

# City of Gold Bar Critical Areas Ordinance Update

ORDINANCE NO. **593**

**Appendix A**

Adopted by the Gold Bar City Council

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# Section 1 Findings of Fact and Purpose

## 1.1 Findings of Fact

The City of Gold Bar hereby finds that:

- A. Critical areas and their buffers are valuable and fragile natural resources with significant development constraints due to flooding, erosion, septic disposal limitations, and land slide hazard.
- B. The State of Washington has enacted a Growth Management Act (RCW 36.70A), and under this Act the City of Gold Bar is adopting regulations protecting critical areas, including wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.
  - 1. RCW 36.70A.170 requires the designation of critical areas.
  - 2. RCW 36.70A.172 requires local governments to give special consideration to the conservation and protection measures necessary to preserve or enhance anadromous fisheries.
- C. In their natural state, wetlands provide many valuable social and ecological services, including:
  - 1. Controlling flooding and stormwater runoff by storing or regulating natural flows;
  - 2. Protecting water resources by filtering out water pollutants, processing biological and chemical oxygen demand, recycling and storing nutrients, and serving as settling basins for naturally occurring sedimentation;
  - 3. Providing areas for surface water recharge;
  - 4. Preventing shoreline erosion by stabilizing the substrate;
  - 5. Providing habitat areas for many species of fish, wildlife, and vegetation, many of which are dependent on wetlands for their survival, and many of which are on Washington State and Federal Endangered Species lists;
  - 6. Providing open space and visual relief from intense development in urbanized area;
  - 7. Providing recreation opportunities; and
  - 8. Serving as areas for scientific study and natural resource education.
- D. Frequently flooded and geologically hazardous areas shall be preserved in order to protect public and private resources and facilities from injury, loss of life, and property or financial damage due to flooding, erosion, landslides, or steep slope failure.
- E. Development in critical areas can result in:
  - 1. Increased soil erosion and sedimentation of downstream water bodies;
  - 2. Increased shoreline erosion;

3. Degraded water quality due to increased turbidity and loss of pollutant removal processes;
  4. Elimination or degradation of wildlife and fisheries habitat;
  5. Loss of fishery resources from water quality degradation, increased peak flow rates, decreased summer low flows, and changes in the stream flow regimen.
  6. Loss of stormwater retention capacity and slow release detention resulting in flooding, degraded water quality, and changes in the stream flow regimen of watersheds;
  7. Loss of groundwater recharge areas;
  8. Loss of slope and soil stability caused by the removal of trees, shrubs, and root systems of vegetative cover on steep slopes.
- F. Buffer areas and building setbacks (if required) surrounding critical areas are essential to maintenance and protection of some critical areas functions and values. Buffer areas protect critical areas from degradation by:
1. Stabilizing soil and preventing erosion;
  2. Filtering suspended solids, nutrients and harmful or toxic substances;
  3. Moderating impacts of stormwater runoff;
  4. Moderating system microclimate;
  5. Protecting wetland wildlife habitat from adverse impacts;
  6. Maintaining and enhancing habitat diversity and/or integrity;
  7. Supporting and protecting wetlands plant and animal species and biotic communities;
  8. Reducing disturbances to wetland resources caused by intrusion of humans and domestic animals;
  9. Protecting steep slopes from erosion and landslides.
- G. The City of Gold Bar is experiencing increased development pressure and resulting natural system changes, and must plan for protection of its natural resources. It is therefore the policy of the City of Gold Bar to ensure protection for critical areas by limiting development activities in wetlands, 100-year flood plains, slopes of 40% or greater; and discouraging development activities within critical areas buffers.
- H. Protection standards for one critical area often provide protection for one or more other critical areas. In determining what particular degree of protection critical areas are to be afforded, the City has evaluated a wide range of the best science available with respect to the critical areas to make informed decisions that meet the intent of the Growth Management Act and that are also reflective of local needs.

- I. Critical areas may also be protected by other actions by the City, such as stormwater management standards, critical area restoration, and public education; and from other regulations, such as the Forest Practices Act, the Shoreline Management Act, and the State Environmental Policy Act.
- J. The U.S. Constitution prohibits the taking of private property without just compensation.

## 1.2 Purpose

The purpose of this Ordinance is to designate and protect ecologically sensitive and hazardous areas in accordance with the Growth Management Act, while also allowing for reasonable use of private property. It is the policy of the City of Gold Bar to require site planning to prevent and minimize damage to critical areas, and to establish criteria to balance the rights of property owners with the preservation of critical areas.

In addition, it is the intent of the City of Gold Bar that activities in or affecting critical areas not threaten public safety, cause nuisances, or destroy or degrade critical areas by:

- A. Impeding flood flows, reducing flood storage capacity, or impairing natural flood control functions, thereby resulting in increased flood heights, frequencies, or velocities on other lands;
- B. Increasing water pollution through location of domestic waste disposal systems or livestock in wetlands; unauthorized application of pesticides and herbicides, disposal of solid waste at inappropriate sites; creation of unstable fills; or the destruction of wetland soils and vegetation;
- C. Increasing erosion and landslide hazard;
- D. Decreasing breeding, nesting, and feeding areas for rare and endangered species of wildlife;
- E. Interfering with the exchange of nutrients needed by fish and other forms of wildlife;
- F. Decreasing habitat for fish and other forms of wildlife;
- G. Adversely altering the recharge or discharge functions of wetlands, thereby impacting groundwater or surface water supplies;
- H. Significantly altering wetland hydrology and thereby causing either short or long-term changes in vegetative composition, soils characteristics, nutrient cycling, or water chemistry;
- I. Destroying sites needed for education or scientific research, such as outdoor biophysical laboratories, living classrooms, and training areas;
- J. Interfering with public rights for passive recreational opportunities provided by wetlands such as bird watching, photography, hiking and similar uses;
- K. Destroying or damaging property values.

The purpose of this ordinance is to protect the public health, safety, and welfare by preventing the adverse environmental impacts of development enumerated in Section I of this ordinance by:

1. Preserving and protecting critical areas by regulating development within them and their buffers;
2. Protecting the public against losses from:
  - a. Unnecessary maintenance and replacement of public facilities.
  - b. Publicly funded mitigation of avoidable impacts;
  - c. Cost for public emergency rescue and relief operations; and
  - d. Potential litigation resulting from construction practices.;
3. Alerting appraisers, assessors, owners, and potential buyers or lessees to the development limitations of properties on which critical areas or required buffer areas are located.
4. Providing City of Gold Bar officials with information to evaluate, approve, condition, or deny public or private development proposals.

## Section 2 Definitions

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

**Alteration** - Any human induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to grading, filling, channelizing, dredging, clearing (vegetation), construction, compaction, excavation or any other activity that changes the character of the critical area.

**Anadromous fish** - Fish that spawn and rear in freshwater and mature in the marine environment.

**Applicant** - A person who files an application for permit under this ordinance and who is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized of such a person.

**Aquifer** - A geological formation, group of formations or part of formation that is capable of yielding a significant amount of water to a well or spring.

**Aquifer recharge areas** - Areas that, due to the presence of certain soils, geology, and surface water, act to recharge ground water by percolation.

**Aquifer susceptibility** - The ease with which contaminants can move from the land surface to the aquifer based solely on the types of surface and subsurface materials in the area. Susceptibility usually defines the rate at which a contaminant will reach an aquifer unimpeded by chemical interactions with the vadose zone media.

**Best available science** - Current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 925.

**Best management practices** - Conservation practices or systems of practices and management measures that:

1. Control soil loss and reduce water quality degradation caused by nutrients, animal waster, toxins, and sediment; and
2. Minimize adverse impacts to surface and groundwater flow, circulation patterns, and to the chemical, physical, and biological characteristics of critical areas.
3. Protect trees and vegetation designated to be retained during and following site construction; and
4. Provide standards for proper use of chemical herbicides within critical areas.

The City shall monitor the application of best management practices to ensure that the standards and policies of this Ordinance are adhered to.

**Buffer or buffer zone** - An area contiguous to and protects a critical area that is required for the continued maintenance, functioning, and/or structural stability of a critical area.

**Channel migration zone (CMZ)** - The lateral extent of likely movement along a stream or river during the next one hundred years as determined by evidence of active stream channel movement

over the past one hundred (100) years. Areas separated from the active channel by legally existing artificial channel constraints that limit bank erosion and channel avulsion without hydraulic connections shall not be considered within the CMZ.

**Conservation easement** - A legal agreement that the property owner enters into to restrict uses of the land. Such restrictions can include, but are not limited to, passive recreation uses such as trails or scientific uses and fences or other barriers to protect habitat. The easement is recorded on a property deed, runs with the land, and is legally binding on all present and future owners of the property, therefore, providing permanent or long-term protection. (Oak Harbor)

**Critical aquifer recharge area** - Areas designated by WAC 365-190-080(2) that are determined to have a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2).

**Critical areas** - Critical areas include any of the following areas or ecosystems: Aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, and wetlands, as defined in RCW 36.70A and this Ordinance.

**Critical facility** - A facility for which even a slight chance of flooding, inundation, or impact from a hazard event might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, and installations that produce, use or store hazardous materials or hazardous waste.

**Critical habitat** - Habitat necessary for the survival of endangered, threatened, rare, or sensitive species.

**Critical species** - All animal and plant species listed by the state or federal government as threatened or endangered.

**Cumulative impacts or effects** - The combined, incremental effects of human activity on ecological or critical areas functions and values. Cumulative impacts result when the effects of an action are added to or interact with other effects in a particular place and within a particular time. It is the combination of these effects, and any resulting environmental degradation, that should be the focus of cumulative impact analysis and changes to policies and permitting decisions.

**Developable area** - An area of land outside of critical areas and their buffers.

**Department** - The administration of the City of Gold Bar.

**Development activity** - Any construction, development, earth movement, clearing or any other site disturbance. Development includes approvals issued by the City that binds land to specific patterns of use, including but not limited to, subdivisions, short subdivisions, zone changes, conditional use permits, and binding site plans. Development activity does not include the following activities:

1. Interior building improvements.
2. Exterior structure maintenance activities, including painting and roofing.
3. Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning and weeding.

4. Maintenance of the following existing facilities that does not expand the affected area: septic tanks (routine cleaning); wells; individual utility service connections; and individual cemetery plots in established and approved cemeteries.

**Erosion** - The process whereby wind, rain, water, and other natural agents mobilize and transport particles.

**Erosion hazard areas** - Those areas containing soils which, according to the United States Department of Agriculture Soil Conservation Service Soil Classification System, may experience severe to very severe erosion,

**Exotic** - Any species of plants or animals that are foreign to the planning area.

**Existing and ongoing agriculture** - Those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops or livestock, for example, the operation and maintenance of farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation systems including irrigation laterals, canals, or irrigation drainage ditches, changes between agricultural activities, and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is, converted to a nonagricultural use or has lain idle for more than five years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity. Forest practices are not included in this definition.

**Fish and wildlife habitat conservation areas** - ~~Areas necessary for maintaining fish and wildlife species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created as defined by WAC 365-190-080(5).~~ Areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species.

**Fish and wildlife habitat conservation** - Land management for maintaining populations of species in suitable habitats within their natural geographic distribution so that the habitat available is sufficient to support viable populations over the long term and isolated subpopulations are not created. This does not mean maintaining all individuals of all species at all times, but it does mean not degrading or reducing populations or habitats so that they are no longer viable over the long term. Counties and cities should engage in cooperative planning and coordination to help assure long term population viability.

Fish and wildlife habitat conservation areas contribute to the state's biodiversity and occur on both publicly and privately owned lands. Designating these areas is an important part of land use planning for appropriate development densities, urban growth area boundaries, open space corridors, and incentive-based land conservation and stewardship programs.

***Fish habitat*** - Habitat that is used by fish at any life stage at any time of the year, including potential habitat likely to be used by fish that could be recovered by restoration or management and includes off-channel habitat.

***Floodway*** - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

***Frequently flooded areas*** - Lands in the floodplain subject to a one percent or greater chance of flooding in any given year. These areas include, but are not limited to, the floodplains of streams, rivers, ponds and lakes.

***Functions, beneficial functions, or functions and values*** - The beneficial roles served by critical areas including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, sediment transport and deposition, sediment removal and filtration, microclimate and temperature regulation, flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, landslide control, and recreational opportunities. These beneficial roles are not listed in order of priority.

***Geologically hazardous areas*** - Areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to siting residential, commercial, or industrial development consistent with public health or safety concerns. Geologically hazardous areas include, but are not limited to, "landslide hazard areas", "steep slopes", and "erosion hazard areas".

***Geotechnical report or geotechnical analysis*** - A scientific study or evaluation conducted by a qualified expert that includes a description of the site hydrology and geology, the affected land form and its susceptibility to mass wasting, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site specific and cumulative impacts of the proposed development including the potential adverse impacts to adjacent and downstream material resource. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified engineers or geologists who are knowledgeable about the regional and local geology.

***Ground water*** - Water in a saturated zone or stratum beneath the surface of land or a surface water body.

***Ground water management area*** - A specific geographic area or subarea designated pursuant to Chapter 173-100 WAC for which a ground water management program is required.

***Ground water management program*** - A comprehensive program designed to protect ground water quality, to assure ground water quantity, and to provide for efficient management of water resources while recognizing existing ground water rights and meeting future needs consistent with local and state objectives, policies and authorities within a designated ground water management area or subarea and developed pursuant to Chapter 173-100 WAC.

***Growth Management Act*** - RCW 36.70A and 36.70B, as amended.

~~***Habitat conservation areas*** - Areas designated as fish and wildlife habitat conservation areas.~~

**Habitats of local importance** - “Habitats of local importance” designated as fish and wildlife habitat conservation areas include those areas found to be locally important by counties and cities.

**Hazard areas** - Areas designated as frequently flooded areas or geologically hazardous areas due to potential for erosion, landslide, seismic activity, mine collapse, or other geological condition.

**Hazardous substances** - Any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC 173-303-090 or 173-303-100.

**High intensity land use** - Land uses which are associated with moderate or high levels of human disturbance or substantial wetland habitat impacts including, but not limited to, medium and high density residential single-family residential using septic systems, multi-family residential, active recreation, and commercial and industrial land uses.

**Hydric soil** - A soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined by the following methods described in the ~~1989~~ “Federal Manual for Identifying and Delineating Jurisdictional Wetlands” approved federal wetland delineation manual and applicable regional supplements.

**Hydrophytic vegetation** - Macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the ~~1989~~ “Federal Manual for Identifying and Delineating Jurisdictional Wetlands” approved federal wetland delineation manual and applicable regional supplements.

**Impervious surface** - A hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development or that causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater.

**In-kind compensation** - To replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement “in-category.”

**Isolated wetlands** - Those regulated wetlands which:

1. Are outside of and not contiguous to any 100-year floodplain or a lake, river, or stream; and
2. Have no contiguous hydric soils or hydrophytic vegetation between the wetland and any surface water.

**Injection well(s)**

1. **Class I** - A well used to inject industrial, commercial, or municipal waste fluids beneath the lowermost formation containing, within one quarter (1/4) mile of the well bore, an underground source of drinking water.

2. **Class II** - A well used to inject fluids:
  - a. Brought to the surface in connection with conventional oil or natural gas exploration or production and may be commingled with wastewaters from gas plants that are an integral part of production operations, unless those waters are classified as dangerous wastes at the time of injection;
  - b. For enhanced recovery of oil or natural gas; or
  - c. For storage of hydrocarbons that are liquid at standard temperature and pressure.
3. **Class III** - A well used for extraction of minerals, including but not limited to the injection of fluids for:
  - a. In-situ production of uranium or other metals that have not been conventionally mined;
  - b. Mining of sulfur by Frasch process; or
  - c. Solution mining of salts or potash.
4. **Class IV** - A well used to inject dangerous or radioactive waste fluids.
5. **Class V** - All injection wells not included in Classes I, II, III, or IV.

**Inter-rill** - Inter-rills are areas subject to sheetwash.

**Landslide hazard areas** - Areas that are potentially subject to risk of mass movement due to a combination of geologic landslide resulting from a combination of geologic, topographic, and hydrologic factors. These areas are typically susceptible to landslides because of a combination of factors including: bedrock, soil, slope gradient, slope aspect, geologic structure, ground water, or other factors.

**Low intensity land use** - Land uses which area associated with low levels of human disturbance or low wetland habitat impacts, including, but not limited to, low density single-family residential with adequate sewer and stormwater retention/detention/biofiltration facilities, passive recreation, open space, or forest management land uses.

**Mine hazard areas** - Areas that are underlain by, adjacent to, or affected by mine workings such as adits, gangways, tunnels, drifts, or airshafts, and those areas of probable sink holes, gas releases, or subsidence due to mine workings. Factors that should be considered include: Proximity to development, depth from ground surface to the mine working, and geologic material.

**Mitigation** - The process of avoiding, reducing or compensating for the environmental impact(s) of a proposal, including the following listed in the order of sequence priority. Measure (1) shall be applied first and subsequent measures applied only after higher priority measures are demonstrated to be not feasible or applicable.

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 the appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating or restoring the effected 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 and environments; and
6. Monitoring the impact and the compensation projects and taking appropriate corrective measures.

**Monitoring** - Evaluating the impacts of development proposals on the biological, hydrological, and geological elements of such systems and assessing the performance of required mitigation measures throughout the collection and analysis of data by *various methods* for the purpose of understanding and documenting changes in natural ecosystems and features, and includes gathering baseline data.

**Native vegetation** - Plant species which are indigenous to the area of question.

**Ordinary High Water Mark (OHWM)** - That mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, that the soil has a character distinct from that of the abutting upland in respect to vegetation as that condition existed on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by the City or Washington State Department of Ecology, provided that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water. [See RCW 90.58.030(2)(b) or its successor and WAC 173-22-030(1) or its successor].

**Out-of-kind compensation** - To replace critical areas with substitute critical areas whose characteristics do not closely approximate those destroyed or degraded. It does not refer to replacement "out-of-category."

**Permeability** - The capacity of an aquifer or confining bed to transmit water. It is a property of the aquifer or confining bed and is independent of the force causing movement.

**Porous soil types** - Soils, as identified by the National Resources Conservation Service, U.S. Department of Agriculture, that contain voids, pores, interstices or other openings which allow the passing of water.

**Potable water** - Water that is safe and palatable for human use.

**Practicable alternative** - An alternative that is available and capable of being carried out after taking into consideration, cost, existing technology, and logistics in light of overall project purposes, and having less impacts to critical areas.

**Primary association area** - The area used on a regular basis by, or is in close association with, or is necessary the proper functioning of the habitat of a specific species. Regular basis means that the habitat area is normally, or usually known to contain a critical species, or based on known

habitat requirements of the species, the area is likely to contain the species. Regular basis is species and population dependent. Species that exist in low numbers may be present infrequently yet rely on certain habitat types.

**Priority habitat** - A habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes:

- Comparatively high fish and wildlife density;
- Comparatively high fish and wildlife species diversity;
- Important fish and wildlife breeding habitat;
- Important fish and wildlife seasonal ranges;
- Important fish and wildlife movement corridors;
- Limited availability;
- High vulnerability to habitat alteration; or
- Unique or dependent species.

A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as, oak woodlands, eelgrass meadows). A priority habitat may also be described by a successional stage (such as, old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as, consolidated marine/estuarine shorelines, talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or non-priority fish and wildlife. Priority habitats are listed by the state Department of Fish and Wildlife.

**Priority species** - Fish and wildlife species requiring protective measures and/or management guidelines to ensure their perpetuation. Priority species are those that meet any of the criteria listed below.

- **Criterion 1: State-listed or state candidate species.** State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12011), or sensitive (WAC 232-12-011). State candidate species are those fish and wildlife species that will be reviewed by the department of Fish and Wildlife (POL-M-6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12297. Federal candidate species are evaluated individually to determine their status in Washington and whether inclusion as a priority species is justified.
- **Criterion 2: Vulnerable aggregations.** Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or state-wide, by virtue of their inclination to congregate. Examples include heron rookeries, seabird concentrations, marine mammal haulouts, shellfish beds, and fish spawning and rearing areas.
- **Criterion 3: Species of recreational, commercial and/or tribal importance.** Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.
- **Criterion 4: Species listed under the Endangered Species Act as either threatened or endangered.**

**Qualified professional** - A person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology or related field, and a minimum of two years of related work experience.

1. A qualified professional for habitats or wetlands must have a degree in biology and professional experience related to the subject species.
2. A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.
3. A qualified professional for critical aquifer recharge areas must be a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

***Repair or maintenance*** - An activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design, drain, dredge, fill, flood, or otherwise alter additional wetlands are not included in this definition.

***Riparian habitat*** - Areas adjacent to aquatic systems with flowing water that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other. The width of these areas extends to that portion of the terrestrial landscape that directly influences the aquatic ecosystem by providing shade, fine or large woody material, nutrients, organic and inorganic debris, terrestrial insects, or habitat for riparian-associated wildlife. Widths shall be measured from the ordinary high water mark or from the top of bank if the ordinary high water mark cannot be identified. It includes the entire extent of the floodplain and the extent of vegetation adapted to wet conditions as well as adjacent upland plant communities that directly influence the stream system. Riparian habitat areas include those riparian areas severely altered or damaged due to human development activities.

***River*** - See "Watercourse."

***Salmonid fish use*** - Those waters used by salmonid or anadromous fish for spawning, rearing or migration. If salmonid fish use has not been determined, salmonid fish use shall be presumed for waters having the following characteristics:

1. Stream segments having a defined channel of 2 feet or greater within the bankfull width and having a gradient of 16 percent or less.
2. Stream segments having a defined channel or 2 feet or greater within the bankfull, and having a gradient greater than 16 percent and less than or equal to 20 percent, and having greater than 50 acres in contributing basin size in, based on hydrographic boundaries;
3. Ponds or impoundments having a surface area of less than 1 acre at seasonal low water and having an outlet to a fish stream;
4. Ponds of impoundments having a surface area greater than 0.5 acre at seasonal low water.

The City may waive or modify the characteristics of this definition where:

1. Waters have confirmed, long term, naturally occurring conditions that make them incapable of supporting fish; or
2. Sufficient information is available to support a departure from the characteristics of this subsection, as determined in consultation with the Department of Fish and Wildlife, affected tribes and interested parties.

***Seismic hazard areas*** - Areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.

***SEPA*** - Washington State Environmental Policy Act, Chapter 43.21C RCW.

***Serviceable*** - Presently usable.

***Shorelines*** - All of the water areas of the state, including reservoirs and their associated shorelands, together with the lands underlying them; except (i) shorelines of state-wide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes.

***Shorelines of state-wide significance*** - Those areas defined within the City of Gold Bar's Shoreline Master Program.

***Shorelands or Shoreland areas*** - Those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes and tidal waters which are subject to the provisions of the Washington State Shorelines Management Act of 1971.

***Soil bio-engineering techniques*** - An applied science that combines structure, biological, and ecological concepts to construct living structures that stabilize the soil to control erosion, sedimentation, and flooding, using live plant materials as a main structural component.

***Special protection areas*** - Aquifer recharge areas defined by WAC 173-200-090 that require special consideration or increased protection because of unique characteristics, including, but not limited to:

1. Ground waters that support an ecological system requiring more stringent criteria than drinking water standards;
2. Ground water recharge areas and wellhead protection areas, that are vulnerable to pollution because of hydrogeologic characteristics; and
3. Sole source aquifer status.

***Species*** - Any group of animals classified as a species or subspecies as commonly accepted by the scientific community.

***Species, endangered*** - Any fish or wildlife species that is threatened with extinction throughout all or a significant portion of its range and is listed by the state or federal government as an endangered species.

***Species of local importance*** - Those species of local concern due to their population status or their sensitivity to habitat manipulation, or that are game species.

***Species, priority*** - Any fish or wildlife species requiring protective measures and/or management guidelines to ensure their persistence as genetically viable population levels as classified by the Department of Fish and Wildlife, including endangered, threatened, sensitive, candidate and monitor species, and those of recreational, commercial, or tribal importance.

***Species, threatened*** - Any fish or wildlife species that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range without cooperative management or removal of threats, and is listed by the state or federal government as a threatened species.

***Steep slopes*** - Slopes of 40% or greater. A 40% slope is defined as any ground that rises at an inclination of 40% or more within a vertical elevation change of at least 10 feet (a vertical rise of ten feet for every twenty-five feet of horizontal distance). A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief. The "toe" of a slope is a distinct topographical break in slope which separates slopes inclined less than 40% from slopes equal to or in excess of 40%. Where no distinct break exists, the toe of a steep slope is the lower most limit of the area where the ground surface drops ten feet vertically within a horizontal distance of twenty-five feet. The "top" of a slope is a distinct, topographical break in slope which separates slopes inclined at less than 40% from slopes equal to or in excess of 40%. Where no distinct break in slope exists, the top of the slope shall be the uppermost limit of the area where the ground surface drops at least 10 feet vertically within a horizontal distance of twenty-five feet.

***Storm water*** - Surface water runoff collected and transported by a managed system.

***Stream*** - See "Watercourse."

***Sub-drainage basin or subbasin*** - The drainage area of the highest order stream containing the subject property impact area. Stream order is the term used to define the position of a stream in the hierarchy of tributaries in the watershed. The smallest streams are the highest order (first order) tributaries. These are the upper watershed streams and have no tributaries of their own. When two first order streams meet, they form a second order stream, and when two second order streams meet they become a third order stream, and so on.

***Substantially degrade*** - To cause damage or harm to an area's natural ecological functions. An action is considered to substantially degrade the environment if: The damaged ecological function or functions affect other related functions or the liability of the larger ecosystem; or The damage is not reversed or self-correcting through natural means within approximately two years; or There is the threat, as determined by best available science, that the degrading action could cause significant damage to shoreline ecological functions under foreseeable conditions; or There is the threat that the action could contribute to damaging ecological functions as part of cumulative impacts from similar permitted activities on nearby shorelines.

***Unavoidable and necessary impacts*** - Impacts to critical areas that remain after a person proposing to alter critical areas has demonstrated that no practicable alternative exist to the proposed project.

***Vulnerability*** - The combined effect of susceptibility to contamination and the presence of potential contaminants.

***Water dependent*** - A use or portion of a use that cannot exist in a location that is not adjacent to the water, but is dependent on the water by reason of the intrinsic nature of its operations. A use that can be carried out only on, in, or adjacent to water. Examples of water dependent uses include ship cargo terminal loading areas; fishing; ferry and passenger terminals; barge loading, ship building, and dry docking facilities; marinas, moorage, and boat launching facilities; aquaculture; float plane operations; surface water intake; and sanitary sewer and storm drain outfalls.

**Water table** - That surface in an unconfined aquifer at which the pressure is atmospheric. It is defined by the levels at which water stands in wells that penetrate the aquifer just far enough to hold standing water.

**Water Typing System** - Waters classified according to WAC 222-16-031 as follows:

1. **Type 1 Water** - All waters, within their ordinary high-water mark, as inventoried as "shorelines of the state" under Chapter 90.58 RCW and the rules promulgated pursuant to Chapter 90.58 RCW, but not including those waters' associated wetlands as defined in Chapter 90.58 RCW.
2. **Type 2 Water** - Segments of watercourses that are not classified as Type 1 Water and have a high fish, wildlife, or human use. These are segments of watercourses and periodically inundated areas of their associated wetlands, which:
  - a. Are diverted for domestic use by more than one hundred (100) residential or camping units or by a public accommodation facility licensed to serve more than ten (10) persons, where such diversion is determined by the Department of Natural Resources to be a valid appropriation of water and only considered Type 2 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by fifty percent (50%), or whichever is less;
  - b. Are diverted for use by federal, state, tribal or private fish hatcheries. Such waters shall be considered Type 2 Water upstream from the point of diversion for 1,500 feet, including tributaries if highly significant for protection of downstream water quality.
  - c. Are within a federal, state, local or private campground having more than thirty (30) camping units: Provided, That the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within one hundred (100) feet of a camping unit.
  - d. Are used by fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have highly significant fish populations:
    - i. Stream segments having a defined channel twenty (20) feet or greater within the bankfull width and having a gradient of less than four percent (4%).
    - ii. Lakes, ponds, or impoundments having a surface area of one (1) acre or greater at seasonal low water; or
  - e. Are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria:
    - i. The site must be connected to a fish bearing stream and be accessible during some period of the year; and
    - ii. The off-channel water must be accessible to fish through a drainage with less than a five percent (5%) gradient.
3. **Type 3 Water** - Segments of watercourses that are not classified as Type 1 or 2 Waters and have a moderate to slight fish, wildlife, and human use. These are segments of watercourses and periodically inundated areas of their associated wetlands which:

- a. Are diverted for domestic use by more than ten (10) residential or camping units or by a public accommodation facility licensed to serve more than ten (10) persons, where such diversion is determined by the Department of Natural Resources to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type 3 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by fifty percent (50%), whichever is less;
  - b. Are used by fish for spawning, rearing or migration.
4. **Type 4 Water** - All segments of watercourses within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are waters that do not go dry any time of a year of normal rainfall. However, for the purpose of water typing, Type 4 Waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow. If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see State Forest Practices Board Manual, Section 23), then Type 4 Waters begin at a point along the channel where the contributing basin area is at least fifty two (52) acres.
  5. **Type 5 Waters** - All segments of watercourses within the bankfull width of the defined channels that are not Type 1, 2, 3, or 4 Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of the year and are not located downstream from any stream reach that is a Type 4 Water. Type 5 Waters must be physically connected by an above-ground channel system to Type 1, 2, 3, or 4 Waters.

**Watercourse** - Any portion of a channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the state including areas in which fish may spawn, reside, or through which they may pass, and tributary waters with defined beds or banks, which influence the quality of fish habitat downstream. This includes watercourses that flow on an intermittent basis or which fluctuate in level during the year and applies to the entire bed of such watercourse whether or not the water is at peak level. This definition does not include irrigation ditches, canals, storm water run-off devices, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.

**Well** - A bored, drilled or driven shaft, or a dug hole whose depth is greater than the largest surface dimension for the purpose of withdrawing or injecting water or other liquids.

**Wellhead protection area (WHPA)** - The portion of a zone of contribution for a well, wellfield or spring, as defined using criteria established by the state Department of Ecology.

**Wetlands** - Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation, typically adapted for life in saturated soil conditions. Wetlands generally include natural ponds, swamps, marches, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

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*Wetland edge* - The boundary of a wetland as delineated based on the definitions contained in this ordinance.

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## Section 3 General Provisions

### 3.1 Abrogation and Greater Restriction

It is not intended that this ordinance repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.

### 3.2 Interpretation

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

### 3.3 Severability

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

### 3.4 Fees.

- A. By resolution, fees shall be established for critical areas review and other services provided by the City as required by this Ordinance.
- B. Unless otherwise indicated in this Ordinance, the applicant shall be responsible for the initiation, preparation, submission, and expense of all required reports, assessment(s), studies, plans, reconnaissance(s), peer review(s) by qualified consultants, and other work prepared in support of or necessary to review the application.

### 3.5 Applicability

- A. This ordinance applies to all development activities not expressly exempted from this ordinance, whether or not a permit or authorization is required. Compliance with the requirements of this ordinance is required prior to City approval of, or issuance of permit for any regulated activity in the City of Gold Bar. The Public Works Director or his/her designee shall be responsible for reviewing compliance with this ordinance, unless otherwise specified. If a development activity does not require a separate City of Gold Bar permit, the applicant shall request a critical areas review from the City of Gold Bar. The Public Works Director or his/her designee shall issue permits or authorize activities only upon a finding that the proposed regulated activity complies with all applicable provisions of this ordinance. No regulated activity may be conducted without the prior approval of the City of Gold Bar.
- B. Nothing in this ordinance shall be construed to excuse compliance with any federal, state, or local statute, ordinance or regulation applicable to the subject property or to the development activity, including the rules promulgated under the authority of this chapter.

- C. When any provision of any other ordinance of the City of Gold Bar conflicts with this ordinance, that which provides more protection to critical areas and their buffers shall apply unless specifically provided otherwise in this ordinance.

### 3.6 Maps and Inventory

The Gold Bar critical areas maps have been constructed using existing data from FEMA, the national wetlands inventory, Snohomish County, and other sources. This delineation is for general reference purposes only and shall not be used to determine whether a parcel of land has or has not existing critical areas within its boundaries. All determinations of critical area boundaries shall be made pursuant this ordinance.

The City of Gold Bar has several significant stream and wetland systems that are identified and rated below:

- A. The Wallace River is a Type I Stream inventoried under the City of Gold Bar's Master Shorelines Program,
- B. The Skykomish River is a Type I Stream inventoried under the City of Gold Bar's Master Shorelines Program and is listed as a Shoreline of Statewide Significance,
- C. May Creek is a Type II Stream inventoried under the City of Gold Bar's Master Shorelines Program.

### 3.7 Allowed Activities

The following uses shall be allowed within a critical area or critical area buffer without critical areas review, provided that they are non-polluting, not substantially degrading, are not prohibited by any other ordinance or law, and they are conducted using best management practices. The City may apply conditions to the underlying permit or approval, such as a building permit, to ensure that the proposal is consistent with the provisions of this Ordinance to protect critical areas.

- A. **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 Ordinance.

Emergency actions that create an impact to a critical area or its buffer 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 (1) working day following commencement of the emergency activity. Within thirty (30) days, the Public Works Director shall determine if the action taken was within the scope of the emergency actions allowed in this Subsection. If the City determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions of *Enforcement, Section 10.2* shall apply.

After the emergency, the person or agency undertaking the action shall fully restore and/or mitigate any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved critical area report and mitigation plan. The person or agency undertaking the action shall apply for review, and the alteration, critical area report, and mitigation plan shall be reviewed by the City in accordance with the review procedures contained herein. Restoration and/or mitigation activities must be initiated within one (1) year of the date of the emergency, and completed in a timely manner;

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- B. Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife;
  - C. Outdoor recreational activities, including fishing, bird watching, hiking, non-motorized boating, swimming and other similar non-polluting passive activities;
  - D. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil planting of crops, or alteration of the wetland by changing existing topography, water conditions, or water sources;
  - E. Existing and ongoing agricultural activities including farming, horticulture, aquaculture, and irrigation. Activities on areas lying fallow as part of a conventional rotational cycle are part of an ongoing operation. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations.
  - F. The maintenance or modification of irrigation and drainage ditches, grass-lined swales, canals, storm water management facilities, farm ponds, and landscape amenities in existence prior to the adoption of this ordinance.
  - G. Education, scientific research, and use of nature trails;
  - H. Boundary markers;
  - I. Site investigative work necessary for land use application submittals such as surveys, soil logs, and other related activities. In every case, critical areas impacts shall be minimized and disturbed areas shall be immediately restored;
  - J. The following uses are allowed within critical areas and/or critical area buffers provided that written notice at least 30 days prior to the commencement of such work has been given to the City of Gold Bar, written approval from the City has been attained, and provided that impacts are minimized and that disturbed areas are immediately restored;
    - 1. Normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area and does not include the construction of a maintenance road,
    - 2. Minor modification of existing serviceable structures within a buffer zone where modification does not adversely impact wetland functions, and
    - 3. Flood control measures may be taken to protect property from damage due to upstream development as allowed by the U.S. Army Corps of Engineers.
    - 4. Removal of dead and/or dying trees or vegetation that may pose potential risk to the public or subject property.
  - K. **Permit requests subsequent to previous critical area review.** Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits), and construction approvals (such as building permits) if all of the following conditions have been met:

1. The provisions of this Ordinance have been previously addressed as part of another approval;
  2. There have been no material changes in the potential impact to the critical area or buffer since the prior review;
  3. There is no new information available that is applicable to any critical area review of the site or particular critical area;
  4. The permit or approval has not expired or, if no expiration date, no more than five years has elapsed since the issuance of that permit or approval; and
  5. Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured;
- L. **Public and private pedestrian trails.** Public and private pedestrian trails, except in wetlands, fish and wildlife habitat conservation areas, or their buffers, subject to the following:
1. The trail surface shall meet all other requirements including water quality standards set forth in the storm water management regulations;
  2. Critical area and/or buffer widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas; and
  3. Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report;
- M. **Forest practices.** Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practices regulations, Ordinance 222 WAC, and those that are exempt from City's jurisdiction, provided that forest practice conversions are not exempt.

## Section 4 Critical Areas Project Review

### 4.1 Critical Area Review Process

- A. **Pre-application consultation.** Any person preparing to submit an application for development or use of land where the proposal is located within or adjacent to a critical areas or its buffer, or is likely to impact a critical area, shall conduct a consultation meeting with the Public Works Director or his/her designee prior to submitting an application for development or other approval. At this meeting, the Public Works Director or his/her designee shall discuss the requirements of this Ordinance; provide available critical area maps, scientific information, and other materials; outline the review process; and, work with the applicant to identify any potential concerns that might arise during the review process, in addition to discussing other permit procedures and requirements.
- B. **Initial review.** Following submittal of an application for development or use of land, the Public Works Director or his/her designee shall review the application, site conditions, and other information available pertaining to the site and the proposal and make a determination as to whether any critical areas may be affected by the proposal.
- C. **Site inspection.** The property owner shall provide the City with reasonable access to the site for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period.
- D. **Critical area report required.** If the information available indicates that the project area is within or adjacent to a critical area or buffer, or that the proposed activity is likely to degrade a critical area, then the applicant shall be required to submit a critical area report prior to further review of the project.

### 4.2 Review criteria

- A. Any permit or approval that includes an alteration to a critical area or its buffer, unless otherwise provided for in this Ordinance, may be approved, approved with conditions, or denied based on the proposal's ability to comply with all of the following criteria:
  - 1. The proposal minimizes the impact on critical areas in accordance with *Mitigation sequencing*, Section 4.7;
  - 2. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
  - 3. The proposal is consistent with the general purposes of this Ordinance and the public interest;
  - 4. Any alterations permitted to the critical area are mitigated in accordance with *Critical areas mitigation requirements*, Section 4.6;
  - 5. The proposal protects the critical area functions and values consistent with the best available science; and
  - 6. The proposal is consistent with other applicable regulations and standards. A favorable critical areas review should not be construed as endorsement or approval of any underlying permit or approval.

- B. The City may condition the underlying permit or approval as necessary to mitigate impacts to critical areas and to conform to the standards required by this Ordinance. Any conditions of approval shall be attached to the underlying permit or approval.
- C. The applicant has the burden of proving that a proposal complies with the standards set forth in this Ordinance.

#### **4.3 Completion of the critical area review**

The City's determination regarding critical areas pursuant to this Ordinance shall be final concurrent with the final decision to approve, condition, or deny the development proposal or other activity involved.

#### **4.4 Appeals**

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

#### **4.5 Critical area report**

- A. The critical area report shall use scientifically valid methods and studies in the analysis of critical area data and field reconnaissance and reference the source of science used. The critical area report shall evaluate the proposal and all probable impacts to critical areas. The critical area report shall be prepared by a qualified professional.
- B. At a minimum, the report shall contain the following:
  - 1. The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;
  - 2. The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
  - 4. Identification and characterization of all critical areas, water bodies, and buffers adjacent to the proposed project area;
  - 5. A statement specifying the accuracy of the report, and all assumptions made and relied upon;
  - 6. An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;
  - 7. An analysis of site development alternatives;
  - 8. A description of reasonable efforts made to avoid, minimize, and mitigate impacts to critical areas consistent with *Mitigation sequencing*, Section 4.7;
  - 9. Plans for adequate mitigation, as needed, to offset any impacts;
  - 10. A discussion of the performance standards applicable to the critical area and proposed activity;

11. Financial guarantees to ensure compliance; and
  12. Any additional information required for the critical area as specified in the corresponding chapter.
- C. Unless otherwise provided, a critical area report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the City.
- D. The following areas shall be addressed in a critical area report:
1. The project area of the proposed activity; and
  2. All geologically hazardous areas within two hundred (200) feet of the project area or that have potential to be affected by the proposal;
  3. All wetlands and recommended buffers within three hundred (300) feet of the project area; and
  4. All shoreline areas, water features, floodplains, and other critical areas, and related buffers within three hundred (300) feet of the project area.
  5. All habitat conservation areas and recommended buffers within three hundred (300) feet of the project area; and
- E. The required geographic area of the critical area report may be limited as appropriate if:
1. The applicant, with assistance from the City, cannot obtain permission to access properties adjacent to the project area; or
  2. The proposed activity will affect only a limited part of the subject site.
- F. The City may require additional information to be included in the critical area report when determined to be necessary to the review of the proposed activity in accordance with this Ordinance.

#### **4.6 Critical Areas Mitigation Requirements**

- A. Unless otherwise provided in this Ordinance, if alteration to the critical area is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a development proposal or alteration shall be mitigated in accordance with an approved critical area report.
- B. Mitigation shall be sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.
- C. Mitigation shall not be implemented until after City review of a critical area report that includes a mitigation plan, and mitigation shall be in accordance with the provisions of the approved critical area report.
- D. Where feasible, mitigation projects shall be completed prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed immediately following disturbance

and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to fish, wildlife and flora.

- E. The City may authorize a one-time temporary delay, up to one-hundred-twenty (120) days, in completing minor construction and landscaping when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety and general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the mitigation plan. The justification must be verified and approved by the City, and include a financial guarantee.

#### **4.7 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 sequential order of preference:

- A. Avoiding the impact altogether by not taking a certain action or parts of an action;
- B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, 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 areas, and habitat conservation areas 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 hazard by restoring or stabilizing the hazard area through engineered or other methods;
- E. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
- F. Compensating for the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
- G. Monitoring the hazard or other required mitigation and taking remedial action when necessary.

Mitigation for individual actions may include a combination of the above measures.

#### **4.8 Mitigation Plan Requirements**

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

- A. **Environmental goals and objectives.** The mitigation plan shall include a written report identifying environmental goals and objectives of the compensation proposed and including:

1. A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area;
  2. A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed; and
  3. An analysis of the likelihood of success of the compensation project.
- B. Performance standards.** The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of this Ordinance have been met.
- C. Detailed construction plans.** The mitigation plan shall include written specifications and 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.

These written specifications 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.

- D. Monitoring program.** The mitigation plan shall include a program for monitoring construction of the compensation project, and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring (for example, monitoring shall occur in years 1, 3, 5 and 7 after site construction), 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 compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five (5) years.
- E. Contingency plan.** The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.
- F. Financial guarantees.** The mitigation plan shall include financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures shall be posted in accordance with *Bonds to ensure mitigation, maintenance, and monitoring*, Section 4.10.

#### 4.9 Acting on the Application

The following conditions shall apply to use permits:

##### A. Native growth protection areas

1. Unless otherwise required in this Ordinance, native growth protection areas (NGPA) shall be used in development proposals for subdivisions, short subdivisions, planned unit developments, and binding site plans to delineate and protect those contiguous critical areas and buffers listed below:
  - a. All landslide hazard areas and buffers;
  - b. All wetlands and buffers;
  - c. All habitat conservation areas; and
  - d. All other lands to be protected from alterations as conditioned by project approval.
2. Native growth protection areas shall be recorded on all documents of title of record for all affected lots.
3. Native growth protection areas shall be designated on the face of the plat or recorded drawing in a format approved by the City attorney. The designation shall include the following restrictions:
  - a. An assurance that native vegetation will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and
  - b. The right of the City to enforce the terms of the restriction.
4. Native growth protection areas are an integral part of the lot in which they are created, are not intended for sale, lease or transfer separate from the parent lot. Native growth protection areas shall be included in the area of the parent lot for purposes of subdivision method and minimum lot size.
5. The City of Gold Bar shall require, as a condition of any permit issued pursuant to this ordinance, that the applicant select one of the following methods to protect the native growth protection areas pursuant to Section 4.9.a:
  - a. The applicant shall record with the Snohomish County Auditor, a permanent and irrevocable deed restriction on the property title of all lots containing a native growth protection area. Such deed restriction(s) shall prohibit in perpetuity the development, alteration, or disturbance or vegetation within the critical area except as allowed for in this ordinance or for purposes of habitat enhancement as part of an enhancement project which has received prior written approval from any agency with jurisdictional over such activity; or
  - b. The permit holder, shall record with the Snohomish County Auditor, an easement to the City of Gold Bar or other public or non-profit entity specified by the City of Gold

Bar for the protection of wildlife and/or vegetation within a critical area and/or its buffer.

#### 6. Deed Restriction Language

The deed restriction shall contain the following language:

- a. "Before beginning and during the course of any grading, building construction, or other development activity on a lot or development site subject to this deed restriction~ the common boundary between the area subject to the deed restriction and the area of development activity must be identified and marked. -
- b. Regardless of the legal method of protection chosen, responsibility for maintaining tracts shall be held by the property owner, the permit applicant or designee, adjacent lot owners, a homeowners association, or other entity as designated on the deed.
- c. The following note shall appear on the face of all plats, short plats, or other approved site plans containing separate sensitive area tracts, and shall be recorded on the title of record for all affected lots:

"Note: All lots adjoining separate sensitive area tracts identified as Native Growth Protection Area (N.G.P.A.) or protected by deed restriction are responsible for maintenance and protection of the tract(s). Maintenance includes insuring that no alterations except those allowed by Section 3.7 of the Critical areas Ordinance of the City of Gold Bar occur within the separate tract(s) and that all vegetation remains undisturbed unless the express written authorization of the City of Gold Bar has been received".

#### 4.10 Bonds to ensure mitigation, maintenance, and monitoring

- A. When mitigation required pursuant to a development proposal is not completed prior to the City final permit approval, such as final plat approval or final building inspection, the City shall require the applicant to post a performance bond or other security in a form and amount deemed acceptable by the City. If the development proposal is subject to mitigation, the applicant shall post a mitigation bond or other security in a form and amount deemed acceptable by the City to ensure mitigation is fully functional.
- B. The bond shall be in the amount of one hundred and twenty-five percent (125%) of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater.
- C. The bond shall be in the form of a surety bond, performance bond, assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the City attorney.
- D. Bonds or other security authorized by this Section shall remain in effect until the City determines, in writing, that the standards bonded for have been met. Bonds or other security shall be held by the City for a minimum of five (5) years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.

- E. Depletion, failure, or collection of bond funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.
- F. Public development proposals shall be relieved from having to comply with the bonding requirements of this Section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.
- G. Any failure to satisfy critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within thirty (30) days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default, and the City may demand payment of any financial guarantees or require other action authorized by the City code or any other law.
- H. Any funds recovered pursuant to this Section shall be used to complete the required mitigation.

#### **4.11 Suspension or Revocation of a Permit**

##### **A. Suspension, Revocation**

- 1. In addition to other penalties provided for elsewhere, the City of Gold Bar may stop work on a project if it finds that the applicant or permittee has not complied with any or all of the conditions or limitations set forth in the permit, has exceeded the scope of work set forth in the permit, or has failed to undertake the project in the manner set forth in the approved application. Work may resume when the applicant has complied.

#### **4.12 Re-submittal of Denied Permit Applications**

Applications which have been denied may not be resubmitted for a period of eighteen months. An application shall be construed as a re-submittal if it is substantially similar to the denied application. An application shall not be construed as substantially similar to a denied application if it significantly and materially reduces the adverse environmental impacts of the denied application or it significantly reduces noncompliance with this ordinance.

#### **4.13 Critical areas reasonable use permit**

- A. If the application of this Ordinance would deny all reasonable use of the subject property, the property owner may apply for an exception pursuant to this Section.
- B. An application for a reasonable use exception shall include a critical area 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) (SEPA documents).
- C. The planning commission shall review the application, conduct a public hearing pursuant to the hearing provisions of the development code, and make recommendation to the city council. The city council shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use permit criteria in Subsection (D).
- D. **Reasonable use permit criteria.** The criteria for review and approval of reasonable use permit is:

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1. The application of this Ordinance would deny all reasonable economic use of the property;
  2. No other reasonable use of the property has less impact on the critical area;
  3. The impact to the critical area is the minimum necessary to allow for reasonable use of the property;
  4. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
  5. The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science; and
- E. **Burden of proof.** The applicant has the burden of proving that the application meets the stated reasonable use permit criteria.

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## Section 5 Wetlands

### 5.1 Designation and rating wetlands

- A. **Designating wetlands.** Wetlands are those areas, designated in accordance with the ~~Washington State Wetland Identification and Delineation Manual~~ approved federal wetland delineation manual and applicable regional supplements, that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. All areas within the City meeting the wetland designation criteria ~~in the Identification and Delineation Manual~~, regardless of any formal identification, are designated wetlands.
- B. **Wetland ratings.** Wetlands shall be rated according to the Department of Ecology wetland rating system found in the *Washington State Wetland Rating System for Western Washington* (Ecology Publication #~~93-7414-06-029~~), or as revised ~~by Ecology~~. This system contains the definitions and methods for determining the category of wetland. Wetland rating categories shall not change due to illegal modifications.

### 5.2 Wetlands performance standards

- A. Activities and uses shall be prohibited from wetlands and wetland buffers, except as provided for in this Ordinance. Activities may only be permitted in a wetland or wetland buffer if the applicant can show that the proposed activity will not degrade the functions and values of the wetland and other critical areas, or that the impacts to the functions and values will be fully mitigated.
- B. **Category II and III wetlands.** Water-dependent activities may be allowed in Category II and III wetlands where there are no practical alternatives that would have a less adverse impact on the wetland and other critical areas.
- C. **Category IV wetlands.** Activities and uses that result in unavoidable and necessary impacts may be permitted in Category IV wetlands and associated buffers in accordance with an approved critical area report and mitigation plan, and only if the proposed activity is the only practical alternative that will accomplish the applicant's objectives.
- D. **Wetland buffers**
- Standard buffer widths.** The standard buffer widths presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. If the vegetation is inadequate then the buffer width shall be increased or the buffer should be planted to maintain the standard width. Required standard wetland buffers, based on wetland category and land use intensity, are as follows:
    - Category I 150 feet
    - Category II 100 feet
    - Category III ~~100-75~~ feet
    - Category IV ~~35-40~~ feet
  - Measurement of wetland buffers.** Buffers shall be measured from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as

compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland.

3. **Increased wetland buffer widths.** The City may require increased buffer widths in accordance with the recommendations of a qualified professional biologist and the best available science on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values based on site-specific characteristics.
4. **Wetland buffer width averaging.** The Public Works Director may allow modification of the standard wetland buffer width in accordance with an approved critical area report and the best available science on a case-by-case basis by averaging buffer widths. Averaging of buffer widths may only be allowed where a qualified wetlands professional demonstrates that:
  - a. It will not reduce wetland functions or values;
  - b. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;
  - c. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and
  - d. The buffer width is not reduced to less than ~~fifty percent (50%)~~ seventy-five percent (75%) of the standard width or fifty (50) feet, whichever is greater, except for buffers between Category IV wetlands and low or moderate intensity land uses.
5. **Reduction of wetland buffer widths**
  - a. The Public Works Director may allow the standard wetland buffer width of Category III and IV wetlands to be reduced in accordance with an approved critical area report on a case-by-case basis when it is determined that a smaller area is adequate to protect the wetland functions and values based on site-specific characteristics.
  - b. This determination shall be supported by documentation showing that a reduced buffer is adequate based on all of the following criteria:
    - i. The critical area report provides a sound rationale for a reduced buffer based on the best available science;
    - ii. The existing buffer area is well-vegetated with native species and has less than ten percent (10%) slopes; and
    - iii. No direct or indirect, short-term or long-term, adverse impacts to wetlands will result from the proposed activity.
  - c. The Public Works Director may require long-term monitoring of the buffer and wetland. Subsequent corrective actions may be required if adverse impacts to wetlands are discovered during the monitoring period.
6. **Buffer conditions shall be maintained.** Except as otherwise specified or allowed in accordance with this Ordinance, wetland buffers shall be retained in an undisturbed condition.

## E. Signs and fencing of wetlands

1. **Temporary markers.** The outer perimeter of the wetland or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that no unauthorized intrusion will occur, and inspected by the Public Works Director prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction, and shall not be removed until permanent signs, if required, are in place.
2. **Permanent signs.** As a condition of any permit or authorization issued pursuant to this Chapter, the Public Works Director may require the applicant to install permanent signs along the boundary of a wetland or buffer.

Permanent signs shall be made of a metal face and attached to a metal post, or another material of equal durability. Signs must be posted at an interval of one per lot or every 50 feet, whichever is less, and must be maintained by the property owner in perpetuity. The sign shall be worded as follows or with alternative language approved by the Public Works Director:

“Protected Wetland Area”  
Do Not Disturb  
Contact [local contact information]  
Regarding Uses and Restriction”

### 3. Fencing

- a. The City shall condition any permit or authorization to require the applicant to install a permanent fence at the edge of the wetland buffer, when fencing will prevent future impacts to the wetland.
- b. Fencing installed as part of a proposed activity or as required in this Subsection shall be design so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

### 5.3 Wetlands mitigation requirements

- A. Mitigation plans shall be consistent with the Department of Ecology Wetland Mitigation in Washington State, Parts I and II (Ecology Publication #06-06-011 a-b, 2006, or as revised), Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals, 1994, as revised.
- B. Wetland mitigation actions shall not result in a net loss of wetland area except when the following criteria are met:
  1. The lost wetland area provides minimal functions and the mitigation action(s) results in a net gain in wetland functions as determined by a site-specific function assessment, such as the “credit/debit” method established in Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report (Ecology Publication #10-06-11, 2012, or as revised); or

2. The lost wetland area provides minimal functions as determined by a site-specific function assessment and other replacement habitats provide greater benefits to the functioning of the watershed, such as riparian habitat restoration and enhancement.

C. Mitigation actions shall be conducted within the same sub-drainage basin.

**D. Mitigation ratios**

1. **Acreage replacement ratios.** The following ratios shall apply to creation or restoration. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply in those cases. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

Category I	6-to-1
Category II	3-to-1
Category III	2-to-1
Category IV	1.5-to-1

2. **Decreased replacement ratio.** The Mayor or his or her designee may decrease these ratios under the following circumstances:
  - a. Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions have a very high likelihood of success;
  - b. Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions will provide functions and values that are significantly greater than the wetland being impacted; or
  - c. The proposed mitigation actions are conducted in advance of the impact and have been shown to be successful.

**E. Wetlands enhancement as mitigation**

1. Impacts to wetlands may be mitigated by enhancement of existing significantly degraded wetlands. Applicants proposing to enhance wetlands must produce a critical area report that identifies how enhancement will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site. An enhancement proposal must also show whether existing wetland functions will be reduced by the enhancement actions.
2. At a minimum, enhancement acreage shall be ~~double~~ four times the acreage required for creation or restoration under Subsection D.

**F. Wetland Mitigation Banks.**

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 state rules;
  - b. The Administrator 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 certified bank instrument.
2. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument.
3. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the certified bank instrument. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

**G. In-Lieu Fee.** To aid in the implementation of off-site mitigation, the City may develop an in-lieu fee program. This program shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu fee mitigation, and state water quality regulations. An approved in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor, a governmental or non-profit natural resource management entity. Credits from an approved in-lieu fee program may be used when paragraphs 1-6 below apply:

1. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts.
2. The mitigation will occur on a site identified using the site selection and prioritization process in the approved in-lieu fee program instrument.
3. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu fee program instrument.
4. Land acquisition and initial physical and biological improvements of the mitigation site must be completed within three years of the credit sale.
5. Projects using in-lieu fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland scientist using the method consistent with the credit assessment method specified in the approved instrument for the in-lieu fee program.
6. Credits from an approved in-lieu fee program may be used to compensate for impacts located within the service area specified in the approved in-lieu-fee instrument.

**5.4 Subdivisions associated with wetlands.**

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

- A. Land that is located wholly within a wetland or its buffer may not be subdivided.
- B. Land that is located partially within a wetland or its buffer may be subdivided provided that an accessible and contiguous portion of each new lot is:
  - 1. Located outside of the wetland and its buffer; and
  - 2. Meets the minimum lot size requirements.
- C. Access roads and utilities serving the proposed subdivision may be permitted within the wetland and associated buffers only if the City determines that no other feasible alternative exists in and when consistent with this Ordinance.

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## Section 6 Critical Aquifer Recharge Areas

### 6.1 Critical aquifer recharge areas designation.

Critical aquifer recharge areas (CARA) are those areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2). CARA include:

- A. Those aquifer recharge areas that have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water.
- B. Wellhead protection areas defined by the boundaries of the ten (10) year time of ground water travel, or boundaries established using alternate criteria approved by the Department of Health in those settings where ground water time of travel is not a reasonable delineation criterion, in accordance with WAC 246-290-135.
- C. Those critical aquifer recharge areas delineated by a hydrogeologic study prepared in accordance with the state Department of Ecology guidelines.
- D. Susceptible ground water management areas as designated pursuant to Chapters 173-100 WAC.
- E. Special protection areas as defined by WAC 173-200-090.
- F. Those aquifer recharge areas meeting the criteria for susceptibility or vulnerability established by the state Department of Ecology

### 6.2 Aquifer recharge area susceptibility ratings.

Aquifer recharge areas shall be rated as having high, moderate, or low susceptibility based on soil permeability, geologic matrix, infiltration, and depth to water as determined by the criteria established by the state Department of Ecology.

### 6.3 Critical area report – Additional requirements for critical aquifer recharge areas.

In addition to the general critical area report requirements of Section 1.210, critical area reports for critical aquifer recharge areas shall contain a hydrogeological assessment. A hydrogeologic assessment shall include the following site and proposal related information at a minimum:

- A. Available information regarding geologic and hydrogeologic characteristics of the site including the surface location of all critical aquifer recharge areas located on site or immediately adjacent to the site, and permeability of the unsaturated zone;
- B. Ground water depth, flow direction and gradient based on available information;
- C. Currently available data on wells and springs within 1,300 feet<sup>1</sup> of the project area;
- D. Location of other critical areas, including surface waters, within 1,300 feet of the project area;
- E. Best management practices proposed to be utilized.
- F. Historic water quality data for the area to be affected by the proposed activity compiled for at least the previous five (5) year period;

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<sup>1</sup> Distance of 1300 feet is based on "Guidance Document for the Establishment of Critical Aquifer Recharge Area Ordinances." by Ecology, July 2000, publication #97-30

- G. Ground water monitoring plan provisions; and
- H. Discussion of the effects of the proposed project on the ground water quality and quantity, including:
  - 1. Predictive evaluation of ground water withdrawal effects on nearby wells and surface water features; and
  - 2. Predictive evaluation of contaminant transport based on potential releases to ground water; and
- I. A spill plan that identifies equipment and/or structures that could fail, resulting in an impact. Spill plans shall include provisions for regular inspection, repair, and replacement of structures and equipment that could fail.

#### **6.4 CARA Performance standards**

- A. The proposed activity must comply with the water source protection requirements and recommendations of the federal Environmental Protection Agency, state Department of Health, and the health district.
- B. **Storage Tanks.** All storage tanks proposed to be located in a critical aquifer recharge area must comply with local building code requirements and must conform to the following requirements:
  - 1. **Underground Tanks.** All new underground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:
    - a. Prevent releases due to corrosion or structural failure for the operational life of the tank;
    - b. Be protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substances; and,
    - c. Use material in the construction or lining of the tank that is compatible with the substance to be stored.
  - 2. **Aboveground Tanks.** All new aboveground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:
    - a. Not allow the release of a hazardous substance to the ground, ground waters, or surface waters;
    - b. Have a primary containment area enclosing or underlying the tank or part thereof; and
    - c. A secondary containment system either built into the tank structure or a dike system built outside the tank for all tanks.

**C. Vehicle repair and servicing**

1. Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.
2. No dry wells shall be allowed in critical aquifer recharge areas on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by the state Department of Ecology prior to commencement of the proposed activity.

**D. Spreading or injection of reclaimed water.** Water reuse projects for reclaimed water must be in accordance with the adopted water or sewer comprehensive plans that have been approved by the departments of Ecology and Health.

1. Surface spreading must meet the ground water recharge criteria given in Chapter 90.46.080 RCW and Chapter 90.46.010(10).
2. Direct injection must be in accordance with the standards developed by authority of Chapter 90.46.042 RCW.

**E. State and federal regulations.** The uses listed below shall be conditioned as necessary to protect critical aquifer recharge areas in accordance with the applicable state and federal regulations.

**Statutes, Regulations, and Guidance Pertaining to Ground Water Impacting Activities**

Activity	Statute - Regulation - Guidance
Above Ground Storage Tanks	Chapter 173-303 -640 WAC
Animal Feedlots	Chapter 173-216 WAC, Chapter 173-220 WAC
Automobile Washers	Chapter 173-216 WAC, Best Management Practices for Vehicle and Equipment Discharges (WDOE WQ-R-95-56)
Below Ground Storage Tanks	Chapter 173-360 WAC
Chemical Treatment Storage and Disposal Facilities	Chapter 173-303-182 WAC
Hazardous Waste Generator ( <i>Boat Repair Shops, Biological Research Facility, Dry Cleaners, Furniture Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, etc.</i> )	Chapter 173-303 WAC
Injection Wells	Federal 40 CFR Parts 144 and 146, Chapter 173-218 WAC
Junk Yards and Salvage Yards	Chapter 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Vehicles Recycler Facilities (WDOE 94-146)
Oil and Gas Drilling	Chapter 332-12-450 WAC, WAC , Chapter 173-218 WAC
On-Site Sewage Systems (Large Scale)	Chapter 173-240 WAC
On-Site Sewage Systems (< 14,500 gal/day)	Chapter 246-272 WAC, Local Health Ordinances
Pesticide Storage and Use	Chapter 15.54 RCW, Chapter 17.21 RCW
Sawmills	Chapter 173-303 WAC, 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Log Yards (WDOE 95-53)
Solid Waste Handling and Recycling Facilities	Chapter 173-304 WAC
Surface Mining	Chapter 332-18-015 WAC

Activity	Statute - Regulation - Guidance
Waste Water Application to Land Surface	Chapter 173-216 WAC, Chapter 173-200 WAC, WDOE Land Application Guidelines, Best Management Practices for Irrigated Agriculture

**6.5 Uses prohibited from critical aquifer recharge areas.**

The following activities and uses are prohibited in critical aquifer recharge areas:

- A. **Landfills.** Landfills, including hazardous or dangerous waste, municipal solid waste, special waste, woodwaste, and inert and demolition waste landfills;
- B. **Underground injection wells.** Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells;
- C. **Mining**
  - 1. Metals and hard rock mining.
  - 2. Sand and gravel mining is prohibited from critical aquifer recharge areas determined to be highly susceptible or vulnerable.
- D. **Wood treatment facilities.** Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);
- E. **Storage, processing, or disposal of radioactive substances.** Facilities that store, process, or dispose of radioactive substances; and
- F. **Other**
  - 1. Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source;
  - 2. Activities that would significantly reduce the recharge to aquifers that are a source of significant baseflow to a regulated stream;
  - 3. Activities that are not connected to an available sanitary sewer system are prohibited from critical aquifer recharge areas associated with sole source aquifers.

## Section 7 Geologically Hazardous Areas

### 7.1 Designation of geologically hazardous areas.

Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible development is sited in areas of significant hazard. Such incompatible development may not only place itself at risk, but also may increase the hazard to surrounding development and use. Areas susceptible to one or more of the following types of hazards shall be designated as a geologically hazardous area:

- A. Erosion hazard;
- B. Landslide hazard;
- C. Seismic hazard;
- D. Mine hazard;
- E. Volcanic hazard; and
- F. Other geological events including tsunamis, mass wasting, debris flows, rock falls, and differential settlement.

### 7.2 Designation of specific geological hazard areas

- A. **Erosion hazard areas.** Erosion hazard areas are at least those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "moderate to severe," "severe," or "very severe" rill and inter-rill erosion hazard.
- B. **Landslide hazard areas.** Landslide hazard areas are areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Example of these may include, but are not limited to the following:
  - 1. Areas of historic failures, such as:
    - a. Those areas delineated by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "severe" limitation for building site development;
    - b. Those areas mapped by the Department of Ecology (Coastal Zone Atlas) or the Department of Natural Resources (slope stability mapping) as unstable ("U" or class 3), unstable old slides ("UOS" or class 4), or unstable recent slides ("URS" or class 5); or
    - c. Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the U.S. Geological Survey or Department of Natural Resources;
  - 2. Areas with all three of the following characteristics:
    - a. Slopes steeper than fifteen percent (15%); and

- b. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
  - c. Springs or ground water seepage;
3. Areas that have shown movement during the Holocene epoch (from ten thousand years ago to the present) or that are underlain or covered by mass wastage debris of that epoch;
  4. Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;
  5. Slopes having gradients steeper than eighty percent (80%) subject to rock fall during seismic shaking;
  6. Areas potentially unstable because of rapid stream incision, stream bank erosion, and undercutting by wave action;
  7. Areas that show evidence of, or are at risk from snow avalanches;
  8. Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and
  9. Any area with a slope of forty percent (40%) or steeper and with a vertical relief of ten (10) or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten (10) feet of vertical relief.
- C. **Seismic hazard areas.** Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, or surface faulting. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington. The strength of ground shaking is primarily affected by:
1. The magnitude of an earthquake;
  2. The distance from the source of an earthquake;
  3. The type of thickness of geologic materials at the surface; and
  4. The type of subsurface geologic structure.

Settlement and soil liquefaction conditions occur in areas underlain by cohesionless, loose, or soft-saturated soils of low density, typically in association with a shallow ground water table.

D. **Mine hazard areas.** Mine hazard areas are those areas underlain by, or affected by mine workings such as adits, gangways, tunnels, drifts, or airshafts, and those areas of probable sink holes, gas releases, or subsidence due to mine workings. Factors that should be considered include: proximity to development, depth from ground surface to the mine working, and geologic material.

E. **Volcanic hazard areas.** Volcanic hazard areas are areas subject to pyroclastic flows, lava flows, debris avalanche, inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

- F. **Other hazard areas.** Geologically hazardous areas shall also include areas determined by the Mayor to be susceptible to other geological events including mass wasting, debris flows, rock falls, and differential settlement.

### 7.3 Critical area report – Additional requirements for geologically hazardous areas

- A. **Geological hazards assessment.** A critical area report for a geologically hazardous area shall contain an assessment of geological hazards:

1. **Assessment of geological characteristics.** The report shall include an assessment of the geologic characteristics of the soils, sediments, and/or rock of the project area and potentially affected adjacent properties, and a review of the site history regarding landslides, erosion, and prior grading. Soils analysis shall be accomplished in accordance with accepted classification systems in use in the region. The assessment shall include, but not be limited to:
  - a. A description of the surface and subsurface geology, hydrology, soils, and vegetation found in the project area and in all hazard areas addressed in the report;
  - b. A detailed overview of the field investigations, published data and references: data and conclusions from past assessments of the site; and site specific measurements, test, investigations, or studies that support the identification of geologically hazardous areas; and
  - c. A description of the vulnerability of the site to geologic events;
2. **Analysis of proposal.** The report shall contain a hazards analysis including a detailed description of the project, its relationship to the geologic hazard(s), and its potential impact upon the hazard area, the subject property and affected adjacent properties; and
3. **Minimum buffer and building setback.** The report shall make a recommendation for the minimum no-disturbance buffer and minimum building setback from any geologic hazard based upon the geotechnical analysis.

#### B. **Mitigation of long-term impacts.**

When hazard mitigation is required, the mitigation plan shall specifically address how the activity maintains or reduces the pre-existing level of risk to the site and adjacent properties on a long-term basis (equal to or exceeding the projected lifespan of the activity or occupation). Proposed mitigation techniques shall be considered to provide long-term hazard reduction only if they do not require regular maintenance or other actions to maintain their function. Mitigation may also be required to avoid any increase in risk above the pre-existing conditions following abandonment of the activity.

### 7.4 Critical area report – Additional technical information requirements for specific geological hazards.

In addition to the general critical area report requirements of Sections 4.5 and 7.3, critical area reports for geologically hazardous areas must meet the requirements of this Section.

- A. **Erosion and landslide hazard areas.** In addition to the basic critical area report requirements, the technical information for an erosion hazard or landslide hazard area shall include the following information at a minimum:

1. **Site plan.** The critical areas report shall include a copy of the site plan for the proposal showing:
  - a. The height of slope, slope gradient, and cross section of the project area;
  - b. The location of springs, seeps, or other surface expressions of ground water on or within two hundred (200) feet of the project area or that have potential to be affected by the proposal; and
  - c. The location and description of surface water runoff features;
2. **Hazards analysis.** The hazards analysis component of the critical areas report shall specifically include:
  - a. A description of the extent and type of vegetative cover;
  - b. A description of subsurface conditions based on data from site-specific explorations;
  - c. Descriptions of surface and ground water conditions, public and private sewage disposal systems, fills and excavations and all structural improvements;
  - d. An estimate of slope stability and the effect construction and placement of structures will have on the slope over the estimated life of the structure;
  - e. An estimate of the bluff retreat rate that recognizes and reflects potential catastrophic events such as seismic activity or a one hundred year storm event;
  - f. Consideration of the run-out hazard of landslide debris and/or the impacts of landslide run-out on down slope properties.
  - g. A study of slope stability including an analysis of proposed cuts, fills, and other site grading;
  - h. Recommendations for building siting limitations;
  - i. An analysis of proposed surface and subsurface drainage, and the vulnerability of the site to erosion;
3. **Geotechnical engineering report.** The technical information for a project within a landslide hazard area shall include a geotechnical engineering report prepared by a licensed engineer that presents engineering recommendations for the following:
  - a. Parameters for design of site improvements including appropriate foundations and retaining structures. These should include allowable load and resistance capacities for bearing and lateral loads, installation considerations and estimates of settlement performance;
  - b. Recommendations for drainage and subdrainage improvements;
  - c. Earthwork recommendations including clearing and site preparation criteria, fill placement and compaction criteria, temporary and permanent slope inclinations and protection, and temporary excavation support, if necessary; and

- d. Mitigation of adverse site conditions including slope stabilization measures and seismically unstable soils, if appropriate.
  4. **Erosion and sediment control plan.** For any development proposal on a site containing an erosion hazard area, an erosion and sediment control plan shall be required. The erosion and sediment control plan shall be prepared in compliance with requirements set forth in the adopted stormwater management regulations;
  5. **Drainage plan.** The technical information shall include a drainage plan for the collection, transport, treatment, discharge and/or recycle of water prepared in accordance with the adopted stormwater management regulations. The drainage plan should consider on-site septic system disposal volumes where the additional volume will affect the erosion or landslide hazard area.
  6. **Mitigation plans.** Hazard and environmental mitigation plans for erosion and landslide hazard areas shall include the location and methods of drainage, surface water management, locations and methods of erosion control, a vegetation management and/or replanting plan and/or other means for maintaining long term soil stability.
  7. **Monitoring surface waters.** If the Public Works Director determines that there is a significant risk of damage to downstream receiving waters due to potential erosion from the site, based on the size of the project, the proximity to the receiving waters, or the sensitivity of the receiving waters, the technical information shall include a plan to monitor the surface water discharge from the site. The monitoring plan shall include a recommended schedule for submitting monitoring reports to the City.
- B. **Seismic hazard areas.** In addition to the basic report requirements, a critical area report for a seismic hazard area shall also meet the following requirements:
1. The site map shall show all known and mapped faults within two hundred (200) feet of the project area or that have potential to be affected by the proposal.
  2. The hazards analysis shall include a complete discussion of the potential impacts of seismic activity on the site (for example, forces generated and fault displacement).
  3. A geotechnical engineering report shall evaluate the physical properties of the subsurface soils, especially the thickness of unconsolidated deposits, and their liquefaction potential. If it is determined that the site is subject to liquefaction, mitigation measures appropriate to the scale of the development shall be recommended and implemented.
- C. **Mine hazard areas.** In addition to the basic report requirements, a critical area report for a mine hazard critical area shall also meet the following requirements:
1. **Site plan.** The site plan shall delineate the following found within two hundred (200) feet of or directly underlying the project area, or that have potential to be affected by the proposal:
    - a. The existence of mines, including all significant mine features, such as mine entries, portals, adits, mine shafts, air shafts, and timber shafts;
    - b. The location of any nearby mines that may impact or be affected by the proposed activities;

- c. The location of any known sinkholes, significant surface depressions, trough subsidence features, coal mine spoil piles and other mine-related surface features; and
  - d. The location of any prior site improvements that have been carried out to mitigate abandoned coal mine features;
2. **Hazards analysis.** The hazards analysis shall include a discussion of the potential for subsidence on the site and classify all mine hazards areas within two hundred (200) feet of the project area, or that have potential to be affected by the proposal, as either low, moderate, or severe. The hazards analysis shall include a mitigation plan containing recommendations for mitigation of the potential for future trough subsidence, as appropriate, for the specific proposed alteration; and recommendations for additional study, reports, and development standards if warranted.
- D. **Other geologically hazardous areas.** In addition to the basic requirements, the Public Works Director may require additional technical information to be submitted when determined to be necessary to the review the proposed activity and the subject hazard. Additional technical information that may be required, includes, but is not limited to:
- 1. **Site plan.** The site plan shall show all hazard areas located within two hundred (200) feet of the project area or that have potential to be affected by the proposal; and
  - 2. **Hazards analysis.** The hazards analysis shall include a complete discussion of the potential impacts of the hazard on the project area and of the proposal on the hazard.

#### 7.5 Geologically hazardous areas performance standards

- A. Alterations of geologically hazardous areas or associated buffers may only occur for activities that:
- 1. Will not increase the threat of the geological hazard to adjacent properties beyond pre-development conditions;
  - 2. Will not adversely impact other critical areas;
  - 3. Are designed so that the hazard to the project is eliminated or mitigated to a level equal to or less than pre-development conditions; and
  - 4. Are certified as safe as designed and under anticipated conditions by a qualified engineer or geologist, licensed in the state of Washington.
- B. **Critical facilities prohibited.** Critical facilities shall not be sited within geologically hazardous areas unless there is no other practical alternative.

#### 7.6 Geologically hazardous areas performance standards – Specific geological hazards

- A. **Erosion and landslide hazard areas.** Activities on sites containing erosion or landslide hazards shall meet the standards of *Performance standards*, Section 7.5 and the specific following requirements:
- 1. **Buffer required.** A buffer shall be established from all edges of landslide hazard areas. The size of the buffer shall be determined by the Public Works Director to eliminate or

minimize the risk of property damage, death or injury resulting from landslides caused in whole or part by the development, based upon review of and concurrence with a critical area report prepared by a qualified professional.

- a. **Minimum buffer.** The minimum buffer shall be equal to the height of the slope or fifty (50) feet, whichever is greater.
  - b. **Buffer reduction.** The buffer may be reduced to a minimum of twenty (20) feet when a qualified professional demonstrates to the City's satisfaction that the reduction will adequately protect the proposed development, adjacent developments and uses and the subject critical area.
  - c. **Increased buffer.** The buffer may be increased where the City determines a larger buffer is necessary to prevent risk of damage to proposed and existing development;
2. **Alterations.** Alterations of an erosion or landslide hazard area and/or buffer may only occur for activities for which a hazards analysis is submitted and certifies that:
- a. The development will not increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions;
  - b. The development will not decrease slope stability on adjacent properties; and
  - c. Such alterations will not adversely impact other critical areas;
3. **Design standards.** Development within an erosion or landslide hazard area and/or buffer shall be designed to meet the following basic requirements unless it can be demonstrated that an alternative design that deviates from one or more of these standards provides greater long-term slope stability while meeting all other provisions of this Ordinance. The requirement for long-term slope stability shall exclude designs that require regular and periodic maintenance to maintain their level of function. The basic development design standards are:
- a. The proposed development shall not decrease the factor of safety for landslide occurrences below the limits of 1.5 for static conditions and 1.2 for dynamic conditions. Analysis of dynamic conditions shall be based on a minimum horizontal acceleration as established by the current version of the Uniform Building Code.
  - b. Structures and improvements shall be clustered to avoid geologically hazardous areas and other critical areas;
  - c. Structures and improvements shall minimize alterations to the natural contour of the slope and foundations shall be tiered where possible to conform to existing topography;
  - d. Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation;
  - e. The proposed development shall not result in greater risk or a need for increased buffers on neighboring properties;
  - f. The use of retaining walls that allow the maintenance of existing natural slope area is preferred over graded artificial slopes;

- g. Development shall be designed to minimize impervious lot coverage;
4. **Vegetation shall be retained.** Unless otherwise provided or as part of an approved alteration, removal of vegetation from an erosion or landslide hazard area or related buffer shall be prohibited;
  5. **Seasonal restriction.** Clearing shall be allowed only from May 1st to October 1st of each year provided that the City may extend or shorten the dry season on a case-by-case basis depending on actual weather conditions, except that timber harvest, not including brush clearing or stump removal, may be allowed pursuant to an approved forest practice permit issued by the City or the Department of Natural Resources;
  6. **Utility lines and pipes.** Utility lines and pipes shall be permitted in erosion and landslide hazard areas only when the applicant demonstrates that no other practical alternative is available. The line or pipe shall be located above ground and properly anchored and/or designed so that it will continue to function in the event of an underlying slide. Stormwater conveyance shall be allowed only through a high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior.
  7. **Point discharges.** Point discharges from surface water facilities and roof drains onto or upstream from an erosion or landslide hazard area shall be prohibited except as follows:
    - a. Conveyed via continuous storm pipe downslope to a point where there are no erosion hazards areas downstream from the discharge;
    - b. Discharged at flow durations matching predevelopment conditions, with adequate energy dissipation, into existing channels that previously conveyed stormwater runoff in the predeveloped state; or
    - c. Dispersed discharge upslope of the steep slope onto a low-gradient undisturbed buffer demonstrated to be adequate to infiltrate all surface and stormwater runoff, and where it can be demonstrated that such discharge will not increase the saturation of the slope;
  8. **Subdivisions.** The division of land in landslide hazard areas and associated buffers is subject to the following:
    - a. Land that is located wholly within a landslide hazard area or its buffer may not be subdivided. Land that is located partially within a landslide hazard area or its buffer may be divided provided that each resulting lot has sufficient buildable area outside of, and will not affect, the landslide hazard or its buffer.
    - b. Access roads and utilities may be permitted within the landslide hazard area and associated buffers if the City determines that no other feasible alternative exists.
  9. **Prohibited development.** On-site sewage disposal systems, including drain fields, shall be prohibited within erosion and landslide hazard areas and related buffers.
- B. **Mine hazard areas.** Activities proposed to be located in mine hazard area shall meet the standards of *Performance standards*, Section 7.5 and the specific following requirements:
1. **Alterations.** Alterations of a mine hazard area and/or buffer are allowed, as follows:

- a. All alterations are permitted within a mine hazard area with a low potential for subsidence:
  - b. Within a mine hazard area with a moderate potential for subsidence and at coal mine by-product stockpiles, all alterations are permitted subject to a mitigation plan to minimize risk of structural damage using appropriate criteria to evaluate the proposed use, as recommended in the hazard analysis; and
  - c. Within a mine hazard area with a severe potential for subsidence only those activities allowed in accordance with Section 4.050 will be allowed.
2. **Subdivisions.** The division of land in mine hazard areas and associated buffers is subject to the following:
- a. Land that is located within two hundred (200) feet of a mine hazard area with a severe potential for subsidence may not be subdivided. Land that is located partially within a mine hazard area may be divided provided that each resulting lot has sufficient buildable area that is two hundred (200) feet away from the mine hazard area with a severe potential for subsidence. Land that is located within a mine hazard area with a low or moderate potential for subsidence may be subdivided.
  - b. Access roads and utilities may be permitted within two hundred (200) feet of a mine hazard area with a moderate or severe potential for subsidence if the City determines that no other feasible alternative exists.
3. **Reclamation activities.** For all reclamation activities, including grading, filling, and stockpile removal, as-built drawings shall be submitted to the City in a format specified by the City.
- C. **Other hazard areas.** Activities on sites containing or adjacent to other geologically hazardous areas, shall meet the standards of *Performance standards*, Section 7.5.

## Section 8 Fish and Wildlife Habitat Conservation Areas

### 8.1 Designation of fish and wildlife habitat conservation areas.

All of the following habitat areas are designated critical areas:

- A. **Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association.**
- B. **State priority habitats and areas associated with state priority species, including, but limited to, riparian areas associated with water ways.**
- C. **Habitats and species of local importance.** Habitats and species of local importance are those designated by the City, including those habitats and species that, due to their population status or sensitivity to habitat manipulation, warrant protection through possible retention or recovery of connectivity of habitat features.
- D. **Naturally occurring ponds under twenty (20) acres.** Naturally occurring ponds are those ponds under twenty (20) acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds, and landscape amenities, unless such artificial ponds were intentionally created for mitigation.
- E. **Waters of the state.** Waters of the state includes lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in WAC 222-16-031.
- F. **Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity.**
- G. **State natural area preserves and natural resource conservation areas.**

### 8.2 Critical area report – Additional requirements for habitat conservation areas.

In addition to the general critical area report requirements of Section 1.140, critical area reports for habitat conservation areas must meet the requirements of this Section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

- A. **Habitat assessment.** A habitat assessment is an investigation of the project area to evaluate the potential presence or absence of designated critical fish or wildlife species or habitat. 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:
  - 1. Detailed description of vegetation on and adjacent to the project area and its associated buffer;
  - 2. 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;

3. 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;
  4. A detailed discussion of the direct and indirect potential impacts on habitat by the project, including potential impacts to water quality;
  5. 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 to be conducted in accordance with *Mitigation sequencing*, Section 4.7; and
  6. A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.
- B. Additional information may be required.** When appropriate due to the type of habitat or species present or the project area conditions, the City may also require the habitat management plan to include:
1. An evaluation by a qualified professional regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate;
  2. A request for consultation with the Department of Fish and Wildlife or the local Native American Indian Tribe or other appropriate agency; and
  3. Detailed surface and subsurface hydrologic features both on and adjacent to the site.

### **8.3 Habitat performance standards – General requirements**

- A. Alterations prohibited.** Land development and use shall be prohibited from habitat conservation areas and their buffers, except in accordance with this Ordinance.
- B. Mitigation shall result in contiguous corridors.** When mitigation is required to offset impacts, mitigation sites shall be located to preserve or achieve contiguous wildlife habitat corridors to minimize the isolating effects of development on habitat areas, so long as mitigation of aquatic habitat is located within the same aquatic ecosystem as the area disturbed.
- C. Approvals of activities may be conditioned.** The City shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary, to minimize or mitigate any potential adverse impacts. Conditions may include, but are not limited to, the following:
1. Establishment of buffer zones;
  2. Preservation of critically important vegetation;
  3. Limitation of access to the habitat area, including fencing to deter unauthorized access;
  4. Seasonal restriction of construction activities;
  5. Establishment of a duration and timetable for periodic review of mitigation activities; and

6. Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation.

#### D. Buffers

1. **Establishment of buffers.** The City shall require the establishment of buffer areas for activities adjacent to habitat conservation areas when needed to protect the habitat conservation areas. Required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby, and shall be consistent with the management recommendations issued by the state Department of Fish and Wildlife. Habitat conservation areas and their buffers shall be preserved in perpetuity through the use of native growth protection areas in accordance with Sections 1.200.
2. **Seasonal restrictions.** When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger buffers may be required and activities may be further restricted during the specified season.
3. **Habitat buffer averaging.** The City may allow the recommended habitat area buffer width to be reduced in accordance with a critical area report only if:
  - a. It will not reduce stream or habitat functions;
  - b. It will not adversely affect salmonid habitat;
  - c. It will provide additional natural resource protection, such as buffer enhancement;
  - d. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and
  - e. The buffer area width is not reduced by more than fifty percent (50%) in any location;

#### E. Signs and fencing of habitat conservation areas

1. **Temporary markers.** The outer perimeter of the habitat conservation area or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that no unauthorized intrusion will occur, and verified by the Public Works Director prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction, and shall not be removed until permanent signs, if required, are in place.
2. **Permanent signs.** As a condition of any permit or authorization issued pursuant to this Chapter, the Public Works Director may require that applicant to install permanent signs along the boundary of a habitat conservation area or buffer.
  - a. Permanent signs shall be made of a metal face and attached to a metal post, or another material of equal durability. Signs must be posted at an interval of one per lot or every fifty (50) feet, whichever is less, and must be maintained by the property owner in perpetuity. The sign shall be worded as follows or with alternative language approved by the Public Works Director:

"Habitat Conservation Area"  
Do Not Disturb  
Contact [local contact information]  
Regarding Uses and Restriction"

- b. The provisions of subsection (a) may be modified as necessary to assure protection of sensitive features or wildlife.

**3. Fencing**

- a. The Public Works Director, or his or her designee, shall determine if fencing is necessary to protect the functions and values of the critical area. If found to be necessary, the Public Works Director, or his or her designee, shall condition any permit or authorization issued pursuant to this Chapter to require the applicant to install a permanent fence at the edge of the habitat conservation area or buffer, when fencing will prevent future impacts to the habitat conservation area.
- b. The applicant shall be required to install a permanent fence around the habitat conservation area or buffer when domestic grazing animals are present or may be introduced on site.
- c. Fencing installed as part of a proposed activity or as required in this Subsection shall be design so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes habitat impacts.

**F. Subdivisions.** The subdivision and short subdivision of land in fish and wildlife habitat conservation areas and associated buffers is subject to the following:

- 1. Land that is located wholly within a habitat conservation area or its buffer may not be subdivided.
- 2. Land that is located partially within a habitat conservation area or its buffer may be divided provided that the developable portion of each new lot and its access is located outside of the habitat conservation area or its buffer and meets the minimum lot size requirements of the adopted zoning regulations.
- 3. Access roads and utilities serving the proposed may be permitted within the habitat conservation area and associated buffers only if the City determines that no other feasible alternative exists and when consistent with this Ordinance.

**8.4 Habitat performance standards – Specific habitats**

**A. Endangered, threatened, and sensitive species**

- 1. No development shall be allowed within a habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by the management rules established by the Department of Fish and Wildlife or applicable state or federal agency.
- 2. Whenever activities are proposed adjacent to a habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with a critical area report prepared by a qualified professional and approved by the City.

Approval for alteration of land adjacent to the habitat conservation area or its buffer shall not occur prior to consultation with the Department of Fish and Wildlife for animal species, the Department of Natural Resources for plant species, and other appropriate federal or state agencies.

3. ~~Development projects likely to harm bald eagle nests or roosts are required to abide by the *National Bald Eagle Management Guidelines*, and demonstrate that a U.S. Fish and Wildlife Service (USFWS) permit is not required by using the USFWS online self-certification tool or, if a USFWS permit is required, demonstrate that it has been obtained. Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292). Whenever activities are proposed adjacent to a verified nest territory or communal roost, a habitat management plan shall be developed by a qualified professional. Activities are adjacent to bald eagle sites when they are within eight hundred (800) feet, or within one half mile (2,640 feet) and in a shoreline foraging area. The City shall verify the location of eagle management areas for each proposed activity. Approval of the activity shall not occur prior to approval of the habitat management plan by the Department of Fish and Wildlife.~~

**B. Anadromous fish**

1. All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:
  - a. Activities shall be timed to occur only during the allowable work window as designated by the Department of Fish and Wildlife for the applicable species;
  - b. An alternative alignment or location for the activity is not feasible;
  - c. The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas;
  - d. Shoreline erosion control measures shall be designed to use bioengineering methods or soft armoring techniques according to an approved critical area report, and;
  - e. Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved critical area report.
2. Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.
3. Fills, when authorized by the adopted shoreline master program, shall not adversely impact anadromous fish or their habitat or shall mitigate any unavoidable impacts, and shall only be allowed for a water-dependent use.

**C. Riparian habitat areas.** Unless otherwise allowed in this Ordinance, all structures and activities shall be located outside of the riparian habitat area.

1. **Riparian habitat area widths.** A riparian habitat area shall have the following width, unless a greater width is required pursuant to this section, Subsection 3, or a lesser width is allowed pursuant to this section, Subsection 4. Widths shall be measured outward in

each direction, 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.

<b>Riparian Habitat Areas</b>	
<b>Stream type</b>	<b>RHA widths</b>
Type 1 & 2; or shorelines of the state, or shorelines of statewide significance	150 feet
Type 3: 5-20 feet wide	100 feet
Type 3; < 5 feet wide	75 feet
Type 4 and 5	50 feet

2. **Increased riparian habitat area widths.** The riparian habitat area widths shall be increased, as follows:
  - a. When the City determines that the riparian habitat width is insufficient to prevent habitat degradation and to protect the structure and functions of the habitat area;
  - b. When the frequently flooded area exceeds the riparian habitat area width, the riparian habitat area shall extend to the outer edge of the frequently flooded area;
  - c. The riparian habitat width shall be measured from the outer edge of the channel migration zone when a channel migration zone is present.
  - d. When the habitat area is in an area of high blowdown potential, the riparian habitat width shall be expanded an additional fifty (50) feet on the windward side; and
  - e. When the habitat area is within an erosion or landslide hazard area, or buffer, the riparian habitat area shall be the recommended distance, or the erosion or landslide hazard area or buffer, whichever is greater.
  
3. **Riparian habitat area width averaging.** The City may allow the recommended riparian habitat area width to be reduced in accordance with a critical area report only if:
  - a. The width reduction will not reduce stream or habitat functions, including those of nonfish habitat;
  - b. The width reduction will not degrade the habitat, including habitat for anadromous fish;
  - c. The proposal will provide additional habitat protection;
  - d. The total area contained in the riparian habitat area of each stream on the development proposal site is not decreased;
  - e. The recommended riparian habitat area width is not reduced by more than fifty percent (50%) in any one location;

- f. The width reduction will not be located within another critical area or associated buffer; and
  - g. The reduced riparian habitat area width is supported by best available science.
4. **Riparian habitat mitigation.** Mitigation of adverse impacts to riparian habitat areas shall result in equivalent functions and values on a per function basis, be located as near the alteration as feasible, and be located in the same sub drainage basin as the habitat impacted.
5. **Alternative mitigation for riparian habitat areas.** The performance standards set forth in this Subsection may be modified at the City's discretion if the applicant demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected sub-drainage basin as a result of alternative mitigation measures.
- D. **Aquatic habitat.** The following specific activities may be permitted within a riparian habitat area, pond, lake, water of the state, or associated buffer when the activity complies with the following standards and the adopted shoreline master program.
1. **Clearing and Grading.** When clearing and grading is permitted as part of an authorized activity or as otherwise allowed in these standards, the following shall apply:
- a. Grading is allowed only during the dry season, which is typically regarded as beginning on May 1st and ending on October 1st of each year, provided that the City may extend or shorten the dry season on a case-by-case basis, determined on actual weather conditions.
  - b. Filling or modification of a wetland or wetland buffer is permitted only if it is conducted as part of an approved wetland alteration.
  - c. The soil duff layer shall remain undisturbed to the maximum extent possible. Where feasible, any soil disturbed shall be redistributed to other areas of the project area.
  - d. The moisture-holding capacity of the topsoil layer shall be maintained by minimizing soil compaction or reestablishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces.
  - e. Erosion and sediment control that meets or exceeds the standards set forth in the adopted stormwater management regulations shall be provided.
2. **Shoreline erosion control measures.** New, replacement, or substantially improved, shoreline erosion control measures may be permitted be in accordance with an approved critical area report that demonstrates the following:
- a. Natural shoreline processes will be maintained. The project will not result in increased beach erosion or alterations to, or loss of, shoreline substrate within one-quarter (1/4) mile of the project area.
  - b. The shoreline erosion control measures will not degrade fish or wildlife habitat conservation areas or associated wetlands.

- c. Adequate mitigation measures ensure that there is no net loss of the functions or values of riparian habitat as a result of the proposed shoreline erosion control measures.
3. **Streambank stabilization.** Streambank stabilization to protect new structures from future channel migration is not permitted except when such stabilization is achieved through bioengineering or soft armoring techniques in accordance with an approved critical area report.
4. **Launching ramps – Public or private.** Launching ramps may be permitted in accordance with an approved critical area report that has demonstrated the following:
  - a. The project will not result in increased beach erosion or alterations to, or loss of, shoreline substrate within one-quarter (1/4) mile of the site;
  - b. The ramp will not adversely impact critical fish or wildlife habitat areas or associated wetlands;
  - c. Adequate mitigation measures ensure that there is no net loss of the functions or values of riparian habitat as a result of the ramp; and
5. **Docks.** Repair and maintenance of an existing dock or pier may be permitted in accordance with an approved critical area report subject to the following:
  - a. There is no increase in the use of materials creating shade for predator species or eelgrass;
  - b. There is no expansion in overwater coverage;
  - c. There is no new spanning of waters between three (3) and thirteen (13) feet deep;
  - d. There is no increase in the size and number of pilings; and
  - e. There is no use of toxic materials (such as creosote) that come in contact with the water.
6. **Roads, trails, bridges, and rights-of-way.** Construction of trails, roadways, and minor road bridging, less than or equal to thirty (30) feet wide, may be permitted in accordance with an approved critical area report subject to the following standards:
  - a. There is no other feasible alternative route with less impact on the environment;
  - b. The crossing minimizes interruption of downstream movement of wood and gravel;
  - c. Roads in riparian habitat areas or their buffers shall not run parallel to the water body;
  - d. Trails shall be located on the outer edge of the riparian area or buffer, except for limited viewing platforms and crossings;
  - e. Crossings, where necessary, shall only occur as near to perpendicular with the water body as possible;

- f. Mitigation for impacts is provided pursuant to a mitigation plan of an approved critical area report;
  - g. Road bridges are designed according to the Department of Fish and Wildlife *Fish Passage Design at Road Culverts*, March 1999, and the National Marine Fisheries Service *Guidelines for Salmonid Passage at Stream Crossings*, 2000; and
  - h. Trails and associated viewing platforms shall not be made of continuous impervious materials.
7. **Utility Facilities.** New utility lines and facilities may be permitted to cross watercourses in accordance with an approved critical area report if they comply with the following standards:
- a. Fish and wildlife habitat areas shall be avoided to the maximum extent possible;
  - b. Installation shall be accomplished by boring beneath the scour depth and hyporheic zone of the water body and channel migration zone, where feasible;
  - c. The utilities shall cross at an angle greater than sixty (60) degrees to the centerline of the channel in streams or perpendicular to the channel centerline whenever boring under the channel is not feasible;
  - d. Crossings shall be contained within the footprint of an existing road or utility crossing where possible;
  - e. The utility route shall avoid paralleling the stream or following a down-valley course near the channel; and
  - f. The utility installation shall not increase or decrease the natural rate of shore migration or channel migration.
8. **Public flood protection measures.** New public flood protection measures and expansion of existing ones may be permitted, subject to the City's review and approval of a critical area report and the approval of a Federal Biological Assessment by the federal agency responsible for reviewing actions related to a federally listed species.
9. **Instream structures.** Instream structures, such as, but not limited to, high flow bypasses, sediment ponds, instream ponds, retention and detention facilities, tide gates, dams, and weirs, shall be allowed only as part of an approved watershed basin restoration project approved by the City and upon acquisition of any required state or federal permits. The structure shall be designed to avoid modifying flows and water quality in ways that may adversely affect habitat conservation areas.
10. **Stormwater conveyance facilities.** Conveyance structures may be permitted in accordance with an approved critical area report subject to the following standards:
- a. No other feasible alternatives with less impact exist;
  - b. Mitigation for impacts is provided;
  - c. Stormwater conveyance facilities shall incorporate fish habitat features; and

- d. Vegetation shall be maintained and, if necessary, added adjacent to all open channels and ponds in order to retard erosion, filter out sediments, and shade the water.

**11. On-site sewage systems and wells.**

- a. New on-site sewage systems and individual wells may be permitted in accordance with an approved critical area report only if accessory to an approved primary structure for which it is not feasible to connect to a public system.
- b. Repairs to failing on-site sewage systems associated with an existing structure shall be accomplished by utilizing one of the following methods that result in the least impact:
  - i. Connection to an available public sanitary sewer system;
  - ii. Replacement with a new on-site sewage system located in a portion of the site that has already been disturbed by development and is located landward as far as possible, provided the proposed sewage system is in compliance with the health district standards; or
  - iii. Repair to the existing on-site septic system.

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## Section 9 Frequently Flooded Areas

### 9.1 Frequently Flooded Areas

Areas of 100-year flood, base flood elevations and flood hazard factors have been delineated for most flood hazard areas within the City of Gold Bar. All new subdivisions, short plats, grading, fill and clearing permits, variances, conditional use permits, building permits and rezones within a flood zone of the Flood Insurance Rate Map shall complete a survey and elevation study to determine the appropriate 100 year flood plain delineation. All permits shall comply with the applicable sections of the Gold Bar Municipal Code to assure flood damage prevention and be required to delineate the floodplain. The current 100-year flood areas, as delineated on the Flood Insurance Rate Maps for the City of Gold Bar, may not reflect the actual 100-year floodplain. Past 100-year events have not occurred in all the areas delineated and will need to be mapped and further verified by the City of Gold Bar.

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## Section 10 Temporary Emergency Permit, Enforcement

### 10.1 Temporary Emergency Permit

- A. Notwithstanding the provisions of this ordinance or any other laws to the contrary, the City of Gold Bar may issue a temporary permit for a project within a sensitive area if-
1. The City of Gold Bar determines that an unacceptable threat to life or severe loss of property will occur if an emergency permit is not granted; and
  2. The anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by this act and other applicable laws.
- B. 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 non-emergency activities under this 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 sensitive area 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.
- C. Issuance of an emergency permit by the City of Gold Bar does not preclude the necessity to obtain necessary approvals from appropriate federal and state authorities. The emergency permit may be terminated at any time without process upon a determination by the City of Gold Bar that the action was not or is no longer necessary to protect human health, property value, or the environment.

### 10.2 Enforcement

A person or entity who fails to conform to the terms of this ordinance shall be construed as having violated the Gold Bar Zoning Code, Title 17 GBMC, for purposes of Chapter 17.84 GBMC, as now or hereafter amended, pertaining to enforcement of the Gold Bar Zoning Code.

## Section 11 Non-Conforming Activities

A regulated activity that was approved prior to the passage of this ordinance and to which significant economic resources have been committed pursuant to such approval but which is not in conformity with the provisions of this ordinance may be continued subject to the following:

- A. No such activity shall be expanded, changed, enlarged or altered in any way that increase the extent of its non-conformity except for activities allowed with an emergency permit issued under Section 10.1;
- B. Except for cases of discontinuance as part of normal agricultural practices, if a non-conforming activity is discontinued for 12 consecutive months, any resumption of the activity shall conform to this ordinance;
- C. If the value of a nonconforming structure is reduced by more than 50% by human activities or an act of God;
- D. Activities or adjuncts thereof that are or become nuisances shall not be entitled to continue nonconforming activities.