

Title 21

ENVIRONMENTAL PROTECTION

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Chapter 21.04

ENVIRONMENTAL PROTECTION

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21.04.010 Purpose.

The purpose of the ordinance codified in this chapter is to implement the Revised Statewide SEPA Rules (WAC 197-11) and certain elements of Chapter 173-800 WAC, as established by the Council on Environmental Policy and the Washington Department of Ecology, as those guidelines apply to the actions of the City of North Bonneville. (Ord. 709 § 1, 1994)

21.04.020 Authority.

The City of North Bonneville adopts the ordinance codified in this chapter pursuant to the State Environmental Policy Act, RCW 43.21C.120 and the SEPA Rules, WAC 197-11-904. (Ord. 709 § 2, 1994)

21.04.030 Adoption by reference.

The City of North Bonneville adopts Chapter 197-11 WAC of the Washington Administrative Code (SEPA Rules 197-11-010 through 197-11-990 inclusive. (Ord. 709 § 3, 1994)

21.04.040 Additional definitions.

In addition to those definitions contained within WAC 197-11-700 through 799, when used in this chapter, the following terms shall have the following meanings, unless the context indicates otherwise:

- (1) "Department" means any division, subdivision or organizational unit of the City established by ordinance, rule or order.
- (2) "SEPA Rules" means Chapter 97-11 WAC adopted by the Department of Ecology.
- (3) "Ordinance" means the ordinance, resolution, or other procedure used by the City to adopt regulatory requirements.
- (4) "Early notice" means the City's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated DNS procedures). (Ord. 709 § 4, 1994)

21.04.050 Non-exempt proposals--DNS or EIS.

- (1) For nonexempt proposals, the determination of non-significance (DNS) of Draft EIS for the proposal shall accompany the City's staff recommendation to any appropriate advisory body, such as the Planning Commission.
- (2) If the City's only action on a proposal is a building permit or other license, the applicant may request in writing that the City conduct environmental review prior to submission of the detailed plans and specifications. (Ord. 709 § 5, 1994)

21.04.060 Use of exemptions.

- (1) When the City receives an application for a license or, in cases where the City is initiating a proposal, the City shall determine whether the license and/or the proposal is exempt. If a proposal is exempt, none of the procedural requirements of this chapter apply to the proposal and the City shall not require completion of an environmental checklist. The exemptions are those contained in the SEPA Rules, Section WAC 197-11-305 and in Part Nine, WAC 197-11-800 through 197-11-880.
- (2) If a proposal includes both exempt and non-exempt actions, the City may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:
 - (a) The City shall not give authorization for:
 - (i) Any nonexempt action;
 - (ii) Any action that would have an adverse environmental impact; or
 - (iii) Any action that would limit the choice of alternatives. (Ord. 709 § 6, 1994)

21.04.070 Lead agency.

- (1) The Planning Commission and/or City Staff shall be the designated lead agency for the City and shall be responsible for carrying out the duties and functions of the City when acting under and pursuant to the State Environmental Policy Act and the SEPA Rules.
- (2) In the event that an EIS is to be prepared by a private applicant or a consultant retained by the private applicant, the lead agency shall ensure that the EIS is prepared in a responsible manner and with appropriate methodology. The lead agency shall direct the areas of research and examination to be undertaken, as well as the organization of the resulting document.
- (3) In the event that the City is preparing an EIS, the Board may require a private applicant to provide data and information which is not in the possession of the City relevant to any or all areas to be covered by the EIS. (Ord. 709 § 7, 1994)

21.04.080 Environmental checklist.

- (1) A completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this chapter; except, a check list is not needed if the City and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency.
- (2) For private proposals, the City will require the applicant to complete the environmental checklist, providing assistance as necessary. For City proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.
- (3) The City may require that it, and not the private applicant, will complete all or part of the environmental checklist, for a private proposal, if either of the following occurs:

- (a) The City has technical information on the question or questions that is unavailable to the private applicant; or
- (b) The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration. (Ord. 709 § 8, 1994)

21.04.090 Mitigated determination of nonsignificance.

(1) As provided in this section and in WAC 197-11-350, the lead agency may issue a determination of non-significance (DNS) based on conditions attached to the proposal by the lead agency or on changes to, or clarifications of, the proposal made by the applicant.

(2) An applicant may request in writing early notice of whether a determination of significance (DS) is likely under WAC 197-11-350. The request must:

- (a) Follow submission of a permit application and environmental checklist for a non-exempt proposal for which the department is lead agency; and
- (b) Precede the City's actual threshold determination for the proposal.

(3) The lead agency should respond to the request for early notice within fifteen (15) days. The response shall:

- (a) Be written;
- (b) State whether the City currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that are leading the City to consider a DS; and
- (c) State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

(4) As much as possible, the City should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

(5) When an applicant submits a changed or clarified proposal, along with a revised environmental checklist, the City shall base its threshold determination on the changed or clarified proposal and should make the determination within fifteen (15) days of receiving the changed or clarified proposal:

- (a) If the City indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the City shall issue and circulate a determination of non-significance under WAC 197-11-340(2).
- (b) If the City indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the City shall make the threshold determination, issuing a DNS or DS as appropriate.
- (c) The applicant's proposed mitigation measures (clarifications, changes, or conditions) must be in writing and must be specific. For example, proposal to "control noise" or "prevent storm water runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200 feet storm water retention pond at Y location" are adequate.
- (d) Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.

(6) A mitigated DNS is issued under WAC 197-11-340(2), requiring a fifteen (15) day comment period and public notice.

(7) Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the City.

(8) If the City's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the City should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (withdrawal of DNS).

(9) The City's written response under subsection (2) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the City to consider the clarifications or changes in its threshold determination. (Ord. 709 § 9, 1994)

21.04.100 Preparation of EIS--Additional considerations.

(1) Preparation of draft and final EIS's and supplemental EIS's is the responsibility of the City under the direction of the lead agency. Before the City issues an EIS, the lead agency shall be satisfied that it complies with this chapter and Chapter 197-11 WAC.

(2) The draft and final EIS or SEIS shall be prepared by City staff, the applicant, or by a consultant selected by the City or the applicant. If the lead agency requires an EIS for a proposal and determines that someone other than the City will prepare the EIS, the lead agency shall notify the applicant immediately after completion of the threshold determination. The lead agency shall also notify the applicant of the City's procedure for EIS preparation, including approval of the draft and final EIS prior to distribution.

(3) The City may require an applicant to provide information the City does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or that is being requested from another agency. (This does not apply to information the City may request under another chapter or statute). (Ord. 709 § 10, 1994)

21.04.110 Additional elements--EIS.

The following additional elements may be considered a part of the environment for the purpose of EIS content, but shall not add to the criteria for threshold determinations or perform any other function or purpose under this chapter.

- (1) Economy, including but not limited to employment and tax base;
- (2) Cultural factors;
- (3) Social policy analysis. (Ord. 709 § 11, 1994)

21.04.120 Public notice.

(1) When the SEPA Rules require notice to be given, such as when the City issues a determination of non-significance (DNS) or determination of significance (DS), the lead agency shall use reasonable methods to inform the public and other agencies that environmental documents are being prepared or are available and that public hearings, if any, will be held. Examples of reasonable methods to inform the public include:

- (a) Posting the property, for site-specific proposals;
- (b) Publishing notice in a newspaper of general circulation in the county or city where the proposal is located;
- (c) Posting notice at the city hall, city kiosk, post office and customary grocery store;
- (d) Notifying individuals or groups with known interest in the proposal being considered;
- (e) Publishing notice in the city newsletter.

At a minimum, notice shall be given by methods 1(a) and 1(b).

(2) The City may require applicants to complete the public notice requirements for the applicant's proposal at their expense. (Ord. 709 § 12, 1994)

21.04.130 Substantive authority.

The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the City of North Bonneville. (Ord. 709 § 13, 1994)

21.04.140 Conditions to permit or approval.

The City may attach conditions to a permit or approval for a proposal so long as:

- (a) Such conditions are necessary to mitigate specific probable significant adverse environmental impacts identified in environmental documents prepared pursuant to this chapter;
- (b) Such conditions are in writing;
- (c) The mitigation measures included in such conditions are reasonable and capable of being accomplished;
- (d) The City has considered whether local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts;
- (e) Such conditions are based on one or more policies in Section 21.04.160 below and cited in the license or other decision document. (Ord. 709 § 14, 1994)

21.04.150 Denial of permit or approval.

The City may deny a permit or approval for a proposal on basis of SEPA so long as:

- (a) A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a final EIS or final supplemental EIS prepared pursuant to this chapter;
- (b) A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact;

(c) The denial is based on one or more policies identified in Section 21.04.160 and identified in writing in the decision document. (Ord. 709 § 15, 1994)

21.04.160 Policies for exercise of authority.

The City designates and adopts by reference the following policies as the basis for the City's exercise of authority pursuant to this section:

- (a) The City shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs and resources to the end that the City and its citizens may:
 - (i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
 - (ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
 - (iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
 - (iv) Preserve important historic, cultural, and natural aspects of our national heritage;
 - (v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
 - (vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
 - (vii) Enhance the quality of renewal resources and approach the maximum attainable recycling of depletable resources.
- (b) The City recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.
- (c) The City adopts by reference the policies in the following City ordinances and plans:
 - (i) North Bonneville Comprehensive Plan
 - (ii) Interim Zoning Ordinance.

(Ord. 709 § 16, 1994)

21.04.170 Appeal.

Except for permits and variances issued pursuant to Chapter 90.58 Revised Code of Washington, when any proposal or action not requiring a decision of the City Council is conditioned or denied on the basis of SEPA by non-elected officials, the decision shall be appealable to the City Council. Such appeal may be perfected by the proponent or any aggrieved party by giving notice to the responsible official within ten (10) days of the decision being appealed. Review by the City Council shall be on an original basis. (Ord. 709 § 17, 1994)

21.04.180 Environmentally sensitive areas.

(1) The City shall designate environmentally sensitive areas under the standards of WAC 197-11-908 and shall file maps designating such areas, together with the exemptions from the list in WAC 197-11-908 that are applicable in such areas, with the Mayor and Department of Ecology, headquarters office, Olympia, Washington. The environmentally sensitive area designations shall have full force and effect of law as of the date of filing.

(2) The City shall treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposals under this chapter, making a threshold determination for all such proposals. The City shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area.

(3) Certain exemptions do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped. (Ord. 709 § 18, 1994)

21.04.190 SEPA public information.

The City shall retain all documents required by the SEPA Rules (Chapter 197-11 WAC) and make them available in accordance with Chapter 42.17 RCW. (Ord. 709 § 19, 1994)

21.04.200 Fees.

A fee as set forth in Chapter 18.02 of this code is required for conducting the environmental review of projects pursuant to the State Environmental Protection Act (SEPA). (Ord. 709 § 1, 2003; Ord. 709 § 20, 1994)

21.04.210 Notice of action--Statute of limitations.

(1) The City applicant for, or proponent of any action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

(2) The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the city clerk or applicant or proponent pursuant to RCW 43.21C.080. (Ord. 709 § 21, 1994)

Chapter 21.10

**RESOURCE LANDS AND CRITICAL
AREAS PROTECTION**

Sections:

- 21.10.010 Statutory authorization, purpose and objectives.**
- 21.10.020 Definitions.**
- 21.10.030 Applicability; establishment of resource lands and critical area.**
- 21.10.040 Data maps; interpretation of data maps; effect of data maps.**
- 21.10.050 General provisions; allowed uses; exemptions; reasonable use exception.**
- 21.10.060 Critical area report standards and requirements.**
- 21.10.070 Resource lands and critical areas; standards for site-specific analysis; additional critical area report requirements; development standards.**
- 21.10.080 Warning and disclaimer of liability.**
- 21.10.090 Appeals.**
- 21.10.100 Violations and penalties.**
- 21.10.110 Severability.**
- 21.10.120 Effective date.**

21.10.010 Statutory authorization, purpose and objectives.

A. Statutory authorization.

The Legislature of the State of Washington has, in RCW 36.70A060, mandated local governments that plan under RCW 36.70A.040 to adopt development regulations to ensure the conservation of agricultural, forest and mineral resource lands and to adopt development regulations precluding land uses or development that are incompatible with critical areas designated under RCW 36.70A.170.

B. Statement of purpose and objectives.

It is the purpose of this chapter to promote the public health, safety and general welfare in specific areas by provisions designed to:

1. Protect human life and health;
2. further the public's interest in the conservation and wise use of our lands;
3. assure the long term conservation of resource lands;
4. preclude land uses and developments which are incompatible with identified critical areas;
5. protect unique, fragile and valuable elements of the environment, including fish and wildlife and their habitats, from incompatible development and prevent adverse environmental impacts to habitat areas;
6. protect aquifer recharge areas, water sources and water quality for the benefit of human uses, recreation and wildlife;
7. classify and designate critical areas and resource lands;
8. develop appropriate regulatory and non-regulatory actions in response; and otherwise comply with requirements imposed by the State of Washington's Growth Management Act (GMA); and
9. encourage economic development consistent with adopted regulations; protect private property rights of landowners from arbitrary and discriminatory actions; and encourage the retention of open space and development of recreational opportunities.

21.10.020 Definitions.

1. "Agricultural lands"--lands that are not already characterized by urban grow and are of long term significance for the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees are not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, or livestock.
2. "Anadromous"—means fish that migrate up rivers and streams from the ocean to breed in fresh water.
3. "Aquifer"—means a groundwater-bearing geologic formation or formations that contain enough saturated permeable material to yield significant quantities of water to wells or springs (Chapter 173-100 WAC).
4. "Base Flood"—means the flood having a 1% chance of being equaled or exceeded in any given year. Also referred to as the "100-year flood."
5. "Base Flood Elevation"—means the elevation that the base flood is expected to reach. Also referred to as the "100-year flood elevation."
6. "Best management practices"--means conservation practices or systems of practices and management measures that:
 - a. control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics, and sediment; and
 - b. Minimize, or where possible, avoid adverse impacts to space water and groundwater flow, to circulation patterns, and to the chemical, physical, and biological characteristics of wetlands and water bodies.
7. "Bog"—is a type of wetland where organic (peat or muck) soil layers comprise at least 16 of the first 32 inches of the soil profile; or contain greater than 70% mosses. Many bogs have soils classified as peat or muck, are nutrient poor, have a low pH (acidic), and are fed largely by rainfall rather than streams or groundwater.
8. "Buffer"—is an area that is contiguous to and protects a critical area and which is required for the continued maintenance, functioning, and/or structural stability of a critical area.
9. "City"—means the City of North Bonneville, Washington.
10. "Classification"—means defining categories to which natural resource lands and critical areas are assigned.
11. "Critical areas"—means one, or a combination, of wetlands, critical aquifer recharge areas, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas.
12. "Critical aquifer recharge area"—those areas that have been identified as having a critical recharging effect on aquifer use for potable water in community water systems.
13. "Data maps"—means that series of maps maintained by the city for the purpose of graphically depicting the boundaries of resource lands, and critical areas.
14. "Designation"—means formal adoption of a policy statement, and may include further legislative action. Designation establishes, for planning purposes: the classification scheme; the general distribution, location and extent of the uses of land consistent with the underlying zone and the general distribution, location and extent of critical areas.
15. "Development application"—means an application tendered under the provisions of the city land use, zoning or site development ordinances, building permit applications, surface mining permits, hydraulic approvals, shoreline permits, subdivisions or short plats, road construction or excavation and grading permits.
16. "Economically viable use" – means any use of property that enables the property owner to derive some economic benefit from ownership. This does not mean the highest and best use, but it means some economic use, however minimal, to avoid unconstitutional taking.
17. "Endangered and Threatened Species, Federally Designated"—are fish, wildlife, and plant species identified by the U.S. Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS) as threatened or endangered under the Endangered Species Act, 16 USC Section 1531, *et seq.*
18. "Endangered, Threatened and Sensitive Species, State Designated"—are fish, wildlife, and plant species native to the State of Washington and identified by the Washington Department of Fish and Wildlife (WDFW) as sensitive, threatened, or endangered species.
19. "Enhancement"—means actions performed to improve the condition of an existing degraded critical area or buffer so that the functions provided are of a higher quality. See also Wetland Enhancement.
20. "Erosion control"—is the design and installation of measures to control erosion and sedimentation during and after construction and to permanently stabilize soil exposed during and after construction using a combination of structural control measures, cover measure, and construction practices.

21. "Fish and wildlife habitat conservation areas"—includes habitat for endangered, threatened and sensitive species; priority habitats and species areas; riparian areas; habitats of local importance, and water bodies.

22. "Fish habitat"—is habitat which is used by any fish at any life stage at any time of the year, including potential habitat likely to be used by fish which could be recovered by restoration or management and includes off-channel habitat. (WAC 222-16-030)

23. "Flood" or "flooding"—means a general and temporary condition of partial or complete inundation of normally dry land area from the overflow of inland or tidal waters and/or the unusual and rapid accumulation or runoff of surface waters from any source.

24. "Flood Insurance Rate Map (FIRM)"—is the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

25. "Forest land"—as defined in the Washington State Forest Practice Act means all land which is capable of supporting a merchantable stand of timber and is not actively used for a use which is incompatible with timber growing.

26. "Frequently flooded areas"— means floodplains and other areas subject to a one (1.0) percent (i.e., a "100-year flood") or greater chance of flooding in any given year.

27. "Functions" or "functions and values of fish and wildlife habitat conservation areas"—are the beneficial roles served by Fish and Wildlife Habitat Conservation Areas. Fish and Wildlife Habitat Conservation Areas provide habitat for breeding, rearing, foraging, protection and escape, migration, and over-wintering. Fish and Wildlife Habitat Conservation Areas affect the quality of habitat by providing complexity of physical structure, supporting biological diversity, regulating stormwater runoff and infiltration, removing pollutants from water, and maintaining appropriate temperatures.

28. "Functions" or "functions and values of wetlands"—are the beneficial roles served by wetlands. Wetlands improve water quality, maintain watershed hydrology (for example, by providing base stream flow during dry periods and controlling flooding), and provide habitat.

29. "Geological hazard areas"—means areas that because of the susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to siting commercial, residential, or industrial development consistent with public health or safety concerns. Geologic hazard areas include erosion, landslide, mine, seismic, and volcanic hazard areas.

a. Erosion hazard—areas identified as having severe or very severe erosion hazard by the USDA Natural Resource Conservation Service (NRCS) in the *Soil Survey of Skamania County Area, Washington*; October, 1990.

b. Landslide hazard—areas potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors and shall include ravine sidewall areas and slopes of twenty (20) percent or greater.

c. Mine hazard areas—areas directly underlain by, adjacent to, or affected by mine workings such as adits, tunnels, drifts, or air shafts.

d. Seismic hazard areas—areas subject to severe risk or damage as a result of earthquake induced ground shaking, slope failure, settlement, or soil liquefaction.

e. Volcanic hazard areas—areas subject to pyroclastic flows, lava flows, and inundation by debris flows, mudflows, or related flooding resulting from volcanic activity.

30. "Grading"—means any excavation, filling or combination thereof.

31. "Habitats of Local Importance"—means Fish and Wildlife Habitat Conservation Areas which are not designated as Priority Habitats and Species by the WDFW but are designated as locally significant by the city.

32. "Hydrogeomorphic (HGM) Classification"—is a system used to classify wetlands based on the position of the wetland in the landscape (geomorphic setting), the water source for the wetland, and the flow and fluctuation of the water once in the wetland.

33. "Impact"—means the effect of an activity on designated critical areas, their buffers or sensitive resources.

34. "Impervious surface"—means a hard surface area which either prevents or retards the entry of water into the soil. Examples include, but are not limited to, roofs, walkways, patios, driveways, carports, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, haul roads and soil surface areas compacted by construction operations, and oiled or macadam surfaces.

35. "Invasive Species"—are non-native plants which are destructive, competitive, and difficult to control as defined by the Skamania County Noxious Weed Control Board.

36. "Landslide"—means the down-slope movement of a mass of soil, or rock, including, but not limited to, rock falls, slumps, mud flows, debris flows, torrents, and earth flows.

37. "Lot of record"—means a lot shown as a part of a recorded subdivision, or any parcel of land described by metes and bounds in a recorded deed, record of survey, or other appropriate document recorded in the office of the County Auditor.

38. "Mineral lands"—means lands that are not already characterized by urban growth and are of long-term commercial significance for the extraction of aggregate and mine resources, including sand, gravel, and valuable metallic substances.

39. "Mitigation"—means compensating for critical area impacts such that no overall net loss in acreage and/or functions occurs.

40. "Native"—when referring to plants or plant communities, means those species or communities which are indigenous to the watershed, including extirpated species.

41. "100-Year Flood"—is a flood having a 1% chance of being equaled or exceeded in any given year. Also referred to as the "base flood."

42. "100-Year Flood Elevation"—means the elevation that the 100-year flood is expected to reach. Also referred to as the "base flood elevation."

43. "Ordinary high water mark"—is that mark which is found by examining the bed and banks of a water body and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years that the soils and vegetation have a character distinct from that of the abutting upland area. Where the ordinary high water mark cannot be found, it shall be the line of mean high water in areas adjoining fresh water. [WAC 173-22-030(11)]

44. "Planning Advisor"—means the officer charged with administration of the City Comprehensive Plan and zoning ordinances.

45. "Priority Habitats and Species (PHS)"—are important fish and wildlife species and habitats as determined by the WDFW. Priority Habitats include habitats of state and federal listed species as well as other important species.

46. "Qualified professional"—"means an accredited or licensed professional with a combination of education and experience in the discipline(s) appropriate for the subject matter that is being commented on; someone who would qualify as an expert in his/her field. The following further define qualifications required for each critical area.

a. Groundwater. A qualified professional means a hydrogeologist, geologist, engineer, or other scientist who meets all the following criteria has received a baccalaureate or post-graduate degree in the natural sciences or engineering; and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, profession certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater vulnerability.

b. Urban Forestry. Qualified professionals in urban forestry must have academic and field experience that makes them competent in urban forestry. This may include arborists certified by the International Society of Arboriculture or foresters certified by the Society of American Foresters. Qualified professionals in urban forestry must possess the ability to evaluate the health and hazard potential of existing trees, and the ability to prescribe appropriate measures necessary for the preservation of trees during land development.

c. Critical Areas. Qualified professionals in critical areas must have obtained a baccalaureate degree or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology or a related field, and two years of related work experience. In addition:

(1) A qualified professional for frequently flooded areas or a geologic hazard must be a registered professional engineer, geologist, engineering geologist or hydrogeologist licensed in the State of Washington with experience in the analyses required for the relevant hazard(s). For frequently flooded areas, a qualified professional may also be an architect where provided by state or federal law.

(2) A qualified professional for wetlands must have a minimum of five years experience in wetland science including experience preparing wetland reports for review by regulatory agencies.

47. "Resource lands"—means agricultural, forest, and mineral lands which have long-term commercial significance.

48. "Restoration"—means measures taken to restore an altered or damaged natural feature including:
- a. Rehabilitation defined as active steps taken to restore damaged critical areas or their buffers to the functioning condition that existed prior to an unauthorized alteration; and
 - b. Re-establishment defined as actions performed to reestablish structural and functional characteristics of the critical area that have been lost by alteration, past management activities, or catastrophic events. See also wetland creation, re-establishment, and rehabilitation.

49. "Riparian area"—means that area immediately adjacent to streams, ponds, and lakes that directly contributes to the water quality and habitat components of the water body, including but not limited to upland areas immediately adjacent to the water body that directly contribute shade, nutrients, cover or debris.

50. "State Environmental Policy Act (SEPA), as amended"—means the State Environmental Policy Act (Chapter 43.21C RCW), its implementing rules (Chapter 197-11 WAC), and NBMC Chapter 21.04.

51. "Stormwater Facility"—means a constructed component of a stormwater drainage system, designed or constructed to perform a particular function or multiple functions. Stormwater facilities include, but are not limited to, pipes, swales, ditches, culverts, street gutters, detention ponds, retention ponds, constructed wetlands, infiltration devices, catch basins, oil/water separators, and biofiltration swales.

52. "Stream"—means water contained within a channel, either perennial or intermittent, and classified according to WAC 222-16-030 or WAC 222-16-031. Streams are those areas where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is indicated by hydraulically sorted sediments or the removal of vegetative litter or loosely rooted vegetation by the action of moving water. The channel or bed need not contain water year-round. Streams also include natural watercourses modified by humans. Streams do not include drainage ditches which are not modifications of natural watercourses. This definition is not meant to include irrigation ditches, canals, stormwater runoff devices or other entirely artificial watercourses unless they are used to convey streams naturally occurring prior to construction. Those topographic features that resemble streams but have no defined channels (i.e., swales) shall be considered streams when hydrologic and hydraulic analyses done pursuant to a development proposal predict formation of a defined channel after development.

53. "Take"—as it relates to Section 9 of the Endangered Species Act (ESA) makes it illegal to take an endangered species of fish or wildlife. The definition of "take" is to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." (16 U.S.C. 1532(19)).

54. "Urban growth area (UGA)"—means an urban growth area designated in the comprehensive plan.

55. "Urban growth boundary (UGB)"—means the boundary of an urban growth area designated in the comprehensive plan.

56. "Urban growth, characterized by"—means land having urban growth on it, or land located in relationship to an area with urban growth on it as to be appropriate for urban growth, or any and all incorporated areas.

57. "Utility"—means a provider to the public or individual recipients of such services as water supply, electric power, gas, communications, and sanitary sewers.

58. "Utility line"—means pipe, conduit, cable, other similar means or facility by which services are conveyed to the public or individual recipients.

59. "Wetlands"—means an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created (but not as mitigation for impacts to wetlands) 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 shall include those artificial wetlands intentionally created from non-wetland areas to mitigate conversion of wetlands.

60. "Wetland creation"—means the manipulation of the physical, chemical or biological characteristics present to develop a wetland on an upland or deepwater site where a wetland did not previously exist. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, hydric soils, and support the growth of hydrophytic plant species. Creation results in a gain in wetland acres and functions.

61. "Wetlands Delineation Manual"—means the approved federal wetland delineation manual and applicable regional supplements.

62. “Wetland enhancement”—means the manipulation of the physical, chemical or biological characteristics of a biological wetland to increase or improve specific functions or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention or wildlife habitat. Activities typically consist of planting vegetation, controlling non-native or invasive species, modifying site elevations to result in open water ponds or some combination of these. Enhancement results in a change in certain wetland functions and can lead to a decline in other wetland functions. It does not result in a gain in wetland acres.

63. “Wetland re-establishment”—means the manipulation of the physical, chemical or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Activities include but are not limited to removing fill material, plugging ditches or breaking drain tiles. Re-establishment results in a gain in wetland acres and functions.

64. “Wetland Rehabilitation”—means the manipulation of the physical, chemical or biological characteristics of a site with the goal of repairing natural or historic functions, and processes of a degraded wetland. Activities include but are not limited to breaching a dike to reconnect wetlands to a floodplain, restoring tidal influence to a wetland or breaking drain tiles and plugging drainage ditches. Rehabilitation results in a gain in wetland functions but not in wetland acres. (Ord. 1046, 2015)

21.10.030 Applicability; establishment of resource lands and critical areas

I. Applicability.

The provisions of this chapter apply only to lands designated as critical areas within the North Bonneville corporate limits and urban growth area.

A. Properties containing critical areas are subject to this chapter.

B. When the requirements of this chapter are more stringent than those of other North Bonneville codes and regulations, the requirements of this chapter shall apply.

C. Where a property contains two or more critical areas, the site shall meet the minimum standards and requirements for each identified critical area as set forth in this chapter.

D. The city shall not approve any land use, building or site improvement permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated buffer, if the proposed activity does not comply with the requirements of this chapter.

II. List of resource lands.

If and where applicable, the incorporated areas of the city shall be designated as agricultural, forest, and mineral resource lands.

III. List of critical areas.

The incorporated area of North Bonneville is hereby divided into the following--not mutually exclusive--critical areas where appropriate:

A. Wetlands

B. Critical Aquifer Recharge Areas

C. Frequently Flooded Areas

D. Geologically Hazardous Areas

E. Fish and Wildlife Habitat Conservation Areas

IV. Applicability by Activity.

A. Table 21.10.030-1 establishes the level of review required for uses or activities under this chapter.

B. Exempt. Activities or uses that are exempt require no review and do not need to meet the standards of this chapter.

C. Review Required. Activities and uses that are categorized as “review required” must comply with the standards of the chapter but no special report is needed. Determination of compliance with this chapter shall be determined through the review process required for the underlying development permit application.

D. Critical Area Report. For activities where a critical area report is required, the applicant must submit a report consistent with this chapter and with the underlying development application and will submit additional application fees consistent with the adopted fee schedule.

E. The Planning Advisor shall have the discretion to determine whether the proposed activity may adversely impact protected critical areas and/or their buffers and shall assign the appropriate level of review, exempt, review required, or critical areas report. The decision of the Planning Advisor may be appealed to the Planning Commission.

Table 21.10.030-1 Applicability by Activity					
Use/Activity	Development located in any of the following critical areas may be exempt (E), Review Required (RR), or subject to a critical area report (CAR):				
	Wetland	Fish and Wildlife Habitat	Critical Aquifer Recharge	Geological Hazardous Areas	Frequently Flooded Area
RESIDENTIAL ACTIVITIES					
One single-family dwelling on a preexisting legal lot located in a critical areas or buffers	RR	RR	RR	RR	RR
Single-family permit located outside critical areas or buffers	E	E	E	E	E
Residential development exceeding one single family dwelling on a legal lot of record within critical area or buffer	CAR	CAR	CAR	CAR	CAR
Residential development exceeding one single family dwelling outside critical areas or buffers	E	E	E	E	E
Expansion, alteration or addition to existing construction within a critical area or buffer	RR	RR	RR	RR	RR
Expansion, alteration or addition to existing construction outside of critical areas or buffers	E	E	E	E	E
Construction and modifications to existing structures that does not change the footprint of the building or does not increase the footprint within a critical area or buffer	E	E	E	E	E
COMMERCIAL AND INDUSTRIAL ACTIVITIES					
New construction on vacant land in critical areas or buffers	CAR	CAR	CAR	CAR	CAR
New construction previously approved prior to adoption of the ordinance codified in this chapter	E	E	E	E	E
New construction on vacant land outside critical areas or buffers	E	E	E	E	E
Expansion, alteration or addition to existing construction within a critical area or buffer	RR	RR	RR	RR	RR
Expansion, alteration or addition to existing construction outside of critical areas or buffers	E	E	E	E	E
Public facilities and services identified on the CFP such as road, sewer and water infrastructure, power line, gas lines, and so forth	RR	RR	RR	RR	RR
Construction and modifications to existing structures that does not change the footprint of the building or does not increase the footprint within a critical area or buffer	E	E	E	E	E
Public facilities on a site already developed where there is no proposed impact to a critical area or buffer	E	E	E	E	E
UTILITIES					
Normal and routine maintenance or repair of existing utility structures or rights-of-way that do not expand further into the critical area or buffer	E	E	E	E	E
Relocation within improved right-of-way of electric facilities, lines, equipment, or appurtenances, not including substations, with an associated voltage of fifty-five thousand (55,000) volts or less only when required by a local government agency	E	E	E	E	E

Table 21.10.030-1 Applicability by Activity					
Use/Activity	Development located in any of the following critical areas may be exempt (E), Review Required (RR), or subject to a critical area report (CAR):				
	Wetland	Fish and Wildlife Habitat	Critical Aquifer Recharge	Geological Hazardous Areas	Frequently Flooded Area
Relocation within improved right-of-way of utility lines, equipment, or appurtenances only when required by a local governmental agency which approves the new location of the facilities	E	E	E	E	E
Installation or construction in improved city road rights-of-way, and replacement, operation, or alteration of all electric facilities, lines, equipment, or appurtenances, not including substations, with an associated voltage of fifty-five thousand (55,000) volts or less	E	E	E	E	E
Installation or construction in improved city road rights-of-way and replacement, operation, repair, or alteration of all utility lines, equipment, or appurtenances	E	E	E	E	E
OTHER ACTIVITIES					
Clearing, filling, grading, and native vegetation removal activities within a critical area or buffer	CAR	CAR	CAR	CAR	CAR
Repair of existing structures, infrastructure improvements, utilities, public or private roads or drainage systems in critical areas or buffers	RR	RR	RR	RR	RR
Public facilities on a site already developed where there is no proposed impact to a critical area or buffer	RR	RR	RR	RR	RR
Public improvement projects within an existing improved right-of-way or roadway easement	E	E	E	E	E
Chemical applications subject to applicable local, state or federal handling and application requirements	E	E	E	E	E
Minor site investigative work, up to 10 cubic yards of fill or removal or removal of trees of six inches dbh or less	E	E	E	E	E
Hand removal of invasive weeds and blackberries	E	E	E	E	E
Impervious public and private pedestrian trails within a critical area or buffer	RR	RR	RR	RR	RR
Select removal of dangerous trees when approved by the Public Works Director	RR	RR	RR	RR	RR
Construction of fences in a critical area or buffer	RR	RR	RR	RR	RR
Vegetation removal and maintenance activities inside existing landscaped areas on lots that predate adoption of this chapter (other than removal of trees greater than six inches dbh)	E	E	E	E	E
New construction of a dock, expansion, alteration or addition to existing docks within a critical area or buffer	RR	RR	RR	RR	RR
Construction or modification of boundary markers or fences	E	E	E	E	E
Emergencies activities authorized by the Planning Advisor pursuant to NBMC 21.10.050(II)(A)(1).	E	E	E	E	E

21.10.040 Data maps; interpretation of data maps; effect of data maps

I. Data maps.

Resource lands and critical areas are hereby designated on a series of data maps, listed in Exhibit A or as amended, maintained at City Hall. These maps contain the best available graphic depiction of resource lands and critical areas and will be updated as reliable data become available. The maps are for information and illustrative purposes only and are not regulatory in nature. The resource lands and critical areas data maps are intended to alert the development community, appraisers, and current or prospective property owner of a potential encounter with a use of development-limiting factor based on the natural systems. The presence of a resource designation or critical area on the data maps is sufficient foundation for the city to order an analysis for the factor(s) identified prior to acceptance of a development application as being complete and ready for processing under the Comprehensive Plan and Zoning Ordinance of the city. (Note: See Exhibit A at the end of the chapter listing critical areas maps.)

II. Interpretation of data maps.

The official charged with administration of the Comprehensive Plan and Zoning Ordinance of the city is the official charged to interpret the data maps of this ordinance, subject to the same appeal procedures as apply to zoning appeals as may be set out in said Comprehensive Plan and Zoning Ordinance.

The data maps found in Exhibit A or as amended are to be used as a general guide to the location and extent of resource lands and critical areas. Resource lands and critical areas indicated on the data maps are presumed to exist in the locations shown and are protected under all the provisions of this ordinance. The exact location of resource lands and critical areas shall be indicated by the applicant as a result of field investigations performed by qualified professionals using definitions found in this ordinance. All development applications are required to show the boundaries of all resource lands and critical areas on or within three-hundred (300) feet of the subject parcel on a scaled drawing (1:2,400 or larger scale) prior to the development application being considered "complete" for processing purposes.

The conclusion by the appropriate city official that a parcel of land or a part of a parcel of land that is subject of a proposed development application is within the boundary(s) of one or more critical areas or resource lands and associated buffers, as shown on the data maps, shall serve as cause for additional investigation and analysis to be conducted by the applicant. The site-specific analysis shall be limited to those resource lands and critical areas indicated on the data maps. In the event of multiple designations, each subject matter will be addressed independently and collectively for the purpose of determining development's limitations and appropriate mitigating measures.

21.10.050 General provisions; allowed uses; exemptions reasonable use exceptions

I. General Provisions.

Prior to accepting a development application tendered pursuant to the Comprehensive Plan and Zoning Ordinance, Building or Land Divisions Ordinance of the city, the appropriate city official shall consult data maps for the purposes of determining whether or not the property subject to the applications is within any area shown as a resource land or critical area. When such areas are encountered, the applicant will immediately be notified and the type(s) of resource land or critical area disclosed. Instructions shall be provided to the applicant on the type(s) of evaluation and site-specific analysis that will be required as supplement to the application materials necessary to bring the application up to a standard that can be characterized as "complete" and eligible for processing.

From the effective date of NBMC Title 20, no development applications processed under the Comprehensive Plan and Zoning Ordinance, Building or Land Divisions Ordinance of the city shall be approved without a written finding that NBMC Title 20 has been considered, additional information has been assembled under NBMC Title 20, or was not required, and that the purpose and intent of NBMC Title 20 have been accorded substantial consideration.

II. Allowed Uses.

The city may allow the following uses on critical areas and within buffer areas subject to the review and mitigation requirements of this chapter:

A. Pervious and impervious public and private trails for nonmotorized uses provided that the following conditions are met:

1. Trails in wetlands or wetland buffers must be limited to permeable surfaces no more than five (5) feet

in width, except when single multi-use pathways are used in lieu of concrete sidewalks as allowed in NBMC 12.24.200(F) and must not exceed six (6) feet in width.

2. Trails are not permitted in wetlands except for minor crossings that demonstrate that impacts have been minimized.
3. Trails must be located within the outer twenty-five (25) percent of a wetland buffer, and should be designed to avoid removal of significant trees.

B. Below, or above ground public utilities, facilities and improvements, initiated by the city, where necessary to serve development including: streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, open space, and parks and recreational facilities, anticipated in the capital facilities plan, where there is no other reasonable alternative, based on topographic and environmental conditions, as determined by the Planning Advisor;

C. Removal of dangerous trees, as determined by the city Public Works Director, or the removal of invasive or nuisance plants as defined by the Skamania County Noxious Weed Control Board;

D. Construction, replacement, or alteration of new or existing construction on a legal lot of record, created prior to the effective date of this chapter, so long as the construction conforms to the height regulations, lot coverage and dimension standards and other design provisions for the underlying zone in which the construction is located. The construction shall be used as allowed in the underlying zoning designation. The city may modify underlying zoning district dimensional standards applicable by up to a 50 percent adjustment, if necessary to protect critical areas;

E. Limited Uses. Limited uses shall avoid critical areas, and where allowed within buffer areas shall be subject to the mitigation measures and implementation of a monitoring plan as described in this chapter. All limited uses shall be consistent with the provisions of this chapter and SEPA;

F. Development Subject to Site Plan Review. Any expansion, alteration, or addition to an existing or new building or structure affecting critical areas shall be subject to site plan review, unless otherwise exempted in this chapter;

G. Development approvals shall ensure that all best management practices are employed to avoid introducing pollutants, sediments, chemicals, etc into all critical areas and buffers.

III. Exemptions.

A. Exempt Activities in All Critical Areas. The following developments, activities, and associated uses shall be exempt from the provisions of this chapter provided that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements, and a written request for exemption has been filed with and approved by the Planning Advisor. The Planning Advisor shall have the authority to negotiate memoranda of agreements with utility service providers or public agencies, and said agreements shall specify best management practices to be used in situations of emergency.

1. Emergencies. Emergency activities are those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of this chapter. For emergency actions that create an impact to a critical area or its buffer the applicant shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. The person or agency undertaking such action shall notify the city within one working day following commencement of the emergency activity. Following the emergency appropriate mitigation shall be implemented and permanent activities, installations or impacts are subject to review and compliance with the applicable standards.
 - a. Authorization. Notwithstanding the provisions of this chapter, the Planning Advisor may issue a temporary emergency permit prospectively or, in the case of imminent threats to public health, safety or welfare, retroactively, where the anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by the Act and other applicable laws.
 - b. Prior to issuing an emergency permit, the Planning Advisor shall issue a finding that extraordinary circumstances exist and that the potential threat to public health, safety or welfare from the emergency situation is clearly significant and substantial.

- c. Conditions. Any emergency permit granted shall incorporate, to the greatest extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for nonemergency activities under the Act and shall:
 - 1) Be limited in duration to the time required to complete the authorized emergency activity, not to exceed 90 days; and
 - 2) Require, within this 90-day period, the restoration of any wetland altered as a result of the emergency activity, except that if more than the 90 days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration.
 - d. Notice. Notice of issuance of an emergency permit shall be published in a newspaper having general circulation in the city not later than 10 days after issuance of such permit.
 - e. Termination. The emergency permit may be terminated at any time without process upon a determination by the city that the action is no longer necessary to protect human health or the environment.
2. Repair. Repair or replacement of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees or drainage systems, including operation and maintenance of existing facilities, that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed maintenance or repair.
 3. Chemical Applications. The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary; provided, that their use shall be restricted in accordance with Department of Fish and Wildlife Management Recommendations, the regulations of the Department of Agriculture and the U.S. Environmental Protection Agency.
 4. Minor Site Investigative Work. Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored.
 5. Boundary Markers. Construction or modification of boundary markers or fences.
 6. Construction and modifications to existing structures that does not increase the footprint of the structure or increase the footprint within a critical area or buffer.
 7. Expansion, alteration or addition to existing construction outside of critical areas or buffers.
 8. New construction previously approved prior to adoption of the ordinance codified in this chapter.
 9. New construction on vacant land outside critical areas or buffers.
 10. Residential development exceeding one single family dwelling or single-family permit located outside critical areas or buffers.
 11. The removal of the following vegetation with hand labor and light equipment, and vegetation removal that is a hazard to electrical power lines with handheld and walk-beside equipment such as mowers and weed eaters in compliance with the provisions contained in the ANSI A300 (Part 1) guidelines, including, but not limited to:
 - a. Invasive non-native weeds;
 - b. Vegetation removal and maintenance activities inside existing landscaped areas on lots that predate adoption of this chapter (other than removal of trees greater than six (6) inches dbh).
 12. Utility exemptions.
 - a. Normal and routine maintenance or repair of existing utility structures or rights-of-way.
 - b. Relocation of electric facilities, lines, equipment, or appurtenances, not includes substations, with an associated voltage of fifty-five thousand (55,000) volts or less only when required by a local government agency.
 - c. Relocation within improved right-of-way of utility lines, equipment, or appurtenances only when required by a local governmental agency which approves the new location of the facilities.
 - d. Installation or construction in improved city road rights-of-way, and replacement, operation, or alteration of all electric facilities, lines, equipment, or appurtenances, not including substations, with an associated voltage of fifty-five thousand (55,000) volts or less.
 - e. Installation or construction in improved city road rights-of-way and replacement, operation, repair, or alteration of all utility lines, equipment, or appurtenances.

13. Public agency exemptions.

a. Public facilities on a site already developed where there is no proposed impact to a critical area or buffer.

b. Public improvement projects located within existing improved right-of-way or roadway easements.

B. Exemption Request and Review Process. The proponent of the activity shall submit a completed exemption request form to the Planning Advisor that describes the activity and states the exemption listed in this section that applies. The Planning Advisor shall review the exemption request to verify that it complies with this chapter and approve or deny the exemption. If the exemption is approved, it shall be placed on file with the department and the requesting party notified. If the exemption is denied, the proponent may continue in the review process and shall be subject to the requirements of this chapter.

C. Exempt Activities Shall Minimize Impacts to Critical Areas. All exempted activities shall use reasonable methods and best management practices to avoid potential adverse impacts to critical areas. To be exempt from this chapter does not give permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense.

IV. Takings exception

A. General Requirements.

1. If a property owner has owned property before the effective date of this chapter and can establish by a procedure set forth in sections B and C below, that the application of this chapter to that property would result in an unconstitutional taking of a legal lot without just compensation, development may be allowed that is consistent with the allowed uses of the underlying zone, general purposes of this chapter, and the public interest.
2. Nothing in this chapter is intended to preclude a constitutional diminution in value of property caused by application of this chapter, provided some economically viable use remains.
3. The Planning Advisor shall prepare and maintain application forms necessary to implement this section.

B. Application Requirements.

1. An applicant for a development proposal may file a request for a takings exception which shall include the following information:
 - (a.) A description of the areas of the site which are critical areas or within setbacks required under this chapter;
 - (b.) A description of the amount of the site which is within setbacks required by other standards of the City code;
 - (c.) A description of the proposed development, including a site plan;
 - (d.) An analysis of the impact that the amount of development would have on the critical area(s);
 - (e.) An analysis of whether any other economic use is possible that would result in less impact on the critical area(s) and associated buffer(s);
 - (f.) A design of an economic use of the property that will have the least impact practicable on the critical area(s);
 - (g.) An analysis of the variance from the standards of this chapter to accommodate the proposed development;
 - (h.) A description of any modifications needed to the required front, side, and rear setbacks; building height; and buffer widths to provide for an economically viable use of the site while providing greater protection to the critical area(s); and
 - (i.) Such other information as the city determines is reasonably necessary to evaluate the issue of economically viable use as it relates to the proposed development, including any evidence that the regulation is unduly oppressive on the landowner.
 - (j.) The city shall process a request for a takings exception as a Type II procedure pursuant to NBMC 18.18.01.230.

C. Takings Exception Decision Criteria.

The review authority shall approve a reasonable use exception if the authority determines the following criteria are met:

1. The proposed use is consistent with the permitted and allowed uses of the underlying zone;
2. The proposed development does not pose a threat to the public health, safety, or welfare on or off the site;
3. Any alteration of the critical area(s) shall be the minimum necessary to allow for an economically viable use of the property;
4. The proposed development will not result in a “take” of a threatened or endangered species;
5. The inability of the applicant to derive an economically viable use of the property is not the result of actions taken by the applicant or immediate predecessor in interest, after the effective date of this chapter, in subdividing the property or adjusting a boundary line, or otherwise creating the undevelopable condition;
6. Whether the application of the chapter is unduly oppressive on the landowner, and whether the regulation is narrowly applied to achieve its purpose, including an analysis of the nature of harm sought to be avoided; the availability and effectiveness of less drastic protection measures; and the economic loss suffered by the property owner. Factors for this analysis include, on the public’s side, the seriousness of the public problem; the extent to which the owner’s land contributes to it; the degree to which the regulation solves it; and the feasibility of less oppressive solutions, and on the owner’s side, the amount and percentage of value lost; the extent of remaining use; past, present and future uses; the temporary or permanent nature of the regulation; the extent to which the owner should have anticipated such regulation; and the feasibility of the owner altering present or currently planned uses; and
7. The proposal mitigates the impacts on the critical area(s) to the maximum extent possible, while still allowing an economically viable use of the site. The applicant shall prepare and implement a mitigation and monitoring plan consistent with this chapter.

21.10.060 Critical area report standards and requirements

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

II. General Critical Areas Report Contents. At a minimum, the Critical Areas Report shall contain the following:
A. The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;

B. A copy of the site plan for the development proposal including:

1. A map to scale depicting critical areas, buffers, the development proposal, and any areas to be cleared; and
2. Proposed stormwater management and sediment control plan for the development including a description of any impacts to drainage alterations; and
3. The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;

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

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

E. Plans for adequate mitigation, as needed, to offset any impacts, in accordance this chapter. The applicant is required to demonstrate that all reasonable efforts have been made to avoid and minimize impacts to critical areas, in the following sequential order of preference:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

6. Monitoring the impact and taking appropriate corrective measures.

F. Any additional information required for the specific critical areas and buffers as specified in NBMC 21.740.110 Fish and Wildlife Habitat Conservation Area, NBMC 21.740.120 Frequently Flooded Areas, NBMC 21.740.130 Geologic Hazard Areas, and NBMC 21.740.140 Wetlands.

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

III. Mitigation Plan Requirements.

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

A. Detailed Construction Plans.

B. The mitigation plan shall include descriptions of the mitigation proposed, such as:

1. The proposed construction sequence, timing, and duration;
2. Grading and excavation details;
3. Erosion and sediment control features;
4. A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
5. Measures to protect and maintain plants until established.

C. The mitigation plan shall include a program for monitoring construction of the mitigation project and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring, and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the mitigation project. The mitigation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five (5) years. For forested and scrub-shrub communities ten (10) years or more of monitoring are needed. When the applicant believes that the conditions of the monitoring plan are met, the applicant shall contact the City and request that the City verify and certify so in writing. The City shall conduct an on-site assessment as part of the verification process. The applicant shall provide reasonable access to the property as necessary for verification and certification

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

21.10.070 Resource lands and critical areas; standards for site-specific analysis; additional critical area report requirements; development standards

I. Resource Lands.

A. Agricultural lands.

(None identified)

B. Forest lands.

(None identified)

C. Mineral resource lands.

(None identified)

II. Critical Areas.

A. Wetlands.

1. Site analysis—required for the purpose of establishing an exact wetland boundary using the criteria found in the approved federal wetland delineation manual and applicable regional supplements. Field delineation of the boundary is required and a scaled map must be produced (at 1:2,400 or larger). The classifications of Section 7.2 must then be applied to the wetland area to establish the category(s) of wetlands in evidence. The applicant or proponent shall provide a wetlands report prepared by a qualified professional.

2. Wetlands rating system—The following rating system, adapted from the WDOE wetland rating system found in the Washington State Wetland Rating System for Western Washington—2014 Update (Publication #14-06-029, or as revised by WDOE) is hereby adopted for the purpose of determining Wetlands Classifications. The wetland rating system is used in part to determine buffer widths pursuant to Section 21.10.070.II.A.2. The wetland rating and buffer systems are also used for mitigation and enhancement options under Section 21.10.070.II.A.3.

a. Wetland rating categories.

(1) Category I. Category I wetlands are:

- (a) relatively undisturbed estuarine wetlands larger than 1 acre;
- (b) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR;
- (c) bogs;
- (d) mature and old-growth forested wetlands larger than 1 acre;
- (e) wetlands in coastal lagoons;
- (f) interdunal wetlands that score 8 or 9 habitat points and are larger than 1 acre; and
- (g) wetlands that perform many functions well (scoring 23 points or more).

These wetlands: (1) represent unique or rare wetland types; (2) are more sensitive to disturbance than most wetlands; (3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (4) provide a high level of functions.

(2) Category II. Category II wetlands are:

- (a) estuarine wetlands smaller than 1 acre, or disturbed estuarine wetlands larger than 1 acre;
- (b) interdunal wetlands larger than 1 acre or those found in a mosaic of wetlands; or
- (c) wetlands with a moderately high level of functions (scoring between 20 and 22 points).

(3) Category III. Category III wetlands are:

- (a) wetlands with a moderate level of functions (scoring between 16 and 19 points);
- (b) can often be adequately replaced with a well-planned mitigation project; and
- (c) interdunal wetlands between 0.1 and 1 acre.

Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

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

b. Date of wetland rating. Wetland rating categories shall be applied as the wetland exists on the date of adoption of the rating system by the local government, as the wetland naturally changes thereafter, or as the wetland changes in accordance with permitted activities. Wetland rating categories shall not change due to illegal modifications.

3. Wetland buffers. Wetland buffer widths shall be determined by the planning official in accordance with the standards below:

a. All buffers shall be measured horizontally outward from the delineated wetland boundary.

b. Buffer widths are established by comparing the wetland rating category and the intensity of land uses proposed on development sites per Table 21.10.070-1, 21.10.070-2, 21.10.070-3 and 21.10.070-4. For Category IV wetlands, the required water quality buffers, per Table 21.10.070-1, are adequate to protect habitat functions.

c. Functionally Isolated Buffer Areas. Areas which are functionally separated from a wetland and do not protect the wetland from adverse impacts shall be treated as follows:

(1) Pre-existing roads, structures, or vertical separation shall be excluded from buffers otherwise required by this chapter;

- (2) Distinct portions of wetlands with reduced habitat functions that are components of wetlands with an overall habitat rating score greater than five (5) points shall not be subject to the habitat function buffers designated in Table 21.10.070-2 and Table 21.10.070-3 if the area of reduced habitat function is at least one (1) acre in size and does not meet any WDFW priority habitat or species criteria.

Table 21.10.070-1: Buffers Required to Protect Water Quality Functions			
<u>Wetland Rating</u>	<u>Low Intensity Use</u>	<u>Moderate Intensity Use</u>	<u>High Intensity Use</u>
<u>Category I</u>	<u>50 ft.</u>	<u>75 ft.</u>	<u>100 ft.</u>
<u>Category II</u>	<u>50 ft.</u>	<u>75 ft.</u>	<u>100 ft.</u>
<u>Category III</u>	<u>40 ft.</u>	<u>60 ft.</u>	<u>80 ft.</u>
<u>Category IV</u>	<u>25 ft.</u>	<u>40 ft.</u>	<u>50 ft.</u>

Table 21.10.070-2. Buffers Required to Protect Habitat Functions in Category I and II Wetlands			
<u>Habitat Score in the Rating Form</u>	<u>Low Intensity Use</u>	<u>Moderate Intensity Use</u>	<u>High Intensity Use</u>
<u>3-4 points</u>	<u>See Table 21.10.070-1</u>	<u>See Table 21.10.070-1</u>	<u>See Table 21.10.070-1</u>
<u>5</u>	<u>70 ft.</u>	<u>105 ft.</u>	<u>140 ft.</u>
<u>6</u>	<u>90</u>	<u>135</u>	<u>180</u>
<u>7</u>	<u>110</u>	<u>165</u>	<u>220</u>
<u>8</u>	<u>130</u>	<u>195</u>	<u>260</u>
<u>9</u>	<u>150</u>	<u>225</u>	<u>300</u>

Table 21.10.070-3. Buffers Required to Protect Habitat Functions in Category III Wetlands			
<u>Habitat Score in the Rating Form</u>	<u>Low Intensity Use</u>	<u>Moderate Intensity Use</u>	<u>High Intensity Use</u>
<u>3-4 points</u>	<u>See Table 21.10.070-1</u>	<u>See Table 21.10.070-1</u>	<u>See Table 21.10.070-1</u>
<u>5</u>	<u>60 ft.</u>	<u>90 ft.</u>	<u>120 ft.</u>
<u>6</u>	<u>65</u>	<u>100</u>	<u>135</u>
<u>7</u>	<u>75</u>	<u>110</u>	<u>150</u>

Table 21.10.070-4: Land Use Intensity Matrix						
Parks and Recreation		Streets and Roads	Stormwater Facilities	Utilities	Commercial /Industrial	Residential ²
Low	Natural fields and grass areas, viewing areas, split rail fencing	NA	Outfalls, spreaders, constructed wetlands, bioswales, vegetated detention basins, overflows	Underground and overhead utility lines, manholes, power poles (without footings)	NA	NA
Moderate	Impervious trails, engineered fields, fairways	Residential driveways and access roads	Wet ponds	Maintenance access roads	NA	Density less than 1 unit per acre
High	Greens, tees, structures, parking, lighting, concrete or gravel pads, security fencing	Public and private streets, security fencing, retaining walls	Maintenance access roads, retaining walls, vaults, infiltration basins, sedimentation fore bays and structures, security fencing	Paved or concrete surfaces, structures, facilities, pump stations, towers, vaults, security fencing, etc.	All site development	Density higher than 1 unit per acre
¹ The planning official shall determine the intensity categories applicable to proposals should characteristics not be specifically listed in Table 21.10.070-4. ² Measured as density averaged over a site, not individual lot sizes.						

4. Critical Area Report-Additional Requirements for Wetlands

A critical areas report for wetlands shall be prepared by a qualified professional as defined herein. The Critical Areas Report shall contain an analysis of the wetlands including the following site- and proposal-related information:

- a. A written assessment, data sheets and accompanying maps of any wetlands or buffers on the site including the following information:
 - (1) Hydrogeomorphic (HGM) classification;
 - (2) Wetland category;
 - (3) Wetland delineation and required buffers including the following:
 - (a) Methodology. The location of a wetland and its boundary shall be determined through the performance of a field investigation utilizing the methodology contained in the approved federal manual and applicable regional supplements. Discussion of methods and results with special emphasis on technique used from the approved federal manual and applicable regional supplements.
 - (b) Information Requirements. Wetland boundaries shall be staked and flagged in the field and a delineation report shall be submitted to the department. The report shall include the following information:
 - (i) USGS quadrangle map with site clearly defined;
 - (ii) Topographic map of area (2 foot contours at a minimum scale of 1:2,400);
 - (iii) National wetland inventory map showing site;
 - (iv) Natural Resource Conservation Service (NRCS) soils map showing site;
 - (v) Site map, at a scale no smaller than one (1) inch equals one hundred (100) feet (1" = 100', a scaling ratio of 1:1,200), if practical, showing the following information:

- (a) Wetland boundaries,
- (b) Sample sites and sample transects,
- (c) Boundaries of forested areas,
- (d) Boundaries of wetland classes if multiple classes exist;
- (vi) All completed field data sheets per the approved federal manual and applicable regional supplements, numbered to correspond to each sample site.
- (c) Existing wetland acreage;
- (d) Vegetative, faunal, and hydrologic characteristics;
- (e) Soil types and substrate conditions;
- (f) Topographic elevations, at 1' contours; and
- (g) A discussion of the water sources supplying the wetland and documentation of hydrologic regime.
- (h) Functional evaluation for the wetland and buffer using WDOE's most current approved method and including the reference of the method and all data sheets.
- (i) Proposed mitigation, if needed, including a discussion of alternatives and trade-offs inherent in the various alternatives, a written description and accompanying maps of the mitigation area, including the following information:
 - (i) A discussion of measures, including avoidance, minimization and mitigation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land use activity.
 - (ii) Existing and proposed wetland acreage;
 - (iii) Existing and proposed vegetative and faunal conditions;
 - (iv) Surface and subsurface hydrological conditions of existing and proposed wetlands and hydrologically associated wetlands including an analysis of existing hydrologic regime and proposed hydrologic regime for enhanced, created, or restored mitigation areas;
 - (v) Relationship to lakes, streams and rivers in the watershed;
 - (vi) Soil type and substrate conditions;
 - (vii) Topographic elevations, at 1' contours; and
 - (viii) Required wetland buffers including existing and proposed vegetation.
 - (ix) Identification of the wetland's contributing area.
 - (x) Required wetland buffers; and
 - (xi) Property ownership.
- (j) A discussion of ongoing management practices that will protect wetlands after the project site has been developed; including proposed monitoring and maintenance programs.
- (k) When deemed appropriate, the Planning Advisor may also require the critical area report to include an evaluation by WDOE or an independent qualified expert regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, and to include any recommendations as appropriate.

5. Development Standards in Wetlands and Buffers.

- a. Authorized Activities in Wetlands. Activities and uses shall be prohibited from wetlands, except as provided for in this chapter. Wetland permit applications shall be based upon a mitigation plan and shall satisfy the following general requirements:
 - (1) The proposed activity shall not cause significant degradation of wetland functions;
 - (2) The proposed activity shall comply with all state, local and federal laws, including those related to sediment control, pollution control, floodplain restrictions, stormwater management, and on-site wastewater disposal.
 - (3) The proposed activity shall demonstrate avoidance and minimization of impacts to wetlands and wetland functions.
 - (a) Category III and IV wetlands between 1,000 square feet and 4,000 square feet may be exempted from demonstrating avoidance if the applicant shows that all of the following criteria have been met:
 - (i) Wetland is not associated with a riparian corridor; and

- (ii) Wetland is not part of a wetland mosaic; and
- (iii) Wetland does not score 5 points or greater for habitat in the 2014 Western Washington Rating System; and,
- (iv) Wetland does not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife.

Impacts allowed under this provision to these wetlands will be fully mitigated as required in mitigation section.

- (b) All Category I and II Wetlands between 1,000 square feet and 4,000 square feet should be evaluated with full mitigation sequencing and buffer establishment. Any approved impacts should be adequately compensated by mitigation.
 - (c) Wetlands larger than 4,000 square feet will be evaluated using standard procedures for wetland review.
- (4) If the proposed activity impacts wetlands or wetland functions mitigation as provided in the chapter will be required.
- (5) Exempted Wetlands. This chapter shall not apply to the following wetlands:
- (a) Wetlands less than 1,000 square feet where it has been demonstrated by the applicant that they are not associated with a riparian corridor, they are not part of a wetland mosaic and do not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife.
 - (b) Riparian. Wetlands less than five feet wide above the ordinary high water mark along streams and lakes.
 - (c) Stormwater Facilities. Stormwater facilities are only allowed in buffers of Category III and IV wetlands with low habitat function (less than five (5) points on the habitat section of the rating system form); provided, the following conditions are demonstrated by the applicant:
 - (i) Facilities shall be built on the outer twenty-five (25) percent of the buffer
 - (ii) Facilities do not degrade the existing buffer function; and are designed to blend with the natural landscape; and
 - (iii) Stormwater facilities do not alter the hydroperiod of the wetland or adversely affect water quality; and
 - (iv) Stormwater facilities are limited to dispersion outfalls, bioswales, or other new technologies approved by WDOE.
- b. Authorized Activities in Wetland Buffers. The following additional standards apply for regulated activities in a wetland buffer:
- (1) Buffer averaging. Averaging buffers is not allowed in conjunction with any of the other provisions for reductions in buffer width. The City shall have the authority to average buffer widths on a case-by-case basis, where a qualified wetlands professional demonstrates, as part of a critical area report, that all of the following criteria are met:
 - (a) The total area contained in the buffer after averaging is no less than that contained within the buffer prior to averaging;
 - (b) Decreases in width are generally located where wetland functions may be less sensitive to adjacent land uses and increases are generally located where wetland functions may be more sensitive to adjacent land uses, to achieve no net loss or a net gain in functions; and
 - (c) The averaged buffer, at its narrowest point, shall not result in a width less than twenty-five (25) percent of the required width, provided that minimum buffer widths shall never be less than twenty-five (25) feet.
 - (d) There is no feasible alternative to the site design that could be accomplished without buffer averaging.
 - (2) Road and Utility Crossings. Crossing buffers with new roads and utilities is allowed provided all the following conditions are met:
 - (a) Buffer functions, as they pertain to protection of the adjacent wetland and its functions, are replaced and mitigated as specified in 21.10.070(II)(A)(6); and
 - (b) Impacts to the buffer and wetland are minimized.

- (3) Other Activities in a Buffer. Regulated activities not involving stormwater management, road and utility crossings, or a buffer reduction are allowed in the buffer if all the following conditions are met:
 - (a) The activity is temporary and will cease or be completed within three (3) months of the date the activity begins;
 - (b) The activity will not result in a permanent structure in or under the buffer;
 - (c) The activity will not result in a reduction of buffer acreage or function;
 - (d) The activity will not result in a reduction of wetland acreage or function.
6. Wetland and wetland buffer mitigation.
 - a. Location of Wetland Mitigation. Wetland mitigation for unavoidable impacts shall be located using the following prioritization:
 - (1) Within the same watershed. Mitigation actions shall be conducted within the same watershed as the project site and preferable within the same stream reach.
 - (a) On-site mitigation is preferred and should be based on the natural capacity of the site to mitigate for impacts. If on-site mitigation is not feasible or on-site opportunities do not have a high likelihood of success then off-site mitigation within the same watershed shall be considered.
 - (b) Off-site mitigation shall demonstrate that mitigation will result in greater benefits or functions, or restore or enhance limited or important functions to the health of the watershed. Off-site mitigation shall be in the same watershed unless:
 - (i) Watershed goals for water quality, flood or conveyance, habitat or other wetland functions have been established and strongly justify location of mitigation at another site; or
 - (ii) Credits from a certified wetland mitigation bank are used as mitigation and the use of credits is consistent with the terms of the bank's certification.
 - (2) In-kind. Locate or create wetlands with similar landscape position and the same hydro-geomorphic (HGM) classification based on a reference to a naturally occurring wetland system; and
 - (3) Out-of-kind. Mitigate in a different landscape position and/or HGM classification based on a reference to a naturally occurring wetland system.
 - b. Types of Wetland Mitigation. The various types of wetland mitigation allowed are listed below in the general order of preference.
 - (1) Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland. Restoration results in a gain in wetland acres and/or functions. Activities could include removing fill material, plugging ditches, or breaking drain tiles. There are two types of restoration:
 - (a) Re-establishment— Re-establishment results in a gain in wetland acres and functions. Activities could include removing fill material, plugging ditches or breaking drain tiles.
 - (b) Rehabilitation— Rehabilitation results in a gain in wetland functions but not in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain, restoring tidal influence to a wetland or breaking drain tiles and plugging drainage ditches.
 - (2) Creation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of developing a wetland on an upland or deepwater site where a wetland did not previously exist. Establishment results in a gain in wetland acres. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydro-period, create hydric soils, and support the growth of hydrophytic plant species.
 - (3) Enhancement: The manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify, or improve the specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Activities typically

consist of planting vegetation, controlling non-native or invasive species, modifying site elevations or the proportion of open water to influence hydro-periods, or some combination of these activities.

- (4) Preservation: Removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This includes the purchase of land or easements repairing water control structures or fences, or structural protection such as repairing a barrier island. This term also includes activities commonly associated with the term, preservation. Preservation does not result in a gain of wetland acres, but may result in improved wetland functions.
- c. Effect of mitigation. If wetland mitigation occurs such that the rating of the wetland changes, the requirements for the category of the wetland after mitigation shall apply.
- d. Standard Wetland Mitigation Ratios. The mitigation ratios in Table 21.10.070-5 apply for each of the mitigation types described in this chapter:
 - (1) Preservation. The Planning Advisor has the authority to approve preservation of existing wetlands as wetland mitigation under the following conditions:
 - (a) The wetland area being preserved is a Category I or II wetland or is within a WDFW Priority Habitat or Species area;
 - (b) The preservation area is at least one (1) acre in size;
 - (c) The preservation area is not an existing or proposed wetland mitigation site; and
 - (d) The preservation/mitigation ratio's in Table 21.10.070-6 apply:
- e. Buffer Mitigation. Regulated activities in buffers shall be required to provide mitigation as follows:
 - (1) Mitigation shall be provided for buffer averaging as stipulated in 21.10.070(II)(A)(5)(b)(1).
 - (2) Direct impacts to buffers will be mitigated at a 1:1 mitigation ratio provided the applicant demonstrates that the mitigation provides buffer functions at an equal or greater level than the pre-project buffer.
- f. The Planning Advisor has the authority to reduce wetland mitigation ratios under the following circumstances:
 - (1) Documentation by a qualified wetland specialist demonstrates that the proposed mitigation actions have a very high likelihood of success based on prior experience;
 - (2) Documentation by a qualified wetland specialist demonstrates that the proposed actions for compensation will provide functions and values that are significantly greater than the wetland being affected;
 - (3) The proposed actions for compensation are conducted in advance of the impact and are shown to be successful.
- g. Wetland Mitigation Banking. Wetland mitigation banking developed per WDOE requirements and approved by WDOE may be used for wetland mitigation. A wetland permit shall be obtained prior to any mitigation banking. If a wetland permit is not obtained prior to mitigation bank construction, mitigation credit shall not be awarded. The mitigation credits shall be determined as follows:
 - (1) Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:
 - (a) The bank is certified under Chapter 173-700 WAC;
 - (b) The Planning Advisor determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
 - (c) The proposed use of credits is consistent with the terms and conditions of the bank's certification.
 - (2) Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification.
 - (3) Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

Wetland to be Replaced	Reestablishment or Creation	Rehabilitation	Reestablishment or Creation and Rehabilitation	Reestablishment or Creation and Enhancement	Enhancement
Category IV	1.5:1	3:1	1:1 R/C and 1:1 RH	1:1 R/C and 2:1 E	6:1
Category III	2:1	4:1	1:1 R/C and 2:1 RH	1:1 R/C and 4:1 E	8:1
Category II	3:1	6:1	1:1 R/C and 4:1 RH	1:1 R/C and 8:1 E	12:1
Category I, Forested	6:1	12:1	1:1 R/C and 10:1 RH	1:1 R/C and 20:1 E	24:1
Category I, Based on Score for Functions	4:1	8:1	1:1 R/C and 6:1 RH	1:1 R/C and 12:1 E	16:1
Category I, Natural Heritage Site	Not Considered Possible	6:1 Rehabilitate a Natural Heritage Site	N/A	N/A	Case-by-Case

Habitat Function of Wetland to be Replaced	In Addition to Standard Mitigation		As the Only Means of Mitigation	
	Full and Functioning Buffer	Reduced and/or Degraded Buffer	Full and Functioning Buffer	Reduced and/or Degraded Buffer
Low (3-4 points)	10:1	14:1	20:1	30:1
Moderate (5-7 points)	13:1	17:1	30:1	40:1
High (8-9 points)	16:1	20:1	40:1	50:1

B. Critical aquifer recharge areas.

1. Site analysis—required for the purpose of delineating the recharge areas on a scaled development plan and providing detailed information as developed by a qualified professional as defined herein.
 - a. Critical Area Report – Additional Requirements for Critical Aquifer Recharge Areas.
 - (1) description of the general geological and hydrological characteristics of the area under pest application consideration;
 - (2) description of local characteristics associated with site drainage and water movement;
 - (3) description of conditions prior to project development;
 - (4) description of conditions as they are likely to exist after complete development of the proposed project, and their impact on groundwater quantity and quality;
 - (5) the post development description shall include the effects of the activities likely to occur as a result of the complete development and use of the project, at final equilibrium;
 - (6) as part of subsection e. above, the effects of sewage disposal, lawn and yard activities, agriculture and animal husbandry, storm water impacts, and any other impact reasonably associated with the project type shall be described.

2. Development standards.
 - a. The site analysis developed by the qualified professional will propose as a derivative of the information described in section 21.10.070(B)(1)(a), a water quality baseline which will serve as a minimum standard that shall not be further degraded by proposed development.
 - b. The creation of additional impervious surfaces shall be limited to that amount described in the site analysis that will ensure adequate aquifer recharge and water quality protection.
 - c. Development approvals shall ensure that all best management practices are employed to avoid introducing pollutants into the aquifer. Such methods include the collection and disposal of storm water away from the aquifer recharge area or on-site detention, treatment and infiltration of storm water.
- C. Frequently flooded areas.
 1. Site analysis—required for development sites containing mapped flood hazard areas for the purpose of establishing base flood elevations of the one hundred (100) year flood event.
 - a. Critical Area Report – Additional Requirements for Frequently Flooded Areas.
 - (1) Plans drawn to scale showing the nature, location, dimensions and elevations of the area in question, and existing or proposed structures, fill, storage of materials, and drainage facilities. A topographic map of the site with two (2) foot contours at a minimum scale of 1:2,400. Elevation data shall be certified by a licensed professional land surveyor.
 - (2) Elevation in relation to mean sea level of the lowest floor (including basement) of all nonresidential structures;
 - (3) Elevation in relation to mean sea level to which any structure has been flood proofed
 - (4) Certification by a registered professional engineer or architect that the flood proofing methods for any nonresidential structure meet the flood proofing requirements; and
 - (5) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
 2. Development standards.
 - a. All developments must satisfy the provisions of the National Flood Insurance Program, authorized by the National Flood Insurance Act of 1968.
 - b. A floodplain permit shall be obtained before construction or development begins within any area of special flood hazard. The permit shall be for all structures including manufactured homes and other development, including fill and other activities.
 - c. The areas for state and local floodplain management regulations shall be those areas subject to a base (100-year) flood. Base floodplains are designated as special flood hazard areas on the most recent maps provided by the Federal Emergency Management Agency for the National Flood Insurance Program. Best available information shall be used if these maps are not available or sufficient.
 - d. Land uses in the floodplain combining district shall be subject to all relevant local, state, or federal regulations including those of the underlying zoning district. Where applicable, permit requirements under the Shoreline Management Act (Chapter 90.58 RCW), or the State Flood Control Zone Act (Chapter 86.16 RCW) may be substituted for permits required under this chapter; provided, that the standards of this chapter are applied.
- D. Geologically hazardous areas.
 1. Erosion hazard.
 - a. Site analysis—required to determine the exact location and circumstances that might be expected to precipitate a significant erosion event.
 - (1) Critical Area Report – Additional Requirements for Erosion Hazard Areas. The analysis shall be prepared by a qualified professional as defined herein, and include the following additional information:
 - (a) The type and effectiveness of mitigating measures available to safeguard the public safety and welfare shall be addressed.
 - (b) The analysis shall discuss the proposed development's influence on the erosion hazard and suggest appropriate design and development measures that might be taken to minimize such hazards.

- b. Development standards.
 - (1) Documented landslide hazard areas shall be avoided as locations for building construction, roads, or utility systems where mitigation is not feasible.
 - (2) If the degree of hazard warrants some development activity, post construction slope stabilization and appropriately upgraded road construction specifications shall be employed to eliminate as completely as practicable any public or private exposure to landslide hazards or abnormal maintenance or repair costs.
- 2. Landslide hazard
 - a. Site analysis—required to identify and quantify geologic, topographic and hydrologic factors that might contribute to slope stability.
 - (1) Critical Area Report – Additional Requirements for Landslide Hazard Areas. The analysis shall be prepared by a qualified professional as defined herein, and include the following additional information:
 - (a) The rate and extent of potential hazards to development activity must be assessed and mitigation measures, if any, evaluated.
 - (b) The proposed development must be analyzed in the light of the hazards and effects represented by the landslide exposure on proposed public and private investments.
 - (c) Development operational factors should be included in the analysis to account for the effects of storm water generation from impervious surfaces and the influence of street conveyance on slope stability.
 - b. Development standards.
 - (1) Documented landslide hazard areas shall be avoided as locations for building construction, roads, or utility systems where mitigation is not feasible.
 - (2) If the degree of hazard warrants some development activity, post construction slope stabilization and appropriately upgraded road construction specifications shall be employed to eliminate as completely as practicable any public or private exposure to landslide hazards or abnormal maintenance or repair costs.
 - (3) Buffer and Setback Distances.
 - (a) Activities at the base of ascending slopes (building at the bottom of a steep slope):
 - (i) For slopes greater than or equal to forty percent (40%) and less than one hundred percent (100%), buffers shall extend a distance away from the toe of the slope that is equal to the vertical height of the slope divided by two, but not to exceed fifteen (15) feet. For slopes less than one hundred percent (100%), the toe of the slope is defined as a distinct break in slope at the base of a steep slope.
 - (ii) For slopes greater than one hundred percent (100%), the buffer shall extend a distance back from the toe of the slope equal to the height of the slope divided by two, not to exceed fifteen (15) feet. The buffer shall be measured horizontally from a plane, drawn tangent to the top of the slope at an angle of forty-five (45) degrees to the proposed structure.
 - (iii) The setback shall be eight (8) feet beyond the buffer.
 - (b) Activities at the tops of descending slopes (building at the top of a steep slope):
 - (i) For slopes greater than or equal to forty percent (40%) and less than one hundred percent (100%), buffers shall extend a distance back from the top of the slope equal to the vertical height of the slope divided by three (3), but not to exceed forty (40) feet. The top of the slope is defined as a distinct break in slope at the top of a steep slope.
 - (ii) For slopes greater than one hundred percent (100%), the buffer shall extend a distance back from the top of the slope equal to the height of the slope divided by three (3), but not to exceed forty (40) feet. The buffer shall be measured horizontally from a plain drawn at forty-five (45) degrees (one hundred percent (100%) slope) from the toe of the slope to the proposed structure.
 - (iii) The setback shall be eight (8) feet beyond the buffer.
 - (c) For projects not required to have a landslide protection area, the setback from the steep slope shall be equal to the buffer distance set in this subsection.

- (d) The Planning Advisor may approve buffers and setbacks which differ from those required by if the applicant submits a geologic hazard area study described in Section 40.430.030(C), which technically demonstrates and illustrates that the alternative buffer provides protection which is greater than or equal to that provided by the buffer required in Section 40.430.020(D)(1).
 - (e) The Planning Advisor may increase buffers or setbacks where necessary to meet requirements of the International Building Code.
 - (4) Other than for exemptions listed in Section 21.10.050, vegetation removal is not allowed on slopes over forty percent (40%) without an approved geologic hazard area study completed by a qualified professional demonstrating that vegetation removal will not result in increased landslide or erosion hazards.
 - (5) Buffers, landslide protection areas and setbacks for steep slopes on projects having approved grading shall be based on regulated steep slopes that remain after that grading.
 - 3. Mine hazard areas.
(Section reserved: no such lands deemed to exist within the city.)
 - 4. Seismic hazard areas.
Until detailed mapping of such areas is completed, all new structures within the city shall conform to building code requirements relating to seismic hazard.
 - 5. Volcanic hazard areas.
(Section reserved: no such lands deemed to exist within the city.)
- E. Fish and wildlife habitat conservation areas.
- 1. Site analysis—required to identify priority habitats and species, habitats, and species of local importance, and the nature and extent of such species' primary association with the habitat conservation area. The investigation shall consider relative density and species richness, breeding habitat, seasonal range dynamics, and movement corridors. The analysis shall address the relative tolerance by species of human activities. The development proposal shall be evaluated in terms of its influence on the above factors and recommend mitigative measures as appropriate. The analysis is to be prepared by a qualified professional in consultation with the WDFW and appropriate federal agencies.
 - a. Critical Area Report – Additional Requirements for Fish and Wildlife Habitat Conservation Areas.
 - (1) A critical area report for a habitat conservation area shall contain an assessment of habitats including the following site- and proposal-related information at a minimum:
 - (a) Detailed description of vegetation on and adjacent to the project area;
 - (b) Identification of any species of local importance, priority species, or endangered, threatened, sensitive or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;
 - (c) A discussion of any federal, state, or local special management recommendations, including Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;
 - (d) A discussion of measures, including avoidance, minimization and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity; and
 - (e) A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.
 - (2) The city may request third party “peer review” of an application by qualified professionals and may incorporate recommendations from such third party reports in findings approving or denying the application.
 - (3) All reports recommending mitigation shall include provisions for monitoring of programs and replacement of improvements, on an annual basis, consistent with report recommendations and at one-, three-, five- and seven-year intervals.
 - (4) The city may require replacement mitigation to be established and functional concurrent with project construction.

- (5) Mitigation efforts shall ensure that development activity does not yield a net loss of the area or function, including fish and wildlife habitat values, of the critical area.
- 2. Fish and wildlife habitat conservation areas include the following categories:
 - a. Riparian/Streams
 - b. Endangered and Threatened Species
 - c. Priority Habitat Species Areas
 - d. Local Habitat Areas
- 3. Riparian/Streams.
 - a. Stream classification. Streams will be classified using the following Water Typing System (WAC 222-16-030) described in Table 21.10.270-7.

Stream Type	Characteristic
Type S Water	Waters identified as shorelines of the state (Columbia River)
Type F Water	Perennial or fish bearing waters (Including but not limited to Hamilton Creek; Greenleaf Lake; Hamilton Springs; Greenleaf Creek; Moffet Creek; Bass Lake; Carpenter Creek)
Type Np Water	Less than 3 feet in width on average
Type Ns Water	Seasonal streams with a defined channel

- b. Riparian buffer widths. Riparian buffers are established for habitats that include aquatic systems. Unless otherwise allowed in this chapter, all structures and activities shall be located outside of the riparian buffer area. The following base riparian buffer widths in Table 21.10.070-8 are based upon the Washington Department of Natural Resources (DNR) Water Typing System and further classification based upon fish presence (Fish bearing v. Non-fish Bearing) for Type F streams. Widths shall be measured outward, on the horizontal plane, from the ordinary high water mark or from the top of bank if the ordinary high water mark cannot be identified. Buffer areas should be sufficiently wide to achieve the full range of riparian and aquatic ecosystem functions, which include but are not limited to protection of instream fish habitat through control of temperature and sedimentation in streams; preservation of fish and wildlife habitat; and connection of riparian wildlife habitat to other habitats.

Stream Type	Base Buffer Width
Type S	150 feet
Type F, anadromous fish bearing stream	100 feet
Type F, non-anadromous fish bearing stream	75 feet
Type Np	50 feet
Type Ns	25 feet

- c. Stream buffer area reduction and averaging. The Planning Advisor may allow the base stream buffer area width to be reduced in accordance with a critical area report only if:
 - (1) The width reduction will not reduce or degrade stream or habitat functions, including anadromous fish habitat and those of nonfish habitat;
 - (2) The stream buffer area width is not reduced by more than fifty percent (50%) in any one location;

- (3) The stream buffer area width is not reduced to less than fifteen (15) feet;
 - (4) The width reduction will not be located within another critical area or associated buffer and the reduced stream buffer area width is supported by best available science;
 - d. Stream buffer mitigation. Mitigation of adverse impacts to stream buffer areas shall result in equivalent functions and values, on a per function basis, and be located in the same drainage basin as the habitat impacted.
- 4. Endangered and Threatened Species.
Species which are state or federally designated endangered, threatened, and sensitive species and the habitat with which they have a primary association. Lists, categories and definitions of species promulgated by National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), and WDFW are provided to the city to be used for guidance only.
- 5. Priority Habitat Species Areas.
The WDFW has identified priority habitats and/or species considered to be priorities for conservation and management. Priority habitat types have unique or significant value to many species. Priority species are those species that require protective measures and/or management guidelines to ensure their perpetuation. Habitat types and species are listed in Exhibit A showing the location of priority species habitats and are kept on file at the city.
- 6. Local Habitat Areas.
Local habitat areas include those areas specifically identified as local habitat areas on the city's adopted critical areas map and background maps used to prepare the critical areas map.
 - a. The city or private citizens may nominate areas for consideration as local habitat areas and for inclusion on the critical areas map.
 - b. The applicant shall be responsible for preparing the nomination using city-prescribed forms. The applicant shall pay a processing fee of one percent of the assessed value of the proposed area as zoned at the time of application. The Planning Commission, through a Type II process, and in reliance upon all best available science in the hearing record, shall make a determination of whether the nominated area qualifies as a local habitat area.
- 7. Development standards.
 - a. No development approval shall be granted unless mitigation of adverse effects can be provided that will ensure continuation of base-line populations for all fish and wildlife habitat areas. Base-line populations are those population levels known or reasonably believed to have been supported by the area in question with relative stability over the decade preceding the proposed development. For streams, creeks, rivers, ponds, lakes and wetlands containing priority habitat and/or species, an undisturbed riparian buffer area shall be provided in accord with Table 21.10.070-8.
 - b. Development reviews shall include consideration of species' regional occurrence and movements, with a view to avoiding creation of isolated sub-populations of those species.
 - c. No approval shall be granted to a project for which the site analysis shows an adverse impact to any threatened or endangered species under the Endangered Species Act, without prior review and approval by appropriate federal agencies.
 - d. Applicants proposing activities subject to this chapter shall demonstrate that the activity substantially maintains the level of habitat functions and values as characterized and documented using best available science, and minimizes habitat disruption or alteration beyond the extent required to undertake the proposal. (Ord. 1046, 2015)

21.10.080 Warning and disclaimer of liability.

The degree of hazard protection required by this ordinance is considered reasonable for regulation purposes and is based on scientific and engineering considerations. Catastrophic natural disasters can, and will, occur on occasion. This does not imply that land outside critical areas, or activities permitted within such areas, will be free from exposure or damage. This chapter shall not create liability on the part of the city, and officers or employees thereof, for any damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

21.10.090 Appeals.

I. Administrative Appeals.

A. Any party of record aggrieved by a recommendation of the Planning Commission to approve, conditionally approve, or disapprove a plan may appeal the decision of the Planning Commission to the City Council in a closed record appeal. An appeal must be filed with the City Clerk-Treasurer within thirty (30) days of the date the recommendation is made. In the closed record appeal the council may affirm or reverse the Planning Commission's recommendation.

B. Any party of record aggrieved by a final decision of the City Council to approve, conditionally approve, or disapprove a plan may appeal the City Council's final decision to the Superior Court for Skamania County in accordance with the provisions contained in RCW Chapter 36.70c adopted by reference as if set forth in full, including any additions or amendments thereto.

21.10.100 Violations and penalties.

Violation deemed civil infraction: Any violation of the regulations as contained in this chapter or any amendment thereto shall be a civil infraction punishable by a fine in accordance within Chapter 7.01.020(E).

21.10.110 Severability.

If any section, subsection, sentence, clause, phrase, part or portion of this chapter is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions.

21.10.120 Effective date.

This chapter is in full force and effective five (5) days after passage and publication as provided by law.

EXHIBIT A

CRITICAL AREAS: MAPS ON FILE IN CITY HALL

MAP

NUMBER

MAP NAME

1. FLOOD HAZARD AREAS, FIRM MAP, FEMA
2. STEEP SLOPES AND EROSION HAZARD AREAS; BASED ON SOIL SURVEY OF SKAMANIA COUNTY, 1990, U.S.D.A.
3. FISH AND WILDLIFE CONSERVATION AREAS - HABITAT OR SPECIES OF LOCAL IMPORTANTANCE
4. CRITICAL AQUIFER RECHARGE AREAS
5. WASHINGTON DEPARTMENT OF FISH AND WILDLIFE PRIORITY HABITATS AND SPECIES (PHS) MAP
6. CITY OF NORTH BONNEVILLE STREAM CLASSIFICATIONS MAP
7. CITY OF NORTH BONNEVILLE WETLANDS MAP
8. CITY OF NORTH BONNEVILLE GEOLOGICAL CRITICAL AREAS MAP