through Buffer Modification (BIMC 16.20.XX), or a Habitat Management Plan (BIMC 16.20.XX), ~~or a Variance (BIMC 16.20.070).~~
3. They have participated in a pre-application conference with city staff.

B. During the pre-application process, the city may, at its sole discretion:

1. Determine whether the property qualifies for inclusion in any program established by the City that would eliminate the need for an RUE including, but not limited to, programs regarding transfer of development rights, mitigation banking, and open space acquisition. If the property qualifies for inclusion in one or more of such programs, the Director shall notify the applicant in writing of such qualification and of the applicable rules and regulations, and shall send an application form for inclusion in such program(s). If the property is included in one or more of such programs, an RUE application is not required, the application shall be further processed as amended or withdrawn, as appropriate; or

2. Determine to offer to purchase the development rights rather than grant an RUE, and the applicant, at his/her sole discretion, may agree to accept the offer to purchase said development rights rather than pursue an RUE.

~~BC. Exception~~ RUE Request and Review Process. An application for an RUE shall ~~be made to the City and shall include the City's Master Land Use Application,~~ a critical area report or Habitat Management Plan, including mitigation plan, if necessary; and any other relevant information and reports that are necessary, ~~in the opinion of as determined by the Director,~~ to process and prepare the recommendation on the application, such as permit applications to other agencies, special studies, and environmental documents

Commented [CC23]: This section moved in the process to the pre-application phase to encourage discussion earlier, rather than requiring the property owner to go through the RUE application, which includes a fee and supporting studies.

prepared pursuant to the State Environmental Policy Act, Chapter 43.21C RCW (SEPA documents).

~~C. After receiving the application, the Director shall determine whether the property qualifies for inclusion in any program established by the City that would eliminate the need for an RUE including, but not limited to, programs regarding transfer of development rights, mitigation banking, and open space acquisition. If the property qualifies for inclusion in one or more of such programs, the Director shall notify the applicant in writing of such qualification and of the applicable rules and regulations, and shall send an application form for inclusion in such program(s). If the property is included in one or more of such programs, the application shall be further processed as amended or withdrawn, as appropriate.~~

~~D. After receiving the application, the City may, at its sole discretion, offer to purchase the development rights rather than grant an RUE, and the applicant, at his/her sole discretion, may agree to accept the offer to purchase said development rights rather than pursue an RUE.~~

~~E. The Director shall prepare a recommendation to the Hearing Examiner based on review of the submitted information and reports, a site inspection, and the proposal's compliance with the criteria in Subsection (G), below.~~

~~F. Hearing Examiner Review. The hearing examiner shall review the RUE application and conduct a public hearing pursuant to the provisions of the BIMC 2.16.100. The Hearing Examiner shall approve, approve with conditions, or deny the request based on the proposal's compliance with all of the RUE review criteria in Subsection (G), below.~~

~~G. Reasonable Use Review Criteria. Criteria for review and approval of reasonable use exceptions are as follows:~~

- ~~1. The application of this chapter would deny all reasonable use of the property;~~
- ~~2. There is no reasonable alternative to the proposal with less impact to the critical area or its required buffer;~~
- ~~3. The proposal minimizes the impact on critical areas in accordance with mitigation sequencing (BIMC 16.20.XX);~~
- ~~34. The proposed impact to the critical area is the minimum necessary to allow reasonable use of the property;~~

~~45.~~ The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant, or of the applicant's predecessor, that occurred after February 20, 1992;

~~56.~~ The proposed total lot coverage does not exceed 1,200 square feet for residential development;

~~67.~~ The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the property;

~~8.~~ Any alterations permitted to the critical area are mitigated in accordance with mitigation requirements in BIMC [16.20.XX](#) and [16.20.XX](#);

~~9.~~ The proposal protects the critical area functions and values consistent with the best available science and results in no net loss of critical area functions and values;

~~10.~~ The proposal addresses cumulative impacts of the action; and

~~8.~~ A Habitat Management Plan has been prepared pursuant to BIMC 16.20.060, unless it is determined through the applicable review process that such a plan is unnecessary; and

~~9~~11. The proposal is consistent with other applicable regulations and standards.

~~HQ.~~ Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application. The standard for the burden of proof shall be clear and convincing evidence.

~~16.20.090 Application requirements.~~

~~A. Submittal Requirements. Applications for land use or development proposals within critical areas or their buffers shall be filed with the information requested on the application forms available from the Department of Planning and Community Development. The applicant shall not be granted any approval or permission to conduct development or land use in a critical area and/or its buffer prior to fulfilling the requirements of this chapter.~~

~~B. Support Information Requirements. When support information is required by the Director it shall contain the following and be prepared by one or more of the experts listed in Subsection B.4 of this section:~~

~~1. A description of the critical areas on or adjoining the site and how the proposed development will or will not impact critical areas, their buffers, and adjoining properties, including:~~

~~a. Drainage, surface and subsurface hydrology, and water quality;~~

~~b. Existing vegetation as it relates to wetlands, steep slopes, soil stability, and fish and wildlife habitat value; and~~

- e. Other critical area characteristics and functions.
- 2. Recommended methods for mitigating impacts and a description of how these methods may impact adjacent properties;
- 3. Any additional information determined as relevant by the Director;
- 4. Such studies shall be prepared by experts in the area of concern, who shall be selected from a list of approved consultants prepared by the Director, as follows:
 - a. Aquifer recharge study: Hydrogeologist;
 - b. Flood hazard area study: Professional civil engineer; hydro-geologist;
 - c. Geologically hazardous area study: Engineering geologist; geotechnical engineer, provided that:
 - i. An engineering geologist may provide a study, including interpretation, evaluation, analysis, and application of geological information and data and may predict potential or likely changes in types and rates of surficial geologic processes due to proposed changes to a location, provided it does not contain recommended methods for mitigating identified impacts, other than avoidance, structural impacts to, or suitability of civil works; and
 - ii. Engineering geologists may not provide engineering recommendations or design recommendations, but may contribute to a complete geotechnical report that is co-sealed by a geotechnical engineer.
 - d. Stream, riparian area, drainage corridor study: Biologist with stream ecology expertise; fish or wildlife biologist; a civil engineer may provide studies for drainage, surface and subsurface hydrology, and water quality;
 - e. Wetland study: Wetlands specialist.
 - f. Habitat Management Plans: Wildlife biologist and/or fisheries biologist.
- 5. The Director may in some cases retain experts at the applicant's expense to assist in the review of studies; and
- 6. Such studies shall be prepared in accordance with procedures established by the Director or City Engineer as specified.

16.20.100 Minimizing impacts to critical areas.

- A. If the Director determines that negative impacts to critical areas are necessary and unavoidable, the applicant shall take measures to minimize the impacts.
- B. Such measures shall include but are not limited to:
 - 1. Limiting the degree or magnitude of the regulated activity;
 - 2. Limiting the implementation of the regulated activity;
 - 3. Using appropriate and best available technology;
 - 4. Taking affirmative steps to avoid or reduce impacts;
 - 5. Sensitive site design and siting of facilities and construction staging areas away from critical areas and their buffers;
 - 6. Involving resource agencies early in site planning; and
 - 7. Providing protective measures such as siltation curtains, hay bales and other siltation prevention measures, scheduling the regulated activity to avoid interference with wildlife and fisheries rearing, resting, nesting or spawning activities.

16.20.110 Mitigation plan requirements.

A. All critical area restoration, creation and/or enhancement projects required pursuant to this chapter either as a permit condition or as a result of an enforcement action shall follow a mitigation plan prepared by an expert approved by the Director. The applicant or violator shall receive written approval of the mitigation plan by the Director prior to commencement. Compensatory mitigation is not required for allowed activities which utilize best management practices to protect the functions and values of regulated critical areas.

B. Purpose of Mitigation Plan. The mitigation plan shall provide information on land acquisition, construction, maintenance and monitoring of the replaced critical area. The mitigation plan shall recreate as nearly as possible the original critical area in terms of its acreage, function, geographic location and setting.

C. Mitigation Plan Submittal Requirements. A complete mitigation plan shall consist of plot plans, a written report, and performance bonds, as required below. The plot plans and written report shall be prepared by qualified professionals approved by the Director.

1. Plot Plan Requirements. The following information shall be submitted on one or more plot plans (as determined by the Director):

a. A legal description and a survey (boundary and topography) prepared by a licensed surveyor of the proposed development site, compensation site, and location of existing critical area(s) on each. This shall include wetland delineation and existing wetland acreage.

b. Scaled plot plan(s) indicating:

- i. Proposed construction;
- ii. Zoning setback and critical area buffer requirements;
- iii. Construction phasing and sequence of construction;
- iv. Site cross sections, percent slope, existing and finished grade

elevations;

v. Soil and substrate conditions;

vi. Grading and excavation plan, including erosion and sediment control plans needed for construction and long term survival; substrate stockpiling locations and techniques, and source controls needed for critical area construction and maintenance;

vii. Landscape plans indicating species, types, quantities, locations, size, spacing or density of planting; planting season or timing; planting instructions, watering schedule and nutrient requirements; source of plant materials or seeds; and, where appropriate, measures to protect plants from destruction or predation; and

viii. Water control structures and water level maintenance practices needed to achieve the necessary hydrocycle/hydroperiod characteristics, etc.

2. Written Report Requirements. A written report shall accompany the plot plan(s) and shall provide the additional information required below. In addition, the report should be used as needed to clarify or explain elements of the plot plan(s).

a. Baseline Information:

- i. Wetland delineation and existing wetland acreage;
- ii. Vegetative, faunal and hydrologic characteristics;
- iii. Soil and substrate conditions;

iv. Relationship within watershed and to existing streams, wetlands, ponds, or saltwater;

v. Existing and proposed adjacent site conditions; and

vi. Existing and proposed ownership.

b. Environmental Goals and Objectives. The report shall contain a description of the environmental goals and objectives to be met by the compensation plan. The goals and objectives shall be related to the functions and values of the original critical area or, if out of kind wetland mitigation, the type of wetland to be emulated. This analysis shall include, but is not limited to the following:

i. Site selection criteria;

ii. Identification of compensation goals;

iii. Identification of functions and values;

iv. Dates for beginning and completion of the project and compensation plan;

v. A complete description of the relationship between and among structures and functions sought;

vi. Review of available literature and/or known like projects to date in restoring or creating the type of critical area proposed;

vii. Likelihood of success of the proposed compensation project at duplicating the original critical area. This shall be based on experiences of comparable projects identified in the literature review or existing projects, if any; and

viii. Likelihood of the ability of the created or restored critical area to provide the functions and values of the original critical area. This shall be based on such factors as surface water and groundwater supply and flow patterns; dynamics of the ecosystem; sediment or pollutant influx and/or erosion, periodic flooding and drought, etc.; presence of invasive flora or fauna; potential human or animal disturbance; and previous comparable projects, if any.

e. Performance Standards. Specific criteria shall be provided for evaluating whether or not the goals and objectives of the project are met and for beginning remedial action or contingency measures. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance, and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria.

d. Detailed Specifications. Written specifications and descriptions of compensation techniques shall be provided. These shall include, but not be limited to, items in Subsection C.2 of this Section.

e. Monitoring Program. A program outlining the approach for monitoring construction of the compensation project and for assessing a completed project shall be provided. Monitoring may include, but is not limited to:

i. Establishing vegetation plots to track changes in plant species composition and density over time;

ii. Using photo stations to evaluate vegetation community response;

iii. Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions (pH, nutrients, heavy metals);

iv. Measuring base flow rates and storm water runoff to model and evaluate water quality predictions, if appropriate;
v. Measuring sedimentation rates, if applicable; and
vi. Sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity.

f. A protocol shall be included outlining how the monitoring data will be evaluated by agencies that are tracking the progress of the compensation project. A monitoring report shall be submitted annually, at a minimum, documenting milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than seven years.

g. Contingency Plan. Identification of potential courses of action, and any corrective measures to be taken when monitoring or evaluation indicates project performance standards are not being met.

D. Performance and Maintenance Surety and Demonstration of Competence. A demonstration of financial resources, administrative, supervisory, and technical competence and scientific expertise to successfully execute the compensation project shall be provided. A compensation project manager shall be named and the qualifications of each team member involved in preparing the mitigation plan and implementing and supervising the project shall be provided, including educational background and areas of expertise, training and experience with comparable projects. In addition, a surety ensuring fulfillment of the compensation project, monitoring program, and any contingency measure shall be posted pursuant to BMC 16.20.180.

E. City Consultation. The City may consult with and solicit comments from any federal, state, regional, or local agency, including tribes, having any special expertise with respect to any environmental impact prior to approving a mitigation proposal which includes critical areas compensation. The compensation project proponents should provide sufficient information on plan design and implementation in order for such agencies to comment on the overall adequacy of the mitigation proposal.

F. Permit Conditions. Any compensation project prepared pursuant to this section and approved by the Director shall become part of the application for the permit.

16.20.180 Performance and maintenance surety.

A. Performance Surety. The Director shall decide when a performance surety is required of an applicant, and the acceptable form of such surety. The amount and the conditions of the surety shall be consistent with the purposes of this chapter; provided, that the minimum amount of the surety, when required, shall be 125% of the estimated cost of performance. A performance surety shall not be required when the actual cost of performance, as documented in a form acceptable to the Director, is less than \$1,000. The Director shall release the surety upon determining that:

1. All activities, including any required compensatory mitigation, have been completed in compliance with the terms and conditions of the permit and the requirements of this chapter;

2. A maintenance surety has been posted by the applicant, where deemed appropriate by the Director.

Until such written release of the surety, the principal or surety cannot be terminated or canceled.

B. Maintenance Surety. When a maintenance surety is required, the holder of a development permit issued pursuant to this chapter shall post a surety for an amount and in a form acceptable to the Director, with conditions sufficient to guarantee that maintenance of structures, improvements, and mitigation required by the permit or by this chapter perform satisfactorily for a minimum of two years after they have been completed. The Director shall release the maintenance surety upon determining that performance standards established for evaluating the effectiveness and success of the structures, improvements, and/or compensatory mitigation have been satisfactorily met for the required period. For compensation projects, the performance standards shall be those contained in the mitigation plan developed and approved during the review process. The maintenance surety applicable to a compensation project shall not be released until the Director determines that performance standards established for evaluating the effect and success of the project have been met.

C. Deposit Instruments. The deposit instrument for the performance or warranty deposit shall be cash, a non-revocable letter of credit, an assignment of funds, bond or other readily accessible source of funds approved by the Director. The deposit instruments shall be on a form acceptable to the Director. Any issuer of a deposit instrument shall pay invoices presented by the City pursuant to this chapter within 45 days. A bond will be accepted only for amounts over \$1,000.00 or when State Law requires a bond. Interest on deposited funds will accrue to the benefit of the depositor, except that any interest earned on a cash deposit will be retained by the City for account administration.

D. Default on deposit.

1. If the work covered by the deposit is not completed within the time specified in the notice given under this chapter, the City shall obtain the proceeds of the deposit and do the work covered by the deposit. The City may either have its employees or a contractor do the work.

2. If, at any time, the Director determines that actions or inactions associated with permit work have created an emergency situation endangering public health, safety, or welfare, creating a potential liability for the City, or such an emergency precludes the notification of applicants as provided in this chapter while still minimizing or avoiding the effects of the emergency, the City may use the deposit to cover costs incurred by the City to correct the emergency situation. The City may either have employees of the City or a contractor do the work. If the City uses the deposit as provided by this section, the applicant shall be notified in writing within four working days of the commencement of emergency work. The notice must state the work that was completed and the nature or timing of the emergency that necessitated the use of the deposit without prior notification.

3. The permittee is responsible for all costs incurred by the City in doing the work covered by the deposit. The City shall release or refund any proceeds of a deposit remaining after subtracting all costs incurred. The permittee shall reimburse the City for any amount expended by the City that exceeds the deposit.

4. If the City uses any of the deposit it shall, within 30 days, provide the owner of the permit an itemized statement of all proceeds and funds used.

~~16.20.190 Notice on title.~~

Commented [CC24]: Moved to Administration

~~A. The owner of any property with field verified presence of critical area or buffer on which a development proposal is submitted shall file for record with the Kitsap County auditor a notice approved by the Director in a form substantially as set forth in Subsection B of this Section. Such notice shall provide notice in the public record of the presence of a critical area and buffer, the application of this chapter to the property, and that limitations on actions in or affecting such areas may exist. The applicant shall submit proof that the notice has been filed for record before the City shall approve any development proposal for such site. The notice shall run with the land and failure to provide such notice to any purchaser prior to transferring any interest in the property shall be in violation of this chapter.~~

~~B. Form of Notice.~~

~~Critical Areas
and/or
Critical Areas Buffer Notice~~

~~Legal~~

~~Description: _____~~

~~Present owner: _____~~

~~NOTICE: This property contains critical areas or their buffers as defined by the City of Bainbridge Island Ordinance No. _____. The property~~

~~was the subject of a development proposal for~~

~~(type of permit) application # _____ filed on ____ (date) ____.~~

~~Restrictions on use or alteration of the critical areas or their buffers may exist due to natural conditions of the property and resulting regulations. Review of such application has provided information on the location of critical areas or critical area buffers and restrictions on their use through setback areas. A copy of the plan showing such setback areas and other restrictions or required enhancements is attached hereto.~~

~~Signature of owner _____~~

~~STATE OF WASHINGTON)~~

~~COUNTY OF _____)~~

~~On this day personally appeared before me to me known to be the individual(s) described in and who executed the within and foregoing instrument and acknowledged that they signed the same as their free and voluntary act and deed for the uses and purposes therein stated.~~

Given under my hand and official seal this ____ day of _____,
_____. NOTARY PUBLIC in and for the state of Washington, residing
at _____.

16.20.200 Compliance and enforcement.

A. It is a violation of this chapter for any person to fail to comply with the requirements of this chapter. It is further a violation of this chapter for any person to:

1. Initiate or maintain, or cause to be initiated or maintained, the use, construction, placement, alteration, or demolition of any structure, land, or property within the city without first obtaining permits or authorizations required by this chapter, or in a manner that violates the terms or conditions of such permits or authorizations;
2. Misrepresent any material fact in any application, plans or other information submitted to obtain permits or authorizations under this chapter; or
3. Remove or deface any sign, notice, complaint, or order required by or posted in accordance with this chapter.

B. When a critical area or its buffer has been altered in violation of this chapter, all ongoing development work shall stop and the critical area shall be restored. The City shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation, or replacement measures at the owner's or other responsible party's expense to compensate for violation of provisions of this chapter.

C. Restoration plan required. All development work shall remain stopped until a restoration plan is prepared and approved by the Director. Such a plan shall be prepared by a qualified professional using the best available science and shall describe how the actions proposed meet the minimum requirements described in Subsection (D) below. The Director shall, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

D. Minimum performance standard for restoration.

1. For alterations to critical aquifer recharge areas, frequently flooded areas, wetlands, and habitat conservation areas, the following minimum performance standards shall be met for the restoration of a critical area; provided, that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:

- a. The historic structural and functional values shall be restored, including water quality and habitat functions;
- b. The historic soil types and configuration shall be replicated;
- c. The critical area and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities. The historic functions and values should be replicated at the location of the alteration; and
- d. Information demonstrating compliance with the requirements in Section BIMC 16.20.110 shall be submitted to the Director.

2. For alterations to flood and geological hazard areas, the following minimum performance standards shall be met for the restoration of a critical area; provided, that if the violator can demonstrate that greater safety can be obtained, these standards may be modified:

- a. The hazard shall be reduced to a level equal to, or less than, the pre-development hazard;
- b. Any risk of personal injury resulting from the alteration shall be eliminated or minimized; and
- c. The hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.

3. All restoration plans shall include a detailed estimate of the cost for implementation of the restoration plan.

E. Site investigations. The Director is authorized to make site inspections and take such actions as are necessary to enforce this chapter. The Director shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.

F. Penalties. Any development carried out contrary to the provisions of this chapter shall constitute a public nuisance and may be enjoined as provided by the statutes of the State of Washington. Enforcement of this chapter and the imposition of penalties for violations of this chapter shall be as provided for in Chapter 1.26 BIMC; provided, that in addition to the civil penalties provided for in BIMC 1.26.090, an additional penalty shall be imposed on any person, party, firm, corporation, property owner, or other legal entity who fails to complete a required restoration plan or who conducts any willful disturbance (including cutting vegetation) of a critical area or its associated buffer in violation of this chapter. For such violations, the additional penalty shall be in the amount equal to 200% of the cost of restoration as approved under a restoration plan pursuant to Subsections (C) and (D) above. Any person, party, firm, corporation, or other legal entity who knowingly and willfully refuses to complete a required restoration pursuant to Subsections (C) and (D) above shall be guilty of a misdemeanor punishable by not more than 30 days in jail and/or not more than a \$1,000 fine.

~~16.20.210 Suspension—Revocation.~~

~~In addition to other penalties provided for elsewhere, the Director may suspend or revoke a permit if it is found that the applicant or permittee has not complied with any or all of the conditions or limitations set forth in accordance with this chapter, has exceeded the scope of work set forth in the permit, or has failed to undertake the project in the manner set forth in the approved application.~~

~~16.20.220 Assessment relief.~~

~~The City of Bainbridge Island, in imposing special assessments, shall take into account the easements or perpetual conservation restrictions in critical areas.~~

~~16.20.230 Other laws and regulations.~~

Commented [CC25]: These sections moved to beginning of section under Administration.

No permit granted pursuant to this chapter shall remove an applicant's obligation to comply in all respects with the applicable provisions of any other federal, state, or local law or regulation.

16.20.240 Conflict.

A. General. When any provision of any other chapter of the BIMC conflicts with this chapter (or any existing regulations, easements, covenants, or deed restrictions), that which provides more protection to critical areas shall apply.

B. Shoreline Master Program. In case of conflict between the provisions of this chapter and the provisions of the Shoreline Master Program, Chapter 16.12 BIMC, the provisions of the Shoreline Master Program, Chapter 16.12 BIMC, shall prevail unless the Critical Areas Ordinance provides greater protection for critical areas. However, the classification or designation of any of the shoreline of Bainbridge Island shall not change from what it is under the Shoreline Master Program as a result of any provisions of the Critical Areas Ordinance.

16.20.250 Severability.

If any clause, sentence, paragraph, section or part of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part thereof to any other person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable.

16.20.030 Definitions.

A. For the purposes of this chapter, the following definitions shall apply:

Add: Adjacent.

Add: Agricultural practices

x. "Alteration" means a human-induced action, which changes the existing conditions of a critical area or its buffer and results in the modification of the existing topography, stability, vegetation, hydrology, wildlife or wildlife habitat.

x. "Anadromous fish" means fish whose life cycle includes time spent in both salt and fresh water.

1. "Applicant" means a person, corporation, or organization that files an application for a development permit with the City and that is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.

x. "Bank stabilization" means modification used for the purpose of retarding erosion, protecting channels, and retaining uplands.

x. "Biodiversity areas and corridors" means areas of habitat that are relatively important to various species of native fish and wildlife.

a. Biodiversity areas.

Commented [CC26]: Will be renumbered at end of process.

i. The area has been identified as biologically diverse through a scientifically based assessment conducted over a landscape scale (e.g., ecoregion, county- or city-wide, watershed, etc.). Examples include but are not limited to WDFW Local Habitat Assessments, Pierce County Biodiversity Network, and Spokane County's Wildlife Corridors and Landscape Linkages; or

ii. The area is within a city or an urban growth area (UGA) and contains habitat that is valuable to fish or wildlife and is mostly comprised of native vegetation. Relative to other vegetated areas in the same city or UGA, the mapped area is vertically diverse (e.g., multiple canopy layers, snags, or downed wood), horizontally diverse (e.g., contains a mosaic of native habitats), or supports a diverse community of species as identified by a qualified professional who has a degree in biology or closely related field and professional experience related to the habitats or species occurring in the biodiversity area. These areas may have more limited wildlife functions than other priority habitat areas due to the general nature and constraints of these sites in that they are often isolated or surrounded by highly urbanized lands.

b. Corridors. Corridors are areas of relatively undisturbed and unbroken tracts of vegetation that connect fish and wildlife habitat conservation areas, priority habitats, areas identified as biologically diverse, or valuable habitats within the city.

2. "ACritical aquifer recharge area" means the surface area of any geological formation sufficiently pervious to provide fresh water to an aquifer through the process of infiltration and percolation; areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge.

3. "Base flood" means a general and temporary condition of partial or complete inundation of normally dry land areas having a one percent chance of being equaled or exceeded in any given year. Base flood elevation data is commonly displayed as an elevation line on flood insurance maps, showing the location of the expected whole foot water surface elevation of the base (100-year) flood.

4. "Best available science" (BAS) means scientifically valid information derived in accordance with WAC 365-195-905, now or as amended hereafter, that is used to develop and implement critical areas policies or regulations.

5. "Best management practices" (BMPs) means conservation practices or systems of practices and management measures that:

a. Control soil loss and protect water quality from degradation caused by nutrients, animal waste, toxins, and sediment; and

b. Minimize adverse impacts to surface water and groundwater flow, and to the chemical, physical, and biological characteristics of critical areas.

BMPs are defined by the United States Department of Agriculture, the State of Washington Department of Agriculture, the Washington State Department of Ecology, Washington State Department of Health, Kitsap Conservation District, and other professional organizations.

6. “Buffer” means an area adjoining to and a part of a critical area that is required for the continued maintenance, functioning, and/or structural stability of that critical area, or an area adjacent to a stream or wetland that (a) surrounds and protects the functions and values of the stream or wetland from adverse impacts, (b) is an integral part of a stream or wetland ecosystem, and (c) provides shading, input of organic debris and coarse sediments, room for variation in stream or wetland edge, habitat for wildlife, and protection from harmful intrusion, to protect the public from losses suffered when the functions and values of the wetland or stream are degraded.

7. “Category I, II, III, IV wetlands”: see “Wetland category”.

8. “Critical areas” means aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, and wetlands.

9. “Critical habitat” means a habitat identified by US Fish and Wildlife Service or the National Marine Fisheries Service as habitat necessary for survival of endangered or threatened species.

Add: Development.

10. “Director” means the director of the City’s Planning and Community Development Department or his/her designee.

11. “Educational or scientific activities” means controlled and/or supervised scientific activities or educational activities that are associated with an educational program that is approved through a conditional use permit.

12. “Engineering geologist” means a practicing engineering geologist who has at least four years of professional employment as an engineering geologist with experience in landslide evaluation, and a Washington State specialty license in engineering geology as specified in Chapter 18.220 RCW.

13. “Erosion hazard area” means a landform or soil type subject to being worn away by the action of water, wind, freeze-thaw, or ice, and which are:

a. Rated in the Soil Survey of Kitsap County Area, Washington, USDA (1980), as having severe hazard of water erosion, including:

- i. Indianola-Kitsap Complex, 45 to 70 percent slope;
- ii. Kitsap Silt Loam, 15 to 30 percent slope, 30 to 45 percent slope;
- iii. Ragnar Fine Sandy Loam, 15 to 30 percent slope; and
- iv. Schneider very gravelly loam, 45 to 70 percent slope;

b. Classified in the Department of Ecology Coast Zone Atlas as:

i. Class 3, class U (unstable) includes severe erosion hazards and rapid surface runoff areas;

ii. Class 4, class UOS (unstable old slides) includes areas having severe limitations due to slope; and

iii. Class 5, class URS (unstable recent slides); and

c. Identified by the USGS Surface Geology Map of Bainbridge Island (Haugerud, 2001) as rilled slopes/scarps.

14. “Existing development” means a development that was lawfully constructed, approved or established prior to the effective date of the ordinance codified in this chapter.

15. "Fish" means species of the vertebrate taxonomic groups *Cephalospidomorphi* and *Osteichthyes*.

16. "Fish and wildlife habitat" means a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These include areas of relative density or species richness, breeding habitat, winter range, and movement corridors. These also include habitats of limited availability or high vulnerability to alteration, such as cliffs, streams and wetlands.

(6) "Fish and wildlife habitat conservation areas" means

(a) areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness.

(b) "Habitats of local importance" designated as fish and wildlife habitat conservation areas include those areas found to be locally important by counties and cities.

(c) "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company.

17. "Fisheries biologist" means a person with experience and training in fisheries who is able to submit substantially correct reports on fish population surveys, stream surveys and other related data analyses of fisheries resources. "Substantially correct" means that technical or scientific errors, if any, are minor and do not delay or affect the site plan review process. Qualifications of a fisheries biologist include:

- a. Either:
 - i. Certification by the American Fisheries Society, or;
 - ii. Bachelor of Science degree in fisheries or the biological sciences from an accredited institution and five years of professional fisheries experience; and
- b. The prior successful completion of at least three habitat management plans; and
- c. The biologist is listed on a roster of qualified professionals prepared by the Director.

18. "Frequently flooded areas" means lands subject to a one percent or greater chance of flooding in any given year, as determined by the Federal Emergency Management Agency. These areas include, but are not limited to, floodplains adjacent to streams, lakes, coastal areas, and wetlands. (Also see Chapter 15.16 BIMC, Flood Damage Prevention.)

19. "Functions" means the beneficial roles served by critical areas including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, groundwater recharge and

discharge, erosion control, wave attenuation, aesthetic value protection, and recreation. These roles are not listed in order of priority.

20. “Geologically hazardous areas” means areas susceptible to significant erosion, sliding, or other geological events. They pose a threat to the health and safety of citizens when used as sites for incompatible commercial, residential or industrial development. Geologically hazardous areas include erosion hazard areas, landslide hazard areas, and seismic hazard areas.

21. “Geotechnical engineer” means a practicing geotechnical/civil engineer who has a valid Washington engineering license and a valid certificate of registration in civil engineering, at least four years of professional employment as a geotechnical engineer with experience in landslide evaluation, and appropriate training and experience as specified in Chapter 18.43 RCW.

22. “Habitat Management Plan” (HMP) means a report prepared by a professional wildlife biologist or fisheries biologist which discusses and evaluates critical fish and wildlife habitat functions and identifies and evaluates measures necessary to enhance and improve habitat conservation on a proposed development site.

23. “Habitat of local importance” means a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain their population and reproduce over the long-term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or areas of high vulnerability to alteration, such as cliffs and wetlands.

24. “Hazard tree” means a tree with structural defects likely to cause failure of all or part of the tree, which could strike a “target.” A target can be a building or a place where people gather such as a park bench, picnic table, street, or backyard. In the case of steep slopes, a hazard tree can also be a tree that is a hazard to stability of the slope, as determined by a geotechnical engineer.

25. “Hazardous substances” means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste as specified in RCW 70.105.010. (Also see BIMC 18.06.450 through 18.06.510).

26. “Hydric soil” means soil which is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

27. “Hydrogeologist” means a practicing hydrogeologist who has at least four years of professional employment as a hydrogeologist with experience in the specific subject area in which they are providing a report, and a Washington specialty license in hydrogeology as specified in RCW Chapter 18.220.

28. “Hydrophyte or hydrophytic vegetation” means plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the “Washington State Wetlands Identification and Delineation Manual (Department of Ecology publication #96-94)” or its most current edition.

29. "Impact of land use" means the relative measure of the intensity of land use used to determine the appropriate buffer widths for wetlands and streams which is categorized as follows:

- a. High impact land use includes commercial development, industrial development, institutional development, residential (more than one unit per acre) development, new agriculture (high-intensity such as dairies, nurseries, greenhouses, raising and harvesting crops requiring annual tilling, raising and maintaining animals), and high-intensity recreation such as golf courses and ballfields.
- b. Moderate impact land use includes residential development (1 unit/acre or less), new agriculture (moderate-intensity such as orchard and hay fields), paved trails, and building of logging roads.
- c. Low impact land use includes low-intensity open space such as passive recreation, natural resources preservation, and unpaved trails.

30. "Invasive/exotic species" means plants and animals that are not native to the Puget Sound lowlands and are recognized by wetland professionals or biologists to be highly competitive with native vegetation and animals. Invasive/exotic plant species include those listed on the noxious weed list developed by the Washington State Noxious Weed Board, nonnative blackberries and English ivy. Invasive/exotic animal species include any species, such as rats, bullfrogs, zebra mussels and green crabs, considered by resource professionals to be damaging to the native animal populations.

31. "Land divisions" means any of the following: Subdivisions (Chapter 17.04 BIMC); Short Subdivisions (Chapter 17.12 BIMC); and/or Large Lot Plats (Chapter 17.16 BIMC).

32. "Land Use Permit" means any of the following: Planned Unit Developments (Chapter 18.120 BIMC); Conditional Use Permits (Chapter 18.108 BIMC); and/or Site Plan Review (Chapter 18.105 BIMC).

33. "Landslide hazard areas" means areas which are potentially subject to risk of mass movement due to a combination of factors, including historic failures, geologic, topographic, and hydrologic features. Some of these areas are identified in the Department of Ecology Coastal Zone Atlas and USGS Surface Geology Map of Bainbridge Island (Haugerud, 2001). The presence of these factors shall be determined through assessment, by the least intrusive means, by the City Engineer or at the City Engineer's request by a third party geoengineer or geotechnical expert, prior to issuance of any permit. Landslide hazard areas include the following:

- a. Areas characterized by slopes greater than 15 percent having springs or groundwater seepage and having impermeable soils (typically silt and clay) overlain or frequently interbedded with permeable granular soils (predominantly sand and gravel);
- b. Any area potentially unstable due to rapid stream incision or stream bank erosion;
- c. Any area located on an alluvial fan, debris flow deposit, or in a debris flowpath, presently or potentially subject to impacts or inundation by debris flows or deposition of stream-transported sediments;
- d. Any area with a slope of 40 percent or greater and with a vertical relief of 10 or more feet except areas composed of competent consolidated rock;

e. Any area designated or mapped as class U, UOS, or URS by the Department of Ecology Coastal Zone Atlas and/or mapped as a landslide or scarp on the USGS Surface Geology Map of Bainbridge Island (Haugerud, 2001); or

34. "Liquefaction" means a process in which a water-saturated soil, upon shaking, suddenly loses strength and behaves as a fluid.

35. "Mitigation" includes:

a. Avoiding, minimizing or compensating for adverse impacts, in the following order of preference:

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

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

iii. Rectifying the impacts by repairing, rehabilitating or restoring the affected environment;

iv. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

v. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and

vi. Monitoring the impact and the compensation project and taking appropriate corrective measures. Mitigation for individual actions may include a combination of the above measures; and

b. The following specific categories:

i. Mitigation, Compensatory: replacing project-induced critical area losses or impacts, including, but not limited to, establishment, re-establishment, rehabilitation or enhancement.

ii. Mitigation, Establishment: Mitigation performed to intentionally establish a critical area (e.g., wetland) at a site where it does not currently exist.

iii. Mitigation, Re-Establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former critical area.

iv. Mitigation, Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions and processes to a degraded critical area.

v. Mitigation, Enhancement: The manipulation of the physical, chemical, or biological characteristics of a biological wetland to heighten, intensify or improve specific function(s) or to change for specific purposes such as water quality improvement, flood water retention, or wildlife habitat.

36. "Native or equivalent vegetation" means species which are indigenous to the Puget Sound lowlands ecoregion; or a species that is equivalent in providing the same site-specific functional arrays as would the native species and which is selected from a list of preferred acceptable equivalent vegetation prepared by the Planning Department. Functional arrays may include forage, floodwater restraint, hiding habitat, or other physical or biologic roles in the ecosystem, that singly or in combinations correspond to

those of the native species. As with natives, the role mix of an alternative species may vary depending on the site and its surrounding ecosystem. Invasive/exotic species shall not be considered equivalent species.

37. "Normal maintenance" means those usual acts to prevent a decline, lapse or cessation from a lawfully established condition. Normal maintenance includes removing debris from and cutting or manual removal of vegetation in crossing and bridge areas. Normal maintenance does *not* include:

a. Use of fertilizer or pesticide application in wetlands, Fish and Wildlife Habitat Conservation Areas, or their buffers;

b. Re-digging ditches in wetlands or their buffers to expand the depth and width beyond the original ditch dimensions;

c. Re-digging existing drainage ditches in order to drain wetlands on lands not classified as existing and ongoing agriculture under BIMC 16.20.040(C) (Exemptions).

38. "Open space" means undeveloped areas of varied size. Open space often contains distinctive geologic, botanic, zoologic, historic, scenic or other critical area, or natural resource land features.

39. Ordinary high water mark: See the Shoreline Master Program (Chapter 16.12 BIMC), Section II, Definitions.

40. "Ravine" means a V-shaped landform generally having little to no floodplain and normally containing steep slopes, which is deeper than 10 vertical feet as measured from the centerline of the ravine to the top of the slope. Ravines are typically created by the wearing action of streams. The top of the slope is determined where there is a significant change in the slope to generally less than a 15 percent slope.

41. "Reasonable alternative" means an activity that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation.

42. "Reasonable use exception (RUE)" is a means of relief that is available for a property that is encumbered to such an extent by critical areas and/or ~~water quality~~ critical area buffers that application of this chapter would deny all reasonable use of the subject property, as further defined by the decision criteria of BIMC 16.20.080-G, and reasonable use of a property cannot be achieved through any other means.

43. "Repair" means activities that restore the character, size, or scope of a project only to the previously authorized condition.

44. "Seismic hazard areas" means areas subject to severe risk of damage as a result of seismic induced ground shaking, or surface faulting. While ground shaking is the principal risk because the entire island will shake significantly, severe damage will occur where slope failure, liquefaction, and settlement are induced by the shaking and surface rupture is created by fault movement. The following areas are considered seismic hazard areas:

a. Seismic Landslide Hazard Areas - Slopes which are stable in non-earthquake periods, but fail and slide during ground shaking;

b. Liquefaction Hazard Areas - Areas of cohesionless, loose or soft, saturated soils of low density in association with a shallow groundwater table that are subject to settlement and/or liquefaction from ground shaking, or;

c. Fault Hazard Areas - Areas of known surface rupture or significant surface deformation as a result of an active fault movement, including 50 feet on either side.

45. "Site" means the entire lot, series of lots, or parcels on which a development is located or proposed to be located, including all contiguous undeveloped lots or parcels under common ownership.

46. "Streams" means those areas in the City of Bainbridge Island where the surface water flows are sufficient to produce a defined channel or bed. A defined channel or bed is an area which demonstrates clear evidence of the passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed need not contain water year-round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff devices, or other artificial watercourses unless they are used by fish or used to convey streams naturally occurring prior to construction.

47. "Stream Types" means a streams classification system based on fish usage and perennial or seasonal water regime as found in WAC 222-16-030 and meeting the standards listed below.

a. "Type F Stream" means a stream that has suitable fish habitat. If fish usage has not been determined, water having the following characteristics are presumed to have fish use: Streams segments having a defined channel of 2 feet or greater within the bankfull width and having a gradient of 16 percent or less. Determination of fish usage shall use the methodology found in Washington Department of Natural Resource's Forest Practice Board Manual, Section 13.

b. "Type Np" means all segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are waters that do not go dry any time of a year of normal rainfall. However, for the purpose of water typing, Type Np Waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.

c. "Type Ns" means all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np Water. Ns Waters must be physically connected by an above-ground channel system to marine waters, Type F, or Np Waters.

48. "Urban natural open space" means an open space that (a) a priority species either resides within, or resides adjacent to and uses the open space for breeding and/or regular feeding; and/or (b) functions as a corridor connecting other priority habitats, especially those that would otherwise be isolated; and/or (c) is an isolated remnant of natural habitat larger than 10 acres and is surrounded by urban development.

49. "Variance" means relief from the provisions of the habitat buffer standards for wetlands or fish and wildlife habitat conservation areas, or provisions of section 16:20.150(E) (2) (a) pertaining to setbacks from slopes classified as a geologically

hazardous area, where strict application of this chapter renders compliance with these provisions an unnecessary hardship by strict application of this Chapter, as provided for in BIMC 16.20.070.”

50. “Wetland” means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined in Department of Ecology publication #96-94, Washington State Wetlands Identification and Delineation Manual or the current Washington State Department of Ecology methodology. Wetlands generally include swamps, estuaries, marshes, bogs, and similar areas.

51. “Wetland boundary” means the boundary or edge of a wetland as delineated using the methodology found in Department of Ecology publication #96-94, Washington State Wetlands Identification and Delineation Manual or Washington State Department of Ecology current methodology.

52. “Wetland category” means category as defined in “Washington State Wetland Rating System for Western Washington, Revised,” Department of Ecology publication #04-06-025, or as revised and adopted by the department.

53. “Wetland classes” means the classification system of the U.S. Fish and Wildlife Service (Cowardin, et al. 1979).

54. Wetland Mitigation.

a. In-kind: To replace wetlands with substitute wetlands whose characteristics closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement “in-category.”

b. Off-site: To replace wetlands away from the site on which a wetland has been impacted by a regulated activity.

c. On-site: To replace wetlands at or adjacent to the site on which a wetland has been impacted by a regulated activity.

d. Out-of-kind: To replace wetlands with substitute wetlands whose characteristics do not closely approximate those destroyed or degraded by a regulated activity. It does not refer to replacement “out-of-category.”

55. Wetlands, Regulated.

a. “Regulated wetlands” means:

i. ~~All Category I and II wetlands;~~

ii. ~~All Category III and Category IV wetlands that are greater than 1,000 square feet;~~

b. ~~Category I, II, III and IV wetlands include:~~

i. Lands defined as wetlands shall be those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

ii. Wetlands created as mitigation and wetlands modified for approved land use activities.

~~eb.~~ Regulated wetlands do not include artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm

ponds, and landscape amenities, or those wetlands created after July 1, 1990 that were unintentionally created as a result of the construction of a road, street, or highway.

56. “Wetlands specialist” means a person with experience and training in wetland issues who is able to submit substantially correct reports on wetland delineations, classifications, functional assessments and mitigation plans. “Substantially correct” means that errors, if any, are minor and do not delay or affect the site plan review process. Qualifications of a wetlands specialist include:

- a. Either:
 - i. Certification as a Professional Wetland Scientist (PWS) or Wetland Professional in Training (WPIT) through the Society of Wetland Scientists, or;
 - ii. Bachelor of science degree in the biological sciences from an accredited institution and five years of professional field experience; and
- b. The prior successful completion of at least three wetland reports; and
- c. The specialist is listed on a roster of qualified professionals prepared by the Director.

57. “Wildlife biologist” means a person with experience and training in the principles of wildlife management and with practical knowledge in the habits, distribution and environmental management of wildlife. Qualifications include:

- a. Either:
 - i. Certification as a professional wildlife biologist through The Wildlife Society, or;
 - ii. Bachelor of science or bachelor of arts degree in wildlife management, wildlife biology, ecology, zoology, or a related field, from an accredited institution and five years of professional field experience; and
- b. The prior successful completion of at least three habitat managements plans; and
- c. The biologist is listed on a roster of qualified professionals prepared by the Director.

58. “Zone of Influence” means an area, usually upslope from a geologically hazardous area, where changes in land use and hydrology can affect the stability of the geologically hazardous area. The zone of influence is defined as 300 feet upslope from slopes greater than 40 percent, and 200 feet upslope from slopes greater than 15 percent but less than 40 percent that are determined to be geologically hazardous areas.

Chapter 16.20

CRITICAL AREAS

16.20.1630 Wetlands.

~~A. Purpose. This section applies to all regulated uses within or adjacent to areas designated as wetlands, as categorized in BIMC 16.20.160(B) below. The intent of this Section is listed in no specific priority, as follows:~~

Commented [CC1]: Purpose statement only at beginning of chapter; same for all critical areas.

- ~~1. Preserve, protect, restore, and improve wetland functions and values. Achieve no net loss and increase the quality of wetland acreage, functions, and values within the city. Mitigation measures, as conditions of permits, must have a reasonable expectation of success. Under the conditions of this Section, the Director may deny development proposals that would irreparably impact regulated wetlands; and~~
- ~~2. Protect the public's health, safety, and welfare, while preventing public expenditures that could arise from improper wetland uses and activities; and~~
- ~~3. Plan wetland uses and activities in a manner that protects and enhances the natural systems and environmental quality of Bainbridge Island and allows property holders to benefit from wetland property ownership wherever allowable under the conditions of this chapter; and~~
- ~~4. Preserve ecological functions and values of wetlands which provide water quality protection, natural flood control, stormwater storage, contributes to groundwater and stream flow, shoreline stabilization, and wildlife and fish habitat; and~~
- ~~5. Prevent turbidity and pollution of wetlands and fish or shellfish bearing waters, and maintain healthy wildlife habitat; and~~
- ~~6. Encourage land use development patterns that maintain, enhance, or restore natural wetland systems and protect disturbance-sensitive and wetland-dependent wildlife, fish resources, and open space; and~~
- ~~7. Protect and preserve wetlands values as natural areas providing aesthetic, recreational, and educational opportunities that need to be preserved for future generations; and~~
- ~~8. Enhance the connectivity between wetland landscapes.~~

A. Applicability

1. This chapter applies to:
 - a. All wetlands designated pursuant to BIMC 16.20.XX except as specified in subsection (2) of this section.
 - b. All wetland buffers as shown in the tables in BIMC 16.20.130.XX.
2. This section does not apply to wetlands located within the city's shoreline jurisdiction, which are regulated by the city's shoreline master program (BIMC 16.12).

B. Identification and designation

1. Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the federal wetland delineation manual and applicable regional supplements (as updated), as required by WAC 173-22-035. All areas within the city meeting the wetland designation criteria, regardless of any formal delineation, are hereby designated as wetlands and are subject to provisions of this chapter unless specified in BIMC 16.20.XX.

2. A wetland delineation must be conducted by a qualified professional, in accordance with BIMC 16.20.XX.

3. The wetland boundary shall be marked in the field and surveyed by a licensed surveyor. The surveyed wetlands shall be sized and mapped on a scaled site plan. The director may require the wetland delineation to be verified in the field by the Army Corps of Engineers or the Washington State Department of Ecology when there is uncertainty in the wetland boundary or there was unauthorized wetland disturbance. The requirement for a licensed surveyor to survey the wetland boundaries may be waived in limited circumstances, such as when there is no access to the wetland property or there is no proposed impact to the wetland and wetland buffer, with authorization from the director.

4. Wetland delineations shall be valid for five years from the date of the delineation.

BC. Wetland Categories. ~~For regulatory purposes, wetland delineations shall be determined by using the Washington State Wetlands Identification and Delineation Manual, March 1997, or as amended hereafter.~~

~~The City uses the Department of Ecology's (DOE's) Washington State Wetland Rating System for Western Washington, 2004, or as amended hereafter and adopted by the Director to categorize wetlands for the purposes of establishing wetland buffer widths, wetland uses and replacement ratios for wetlands. Once a wetland has been classified using the current DOE rating system, the City shall not reclassify the wetland without clearly documenting the reason for the change. If the wetland has a rating in the City GIS system, this rating can be used for regulatory purposes. This system consists of four wetland categories generally described. Wetlands shall be rated according to the Washington State Wetland Rating System for Western Washington – 2014 Update (Ecology Publication No. 14-06-029, October 2014), as revised. The wetland categories determined by the rating are as follows:~~

1. Category I wetlands are:

- a. Relatively undisturbed estuarine wetlands larger than one acre;

b. Wetlands that are, or may be in the future, identified by scientists of the Washington Natural Heritage Program/Department of Natural Resources as wetlands of high conservation value;

c. Bogs;

d. Mature forested wetlands larger than one acre;

e. Wetlands in coastal lagoons; and

f. Wetlands that perform many functions well and score 23 points or more in the wetland rating. These wetlands are those that represent a unique or rare wetland type, are more sensitive to disturbance than most wetlands, or are relatively undisturbed and contain ecological attributes that are impossible to replace within one human lifetime.

2. Category II wetlands are:

a. Bogs between one-tenth acre (4,356 square feet) and one-fourth acre (10,890 square feet) in size;

b. Wetlands with a moderately high level of functions and score 20 to 22 points in the wetland rating.

c. Estuarine wetlands smaller than one acre or disturbed estuarine wetlands larger than one acre.

3. Category III wetlands are:

a. Bogs less than one-tenth acre (4,356 square feet) in size;

b. Wetlands with a moderate level of functions and score between 16 to 19 points in the wetland rating.

4. Category IV wetlands are:

a. Wetlands with a low level of functions, scoring less than 16 points in the wetland rating.

5. Date of Wetland Rating. The wetland rating categories in this section shall be applied to wetland studies including but not limited to delineations, on or after the date of adoption of the ordinance codified in this chapter. The wetland rating shall be valid for five years unless the state rating system changes or the wetland and/or the wetland buffer have been altered since the rating.

6. Illegal modifications. Wetland rating categories shall not change due to illegal modifications.

~~1. Category I wetlands are those that:~~

~~a. Represent unique or rare wetland type; or~~

~~b. Are more sensitive to disturbance than most wetlands; or~~

~~c. Are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or~~

~~d. Provide a high level of function.~~

—Category I wetlands include estuarine wetlands larger than one acre, bogs, mature and old-growth wetlands over one acre, wetlands in coastal lagoons, and wetlands that perform many functions very well as demonstrated by a score of over 70 points using the DOE rating system.

2. Category II wetlands are difficult, though not impossible, to replace, and provide a high level of function. Category II wetlands include estuarine wetlands smaller than one acre or disturbed and larger than one acre and wetlands that perform functions well as demonstrated by a score of 51-69 using the DOE rating system.

3. Category III wetlands are wetlands with a moderate level of function as demonstrated by a score of 30-50 points using the DOE rating system.

4. Category IV wetlands have the lowest level of function as demonstrated by a score less than 30 points using the DOE rating system and are often heavily disturbed.

C. Regulated and Non-Regulated Wetlands Classification.

1. Regulated Wetlands:

a. All natural wetlands that meet the criteria in the Washington State Wetland Identification and Delineation manual and are greater than 1000 square feet.

b. Unintentionally created wetlands that meet the criteria in the Washington State Wetland Identification and Delineation manual except as listed in subsection (C)(2)(b) of this section.

e. Wetlands intentionally created from non-wetland areas to mitigate conversion of other wetlands.

d. Wetlands less than or equal to 1000 square feet if the wetland is associated with a riparian corridor or is part of a wetland mosaic, or contains habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife.

2. Non-Regulated Wetlands:

a. Wetlands less than or equal to 1000 square feet if the wetland is not associated with a riparian corridor or is not part of a wetland mosaic, or does not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife.

b. Created Wetlands. Wetlands created intentionally from a non-wetland site that was not required to be constructed as mitigation for adverse wetland impacts. These may include, but are not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment ponds, farm ponds not contiguous, as defined in this chapter, and landscape amenities. The applicant shall bear the burden of proving that the wetland was intentionally created from a non-wetland site. Where enhancements or restorations are made to wetlands for purposes other than mitigation, the original rating shall be maintained even if the changes would otherwise result in a higher classification.

b. Recent, Road-Construction Related Wetlands. Wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. The applicant shall bear the burden of proving that the wetland meets these criteria.

D. Mapping

The location and extent of all mapped critical areas shown on the city of Bainbridge Island critical area maps are approximate and shall be used as a general guide only. The type, extent and boundaries shall be determined in the field by a qualified professional according to the requirements of this chapter. The critical area maps (provide hyperlink) are adopted as part of this chapter and are incorporated herein by this reference. In addition, the National Wetlands Inventory and Soil Maps produced by the U.S. Department of Agriculture, National Resources Conservation Service may be useful in helping to identify potential wetland areas. The inventory and cited resources are to be used as a guide for the city, project applicants, and ~~for~~ property owners, and may be continuously updated as new or altered critical areas are identified.

E. Protection of Wetlands

1. Any action taken pursuant to this chapter shall result in equivalent or greater functions and values of the wetlands and wetland buffers associated with the proposed action, as determined by the best available science. All actions and developments shall be designed and constructed in accordance with mitigation sequencing as described in BIMC 16.20.XX and WAC 197-11-768.
2. Applicants must first demonstrate an inability to avoid or reduce impacts, before compensation of impacts will be allowed. No activity or use shall be allowed that results in a net loss of the functions or values of critical areas.
3. Permanent protection of critical areas that are part of an approved mitigation plan or buffer enhancement plan shall be achieved through a Notice to Title recorded at the Kitsap County Auditor's Office, or similar means of protection in perpetuity.

F. Permit and review procedures

1. Any development, use or activity within any wetland and/or its required buffer shall require a critical area permit unless it qualifies as an exempt activity, as provided in BIMC [16.20.130.XX](#).
2. Critical area permits shall be reviewed pursuant to the criteria in BIMC 16.20.XX.
3. Applications for critical area permits for wetlands shall include:
 - a. [City of Bainbridge Island Master Land Use Application \(hyperlink\)](#); and

- b. Wetland critical areas report prepared in accordance with BIMC 16.20.XX if wetland or buffers occur within or adjacent to the project site; and
- c. Wetland mitigation report, prepared in accordance with BIMC 16.20.XX, if wetland and buffer impacts are anticipated; or
- d. Buffer enhancement plan, prepared in accordance with BIMC 16.20.XX, if only buffer modification is requested.

G. Prohibited activities

- 1. The following development, uses and activities are prohibited in all wetlands:
 - a. Draining, excavation, placement of fill material and flooding not associated with an exempt or regulated use
 - b. Forest Practices – Class IV General or Conversion Option Harvest Plan
 - c. New or expanded agriculture
 - d. On-site sewage facility
- 2. The following development, uses and activities are prohibited in Category I and II wetlands:
 - a. Fish hatchery
 - b. Golf course
 - c. Mineral extraction
 - d. Public facility
 - e. Public communications tower
 - f. New public road/street
 - g. New private access road or driveway
 - h. Stormwater retention/detention facility
 - i. Primary utility

H. Development standards for specific development, uses and activities. The following development, uses and activities may be allowed within wetlands and their required buffers. Any proposal for the following development, uses and activities requires a critical area permit pursuant to BIMC 16.20.130.X and shall comply with the standards of this section and other applicable state, federal and local regulations.

~~F. Additional development standards for regulated uses. In addition to meeting the Development Standards in section D, above, those regulated uses identified below shall also comply with the standards of this section and other applicable state, federal and local ordinances.~~

- ~~1. Docks. Construction of a dock, pier, moorage, float, or launch facility may be permitted where no existing buffer or wetland vegetation would be significantly altered.~~
- ~~2. Forest Practice, Class IV General, and Conversion Option Harvest Plans (COHPs). All timber harvesting and associated development activity, such as~~

~~construction of roads, shall comply with the provisions of this chapter, including the maintenance of buffers around regulated wetlands.~~

3. Agricultural restrictions. New agricultural activities and new structures accessory to agriculture use are prohibited in wetlands and their buffers. Existing, ongoing agricultural shall utilize best management practices so as to not result in a net loss of the functions and values of wetlands. Existing, ongoing agriculture other than that occurring in grazed wet meadows shall avoid impacts to wetlands by either:

a. Implementation of a farm resource conservation and management plan agreed upon by the Kitsap Conservation District and agriculture operator to protect and enhance water quality; or

b. Installation of fencing no closer to the wetland than the outer edge of its required buffer. ~~activities In all development proposals which would permit introduction of agricultural uses, all regulated wetlands shall be avoided. These restrictions shall not apply to those regulated wetlands defined as grazed wet meadows, regardless of their classification, only where grazing has occurred within the last five (5) years. Wetlands shall be protected by installation of fencing located not closer than the outer buffer edge.~~

4. Road/street repair and construction: Any private or public road or street repair, maintenance, expansion or construction may be allowed within a wetland or its required buffer only when all of the following are met~~permitted, subject to the following standards:~~

a. No other reasonable or practicable alternative exists and the road or street crossing serves multiple properties whenever possible;

b. Publicly owned or maintained road or street crossings should provide for other purposes, such as utility crossings, pedestrian or bicycle easements, viewing points, etc.; and

c. The road or street repair and construction are the minimum necessary to provide safe roads and streets.

d. Mitigation shall be performed in accordance with specific project mitigation plan requirements.

5. Land Divisions and Land Use Permits. All land divisions and land uses proposed on a site that includes regulated wetlands, shall comply with the procedures and standards listed below. When a parcel contains a wetland, City policy shall always be to primarily protect the functions and values of the wetland, while recognizing the value of the development rights provided to the property by its zoning.

a. Density Calculation.

i. The actual density that will allowed to be built upon a parcel containing a wetland shall ultimately be determined during the site specific review of the parcel's planned development.

ii. In determining the actual density of a parcel based on a specific site plan, the site plan shall locate all buildings outside of ~~the~~ any wetland and its required buffers;

iii. The number of development rights allowed for any residentially-zoned parcel shall be its size in square feet divided by the number of square feet per home that is required by its zoning;

iv. If the land can be subdivided such that all setbacks, buffers, and other zoning requirements can be observed, and no zoning variances are requested, the density from the wetland, except the area with permanent open water, can be transferred within the property;

v. To the extent that the number of allowable development rights cannot be used on-site, they may be sold, traded, or transferred by the property owner through the transfer of development rights program pursuant to Chapter 18.37 BIMC;

vi. Property owners may voluntarily extinguish development rights that are provided by the underlying zoning, but the ~~C~~city shall not extinguish any of these rights outside the aforementioned transactions.

b. Land division approvals shall be conditioned to require that ~~regulated~~ wetlands and ~~regulated~~ wetland buffers be designated as an easement or covenant encumbering the wetland and wetland buffer. Such easement or covenant shall be recorded together with the land division and represented on the final plat or binding site plan, and title.

c. In order to implement the goals and policies of this chapter, to accommodate innovation, creativity, and design flexibility, and to achieve a level of environmental protection that would not be possible by typical lot-by-lot development, the use of the clustered development or similar innovative site planning is strongly encouraged for projects with regulated wetlands on the site.

6. Surface Water Management. Surface water structures or discharges from stormwater facilities may be allowed within wetlands and their required buffers only when the applicant has an approved Site Assessment Review (SAR) pursuant to the requirements of BIMC 15.20 and the proposal meets criteria in Appendix I-D, Guidelines for Wetlands when Managing Stormwater, from Washington State Department of Ecology's 2012 Stormwater Management Manual for Western Washington, as amended in 2014. The following stormwater management activities may be allowed within wetland or buffer areas only if they meet the following requirements, in addition to the development standards in this section and in conformance with the Stormwater Management Ordinance, Chapter 15.20 BIMC:

~~a. Surface water discharges from stormwater facilities or structures; provided, that the new surface water discharges to regulated wetlands from retention/detention facilities;~~

~~b. Pre settlement ponds or other surface water management structures; provided, that the discharge does not significantly increase or decrease the rate of flow and/or hydro period, nor decrease the water quality of the wetland. Water quality treatment best management practices will be required prior to discharge. Pre-treatment of surface water discharge through biofiltration or other means shall be required.~~

7. Trails and Trail-Related Facilities: Construction of public and private trails and trail-related facilities, such as benches and viewing platforms, may be allowed in wetlands or wetland buffers ~~pursuant to~~ only when the following guidelines standards are met:

a. Trails and related facilities shall, ~~to the extent feasible,~~ be placed on existing road grades, utility corridors, or any other previously disturbed areas if present at the site and consistent with trail planning objectives.

b. Trails and related facilities shall be planned to minimize removal of trees, soil disturbance, and existing hydrological characteristics, shrubs, snags, and important wildlife habitat.

c. Viewing platforms and benches, and access to them, shall be designed and located to minimize disturbance of wildlife habitat and/or critical characteristics of the affected wetland. Viewing platforms shall be limited to one hundred (100) square feet in size, unless demonstrated through a wetland critical areas report and mitigation plan that a larger structure will not result in a net loss of wetland functions.

d. Planning shall utilize mitigation sequencing in BIMC 16.20.XX to first avoid siting trail and trail-related facilities within wetlands and their required buffers. Trails and related facilities shall, to the extent feasible, generally be located outside wetlands and required wetland buffers. When located within wetland buffers, trails and related facilities shall, to the extent feasible, be located outer twenty-five (25) percent of the buffer. Where trails are permitted within buffers they shall be located in the outer portion of the buffer and a minimum of 25 feet from the wetland edge, except where wetland crossings or viewing areas have been approved by the Director. Trail locations closer to the wetland may be allowed if the primary purpose of the trail is wetland viewing or enjoyment or Trails and trail-related facilities may be allowed within wetlands or wetland buffers if there are no other reasonable alternatives for meeting trail planning objectives and it is demonstrated through a wetland critical areas report and mitigation plan that the proposal will not result in a net loss of wetland functions.

e. Trails shall ~~generally~~ be limited to ~~non-motorized use~~ pedestrian use unless other more intensive uses, such as bike or horse trails, have been specifically allowed and mitigation has been provided. Trail width shall not exceed five feet unless there is a demonstrated need, subject to review and approval by the Director. Trails shall be constructed with pervious materials unless otherwise approved by the Director.

8. Utilities. Installation of utilities within wetlands or their required buffers may be allowed when the following standards are met: in Wetlands or Wetland Buffers:

a. ~~The utility maintenance authorized in BIMC 16.20.040(C) shall be allowed, subject to best management practices in wetlands and wetland buffers.~~

ba. Construction of new utilities outside the road right-of-way or an existing utility corridors may be permitted in wetlands or wetland buffers, only when no reasonable alternative location is available and the utility ~~corridor~~ meets the requirements for installation, replacement of vegetation and maintenance outlined below, and as required in the filing and approval of applicable permits and special reports required by this chapter.

eb. Sewer or On-site Sewage Utility. Construction of sewer lines or on-site sewage systems may be permitted in wetland buffers only when:

- i. The applicant demonstrates it is necessary to meet state and/or local health code minimum design standards (not requiring a variance for either horizontal setback or vertical separation); and/or
- ii. There are no other practicable or reasonable alternatives available and construction meets all other applicable requirements of this section ~~and the special use review requirements pursuant to BMC 16.20.160(G)~~. Joint use of the sewer utility corridor by other utilities may be allowed.

ec. ~~New utilities corridors~~ shall not be allowed when the ~~regulated~~ wetland or buffer has known locations of federal or state listed endangered, threatened, ~~or monitored~~ or sensitive species, heron rookeries or nesting sites of raptors which are listed as species of concern, except in those circumstances where an approved Habitat Management Plan indicates that the utility corridor will not significantly impact the wetland or wetland buffer;

ed. ~~New utility corridor~~ construction and maintenance shall protect the ~~regulated~~ wetland and buffer environment by utilizing the following methods:

- i. ~~New utilities corridors~~ shall be aligned when possible to avoid cutting trees greater than 12 inches in diameter at breast height (four and one-half feet), measured on the uphill side.

ii. ~~New utilities corridors~~ Any area of disturbance resulting from installation of a utility shall be revegetated with appropriate native or equivalent vegetation at preconstruction densities or greater, immediately upon completion of construction, or as soon thereafter as possible, if due to seasonal growing constraints. The utility or landowner responsible for installation shall ensure that such vegetation survives.

iii. ~~Any additional utility corridor~~ access for maintenance shall be provided as much as possible at specific points, rather than by parallel roads. If parallel roads are necessary, they shall be of a minimum width but no greater than 15 feet; and shall be contiguous to the location of the utility corridor on the side away from the wetland. Mitigation will be required for any additional access through restoration of vegetation in disturbed areas.

- iv. The Director may require other additional mitigation measures.

fe. ~~Utility corridor~~ maintenance shall include the following measures to protect the ~~regulated~~ wetland and buffer environment:

- i. ~~Where feasible, painting of utility equipment such as power towers shall not be sprayed or sandblasted, nor should lead-based paints be used.~~

ii. No pesticides, herbicides or fertilizers may be used in wetland areas or their buffers except those approved by the U.S. Environmental Protection Agency (EPA) and Washington Department of Ecology EPA and Ecology. ~~Where approved, they herbicides must be and applied by a licensed applicator in accordance with the safe application practices on the label.~~

9. Parks. Development of public park and recreation facilities may be allowed ~~permitted~~; provided, that no alteration of wetlands or wetland buffers is allowed except as

allowed in BIMC 16.20.XX (Exemptions) and BIMC 16.20.160.XX (Development standards for specific development, uses and activities). For example, enhancement of wetlands and development of trails may be allowed in wetlands and wetland buffers subject to special use requirements and approval of a Wetland Mitigation Plan in BIMC 16.20.160.F (Permit and review procedures).

~~10. Educational or scientific activities. These activities shall only be permitted if they are directly related to the affected wetland and related buffers, and may include the viewing and sampling of natural systems. They may also include the installation of physical structures, including pervious trails, benches, permanent wildlife watching blinds, boardwalks, viewing platforms, or similar structures, or minor modifications to wetlands and their buffers. Any physical structures or minor modifications are subject to City approval to minimize the impacts of human intrusion on the functions and values of critical areas and their buffers according to the following criteria:~~

- ~~a. Minimize the footprint of structures and the number of access points to any particular critical area;~~
- ~~b. Minimize the amount of clearing and grading;~~
- ~~c. Elevate structures where possible;~~
- ~~d. Avoid impacting the flow of water;~~
- ~~e. Use appropriate building materials; and~~
- ~~f. Minimize the impacts of construction.~~

I. Wetland Buffers

D. Development Standards.

~~1. Water quality buffers — An applicant shall provide the prescribed water quality buffers in this section (Tables 3-6) unless a Reasonable Use Exception is granted pursuant to BIMC 16.20.080.~~

~~2. Habitat buffers — An applicant shall provide either:~~

- ~~a. The prescribed habitat buffers specified in this section (Tables 3, 4, 5, and 6); or~~
- ~~b. An approved Habitat Management Plan, pursuant to BIMC 16.20.060, that clearly provides greater habitat functions and values in perpetuity than the prescribed habitat buffers in this section (Tables 3, 4, 5, and 6).~~

31. Buffers shall remain as undisturbed native vegetation areas for the purpose of protecting the integrity, function, and value of wetland resources. Any buffer modification proposed shall be through an approved Buffer Enhancement Plan meeting the requirements of BIMC 16.20.XX. No uses or activities shall be allowed within the buffer unless allowed by this section. If the buffer has previously been disturbed, the director may require the disturbed buffer area be revegetated pursuant to an approved Buffer Enhancement Plan meeting the requirements of BIMC 16.20.XX. No refuse, including but not limited to household trash, yard waste and commercial/industrial refuse,

~~shall be placed in the buffer. Buffers shall remain undisturbed natural vegetation areas except where the buffer can be enhanced to improve its functional attributes. Any buffer enhancement and/or limited view clearing activity must be reviewed and approved by the Director. No refuse shall be placed in the buffer. Alteration of habitat buffer areas may be allowed for water dependent and water related activities and for development authorized by BIMC 16.20.040.C (Exemptions), or BIMC 16.20.040.D (Standards for Existing Development), or BIMC 16.20.050.B (Buffer Averaging), or BIMC 16.20.070 (Variances), or BIMC 16.20.080 (Reasonable Use Exception).~~

2. All regulated wetlands shall be surrounded by a buffer, based upon *Appendix 8-C, Section 8C.2.3 of Wetlands in Washington State – Volume 2: Guidance for Protecting and Managing Wetlands* (Ecology Publication #05-06-008), as amended. Standard buffer widths are shown in Tables 1 through 4. If a wetland meets more than one of the criteria listed in each table, the buffer needed to protect the wetland is the widest one.

~~4. If a wetland meets more than one of the criteria listed in each table, the buffer needed to protect the wetland is the widest one.~~

3. The required minimum buffers listed in Tables 1 through 4 are based on the assumption that the buffer is well vegetated with native species appropriate to the site. If the buffer does not consist of vegetation adequate to provide wetland protection and buffer functions, the director may require that the buffer be planted to achieve such protection and function.

Table 1: Category I Wetlands - Buffers

Wetland Characteristics	Impact of Land Use	Water Quality Buffer	Habitat Buffer	Total Buffer Width	Other Protection
Natural Heritage Wetlands	Low Moderate High	50 ft 75 ft 100 ft	75 ft 115 ft 150 ft	125 ft 190 ft 250 ft	No additional discharge of surface water. No septic systems within 300 ft. Restore degraded parts of the buffer
Bogs	Low Moderate High	50 ft 75 ft 100 ft	75 ft 115 ft 150 ft	125 ft 190 ft 250 ft	No additional surface discharges. Restore degraded parts of the buffer.
Forested	Low Moderate High	50 ft 75 ft 100 ft	75 ft 115 ft 150 ft	125 ft 190 ft 250 ft	If forested wetland scores high for habitat, maintain connectivity to other natural areas.
Estuarine	Low Moderate High	50 ft 75 ft 100 ft	50 ft 75 ft 100 ft	100 ft 150 ft 200 ft	N/A

Wetland Characteristics	Impact of Land Use	Water Quality Buffer	Habitat Buffer	Total Buffer Width	Other Protection
Wetlands in Coastal Lagoon	Low Moderate High	50 ft 75 ft 100 ft	50 ft 75 ft 100 ft	100 ft 150 ft 200 ft	N/A
High level of function for habitat (score for habitat is 29-36 8-9 pts.)	Low Moderate High	50 ft 75 ft 100 ft	100 ft 150 ft 200 ft	150 ft 225 ft 300 ft	Maintain connectivity to other natural areas. Restore degraded parts of the buffer.
Moderate level of function for habitat (score for habitat is 20-28 5-7pts.)	Low Moderate High	50 ft 75 ft 100 ft	25 ft 35 ft 50 ft	75 ft 110 ft 150 ft	N/A
High level of function for water quality improvement and low for habitat (score for water quality 24-32 8-9 pts.; habitat less than 20 5 pts.)	Low Moderate High	50 ft 75 ft 100 ft	0 ft 0 ft 0 ft	50 ft 75 ft 100 ft	No additional discharges of untreated runoff.
Not meeting any of the above criteria.	Low Moderate High	50 ft 75 ft 100 ft	0 ft 0 ft 0 ft	50 ft 75 ft 100 ft	N/A

Table 2: Category II Wetlands - Buffers

Wetland Characteristics	Impact of Land Use	Water Quality Buffer	Habitat Buffer	Total Buffer Width	Other Protection
High level of function for habitat (score for habitat is 29-36 8-9 pts.)	Low Moderate High	50 ft 75 ft 100 ft	100 ft 150 ft 200 ft	150 ft 225 ft 300 ft	Maintain connectivity to other natural areas.
Moderate level of	Low Moderate	50 ft 75 ft	25 ft 35 ft	75 ft 110 ft	N/A

function for habitat (score for habitat is 20-28 5-7pts.)	High	100 ft	50 ft	150 ft	
Estuarine	Low	50 ft	25 ft	75 ft	N/A
	Moderate	75 ft	35 ft	110 ft	
	High	100 ft	15 ft	115 ft	
Not meeting any of the above criteria	Low	50 ft	0 ft	50 ft	N/A
	Moderate	75 ft	0 ft	75 ft	
	High	100 ft	0 ft	100 ft	

Table 3: Category III Wetlands - Buffers

Wetland Characteristics	Impact of Land Use	Water Quality Buffer	Habitat Buffer	Total Buffer Width	Other Protection
Moderate level of function for habitat (score for habitat is 20-28 5-7pts.)	Low	40 ft	35 ft	75 ft	N/A
	Moderate	60 ft	50 ft	110 ft	
	High	80 ft	70 ft	150 ft	
Not meeting above criterion	Low	40 ft	0 ft	40 ft	N/A
	Moderate	60 ft	0 ft	60 ft	
	High	80 ft	0 ft	80 ft	

Table 4: Category IV Wetlands - Buffers

Wetland Characteristics	Impact of Land Use	Water Quality Buffer	Habitat Buffer	Total Buffer Width	Other Protection
Larger than 10,000 square feet. All	Low	25 ft	0 ft	25 ft	N/A
	Moderate	40 ft	0 ft	40 ft	
	High	50 ft	0 ft	50 ft	
Smaller than 10,000 square feet	Low	25 ft	0 ft	25 ft	N/A
	Moderate	25 ft	0 ft	25 ft	
	High	25 ft	0 ft	25 ft	

4. Buffer Measurement. All buffers shall be measured on a horizontal plane from the delineated wetland edge as marked in the field a qualified professional.

5. Fencing and Signs. This section applies to those wetlands and their buffers that are within 200 feet of regulated development activities.

a. Wetland buffers shall be temporarily fenced or otherwise suitably marked between the area where the construction activity occurs and the buffer. Fences shall be made of a durable protective barrier and shall be highly visible. Silt fences and plastic construction fences may be used to prevent encroachment on wetlands or their buffers by construction. Temporary fencing shall be removed after the site work has been completed and the site is fully stabilized per city approval.

b. The Director may require that permanent signs and/or fencing be placed on the common boundary between a wetland buffer and the adjacent land. Such signs will identify the wetland buffer. The Director may approve an alternate method of wetland and buffer identification, if it provides adequate protection to the wetland and buffer.

6. Structure or hard surface setback. A structure or hard surface setback line of fifteen feet is required from the edge of any wetland buffer. Minor structural or impervious surface intrusions into the areas of the setback, such as but not limited to fire escapes, open/uncovered porches, landing places, outside walkways, outside stairways, retaining walls, fences and patios, may be permitted if the department determines upon review of an analysis of buffer functions submitted by the applicant, that such intrusions will not adversely impact the wetland. The functional analysis shall include a functional methodology supported by best available science. The setback shall be identified on a site plan and filed as an attachment to the notice on title as required by Section 16.20.XX (Notice on Title).

7. Buffer Modification. On each site, only one of the following modifications to buffer widths may be allowed provided the applicant demonstrates the need for modification through mitigation sequencing pursuant to BIMC 16.20.XX.

a. Buffer Width Averaging. The width of a required buffer may be averaged if the applicant can demonstrate that averaging can provide equal or greater functions and values as would be provided under the required buffer and all of the following conditions are met:

i. The total area of buffer after averaging is equal to the area required without averaging.

ii. Averaging cannot result in the any portion of the buffer being reduced more than 25 percent of its required width.

b. Buffer Width Reduction. The width of a required buffer may be reduced if the applicant can demonstrate that the reduction will provide equal or greater functions

and values as would be provided under the required buffer this will improve the protection of wetland functions and all of the following conditions are met:

- i. The buffer may not be reduced more than 25 percent of its required width.
- ii. Native vegetation on other portions of the site is retained in order to offset habitat loss from buffer reduction.

c. The required buffer widths for proposed land uses with high-intensity impacts to wetlands may be reduced to those required for moderate-intensity impacts under the following conditions:

- i. For wetlands that score moderate or high for habitat (5 points or more for the habitat function), the width of the buffer may be reduced if both of the following criteria are met:

- a. A relatively undisturbed, vegetated corridor at least 100-feet wide is provided if the wetland contains any priority habitats as defined by the Washington Department of Fish and Wildlife. “Relatively undisturbed” and “vegetated corridor” are defined in the Western Washington Wetland Rating System. The corridor must be protected for the entire distance between the wetland and the priority habitat by some type of legal protection, such as a Notice to Title.

- b. Measures to minimize the impacts of different land uses on wetlands, such as the examples in Table 5, are applied.

- ii. For wetlands that score less than 5 points for habitat, the buffer width may be reduced to that required for moderate land use impacts by applying measures to minimize the impacts of different land uses on wetlands, such as the examples in Table 5.

d. Any request for buffer modification outlined above (BIMC 16.20.160.XX-XX) shall be reviewed in conjunction with the underlying land use or construction permit. A critical area permit is not required. Requests for buffer averaging or buffer reduction shall include a Buffer Enhancement Plan prepared by a qualified professional that meets the requirements of BIMC 16.20.XX. Buffer enhancement plans shall be reviewed pursuant to the criteria in BIMC 16.20.XX.

e. Any other buffer modification, other than non-compensatory enhancement, requires a Reasonable Use Exception pursuant to BIMC 16.20.XX.

Table 5: Examples of measures to minimize impacts to wetlands from different types of activities.

Examples of Disturbance	Examples of Measures to Minimize Impacts	Activities that Cause the Disturbance
Lights	• Direct lights away from wetland.	Parking lots, warehouses, manufacturing, residential
Noise	• Locate activity that generates noise away from wetland. • <u>If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source.</u> • <u>For activities that generate relatively continuous, potentially disruptive noise, such as heavy industry or manufacturing, establish an additional 10-foot heavily vegetated buffer strip immediately adjacent to the outer wetland buffer.</u>	Manufacturing, residential
Toxic runoff*	• Route all new runoff away from wetland. • Establish covenants limiting use of pesticides within 150 ft feet of wetland. • Apply integrated pest management.	Parking lots, roads, manufacturing, residential areas, application of agricultural pesticides, landscaping
<u>Stormwater runoff</u>	• <u>Retrofit stormwater detention and treatment for roads and existing adjacent development.</u> • <u>Prevent channelized flow from lawns that directly enters the buffer.</u> • <u>Use Low Impact Development techniques consistent with BIMC 15.20.</u>	<u>Parking lots, roads, manufacturing, residential areas, landscaping</u>
Change in water regime	Infiltrate or treat, detain, and disperse new runoff into buffer.	Impermeable surfaces, lawns, tilling
<u>Pets and human disturbance</u>	Plant dense vegetation around buffer, such as rose, hawthorn, etc. • <u>Plant buffer with dense, impenetrable native vegetation appropriate for region.</u> • <u>Install low impact fencing at buffer perimeter.</u> • <u>Place wetland and its buffer in separate open space tract or protect with conservation easement.</u>	Residential areas
<u>Human disturbance</u>	Plant buffer with impenetrable natural vegetation appropriate for region.	Residential areas
Dust	Utilize best management practices to control	Tilled fields

	dust.	
* These examples are not necessarily adequate to meet the rules for minimizing toxic runoff if threatened or endangered species are present at the site.		

a. For Category II or III wetlands smaller than 10,000 square feet with a habitat score of less than 20 points, the buffer may be reduced by 50 percent.

b. For the purpose of determining the impact of land use, unless the Director determines a lesser level of impact is appropriate based on information provided by the applicant, the intensity of impact of the adjacent land use is determined based on the “impact of land use” definition.

5. If an applicant elects to propose an HMP, and that HMP proposes habitat buffer widths less than those prescribed in Tables 3—6, the HMP shall be prepared pursuant to BIMC 16.20.060 and fulfill all requirements specified therein.

6. Table 7 provides examples of measures that might be provided in an HMP or when prescribed buffers are otherwise altered with by Buffer Averaging (BIMC 16.20.050.B), Variance (BIMC 16.20.070), or Reasonable Use Exception (BIMC 16.20.080), to minimize impacts of certain activities. Other measures may also be effective in minimizing impacts depending on site specific circumstances and the nature of proposed activity.

Table 7: Examples of measures to minimize impacts to wetlands from different types of activities.

Examples of Disturbance	Examples of Measures to Minimize Impacts	Activities that Cause the Disturbance
Lights	Direct lights away from wetland.	Parking lots, warehouses, manufacturing, residential
Noise	Locate activity that generates noise away from wetland.	Manufacturing, residential
Toxic runoff*	Route all new runoff away from wetland. Establish covenants limiting use of pesticides within 150 ft of wetland. Apply integrated pest management.	Parking lots, roads, manufacturing, residential areas, application of agricultural pesticides, landscaping
Change in water regime	Infiltrate or treat, detain, and disperse new runoff into buffer.	Impermeable surfaces, lawns, tilling
Pets	Plant dense vegetation around buffer, such as rose, hawthorn, etc.	Residential areas

Human disturbance	Plant buffer with impenetrable natural vegetation appropriate for region.	Residential areas
Dust	Utilize best management practices to control dust.	Filled fields
* These examples are not necessarily adequate to meet the rules for minimizing toxic runoff if threatened or endangered species are present at the site.		

7. Small wetlands

a. Wetlands of less than 1,000 square feet are exempt from regulation of this section where the applicant has shown that they are not associated with a riparian corridor, are not part of a wetland mosaic, and do not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife.

b. All wetlands between 1,000 and 4,000 square feet shall be evaluated using Department of Ecology's Wetland Rating System for Western Washington (2004) to establish category and evaluate functions. Using the following criteria, the Director shall determine whether to exempt wetlands between 1,000 and 4,000 square feet from the requirement to avoid impacts:

- i. The wetland is not associated with a riparian corridor; and
- ii. The wetland is not part of a wetland mosaic; and
- iii. The wetland does not score 20 points or more for habitat in the

Wetland Rating System; and

iv. The wetland does not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife; and

v. The wetland is substantially covered by invasive species or otherwise severely disturbed.

8. Buffer Measurement. All buffers shall be measured on a horizontal plane from the regulated wetland edge as marked in the field.

9. Fencing and Signs. This section applies to those wetlands and their buffers that are within 200 feet of regulated development activities.

a. Wetland buffers shall be temporarily fenced or otherwise suitably marked, as required by the Director, between the area where the construction activity occurs and the buffer. Fences shall be made of a durable protective barrier and shall be highly visible. Silt fences and plastic construction fences may be used to prevent encroachment on wetlands or their buffers by construction. Temporary fencing shall be removed after the site work has been completed and the site is fully stabilized per City approval.

b. The Director may require that permanent signs and/or fencing be placed on the common boundary between a wetland buffer and the adjacent land. Such signs will identify the wetland buffer. The Director may approve an alternate method of wetland and buffer identification, if it provides adequate protection to the wetland and buffer.

~~10. Building or Impervious Surface Setback Lines. A building or impervious surface setback line of 15 feet is required from the edge of any wetland buffer. Minor structural or impervious surface intrusions into the areas of the setback may be permitted if the Director determines that such intrusions will not adversely impact the wetland. The setback shall be identified on a site plan and filed as an attachment to the notice on title as required by Section 16.20.190 (Notice on Title).~~

~~E. Regulated Uses And Activities. New development activities on properties containing regulated wetlands and buffers are subject to the development standards in this section, as permitted in the underlying zoning designation. Requirements for additional activities are specified in Table 8. The City may grant exceptions to these uses and activities according to the intent and specifications of this chapter. All authorized uses and activities in a regulated wetland or its buffer shall be subject to conditions established by the Director and may be subject to mitigation as required by this chapter.~~

~~Development shall be classified as “allowed,” “permitted,” “special use” or “prohibited” according to this Section. Any regulated uses not specifically listed in Table 8 shall be considered unclassified and may be allowed if granted a special use review in accordance with this chapter. For the purpose of Table 8, “W” and “B” refer to the terms “wetland” and “buffer.”~~

Table 8: Regulated Uses and Activities in Regulated Wetlands and Buffers

	Category I		Category II		Category III		Category IV	
	W	B	W	B	W	B	W	B
1. Agriculture-existing & ongoing	A	A	A	A	A	A	A	A
2. Agriculture-Building (Grazed Wet Meadows)	X	X	X	S	S	S	S	S
3. A) Agriculture Conversion (Wetland dependent)	X	S	X	S	S	S	S	S
B) (Non wetland dependent)	X	S	X	S	X	S	X	S
4. Bank stabilization	X	X	S	S	S	S	P	P
5. Boat ramp	X	X	S	S	S	S	S	S
6. Dock/float	S	S	S	S	S	S	P	P
7. Draining Wetlands (associated with no other permitted use, except as allowed under Section 120.C)	X	N/A	X	N/A	X	N/A	X	N/A
8. Educational or Scientific Activities	P	P	P	P	P	P	P	P
9. Enhancement	S	S	P	P	P	P	P	P
10. Excavation (not associated with enhancement)	X	X	S	S	S	S	S	S
11. Fill (associated with no other use)	X	X	X	X	X	X	X	X

	Category I		Category II		Category III		Category IV	
	W	B	W	B	W	B	W	B
12. Fish Hatchery	X	X	S	S	S	S	S	S
13. Flooding (associated with no other use)	X	X	S	S	S	S	S	S
14. Forest Practice Class IV General or COHP	X	X	X	X	X	X	X	X
15. Golf Course	X	X	X	X	S	S	S	S
16. Land Division	P	P	P	P	P	P	P	P
17. Mineral extraction	X	X	S	S	S	S	S	S
18. Parks Development- Public & Private	S	S	S	S	S	S	P	P
19. Ponds Stock Watering	X	X	X	S	X	S	S	P
20. Public Facility	X	X	X	S	S	S	S	S
21. Public Project of Significant Importance	S	S	S	S	S	S	S	S
22. Radio/TV Towers	X	X	S	S	S	S	S	S
23. Restoration/Revegetation of Site	S	S	P	P	P	P	P	P
24. Road/Street- Public/Private Access								
A) Expand within existing ROW	S	S	S	S	S	S	P	P
B) New Facilities	X	X	S	S	S	S	S	S

	Category I		Category II		Category III		Category IV	
	W	B	W	B	W	B	W	B
25. Signs- (Interpretation, Hazard, Critical Area Boundary, Survey Markers)	P	P	P	P	P	P	P	P
26. Site Investigation (non- mechanized)	A	A	A	A	A	A	A	A
Site Investigation (mechanized)	P	P	P	P	P	P	P	P
27. Stormwater, Private R/D Facility	X	X	X	S	S	S	S	S
28. Stormwater, Regional R/D Facility	X	X	X	S	S	S	S	S
29. Trails and Trail Related Facilities	P	P	P	P	P	P	P	P
30. Utility Facility	X	X	S	S	S	S	S	S
31. Utility On- Site Sewage Facility	X	X	X	S	X	S	X	S
32. Utility Line- Overhead	S	S	S	S	S	S	P	P
33. Utility Line- Underground	X	S	S	S	S	S	S	S

Key: — A = Allowed Outright — P = Permitted Subject to Development Standards and Underlying Permit S = Special Use Review Required — X = Prohibited

F. Additional development standards for regulated uses. In addition to meeting the Development Standards in section D, above, those regulated uses identified below shall also comply with the standards of this section and other applicable state, federal and local ordinances:

1. Docks. Construction of a dock, pier, moorage, float, or launch facility may be permitted where no existing buffer or wetland vegetation would be significantly altered.

2. Forest Practice, Class IV General, and Conversion Option Harvest Plans (COHPs). All timber harvesting and associated development activity, such as construction of roads, shall comply with the provisions of this chapter, including the maintenance of buffers around regulated wetlands.

3. Agricultural restrictions. In all development proposals which would permit introduction of agricultural uses, all regulated wetlands shall be avoided. These restrictions shall not apply to those regulated wetlands defined as grazed wet meadows; regardless of their classification, only where grazing has occurred within the last five (5) years. Wetlands shall be protected by installation of fencing located not closer than the outer buffer edge.

4. Road/street repair and construction: Any private or public road or street repair, maintenance, expansion or construction may be permitted, subject to the following standards:

a. No other reasonable or practicable alternative exists and the road or street crossing serves multiple properties whenever possible;

b. Publicly owned or maintained road or street crossings should provide for other purposes, such as utility crossings, pedestrian or bicycle easements, viewing points, etc.; and

c. The road or street repair and construction are the minimum necessary to provide safe roads and streets.

d. Mitigation shall be performed in accordance with specific project mitigation plan requirements.

5. Land Divisions and Land Use Permits. All land divisions and land uses proposed on a site that include regulated wetlands, shall comply with the procedures and standards listed below. When a parcel contains a wetland, City policy shall always be to primarily protect the functions and values of the wetland, while recognizing the value of the development rights provided to the property by its zoning.

a. Density Calculation:

i. The actual density that will allowed to be built upon a parcel containing a wetland shall ultimately be determined during the site specific review of the parcel's planned development.

ii. In determining the actual density of a parcel based on a specific site plan, the site plan shall locate all buildings outside of the wetland buffers;

iii. The number of development rights allowed for any residentially zoned parcel shall be its size in square feet divided by the number of square feet per home that is required by its zoning;

iv. If the land can be subdivided such that all setbacks, buffers, and other zoning requirements can be observed, and no variances are requested, the density from the wetland can be transferred within the property;

v. To the extent that the number of allowable development rights cannot be used on-site, they may be sold, traded, or transferred by the property owner through the transfer of development rights program pursuant to Chapter 18.37 BIMC;

vi. Property owners may voluntarily extinguish development rights that are provided by the underlying zoning, but the City shall not extinguish any of these rights outside the aforementioned transactions.

b. Land division approvals shall be conditioned to require that regulated wetlands and regulated wetland buffers be designated as an easement or covenant encumbering the wetland and wetland buffer. Such easement or covenant shall be recorded together with the land division and represented on the final plat or binding site plan, and title.

e. In order to implement the goals and policies of this chapter, to accommodate innovation, creativity, and design flexibility, and to achieve a level of environmental protection that would not be possible by typical lot-by-lot development, the use of the clustered development or similar innovative site planning is strongly encouraged for projects with regulated wetlands on the site.

6. Surface Water Management. The following stormwater management activities may be allowed within wetland or buffer areas only if they meet the following requirements, in addition to the development standards in this section and in conformance with the Stormwater Management Ordinance, Chapter 15.20 BIMC:

a. Surface water discharges from stormwater facilities or structures; provided, that the new surface water discharges to regulated wetlands from retention/detention facilities;

b. Pre settlement ponds or other surface water management structures; provided, that the discharge does not significantly increase or decrease the rate of flow and/or hydro period, nor decrease the water quality of the wetland. Water quality treatment best management practices will be required prior to discharge. Pre treatment of surface water discharge through biofiltration or other means shall be required.

7. Trails and Trail Related Facilities: Construction of public and private trails and trail related facilities, such as benches and viewing platforms, may be allowed in wetlands or wetland buffers pursuant to the following guidelines:

a. Trails and related facilities shall, to the extent feasible, be placed on existing road grades, utility corridors, or any other previously disturbed areas.

b. Trails and related facilities shall be planned to minimize removal of trees, soil disturbance, and existing hydrological characteristics, shrubs, snags, and important wildlife habitat.

e. Viewing platforms and benches, and access to them, shall be designed and located to minimize disturbance of wildlife habitat and/or critical characteristics of the affected wetland.

d. Trails and related facilities shall generally be located outside required buffers. Where trails are permitted within buffers they shall be located in the outer portion of the buffer and a minimum of 25 feet from the wetland edge, except where wetland crossings or viewing areas have been approved by the Director. Trail locations close to the wetland may be allowed if the primary purpose of the trail is wetland viewing or enjoyment.

e. Trails shall generally be limited to pedestrian use unless other more intensive uses, such as bike or horse trails, have been specifically allowed and mitigation

has been provided. Trail width shall not exceed five feet unless there is a demonstrated need, subject to review and approval by the Director. Trails shall be constructed with pervious materials unless otherwise approved by the Director.

8. ~~Utilities in Wetlands or Wetland Buffers:~~

a. ~~The utility maintenance authorized in BMC 16.20.040(C) shall be allowed, subject to best management practices in wetlands and wetland buffers.~~

b. ~~Construction of new utilities outside the road right of way or existing utility corridors may be permitted in wetlands or wetland buffers, only when no reasonable alternative location is available and the utility corridor meets the requirements for installation, replacement of vegetation and maintenance outlined below, and as required in the filing and approval of applicable permits and special reports required by this chapter.~~

e. ~~Sewer or On-site Sewage Utility. Construction of sewer lines or on-site sewage systems may be permitted in regulated wetland buffers only when:~~

i. ~~The applicant demonstrates it is necessary to meet state and/or local health code minimum design standards (not requiring a variance for either horizontal setback or vertical separation); and/or~~

ii. ~~There are no other practicable or reasonable alternatives available and construction meets all other applicable requirements of this section and the special use review requirements pursuant to BMC 16.20.160(G). Joint use of the sewer utility corridor by other utilities may be allowed.~~

d. ~~New utility corridors shall not be allowed when the regulated wetland or buffer has known locations of federal or state listed endangered, threatened or sensitive species, heron rookeries or nesting sites of raptors which are listed as species of concern, except in those circumstances where an approved Habitat Management Plan indicates that the utility corridor will not significantly impact the wetland or wetland buffer;~~

e. ~~New utility corridor construction and maintenance shall protect the regulated wetland and buffer environment by utilizing the following methods:~~

i. ~~New utility corridors shall be aligned when possible to avoid cutting trees greater than 12 inches in diameter at breast height (four and one-half feet), measured on the uphill side.~~

ii. ~~New utility corridors shall be revegetated with appropriate native or equivalent vegetation at preconstruction densities or greater, immediately upon completion of construction, or as soon thereafter as possible, if due to seasonal growing constraints. The utility shall ensure that such vegetation survives.~~

iii. ~~Any additional utility corridor access for maintenance shall be provided as much as possible at specific points, rather than by parallel roads. If parallel roads are necessary, they shall be of a minimum width but no greater than 15 feet; and shall be contiguous to the location of the utility corridor on the side away from the wetland. Mitigation will be required for any additional access through restoration of vegetation in disturbed areas.~~

iv. ~~The Director may require other additional mitigation measures.~~

f. ~~Utility corridor maintenance shall include the following measures to protect the regulated wetland and buffer environment:~~

i. ~~Where feasible, painting of utility equipment such as power towers shall not be sprayed or sandblasted, nor should lead-based paints be used.~~

ii. ~~No pesticides, herbicides or fertilizers may be used in wetland areas or their buffers except those approved by the EPA and Ecology. Where approved, herbicides must be applied by a licensed applicator in accordance with the safe application practices on the label.~~

9. ~~Parks. Development of public park and recreation facilities may be permitted; provided, that no alteration of wetlands or wetland buffers is allowed except for uses allowed in Table 8. For example, enhancement of wetlands and development of trails may be allowed in wetlands and wetland buffers subject to special use requirements and approval of a Wetland Mitigation Plan.~~

10. ~~Educational or scientific activities. These activities shall only be permitted if they are directly related to the affected wetland and related buffers, and may include the viewing and sampling of natural systems. They may also include the installation of physical structures, including pervious trails, benches, permanent wildlife watching blinds, boardwalks, viewing platforms, or similar structures, or minor modifications to wetlands and their buffers. Any physical structures or minor modifications are subject to City approval to minimize the impacts of human intrusion on the functions and values of critical areas and their buffers according to the following criteria:~~

a. ~~Minimize the footprint of structures and the number of access points to any particular critical area;~~

b. ~~Minimize the amount of clearing and grading;~~

c. ~~Elevate structures where possible;~~

d. ~~Avoid impacting the flow of water;~~

e. ~~Use appropriate building materials; and~~

f. ~~Minimize the impacts of construction.~~

G. ~~Special Use Review. Development identified as a Special Use Review in Table 8 of this section may be approved, with conditions, or denied according to the procedures and criteria outlined in this subsection. Special Use Review is an administrative process unless the underlying permit requires a public hearing.~~

1. ~~The Director is authorized to take action on permits as required by this chapter.~~

2. ~~The Director may approve a permit after review of the application and a Wetland Mitigation Plan submitted in accordance with this chapter. The Director shall determine whether the use or activity cannot be avoided because no reasonable or practicable alternative exists, the proposed use is consistent with the spirit and intent of this chapter and it will not cause adverse impacts to the wetland or the wetland buffer which cannot be mitigated. In taking action to approve a Special Use Review, the Director may attach reasonable conditions as necessary to minimize impacts, rectify impacts or compensate for impacts to the wetland or wetland buffer.~~

3. ~~The Director shall deny a Special Use Review request if the proposed use or activity is inconsistent with this chapter and/or will cause adverse impacts to the wetland or wetland buffer, which cannot be adequately mitigated and/or avoided.~~

4. Special use review requests for agricultural conversions shall include a farm plan developed by the Kitsap Conservation District. The plan shall identify the best management practices for the proposed agricultural activity.

5. Special Use Review determinations are appealable to the hearings examiner pursuant to BIMC 2.16.130.

H. Wetlands and Streams Restoration, Creation, Mitigation, or Enhancement.

I. Wetland mitigation requirements.

1. Any person who alters regulated wetlands or streams or their standard buffers as required by this chapter shall restore, create or enhance equivalent areas or greater areas than those altered in order to compensate for losses. In the alternative, conservation easements or mitigation banking may be considered as appropriate mitigation provided that areas equivalent to those altered are achieved.

2. Where feasible, restored or created wetlands and streams shall be a higher category than the altered wetland or stream.

3. Compensation areas shall be determined according to function, acreage, type, location, time factors, ability to be self-sustaining and projected success. Multiple compensation projects may be proposed for one project in order to best achieve the goal of no net loss.

4. Given the need for expertise and monitoring, voluntary restoration, creation or enhancement projects or compensatory projects may be permitted only when the Director finds that the proposed project is associated with an activity or development otherwise permitted. Additionally, the applicant shall:

a. Demonstrate sufficient scientific expertise, supervisory capability, and financial resources to carry out the project;

b. Demonstrate the capability for monitoring the site and to make corrections during this period if the project fails to meet projected goals and plans; and

c. Provide for the long-term protection and management of the compensation area to avoid further development or degradation.

1. Any impacts to wetlands or buffers shall be mitigated in accordance with mitigation sequencing.

5. Acreage Replacement Ratio. Any applicant proposing to alter wetlands may propose to reestablish, create, rehabilitate, or enhance wetlands in order to compensate for the wetland losses.

a. Replacement Ratios for Wetlands. Table 9 provides the required replacement ratios for the reestablishment or creation, rehabilitation, or enhancement of a wetland. The first number specifies the replacement acreage of wetlands and the second specifies the acreage of wetlands altered.

Table 9: Replacement Ratios for Wetlands

Category and	Re-establishment or	Rehabilitation	1:1 Re-	Enhancement
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Commented [CC2]: This section will be updated with Ecology guidance. No changes to mitigation ratios proposed.

Type	Creation		establishment or Creation (R/C) or Enhancement (E)	Only
I - Forested	6:1	12:1	1:1 R/C 10:1 E	24:1
I – Highly functioning	4:1	8:1	1:1 R/C 6:1 E	16:1
I - Bog	Not possible	6:1 of a Bog	Case by Case	Case by Case
I - Estuarine	Case by Case	6:1 - Estuarine	Case by Case	Case by Case
II - Estuarine	Case by Case	4:1 - Estuarine	Case by Case	Case by Case
II - Others	3:1	8:1	1:1 R/C 4:1 E	12:1
III	2:1	4:1	1:1 R/C 2:1 E	8:1
IV	1.5:1	3:1	1:1 R/C 2:1 E	6:1

b. Replacement ratios for buffers shall be 1:1.

c. Increased Replacement Ratio. The Director may increase the ratios under the following circumstances:

i. Uncertainty as to the probable success of the proposed rehabilitation or creation;

ii. Significant period of time between destruction and replication of wetland functions; or

iii. Projected losses in functional value.

d. Decreased Replacement Ratio. The Director may decrease these ratios when there are findings of special studies coordinated with agencies with expertise which demonstrate that no net loss of wetland function or value is attained under the decreased ratio.

e. In all cases, a minimum acreage replacement ratio of 1:1 shall be required.

6. Wetland Type. In-kind compensation shall be provided except where the applicant can demonstrate that:

a. The wetland system is already significantly degraded and out-of-kind replacement will result in a wetland with greater functions and values;

b. Scientific problems such as invasive/exotic vegetation and changes in watershed hydrology make implementation of in-kind compensation impossible;

c. Out-of-kind replacement will best meet identified regional goals (e.g., replacement of historically diminished wetland types); and

d. Where out-of-kind replacement is accepted, greater acreage replacement ratios may be required to compensate for lost functions and values.

7. Location. On-site compensation shall be provided except where the applicant can demonstrate that:

a. The hydrology and ecosystem of the original wetland and those who benefit from the hydrology and ecosystem will not be substantially damaged by the on-site loss;

b. On-site compensation is not scientifically feasible due to problems with hydrology, soils, or other factors;

- c. Compensation is not practical due to potentially adverse impacts from surrounding land uses;
 - d. Existing functions and values at the site of the proposed restoration are significantly greater than lost wetland functional values;
 - e. That established regional goals for flood storage, flood conveyance, habitat or other wetland functions have been established and strongly justify location of compensatory measures at another site;
 - f. There is no feasible location for on-site mitigation;
 - g. Off-site compensation shall occur within the same watershed, if feasible, as the wetland loss occurred; provided, that Category IV wetlands may be replaced outside of the watershed when there is no reasonable alternative; and
 - h. In selecting compensation sites, an applicant shall pursue siting in the following order of preference:
 - i. Upland sites which were formerly wetlands;
 - ii. Idled upland sites generally having bare ground or vegetative cover consisting primarily of invasive introduced species, weeds, or emergent vegetation; or
 - iii. Other disturbed upland.
8. Timing. Wherever feasible, compensatory projects shall be completed prior to activities that will disturb wetlands, and immediately after activities that will temporarily disturb wetlands. In all other cases, except for Category I wetlands, compensatory projects should be completed prior to use or occupancy of the activity or development which was conditioned upon such compensation. Construction of compensation projects shall be timed to reduce impacts to existing wildlife and flora.
9. Cooperative Restoration, Creation or Enhancement Projects. The Director may encourage, facilitate, and approve cooperative projects wherein a single applicant or other organization with demonstrated capability may undertake a compensation project with funding from other applicants under the following circumstances:
- a. Restoration, creation or enhancement at a particular site may be scientifically difficult or impossible; or
 - b. Creation of one or several larger wetlands may be preferable to many small wetlands;
 - c. Persons proposing cooperative compensation projects shall:
 - i. Submit a joint permit application;
 - ii. Demonstrate compliance with all standards;
 - iii. Demonstrate the organizational and fiscal capability to act cooperatively; and
 - iv. Demonstrate that long-term management can and will be provided.
10. Mitigation Banking.
- a. The City may consider and approve replacement or enhancement of wetlands to address unavoidable adverse impacts caused by development activities through an approved wetland mitigation bank. Compensatory mitigation in advance of authorized impacts must be provided through an approved mitigation bank if a bank is used.

b. When off-site mitigation is authorized, the Director shall give priority to locations within the same drainage basin as the development proposal site that meet the following:

i. Mitigation banking sites and resource mitigation reserves as authorized by this chapter;

ii. Private mitigation sites that are established in compliance with the requirements of this chapter and approved by the Director; and

iii. Public mitigation sites that have been ranked in a process that has been supported by ecological assessments.

c. The Director may require documentation that the mitigation site has been permanently preserved from future development or alteration that would be inconsistent with the functions of the mitigation. The documentation may include, but need not be limited to, a conservation easement, transfer of clearing credits or other agreement between the applicant and owner of the mitigation site. The City may enter into agreements or become a party to any easement or other agreement necessary to ensure that the site continues to exist in its mitigated condition.

d. The Director shall maintain a list of sites available for use for off-site mitigation projects.

e. The Director may develop a program to allow the payment of a fee in lieu of providing mitigation on a development site. The program should address:

i. When the payment of a fee is allowed, considering the availability of a site in geographic proximity with comparable hydrologic and biological functions and potential for future habitat fragmentation and degradation; and

ii. The use of the fees for mitigation on public or private sites that have been ranked according to ecological criteria through one or more programs that have included a public process.

Chapter 16.20

CRITICAL AREAS

16.20.020090 Aquifer recharge areas.

A. Applicability. This section applies to all critical aquifer recharge areas as classified in BIMC 16.20.090.B except those located within the city's shoreline jurisdiction, which are regulated by the city's shoreline master program (BIMC 16.12).

AB. Classification. ~~The entirety of Bainbridge Island is classified as critical aquifer recharge area for the Island's aquifer system. The entirety of Bainbridge Island is the recharge area for the island aquifers. Certain uses must be carefully evaluated before being approved, and others must be prohibited, in order to protect the city's aquifers, due to the following:~~

- ~~1. Bainbridge Island is dependent upon its aquifers as the sole and essential source for drinking water. Critical recharge areas have the potential to affect potable water where an essential source of drinking water is vulnerable to contamination.~~
- ~~2. The island aquifers are vulnerable to pollution that has the potential to create a significant public health hazard. High vulnerability is indicative of land uses which produce contaminants that may degrade groundwater and low vulnerability is indicative of land uses which will not.~~
- ~~3. Susceptibility to pollution is a function of depth of groundwater, permeability of soils, soil types, presence of potential sources of contamination and any other relevant factors.~~
- ~~4. Soil types that transfer water to the aquifer are rated in terms of infiltration rate. Soil types with the high infiltration rates are associated with areas of high aquifer recharge. The rates and soil types are defined by the U.S. Department of Agriculture, Soil Conservation Service, in the Soil Survey of Kitsap County.~~
- ~~5. The island aquifers are vulnerable to a reduction in recharge from activities that reduce the infiltration rate on a site.~~

C. Permit review and procedures

1. Any development, use or activity shall require a critical area permit unless it qualifies as an exempt activity, as provided in BIMC 16.20.XX.
2. Critical area permits shall be reviewed pursuant to the criteria in BIMC 16.20.XX.

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3. Applications for critical area permits for aquifer recharge areas shall include:

a. City of Bainbridge Island Master Land Use Application (hyperlink); and

b. Site Assessment meeting the requirements of BIMC 16.20.170, Critical area reports.

i. All proposed new and re-development shall require a site assessment identifying all potential impacts of the proposed land use or activity to groundwater or surface water quality and quantity as described in 16.20.170.X. If the applicant has completed a Site Assessment Review (SAR) in accordance with Chapter 15.19 BIMC that includes those elements listed in 16.20.170.X, the SAR will suffice to fulfill this requirement. Additional in-depth site assessment elements as detailed in 16.20.170.X may be required upon review of the site assessment.

ii. All site assessments must be prepared and stamped by a professional hydrogeologist licensed in Washington State in accordance with RCW 18.220 and WAC 308-15. Affected public water purveyors (Group A & B), affected Tribes, and the Kitsap Public Health District will be notified and invited to comment on all site assessments. The City will consider all recommendations submitted by these entities when considering permit conditions.

iii. The City may require third-party independent review by a professional hydrogeologist of any required application materials.

c. Aquifer recharge mitigation plan, meeting the requirements of BIMC 16.20.170, Critical area reports, if aquifer recharge impacts are identified in the site assessment.

D. Prohibited Activities and Uses. The following activities and uses are prohibited due to the probability or potential magnitude of their adverse effects on groundwater:

1. Landfills. Landfills, including hazardous or dangerous waste, municipal solid waste, special waste, wood waste, and inert and demolition waste landfills;

2. Underground Injection Wells. Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells;

3. Chemical wood preservation and/or treatment facilities;

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4. Storage, Processing, or Disposal of Radioactive Substances. Facilities that store (other than minor sources such as medicinal uses or industrial testing devices), process, or dispose of radioactive substances;

5. Hazardous liquid transmission pipelines;

6. Commercial mining and washing of metals, hard rock, sand, and gravel;

7. Hydrocarbon extraction, reprocessing, refinement, and storage;

8. Electroplating/metal finishing;

9. Facilities that treat, store, process, or dispose of hazardous waste; and

10. Other Prohibited Uses or Activities.

a. Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source; and

b. Activities that would significantly reduce the recharge to aquifers that are a source of significant baseflow to a stream.

E. Aquifer recharge areas impact mitigation.

1. No development, use or activity may cause exceedance of the water or sediment quality standards or otherwise violate the anti-degradation requirements specified in WAC Chapters 173-200, 173-201A, and 173-204.

2. Where determined to be necessary through the site assessment process, critical area permit approvals shall include conditions designed to prevent significant degradation of groundwater and surface water quality and quantity.

3. For proposals requiring aquifer recharge area impact mitigations, the applicant shall submit a mitigation plan meeting the requirements of 16.20.170, Critical area reports.

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These two sections will be in 16.20.170, Critical area reports

Aquifer recharge areas site assessment requirements.

The site assessment shall include:

- a. A site map drawn to scale which indicates the location of known or geologically representative wells (abandoned and active), springs, and surface water features within 1,000 feet of the project property;
- b. A description of the site-specific hydrogeological characteristics. At a minimum this will include a description of the lithology, depth and static water level of known underlying aquifer(s), and depiction of groundwater flow direction and patterns on the site map;
- c. A description of the proposed land use and activities specifically detailing water consumption; an inventory of all chemical use, storage, transportation, production (including process wastewater), and disposal; and any potential pollutant identified by the U.S. EPA as a potential source of drinking water contamination (Appendix A of the Washington State Critical Aquifer Recharge Area Guidance Document) or known to be deleterious to the environment or human health; and
- d. A general discussion of surface and groundwater quality and quantity in the area and the identification of the potential adverse quality and quantity impacts to groundwater and surface water features within 1,000 feet of the project.

2. In-depth Site Assessment Elements. The required elements of the in-depth site assessment for a given development or re-development will be based on the initial site assessment review by City Planning and Community Services, the Kitsap Public Health District, affected Tribes, and affected public water purveyors.

One or more of the elements listed below may be required based upon the proposed project activity, complexity of underlying hydrogeological conditions, and the perceived potential to adversely impact groundwater or surface water quality or quantity. One or more of these elements may also be required if the applicant chooses to demonstrate that mitigation

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measures are not necessary to protect the quantity or quality of groundwater or surface water or that the project does not pose a detrimental risk to groundwater or surface water.

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Additional in-depth site assessment elements include:

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a. Lithologic characteristics and stratigraphic relationships of the affected aquifer(s) and overlying geologic units and soil types including thickness, horizontal and vertical extent, permeability, and infiltration rates of surface soils.

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b. Delineation of identified structural features such as faults, fractures, and fissures.

c. Aquifer characteristics including determination of recharge and discharge areas, transmissivity, storage coefficient, hydraulic conductivity, porosity, and estimate of groundwater flow direction, velocity and patterns for the affected aquifer(s).

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d. Estimate of precipitation and evapotranspiration rates for the project area.

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e. Preparation of appropriate hydrogeological cross sections depicting underlying lithology and stratigraphy, aquifer(s), and potential or probable contaminant pathways to both surface and groundwater from a chemical release.

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f. Determination of background or existing groundwater quality underlying the project area and water quality of surface water bodies.

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g. 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) with consideration to advection, dispersion, and diffusion of contaminants in the groundwater.

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h. Delineation of areas potentially affected by contaminant migration on the ground surface and/or through potentially affected aquifer(s).

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i. Determination of the degree of continuity between groundwater and nearby surface water including potential impacts to baseflow in streams from proposed groundwater withdrawals, and potential impacts to surface water quality from site runoff or contaminated groundwater discharge.

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j. Assessment of the potential for pumping-induced seawater intrusion.

k. Nitrate Loading Assessment. For projects that have the potential to adversely impact groundwater quality by nitrate loading, the applicant shall test existing wells and/or required test wells for nitrate as nitrogen and calculate the current and projected future groundwater nitrate concentrations at full project build-out, at appropriate point(s) of compliance, as determined by project characteristics, and in a methodology approved by the City. If the calculated nitrate loading in the intended water supply equals or exceeds 5 milligrams per liter nitrate as nitrogen, the applicant shall develop a mitigation plan with the point(s) of compliance determined based on project characteristics.

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l. Multiple-stage (or phased) development must consider impacts of the total build-out of the project in terms of critical aquifer recharge areas protection to allow for an assessment of the cumulative impacts of the entire development.

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Mitigation Plan Elements.

For proposals requiring aquifer recharge area impact mitigations, the applicant shall develop for approval by the City a mitigation plan for the proposed development. Affected public water purveyors (Group A & B), affected Tribes, and the Kitsap Public Health District will be notified and invited to comment on all mitigation plans. The City will consider all recommendations submitted by these entities when developing appropriate permit conditions.

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The City may, based on performance criteria and monitoring results, require additional amendments to the plan. The City reserves the right to submit mitigation plans for a third-party review at the applicant's expense and to reject any proposed land use or activity that poses significant risk to groundwater or surface water quality or quantity that cannot be satisfactorily mitigated.

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The mitigation plan shall contain the project's permit conditions and, as applicable:

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a. A description of the mitigation measures to be taken, how they will be implemented, and performance criteria.

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b. A groundwater and surface water monitoring program to measure potential impacts of the development to underlying aquifer(s) and surface water. The monitoring plan will describe monitoring, maintenance, and reporting requirements.

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c. A contingency plan describing spill response and corrective actions to be taken if a release occurs or monitoring results indicate that mitigation measures are not effectively protecting groundwater and surface water resources and human health. The City shall have the authority to impose additional required corrective actions where such measures are necessary to protect groundwater and surface water resources or human health. Where appropriate contingencies are not feasible and result in an activity posing unacceptable risk to groundwater or surface water resources or human health, the City shall deny the proposal.

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d. Multiple-stage (or phased) development must consider mitigation for each phase of development as well as the total build-out of the project in terms of critical aquifer recharge areas protection to allow for an assessment of the cumulative impacts of the entire development.

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e. Conditions that would precipitate ceasing the project operation altogether.

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f. Wellhead Protection Mitigation. Where a wellhead protection plan addressing the project area exists, the City shall use the recommendations contained in the wellhead protection plan as a basis for formulating required mitigation measures. In the absence of such a mitigation plan, the City shall contact the owner of the public water system (Group A and B) impacted by the proposed project and jointly develop mitigation measures, a summary of which shall be signed by the applicant and recorded with the applicant's property title.

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g. Nitrate Loading Mitigation.

i. General Requirements. If a calculated nitrate loading concentration for a project at the designated point(s) of compliance per 16.20 120.C.2.k is equal to or greater than 5 milligrams per liter nitrate as nitrogen, then the applicant shall be required to place a notification on the documents of title for the property affected and a monitoring plan shall be developed to monitor the nitrate level and include a contingency plan to be implemented if the nitrate level exceeds 10 milligrams per liter nitrate as nitrogen.

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ii. Land Divisions. If the calculated nitrate loading concentration for a land division at the designated point(s) of compliance per 16.20 120.C.2.k is equal to or greater than 5 milligrams per liter nitrate as nitrogen, then the applicant shall:

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(A) Develop a mitigation plan to minimize the nitrate loading rate; and

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(B) Develop a contingency plan to be implemented if the nitrate concentration exceeds 10 milligrams per liter nitrate as nitrogen; and

(C) Place notification on the plat stating that mitigation and contingency plans exist.

iii. Mitigation of nitrate in groundwater from on-site septic systems may include decreasing the density of septic system drainfields.

2. Recording of Mitigation Plan Summaries.

a. General Requirements. The City may require that the applicant record a City-approved summary of the mitigation plan on the property title. A copy of the recorded summary shall be provided to the City in hard copy and electronic format. If a property owner can demonstrate, to the satisfaction of the City, that mitigation measures are no longer necessary, the City shall approve the addition of language on the title for the property nullifying the mitigation requirements.

b. Land Divisions. The City shall require the applicant for a land division to record the mitigation plan as part of the plat notes. If the mitigation plan is not recorded as or referenced by a plat note, the applicant shall record the mitigation plan on the affected property title(s).

B. Hydrogeologic Assessment. The following proposed activities will require the preparation of a hydrogeologic assessment:

1. The use of hazardous substances, other than household chemicals used according to the directions specified on the packaging for domestic applications;

2. The use of injection wells, including on-site septic systems, except those domestic septic systems releasing less than 14,500 gallons of effluent per day; or

3. Any other activity determined by the director likely to have an adverse impact on groundwater quality or quantity or on the recharge of the aquifer.

C. Hydrogeologic Assessment Requirements. A hydrogeologic assessment shall include, at a minimum, the following site and proposal-related information:

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~~1. Available information regarding geologic and hydrogeologic characteristics of the site including the surface location of all critical aquifer recharge areas located on site or immediately adjacent to the site, and permeability of the unsaturated zone;~~

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~~2. Groundwater depth, flow direction, and gradient based on available information;~~

~~3. Currently available data on wells and springs within 1,300 feet of the project area;~~

~~4. Location of other critical areas, including surface waters, within 1,300 feet of the project area;~~

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~~5. Available historic water quality data for the area to be affected by the proposed activity;~~

~~6. Best management practices proposed to be utilized to protect groundwater quality; and~~

~~7. Low impact development practices designed to maintain infiltration rates to the underlying aquifers.~~

~~D. Performance Standards—Specific Uses:~~

~~1. Storage Tanks. All storage tanks proposed in a critical aquifer recharge area must comply with local building code requirements and must conform to the following requirements:~~

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~~a. Underground Tanks. All new underground storage facilities proposed for the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:~~

~~i. Prevent releases due to corrosion or structural failure for the operational life of the tank;~~

~~ii. Be protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substances; and~~

~~iii. Use material in the construction or lining of the tank that is compatible with the substance to be stored.~~

~~b. Above Ground Tanks. All new above ground storage facilities proposed for the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:~~

~~i. Not allow the release of a hazardous substance to the ground, groundwaters, or surface waters;~~

~~ii. Have a primary containment area enclosing or underlying the tank or part thereof; and~~

iii. A secondary containment system either built into the tank structure or a dike system built outside the tank for all tanks.

2. Vehicle Repair and Servicing.

a. Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.

b. No dry wells shall be allowed on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by the State Department of Ecology prior to commencement of the proposed activity.

3. Residential Use of Pesticides and Nutrients. Application of household pesticides, herbicides, and fertilizers shall not exceed times and rates specified on the packaging.

4. Use of Reclaimed Water for Surface Percolation or Direct Recharge. Water reuse projects for reclaimed water must be in accordance with the adopted water or sewer comprehensive plans that have been approved by the State Departments of Ecology and Health.

a. Use of reclaimed water for surface percolation must meet the groundwater recharge criteria given in RCW 90.46.080(1) and 90.46.010(10). The State Department of Ecology may establish additional discharge limits in accordance with RCW 90.46.080(2).

b. Direct injection must be in accordance with the standards developed by authority of RCW 90.46.042.

5. State and Federal Regulations. The uses listed below shall be conditioned as necessary to protect critical aquifer recharge areas in accordance with the applicable state and federal regulations.

Table 1: Statutes, Regulations, and Guidance Pertaining to Groundwater Impacting Activities

Activity	Statute	Regulation	Guidance
Above Ground Storage Tanks		WAC 173-303-640	

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Table 1: Statutes, Regulations, and Guidance Pertaining to Groundwater Impacting Activities

Activity	Statute Regulation Guidance
Animal Feedlots	Chapters 173-216, 173-220 WAC
Automobile Washers	Chapter 173-216 WAC, Best Management Practices for Vehicle and Equipment Discharges (Washington Department of Ecology WQ-R-95-56)
Below Ground Storage Tanks	Chapter 173-360 WAC
Chemical Treatment Storage and Disposal Facilities	WAC 173-303-182
Hazardous Waste Generator (Boat Repair Shops, Biological Research Facility, Dry Cleaners, Furniture Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, etc.)	Chapter 173-303 WAC
Injection Wells	Federal 40 CFR Parts 144 and 146, Chapter 173-218 WAC
Junk Yards and Salvage Yards	Chapter 173-304 WAC, Best Management Practices to Prevent Storm Water Pollution at Vehicles Recycler Facilities (Washington State Department of Ecology No. 94-146)
Oil and Gas Drilling	WAC 332-12-450, Chapter 173-218 WAC
On-Site Sewage Systems (Large Scale)	Chapter 173-240 WAC

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Table 1: Statutes, Regulations, and Guidance Pertaining to Groundwater Impacting Activities

Activity	Statute Regulation Guidance
On Site Sewage Systems (<14,500 gal./day)	Chapter 246-272 WAC, Local Health Ordinances
Pesticide Storage and Use	Chapters 15.54, 17.21 RCW
Sawmills	Chapters 173-303, 173-304 WAC, Best Management Practices to Prevent Storm Water Pollution at Log Yards (Washington State Department of Ecology, No. 95-53)
Solid Waste Handling and Recycling Facilities	Chapter 173-304 WAC
Surface Mining	WAC 332-18-015
Wastewater Application to Land Surface	Chapters 173-216, 173-200 WAC, Washington State Department of Ecology Land Application Guidelines, Best Management Practices for Irrigated Agriculture

E. Prohibited Uses—Uses Prohibited in Aquifer Recharge Areas. The following activities and uses are prohibited in aquifer recharge areas:

1. Landfills. Landfills, including hazardous or dangerous waste, municipal solid waste, special waste, wood waste, and inert and demolition waste landfills;
2. Underground Injection Wells. Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells;
3. Wood Treatment Facilities. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);

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~~4. Storage, Processing, or Disposal of Radioactive Substances. Facilities that store (other than minor sources such as medicinal uses or industrial testing devices), process, or dispose of radioactive substances; and~~

~~5. Other Prohibited Uses or Activities:~~

~~a. Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source; and~~

~~b. Activities that would significantly reduce the recharge to aquifers that are a source of significant baseflow to a regulated stream. (Ord. 2005-03 § 2, 2005)~~

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