

**Chapter 17.07**  
**Critical Areas Protection**

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**17.07.010 Purpose and Intent.**

The purpose of this chapter is to designate and classify ecologically sensitive and hazardous areas and to protect these areas and their functions and values in a manner that also allows reasonable use of private property. This section is intended to:

- A. Implement the City of Zillah Comprehensive Plan and the requirements of the Growth Management Act;
- B. Protect critical areas, in accordance with the Growth Management Act and through the application of best available science, as determined according to WAC 365-195-900 through 365-195-925 or as may be amended, and in consultation with state and federal agencies and other qualified professionals;
- C. Protect the general public, resources and facilities from injury, loss of life, property damage or financial loss due to flooding, erosion, landslides, or steep slopes failure;
- D. Protect unique, fragile and valuable elements of the environment, including ground and surface waters, wetlands, and fish and wildlife and their habitats;
- E. Prevent cumulative adverse environmental impacts to water quality and availability, wetlands, and fish and wildlife habitat; and
- F. Provide flexibility and attention to site specific characteristics, so as to ensure reasonable use of property.
- G. Preserve development options within designated critical areas where such development will not adversely impact critical area values and functions, particularly the functional properties of stream corridors and other hydrological related critical areas.

**17.07.020 General Provisions**

A. The city of Zillah contains areas that can be identified and characterized as critical or environmentally sensitive. Such areas within the city include aquifer recharge areas, fish and wildlife habitat areas, wetlands and streams, flood hazards areas, and geologic hazards areas.

B. The city finds that these critical areas perform a variety of valuable and beneficial biological and physical functions that benefit the city and its residents. Alteration of certain critical areas may also pose a threat to public safety or to public and private property or the environment. The city therefore finds that identification, regulation and protection of critical areas are necessary to protect the public health, safety and general welfare. The city further finds that the functions of critical areas and the purpose of these regulations include the following:

1. **Wetlands.** Wetlands perform a variety of functions that include maintaining water quality; storing and conveying storm water and flood water; recharging ground water; providing important fish and wildlife habitat; and serve as areas for recreation, education and scientific study, and aesthetic appreciation.

Wetland buffers serve to moderate runoff volume and flow rates; reduce sediment, chemical nutrient and toxic pollutants; provide shading to maintain desirable water temperatures; provide habitat for wildlife; and protect wetland resources from harmful intrusion.

The primary goals of wetland protection are to avoid adverse wetland impacts; to achieve no net loss of wetland function and value – acreage may also be considered in achieving the overall goal; to provide levels of protection that reflect the sensitivity of individual wetlands and the intensity of proposed land uses; and to restore and/or enhance existing wetlands, where possible.

2. **Streams.** Streams and their associated riparian corridors provide important fish and wildlife habitat; help to maintain water quality; store and convey storm water and flood water; recharge ground water; and serve as areas for recreation, education and scientific study and aesthetic appreciation. Stream buffers serve to moderate runoff volume and flow rates; reduce sediment, chemical nutrient and toxic pollutants; provide shading to maintain desirable water temperatures; provide habitat for wildlife; and protect stream resources from harmful intrusion.

The primary goals of stream protection are to avoid adverse impacts to streams and associated riparian corridors; to achieve no net loss of functions and values of the larger ecosystem in which the stream is located; to protect fish and wildlife resources; to protect water quality through appropriate management techniques; and, where possible, to provide for stream enhancement and rehabilitation.

3. **Fish and Wildlife Habitat.** Fish and wildlife habitat areas provide opportunities for food, cover, nesting, breeding and movement for fish and wildlife; maintains and promotes diversity of species and habitat; coordinates habitat protection with elements of the open space system; helps to maintain air and water quality; helps control erosion; serves as areas for recreation, education, scientific study, and aesthetic appreciation; and provides neighborhood separation and visual diversity within urban areas.

The primary goals of fish and wildlife habitat protection is to avoid adverse impacts to critical habitats for fish and wildlife; to achieve no net loss of functions and values of the larger ecosystem in which the fish and wildlife habitat is located; to implement the goals of the Endangered Species Act; to promote connectivity between habitat areas to allow for wildlife movement; to provide multi-purpose open space corridors; and where possible to provide for fish and wildlife habitat enhancement and rehabilitation that reflect the sensitivity of the species.

**4. Aquifer Recharge Areas.** Aquifer recharge areas provide a source of potable water and contribute to stream discharge/flow. Such areas contribute to the recharge of aquifers, springs and/or wells and are susceptible to contamination of water supplies through infiltration of pollutants through the soil.

The primary goals of aquifer recharge protections are to protect ground water quality by maintaining the quantity of recharge; avoiding or limiting land use activities that pose potential risk of aquifer contamination; and to minimize or avoid adverse impacts to aquifer recharge areas through the application of performance standards, and to comply with the requirements of the Federal Safe Drinking Water Act and Washington Administrative Code that require Group A public water systems to develop and implement a wellhead protection program.

**5. Flood Hazard Areas.** Floodplains help to store and convey storm water and flood water; recharge ground water; provide important areas for riparian habitat; and serve as areas for recreation, education, and scientific study. Development within floodplain areas can be hazardous to those inhabiting such development, and to those living upstream and downstream. Floods also cause substantial damage to public and private property which can result in significant costs to the public and individuals.

The primary goals of flood hazard protections are to limit or condition development within the 100-year floodplain to avoid substantial risk of damage to public and private property and that result in significant costs to the public and individuals; to avoid significant increases in peak storm water flows or loss of flood storage capacity.

**6. Geologic Hazard Areas.** Geologic hazard areas include lands or areas characterized by geologic, hydrologic and topographic conditions that render them susceptible to varying degrees of risk of landslides, erosion, seismic or volcanic activity.

The primary goals of regulating geologic hazards are to avoid and minimize potential impacts to life and property by regulating and/or limiting land uses where necessary, and to conduct appropriate levels of analysis and ensure sound engineering and construction practices to address identified hazards.

C. This chapter of the Zillah City Code and other sections as incorporated by reference contain standards, procedures, criteria and requirements intended to identify, analyze, and mitigate potential impacts to the city's critical areas, and to enhance and restore degraded resources where possible. The general intent of these protections is to avoid impacts to critical areas. In appropriate circumstances, impacts to specified critical areas resulting from regulated activities

may be minimized, rectified, reduced and/or compensated for, consistent with the requirements of this chapter.

#### **17.07.030 Definitions**

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

"Agriculture" and "Farming" shall include cultivation of the soil, dairying, forestry, raising or harvesting any agricultural or horticultural commodity or the construction, operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for farming purposes; handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market, or to a carrier for transportation to market, or for direct sale any agricultural or horticultural commodity as an incident to ordinary farming operations, or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market or for direct sale.

"*Anadromous fish*" means fish that spawn and rear in freshwater and mature in the marine environment, such as salmon, steelhead, sea-run cutthroat, and bull trout.

"*Applicant*" means the person, party, firm, corporation, or other entity that proposes or has performed any activity that affects a critical area.

"*Aquifer*" means, generally, any water bearing soil or rock unit. Specifically, a body of soil or rock that contains sufficient saturated permeable material to conduct ground water and yield economically significant quantities of ground water to wells or springs.

"*Aquifer recharge areas*" means land areas designated by the city beneath which ground water occurs that is a current or potential future source of drinking water for the city.

"*Artificially created wetlands*" means wetlands created from non-wetland sites through purposeful, legally authorized human action, such as irrigation and drainage ditches, grass-lined swales, canals, retention or detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities.

"*Best Available Science*" As defined in the Procedural Criteria for Adopting Comprehensive Plans and Development Regulations for Best Available Science at WAC 365-195-900, et seq. or as may be amended.

"*Buffer or buffer area, critical area*" means a naturally vegetated, undisturbed, enhanced or re-vegetated zone surrounding a critical area that protects the critical area from adverse impacts to its integrity and value, and is an integral part of the resource's ecosystem.

"*City*" means the city of Zillah.

"*Clearing*" means the removal of timber, brush, grass, ground cover or other vegetative matter from a site, which exposes the earth's surface of the site, or any actions, which disturb the existing ground surface.

“*Comprehensive plan*” means the city of Zillah Comprehensive Plan as it is now adopted or hereafter amended.

“*Critical areas*” or “*an environmentally sensitive area*” means areas that possess important natural functions and embody a variety of important natural and community values. Such areas include aquifer recharge areas, fish and wildlife habitat areas, wetlands and streams, flood hazard, and geologic hazard areas. If not conducted properly, development or alteration of such areas may cause significant impacts to the valuable functions and values of these areas and/or may generate risks to the public health and general welfare, and/or to public and private property.

“*Critical area report*” means a report prepared by a qualified consultant to determine the presence, type, class, size, function and/or value of an area subject to these regulations. Also see “Stream reconnaissance report,” “Wetland impact assessment report” and “Wildlife report.”

“*Critical erosion hazard areas*” means lands or areas underlain by soils identified by the U.S. Department of Agriculture Soil Conservation Service (SCS) (now known as the Natural Resource Conservation Service) as having “severe” or “very severe” erosion hazards.

“*Critical geologic hazard areas*” means lands or areas subject to high or severe risks of geologic hazard, including critical erosion hazard areas, critical landslide hazard areas, and critical seismic hazard areas.

“*Critical habitat*” or “*critical fish and wildlife habitat*” means habitat areas associated with threatened, endangered, or sensitive species of plants or wildlife (pursuant to WAC 232-12-297(2.4), (2.5) and (2.6) or as may be amended) and which, if altered, could reduce the likelihood that the species will maintain and reproduce over the long term.

“*Critical landslide hazard areas*” means lands or areas where there is a high or very high risk of landslide due to a combination of slope, soil permeability, and water.

“*Critical seismic hazard areas*” means lands or areas where there is a high risk of seismic events and damage.

“*Delineation manual*,” “*wetland delineation manual*,” or “*wetland delineation methodology*” means the manual and methodology used to identify wetlands in the field, as described in the Washington State Wetlands Identification and Delineation Manual (Publication No. 96-94), adopted by the Department of Ecology in 1997 (pursuant to RCW 36.70A.175 and 90.58.380 or as amended), and which is based on the U.S. Corps of Engineers Wetlands Delineation Manual (1987). Use of this manual is required by RCW 36.70A.175 and 90.58.380 or as may be amended.

“*Department*” means the city of Zillah department of planning and development or successor agency, unless the context indicates a different city department.

“*Earth/earth material*” means naturally occurring rock, soil, stone, sediment, or combination thereof.

*“Enhancement”* means the improvement of an existing viable wetland, stream or habitat area or the buffers established for such areas, through such measures as increasing plant diversity, increasing fish and wildlife habitat, installing environmentally-compatible erosion controls, increasing structural diversity or removing plant or animal species that are not indigenous to the area. Enhancement also includes actions performed to improve the quality of an existing degraded wetland, stream, or habitat area. See also *“Restoration.”*

*“Erosion”* means a process whereby wind, rain, water, and other natural agents mobilize and transport soil particles.

*“Erosion hazard areas”* means lands or areas that, based on a combination of slope inclination and the characteristics of the underlying soils, are susceptible to varying degrees of risk of erosion. Erosion hazard areas are classified as *“low”* (areas sloping less than 15 percent) or *“high”* (areas sloping 15 percent or more) on the following Soil Conservation Service (SCS), now known as the Natural Resource Conservation Service (NRCS). Soil groups may be identified through site-specific analysis.

*“Excavation”* means the removal or displacement of earth material by human or mechanical means.

*“Existing and “ongoing” agricultural activities”* means those activities conducted on lands defined in RCW 84.34.020(2) or as may be amended, and those activities involved in the production of crops and livestock. Such activity must have been in existence as of July 1, 1990 (the effective date of the Growth Management Act). The definition includes, but is not limited to, operation and maintenance of farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities or crops, and normal operation, maintenance or repair of existing serviceable structures, facilities, or improved areas. Activities, which bring an area into agricultural use from a previous nonagricultural use, are not considered part of an ongoing activity. An operation ceases to be ongoing when the area on which it was conducted is proposed for conversion to a nonagricultural use or has lain idle for a period of longer than five years, unless the idle land is registered in a federal or state soils conservation program. Forest practices are not included in this definition.

*“Exotic”* means any species of plant or animal, not native to or not usually found as domestic pets in the United States, which is foreign and not indigenous to Yakima County regional area.

*“Fill/fill material”* means a deposit of earth material placed by human or mechanical means.

*“Filling”* means the act of transporting and placing (by any manner or mechanism) fill material from, to, or on any surface water body or wetland, soil surface, sediment surface, or other fill material.

*“Geologic hazard areas”* means lands or areas characterized by geologic, hydrologic, and topographic conditions that render them susceptible to varying degrees of risk of landslides, erosion, seismic or volcanic activity.

*“Grading”* means any excavating, filling, clearing, leveling or contouring of the ground surface by human or mechanical means.

*“Habitat management”* means management of land and its associated resources/features to maintain species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. This does not imply maintaining all habitat or individuals of all species in all cases.

*“Hazardous materials”* means any material, either singularly or in combination, that is a physical or health hazard whether the materials are in usable or waste condition; and any material that may degrade ground water quality when improperly stored, handled, treated, used, produced, recycled, disposed of, or otherwise mismanaged. Hazardous materials shall also include, without exception:

1. All materials defined as or designated by rule as a dangerous waste or extremely hazardous waste under Chapter 70.105 RCW and Chapter 173-303 WAC or as may be amended;
2. Any substance defined as or designated by rule as a hazardous substance under Chapter 70.105 RCW and Chapter 173-303 WAC or as may be amended; and
3. Petroleum or petroleum products, including any waste oils or sludges.

*“Hydrologically isolated”* means wetlands which: (1) have no surface water connection to a lake, river, or stream during any part of the year; (2) are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream; and (3) have no contiguous hydric soil between the wetland and any lake, river, or stream. May also be a pond excavated from uplands with no surface water connection to a stream, lake, or other wetland.

*“In-kind wetland mitigation”* means replacement of wetlands with wetlands whose characteristics closely approximate those destroyed or degraded by a regulated activity.

*“Injection well”* means a “well” that is used for the subsurface emplacement of fluids. (From WAC 173-218-030 or as may be amended.)

*“Intentionally created streams”* means streams created through purposeful human action, such as irrigation and drainage ditches, grass-lined swales, and canals. This definition does not include stream modifications performed pursuant to city authorization, such as changes or redirection of stream channels.

*“Landslide”* means episodic down slope movement of a mass of soil or rock.

*“Landslide hazard areas”* means areas that, due to a combination of slope inclination, relative soil permeability, and hydrologic conditions are susceptible to varying degrees of risk of land sliding. Landslide hazard areas are classified as Class I through IV based on the degree of risk as follows:

1. Class I/Low Hazard. Areas with slopes of 15 percent or less.
2. Class II/Moderate Hazard. Areas with slopes of between 15 percent and 40 percent and that are underlain by soils that consist largely of sand or gravel.

3. Class III/High Hazard. Areas with slopes between 15 percent and 40 percent that are underlain by soils consisting largely of silt and clay.
4. Class IV/Very High Hazard. Areas with slopes steeper than 15 percent with identifiable zones of emergent water (e.g., springs or ground water seepage), areas of identifiable landslide deposits regardless of slope and all areas sloping more steeply than 40 percent.

The slopes referenced above include only those where the surface drops 10 feet or more vertically within a horizontal distance of 25 feet.

“*Mitigation*” means activities which include:

1. Avoiding the impact altogether by not taking a certain action or parts of actions.
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
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 or providing substitute resources or environments.

While monitoring without additional actions is not considered mitigation for the purposes of these regulations, it shall be part of a comprehensive mitigation program.

“*Mitigation sequencing*” means considering or performing mitigation actions, as defined in the definition of “mitigation,” in a preferred sequence from (1) through (5). Avoidance is preferred and must be considered prior to pursuing other forms of mitigation.

“*Native*” means any species of plant or animals which are or were indigenous to the Yakima County regional area.

“*Natural heritage wetlands*” means wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as high quality, relatively undisturbed wetlands, or wetlands that support state-listed threatened or endangered plants.

“*Off-site mitigation*” means performance of mitigation actions, pursuant to standards established in this chapter, on a site or in an area other than that proposed for conduct of a regulated activity.

“*Out-of-kind mitigation*” means replacement of wetlands or habitat with substitute wetlands or habitat whose characteristics do not closely approximate those adversely affected, destroyed, or degraded by a regulated activity.

*“Permanent erosion control”* means continuous on-site and off-site control measures that are needed to control conveyance or deposition of earth, turbidity, or pollutants after development, construction, or restoration.

*“Planning Official”* means the planning official of the City of Zillah Department of Planning and Development or successor agency.

*“Qualified consultant”* for purposes of these protections, shall mean a person who has attained a degree from an accredited college or university in the subject matter necessary to evaluate the critical area in question (e.g., biology, ecology, or horticulture/arboriculture for wetlands, streams, fish and wildlife habitat, and geology and/or civil engineering for geologic hazards, and hydro-geologist for aquifer recharge areas), and/or who is professionally trained and/or certified or licensed by the state of Washington to practice in the scientific disciplines necessary to identify, evaluate, manage, and mitigate impacts to the critical area in question.

*“Reasonable use alternative”* means an action that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation. Reasonable alternatives may be those over which an agency with jurisdiction has authority to control impacts, either directly or indirectly through requirement of mitigation measures. (See WAC 197-11-440(5) and 197-11-660 or as may be amended)

*“Reasonable use”* means a legal concept articulated by federal and state courts in regulatory taking cases. See “Reasonable use alternatives” for guidelines in determination.

*“Regulated activities”* means activities that have a potential to significantly impact a critical area that is subject to the provisions of this chapter. Regulated activities generally include, but are not limited to, any filling, dredging, dumping or stockpiling, release of contaminants to soil or water, draining, excavation, flooding, clearing or grading, construction or reconstruction, driving pilings, obstructing, clearing, or harvesting.

*“Restoration”* means actions taken to re-establish wetland, stream or habitat functional values, and the characteristics that have been destroyed or degraded by past alterations (e.g., filling or grading). See also “Enhancement.”

*“Secondary habitat”* means areas that offer less diversity of animal and plant species than critical habitat but are important for performing the essential functions of habitat.

*“Seismic hazard areas”* means areas that, due to a combination of soil and ground water conditions, are subject to risk of ground shaking, subsidence or liquefaction of soils during earthquakes. These areas are typically underlain by soft or loose saturated soils (such as alluvium), have a shallow ground water table, and are typically located on the floors of river valleys.

*“Site”* means the location containing a regulated critical area and on which a regulated activity is proposed. The location may be a parcel or portion thereof, or any combination of contiguous parcels where a proposed activity may impact a critical area.

“*Slope*” means an inclined earth surface, the incline of which is expressed as the ratio of horizontal distance to vertical distance. The slopes referenced above include only those where the surface drops 10 feet or more vertically within a horizontal distance of 25 feet.

“*Spring*” means a source of water where an aquifer comes in contact with the ground surface.

“*Stream reconnaissance report*” means a type of critical area report prepared by an applicant’s qualified consultant to describe a stream and to characterize its conditions, wildlife, habitat values and water quality. The report also includes an analysis of impacts.

“*Streams*” means those areas where surface waters produce a defined channel or bed that demonstrates clear evidence of the passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds and defined-channel swales. The channel or bed need not contain water year-round. This definition is not intended to include artificially created irrigation ditches, canals, storm or surface water devices, or other entirely artificial watercourses unless they are used by fish or created for the purposes of stream mitigation.

“*Structural diversity, vegetative*” means the relative degree of diversity or complexity of vegetation in a fish and wildlife habitat area as indicated by the stratification or layering of different plant communities (e.g., ground cover, shrub layer and tree canopy), the variety of plant species and the spacing or pattern of vegetation.

“*Substrate*” means the soil, sediment, decomposing organic matter or combination of those located on the bottom surface of the wetland, lake, stream, or river.

“*Temporary erosion control*” means on-site and off-site control measures that are needed to control conveyance or deposition of earth, turbidity, or pollutants during development, construction, or restoration.

“*Tertiary habitat*” means habitat that supports some wildlife but does not satisfy the definition of secondary or critical habitat.

“*Utility*” includes natural gas, electric, telephone and telecommunications, cable communications, water, sewer or storm drainage and their respective facilities, lines, pipes, mains, equipment and appurtenances.

“*Variance*” means permission to depart from the requirements of the specific regulations of this title for a particular piece of property.

“*Volcanic hazard areas*” means areas identified by the U.S. Geological Survey (maps dated 1998 or as hereafter revised) as subject to a risk of large lahars with a recurrence interval of 500 to 1,000 years.

“*Well*” includes any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed when the intended use of an excavation is for the location, diversion, artificial recharge, or withdrawal of ground water.

*“Wellhead protection area”* means the portion of a well’s, well field’s or spring’s zone of contribution defined as such using the criteria established by the city.

*“Wetland”* or *“wetlands”* means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including but not limited to irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. However, wetlands include those artificial wetlands intentionally created from non-wetland areas to mitigate conversion of wetlands. (Definition taken from the Washington State Wetlands Identification and Delineation Manual, Ecology Publication No. 96-94.)

*“Wetland impact assessment report”* means a report prepared by a qualified consultant that identifies, characterizes and analyzes potential impacts to wetlands consistent with applicable provisions of these regulations. A wetland impact assessment may be combined with and include a formal wetland delineation.

*“Wildlife report”* means a report prepared by a qualified consultant that evaluates plant communities and wildlife functions and values on a site, consistent with the format and requirements established by this chapter. The report also includes an analysis of impacts.

#### **17.07.040 Applicability – Regulated activities.**

A. All persons proposing development in critical areas or their buffers must first submit an application pursuant to this chapter, except as exempted pursuant to ZMC 17.07.050. These critical area protections shall apply as an overlay to zoning and other land use regulations established by the City.

1. Any new development, construction or use within the City that lies within a critical area as defined herein shall comply with the provisions of this section. No action shall be taken by any person that results in the alteration or modification of any critical area except as consistent with the requirements, objectives and intent of this section.
2. Where two or more types of critical areas overlap, requirements for development shall be consistent with the standards for each critical area.
3. These Critical Areas regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as locally adopted. Any conditions required pursuant to this section may be included in the SEPA review and threshold determination.

B. To avoid duplication, the following permits and approvals shall be subject to and coordinated with the requirements of this chapter: land clearing; grading; subdivision or short subdivision; building permit; planned unit development (if permitted by the city)

code); shoreline substantial development; variance; conditional use permit; and any other permits that may lead to the development or alteration of land.

C. Administrative actions, such as rezones, annexations, and the adoption of plans and programs, shall be subject to the requirements of this chapter. However, the Planning Official may, using discretion, permit any studies or evaluations required by this chapter to use methodologies and provide a level of detail appropriate to the administrative action proposed.

#### **17.07.050 Exemptions and Nonconforming uses.**

The activities listed below are exempt from the provisions of this chapter. Exempt activities shall be conducted using all reasonable methods to avoid impacts to critical areas. Exemption from the chapter shall not be considered permission to degrade a critical area or ignore risks from natural hazards. Incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated at the property owner's expense.

- A. Emergency construction or repair necessary to protect life or property from immediate damage by the elements. An emergency is an unanticipated event or occurrence which poses an imminent threat to public health and safety, to private or public property, or to the environment, and which requires immediate action within a time too short to allow full compliance. Once the threat to the public health, safety, or the environment has dissipated, the construction undertaken as a result of the previous emergency shall then be evaluated and brought into reasonable compliance with this title with due consideration given to the nature, type and extent of emergency responses and actions;
- B. Normal maintenance or repair of existing buildings, structures, roads, utilities, levees, or drainage systems, that do not require construction permits, provided the activity does not materially alter, encroach upon, or increase impacts to critical areas or associated buffers;
- C. Existing and "on-going" agricultural activities normal or necessary to general farming conducted;
- D. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, critical area impacts should be minimized and disturbed areas shall be immediately restored;
- E. Passive recreational, scientific or educational activities, including, but not limited to: fishing, bird watching, hiking, hunting, boating, swimming, canoeing, and bicycling provided the activity does not alter the critical area or its buffer by changing existing topography, water conditions or water sources;
- F. Minor safety improvements to state and local transportation facilities provided the project meets the exempted size impacts for the critical areas;
- G. The operation and maintenance of canals, waterways, drains, reservoirs, or other man-made facilities that now exist or are hereinafter created or developed as a part of an irrigation system;

- H. Maintenance of above-ground utility transmission lines and poles;
- I. Any streamside management project associated with a single-family residence or agricultural activity designed to achieve, through the use of native or natural vegetation and/or bioengineering alternatives, the functional properties of the critical area and carried out in conformance with a conservation plan or design developed through Yakima County Conservation District, or by a qualified professional certified to develop such plans or designs according to best management practices;
- J. Development and construction for which the total cost or fair market value is \$2,500 or less, provided such development and construction does not involve excavation, fill, or other work such as but not limited to placement of structures and removal of native plants, which is not consistent with the function of properties of the designated critical area.
- K. Activities involving artificially created wetlands or streams intentionally created from non-wetland sites, including but not limited to grass-lined swales, irrigation and drainage ditches, retention or detention facilities, and landscape features, except wetlands or streams created as mitigation or when the site contains another critical area;
- L. Additions to a legally established single-family residential structure in existence before November 1, 2010, located within a wetland or stream buffer may be permitted if all of the following criteria are met:
  - a. The addition is no greater than 500 square feet of building footprint over that in existence as of November 1, 2010;
  - b. The addition is not located closer to the critical area than the existing structure;
  - c. Impacts on critical area functions are avoided consistent with the purpose and intent of this title; and
  - d. There are no changes in slope stability, flood conditions or drainage;
- M. Permanent additions to a legally established existing and “on-going” farming operation in existence before November 1, 2010, located within a wetland or stream buffer may be permitted if all of the following criteria are met:
  - a. The addition is not located closer to the critical area than the other existing structure(s); and
  - b. Impacts on critical area functions are avoided consistent with the purpose and intent of this title; and
  - c. There are no changes in slope stability, flood conditions or drainage; and
  - d. Does not meet the “reasonable use alternatives” requirements.

### 17.07.060 Exceptions

A **Exception – Subdivisions with Substantial Completion of Infrastructure.** A building permit application shall not be denied under this chapter if there has been substantial completion of the infrastructure of the plat within which the subject property of the permit is specifically located. A determination of substantial completion shall be based on the Planning Official's assessment of existing constructed infrastructure such as streets, utilities, and drainage improvements.

1. Typically "substantial completion" means the amount of construction within a particular project area has impacted critical areas to the maximum extent that would be attributable to the project actions and on-site mitigation is neither economically nor ecologically viable.

2. The Planning Official will confer with the appropriate city department heads, the city attorney, and, if necessary, the city's risk management specialist regarding the consequences of a decision to deny a building permit for a project with a valid clearing and grading permit, approved site plans, and an authorization to proceed with construction.

B. **Exception – Reasonable Use Alternatives.**

The City may modify the requirements of this section in specific cases when necessary to allow reasonable use of an applicant's property.

1. *Reasonable Use Review Criteria*-To qualify for such relief the applicant must demonstrate all of the following:

- a. That no other reasonable use can be made of the property that will have a lesser adverse impact on the critical area;
- b. That there are no feasible and reasonable onsite alternatives to the proposed activities, including changes in site layout, reductions in density, and similar factors that would allow a reasonable economic use with fewer impacts;
- c. That the proposed use does not pose a material threat to the public health, safety or welfare;
- d. Any alteration shall be the minimum required to allow reasonable use of the property;
- e. The inability of the proponent to derive reasonable use of the property shall not be the result of applicant's after the effective date of this section; and
- f. The proposal is consistent with other applicable regulations and standards.

2. *Exception Request and Review Process.* A request for a reasonable use exception shall be submitted to the city and shall include a critical areas report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State

Environmental Policy Act (Chapter 43.21C RCW or as may be amended) (if reasonably necessary to evaluate application). The planning official shall review and prepare a decision based on review of the submitted information, a site inspection, and the requested proposal's compliance with the reasonable use exception criteria in subsection (B)(1) of this section.

3. A reasonable use exception shall be processed according to the provisions of a Class I review process ZMC 17.06.030 or as may be amended and may be approved, approved with conditions, or denied based on the proposal's ability or lack of ability to comply with all of the reasonable use exception review criteria in subsection (B)(1) of this section. Any alteration of a critical area(s) approved under this section may be subject to appropriate conditions and will require mitigation under an approved mitigation plan.
4. *Burden of Proof.* The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

**17.07.070 Reference Maps and Materials.**

The City shall maintain reference maps and materials that provide information on the general locations of critical areas. Since boundaries are generalized, the application of this section and the actual type, extent and boundaries of critical areas shall be determined and governed by the classification section established for each critical area. In the event of any conflict between the critical area location or designation shown on the City's maps and the criteria and standards established in this section, or the site-specific conditions, the criteria, standards and/or site-specific conditions shall take precedence. Reference maps and inventories shall include, but are not limited to the following:

- A. Wetlands Map, based upon US Fish and Wildlife Service National Wetlands Inventory;
- B. Fish and Fish and wildlife habitat Area Maps, based upon Washington Department of Fish and Wildlife Priority Habitats and Species data;
- C. Soils Maps, based upon Yakima County Soils Survey, May 1985
- D. United States Department of Agriculture- Natural Resources Conservation Service (NRCS)
- E. Steep Slopes Map- Yakima County GIS
- F. U.S.G.S. 7.5 Minute Series Topographic Quadrangle Maps;
- G. Aerial photos- Yakima County GIS;
- H. City of Zillah Comprehensive Plan- January 2007 or as amended;
- I. Yakima County Regional Shoreline Master Program- September 2008 or as amended;

- J. City of Zillah Critical Areas maps: Aquifer Recharge Areas; Streams, Lakes, Potential Wetlands, and Floodplains; and Geologically Hazardous Areas- prepared July 2008;
- K. Washington State Wetlands Identification and Delineation Manual (DOE, 1997), or as amended;
- L. Washington State Wetlands Rating System for Eastern Washington - Revised (Publication# 04-06-15), March 2007 or as amended;
- M. "The Flood Insurance Study for Yakima County, Washington and Incorporated Areas" dated November 18, 2009, and any revisions thereto, with an accompanying Flood Insurance Rate Map (FIRM), and any revisions thereto; and
- N. Approved special reports previously completed for a subject property

#### **17.07.080 Application**

**A. Review Process.** Any new development, construction or use shall require that applicants disclose activities within two hundred and fifty (250) feet of a known or suspected critical area. The provisions of this section shall be applied to any such proposals. The review process shall proceed as follows:

1. *Application meeting/site visit.* Upon receiving a land use or development proposal, the planning official may schedule an application meeting and/or site visit with the proponent for purposes of a preliminary determination whether the proposal is likely to result in impacts to the functions and values of critical areas or pose health and safety hazards. At this meeting, the planning official may discuss the requirements of this section and other applicable regulations; provide critical areas maps and other available reference materials; outline the review and permitting processes; and, work with the proponent to identify any potential concerns with regards to critical areas.
2. *Application and SEPA Checklist.* For all nonexempt proposals, the proponent shall submit all relevant land use/development applications, together with a SEPA Checklist.
3. *Determination of need for critical areas report.* Based upon the pre-application meeting, if conducted, application materials, and the SEPA Checklist, the planning official shall determine if there is cause to require a critical areas report. In addition, the planning official may use critical areas maps and reference materials, information and scientific opinions from appropriate agencies, or any reasonable evidence regarding the existence of critical area(s) on or adjacent to the site of the proposed activity. See subsection C of this section.
4. *Documentation and notification.* The planning official shall document the pre-application meeting if conducted, and/or site visit, application and SEPA threshold determination, and any other steps or findings regarding the determination of whether a critical areas report will be required. The applicant shall receive notice of the determination and any findings that support it.

**B. Application Review and Conditions.**

1. A permit shall only be granted if the permit, as conditioned, is consistent with the purposes and intent of this chapter. Additionally, permits shall only be granted if:
  - a. A proposed action:
    - i. Avoids significant adverse impacts to critical areas;
    - ii. Takes affirmative and appropriate measures to minimize significant adverse impacts to critical areas; or
    - iii. Mitigates (compensates for) unavoidable significant adverse impacts to critical areas; and
    - iv. Assures no net loss of wetland function and value; and
    - v. The proposal is consistent with all other applicable local, state, and federal regulations and standards.
2. The proposal is compatible in design, scale, and use with other development or potential development in the area; and
3. The proposed actions implement, to the maximum extent possible, the best available construction, design, and development techniques that will result in the least adverse impact to the critical area; and
4. Any alteration to a critical area, unless otherwise provided for in this chapter, shall be reviewed and approved, approved with conditions, or denied based on the proposal's ability to comply with all of the criteria in subsection (B1) (a) (i-v); and
5. The city may condition the proposed activity as necessary to mitigate impacts or address adverse impacts to critical areas and to conform to the standards required by this chapter. Through the review process, City of Zillah shall have the authority to attach such conditions to any permit or authorization issued in order to mitigate to critical area(s) and to carry out the provisions of this section. Such conditions may include, but are not limited to the following:
  - i. Specification of allowable lot sizes;
  - ii. Provisions for additional buffers relative to the intensity of a use or activity;
  - iii. Requirements and/or restrictions on the construction, size, location, bulk and/or height, etc. of structure(s);
  - iv. Dedication of necessary easements for utilities, conservation, open space, etc.;
  - v. Imposition of easement agreements, sureties, deed restrictions, covenants, etc. on the future use and/or division of land that run with the land and are filed and recorded in the office of the Yakima County Auditor.
  - vi. Limitations on the removal of existing vegetation;
  - vii. Additional measures to address issues such as erosion control, storm water management, filling, grading, etc.;
  - viii. Development of a mitigation plan to create, enhance, or restore damaged or degraded critical area(s) on and/or off site; and
  - ix. Any monitoring and/or maintenance plans necessary to implement the provisions of this section.

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

7. *Favorable Determination.* If the administrator determines that the proposed activity meets the criteria in this section and complies with the applicable provisions of this chapter, the administrator shall prepare a written notice of determination and identify any required conditions of approval. The notice of determination and conditions of approval shall be included in the project file and be considered in the next phase of the city's review of the proposed activity in accordance with any other applicable codes or regulations.

a. Any conditions of approval included in a notice of determination shall be attached to the underlying permit or approval. Any subsequent changes to the conditions of approval shall void the previous determination pending review of the proposal and conditions of approval by the planning official.

b. A favorable determination should not be construed as endorsement or approval of any underlying permit or approval.

8. *Unfavorable Determination.* If the planning official determines that a proposed activity does not adequately mitigate its impacts on the critical areas and/or does not comply with the criteria in subsection B4 of this section and the provisions of this chapter, the planning official shall prepare written notice of the determination that includes findings of noncompliance.

a. No proposed activity or permit shall be approved or issued if it is determined that the proposed activity does not adequately mitigate its impacts on the critical areas and/or does not comply with the provisions of this chapter.

b. Following notice of determination that the proposed activity does not meet the review criteria and/or does not comply with the applicable provisions of this chapter, the applicant may request consideration of a revised critical areas report. If the revision is found to be substantial and relevant to the critical area review, the planning official may reopen the critical area review and make a new determination based on the revised report.

9. Completion of the Critical Area Review. The city's determination regarding critical areas pursuant to this chapter shall be final concurrent with the final decision to approve, condition, or deny the development proposal or other activity involved.

**C. Critical Areas Report.** If the planning official determines that the site of a proposed development potentially includes, or is adjacent to, critical area(s), a critical areas report may be required. When required, the expense of preparing the critical areas report shall be borne by the applicant. The content, format and extent of the critical areas report shall be approved by the planning official.

1. The requirement for critical areas reports may be waived by the planning staff if there is substantial evidence that:
  - a. There will be no alteration of the critical area(s) and/or the required buffer(s);
  - b. The proposal will not impact the critical area(s) in a manner contrary to the purpose, intent and requirements of this ordinance and the comprehensive plan; and,
  - c. The minimum standards of this section will be met.
2. No critical area report is required for proposals that are exempt from the provisions of this chapter.
3. Critical area reports shall be completed by a qualified professional in the area to which the report pertains, approved by the planning official, who is knowledgeable about the specific critical area(s) in question.
4. At a minimum, a required critical areas report shall contain the following information:
  - a. Applicant's name and contact information; permits being sought, and description of the proposal;
  - b. A copy of the site plan for the development proposal, drawn to scale and showing:
    - i. Identified critical areas, buffers, and the development proposal with dimensions;
    - ii. Limits of any areas to be cleared; and
    - iii. A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations;
  - c. The names and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
  - d. Identification and characterization of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area. Delineation of wetlands shall be accomplished using the *Washington State Wetlands Identification and Delineation Manual* (Publication #96-94), March 1997 (as amended or revised);
  - e. An assessment of the probable cumulative impacts to critical areas resulting from the proposed development of the site;
  - f. An analysis of site development alternatives;

- g. A description of reasonable efforts made to apply mitigation sequencing to avoid, minimize, and mitigate impacts to critical areas;
  - h. A mitigation plan, as necessary, developed in accordance with the mitigation requirements of this section and site assessments and evaluation, including, but not limited to:
    - i. The identification of impacts of the proposed use or development within or adjacent to a critical area or buffer on the critical area; and
    - ii. The impacts of proposed alteration of a critical area or buffer on the development proposal, other properties and the environment;
  - i. A discussion of the performance standards applicable to the critical area and proposed activity;
  - j. Financial guarantees to secure compliance; and
  - k. Any additional information required for specific critical areas as listed in subsequent sections of this section.
5. The planning official may request any other information reasonably deemed necessary to evaluate impacts to critical areas.

**D. Mitigation Requirements.** The applicant shall seek to avoid material impacts that degrade the functions and values of critical areas. If alteration is not reasonably avoidable, material adverse impacts to critical areas and buffers resulting from the development or use proposal shall be mitigated in accordance with an approved critical areas report and SEPA documents. Mitigation shall be on-site, when possible, and sufficient to reasonably maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.

1. *Mitigation sequencing.* Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following order of preference:

- a. Avoiding the impact by not taking a certain action or parts of an action;
- b. Minimizing or reducing impacts by reducing the scope of the proposed use or development; by using accepted technology, engineering or design; or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
- c. Rectifying the impact to wetlands, critical aquifer recharge area(s), frequently flooded area(s), and habitat conservation area(s) by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;

- d. Minimizing or eliminating the risk or impact by restoring, stabilizing or protecting the critical area through engineered or other methods;
- e. Reducing or eliminating the risk or impact over time by preservation and maintenance operations for the duration of the proposed use or development;
- f. Compensating for the impact to critical areas, wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
- g. Monitoring the risk or other required mitigation and taking remedial action when necessary.

2. *Mitigation plan.* When mitigation is required, the applicant shall submit for approval a mitigation plan as part of the critical area report. The mitigation plan shall include:

- a. A written report identifying mitigation objectives, including:
  - i. A description of the anticipated impacts to the critical areas and the proposed mitigating actions and/or compensation measures, including the site selection criteria; identification of compensation objectives; identification of critical area functions and values; and dates for beginning and completion of site compensation construction activities;
  - ii. A review of the best available science for the proposed mitigation and identification of authors (including curriculum vitae); and
  - iii. An analysis of mitigation benefits derived from the compensation project.
- b. Measurable criteria for evaluation of mitigation plan and compliance with requirements of this chapter.
- c. Written specifications and descriptions of proposed mitigation, including, but not limited to:
  - i. The proposed construction sequence, timing, and duration;
  - ii. Grading and excavation details;
  - iii. Erosion and sediment control features;
  - iv. A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
  - v. Measures to protect and maintain plants until established.

- d. A program for monitoring mitigation measures and/or compensation project, and for assessing the completed project over time. The program may include a schedule for site monitoring and compliance with performance standards. A monitoring report may be required to document milestones, successes, problems, and contingency actions for either mitigation measures or compensation project. The mitigation measures or compensation project shall be monitored for a reasonable period necessary to establish that performance standards have been satisfied.
- e. Identify potential or alternative courses of action, and any corrective measures to be considered if monitoring or evaluation indicates project has failed to meet performance standards.

**E. Agency Review.** In cases where the planning official does not have adequate knowledge or training to determine the sufficiency and accuracy of information contained within a critical area report or mitigation plan, said reports or plans shall be submitted to qualified agencies or consultants for review and recommendations prior to acceptance by the City.

**F. Surety/Bonding.** If a development proposal is subject to mitigation, maintenance or monitoring plans, the City of Zillah, in a form acceptable to the City Council and the City Attorney, may require security, bond or other assurance device reasonable or necessary to assure performance and compliance.

#### **17.07.090 Appeals.**

Any decision to approve, condition, or deny a development proposal or other activity based on the requirements of this chapter may be appealed according to, and as part of, the appeal procedure for the permit or approval involved.

#### **17.07.100 Enforcement.**

Violation or failure to comply with the provisions of this ordinance or any permit issued hereunder, shall be subject to enforcement actions by the City of Zillah including, but not limited to (1) revocation of any issued permits; (2) remedies authorized in the Zillah Development Regulations and Shoreline Master Program or any other land use regulation of the City of Zillah; and (3) remedies and penalties provided by any other applicable law. The City Attorney, when authorized by the Mayor and Council, shall seek penalties, remedies, injunctions and other legal sanctions necessary for the enforcement of this title. In addition to costs allowed by these regulations, the prevailing party in an enforcement action may, at the court's discretion, be allowed interest and reasonable attorney's fees. The City Attorney shall seek such costs, interest, and the reasonable attorney's fees on behalf of the City of Zillah when the City is the party.

#### **17.07.110 Aquifer Recharge Areas**

- A. **Classification.** The following three-level classification scheme is used to determine the level of protection necessary for land areas:
  - 1. **Extreme Potential** - Rivers, creeks, wetlands, lakes and ponds; and, lands that have been specifically identified as critical recharge areas based on reliable scientific data.

2. *High Potential* - Lands adjacent to rivers, creeks, wetlands, lakes and ponds that include soils that show permeability ratings in the county soil survey of more than 20 inches per hour within 60 inches of the soil surface.
3. *Moderate Potential* - Lands with soils that show permeability ratings in the county soil survey of more than 20 inches per hour within 60 inches of the soil surface.

*Designation.* The City of Zillah adopts those Aquifer Recharge Areas in Zillah as identified by Yakima County, both present and in the future and shall be designated as they are identified in accordance with the classification provisions. Where no specific hydrogeologic studies have been done, the city may use existing soil, surficial geologic and well log information to determine where recharge areas are likely to be located. Therefore, aquifer recharge areas in City of Zillah shall be designated as they are identified in accord with the classification provisions. Because the classification focuses on areas where recharge is generally known to occur, protections shall be broad enough to preserve essential aquifer recharge functions and values.

*Performance Standards.* In addition to the general provisions of this section and the requirements of the underlying zone, the following minimum standards shall apply to development activities within and adjacent to aquifer recharge areas:

- (1) Development activities within an aquifer recharge area shall be designed, developed and operated in a manner that will not potentially degrade groundwater resources nor adversely effect the recharging of the aquifer.
- (2) A hydrogeologic study and/or ongoing monitoring may be required to assess impacts of development activities on groundwater resources.
- (3) All proposed activities within aquifer recharge areas must comply with the water source protection requirements of the Federal Environmental Protection Agency, Washington State Department of Health and the Yakima County Health District.
- (4) On-site stormwater facilities shall be designed and installed in all aquifer recharge areas, so as to provide both detention and treatment of all runoff associated with the development.
- (5) All development occurring within aquifer recharge areas shall be required to connect to City sewer and water, and on-site sewage disposal shall be prohibited except as may be approved by City Council and permitted by Yakima Health District.
- (6) Landfills, junkyards/salvage yards, mining, wood treatment facilities, or any other activity that could impair the recharge of critical aquifer recharge areas. Such activities may be permitted in areas with high or moderate recharge potential in accord with applicable zoning regulations, providing the applicant can satisfactorily demonstrate that potential negative impacts to groundwater can be prevented.
- (7) All storage tanks, whether above or underground shall be required to be constructed so as to protected against corrosion for the operational life of the tank, to prevent any release of

hazardous substances to the ground, ground waters, or surface waters, and to utilize appropriate containment methods.

- (8) Any agricultural activities conducted within aquifer recharge areas shall incorporate best management practices concerning waste disposal, fertilizer/pesticide/herbicide use, and stream corridor management. If necessary, applicants shall seek technical assistance from the South Yakima County Conservation District or the WSU Cooperative Extension Office.
- (9) Application of pesticides, herbicides and fertilizers within aquifer recharge areas shall comply with timing and rates specified on product packaging.
- (10) Vehicle repair and servicing activities must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.

#### **17.07.120 Fish and Wildlife Habitat Conservation Areas**

- A. *Classification.* Washington Department of Fish and Wildlife (WDFW) has identified those fish and wildlife resources that are considered a priority management and conservation. Priority habitats are those with unique or significant value to many fish or wildlife species. Priority species are those which require special efforts to ensure their perpetuation because of their low numbers, sensitivity to habitat alteration, tendency to form vulnerable aggregations or because they hold commercial, recreational, or tribal importance. City of Zillah shall use the WDFW Priority Habitat and Species program to classify all fish and wildlife habitat conservation areas within the City and urban growth boundary. Two classifications shall apply:
  1. *Critical.* Areas with which state or federally designated endangered, threatened and sensitive species have a primary associate, including, anadromous fish species and habitats requiring special consideration under RCW 36.70A.172(1) or as may be amended.
  2. *Awareness.* All other priority habitats and species identified by WDFW.
- B. *Designation.* Fish and Wildlife conservation areas are designated under the Washington Department of Fish and Wildlife *Priority Habitat and Species Program*. Priority habitats are considered to be priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority Habitat and Species maps prepared by Yakima County based on WDFW data show the range of existing habitat by species.
- C. *Standards.* In addition to the general provisions of this section and the requirements of the underlying zone, the following minimum standards shall apply to development activities within and adjacent to fish and wildlife habitat conservation areas:

- (1) Critical Area Reports for fish and wildlife habitat conservation areas shall include a habitat assessment to evaluate the presence or absence of a potential critical species or habitat.
- (2) The Washington State Department of Fish and Wildlife priority habitat and species management recommendations shall be consulted in developing specific measures to protect a specific project site;
- (3) All projects shall comply with the applicable federal, state and local regulations regarding the species and habitats identified to upon a site.
- (4) Establishment of buffers. When needed to protect the functions and values of habitat conservation areas, the planning official shall require the establishment of buffer areas for activities in or adjacent to such areas. Buffers shall consist of an undisturbed area of native vegetation, or areas identified for restoration. Buffer widths shall reflect the sensitivity of the habitat and the intensity of activity proposed, and shall be consistent with the management recommendations issued by the state Department of Fish and Wildlife.
- (5) As determined through the site-specific study, mitigation measures shall be implemented that maintain the base line populations and reproduction rates for the particular species; and
- (6) As determined through the site-specific study, appropriate habitat conservation, management and monitoring plan(s) shall be developed and implemented, with any necessary surety to ensure compliance with such plan(s) being provided as described in this section.

#### 17.07.130 Wetlands

A. *Classification.* City of Zillah adopts wetland determinations as set forth in RCW 36.70A.030(20) or as may be amended and classification shall be in accordance with the *Washington State Wetlands Rating System for Eastern Washington*:

**Category I** Category I wetlands are those that score over 70 points on the rating system. They generally are those that:

1. represent a unique or rare wetland type;
2. are sensitive to disturbance;
3. are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or
4. provide a very high level of functions.

The City does not wish to risk any degradation to these wetlands. Generally, these wetlands are not common and make up a small percentage of the wetlands in Eastern Washington. Category I wetlands include alkali wetlands, bogs, Natural Heritage wetlands, mature and old-growth forested wetlands with slow growing trees, forests with

stands of Aspen, and wetlands that perform many functions well, as measured by the rating system.

**Category II** Category II wetlands are those that score between 51 and 69 points on the rating system. They generally are:

1. forested wetlands in the channel migration zone of rivers;
2. mature forested wetlands containing fast growing trees;
3. vernal pools present within a mosaic of other wetlands; or
4. those wetlands with a moderately high level of functions.

These wetlands are difficult, though not impossible, to replace. They provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but still need a high level of protection.

**Category III** Category III wetlands are those that score 30-50 points on the rating system. They generally are:

1. vernal pools that are isolated; or
2. wetlands with a moderate level of functions, as measured by the rating system.

These wetlands have generally been disturbed in some manner, and are often smaller, less diverse and/or more isolated in the landscape than Category II wetlands. They may not require as much protection as Category I and II wetlands.

**Category IV** Category IV wetlands have the lowest levels of functions, as measured by the rating system, and are often heavily disturbed. They score less than 30 points. These are wetlands that could be replaced, and in some cases improved. These wetlands do provide some important functions, and should be afforded some degree of protection.

**B. Designation.** To date there has been no wetlands mapping done specifically for the City of Zillah area. To remedy this, the City should pursue an accurate accounting of all wetlands in its planning area based on the *Washington State Wetlands Rating System for Eastern Washington and the Washington State Wetlands Identification and Delineation Manual (Publication #96-94), March 1997*. However, until funding is obtained to conduct a comprehensive inventory of wetlands, the National Wetlands Inventory (NWI) maps shall be used as a base designation. The NWI maps, along with other supportive documentation, shall be used to review development proposals, but because the National Wetlands Inventory was done at such a broad scale, local verification according to the classification criteria shall be part of the standard process for identifying and designating wetlands.

**C. Performance Standards.** In addition to the general provisions of this section and the requirements of the underlying zone, the following minimum standards shall apply to development activities within and adjacent to wetland areas:

- (1) The following buffer zones are required adjacent to and outside of all regulated wetlands according to the following schedule, if impacts from land use and wetland functions are not incorporated. The exception is Category III and IV wetlands between 1,000 – 4,000 square feet which are excluded from all provisions of this section provided the wetland meets the criteria of (C) (1)(a) of this subsection:

i.	Category I	-	250 feet
ii.	Category II	-	200 feet
iii.	Category III	-	150 feet
iv.	Category IV	-	50 feet

The standard buffer widths shall be applied unless the planning official determines through a scientifically supportable method that a greater or lesser buffer width would serve to protect the functions and values of a particular wetland. The standard buffer widths may not be reduced by more than 25% or to no less than 35 feet. Planning Official may also consider buffer averaging. Greater buffer widths or rehabilitation of an inadequate plant community may be required where necessary to ensure development does not result in adverse impacts to wetlands.

- a) The requirement to avoid impacts may be dropped for Category III and Category IV wetlands between 1000 and 4,000 square feet that meet all of the following criteria:

- 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 20 points or greater for habitat in the 2004 Eastern 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; and
- v. Wetland is not a vernal pool; and
- vi. Wetland is not an alkali wetland; and
- vii. Wetland does not contain aspen stands.

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

c) All Category I and II Wetlands between 1,000 and 4,000 square feet should be evaluated with full mitigation sequencing and buffer establishment. Any approved impacts should be adequately compensated by mitigation.

d) Wetlands larger than 4,000 square feet will be evaluated using standard procedures for wetland review.

- (2) Wetland buffer zones shall be retained in their natural condition. Where buffer disturbances are unavoidable during adjacent construction, re-vegetation with native plant materials will be required.
- (3) Wetland alteration proposals shall be approved only if no alternative is available. When no alternative exists, wetlands replacement shall be used to mitigate impacts and shall be based on the functions and values of the particular wetland being impacted. Simplified ratios for wetlands replacement projects shall be as follows:
  - (a) Category I: 6:1
  - (b) Category II: 3:1
  - (c) Category III: 2:1
  - (d) Category IV: 1.5:1

Wetlands enhancement ratios shall not be less than one and one half to one for replacement.

- (4) The following activities are allowed to occur in wetlands and wetland buffer zones subject to conditioning with appropriate Best Management Practices to minimize impacts on the functions and values of wetlands:
  - (a) Outdoor passive recreational activities;
  - (b) Existing and ongoing agricultural activities (provided no additional area is added beyond demonstrable historic levels);
- (5) Maintenance of existing facilities, structures, ditches, roads and utility systems. All projects shall comply with the applicable federal, state and local regulations regarding the species;
- (6) As determined through the site-specific study, mitigation measures shall be implemented that maintain the functions and values found in the particular wetland;
- (7) As determined through the site-specific study, appropriate mitigation, management and monitoring plan(s) may be developed and implemented, with any necessary security to ensure compliance with such plan(s) being provided as described in 17.07.080 C (4) (j) of this chapter.
- (8) A use or structure established prior to the effective date of this section which does not conform to standards set forth herein, is allowed to continue and be reasonably maintained provided that such activity or structure shall not be expanded or enlarged in any manner that increases the extent of its nonconformity.

#### **17.07.140 Frequently Flooded Areas**

A. *Classification.* The following classification system will be used to determine the level of protection necessary for frequently flooded areas:

**Class I** – The floodway of any river or stream as designated by FEMA; and draws, alluvials and flood channels that are not mapped by FEMA but are areas of local concern

that have a historical reoccurrence of flood events characterized by significant damage from flood flows.

**Class II** – All areas mapped by FEMA as 100-year flood plain; and those areas of local concern that experience recurrences of flooding that are characterized by damage due primarily to inundation.

- B. *Designation.* The City designates the areas of special flood hazard (including special flood risk zones) indicated in *The Flood Insurance Study for Yakima County, Washington and Incorporated Areas* and the accompanying Flood Insurance Rate Map (FIRM), as revised or amended, as Frequently Flooded Areas.
- C. *Standards.* In addition to the general provisions of these regulations and the requirements of the underlying zoning district, the following minimum standards shall apply to development activities within and adjacent to frequently flooded areas:
- 1) All development within Frequently Flooded Areas shall be reviewed under and subject to the requirements of City of Zillah's Flood Hazard Protection regulations (Chapter 15.21 of the City's Municipal Zoning Code).
  - 2) All development within Frequently Flooded Areas shall be consistent with the goals, objectives, findings, and recommendations of the City's Comprehensive Plan and Flood Hazard Protection Plan. The Flood Hazard Protection Plan, along with the City's Comprehensive Plan, provides a policy basis for management of flood hazard areas.
  - 3) Where practical, development activities shall be coordinated with structural activities recommended in the Flood Hazard Protection Plan.
  - 4) Where Frequently Flooded Areas coincide with other designated critical areas, critical areas reports and mitigation plans shall address any combined functions and values.
  - 5) In all cases where mitigation measures are proposed, said measures shall be consistent with the City's Flood Hazard Protection Plan.
  - 6) Filling and grading in Frequently Flooded Areas shall occur only upon a determination by a qualified professional that the filling or grading will not increase flood hazards to others.
  - 7) Subdivision in Frequently Flooded Areas will be subject to the following standards:
    - i. All lots created shall have adequate building space outside flood hazard areas, including the floodway, 100-year floodplain, and channel migration zones;
    - ii. Plat maps shall indicate the floodway and/or the 100-year floodplain;
    - iii. Subdivisions shall be designed to minimize or eliminate the potential for flood damage; and

iv. Subdivisions shall provide for storm water drainage, in accordance with City standards, so as to reduce exposure to flood hazards.

8) Bank Stabilization Projects: Where consistent with other regulations and with the Flood Hazard Protection Plan, protection of structures, public roadways or sole access routes in existence before the effective date of this Critical Areas Ordinance shall be allowed. Such projects shall be designed to minimize adverse impacts to property, public improvements, and ecological functions.

#### **17.07.150 Geologically Hazardous Areas**

A. *Classification.* Known geologically hazardous areas within the City of Zillah consist of erosion hazard areas, including steep slopes. As more information is obtained that demonstrates the existence of other types and/or areas of geologically hazardous areas, these types and/or areas shall be classified and protected in accordance with the provisions of this section.

(1) The following general classification system will be used to determine the level of protection necessary for geologically hazardous areas, based upon the risk to development:

- (a) Known or Suspected Risk
- (b) No Risk
- (c) Risk Unknown

(2) The following criteria shall be used in determining the status of an area as a particular type of geologically hazardous area:

(a) Erosion Hazard Area are those that contain all three of the following characteristics:

- i. A slope of 15% or greater;
- ii. Soils identified by the SCS as unstable and having a high potential for erosion; and
- iii. Areas that are exposed to the erosion effects of wind or water.

(b) Landslide Hazard Areas are those that may contain any of the following circumstances:

- i. All areas that have historically been prone to land sliding;
- ii. All areas containing soil types identified by the NRCS as unstable and prone to landslide hazard;
- iii. All areas that show evidence of or are at risk from snow avalanches; or
- iv. All areas that are potential unstable as a result of rapid stream incision or stream bank erosion.

B. *Designations.*

*Geologically Hazardous Areas* - Each type of geologically hazardous area is designated based on different factors. The designation process for each type follows:

Erosion Hazard Areas - SCS soil erosion-hazard ratings are interpretations of the potential for erosion, applied to broadly generalized map units. They do not pinpoint erosion sites, but rather areas that, because of soil properties, availability of water, etc., are more susceptible to severe erosion than others. The SCS maps will be used to identify areas of erosion potential. The soil information needs to be combined with site-specific information (rills, inter-rills, and wind erosion) to determine if erosion hazard is present on the site. The soil types that have erosion hazard potential have been identified within the urban growth area in the County. In the City of Zillah's case, most of the privately held land within the incorporated boundaries is already developed and soil stability has been proven.

Landslide Hazard Areas - Lands that meet the classification criteria are hereby designated as landslide hazard areas and should be mapped, as resources become available.

Mine Hazard Areas - Lands that meet the classification criteria are hereby designated as mine hazard areas and will be mapped, as resources become available.

Seismic Hazard Areas - There are no known active faults in the City of Zillah. The majority of the City is located within Seismic Zone 2B in accordance with the International Building Code (2009 Edition, or as amended).

Volcanic Hazard Areas - There are no volcanic hazard areas in the City of Zillah. There are, however, several active volcanoes that could have impacts on areas of the City of Zillah, particularly the fallout of ash. There is no way to prevent the impacts of fallen ash, but there are ways to respond to the ash that could lessen its impacts.

C. *Standards.* In addition to the general provisions of this section and the requirements of the underlying zone, the following minimum standards shall apply to development activities within and adjacent to geologic hazard area:

- (1) All projects shall be evaluated through a geotechnical report to determine whether the project is proposed to be located in a geologically hazardous areas, and if so, what is the project's potential impact on the geologically hazardous area and the potential impact of the geologic hazard on the proposed project;
- (2) All projects shall comply with the applicable federal, state and local regulations, including the most recently adopted International Building Code;
- (3) As determined through the site-specific study, appropriate buffers shall be maintained between all permitted uses and activities and the designated geologically hazardous area(s);
- (4) The existing native vegetation within the buffer area(s) shall be maintained, except that normal, nondestructive pruning and trimming of vegetation for maintenance purposes is allowed;

- (5) As determined through the site-specific study, appropriate drainage, grading, excavation and erosion control measures shall be implemented in the geologically hazardous area(s);
- (6) As determined through the site-specific study, mitigation measures shall be implemented that maintain the integrity of the geologically hazardous area(s);
- (7) As determined through the site-specific study, appropriate management and monitoring plan(s) shall be developed and implemented to preserve and protect both the geologically hazardous area(s) and the project, with any necessary surety to ensure compliance with such plan(s) being provided as described in 17.07.080 C (4) (j) of the Critical Areas Report of this chapter; and
- (8) A use or structure established prior to the effective date of this section which does not conform to standards set forth herein, is allowed to continue and be reasonably maintained provided that such activity or structure shall not be expanded or enlarged in any manner that increases the extent of its nonconformity, unless otherwise approved through the process.