

**ORDINANCE NO. 09-2729**

**AN ORDINANCE OF THE CITY OF BLAINE, WASHINGTON, UPDATING BLAINE MUNICIPAL CODE, TITLE 17, CHAPTER 17.82, CRITICAL AREAS MANAGEMENT, BASED ON BEST AVAILABLE SCIENCE, TO REGULATE IMPACTS TO WETLANDS, FISH AND WILDLIFE HABITAT, AND SOLE SOURCE AQUIFERS, AND TO MITIGATE POTENTIAL DANGERS FROM GEOLOGICALLY HAZARDOUS AREAS AND FREQUENTLY FLOODED AREAS PURSUANT TO THE GROWTH MANAGEMENT ACT**

WHEREAS, the Growth Management Act requires adoption of regulations designating and protecting critical areas (defined to include wetlands, geologically hazardous areas, fish and wildlife habitat areas, and frequently flooded areas), and through recent state amendments also requires that such regulations and actions shall be based upon the "best available science"; and

WHEREAS, the City has inventoried and mapped critical areas within the City and provided science-based regulations to protect critical areas in compliance with the Growth Management Act and the federal Endangered Species Act; and

WHEREAS, pursuant to RCW Chapter 43.21C, the City's SEPA Official filed a Determination of Non-Significance on February 13, 2009, addressing the draft revised amendments to the critical areas regulations; and

WHEREAS, the Planning Commission conducted two duly advertised public hearings on the draft revised critical areas regulations pursuant to RCW 35A.63.100 on November 13, 2008, and again on March 12, 2009, for the purpose of receiving public comments and testimony on the draft revised regulations; and

WHEREAS, the Planning Commission conducted eight work-sessions; August 11, 2008; October 23, 2008; November 13, 2008; November 19, 2008; January 22, 2009; March 16, 2009; April 16, 2009; and April 23, 2009, addressing draft amendments to the critical areas regulations; and

WHEREAS, the Planning Commission and City Council conducted one joint worksession on December 18, 2008, addressing the draft amendments to the critical areas regulations; and

WHEREAS, on April 23, 2009, the Planning Commission recommended adoption of revised draft amendments to the Critical Areas Management regulations to the City Council; and

WHEREAS, the City Council reviewed this recommendation at a study session on May 4 and again on May 11, 2009; and

WHEREAS, on May 11, 2009, the City Council held a public meeting to review the record and planning commission findings, and to further consider the proposed amendments and elected to hold an additional study session; and

WHEREAS, on June 8, 2009, the City Council conducted a duly advertised public hearing to receive public comment and to further consider the proposed amendments and elected to hold an additional study session; and

WHEREAS, the City Council held a study session on June 15, 2009, and again on July 13, 2009, to further consider the proposed amendments and recommend changes; and

WHEREAS, on July 27, 2009, the City Council held a public meeting to review and discuss the recommended changes and, subsequently, voted to approve the proposed amendments;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLAINE, WASHINGTON, ORDAINS AS FOLLOWS:**

**SECTION 1: Findings.**

1. The Washington State Legislature enacted the Growth Management Act (GMA) in 1990. GMA requires cities to adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170.

2. GMA also requires cities to periodically review and update development regulations protecting critical areas.

3. Critical areas that must be designated under GMA include wetlands, areas with a critical recharging effect on aquifers used for potable water, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas ("Critical Areas").

4. Wetlands perform a variety of beneficial functions, including:  
Habitat diversity and food chain support for fish and wildlife;

- Erosion control and shoreline stabilization;
- Maintenance of stream flows by gradually releasing stored water after floods and wet seasons;
- Storage of storm and flood waters;
- Improvement of water quality through filtration and retention of sediments, nutrients and contaminants;
- Groundwater recharge; and
- Education, scientific study, and aesthetic appreciation.

Wetland protection is important because in many situations these functions cannot be adequately replicated or replaced. Wetlands are identified and rated according to the Washington State Wetland Identification and Delineation Manual, and Washington State Wetland Rating System (Western Washington), prepared by the Department of Ecology. The scientific literature supports protective buffers of relatively intact native vegetation to adequately protect wetland functions and values. However, in an urban area such as the incorporated City of Blaine, flexible application of these protection mechanisms is necessary to allow urban levels of development to take place while still protecting the functions and values of wetlands.

5. Fish and wildlife habitat conservation areas perform many important physical and biological functions that benefit the City of Blaine and its residents, including but not limited to: maintenance of species diversity and genetic diversity; food, cover, nesting, breeding and movement for fish and wildlife. They also serve the human community as areas for recreation, education scientific study and aesthetic appreciation; neighborhood separation and visual diversity within urban areas. Streams and their riparian edges serve numerous natural functions and values. These functions include wildlife and fisheries habitat, water quality

protection, flood protection, shoreline stabilization, stream flow stabilization, and ground water recharge and discharge. In many situations these functions cannot be adequately replicated or replaced. The scientific literature supports the inclusion of protective buffers for streams to provide sediment control, nutrient inputs to downstream waters, large woody debris, and other functions important to riparian areas. The Washington Department of Fish and Wildlife has prepared management recommendations for the preservation of habitat and species, which are based on the best available science, and include, in some instances, recommended protective buffer distances.

6. Geologically hazardous areas are areas that, due to their susceptibility to erosion, sliding, earthquake, or other geological events, may expose development to risks that are inconsistent with the protection of public health and safety. These include landslide hazard areas, seismic hazards, mine hazards, alluvial fans, and erosion hazards areas. These types of events may, also cause disruption of commerce and governmental services, and public expenditures, all of which can adversely affect the public health, safety, and general welfare. Geologic hazards may be exacerbated by development and human activity in sensitive areas. Management of such areas includes limited development and human activity within or adjacent to the geologic hazard, or engineering that fully addresses the potential hazard.

7. Critical Aquifer Recharge Areas: An aquifer is a permeable subsurface soil or rock layer that is capable of storing, transmitting and supplying a significant amount of ground water to wells or springs. Critical aquifer recharge areas are areas that have been identified as having a critical effect on aquifers used for potable water and as being highly susceptible to groundwater contamination. A goal of the Chapter 17.82 is to preserve, protect, and conserve Blaine's groundwater resources for current and future generations by protecting these areas from contamination. WAC 365-190-080 defines well head protection areas, sole source aquifers, special protection areas, and other areas that are susceptible or vulnerable to ground water contamination as areas with a critical recharging effect on aquifers used for potable water (also referred to as critical aquifer recharge areas), the City of Blaine's drinking water comes from groundwater supplies, once ground water is contaminated it is difficult, costly, and sometimes impossible to clean up, preventing groundwater contamination is necessary to avoid exorbitant costs, hardships, and potential physical harm to people. The City of Blaine utilized numerous state resources to develop regulatory protection provisions for Aquifer Recharge Areas, including Guidance Document for Establishment of Critical Aquifer Recharge Area Ordinances, by the Department of Ecology, 2000, which includes scientific recommendations for protecting groundwater, including limiting certain uses and the intensity of development in critical aquifer recharge areas, and potable water is an essential life-sustaining element.

8. Frequently flooded areas are areas located along rivers, streams and coastal areas that are inundated by a depth, velocity, intensity and frequency of flood waters during major events that are of such a magnitude that they pose significant, and potentially devastating, risks to human life and property. Development activities proposed within frequently flooded areas must mitigate for flood hazards. Frequently flooded areas include the 100-year floodplain and the floodway. These special flood hazard areas are identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study, Whatcom County, Washington, All Jurisdictions," dated November 16, 2007. With accompanying Flood Insurance Rate Maps (FIRM), dated November 16, 2007, the study is adopted by reference and declared to be a part of Chapter 17.86, Flood Hazard Regulations.

9. The Critical Areas update is consistent with the Comprehensive Plan, and was developed in accordance with an adopted public participation process.

10. The development of residences, businesses, shopping areas and other structures have the potential of adversely and significantly impacting the functions and values of Critical Areas.

11. Unrestrained development may result in cumulative impacts to those functions and values

of environmental ecosystems that contribute to and are necessary for a healthy natural environment and perceived quality of life.

12. Studies confirm that it is more costly to remedy the loss of Critical Area functions and values than to conserve and protect them from loss or degradation.

13. In determining what Critical Areas are to be afforded a particular degree of protection, the City of Blaine has evaluated a wide range of the best available science with respect to the Critical Areas to make informed decisions that meet the intent of the Growth Management Act and that are also reflective of local needs.

14. Critical Areas may also be protected through other programs and standards including:

- Stormwater management standards;
- Forest Practices Act;
- Shoreline Management Act & the Blaine Shoreline Master Program;
- State Environmental Policy Act (SEPA);
- Building and Construction Permits;
- Land use regulations and site plan review;
- Land clearing Best Management Practices;
- Public Education and other non-regulatory tools.

15. A SEPA Environmental Checklist was completed and a Determination of Non- Significance issued, with notice published in the Bellingham Herald, on February 13, 2009.

16. The U.S. Constitution prohibits the taking of private property without just compensation.

17. The regulations set forth herein are adopted in order to:

- a. Minimize development impacts to critical areas and protect the beneficial uses, natural functions and values of critical areas;
- b. Protect the quality and quantity of water resources and the species inhabiting local waterways, marine waters and wetlands;
- c. Protect species listed as threatened or endangered and their habitats;
- d. Protect unique, fragile and/or valuable elements of the environment, including ground and surface waters, wetlands, anadromous fish species, shellfish, and other fish and wildlife and their habitats;
- e. Prevent erosion and loss of slope and soil stability caused by removal of trees, shrubs and root systems of vegetative cover;
- f. Protect the public against potentially avoidable losses from landslide, subsidence, erosion, flooding and other natural hazards;
- g. Alert the public to natural conditions that pose a hazard or otherwise limit development;
- h. Avoid or minimize adverse environmental impacts to critical areas and mitigate unavoidable impacts;
- i. Protect property rights, allow for flexible compliance and minimize regulatory impacts on development;
- j. Establish critical area protection standards and procedures that are consistent with state and federal regulations pertaining to critical areas; and
- k. Meet the requirements of the Washington Growth Management Act (RCW 36.70A) with respect to the protection of critical areas.

18. The Amendments to Chapter 17.82 Critical Areas Management, attached as Exhibit A, are declared and found to be consistent with relevant substantive and procedural laws, and in particular the Washington State Growth Management Act of 1990, as amended, and the Blaine Comprehensive Plan.

**SECTION 2:** Title 17, Division 5 **Environmental and Cultural Resource Management** is hereby amended as follows:

1. Chapter 17.82 and existing text is deleted;

2. Chapter 17.83 and existing text is deleted;
3. A new chapter titled Chapter 17.82 CRITICAL AREAS MANAGEMENT and new text, attached as Exhibit A, is incorporated into the Blaine Municipal Code.

**SECTION 4: Severability.** If any section, subsection, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

**SECTION 5: Effective Date.** This Ordinance shall take effect and be in force from and after its passage by the City Council and approval by the Mayor, if approved, otherwise, as provided by law and five days after the date of posting for publication.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLAINE, WASHINGTON** on the 27<sup>th</sup> day of July, 2009, and approved by the Mayor on the same day.

**CITY OF BLAINE, WASHINGTON**

  
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Bonnie Onyon  
Mayor

ATTEST/AUTHENTICATE:

  
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Sheri Sanchez  
City Clerk

**Exhibit A**  
**CITY OF BLAINE**

**AMENDMENTS TO  
CHAPTER 17.82, BMC**

**CRITICAL AREAS  
MANAGEMENT**

Ordinance # 09-2729 amendments:

**Division 5. Environmental and Cultural Resource Management**

17.80 SEPA Guidelines *(no change)*

17.81 Shoreline Management Master Program *(no change)*

17.82 Critical Areas Management *(Previous language replaced by new text -below)*

17.84 Land Disturbance *(no change)*

17.85 Cultural Resources and Archaeological Site Management *(no change)*

17.86 Flood Hazard Regulations *(no change)*

17.89 Fees *(no change)*

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**Chapter 17.82**  
**CRITICAL AREAS MANAGEMENT**

*(New Text)*

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**PART ONE: INTRODUCTION**

**17.82.010 Purpose and Intent.**

- A. A fundamental principal of The Growth Management Act is to reduce urban sprawl through the identification of Urban Growth Areas (UGA) and the containment of growth and development within these urban boundaries. This Chapter is not intended to hinder the city's requirement to implement this state mandate or to reduce the lawful right of property owners to use their property as they choose.

The purpose of this chapter is to carry out the goals of the city of Blaine comprehensive plan and the State of Washington Growth Management Act (RCW 36.70A) and its implementing rules by designating and classifying critical areas and establishing development regulations to protect the

functions and values of critical areas and the ecological processes that sustain them while allowing for appropriate economically beneficial or productive use of land and property.

- B. Critical areas addressed in this chapter include:
  - 1. Wetlands;
  - 2. Geologically hazardous areas;
  - 3. Fish and wildlife habitat conservation areas;
  - 4. Critical aquifer recharge areas; and
  - 5. Frequently flooded areas.
- C. The regulations set forth herein are adopted in order to:
  - 1. Minimize development impacts to critical areas and protect the beneficial uses, natural functions and values of critical areas;
  - 2. Protect the quality and quantity of water resources and the species inhabiting local waterways, marine waters and wetlands;
  - 3. Protect species listed as threatened or endangered and their habitats;
  - 4. Protect unique, fragile and/or valuable elements of the environment, including ground and surface waters, wetlands, anadromous fish species, shellfish, and other fish and wildlife and their habitats;
  - 5. Prevent erosion and loss of slope and soil stability caused by removal of trees, shrubs and root systems of vegetative cover;
  - 6. Protect the public against potentially avoidable losses from landslide, subsidence, erosion, flooding and other natural hazards;
  - 7. Avoid or minimize adverse environmental impacts to critical areas and mitigate unavoidable impacts;
  - 9. Establish critical area protection standards and procedures that are consistent with state and federal regulations pertaining to critical areas.
- D. It is not the intent of this Chapter to make a parcel of property unusable by its owner, nor is it intended to prevent the provision of public facilities and services necessary to support existing and planned development. To that end, the following guidelines shall be applied in the administration of this chapter:
  - 1. Build an increasingly accurate data base and use it to educate and alert owners, potential purchasers, real estate agents, appraisers, lenders, builders, developers and other members of the public to natural conditions that pose a hazard, are environmentally sensitive, or otherwise limit development.
  - 2. Develop compliance review procedures and development options that can further minimize the impacts of this chapter on property owners and their lawful development projects.
  - 3. Administer this chapter with flexibility. Administratively, provide the applicant with the full range of opportunities available to achieve compliance with this chapter.
  - 4. Every site is unique. Focus compliance review on the site-specific characteristics of the critical area within the context of the proposed land use and the long term viability of the ecological process that sustains it.
  - 5. Streamline the Critical Areas compliance review process to be short, simple and economical.

#### **17.82.020 Authority.**

This chapter is adopted under the authority of Chapters 36.70 and 36.70A RCW and Article 11 of the Washington State Constitution.

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## **PART TWO: GENERAL PROVISIONS**

### **17.82.030 Applicability and Severability.**

- A. This chapter shall apply to:
  - 1. All land and water areas within the corporate limits of the city of Blaine;
  - 2. All land uses and development, all construction of structures and other facilities;
  - 3. All alterations to land or vegetation in critical areas and their buffers.
- B. All land and water areas within the corporate limits of the city of Blaine, and shall be consistently applied to all land uses and development, all construction of structures and other facilities, and all alterations to land or vegetation in areas meeting the definition and criteria for critical areas and critical area buffers as set forth in this chapter, except as specifically exempted under Section 17.82.090.
- C. This chapter shall not apply to those areas coming under the jurisdiction of the city of Blaine Shoreline Master Program under the following conditions:
  - 1. Prior to final approval by the Washington State Department of Ecology of an updated shoreline master program consistent with RCW 90.58 and WAC 173-26, this chapter shall not apply to areas coming under the jurisdiction of the city of Blaine Shoreline Master Program;
  - 2. Following final approval by the Washington State Department of Ecology of an updated shoreline master program consistent with RCW 90.58 and WAC 173-26, this chapter shall not apply to areas coming under the jurisdiction of the city of Blaine Shoreline Master Program, except to the extent that provisions set forth in this chapter are specifically incorporated by reference into the updated shoreline master program.
- D. Should any section or provision of this chapter be declared invalid, such determination shall not affect the validity of this chapter as a whole, nor the validity of the remaining sections and provisions contained herein.

### **17.82.040 Interpretation.**

In the interpretation and application of this chapter, all provisions shall be considered to be the minimum necessary and shall be liberally construed to serve the purpose of this chapter.

### **17.82.050 Relationship to Other Regulations.**

- A. The regulations contained in this chapter are intended to implement the guidance in the Blaine Comprehensive Plan.
- B. These regulations are additional to, and coordinate with, the Blaine Shoreline Master Program, and other applicable regulations adopted by the city of Blaine.
- C. This chapter shall apply as an overlay to other regulations established by the city. In the event of any conflict between these regulations and any other regulations, the more restrictive shall apply.
- D. Compliance with the provisions of this chapter shall not be construed as constituting compliance with any other applicable regulation.

### **17.82.055 Best Available Science.**

- A. The Growth Management Act requires jurisdictions to include the “best available science” when designating and protecting critical areas. The “best available science” is that scientific information applicable to this chapter that is prepared by local, state or federal natural resource agencies, scientifically based peer reviewed literature, a qualified scientific professional or a team of qualified scientific professionals, that is consistent with the criteria established in WAC 365-195-900 through 365-195-925.

- B. The Growth Management Act also requires the implementation of “conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat (WAC 365-195-900 through 365-195-925).” Anadromous fish are those that spawn and rear in freshwater and mature in the marine environment, including salmon and char (bull trout). These measures are primarily addressed in the City of Blaine Shoreline Management Program. However, habitat and water quality measures have been incorporated into the regulatory provisions of this chapter.
- C. “Best available science” shall be used in developing policy and regulations to protect the functions and values of critical areas.
- D. The City shall require the use of “best available science” in all site-specific critical area reports and related decisions to protect the functions and values of critical areas.

**17.82.060 Critical Area Maps.**

- A. The city has prepared maps indicating the general locations of known or potential critical areas within the city of Blaine. The maps are based on the best available scientific information and include natural resource information gathered through field inventory, as well as information prepared by state and federal natural resource agencies. These maps shall be hereafter referred to as the “Critical Areas Maps” of the city of Blaine.
- B. The Critical Area Maps do not have regulatory authority. However they shall be used to assist both the city and the property owner in achieving compliance with this chapter.
- C. The Critical Area Maps are based on the best available scientific information and summarize natural resource information gathered through field inventory by local officials, as well as information gathered and prepared by state and federal natural resource agencies. Source data publications include but are not limited to:
  1. City of Blaine Shoreline Inventory, 2005.
  2. City of Blaine Wetlands Inventory, 2004.
  3. City of Blaine Planning Department. Data compiled from GIS data including: zoning, area (acres), impervious surface, transportation, slope, FEMA, bulkheads and jetties, and stormwater facilities, 2006.
  4. City of Blaine Community Development, Geological Hazard Areas and Steep Slopes, 2003.
  5. City of Blaine, Comprehensive Parks and Recreation Plan, 2004.
  6. Reid, Alfred, Blaine Shoreline Cultural Resources, 2006.
  7. United States Department of Agriculture, National Resources Conservation Services (NRCS), Soil Survey of Whatcom County, <http://ice.or.nrcs.usda.gov/website/whatcom/viewer.htm>.
  8. Washington State Department of Archaeology & Historic Preservation, The Washington Information System for Architectural and Archaeological Records Data (WISAARD), [www.oahp.wa.gov/pages/wisaardIntro.htm](http://www.oahp.wa.gov/pages/wisaardIntro.htm), 2006.
  9. Washington State Department of Ecology, Digital Coastal Atlas, 2006.
  10. Washington State Department of Ecology, Shoreline Aerial Photos, 2006.
  11. Washington State Department of Ecology, Confirmed and Suspected Contaminated Sites Report, 2006.
  12. Washington State Department of Ecology, Oblique Aerial Photographs, 2003.
  13. Washington State Department of Ecology, Washington State Water Quality Assessment 303(d) Listed Water for 1998, 2006
  14. Washington State Department of Fish and Wildlife, Priority Habitats and Species, 2006.
  15. Schmalz, Dave, Drayton Harbor Avian Survey Maps, 2005.
  16. Washington State Department of Fish and Wildlife, Priority Habitats and Species Data Maps, May 3, 2006.
  17. Washington State Department of Fish and Wildlife, SalmonScape, 2006.

18. Washington State Department of Fish and Wildlife, Species of Concern in Washington State, 2006.
  19. Whatcom County Marine Resources, <http://www.whatcom-mrc.wsu.edu/MRC/index.htm>, 2006.
  20. Whatcom County Planning Department and Development Services, Draft Shoreline Management Program Update 2006.
  21. Whatcom County Planning and Development Services, Critical Areas Maps, 2005.
- D. The community development director or designee shall update the Critical Areas Maps to reflect new information and best available science as it becomes available. The city shall make the maps available to the public upon request.
- E. The Critical Areas Maps shall be utilized as a source of generalized information and shall not be used to determine the absolute presence, absence, or boundaries of a critical area or as substitute for site-specific assessment. Critical area locations and boundaries shown on the Critical Areas Maps are approximate and do not include buffers that may be associated with critical areas. With the exception of frequently flooded areas whose locations are identified on maps prepared by the Federal Emergency Management Agency, the actual type, extent, and boundaries of critical areas shall be determined by a qualified consultant and confirmed by the administrator on a site-specific basis, consistent with the best available science and the provisions established in this chapter.

#### **17.82.062 City-Approved Consultants.**

- A. The director shall maintain a list of consultants qualified to perform professional work required in this chapter including critical area identification, delineation, management recommendations, restoration, mitigation and long term management plans.
- B. Consultant eligibility. Wetland, geotechnical, stream, and wildlife consultants become eligible for inclusion on the city-approved consultant list by complying with specific criteria administratively established by the director after consultation with professionals in each field of science.
- C. Removal. A consultant will be removed from the list if any of the criteria for inclusion on the City approved consultant list are not met during the course of any single project review.
1. If during the course of a project review, it is determined that a third-party professional evaluation of the consultant's report is required, the costs associated with the third-party shall be shared equally between the city and the applicant.
  2. Prior to removal from the City approved list, the City shall provide written notice of the City's removal, the consultant shall have thirty (30) days from the date of mailing of the City's letter advising of the removal to provide any information to the City administrator why the consultant shall not be removed. If no response is received from the consultant, the removal shall become final with no further action required.
  3. If the consultant does provide information supporting remaining on the approved list, the City shall review that information and attempt to respond within ten (10) business days.
  4. No further reports from a consultant shall be accepted by the city, upon issuance of a letter notifying the consultant of their removal, until such time as the consultant is re-instated on the list.
  5. A decision to add or remove a consultant from the approved consultant list shall be made in writing and regarded as a final administrative decision appealable under the provisions of 17.06.080.

#### **17.82.065 Authorizations Required.**

- A. No proposed development or other activity requiring development permit approval or building permit approval, or any other alteration of land, water, or vegetation within a critical area or its standard buffer, except as specifically allowed under Section 17.82.0100, shall be permitted

without prior authorization from the administrator unless otherwise authorized in specific sections of this chapter.

- B. Authorizations by permit shall be provided in the context of the permit approval. The city of Blaine shall insure that the provisions of this chapter are met in conjunction with review of all applications subject to review under Titles 15 and 17, BMC, and any other permit or approval required by the Blaine Municipal Code, as amended, that is not expressly exempted by this chapter.
- C. Authorizations without associated development or building permit shall be provided as a Final Critical Areas Determination by the director. The following activities shall be subject to the provisions of this chapter when they occur within critical areas, or their buffers, regardless of whether or not another permit or approval from the city is required:
  - 1. Clearing or alteration of vegetation, grading, dumping, excavating, discharging, or filling with any material, including the creation of new impervious surfaces; and
  - 2. Constructing, reconstructing, demolishing or altering the size of any building, structure, infrastructure or facility.

#### **17.82.070 Administrative Procedures.**

- A. The community development director or designee shall be the administrator of the provisions set forth in this chapter.
- B. Critical Areas Review is an administrative action not subject to the project permit review procedures pursuant to Section 17.06.030.A.8.g. The review time limits are defined by 17.06.030.B.

#### **17.82.075 Appeals.**

Appeals of a final decision shall be submitted pursuant to BMC 17.06.180, Appeals.

#### **17.82.080 Fees.**

The fees for processing of applications and approvals required pursuant to this chapter shall be as set forth in the city's unified fee schedule. These fees shall be established based on the anticipated direct costs to the city for review of any given application. In addition to the fees set forth in the city's unified fee schedule, the applicant shall be responsible for paying all costs to the city for services provided by a qualified consultant retained by the city to perform critical areas review.

#### **17.82.085 Site Inspections.**

Applications for permits and approvals required pursuant to this chapter shall include a certification signed by the property owner granting the city the right to enter upon and access the property for the purpose of completing reasonably necessary site inspections. The administrator is authorized to make site inspections and take such actions as necessary to administer and enforce this chapter. City representatives shall make a reasonable effort to contact the property owner before entering onto private property.

#### **17.82.090 Violations and Enforcement.**

- A. Violations of this chapter shall be enforced pursuant to Chapter 17.08, Violations and Enforcement.
- B. In addition to those provisions contained in Chapter 17.08, any activity found to be not in compliance with this chapter or any applicable performance requirements or any condition established through the critical areas review and approval process, such as required mitigation, shall be subject to those enforcement actions necessary to bring the activity into compliance. In this enforcement function, the city shall have the authority to require restoration, rehabilitation or replacement measures to compensate for violations of this chapter, which result in destruction or degradation of the functions and values of critical areas or required buffer areas.

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## **PART THREE: EXEMPTIONS, ALTERATIONS AND FLEXIBLE USES**

There exist a number of specific situations under which the strict application of these regulations may create unanticipated and disproportionate obstruction to the reasonable and rational use of their property. Section 3 is intended to add a range of flexible alternatives for those property owners.

### **17.82.100 Exemption from Standard Critical Area Review Requirements.**

- A. Subject to the limitations established in Subsection (B) of this section, the following development activity and associated uses and activities shall be exempt from the standard critical area review procedures and regulatory requirements established in this chapter and the activity may proceed without action by the administrator:
1. Class I, II, III and IV special forest practices conducted in accordance with the applicable standards of the Washington State Forest Practices Act, RCW 76.09, and WAC 222-16, except where any of the following applies:
    - a. The land is being converted to a use other than commercial forest product production; or
    - b. The land is proposed to be converted under a conversion option harvest plan to a use other than commercial forest product production as provided in RCW 76.09.050 and RCW 76.09.240; or
    - c. The land has been platted after January 1, 1960, as provided in RCW 76.09.050 and RCW 76.09.240.
  2. Emergency activities necessary to reduce or prevent an immediate threat to public health, safety and welfare. An emergency is an unanticipated and imminent threat to the public health or safety or to the environment which requires immediate action within a period of time too short to allow full compliance with this chapter. The person or agency undertaking such emergency action shall notify the administrator within one (1) working day, or as soon as practical following commencement of the emergency activity. Following such notification, the administrator shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. Once the immediate threat has been addressed, any adverse impacts on the critical areas shall be minimized and mitigated. If the administrator determines that the action taken or any part of the action taken was beyond the scope of allowed emergency actions, then the enforcement provisions of Section 17.82.170 shall apply.
  3. Normal and routine maintenance or repair of existing structures, utilities, sewage disposal systems, potable water systems, drainage facilities, ponds, or public and private roads and driveways associated with existing residential or commercial development.
  4. Normal maintenance, repair, or operation of existing structures, facilities, and improved areas accessory to a single-family residential use provided no expansion of these operations takes place within a critical area or associated buffers.
  5. Modification of any existing residence that does not add to or alter the existing use and does not expand the building footprint or increase septic effluent.
  6. Activities, outside of a critical area or its buffer, involving artificially created wetlands or artificial watercourses intentionally created from non-wetland sites, including, but not limited to, grass-lined swales, irrigation and drainage ditches, stormwater detention facilities, and landscape features, except those features that provide critical habitat for anadromous fish and those features which were created as mitigation required pursuant to the provisions of this chapter.
  7. Outdoor recreational activities which do not adversely impact critical areas or their buffers.

8. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling soil, planting crops, or changing existing topography, water conditions or water sources.
  9. The lawful operation and maintenance of public and private diking and drainage systems which protect life and property.
  10. Education and scientific research activities which do not adversely impact critical areas or their buffers.
  11. Site investigation work necessary for land use applications such as surveys, soil logs, percolation tests and other related activities which do not adversely impact critical areas or their buffers. In every case, critical area impacts shall be minimized and disturbed areas shall be immediately restored.
  12. Maintenance activities such as mowing and normal pruning, provided that such maintenance activities are limited to existing landscaping improvements and do not expand into critical areas or associated buffers, do not expose soils, do not alter topography, do not destroy or clear native vegetation, and do not diminish water quality or quantity.
  13. The cutting or pruning of hazard trees in a critical area or associated buffer by the landowner.
  14. Fish, wildlife, wetland and/or riparian enhancement activities not required as mitigation provided that the project is approved by the U.S. Department of Fish and Wildlife, the Washington State Department of Fish and Wildlife, or the Washington State Department of Ecology.
  15. All activities and land uses within areas subject to the City of Blaine Shoreline Management Program pursuant to 17.82.030.C.
- B. Exempt activities shall use reasonable methods or accepted best management practices to reduce potential impacts to critical areas and/or to restore impacted critical areas to the extent feasible following completion of exempt activities. To be exempt does not give permission to destroy a critical area or to ignore risk from a natural hazard.
- C. If all or any portion of a proposed development activity meets any of the listed exemption criteria, then exemption from standard critical areas review shall be established through the following procedure:
1. The applicant shall submit an exemption request to the administrator. The request shall describe the proposed project (or portion thereof) in writing and state the criteria listed in this section which applies;
  2. The administrator shall review the exemption request for compliance with this chapter and make a determination, in writing, either certifying or rejecting the exemption;
  3. A copy of the exemption request and subsequent determination shall be included in the file for the proposed development activity.

#### **17.82.110 Nonconforming Development.**

- A. Any established use or existing structure that was lawfully permitted prior to adoption of the ordinance codified in this chapter, but which is not in compliance with the standards established in this chapter, may continue subject to the regulatory provisions contained in Chapter 17.94 Nonconforming Uses, Title 17, BMC.
- B. Nonconforming structures destroyed by fire, explosion, flood, or other casualty may be replaced or restored in-kind, provided:
1. Any reconstruction allowed pursuant to this section must be commenced within one (1) year of the time of the damage, consistent with a police or fire district report; provided, a one year extension may be granted upon compelling evidence that the reconstruction is substantially progressing and the delay is not solely the result of the owner's action;
  2. Upon approval of occupancy, the city shall certify in writing that the restored building or structure is in compliance with this chapter;
  3. Any such restoration shall not expand, enlarge, or otherwise increase the structure's non-conformity or impact on critical areas.

### **17.82.120 Critical Areas Exception for Minor Additions & Remodels.**

- A. Remodels and additions, including new construction of accessory structures, relating to an existing, legally established structure or impervious area shall be administratively permitted, provided that the administrator determines that all of the following criteria are met:
  - 1. the existing legally established use currently encroaches on a critical area buffer and/or it can be demonstrated that the remodel or addition cannot be built in a location outside of the critical area buffer; and,
  - 2. The remodel or addition is consistent with the existing use of the site; and,
  - 3. The impacts on critical area functions and values are avoided and minimized to the maximum extent possible consistent with this chapter; and,
  - 4. The affected area is located at least twenty five (25) feet from the critical area boundary; and
  - 5. The remodel or addition does not measurably intensify the use; and
  - 6. There are no changes in slope, slope stability or drainage; and,
  - 7. The remodel or addition does not increase the affected site, structural/impervious surface footprint by more than 700 square feet.
- B. Planting of native vegetation shall take place in an area equal in size to the area of any native vegetation in a riparian corridor, wetland buffer, steep slope, or steep slope buffer that is removed or adversely impacted by the development. Any invasive species shall be removed from the planting area. The planting area shall be on site and, whenever possible, in the same environmentally critical area or buffer. When this is not possible, the administrator may authorize all or a portion of the planting to be outside the environmentally critical area or buffer or on another parcel, when, after consultation with a qualified professional, the administrator determines this will mitigate the impact.

### **17.82.130 Critical Areas Variances.**

- A. A variance from the dimensional requirements established in this chapter may be granted through approval of a critical areas variance in accordance with the procedural requirements established in Title 17 of the Blaine Municipal Code.
- B. The planning commission shall grant a variance only when they find that the applicant has demonstrated that the request is consistent with all of the following criteria:
  - 1. Special circumstances and conditions exist which are peculiar to the land or lot (including the affected critical area), and which are not applicable to other lands or lots; and
  - 2. The special conditions or circumstances are not the result of actions taken by the applicant; and
  - 3. The granting of the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures under similar circumstances; and
  - 4. The granting of the variance will not create significant adverse impacts to the identified critical areas and will not be detrimental to public safety or welfare; and
  - 5. The proposed design, and use of the property results in the least amount of impact to critical areas necessary to allow the use or the development to occur; and
  - 6. Where applicable, the proposed activity mitigates all impacts to functions and values of the affected critical area and the affected critical area buffers consistent with the requirements set forth in this chapter.
- C. In granting any variance, the planning commission may establish such conditions and safeguards as are deemed necessary to secure adequate protection of critical areas, public health safety and welfare, and to ensure conformity with this chapter.
- D. Approval of a variance shall be accompanied by findings that justify the granting of the variance, and findings that the variance granted is the minimum necessary to allow reasonable use of land, building or structure.

### **17.82.140 Reasonable Use Exceptions.**

Nothing in this chapter is intended to preclude all reasonable economic use of property. If the application of this chapter would deny all reasonable and economically viable use of the subject property, then the

use or development of the property may be allowed through approval of a reasonable use exception where consistent with the provisions set forth in this section. This reasonable use exception process is intended to apply where a proposal does not meet the criteria for a Critical Area Variance under BMC 17.82.140.

- A. If the application of this chapter would result in denial of all reasonable and economically viable use of a property, then a landowner may seek the granting of a reasonable use exception to the standards of this chapter.
- B. An application for a reasonable use exception shall be submitted to the administrator on forms prepared by the city and shall be accompanied by a fee as established in the city's unified fee schedule. The city shall process an application for a reasonable use exception as a Type II-PC action pursuant to the provisions of Chapter 17.06 of this title.
- C. The burden of proof shall be on the applicant to present evidence in support of the application and to provide sufficient information upon which the decision on the application can be made.
- D. The planning commission shall approve, or approve with modifications, an application for a reasonable use exception if all of the following criteria are met:
  1. The application of this chapter would deny all reasonable and economically viable use of the property, and there is no feasible and economically viable alternative use of the property with less of an impact on the critical area(s) and/or the critical area buffers than the proposed use. Feasible alternatives to be evaluated by the Planning Commission may include, but are not limited to:
    - a) locating the activity on a contiguous parcel that has been under the ownership or control of the applicant since the effective date of this chapter;
    - b) change in use;
    - c) reduction in size of use;
    - d) change in timing of activity;
    - e) revision of project design; and
  2. The proposal is limited to the minimum encroachment necessary to allow reasonable and economically viable use of the property; and
  3. The proposed action will result in minimal alteration of existing contours, with a minimum impact on vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions and will be limited to only those actions that achieve the minimum impact necessary to develop the property; and
  4. The proposal is compatible in design, scale, and use with other development or potential development in the immediate vicinity of the subject property in the same zone classification and with similar site constraints; and
  5. The proposal includes, to the maximum extent practicable, mitigation measures necessary to protect the functions and values of the affected critical area(s) and to mitigate for unavoidable impacts; and
  6. The proposal is otherwise consistent with the purpose and intent of this chapter; and
  7. The proposed development does not pose a threat to public health and safety; and
  8. The proposed activity will not result in adverse effects to species listed as threatened or endangered by the federal government or the State of Washington; and
  9. The proposed activity complies with all other federal, state, and local laws, including those related to erosion and sediment control; and
  10. The inability to derive reasonable economic use of the property is not the result of segregating or dividing the property and/or creating the condition of lack of use after the effective date of this chapter.
- E. In granting any reasonable use exception, the planning commission may establish such conditions and safeguards as are deemed necessary to ensure that the proposal is consistent with the intent of this Section and Chapter, provided; at a minimum, they do not conflict with or compromise permit decisions or conditions of permit approval.

- F. If the planning commission decides to grant the reasonable use exception, the planning commission shall make a finding that the reasons set forth by the applicant justify the granting of the reasonable use exception, and that the reasonable use exception granted is the minimum necessary to allow reasonable economic use of the property.
- G. In granting any reasonable use exception, the planning commission may prescribe time limits within which the action for which the reasonable use exception is requested shall commence or be completed or both. Failure to conform to any such time limits shall void the reasonable use exception unless the applicant has received an extension from the administrator.
- H. The administrator may extend a timeline established by the planning commission for a period not to exceed one (1) year if:
  - 1. A written request is filed with the administrator prior to the expiration of the reasonable use exception; and
  - 2. Unforeseen circumstances or conditions necessitate the extension of the reasonable use exception; and
  - 3. Termination of the reasonable use exception would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and
  - 4. The extension of the reasonable use exception will not cause adverse impacts to critical areas.

#### **17.82.150 On-Site Density Transfer**

- A. Purpose. The purpose of on-site density transfer regulations is to provide an incentive to property owners for encouraging the protection, preservation and enhancement of significant critical area and cultural resources, while maintaining the overall density of the zoning district overlaying the property. The provisions of this chapter provide that critical areas may be set aside from development, while allowing a portion of the density, otherwise allowed upon the critical area, to be transferred to the developable (non-sensitive) portion of the site.
- B. Density potential on property overlain by a wetland and its buffer, wildlife habitat conservation area and its buffer, or a geologically hazardous area may be transferred to a legally buildable area on the same residential property subject to the following conditions:
  - 1. The basis for the on-site residential density transfer shall be determined using the densities allowed in the zoning district overlaying the property;
  - 2. Lot size dimensions and setbacks may be reduced for those lots proposed on the developable area subject to the following conditions:
    - a. Minimum lot size reduction: The resulting lot shall be reduced by no more that 40% of the minimum lot size allowed in the zoning district overlaying the property. For example, proposed lots in the Residential Low Density Zoning District, where the minimum lot size is 7,200 square feet, could be reduced to 4,3,20 square feet.
    - b. Rear yard setback abutting a critical area. When the rear yard abuts the reserve tract, the setback shall be 15 feet.
    - c. Other yard setbacks. Front side and rear yard setbacks may be reduced by no more than 25% when the side hard does not abut the exterior boundaries of the property.
  - 3. The buildable portion of the site shall be regulated under the same zoning district overlaying the property and related regulations.
  - 4. The non-buildable critical area and its buffer shall be legally segregated from the buildable property and identified as a reserve open-space and non-buildable parcel.
  - 5. In addition to conditions in this Section, the development proposal must be determined to be compliant with Division 4. Platting and Major Development Approval Procedures, BMC.
- C. Density Calculation.
  - 1. The gross density of the site's critical area and its buffer may be transferred to the developable portion of the property.
  - 2. The total acreage of the subject property shall be divided by the minimum lot size of the zoning district overlaying the property, and the result shall be the gross density. The gross density figure

shall then be rounded to the nearest whole number. The rounded gross density calculation shall be the maximum number of lots that may be located on the developable area, except as limited by the reduction in lot area as described above.

3. The number of lots allowed on the developable area of the property that result from the On-Site Density Transfer may not be increased above gross density.

Example: Calculation of a 2 Acre Developable Area	
Total acreage of parcel:	2 Acres or 87,120 sq. ft. (43,560 sq. ft./acre)
Critical Area & buffer:	20,000 sq. ft.
Zoning designation: Res-Low density	RL (7,200 sq. ft. minimum lot size)
Gross density of total area:	11.62 lots
Total acreage of parcel:	87,120 sq. ft.
Critical Area & buffer	-20,000 sq. ft.
Equals Total Developable Area	67,120 sq. ft.
Roads & Utilities 25%	-16,780 sq. ft.
Lot development area	50,340 sq. ft.
Developable area density: 50,340sq.ft. / 4,320sq.ft. (60% of 7,200sq.ft.) = 11.6 lots	

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## PART FOUR: CRITICAL AREA REVIEW PROCEDURES

### 17.82.200 Critical Area Review Requirements.

- A. Unless otherwise provided in this chapter, the city of Blaine shall complete a Critical Areas Review prior to granting any permit or approval for a development activity or other alteration which is found likely to include, or adversely impact, one or more critical area or critical area buffer.
- B. As part of this review, the administrator shall:
  1. Verify the information provided by the applicant;
  2. Confirm the nature, extent, and type of any critical area identified;
  3. Evaluate any required detailed studies;
  4. Assess the impacts to critical areas and critical area buffers likely to result from the proposed activity;
  5. Determine whether the proposed activity is consistent with the purposes of this chapter;
  6. Determine whether the proposed activity conforms to the applicable performance requirements included in this chapter; and
  7. Determine whether the mitigation proposed by the applicant is sufficient to protect critical areas functions and values and address public health, safety, and welfare concerns consistent with the purpose and intent of this chapter.
- C. Unless otherwise indicated, the applicant shall be responsible for the preparation, submission, and expense of any required assessments, reconnaissance, studies, plans, and all other work in support of the application.
- D. Any proposed activity requiring critical area review shall be conditioned as necessary to mitigate impacts to critical areas and conform to the applicable performance requirements.
- E. Any project that cannot adequately mitigate its impacts to critical areas or critical area buffers shall be denied.
- F. In circumstances where the protective provisions for more than one critical area apply to a specific location, such as where a wetland is adjacent to fish-bearing stream, the most restrictive regulations shall apply.

### **17.82.205 Pre-Application Meeting.**

Any person preparing to initiate the permitting of an activity that may be regulated by the provisions of this chapter is encouraged to request a pre-application meeting with the administrator prior to submitting an application. At this meeting, the administrator shall outline the review process, discuss the requirements of the chapter, and identify, on a preliminary basis, any potential concerns that may arise during the review process.

### **17.82.210 Application.**

For any proposed activity not found to be exempt pursuant to Section 17.82.100, the applicant shall provide critical areas information at the time of permit application. For non-exempt activities not requiring other permits, the applicant shall provide critical areas information as part of a stand-alone critical areas review application for critical areas approval. Such information shall be submitted on forms provided by the city.

### **17.82.220 Initial Critical Areas Determination.**

- A. Upon receipt and review of a properly completed application, the administrator shall visit the subject property and make the Initial Critical Areas Determination. The administrator shall have the discretion to require an assessment by a qualified professional if the initial determination is inconclusive.
- B. If the administrator determines either that the project site includes or is abuts a known or potential critical area, or that the project could have adverse impacts on a critical area or critical area buffer, than the administrator shall notify the applicant that a critical area detailed study is required for each of the critical areas indicated.
- C. The administrator may waive the requirement for preparation of a critical area detailed study if there is substantial evidence that:
  1. There will be no alteration of a critical area or its standard buffer; and
  2. The development proposal and its likely impacts are consistent with the purpose, intent and requirements of this chapter; and
  3. The performance requirements established by this chapter will be met.
- D. Notice of the findings substantiating the determination regarding such a waiver shall be provided to the applicant and included in the project file. Such a determination shall fulfill the critical areas review requirements of this chapter and the critical areas review process shall be considered complete.

### **17.82.230 Critical Area Detailed Studies.**

- A. If a Critical Area Detailed Study is determined to be necessary, then the applicant shall be responsible for making arrangements for preparation of such study by a qualified consultant for the type(s) of critical area(s) involved. At the applicant's discretion, the Detailed Study may be prepared in two steps.
- B. Step one of the Detailed Study includes data review and field reconnaissance sufficient to determine whether a critical area is or is not actually present.
  1. If the reconnaissance reveals that no critical area is actually present, then a statement of this finding along with appropriate supporting documentation shall be prepared by the consultant and submitted to the administrator. If, after review of such statement, the administrator confirms that the finding is accurate, then the detailed study requirements shall be satisfied and the critical area review process shall be considered complete.
  2. If the reconnaissance reveals that a critical area is present, then a statement of this finding along with appropriate supporting documentation shall be prepared by the consultant and submitted to the administrator, and the review process continues to Step Two.

- C. Step two of the Detailed Study shall include a thorough investigation of the identified critical area(s) by a qualified consultant and shall result in the submission of a report which, at a minimum, shall include the following:
  - 1. The boundary and extent of the critical area, impact area, and proposed mitigation area shown on a site plan drawn at an appropriate scale;
  - 2. Detailed description of the critical area, its functions, values and/or associated hazard;
  - 3. Discussion of the impacts likely to result from the project, including probable impact on the function, value, or hazard associated with the critical area resulting from the proposal;
  - 4. Proposed mitigation measures or mitigation plan; and
  - 5. The training and experience of the qualified consultant who prepared the detailed study.
- D. The consultant shall incorporate the “best available science” into the Detailed Study to insure that the functions and values of critical areas will be adequately protected or mitigated.
- E. The qualified consultant may consult with the administrator prior to or during preparation of the Detailed Study to obtain approval for modifications to the content requirements of the study where more or less information is deemed necessary to adequately address the critical area, the project’s potential impacts and proposed mitigation.
- F. It is recommended that the applicant discuss the project, its likely impacts, and any proposed mitigation with the administrator prior to submission of the Detailed Study to facilitate inclusion of appropriate mitigation measures.
- G. Upon receipt of a Detailed Study that is both complete and accurate, the critical areas review process shall move forward to the Final Critical Areas Determination.
- H. All detailed studies shall be provided in printed and electronic format acceptable to the city.

**17.82.240 Final Critical Areas Determination.**

- A. Following submission of a Detailed Study that is both complete and accurate, the administrator shall make a final determination of adequacy.
- B. The final determination shall address the adequacy of the proposed project, the use of “best available science” to mitigate potential impacts to the critical areas in question and compliance with applicable performance requirements.
- C. A determination of adequacy shall be issued only if the proposed project is found to adequately mitigate its impacts on the critical areas and to comply with applicable performance requirements. Notice of such determination shall indicate that the proposed project complies with the provisions of this chapter. Such notice shall be prepared in writing and be included in the project file.
- D. A determination of inadequacy shall be issued if it is found that the proposed project does not adequately mitigate its impacts to critical areas and/or does not comply with applicable performance requirements.
  - 1. The administrator shall prepare written notice of such a determination. Said notice shall indicate the reasons for the finding and areas of non-compliance. This notice shall include recommendations for bringing the proposal into compliance.
- E. Following a determination of inadequacy, the applicant may submit a revised mitigation plan for review.
  - 1. Such submittal must occur within a period of one-hundred eighty (180) days from the date of issuance of the unfavorable determination, or the critical areas review shall expire.
  - 2. If the revisions are found to be substantial and relevant to the critical areas review, the administrator may reopen the review and make a new determination.

**17.82.250 Completion of Critical Area Review.**

- A. If, at any time prior to issuance of a final critical areas determination, the administrator receives relevant and reliable new information, then the administrator may require that the study be revised to incorporate, consider and revise its recommendations.
- B. If, after a final determination of adequacy but prior to issuance of an associated permit or land use approval, the administrator determines that the study is materially in error, used flawed

protocol/scientific methodology, or misrepresents the facts, then the administrator may withdraw the final determination and require that the study be reopened.

- C. A final critical areas determination shall be considered final upon receipt of a written final determination by the administrator, unless appealed pursuant to Section 17.06.180, BMC.
- D. When issued in conjunction with a building or development permit, a final critical areas determination shall become void at the time that the associated building or development permit is invalidated.
- E. When not associated with a building or development permit, a final critical areas determination shall be valid for a period of five (5) years.

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## **PART FIVE: CRITICAL AREA MITIGATION REQUIREMENTS**

### **17.82.260 Critical Area Mitigation - Generally.**

- A. Except as otherwise directed in this chapter, all proposed alterations of critical areas shall include mitigation, including off-site mitigation, sufficient to maintain the functions and values of the critical area, or to prevent or reduce risk from a hazard posed by a critical area.
- B. Mitigation shall include avoiding, minimizing and/or compensating for adverse impacts to regulated critical areas through the following, and in the following order of priority:
  - 1. Avoiding the impact altogether by not taking a certain action;
  - 2. Minimizing the impacts by limiting the degree or magnitude of an action or by otherwise adjusting the action so as to reduce or avoid impacts;
  - 3. Rectifying the impact by repairing, rehabilitating, or restoring the affected area;
  - 4. Reducing or eliminating the impact over time through preservation and/or maintenance through the course of the action; and
  - 5. Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and monitoring the adverse impact and the mitigation project and taking appropriate corrective measures;
  - 6. Monitoring the impact and taking appropriate corrective measures.
- C. All proposed mitigation shall be contained in a proposed mitigation plan which shall be included as part of the Critical Area Detailed Study. The mitigation plan shall describe the following:
  - 1. What mitigation is proposed;
  - 2. How the proposed mitigation will maintain, or compensate for, the functions and values of the critical area or reduce potential risks posed by the critical area;
  - 3. Any monitoring, maintenance and/or inspections that are deemed necessary to insure the adequacy of the proposed mitigation;
  - 4. Remedial measures that may be necessary based on the results of monitoring and/or inspection;
  - 5. Professional expertise necessary to install, maintain, monitor or inspect proposed mitigation measures; and
  - 6. Any bonding deemed necessary by the city to insure performance and/or maintenance of the proposed mitigation.

### **17.82.270 Buffer Alterations.**

- A. For Wetlands and Fish & Wildlife Habitat Conservation Areas, buffers have been identified as the primary mechanism for providing adequate protection. In these cases, the buffers that have been established shall be considered “standard” or “required,” unless provision of adequate mitigation has otherwise been demonstrated by the applicant.
- B. Except as otherwise allowed in this chapter, standard buffers shall be retained in their pre-existing condition.

- C. If the proposed activity does not involve alteration of a critical area or its standard buffer AND the administrator finds that the activity is not likely to have an adverse impact on the critical area, then no mitigation shall be required. If, however, the administrator finds that, due to site-specific conditions, the standard buffer will not provide adequate protection, then increased buffers and/or other mitigation measures shall be required.
- D. If the applicant proposes to in any way alter, any portion of the standard buffer, then the applicant shall submit a Critical Area Detailed Study, pursuant to Section 17.82.230 (and sub-sections 330, 400, 470 or 500 as applicable) that demonstrate how the reduced buffer along with any other proposed mitigation will be sufficient to adequately protect the critical area functions and values.
- E. Proposed mitigation shall be based on and incorporated into a mitigation plan prepared by a qualified biologist consistent with the requirements established in Section 17.82.360, 17.82.430, 17.82.480 or 17.82.510 as applicable.
- F. Increased Buffers.  
If the standard buffer is not comprised of a relatively intact native vegetation community, the administrator shall increase the standard buffer to protect the functions and values of the resource and buffer areas OR the applicant may choose to enhance the standard buffer to meet the above standard. Any such buffer enhancement shall be undertaken at the sole expense of the applicant. The administrator shall also increase the required buffer above the standard buffer width if it is determined that unique circumstances exist, either in terms of the sensitivity of the habitat or the intensity of the proposed land use, such that an increased buffer is necessary to protect the functions and values of the resource.
- G. Buffer Reductions.
  - 1. Buffer Reduction Based on Mitigation.  
Where compensatory mitigation is provided, standard buffers may be reduced, provided that the standard buffer is not reduced by more than forty (40) percent for Habitat Conservation Areas (HCA) and Category II wetlands, or by more than sixty (60) percent for Category III and IV wetlands. Buffer reductions shall only be permitted when all anticipated impacts to the habitat and their required buffers identified pursuant to D. above and mitigated pursuant to E. above.
  - 2. Except as otherwise allowed pursuant to this chapter, reduction of a wetland or HCA buffer below the allowed percentage shall require approval of a critical areas variance or a reasonable use exception.
- H. Buffer Averaging.  
Standard buffers may be reduced through the use of buffer averaging provided that the total buffer area is not reduced below the area that would result from use of the standard buffer, and provided, further, that the standard buffer is not reduced by more than forty (40) percent for Habitat Conservation Areas (HCA) and Category II wetlands, or by more than sixty (60) percent for Category III and IV wetlands, and the use of buffer averaging will improve the overall protection of the resource. Buffer averaging shall only be permitted when all anticipated impacts to the habitat and their required buffers identified pursuant to D. above and mitigated pursuant to E. above.

**17.82.280 Long-term Protective Measures.**

In conjunction with granting critical areas approval, the administrator may, at his or her sole discretion, require any of the following protective measures, singly or in combination that are deemed necessary and appropriate to ensure the long-term protection of the resource:

- A. Building Setback Line.
  - 1. A building setback line of 10 feet shall be required from the edge of a buffer for any building or structure to ensure that the exteriors of the building or structure can be improved, maintained or repaired without encroaching into the buffer.
  - 2. The following activities are allowed within the building setback, provided that construction equipment associated with such activity will not enter into the critical area or buffer:
    - a. Landscaping;
    - b. Building overhangs;

- c. Uncovered decks;
  - d. Clearing and grading;
  - e. Stormwater facilities; and
  - f. Impervious surfaces where resultant runoff meets required water quality standards.
  - g. Utility improvements when no there is no other reasonable location and the improvement has been approved by the city.
3. Signage. Signage demarcating the outer boundaries of critical areas or associated buffers may be required to reduce intrusions from neighboring land uses or alert citizens regarding potential hazards. The administrator shall specify the type, size and spacing of such signage prior to issuance of the approval.
  4. Fencing. Protective fencing demarcating the outer boundaries of critical areas or associated buffers may be required to reduce intrusions from neighboring land uses or alert citizens regarding potential hazards. The administrator shall specify the location and type of fencing prior to issuance of the approval.
  5. Separate Legal Lots or Tracts. Prior to or in conjunction with final recording of any long subdivision, short subdivision or binding site plan, those portions of the property containing critical areas may be required to be placed in separate lots or tracts with applicable development limitations stated on the face of the final recorded document.
  6. Notice on Title. Notification filed with the Whatcom County Auditor's office may be required that states the general presence of one or more critical areas and or associated buffers on the subject property, and that limitations on activities potentially affecting these areas exist.
  7. Protective Covenant. The recording of a protective covenant addressing those portions of the subject property containing critical areas and associated buffers may be required. Such long-term protection may also be provided through the granting of a conservation easement or dedication to a public or private land trust.
  8. Ingress/Egress. The granting of ingress and egress to the administrator may be required for monitoring and evaluation of compliance with required mitigation and conditions of approval.

#### **17.82.290 Bonding.**

- A. A bond may be required by the city in cases where components of the mitigation plan, such as restoration, monitoring, or maintenance, are likely to take place after issuance of the associated permit or approval by the city.
- B. The bond shall be in the form of a surety bond, performance bond, assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions and in a form acceptable to the city attorney.
- C. The bond shall be in the amount of one-hundred twenty-five percent (125%) of either the estimated cost of the uncompleted mitigation measures OR the estimated cost of restoring the functions and values of the critical areas at risk, whichever is greater.
- D. The period of the bond shall be up to three (3) years, or until the city has determined that the mitigation site has achieved long term viability and no longer requires substantial annual maintenance.

#### **17.82.295 Regional Mitigation.**

- A. The city of Blaine may authorize the development of a regional mitigation program in compliance with Chapter 90.84 RCW and approval from the U.S. Corps of Engineers and Department of Ecology.
- B. The regional mitigation program shall service legal development located within the city limits.
- C. Location. Site selection for mitigation shall be based on a location that will provide the greatest ecological benefit and have the greatest likelihood of success. Where feasible, mitigation shall occur in the Cain Creek basin. However, if it can be demonstrated that a mitigation site in an alternative sub-basin or watershed would provide a greater ecological benefit and offer a more successful replacement of wetland functions and values, a mitigation site can be located in an alternative sub-basin or watershed.

### **17.82.297 Mitigation Banking.**

- A. This chapter does not expressly regulate mitigation banking. However, the city supports mitigation banking when it provides greater ecological benefit and provides a more successful replacement of wetland functions and values.
- B. A proposal to develop a mitigation bank in Blaine will be reviewed by city staff through SEPA review and any other permits necessary to receive city approval of such a project. Additionally, city staff will work with State and Federal officials to insure compliance with state and federal regulatory guidelines for the proposed mitigation bank.

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## **PART SIX: WETLANDS**

### **17.82.300 Wetland Designation.**

Wetlands shall be **designated** based on the *Washington State Wetlands Identification and Delineation Manual* (Washington State Department of Ecology, March 1997, Ecology Publication #96-94) as updated. This manual is consistent with the U.S. Corps of Engineers Wetlands Delineation Manual (January 1987).

### **17.82.310 Wetland Rating (Classification).**

Wetlands shall be **rated (classified)** as Category I, Category II, Category III, or Category IV based upon Washington State Department of Ecology's Washington State *Wetlands Rating System for Western Washington* (2006) or most recent update.

### **17.82.320 Wetland Indicators.**

The administrator shall use the following as indicators of the potential presence of a wetland and the need for a Wetland Detailed Study:

- A. The proposed development site abuts, or is located within a wetland and its largest estimated buffer as indicated in the city Critical Area Maps;
- B. Documentation through any public resource information source that a wetland and its largest estimated buffer exists within or abuts the proposed development site;
- C. A finding by a qualified wetland biologist based on site-specific soils, vegetation and hydrology that the presence of a wetland and its largest estimated buffer is likely within the proposed development site;

### **17.82.330 Wetland Detailed Study Requirements.**

A Wetland Detailed Study, if required, shall be completed by a qualified wetland biologist and shall include the following:

- A. Project description.
- B. Site plan identifying the extent and boundaries of all wetlands as determined according to the methodology identified in Section 17.82.300 and identifying the location of the proposed activity. The administrator may require that the delineated wetland boundaries be surveyed by a professional land surveyor and the results of said survey be provided to the city in a digital format acceptable to the city.
- C. A wetland community description and classification (rating) prepared according to the classification system identified in Section 17.82.310.
- D. An assessment of wetland functions and values which addresses the following: soils, vegetation, hydrology, fish and wildlife habitat, water quality, and aesthetics.
- E. Mitigation plan demonstrating how the proposed project (including any proposed mitigation) is able to mitigate impacts to wetlands in conformance with the mitigation sequence outlined in Section

17.82.260, the performance requirements set forth in Section 17.82.340 and the mitigation requirements set forth at Section 17.82.360.

**17.82.340 Wetland Performance Requirements.**

A. Basic Requirement. Except as otherwise allowed pursuant to this chapter, development or other regulated activities are prohibited within a regulated wetland or its standard buffer unless the Detailed Study demonstrates that the proposal will not degrade the functions and values of the subject wetland and buffer or that all impacts to these areas will be fully mitigated. Mitigation shall include avoiding, minimizing and/or compensating for adverse impacts to regulated critical areas pursuant to Section 17.82.260.B. The following requirements shall apply:

REGULATED ACTIVITIES	
Category I Wetlands	<ul style="list-style-type: none"> <li>• Buffer reduction or averaging is prohibited unless determined to be substantially in the public interest and no other viable alternatives exist.</li> </ul>
Category II Wetlands	<ul style="list-style-type: none"> <li>• Regulated activities are prohibited within this wetland and its standard buffer, except as indicated in Sections 17.82.100 thru 17.82.150 and 17.82.350.</li> <li>• Buffer width alteration is only permitted pursuant to sub-section 17.82.340.D &amp; Section 17.82.360</li> <li>• Filling of a Category II wetland, is only permitted when all impacts are compensated through implementation of a mitigation plan consistent with the requirements for a Category II wetland as set forth in Section 17.82.360.</li> </ul>
Category III Wetlands	<ul style="list-style-type: none"> <li>• Regulated activities are prohibited within this wetland and its standard buffer, except as indicated in Sections 17.82.100 thru 17.82.150 and 17.82.350.</li> <li>• Buffer width alteration is only permitted pursuant to sub-section 17.82.340.D &amp; Section 17.82.360</li> <li>• Filling of a Category III Wetland, is permitted when all impacts are compensated at the expense of the developer through implementation of a mitigation plan consistent with the requirements for a Category III wetland as set forth in Section 17.82.360.</li> <li>•</li> </ul>
Category IV Wetlands	<ul style="list-style-type: none"> <li>• Regulated activities are prohibited within a Category IV Wetland and its standard buffer, except as indicated in Sections 17.82.100 thru 17.82.150 and 17.82.350.</li> <li>• Buffer width alteration is only permitted pursuant to sub-section 17.82.340.D &amp; Section 17.82.360</li> <li>• Filling of a Category IV Wetland, is permitted when all impacts are compensated at the expense of the developer through implementation of a mitigation plan consistent with the requirements set forth Section 17.82.360.</li> <li>• Fill or disturbance of a documented Category IV</li> </ul>

	wetland under 2,500 sq. ft. shall be mitigated using an approved stormwater system. Under this condition, the requirements set forth in Section 17.82.360 do not apply.
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B. Standard Buffers.

The following standard buffers shall be established for all wetlands based on classification (rating) and level of function for wildlife habitat. Standard buffers are assumed to be comprised of a relatively intact native vegetation community that is adequate to protect the functions and values of the wetland at the time of the proposed activity.

High level of function for wildlife habitat (wetlands with habitat function scores of 29 or greater on the wetland rating form).	
<b>Wetland Category</b>	<b>Standard Buffer Width</b>
Category I	250 feet
Category II	150 feet
Category III	100 feet
Category IV	50 feet

Moderate level of function for wildlife habitat (wetlands with habitat function scores of 20 to 28 on the wetland rating form).	
<b>Wetland Category</b>	<b>Standard Buffer Width</b>
Category I	150 feet
Category II	125 feet
Category III	75 feet
Category IV	50 feet

Low level of function for wildlife habitat (wetlands with habitat function scores of 19 or less on the wetland rating form).	
<b>Wetland Category</b>	<b>Standard Buffer Width</b>
Category I	100 feet
Category II	75 feet
Category III	50 feet
Category IV	25 feet

C. Wetland Buffers.

Wetland buffers are upland areas adjacent to wetlands that are intended to provide sufficient separation between the aquatic feature and the surrounding areas and uses to protect the wetlands from disturbance from human activities. Buffers also provide vital upland habitat for wildlife species that require wetlands as part of their life cycle. Buffers shall be measured horizontally in a landward direction from the delineated wetland edge.

D. Buffer Averaging or Reduction. (See Section 17.82.270)

1. If the applicant proposes to in any way alter, any portion of the standard buffer, then the applicant shall submit a Critical Area Detailed Study, pursuant to Section 17.82.230 and 330 that demonstrates how the reduced buffer along with any proposed mitigation will be sufficient to adequately protect the critical area functions and values.
2. Proposed mitigation shall be based on and incorporated into a mitigation plan prepared by a qualified biologist consistent with the requirements established in Section 17.82.360.

### **17.82.350 Activities Allowed in Wetlands and Wetland Buffers.**

The following activities may be permitted in wetlands and/or wetland buffers as specified without the issuance of a critical areas variance or reasonable use exception when all reasonable measures have been taken to avoid adverse effects on wetland functions and values, compensatory mitigation is provided for all unavoidable adverse impacts to wetlands, and the amount and degree of alteration are limited to the minimum needed to accomplish the project purpose:

- A. Surface water discharge into Category II, III, and IV wetlands and their buffers and/or Category I wetland buffers when no other alternatives for discharge are feasible and the discharge is designed to minimize physical, hydrologic and ecological impacts to the wetland and its water quality.
- B. Utility lines in Category II, III, and IV wetlands and their buffers and/or Category I wetland buffers when the following criteria are met:
  - 1. No feasible conveyance alternative is available;
  - 2. The project is designed and constructed to minimize physical, hydrologic and ecological impacts to the wetland and wetland buffer;
  - 3. The utility line is located as far from the wetland edge as possible and in a manner that minimizes disturbance of soils and vegetation;
  - 4. Clearing, grading, and excavation activities are limited to the minimum necessary to install the utility line, and the area is restored following utility installation; and
  - 5. Buried utility lines are constructed in a manner that prevents adverse impacts to subsurface drainage, such as through the use of trench plugs.
- C. Public roads, bridges, and trails in Category II, III, and IV wetlands and their buffers and/or Category I wetland buffers when no feasible alternative alignment is available and the facility is designed and constructed to minimize physical, hydrologic and ecological impacts to the wetland, including placement on elevated structures as an alternative to fill, where feasible.
- D. Stormwater management facilities, limited to detention / retention / treatment ponds, media filtration facilities, and lagoons or infiltration basins, within a Category II, III or IV wetland buffer where the following criteria are met:
  - 1. No other feasible alternative location exists;
  - 2. The width of the buffer between the stormwater facility and the wetland edge is not less than twenty-five feet;
  - 3. The facility is located, constructed, and maintained in a manner that minimizes adverse effects on the buffer and adjacent wetland;
  - 4. The stormwater facility meets applicable city or state stormwater management standards; and
  - 5. Low impact development approaches have been considered and implemented to the maximum extent feasible.
- E. Stormwater conveyance or discharge facilities such as dispersion trenches, level spreaders, and outfalls within a Category II, III, or IV wetland buffer where the following criteria are met:
  - 1. Due to topographic or other physical constraints, there is no feasible location for the facility outside the buffer;
  - 2. The discharge facility is located as far from the wetland edge as possible and is designed and constructed in a manner that minimizes disturbance of soils and vegetation;
  - 3. The discharge outlet is designed to prevent erosion and promote infiltration where feasible;
  - 4. The discharge water meets state water quality standards; and
  - 5. Low impact development approaches have been considered and implemented to the maximum extent feasible.
- F. Passive recreation facilities that are part of a non-motorized trail system or environmental education program including walkways, wildlife viewing structures, and trails, in wetland buffers provided that all of the following criteria are met:
  - 1. Trails shall not exceed ten feet in width and shall be made of pervious material where feasible;
  - 2. A minimum buffer of fifteen feet is maintained between the trail or facility and the wetland edge;

3. The trail or facility is constructed and will be maintained in a manner that minimizes disturbance of the buffer and the adjacent wetland.

**17.82.360 Wetland Mitigation Requirements.**

- A. When a regulated activity is proposed within a wetland or wetland buffer, the applicant shall demonstrate to the satisfaction of the administrator that all reasonable efforts have been made to avoid, minimize and/or compensate for potential impacts consistent with the mitigation sequence established at Subsection 17.82.260(B). (Use the state approved manual, *Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance*. (DOE 3/12)
- B. Except as otherwise directed in this chapter, all projects that result in permanent loss or degradation of wetland functions and values due to a proposed reduction in wetland area shall provide compensatory mitigation to offset proposed actions.
- C. Mitigation Ratios.

The following ratios shall be used as a guide to determine the acreage of wetland to be created, restored or enhanced in relation to the acreage of wetland area lost:

Wetland Category	Area Created: Area Lost				Area Enhanced : Area Lost			
	Cat IV	Cat III	Cat II	Cat I	Cat IV	Cat III	Cat II	Cat I
Category I				6:1				12:1
Category II – forested			3:1				6:1	
Category II – scrub/shrub or emergent			2:1				4:1	
Category III		2:1	1.5:1			3:1	2:1	
Category IV		1:1				2:1	1:1	

- D. Compensatory mitigation shall be provided on-site or off-site in the location that will provide the greatest ecological benefit and have the greatest likelihood of success, provided that mitigation occurs as close as possible to the impact area and within the same watershed as the permitted alteration.
- E. Compensatory mitigation in a location within the Cain Creek basin may be used as an alternative to on-site or same-watershed compensatory mitigation.
- F. All wetlands created, restored or enhanced as part of compensatory mitigation required pursuant to this chapter shall be provided with buffers of sufficient size to protect their functions and values.
- G. All mitigation areas shall be protected and managed to prevent degradation and ensure long-term protection of critical area functions and values. Permanent protection shall be achieved through deed restriction, protective covenant or other protective measure pursuant to Section 17.82.290.
- H. Mitigation Plan.

Where preparation of a mitigation plan is required (see Section 17.82.230), said plan shall be prepared by a qualified wetland biologist consistent with the Department of Ecology guidance document, *Guidance on Wetland Mitigation in Washington State*, and shall be approved by the administrator. The mitigation plan shall be prepared based on the best available science and shall address the following:

1. The characteristics of the wetland;
2. The characteristics of the watershed contributing to the wetland;
3. The functions and values of the wetland to be protected by the buffer;
4. The characteristics of the buffer;
5. The intensity of the proposed adjacent land use;
6. The functions that the standard buffer is intended to provide at the specific location;
7. Proposed measures to reduce the adverse effects of adjacent land uses, such as lighting and noise restrictions, buffer fencing and signage, conservation easements, use of integrated pest

- management and limitations on application of pesticides, and use of low impact development techniques;
8. Proposed mitigation measures together with an analysis of the anticipated effectiveness of the proposed mitigation measures to protect the functions and values of the affected wetland and wetland buffer;
  9. Proposed monitoring, maintenance and reporting necessary to ensure the effectiveness of the proposed mitigation; and
  10. Proposed bonding to insure the completion and effectiveness of the proposed mitigation including monitoring, maintenance, and reporting.
- I. Completion of Mitigation.
- Where feasible, initial phases of mitigation projects shall be completed prior to activities that will disturb wetland or buffer areas. In all other cases, mitigation shall be completed as quickly as possible following disturbance and prior to use or occupancy of the activity or development unless such timing is found to be infeasible due to factors such as the optimal time of year or hydrologic conditions for planting. The administrator may require the posting of a performance bond or other form of surety to insure that all required mitigation, including required monitoring and repair, is completed in a timely fashion and consistent with the approved mitigation plan.

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## **PART SEVEN: FISH AND WILDLIFE HABITAT CONSERVATION AREAS**

### **17.82.370 Fish and Wildlife Habitat Conservation Areas Designation.**

Areas that meet any of the following criteria shall be designated as fish and wildlife habitat conservation areas (HCA) and shall be subject to the provisions of this chapter:

- A. Rivers, streams and creeks identified as Waters of the State pursuant to Title 222 WAC.
- B. Areas with which federally and/or state listed species have a primary association.
- C. State priority habitats and areas with which state priority species have a primary association.
- D. Commercial and recreational shellfish areas, including designated Shellfish Habitat Conservation Areas.
- E. Kelp and eelgrass beds.
- F. Surf smelt, Pacific herring, and Pacific sand lance spawning areas.
- G. Naturally occurring lakes over 20 acres and other waters of the state including marine waters, and waters planted with game fish by a government or tribal entity.
- H. Natural Area Preserves and natural resource conservation areas.
- I. Habitats and species of local importance established by the city of Blaine pursuant to this chapter.

### **17.82.380 Fish and Wildlife Habitat Conservation Areas (HCA) Classification.**

Fish and wildlife habitat conservation areas shall be classified as follows:

- A. Class A Streams. Class A Streams shall include those rivers, streams and creeks identified and regulated as shorelines of the state pursuant to RCW 90.58, the Shoreline Management Act, and are subject to the city of Blaine Shoreline Management Master Program.
- B. Class B Streams. Class B Streams shall include all other fish-bearing streams not included in Class A Streams that are known or have potential use by anadromous or resident fish species.
- C. Class C Streams. Class C Streams shall include all other streams that have no known or potential use by anadromous or resident fish species.
- D. Marine habitats. Marine habitats include those marine water areas identified and regulated as shorelines of the state pursuant to RCW 90.58, the Shoreline Management Act, and subject to the city of Blaine Shoreline Management Master Program.

- E. Upland wildlife habitats. Upland wildlife habitats shall include those upland areas with which threatened, endangered or sensitive species, have a primary association.
- F. Natural Area Preserves and Natural Resource Conservation Areas. Natural Area Preserves and Natural Resource Conservation Areas shall include areas designated as such.
- G. Habitats of local importance. Habitats of local importance shall include those habitats with which species of local importance have a primary association as designated by the Blaine city council.

#### **17.82.390 Fish and Wildlife Habitat Conservation Area Indicators.**

The administrator shall use the following as indicators of the potential presence of a Fish and Wildlife HCA and the need for a Fish and Wildlife HCA Detailed Study:

- A. The proposed development site is located within an area listed as a Fish and Wildlife HCA in the city Critical Area Maps;
- B. Documentation through any public resource information source that a Fish and Wildlife HCA exists on or adjacent to the proposed development site;
- C. A finding by a qualified fisheries or wildlife biologist that the presence of a Fish and Wildlife HCA is likely.

#### **17.82.400 Fish and Wildlife Habitat Conservation Areas Detailed Study Requirements.**

A Fish and Wildlife HCA Detailed Study shall be prepared by a qualified fish and/or wildlife biologist and shall include the following:

- A. Project description;
- B. Identification of the type, location and extent of the habitat area on or abuts the project site;
- C. A habitat description and assessment of the functions and values of the habitat area, including a discussion of the species in question and the related plant and animal species, soils and hydrology;
- D. A regulatory analysis, including a discussion of any federal, state, tribal and/or local requirements or management recommendations that have been developed for the species and/or habitats in question;
- E. A mitigation plan, including a discussion of how the proposal and any proposed mitigation measures are sufficient to avoid or minimize adverse impacts to identified species and habitats.

#### **17.82.410 Fish and Wildlife Habitat Conservation Areas (HCA) Performance Requirements.**

- A. Basic Requirement.

A regulated Fish and Wildlife HCA or its standard buffer shall only be altered if the Detailed Study demonstrates that the proposal will not degrade the functions and values of the subject habitat and buffer or that all impacts to these areas will be mitigated.

- B. HCA Buffers.

HCA buffers are upland areas adjacent to fish and wildlife HCAs that are intended to provide sufficient separation between the habitat feature and the surrounding areas and uses to protect the habitat from disturbance from human activities. Buffers also provide vital upland habitat for wildlife species that require aquatic or riparian habitat as part of their life cycle. Buffers shall be measured horizontally in a landward direction from the ordinary high water mark for stream and marine habitats and from the outermost edge of upland habitat areas.

- C. Standard HCA Buffers.

The following standard buffers shall be established for the following fish and wildlife HCAs based on designation and classification. Standard buffers are assumed to be comprised of a relatively intact native vegetation community that is adequate to protect the functions and values of the resource at the time of the proposed activity.

1. Stream Habitat Conservation Areas - Standard Buffers.

The following standard buffers shall be established for all Stream Habitat Conservation Areas based on their classification:

Habitat Conservation Area	Standard Buffer from OHWM
Class A Stream	Not regulated under this Chapter - See Shoreline Management Program
Class B Stream	100 feet
Class C Stream	50 feet or the top of the defined channel plus ten (10) feet, whichever is greater

2. Non-Stream Habitat Conservation Areas.

The administrator shall determine the appropriate buffer widths for other habitat conservation areas based on the best available information. Buffer widths for non-stream habitat conservation areas shall be as set forth in the following table:

Habitat Conservation Area	Standard Buffer
Marine Habitats; Commercial and Recreational Shellfish Areas; Kelp and Eelgrass Beds; and Surf Smelt, Pacific Herring, and Pacific Sand Lance Spawning Areas	See Shoreline Management Program.
Areas with which federally listed species have a primary association; and State Priority Habitats.	Buffers shall be based on recommendations provided by the Washington Department of Fish and Wildlife PHS Program; provided that local and site specific factors shall be taken into consideration and the buffer width based on the best available information concerning the species/habitat(s) in question and/or the opinions and recommendations of a qualified professional with appropriate expertise.
Natural Area Preserves and Natural Resource Conservation Areas	No buffer requirement
Habitats of Local Importance	No habitats or species of local importance have been established by the Blaine city council prior to or through the adoption of this chapter. Buffers for any habitats and species of local importance subsequently designated by the city council shall be consistent with the buffer requirements established by the city council through formal amendment of this chapter.

D. Residences in developed neighborhoods.

Where established residential development currently exists, the buffer and setback requirements for a new single family residence shall be established as that straight line between existing houses on each side of the property OR, if this condition does not exist, the average setback of four existing residences within 300 feet of the proposed development site.

E. Limitation on subdivision.

Properties located partially or wholly within a fish and wildlife habitat conservation area or buffer shall not be subdivided in such a way that would increase the impacts to the resource that would result from development of the proposed lots or parcels.

### **17.82.420 Activities Allowed within Fish and Wildlife Habitat Conservation Areas.**

The following activities may be permitted in fish and wildlife habitat conservation areas and/or their buffers as specified without the issuance of a critical areas variance or reasonable use exception when all reasonable measures have been taken to avoid adverse effects on the functions and values of the resource, mitigation is provided for all unavoidable adverse impacts, and the amount and degree of alteration are limited to the minimum needed to accomplish the project purpose:

- A. Surface water discharge into habitat conservation areas and their buffers when no other alternatives for discharge are feasible and the discharge is designed to minimize physical, hydrologic and ecological impacts to critical areas.
- B. Utility lines in habitat conservation areas and their buffers when the following criteria are met:
  - 1. No feasible conveyance alternative is available;
  - 2. The project is designed and constructed to minimize physical, hydrologic and ecological impacts to the habitat conservation area and associated buffer;
  - 3. The utility is located within an existing road or utility corridor, where available;
  - 4. The utility line is located as far from the habitat conservation area edge as possible and in a manner that minimizes disturbance of soils and vegetation;
  - 5. Clearing, grading, and excavation activities are limited to the minimum necessary to install the utility line and the area is restored following utility installation;
  - 6. Buried utility lines are constructed in a manner that prevents adverse impacts to subsurface drainage, such as through the use of trench plugs.
- C. Public roads and trails within habitat conservation area buffers when the following criteria are met:
  - 1. No feasible alternative alignment is available that would provide less impact;
  - 2. The road or trail is constructed and maintained in manner that minimizes disturbance of the buffer and associated critical areas;
  - 3. The crossing minimizes erosion and sedimentation, alteration of hydrologic processes, and disruption of natural processes such as channel migration, the downstream movement of wood and gravel, and the movement of all fish and wildlife;
  - 4. Opportunities for deviations from technical standards for width or other dimensions have been fully explored and incorporated into the project design.
- D. Public road, trail and bridge crossings when the following criteria are met:
  - 1. No feasible alternative crossing location or alignment is available that would provide less impact;
  - 2. The crossing is constructed and maintained in a manner that minimizes disturbance of the critical area and associated buffer;
  - 3. The crossing minimizes interruption of natural processes such as channel migration, the downstream movement of wood and gravel, and the movement of all fish and wildlife;
  - 4. Bridges are preferred for all stream crossings and should be designed to maintain the existing stream substrate and gradient, provide adequate horizontal clearance on each side of the ordinary high water mark, and provide adequate vertical clearance above the ordinary high water mark;
  - 5. Culverts shall be designed according to applicable state and federal guidance criteria for fish passage as identified in *Fish Passage Design at Road Culverts* (WDFW March, 1999), and/or the National Marine Fisheries Service *Guidelines for Salmonid Passage at Stream Crossings* (2000), (and subsequent revisions);
  - 6. Any existing culvert that is detrimental to fish passage is corrected or replaced;
  - 7. Crossings are limited to the minimum width necessary, and joint crossings are utilized where multiple properties can be accessed by one crossing; and
  - 8. Opportunities for deviations from technical standards for width or other dimensions have been fully explored and incorporated into the project design.
- E. Stormwater management facilities, limited to detention / retention / treatment ponds, media filtration facilities, and lagoons or infiltration basins, within a habitat conservation area buffer where the following criteria are met:
  - 1. No other feasible alternative location exists;

2. The width of the buffer between the stormwater facility and the edge of the habitat conservation area is not less than twenty-five feet;
  3. The facility is located, constructed, and maintained in a manner that minimizes adverse effects on the buffer and adjacent habitat area;
  4. The stormwater facility meets applicable city or state stormwater management standards; and
  5. Low impact development approaches have been considered and implemented to the maximum extent feasible.
- F. Stormwater conveyance or discharge facilities such as dispersion trenches, level spreaders, and outfalls within a habitat conservation area buffer where the following criteria are met:
1. Due to topographic or other physical constraints, there is no feasible location for the facility outside the buffer;
  2. The discharge facility is located as far from the edge of the habitat conservation area as possible and is designed and constructed in a manner that minimizes disturbance of soils and vegetation;
  3. The discharge outlet is designed to prevent erosion and promote infiltration where feasible;
  4. The discharge water meets state water quality standards; and
  5. Low impact development approaches have been considered and implemented to the maximum extent feasible.
- G. Relocation of streams, or portions of streams, when there is no other feasible alternative and when the relocation will result in equal or better habitat and water quality and quantity, and will not diminish the flow capacity of the stream or other natural stream processes.
- H. Stream bank stabilization and shoreline protection projects when the following criteria are met:
1. Natural shoreline processes will be maintained to the maximum extent practicable;
  2. The activity will not result in increased erosion and will not alter the size or distribution of shoreline or stream substrate, or eliminate or reduce sediment supply from feeder bluffs;
  3. No alteration of juvenile fish migration corridors will occur;
  4. No net loss of intertidal or riparian habitat function will occur;
  5. Use of non-structural measures, such as placing or relocating the development farther from the shoreline, planting vegetation, or installing on-site drainage improvements, is not feasible or will not be sufficient;
  6. Use of bioengineering or soft armoring techniques is preferred over use of hard bank armoring, which may occur only when the property contains an existing permanent structure(s) that is in danger from shoreline or stream bank erosion caused by wave action or riverine processes; and
  7. Bank stabilization or shore protection will not adversely affect habitat conservation areas or mitigation will be provided to compensate for adverse effects where avoidance is not feasible.
- I. Construction, reconstruction, repair and maintenance of docks and public or private launching ramps where the following criteria are met:
1. The dock or ramp is located and oriented and constructed in a manner that minimizes adverse effects on navigation, wave action, water quality, movement of aquatic and terrestrial life, ecological processes, eelgrass beds, shellfish beds, spawning habitat and wetlands;
  2. Natural shoreline processes will be maintained to the maximum extent practicable;
  3. The activity will not result in increased erosion and will not alter the size or distribution of shoreline or stream substrate, or eliminate or reduce sediment supply from feeder bluffs;
  4. No alteration of juvenile fish migration corridors will occur; and
  5. No net loss of riparian habitat function will occur.
- J. Passive recreation facilities that are part of a non-motorized trail system or environmental education program including walkways, wildlife viewing structures, and trails, in habitat conservation area buffers provided that the following criteria are met:
1. Trails shall not exceed ten feet in width and shall be made of pervious material where feasible;
  2. A minimum buffer of fifteen feet is maintained between the trail or facility and the edge of the habitat conservation area; and

3. The trail or facility is constructed and will be maintained in manner that minimizes disturbance of the buffer and the adjacent resource.

#### **17.82.430 Fish and Wildlife Habitat Conservation Area Mitigation Requirements.**

- A. When a regulated activity is proposed within a fish and wildlife habitat conservation area or its associated buffer, the applicant shall demonstrate to the satisfaction of the administrator that all reasonable efforts have been made to avoid, minimize and/or compensate for potential impacts consistent with the mitigation sequence established at Subsection 17.82.260(B).
- B. All projects that result in permanent loss or degradation of habitat functions and values due to a proposed reduction in a habitat conservation area or buffer area shall provide compensatory mitigation to offset proposed actions.
- C. Compensatory mitigation shall be provided on-site or off-site in the location that will provide the greatest ecological benefit and have the greatest likelihood of success, provided that mitigation occurs as close as possible to the impact area and within the same watershed as the permitted alteration. This provision may be waived upon demonstration through a watershed- or landscape-based analysis that mitigation within an alternative sub-basin of the same basin or within an approved mitigation bank would have the greatest ecological benefit and the greatest likelihood of success.
- D. All habitat conservation areas created, restored or enhanced as part of compensatory mitigation required pursuant to this chapter shall be provided with buffers of sufficient size to protect their functions and values.
- E. All mitigation areas shall be protected and managed to prevent degradation and ensure long-term protection of critical area functions and values. Permanent protection shall be achieved through deed restriction, protective covenant or other protective measure pursuant to Section 17.82.290.
- F. Mitigation Plan.

Where preparation of a mitigation plan is required, said plan shall be prepared by a qualified fisheries, wildlife or natural resource biologist and shall be approved by the administrator. The mitigation plan shall be prepared based on the best available science and shall address the following:

1. The characteristics of the habitat conservation area;
  2. The characteristics of the watershed within which the habitat area is located;
  3. The functions and values of the habitat conservation area to be protected by the buffer;
  4. The characteristics of the buffer;
  5. The functions that the standard buffer is intended to provide at the specific location;
  6. The intensity of the proposed adjacent land use;
  7. Proposed measures to reduce the adverse effects of adjacent land uses, such as lighting and noise restrictions, buffer fencing and signage, conservation easements, use of integrated pest management and limitations on application of pesticides, and use of low impact development techniques;
  8. Proposed mitigation measures together with an analysis of the anticipated effectiveness of the proposed mitigation measures to protect the functions and values of the affected habitat conservation area and buffer;
  9. Proposed monitoring, maintenance and reporting necessary to ensure the effectiveness of the proposed mitigation; and
  10. Proposed bonding to insure the completion and effectiveness of the proposed mitigation including monitoring, maintenance, and reporting.
- G. Completion of Mitigation.  
Where feasible, mitigation projects shall be completed prior to activities that will disturb habitat conservation areas or buffers. In all other cases, mitigation shall be completed as quickly as possible following disturbance and prior to use or occupancy of the activity or development unless such timing is found to be infeasible due to factors such as the optimal time of year for planting or as a result of other construction or ecological constraints. The administrator may require the posting of a performance bond or other form of surety to insure that all required mitigation, including required

monitoring and repair, is completed in a timely fashion and consistent with the approved mitigation plan.

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## **PART EIGHT: GEOLOGICALLY HAZARDOUS AREAS**

### **17.82.440 Geologically Hazardous Areas Designation.**

Areas that meet any of the classification criteria established below shall be designated as geologically hazardous areas and shall be subject to the provisions of this chapter.

### **17.82.450 Geologically Hazardous Areas Classification.**

Geologically hazardous areas shall be classified as landslide hazard areas, erosion hazard areas, seismic hazard areas, and tsunami hazard areas based on the following criteria.

- A. Landslide hazard areas. Landslide hazard areas shall include:
1. Active landslide hazard areas that meet any of the criteria specified under Subsection (2), below, that have been identified through observation by the administrator or through a detailed study prepared by a qualified consultant.
  2. Potential landslide hazard areas that meet any of the following criteria:
    - a. Areas with a slope exceeding fifteen percent (15%) that have a relatively permeable geologic unit overlying a relatively impermeable unit and have springs or groundwater seeps;
    - b. Areas with a slope inclination greater than thirty-five percent (35%) with a vertical relief of ten (10) or more feet except where comprised of competent bedrock;
    - c. Areas with a slope gradient steeper than eighty percent (80%) subject to rock fall during seismic shaking;
    - d. Potentially unstable slopes resulting from rapid river or stream incision, river or stream bank erosion, or undercutting by wave action;
    - e. Areas that show past sloughing or calving of bluff sediments, resulting in a vertical or steep bluff face with little or no vegetation;
    - f. Areas that have shown evidence of historic failure or instability, including, but not limited to, back-rotated benches on slopes; areas with structures that exhibit structural damage such as settling and cracking of building foundations; and areas that have toppling, leaning, or bowed trees caused by ground surface movement;
    - g. Areas of historical landslide movement including coastal shoreline areas mapped by the Department of Ecology Coastal Zone Atlas or the Department of Natural Resources slope stability mapping as unstable ("U" or class 3), unstable old slides ("UOS" or class 4), or unstable recent slides ("URS" or class 5).
- B. Erosion hazard areas. Erosion hazard areas shall include:
1. Surface erosion areas, which include areas with slopes greater than 15 percent (15%) and with soils identified by the Natural Resources Conservation Service as having a "severe," or "very severe" rill and inter-rill erosion hazard because of natural characteristics, including vegetative cover, soil texture, slope, gradient, and rainfall patterns, or human induced changes to natural characteristics; and
  2. Coastal and riverine erosion areas, which are subject to impacts from lateral erosion related to moving water such as river channel migration and shoreline retreat. These areas include those areas mapped by the Federal Emergency Management Agency as being located in the 100-year floodplain or mapped as being within any A or V zone.
- C. Seismic hazard areas. Seismic hazard areas shall include:
1. Areas where manmade fill or partially decomposed organic material average at least five feet in depth;

- 2. Filled wetlands;
- 3. Alluvial deposits or fill areas subject to liquefaction during severe shaking.
- D. Tsunami hazard areas. Tsunami hazard areas shall include coastal areas susceptible to flooding, inundation, debris impact, and/or mass wasting as the result of coastal wave action generated by seismic events.

#### **17.82.460 Geologically Hazardous Areas Indicators.**

The administrator shall use the following as indicators of the potential presence of a Geologically Hazardous Area and the need for a Geologically Hazardous Area Detailed Study:

- A. The proposed development site is located within fifty (50) feet of an area listed as a geologically hazardous area on the city Critical Areas Maps;
- B. Documentation through any public resource information source that a geologically hazardous area exists on or within fifty (50) feet of the proposed development site;
- C. A finding by a qualified geologist or geotechnical engineer that the presence of a geologically hazardous area is likely on or within fifty (50) feet of the proposed development site;

#### **17.82.470 Geologically Hazardous Areas Detailed Study Requirements.**

A Geologically Hazardous Area Detailed Study shall be prepared by a qualified geologist or geotechnical engineer and shall include the following:

- A. Project description.
- B. Identification of the type, location and extent of the hazard area on the project site plan.
- C. An assessment of the geologic and engineering characteristics of the proposed sites.
- D. A geotechnical analysis of the project in relation to the proposed site, including discussion of potential impacts on the hazard area, the project site and adjacent properties.
- E. A mitigation plan, including documentation of preparation or concurrence by a professional engineer, discussing how the project has been designed to avoid or minimize risks associated with the identified hazard area.

#### **17.82.480 Geologically Hazardous Areas Performance Requirements.**

- A. Basic Requirement. Alteration of a geologically hazardous area or a site within fifty (50) feet of such area shall only be permitted if the Detailed Study indicates that the project has been designed such that the risks associated with the hazard area have been reduced to within acceptable levels. Such mitigation of risks shall be certified by a qualified geologist or geotechnical engineer. The administrator shall have the authority to have the certification provided by the qualified consultant reviewed and confirmed by the public works administrator and/or a qualified, third-party consulting engineer.
- B. Wherever possible, proposed developments or alternations shall be located on portions of sites or parcels that are outside of areas potentially impacted by geologically hazardous areas.
- C. The administrator shall have the authority to establish vegetated buffers and/or setbacks from a hazard area based on the findings prepared by the qualified consultant or based on other information available to the administrator. In those areas where the administrator determines that a buffer and/or setback from a geologically hazardous area is necessary, the standard vegetated buffer shall be twenty-five (25) feet from the top, sides and toe of the hazard area and the standard setback shall be twenty-five (25) feet from the outer edge of the buffer for a total setback from the hazard area of fifty (50) feet, except where information supporting a lesser buffer or setback is provided in the Detailed Study.
- D. Properties located partially or wholly within a geologically hazardous area shall not be subdivided in such a way that would increase the hazard posed by development of the proposed lots or parcels.
- E. Activities proposed within landslide hazard areas shall demonstrate all of the following:
  - 1. The proposed alteration shall not cause any increase in surface water discharge or sedimentation to other properties;

2. The proposed alteration shall not decrease slope stability on or off the site;
  3. Disturbance of trees and other vegetation shall be minimized to reduce erosion and maintain slope stability;
  4. Structures shall conform to the natural contour of the slope, and foundations shall be designed to conform generally to the existing topography of the site;
  5. Where allowed by the underlying zoning, structures shall be clustered to reduce impacts; and
  6. Structures and improvements shall be located to preserve the most sensitive portion of the site and its natural landforms and vegetation.
- F. Seismic Hazard Areas: The building of structures within a seismic hazard area shall conform to the requirements established in the International Building Code.

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## **PART NINE: AQUIFER RECHARGE AREAS**

### **17.82.490 Aquifer Recharge Area Designation.**

Aquifer recharge areas shall be designated based on meeting any one of the following criteria:

- A. Wellhead Protection Areas designated per WAC 246-290;
- B. Sole Source Aquifers designated by the U.S. EPA per the Federal Safe Drinking Water Act;
- C. Areas designated for special protection as part of a groundwater management program per RCW 90.44, 90.48, or 90.58 or WAC 173-100 or 173-200; or
- D. Areas overlying unprotected aquifers used as a source of potable water.

### **17.82.495 Exemption from Review Requirements.**

The following development activity and associated uses and activities shall be exempt from the review procedures and regulatory requirements established in section:

- A. Single Family, duplex or attached single family construction.
- B. Any activity exempt from SEPA review.

### **17.82.500 Aquifer Recharge Area Detailed Study Requirements.**

- A. All proposals within a designated aquifer recharge area with “high recharge potential” shall require preparation of an Aquifer Recharge Area Detailed Study.
- B. All proposals within a designated aquifer recharge area with “medium recharge potential” shall require preparation of an Aquifer Recharge Area Detailed Study when it is determined to be a major development permit or there is reasonable evidence that indicates the activity could pose an adverse impact on the underlying aquifer system.
- C. An Aquifer Recharge Area Detailed Studies shall be prepared by a qualified consultant with experience in preparing hydrogeologic site assessments. Evidence of these qualifications shall be included with the Detailed Study.
- D. The Detailed Study shall identify the existing hydrogeologic conditions of the project site and the proposed activity’s potential to result in contamination of groundwater resources.
- E. The Detailed Study shall also identify proposed mitigation measures necessary to reduce potential impacts to groundwater resources.

### **17.82.510 Aquifer Recharge Area Performance Requirements.**

- A. Activities requiring preparation of an aquifer recharge area detailed study shall only be permitted if the detailed study indicates that the activity does not pose a threat to the underlying aquifer system and will not adversely affect groundwater resources used as a source of potable water. The administrator shall establish mitigating conditions necessary to insure protection of groundwater resources.

- B. Storage of hazardous materials within the city's wellhead protection area or within adjacent areas potentially affecting this area is prohibited.
- C. Stormwater discharge facilities, whether utilizing surface outfall or subsurface infiltration, shall be designed, constructed and maintained to ensure that such facilities do not adversely impact the city's source of potable water.

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## **PART TEN: FREQUENTLY FLOODED AREAS**

### **17.82.520 Frequently Flooded Areas Designation.**

Frequently flooded areas shall include those areas identified as Areas of Special Flood Hazard by the Federal Emergency Management Agency on the Flood Insurance Rate Maps for the city of Blaine.

### **17.82.530 Frequently Flooded Areas Performance Requirements.**

- A. Development and alterations within frequently flooded areas shall comply with the Flood Hazard Regulations of the city of Blaine, Chapter 17.86 of the Blaine Municipal Code.
- B. Subdivisions of land that include frequently flooded areas shall include the following notification on all recorded documents:
  - “The structures on this property are located in an area that may be subject to inundation by floodwaters. For further information regarding this potential hazard, please contact the Federal Emergency Management Agency, the Whatcom County Emergency Services office, or the city of Blaine.”

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## **PART ELEVEN: DEFINITIONS**

### **17.82.540 Definitions.**

“Abut” means to touch or border upon. A piece of land bordering on a street or an adjoining property is said to abut such street or property.

"Administrator" means the community development director or his or her designee.

“Agriculture” or “Agricultural activities” means those activities directly pertaining to the production of crops or livestock including but not limited to cultivation, harvest, grazing, animal waste storage and disposal, fertilization, the operation and maintenance of farm and stock ponds, drainage ditches, irrigation systems, and canals, and normal maintenance, operation and repair of existing serviceable structures, facilities, or improved areas.

"Anadromous fish" means fish species that ascend rivers from the sea to spawn.

"Aquifer" means any geologic formation capable of yielding a significant amount of ground water to a well, spring or other withdrawal works in sufficient quantity for beneficial use.

"Aquifer recharge areas" means areas where the prevailing geologic conditions allow infiltration rates which contribute significantly to the replacement of groundwater and which create a high potential for contamination of groundwater resources that serve as a source of potable water supplies.

"Artificial watercourse" means ditches and other water conveyance systems, not constructed from natural watercourses, which are artificially constructed and actively maintained for irrigation and drainage.

Artificial watercourses include lateral field ditches used to drain farmland where the ditch did not replace a natural watercourse.

“Best available science” means information gathered, analyzed and presented based on professional experience, expertise and judgement, and established scientific principles and practices. Such principles and practices include peer review, use of scientific methodology, logical analysis and reasonable inference, statistical analysis, rigorous referencing within the scientific literature, and conclusions drawn from within an accepted scientific framework and placed in an appropriate scientific context.

“Best management practices (BMP)” means physical or structural tools and/or management practices which, when used singularly or in combination, prevent or reduce adverse impacts to critical areas or their buffers.

"Biologist" means a person having specific relevant expertise who has a minimum of a Bachelor of Science degree in biological sciences or a related field from an accredited college or university OR equivalent relevant training in fish and wildlife biology and substantial demonstrated experience as a practicing biologist.

"Buffer" or “Buffer area” means a naturally vegetated, undisturbed or revegetated zone immediately adjacent to a critical area that helps protect the critical area from adverse impacts to its functions and values OR that helps provide the margin of safety necessary to minimize risk to the public.

"Compensatory mitigation" means replacing project-induced losses or adverse impacts to critical areas and includes, but is not limited to, restoration, creation, or enhancement.

“Creation” means actions intentionally performed to establish a critical area, or a portion of a critical area, where one did not formerly exist.

"Critical area designation" means legal identification and specification of critical areas for regulatory purposes.

“Critical area detailed study” means a thorough investigation of a proposed activity and the critical area(s) it may impact as required by this chapter.

“Critical area indicators” means site-specific features such as vegetation, soils, hydrology, topography or other environmental features established through a site visit or other means that indicate that critical areas are or may be present at a particular location. For critical areas such as aquifer recharge areas, where indicators cannot be identified through a site visit, indicators may be identified through use of critical area maps or other resources.

“Critical area review” means the administrative and investigative process for decision making by the city on authorizations required by this chapter. The process begins with the filing of an application for an activity within the jurisdiction of this chapter and concludes with the Final Critical Areas Determination.

“Critical areas” means the following areas as required by RCW 36.70A and WAC 365-190-080, and as defined and regulated in this chapter: wetlands, geologically hazardous areas, frequently flooded areas, fish & wildlife habitat conservation areas, and aquifer recharge areas.

"Delineation" means the precise determination of wetland boundaries in the field according to the application of specific methodology as described in the *Washington State Wetlands Identification and Delineation Manual*, Washington State Department of Ecology publication #96-94, and the *U. S. Army Corps 1987 Wetland Delineation Manual and Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region*.

“Drainage” means the collection, conveyance, containment, and/or discharge of surface and stormwater runoff.

“Drainage ditch” means an artificial watercourse constructed to drain surface or ground water.

"Endangered species" means a species, native to the state of Washington, which is designated by the responsible State or Federal fish or wildlife agency as endangered.

"Enhancement" means an action which improves a critical area's functions or values.

"Final critical areas determination" means the determination by the administrator that a regulated activity, as proposed or conditioned, is or is not adequate to mitigate potential impacts to affected critical areas and comply with applicable performance requirements. The determination will be either favorable or unfavorable, indicating that the proposed activity is or is not authorized.

"Fish and wildlife habitat conservation areas" (HCA) means:

- a. Areas with which endangered, threatened, and sensitive species have a primary association;
- b. Habitats and species of local importance that have been designated by the city at the time of application;
- c. Waters of the State as defined by WAC 222-16;
- d. Areas with which anadromous fish species have a primary association; and
- e. Streams and rivers planted with game fish by a governmental or tribal entity.

"Frequently flooded areas" means areas of special flood hazard as designated and regulated pursuant to Chapter 17.86 of the Blaine Municipal Code.

"Functions" means those natural processes performed by a critical area and its components.

"Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geologic events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

"Geologist" means a person who has received a degree in geology from an accredited college or university, OR a person who has equivalent education and training and substantial demonstrated experience as a practicing geologist.

"Geotechnical engineer" means a person who is licensed as a civil engineer with the State of Washington and who has recent, related experience as a professional geotechnical engineer.

"Groundwater" means all waters that exist beneath the land surface or beneath the bed of any body of surface water, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves.

"Habitats of Local Importance" means a seasonal range or habitat element with which a designated species of local importance has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term.

"Hazard tree" means a standing tree, either live or dead, having defects, singly or combined, in roots, butt, bole, or limb, which predispose it to mechanical failure in whole, or in part, and which is so located that such failure has a probability of injury and damage to persons and/or property.

"Initial critical areas determination" means the determination by the administrator that a regulated activity as proposed potentially includes or does not include a critical area, OR is or is not adjacent to a critical area, OR would or would not have possible adverse impacts on a critical area.

"Mitigation" means avoiding, minimizing, reducing, rectifying, eliminating or compensating for project-induced, adverse impacts to critical areas.

"Mitigation plan" means a detailed plan indicating actions necessary to mitigate adverse impacts to critical areas.

"Modified natural watercourse" means that segment of a natural watercourse that has been modified and is maintained by diking and drainage districts, and where such modification was not the result of an illegal action.

"National Wetland Inventory" means an inventory that was developed by the U.S. Fish and Wildlife Service, which used aerial photography to map wetlands across the United States.

"Native vegetation" means plant species which are indigenous to the area.

"Natural watercourse" means any stream in existence prior to settlement that originated from a natural source. An example of a natural watercourse is a stream that originates in a wetland or upland area, flows through agricultural, rural and/or urban land, and ultimately empties into a saltwater bay or another watercourse.

"Off-site" means action away from the site at which a critical area has been or may likely be adversely impacted by a regulated activity.

"On-site" means action on or immediately adjacent to the site at which a critical area has been or will likely be adversely impacted by a regulated activity.

"Ongoing agriculture" means the continuation of any existing agricultural activity as defined in this section including crop rotations.

"Ordinary high water mark (OHWM)" means the mark on the shores of all water which will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation; provided that, in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean higher high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water. (WAC 173-22--030.)

"Performance requirements" means specific, measurable criteria that a proposed development activity must conform to and that may be used to determine the degree to which said activity complies with the provisions of this chapter.

"Potable water" means water which meets the quality standards for drinking purposes as established by the State of Washington.

"Qualified consultant" means a person having relevant expertise through education, training and/or experience who is capable of providing the specified professional services at the level required by this chapter. Qualified consultants include fish and/or wildlife biologists, geologists or geotechnical engineers, and wetland specialists.

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

"Restoration" means the return of a critical area or buffer to a state in which its functions and values approach its unaltered state as closely as possible.

"Riparian area" means the portion of habitat extending from the ordinary high-water mark (OHWM) of a stream (i.e., a flowing body of water) to that part of the upland influenced by elevated water tables or flooding. It includes the area that directly influences the aquatic ecosystem (e.g. providing coarse woody debris to the stream, temperature attenuation, or filtering sediments); provided, riparian areas associated with an existing system of dikes and levees shall not extend beyond the toe of the slope on the landward side of the dike or levee structure.

"Sensitive species" means a species native to the State of Washington, which is vulnerable or declining and is likely to become endangered or threatened in a significant portion of its range within the State without cooperative management or the removal of threats as designated by WAC 232-12-011.

"Shoreline Master Program" means the Shoreline Master Program of the city of Blaine.

“Site assessment” means a site-specific analysis that identifies the presence of critical areas, classifies and designates each critical area, documents site conditions, analyzes project-generated impacts, and identifies appropriate mitigative measures. Site assessments include wetland reports, habitat assessments, habitat management plans, geotechnical reports, and hydrogeologic reports.

“Slope” means an inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance from the toe to the top of the surface. The slope may also be expressed as a percentage based on the quotient of the vertical distance divided by the horizontal distance.

"Species of Local Importance" means those species that may not be endangered, threatened or sensitive from a statewide perspective, but are of local concern due to their population status, sensitivity to habitat manipulation, or other educational, cultural or historic attributes. A species shall only be considered as being of local importance upon official designation as such by the city.

"Threatened species" means a species, native to the State of Washington, which is likely to become endangered in the foreseeable future throughout a significant portion of its range within the state without cooperative management or the removal of threats as designated by WAC 232-12-011.

“Values” means the desirable attributes associated with a critical area and its components which contribute to public health, safety and welfare.

“Wetland” or “wetlands” means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. For the purposes of this chapter, those portions of a lake or naturally occurring pond that meet the definitional criteria for “wetland” shall be regulated under the wetland section of this chapter. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands and ponds intentionally created from non-wetland areas created to mitigate conversion of wetlands.

"Wetland delineation" means mapping wetlands and establishing a wetland edge or boundary in accordance with the manual adopted under RCW36.70.A.175 pursuant to RCW 90.58.380 as updated.

"Wetland reconnaissance" means a site assessment of wetlands in accordance with the methodologies stipulated in the manual adopted under RCW36.70.A.175 pursuant to RCW 90.58.380 as updated. DOE

“Wetland specialist” means a person who has earned a Bachelor's Degree in science with specific or related course work in wetland ecology, hydrology or soils science from an accredited college or university and who has two years of professional experience in wetland delineation, functional assessment and mitigation OR equivalent training and experience.

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## **Add to Title 17, Division 4. Platting and Major Development Approval Procedures:**

*(Integrate number)* Limitation on Subdivision.

The subdivision and short subdivision of land in wetlands and associated buffers is subject to the following:

1. Land that is located wholly within a wetland or its buffer may not be subdivided;
2. Land that is located partially within a wetland or its buffer may be subdivided, provided that an accessible and contiguous portion of each new lot is:

- i. Located outside of the wetland and its buffer; and
  - ii. Meets the minimum lot size requirements of BMC Title 12;
3. Access roads and utilities serving the proposed subdivision may be permitted within the wetland and associated buffers only if the city determines that no other feasible alternative exists and when consistent with this chapter;
4. Subdivision and short subdivision development that contain a wetland or wetland buffer shall not result in degradation of the wetland or its buffer nor significantly change its hydrology.

**END OF PROPOSED AMENDMENTS**