

Town of Nespelem

Ordinance 2022-04

*An Ordinance Establishing Critical Areas within
the Town of Nespelem, Washington.
And Establishing the Identification, Classification and
Regulation of such Critical Areas.*

WHEREAS, the Town is required to adopt critical areas regulations pursuant to RCW 36.70A.060; and

WHEREAS, the Town has considered the “Minimum Guidelines” for critical areas regulations as set forth in Chapter 365-190 WAC and its decisions have been informed by this guidance; and

WHEREAS the adoption of the Critical Areas Ordinance completes the review and update required under RCW 36.70A.130; and

WHEREAS, the Town has used best available science as the basis for reviewing and developing amendments to its critical areas and natural resource lands regulations in accordance with WAC 365-195-915; and

WHEREAS, the Town Council has fully considered all comments, public testimony, and the entire public record; and

WHEREAS, the proposed critical areas and natural resource lands regulations have been found consistent with the comprehensive plan, existing development regulations and state and federal laws; and

NOW THEREFORE, be it ordained by the Town Council of the Town of Nespelem, Washington, as follows:

SECTION 1 - ADMINISTRATION

Section 1.1 Statement of Purpose:

This CAO is intended to protect the functions and values of critical areas including wetlands, streams, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.

It is the purpose of this Ordinance to promote the public health, safety, and

general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

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- To protect human life and health.
- To minimize expenditure of public money and costly flood control projects.
- To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- To minimize prolonged business interruptions.
- To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard.
- To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas.
- To ensure that potential buyers are notified that property is in an area of special flood hazard.
- To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

Section 1.2 Penalties for Noncompliance:

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this CAO and other applicable regulations. Violations of the provisions of this CAO by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions), shall constitute a civil infraction. Any person who violates this Ordinance or fails to comply with any of its requirements shall upon conviction thereof be assessed not more than \$250.00 for each violation, and in addition shall pay all costs and expenses involved in the case. Each day that the violation occurs shall constitute a separate violation. The Town Attorney, when authorized by the administration, shall seek penalties, remedies, injunctions, and other legal sanctions necessary for the enforcement of this CAO.

Section 1.3 Abrogation and Greater Restrictions:

This CAO is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this CAO and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

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Section 1.4 Interpretation

In the interpretation and application of this CAO, all provisions shall be:

- Considered as minimum requirements.
- Liberally construed in favor of the governing body; and
- Deemed neither to limit nor repeal any other powers granted under State statutes.

Section 1.5 Definitions:

Unless specifically defined below, words or phrases used in this CAO shall be interpreted so as to give them the meaning they have in common usage and to give this CAO its most reasonable application. Where a term here duplicates a term already defined in the zoning ordinance, the definition of this CAO prevails:

Administrator: The Mayor or the Mayor's designee.

Anadromous: Fish that live part or the majority of their lives in salt water but return to fresh water to spawn.

Advance Mitigation: Mitigation of an anticipated critical area impact or hazard completed according to an approved critical area report and prior to site development.

Agricultural Lands: Those lands not already characterized by urban growth and are of long-term significance for the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable and animal products, or the food and fiber for the consumption of livestock, or other products and processes normally associated with farming.

Alteration, Critical Area: 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.

Appeal: A request for a review of the interpretation of any provision of this CAO or a request for a variance.

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

Aquifer Recharge Areas: Aquifer Recharge Areas are areas having a critical

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recharging effect on aquifers used for potable water where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the certifiable potability of water (WAC 365-190-030).

Area of Shallow Flooding: An area designated AO or AH Zone on the flood insurance map(s). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. AO is characterized as Sheet Flow and AH indicates Ponding.

Area of Special Flood Hazard: Means the land in the flood plain within a community subject to a one (1%) percent or greater change of flooding in any given year. Designation on maps always includes the letter A.

Base Flood: A flood event having a one (1%) percent chance of being equaled or exceeded in any given year, also referred to as the 100-year flood. Designations of base flood areas on flood insurance map(s) always include the letter A.

Basement: Any area of the building having its floor subgrade (below ground level) on all sides.

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 pursuant to the WAC 365-195-900 through 925. Sources of best available science are included in "Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas" published by the State Office of Community Development.

Best Management Practices: Conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by high concentration of nutrients, animal waste, toxics, and sediment; minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical and biological characteristics of wetlands, protect trees and vegetation designated to be retained during and following site construction; and provide standards for proper use of chemical herbicides within critical areas.

Breakaway Wall: A wall that is not part of the structural support of the building and intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Building Inspector: The person designated as the building inspector for the Town of Nespelem.

Class V Injection Wall: A shallow disposal system that is used to place a variety of fluids below the land surface.

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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.

Critical Aquifer Recharge Area: Areas designated by WAC 365-190-100 that are determined to have a critical recharging effect on aquifers used for potable water, as defined by WAC 365-190-030(3).

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

Critical Habitat: Habitat necessary for the survival of endangered, threatened, rare, sensitive or monitor species.

Data Maps: That series of maps maintained by Town of Nespelem or its referenced repository for the purpose of graphically depicting the boundaries of resource lands and critical areas.

Developable Area: A site or portion of a site that may be utilized as the location of development.

Development: Any activity upon the land consisting of construction or alteration of structures, earth movement, dredging, dumping, grading, filling, mining, removal of any sand, gravel, or minerals, driving of piles, drilling operations, bulkheading, clearing of vegetation, or other land disturbance. Development includes the storage or use of equipment or materials inconsistent with the existing use. Development also includes approvals issued by the Town 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:

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

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Elevated Building: For insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

Emergency: A serious situation or occurrence that happens unexpectedly and demands immediate action such as those causing hazardous situations including flooding, snow or ice storms, high winds, or other natural events.

Erosion Hazard Areas: At least those areas identified by the United States Department of Agriculture Soil Conservation Service as having a "severe" rill and inter-rill erosion hazard.

Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from:

- The overflow of inland or tidal waters and/ or
- The unusual and rapid accumulation of runoff of surface waters from any source.

Flood Insurance Rate Map (FIRM): The official map on which the Federal Insurance Administration has delineated the areas of special flood hazards and include the risk premium zones applicable to the community also known as "Flood Insurance Rate Map," or "FIRM."

Flood Insurance Study: The official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary- Floodway Map, and the water surface elevation of the base flood.

Flood Plain: The total land area adjoining a river, stream, watercourse, or lake subject to inundation by the base flood.

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.

Forest Lands: Those lands not already characterized by urban growth and are of long-term significance for the commercial production of timber and other wood fiber normally associated with forestry practices.

Frequently Flooded Areas: Lands in the flood plain subject to a one (1%) percent or greater chance of flooding in any given year. Frequently flooded areas perform important hydrologic functions and may present a risk to persons and property, as designated by WAC 365-190-110. Classifications of frequently flooded areas include, at a minimum, the 100-year flood plain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

Functions and Values: The beneficial roles served by critical areas including, but not limited to, water quality protection and enhancement, fish and wildlife habitat,

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food chain support, flood storage, conveyance and attenuation, ground water recharge and discharge, erosion control, wave attenuation, protection from hazards, historical and archaeological and aesthetic value protection, and recreation. These beneficial roles are not listed in order of priority.

Geologically Hazardous Areas: 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:

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

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

Long Term Commercial Significance: The growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

Lowest Floor: The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this CAO.

Manufactured Home: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

Mineral Resource Lands: Those lands not already characterized by urban growth and are of long-term significance for the production or extraction of aggregate and other mineral substances, including sand, gravel, and other valuable metals.

Mitigation: A negotiated action involving the avoidance, reduction, or compensation for possible adverse impacts. In the following order of preference this includes:

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- Avoiding the impacts altogether by not taking action.
- Reducing or eliminating impacts by preservation or maintenance.
- Minimizing impacts by limiting degree or magnitude.
- Rectifying impacts by repairing, rehabilitating, or restoring.
- Compensating for impacts by in-kind replacement.
- Monitoring impacts by a planned evaluation process.

Monitoring: Evaluating the impacts of development proposals on the biological, hydrological, and geological elements of such systems. 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 fathering baseline data.

Native vegetation: Plant species that are indigenous to the area in question.

New Construction: Means structures for which the "start of construction" commenced on or after the effective date of this CAO.

Off-Site Compensation: To replace critical areas away from the site on which a critical area has been impacted.

On-Site Compensation: To replace critical areas at or adjacent to the site on which a critical area has been impacted.

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.

Priority Habitat: Habitat type or elements with unique or significant value to one or more species as classified by the Department of Fish and Wildlife. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element.

Project Area: All areas within fifty (50) feet of the area proposed to be disturbed, altered, or used by the proposed structures.

Qualified Professional: A person with experience and training in the applicable critical area. A qualified professional (usually) must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and two (2) years of related work experience.

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

Restoration: Measures taken to restore an altered or damaged natural feature including:

- Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and
- Actions performed to reestablish structural and functional characteristics of the critical area that have been lost by alteration, past management activities, or catastrophic events.

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

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:

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

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.

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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.

Start of Construction: Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/ or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Streams: Stream types include categories established as follows:

- "Type 1" means those streams inventoried as "shorelines of the state" in the Town's adopted Shoreline Master Program.
- "Type 2" means perennial or intermittent streams used by anadromous fish during any state of life.
- "Type 3" means perennial or intermittent streams with the potential for salmonid use but does not currently support anadromous fish use because of fish barriers or any other condition that substantially interferes with stream use by anadromous fish.
- "Type 4" means intermittent or perennial streams that are not Type 1, 2 or 3 that may contain fish other than anadromous fish and segments of natural waters which are not classified as Type 1, 2 or 3. Their significance lies in their influence on water quality downstream of Type 1, 2 or 3 waters. These may be perennial or intermittent. This classification shall be applied to segments of natural water which are not classified as Type 1, 2 or 3, and for the purpose of protecting water quality downstream are classified as Type 4 water upstream until the channel becomes less than two feet in width between the ordinary high-water marks.
- "Type 5" means intermittent or perennial streams that are not Type 1, 2, 3 or 4.

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Structure: A walled and roofed building including a gas or liquid storage tank that is principally above ground.

Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition +would equal or exceed fifty (50%) percent of the market value of the structure before the damage occurred.

Substantial Improvement: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50%) percent of the market value of the structure either:

- Before the improvement or repair is started; or
- If the structure has been damaged and is being restored before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include: Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or any alteration of a structure listed on the National Register of Historic Places of a State Inventory of Historic Places.

Urban Growth: Growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

Variance: A grant of relief from the requirements of this CAO which permits construction in a manner that would otherwise be prohibited by this CAO.

Water Dependent: A structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

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.

Well: A bored, drilled, or driven shaft, or a dug hole whose depth is greater than the

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largest surface dimension for the purpose of withdrawing or injecting water or other liquids.

Wetland or Wetlands: Areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, 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 non-wetland areas created to mitigate conversion of wetlands.

Wetlands, Isolated: Those wetlands that are outside of and not contiguous to any 100-year flood plain of a lake, river, or stream, and have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water.

Section 1.6 Data Maps:

- a) Resource lands and critical areas are hereby designated on a series of data maps maintained at Town of Nespelem. These maps contain the best available graphic depiction of resource lands and critical areas and will be continuously updated as reliable data becomes available. These maps are for information and illustrative purposes only and are not regulatory in nature.
- b) The resource lands and critical areas data maps are intended to alert the development community, appraisers, and current to prospective property owners of a potential encounter with a use or development limiting factor based on the natural systems. The presence of a critical area or resource designation on the data maps is sufficient foundation for the designated Town official to order an analysis of the factor(s) identified prior to acceptance of a development application as being complete and ready for processing under the Town Zoning Ordinance, Platting and Subdivision Ordinance, and the Short Plat and Short Subdivision Ordinance or any other regulatory authority-i.e., Shorelines Management, SEPA, etc.
- c) Interpretation of Data Maps.
 - The designated Town official is hereby declared the Administrator of this CAO for the purpose of interpreting data maps. An affected property owner has a right to appeal the administrative determination to the (appropriate jurisdiction with the power of appeals) using the same procedure for zoning appeals found in the Town Zoning Ordinance, Platting and Subdivision Ordinance and the Short Plat and Short Subdivision Ordinance.

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- The data maps are to be used as a general guide to the location and extent of resource lands and critical areas. Resource lands and critical areas indicated on the data maps are presumed to exist in the locations shown and are protected under all the provisions of this CAO. The exact location of resource lands and critical areas shall be determined by the applicant as a result of field investigations performed by qualified professionals using the definitions found in this Ordinance. All development applications are required to show the boundary(s) of all resource lands and critical areas on a scaled drawing prior to the development application being considered "complete" for processing purposes.
- a) Application of Data Maps. The conclusion by the administrative authority that a parcel of land or a part of parcel of land that is the subject of a proposed development application is within the boundary(s) of one or more critical areas or resource lands as shown on the data maps, shall serve as cause for additional investigation and analysis to be conducted by the applicant. The site-specific analysis shall be limited to those resource lands and critical areas indicated on the data maps. In the event of multiple designations, each subject matter will be addressed independently and collectively for the purpose of determining development limitations and appropriate mitigating measures by Town of Nespelem.

Section 1.7 List of Resource Lands:

Within the incorporated area of Town of Nespelem, there are no designated resource lands including Agricultural Lands, Forest Lands, or Mineral Resource Lands.

SECTION 2 - CRITICAL AREAS

Section 2.1 Maps and Reference Material:

Critical Areas may be depicted generally on the Federal Emergency Management Agency's (FEMA) FIRM and Floodway maps; National Wetlands Inventory maps; The Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1987 revised edition); Washington State Tier Wetlands Rating System as it pertains to Category I-III wetlands; Washington State Department of Natural Resources Geologic Hazard Areas maps; Washington State Department of Natural Resources Mine Hazard Area maps base; U.S. Bureau of Land Management Mine Hazard Area maps; Washington State Department of Fish and Wildlife Priority Habitats and Species maps; Washington State Department of Natural Resources Water Type maps; U.S.G.S. landslide activity and slope maps; U.S. Soil Survey's National Soils Survey Interpretations Handbook; Uniform Building Code Seismic Risk Zone Maps.

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This CAO is designed to protect Critical Areas based upon the best available information at this time, which information has been subject to considerable review and comment from the general public as well as from scientific and technical sources. Utilization of revised maps must be subject to that same critique prior to adoption by the Town.

These maps are used as a general guide to the location and extent of Critical Areas. Any presumption created by these maps may be rebutted by a preponderance of the evidence. These maps are also intended to alert the development community, Town residents, as well as current and prospective landowners of the possibility of site development constraints which may limit or alter development plans. This CAO does not apply if Critical Areas do not exist on a given parcel.

Section 2.2 Permitted, Conditional and Prohibited Uses:

Uses allowed by right or by conditional use permit or uses altogether prohibited in the Critical Areas Overlay Zone shall be the same as those listed in the underlying zoning district.

Section 2.3 Purpose, Intent and Applicability

The purpose of this section is to designate, classify and protect the functions and values of Critical Areas in a manner consistent with State law while allowing for reasonable use of private property. By adopting this section, Town of Nespelem acknowledges that Critical Areas provide a variety of important biological and physical functions that benefit the community and its residents or may pose a threat to human safety or property.

The Critical Area Overlay Zone consists of that area within 200' of designated wetlands (as designated in the national wetlands inventory), aquifer recharge areas, critical wildlife habitat (as identified by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Washington Department of Fish and Wildlife, the Department of Natural Resources, and the Washington Conservation Commission), frequently flooded areas (within Zone A as shown on the National Flood Insurance Program maps) or geologically hazardous areas (as identified by the U.S. Geological Survey and the Department of Natural Resources). Any development proposed on a parcel of land within the Critical Area Overlay Zone shall be subject to project review as required in this section unless specifically exempted.

Section 2.4 Critical Areas Permit Required:

A development permit shall be obtained before construction or development begins within any Critical Area. The permit shall be for all structures including

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manufactured homes, as set forth in the "Definitions," and for all development including fill and other activities, also as set forth in the "Definitions." Boundaries of a Critical Area must be clearly marked prior to construction activities.

Section 2.5 Application for a Critical Areas Permit:

- a) For those projects determined by the Town administrator or designee likely to have an impact to the Critical Areas, the applicant shall submit a technical study identifying the precise limits of the critical area and its function and resource value as part of the application. The study shall be prepared by

experts with demonstrated qualifications in the area of concern and shall apply best available science as part of its analysis.

- b) The following activities shall be allowed in Critical Areas without a Critical Areas Permit provided they are conducted using best management practices and at a time and in a manner designed to minimize adverse impacts to the Critical Area:

- 1) Normal repair and routine maintenance and operation of residences, landscaping, utilities, roads, trails, irrigation and drainage ditches, and fishponds which were lawfully constructed, approved, or established prior to the effective date of this chapter if no expansion results.
- 2) Operation and maintenance of all electric facilities, lines, equipment or appurtenances, water, and sewer lines; natural gas, cable communications and telephone facilities, lines, pipes, mains, equipment, or appurtenances, except for power, water, and sewer substations and pump sites or new utilities within designated frequently flooded areas. For the purposes of this Ordinance, operation and maintenance shall include those usual acts necessary for the continued use of existing services in their established locations. Replacement, expansion, relocation, or placement of new utility service lines shall be subject to the standards of this Ordinance, as applicable.
- 3) Conservation or preservation of soil, water vegetation, fish, shellfish, and other wildlife that does not involve changing the structure or functions of the existing wetland.
- 4) Low-intensity, outdoor recreational activities having minimal adverse impacts, including but not limited to wildlife watching and nonpermanent blinds, hiking, boating, swimming, canoeing, bicycling, pervious trails less than five (5) feet in width, and sport fishing or hunting.
- 5) The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and that does not require tilling of soil, planting of

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crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions or water sources.

- 6) Existing and ongoing agricultural activities, including farming, horticulture, aquaculture, irrigation, ranching or grazing of animals. 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.
 - 7) Education, scientific research and activities, and use of nature trails.
 - 8) Site investigative work necessary for land use application submittals, such as surveys, soil logs and other related activities. In every case, critical area impacts shall be minimized, and disturbed areas shall be immediately restored.
 - 9) Enhancement of a critical area or buffer by removing non-native, invasive plant species. Only hand removal shall be allowed under this exemption unless the necessary permits have been obtained from the regulatory agencies specifically allowing biological or chemical treatments. All removed plant material shall be taken from the site and disposed of appropriately. Plants that appear on the State Noxious Weed Board list of noxious species must be handled according to a control plan appropriate for that plant species. Re-vegetation with native species is allowed at natural densities if performed in conjunction with removal of invasive species.
- c) The Town requires applicants to demonstrate that development on a site determined to have Critical Areas will protect the resource by taking one of the following steps (listed in order of preference):
- 1) Avoid impacts to the resource altogether.
 - 2) Minimize the impact by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
 - 3) Rectify the impact by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project.
 - 4) Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action.
 - 5) Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.

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- b) If critical resources are on the property that is being developed in the Town and that lot crosses a jurisdictional line, Town of Nespelem shall coordinate with Okanogan County and the Colville Confederated Tribes in the review of the project.

Application for a Critical Areas Permit shall be made on forms furnished by Town of Nespelem and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Required information specific to each particular type of Critical Area is listed in those Critical Area sections later in this CAO.

If a project report is required for a development permit, the following information is required:

- Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures.
- Elevation in relation to mean sea level to which any structure has been flood proofed.
- Certification by a registered professional engineer or architect that the flood-proofing methods for any nonresidential structure meet the flood-proofing criteria in the floodways.
- Description of the extent to which a watercourse will be altered or relocated as a result of the proposed development.

Section 2.6 Designation of Local Administrator:

The Administrator is hereby appointed to administer and implement this CAO by granting or denying Critical Areas Permit applications in accordance with its provisions.

Section 2.7 Duties and Responsibilities of Local Administrator:

- a) Duties of the Administrator shall include, but not be limited to:
- b) Review all Critical Areas Permits to determine that the permit requirements of this CAO have been satisfied.
- c) Review all Critical Areas Permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.

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- d) Review all Critical Areas Permits to determine if the proposed development is located within a Critical Area.

Section 2.8 Record of Notice:

All designated Critical Areas shall be recorded on all documents of title of record for all affected property.

SECTION 3 - VARIANCE PROCEDURE

Section 3.1 Appeal Board:

- a) The Town Council of Town of Nespelem shall hear and decide appeals and requests for variances from the requirements of this CAO.
- b) The Town Council shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Administrator in the enforcement or administration of this CAO.
- c) Those aggrieved by the decision of the Town Council may appeal such decision to a court of record.

Section 3.2 Conditions for Variance:

- a) Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases, the technical justification required for is using the variance increases.
- b) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section.
- c) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
- d) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- e) Variances shall only be issued upon:

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- 1) A showing of good and sufficient cause.
 - 2) A determination that failure to grant the variance would result in exceptional hardship to the applicant.
 - 3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - 4) A demonstration that no net loss of Critical Areas functions and values will occur as a result.
- f) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
- g) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of flood-proofing than watertight or dry flood-proofing, where it can be determined that such action will have low damage potential and complies with all other variance criteria except 3.2(A).
- h) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance, if applicable, will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

SECTION 4 - DETERMINATION OF CONSISTENCY

Section 4.1 Development of Regulated Activity-Determination of Consistency Required:

- a) Any proposed non-exempt land use development or activity requires the applicant to complete a Critical Areas Permits application. The application shall include the following:
 - 1) A scaled drawing of the site and the proposed development.
 - 2) Identification of the site location by section, township, and range.

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- 3) The general location of all existing land uses, structures, public and private access roads.
 - 4) A completed SEPA checklist, if applicable; and
 - 5) Other applicable permit applications.
- b) An application shall be deemed "complete" only when all required information is furnished. The Building Inspector shall compare the site of the proposed development or activity against the Critical Areas Maps so as to ascertain the following:
- 1) If the proposed development or activity falls within or near any resource area.
 - 2) If the mapped resource exists.
 - 3) If the development is likely to have a significant adverse impact on the functions and values of the Critical Areas.
 - 4) Critical Areas Special Study is required.
 - 5) If all necessary permits have been obtained from those federal, state, tribal or local governmental agencies from which prior approval is required.
 - 6) Upon completion of the initial review, the Building Inspector shall determine whether the development as proposed is consistent with the standards set forth in this CAO. If the development as proposed is found to be consistent, a Determination of Consistency shall be issued.
- c) If a Determination of Consistency cannot be issued, the applicant is required to submit a Development Checklist which shall contain the following information:
- 1) Legal description of the land and assessor's parcel number.
 - 2) As defined herein, the location of the following, if applicable:
 - i. Wetlands
 - ii. Aquifer recharge areas
 - iii. Geologically hazardous areas
 - iv. Frequently flooded areas
 - v. Priority habitats
 - vi. Prime agriculture lands
 - vii. Forest resource lands
 - viii. Mineral resource lands
 - 3) Any voluntary methods or activities anticipated by the applicant pertaining to critical areas, including incentives being offered by local or state government.

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- 4) Duplicate plans drawn to scale showing the nature, location, dimensions, and elevations of the area in question, including existing or proposed structures, estimated amount of fill material, drainage facilities, significant natural features, and the location of the above items, if applicable. Survey quality documents will not normally be required.
 - 5) The requirement for delineating the location of possible Critical Areas will be waived if field investigation by Town staff indicated the following:
 - i. Sufficient information exists for staff to estimate the boundaries of any Critical Areas without a delineation by the applicant; or
 - ii. No structures and uses, except for exempt activities, are proposed to be located within any possible Critical Area.
 - 6) Subject to field investigation by Town staff, or other reliable and relevant information, the information submitted by the applicant shall be presumed valid for all purposes under this CAO.
- d) Upon review of the Development Checklist, the Building Inspector shall determine whether the development as proposed is consistent with the standards set forth in this CAO and, if so, a Determination of Consistency shall be issued. If the development is still likely to have a significant impact on the functions of resource, the applicant is required to conduct a "Critical Areas Special Study."

Section 4.2 Critical Areas Special Study-Requirements:

The purpose of the Critical Areas Special Study is to adequately evaluate the proposal and all potential significant impacts on the resource. The study may be included as part of the environmental review process under the SEPA as administrated by Town of Nespelem, in accordance with the provisions of this CAO.

The study shall be performed by a professional who is licensed or qualified as an expert in the resources at issue. The study shall include the following when applicable.

- a) The resume of the principal author(s) which disclose(s) their technical training and experience and demonstrates their stature as a qualified professional.
- b) Identification and characterization of the Critical Area resource(s).
- c) An assessment of any potential hazards associated with the proposed development.
- d) An assessment of the impacts of the development proposal on any Critical Area resource(s).

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- e) A mitigation plan which reduces impacts to an insignificant level and specifies maintenance, monitoring, and bonding measures (where necessary).
- f) Any other site analysis and/ or development plans specifically listed under the resource sections.

Section 4.3 Issuance:

A Determination of Consistency will be issued when it can be demonstrated, and the Town finds that:

- a) After consideration of all feasible Best Management Practices, including alternative designs, scale (size), locations, and management plan, the proposed development meets the standards of this CAO, protects the function and values of resource lands and Critical Areas, and the required mitigation reduces impacts to insignificant levels on an individual and/ or cumulative project basis; or
- b) Significant impact to Critical Areas function and values are both unavoidable and necessary because of public health and safety, or specific local or regional economic consideration which override the public interest in the protection of Critical Areas, or because all reasonable economic uses for the property would be denied as a result of circumstances peculiar to the subject property; and all unavoidable significant impacts shall be offset by enhancement of other Critical Areas on or off-site.

Section 4.4 Issuance-General Requirements-Property Owner:

Upon the issuance of a Determination of Consistency, the owner of any property wholly or partially within a Critical Area on which a regulated activity is undertaken or proposed shall record a "Notice of Critical Area Protection" with the Okanogan County Auditor. The notice is to identify the presence of a Critical

Area resource and buffer, the application of this CAO to the property, and that limitations on action in or affecting such Critical Areas and buffers may exist.

Any subdivision building site plan or boundary line adjustment shall contain a "Critical Areas Designation" on the final draft recorded with the Okanogan County Auditor.

The form of the notice and designation shall be provided by the Administrator and shall contain, at a minimum, a description of the specific resource protected, i.e., wetland, riparian corridor, and a map or legal description which identifies the resource boundary and the gross acreage within it. For the purposes of assessment, the filing of such a notice shall also designate the Critical Area resource and buffer lands eligible for reduced tax assessments.

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The notice and designation shall run with the land and failure to provide such notice to any purchaser prior to transferring any interest in the property shall be a violation of this CAO.

Prior to commencing construction activities on a development site, the applicant shall mark, as is required by the Town, the boundary of designated Critical Area Resources in a highly visible manner, with an item such as, but not limited to, yellow caution tape. These areas must remain so marked until all construction activities in the vicinity of the sensitive area are completed. All development related activities must stay outside the marked boundary.

Performance and maintenance bonds or other forms of surety may be required to insure the completion of mitigation, restoration, enhancement, or remediation requirements associated with any development impacting a critical areas resource.

Section 4.5 Appeal of Decision of Building Inspector:

An applicant or any person may appeal the Building Inspector's decision to:

- a) Require or not require a Special Study.
- b) Issue or issue with conditions a Determination of Consistency.
- c) Deny the issuance of a Determination of Consistency.
- d) Extend or deny the extension of a Determination of Consistency.

The written appeal shall be made to the Building Inspector within ten (10) working days from the date of the action. The appeal shall state clearly the

resource issue and the specific findings or element of the action being contested.

The Building Inspector shall convene a review committee of resource agency representatives and the appellant no more than 21 working days from the date of the filing of an appeal. The review committee shall review the decision of the Building Inspector relative to the issues on appeal. The review committee shall support the original determination or recommend changes in writing to the Building Inspector within seven (7) working days of convening.

The final determination of the review committee may be appealed to the Town Council within 20 working days of the Building Inspector's receipt of the review committee's determination.

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Section 4.6 Term-Extension Requirements:

- a) The Determination of Consistency shall be valid for two (2) years from the date of issuance. An extension of the Determination of Consistency shall not be required when substantial construction of the development has occurred within two (2) years of issuance. Upon demonstration that the applicant has been diligently seeking required permits, a one-year extension of the Determination of Consistency will be granted upon request of the original permit holder or successor in title.
- b) When neither substantial construction nor diligence in seeking permits can be demonstrated, then prior to the granting of each one-year extension, the Building Inspector shall review the original findings and may require updated information and/ or assistance from persons or agencies having technical expertise. The Building Inspector may require additional mitigation measures

In order to extend the Determination, if the circumstances at the time of the original findings have been altered, or if the applicant has failed to abide by the terms of the original Determination.

Section 4.7 Suspension or Revocation:

The Administrator may suspend or revoke a permit if it finds that the applicant has not complied with the conditions or limitations set forth in the permit or has exceeded the scope of the work set forth in the permit. The Administrator shall cause notice of the denial, issuance, conditional issuance, revocation, or suspension of a permit to be published in a timely manner in a daily or weekly newspaper having a broad circulation in the area wherein the wetland lies.

Section 4.8 Nonconforming Activities:

A regulated activity that was lawful before the passage of this CAO, but which is not in conformity with the provisions of this CAO, may be continued subject to the following:

- a) No such structure or use shall be expanded, changed, enlarged, or altered in any way that increases its nonconforming character relative to the provisions of this Ordinance without securing a Conditional Use Permit, except as specifically authorized in (b) and (c) below.
- b) Final Plat approvals, Conditional Use Permits, and building permits issued before the effective date of this CAO will not be controlled by this CAO.
- c) In the event that a structure defined as nonconforming relative to provisions of this section is destroyed by fire or remodeled, it may be rebuilt in such a way that does not increase the nonconformity, but such rebuilding or remodeling shall not

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trigger a requirement for restoration of wetlands, streams, or buffers that were altered in a way that was legal at the time of their alteration.

Section 4.9 Reasonable Use Exception:

"Reasonable use" means the minimum use to which a property owner is entitled under applicable state and federal constitutional provisions, including takings and substantive due process. Reasonable use shall be liberally construed to protect the constitutional property rights of the applicant. A reasonable use exemption may only be secured by using the Town's conditional use process.

A reasonable use exemption may be secured only if:

- a) The strict application of the CAO would deny reasonable use of the property.
- b) There is no other reasonable use that would result in less impact on the critical area.
- c) Any alterations permitted to the Critical Area shall be the minimum necessary to allow for reasonable use of the property.

Section 4.10 Relief:

If application of the requirements in this section would deny all reasonable economic use of the lot, development will be permitted if the applicant demonstrates all of the following to the satisfaction of the Town as part of the Critical Area permit in addition to demonstrating all of the findings required of variances from provisions of the zoning ordinance:

- a) There is no other reasonable use or feasible alternative to the proposed development with less impact on the Critical Area.
- b) The proposed development does not pose a threat to the public health, safety, and welfare on or off of the subject property.
- c) Any alterations permitted to the requirements of this section shall be the minimum necessary to allow for reasonable use of the property.
- d) The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the application in subdividing the property or adjusting a boundary line and creating the undevelopable condition after the effective date of this section.
- e) The proposal mitigates the impact on the Critical Area to the maximum extent possible.

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Section 4.11 Mitigation:

Mitigation shall be required in the following 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, frequently flooded 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, frequently flooded areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments.
- 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.

Section 4.12 Enforcement:

The methods of enforcement of Critical Area protection shall include inspections, reporting requirements, bonds, permit revocation, civil penalties, and abatement.

Section 4.13 Notification:

Property owners with land adjacent to Critical Areas must be notified of Critical Area buffers on their lands.

SECTION 5 - WETLANDS, AQUIFER PROTECTION AREAS AND STREAMS

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Section 5.1 Wetland Determination:

- a) Identification of wetlands and delineation of their boundaries pursuant to this CAO shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. All areas within the Town meeting the wetland designation criteria in that procedure are hereby designated Critical Areas and are subject to the provisions of this CAO. Wetland delineations are valid for five (5) years; after such date the Town shall determine whether a revision or additional assessment is necessary.
- b) Rating. Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the *Washington State Wetland Rating System for Eastern Washington* (Ecology Publication #14-06-030, October 2014, or as revised and approved by Ecology), which contains the definitions and methods for determining whether the criteria below are met.
- Category I. Category I wetlands are: (1) alkali wetlands; (2) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; (3) bogs and calcareous fens; (4) mature and old-growth forested wetlands over ¼ acre with slow-growing trees; (5) forests with stands of aspen; and (6) wetlands that perform many functions very well (scores between 22-27). These wetlands are those that (1) represent a unique or rare wetland type; (2) are more sensitive to disturbance than most wetlands; (3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (4) provide a high level of function.
 - Category II. Category II wetlands are: (1) forested wetlands in the floodplains of rivers; (2) mature and old-growth forested wetlands over ¼ acre with fast-growing trees; (3) vernal pools; and (4) wetlands that perform functions well (scores between 19-21 points). These wetlands are difficult, though not impossible, to replace, and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but still need a relatively high level of protection.
 - Category III. Category III wetlands have a moderate level of functions (scores between 16-18 points). Wetlands scoring between 16-18 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.
 - Category IV. Category IV wetlands have the lowest level of functions (scores fewer than 16 points) and are often heavily disturbed. These are wetlands that we should be able to replace, and in some cases be able to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions and also need to be protected.
- c) Development near wetlands shall observe the following setbacks from the edge

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of the wetland. NO development or activity shall occur within the required setbacks unless the applicant can demonstrate through a Critical

- d) Area's report prepared by a Qualified Professional that the proposed use or activity will not degrade the functions and values of the wetland and other

Critical Areas according to the evaluation criteria from Subsection E below. Such Critical Areas report must contain the following minimum standards:

- 1) The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the wetland Critical Area report; a description of the proposal; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.
- 2) A statement specifying the accuracy of the report and all assumptions made and relied upon.
- 3) Documentation of any fieldwork performed on the site, including field data sheets for delineations, function assessments, baseline hydrologic data, etc.
- 4) A description of the methodologies used to conduct the wetland delineations, function assessments, or impact analyses including references.
- 5) Identification and characterization of all Critical Areas, wetlands, water bodies, shorelines, floodplains, and buffers on or adjacent to the proposed project area. For areas off site of the project site, estimate conditions within 300 feet of the project boundaries using the best available information.
- 6) For each wetland identified onsite and within 300 feet of the project site, provide: The wetland rating per this section; required buffers; hydrogeomorphic classification; wetland acreage based on a professional survey from the field delineation (acreages for onsite portion and entire wetland area including off-site portions); Cowardian classification of vegetation communities; habitat elements; soil conditions based on site assessment and/ or soil survey information; and to the extent possible, hydrologic information such as location and condition of inlet/ outlets (if they can be legally accessed), estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g., algal mats, drift lines, flood debris, etc.). Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site.
- 7) A description of the proposed actions including an estimation of acreages of impacts to wetlands and buffers based on the field delineation and survey and an analysis of site development alternatives including a no-development alternative.

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- 8) An assessment of the probable cumulative impacts to the wetlands and buffers resulting from the proposed development.
- 9) A description of reasonable efforts made to apply mitigation sequencing to avoid, minimize, and mitigate impacts to critical areas.
- 10) A discussion of measures, including avoidance, minimization, and compensation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land-use activity.
- 11) A conservation strategy for habitat and native vegetation that addresses methods to protect and enhance onsite habitat and wetland functions.
- 12) An evaluation of the functions of the wetland and adjacent buffer. Include reference for the method used and data sheets.
- 13) Maps (to scale) depicting delineated and surveyed wetland and required buffers onsite, including buffers for off-site Critical Areas that extend onto the project site; the developmental proposal; other Critical Areas; grading and clearing limits; areas of proposed impacts to wetlands and/or buffers (include square footage estimates).
- 14) A depiction of the proposed stormwater management facilities and outlets (to scale) for the development, including estimated areas of intrusion into the buffers of any Critical Areas. The written report shall contain a discussion of the potential impacts to the wetland(s) associated with anticipated hydroperiod alterations from the project.

In no case shall any development or activity be permitted closer to the edge of the wetland than within one-half of the required setback.

Wetland Category	Setback (feet)
Category I	250
Category II	200
Category III	150
Category IV	50

- e) Buffer zones may be increased if the Town Council finds, on a case- by-case basis and based upon best available science, at least one of the following applies:
 - 1) A larger buffer is necessary to maintain viable populations of existing species, or
 - 2) The wetlands are used by species proposed or listed by the federal government or the state as endangered, threatened, rare, sensitive or being

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monitored as habitat for those species or has unusual nesting or resting sites, or

- 3) The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts, or
 - 4) The adjacent land has minimal vegetative cover or slopes greater than 25%.
- f) Buffer zones may be decreased to no less than twenty-five (25') feet if the Town Council finds on a case-by-case basis and based upon best available science, that all of the following apply:
- 1) The Critical Area report provides a sound rationale for a reduced buffer, and
 - 2) The existing buffer area is well-vegetated with native species and has less than 10% slopes, and
 - 3) No direct or indirect, short-term, or long-term adverse impact to the wetland will result from the proposed activity.
- g) Wetland buffer areas may be used for conservation and restoration activities, passive recreation (including trails, wildlife viewing structures and fishing access areas) and storm water management facilities.
- h) Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with *Wetland Mitigation in Washington State - Part 2: Developing Mitigation Plans - Version 1* (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised), and *Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington)* (Publication #10-06-07, November 2010). Mitigation ratios shall be consistent with:

Category and Type of Wetland	Creation or Re-establishment	Rehabilitation	Enhancement
Category I: Bog, Natural Heritage site	Not considered possible	Case by case	Case by case
Category I: Mature Forested	6:1	12: 1	24:1
Category I: Based on functions	4:1	8:1	16:1
Category II	3:1	6:1	12: 1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

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Mitigation requirements may also be determined using the credit/debit tool described in *Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Eastern Washington: Final Report* (Ecology Publication #11-06- 015, August 2012).

Section 5.2 Aquifer Protection Areas:

- a) In areas designated as high susceptibility for aquifer contamination, all uses shall be connected to the Town's sewer system, if available. No new uses on a septic system are permitted in high susceptibility areas of critical aquifer recharge.
- b) For uses locating within the critical aquifer recharge area and requiring site plan review, a disclosure form indicating activities and hazardous materials that will be used shall be provided for review and approval.
- c) Impervious surfaces shall be minimized within the critical aquifer recharge areas.
- d) Best management practices as defined by state and federal regulations shall be followed by commercial and industrial uses located in the critical aquifer recharge areas to ensure that potential contaminants do not reach the aquifer.
- e) A spill prevention and emergency response plan shall be prepared and submitted for review and approval by the Town and Fire District.

Section 5.3 Aquifer Protection Area Designations:

The Town, through this Section, hereby designates two categories for aquifer recharge areas. These categories are designated to assist the Administrator in determining the level of assessment necessary to evaluate specific land use proposals. The categories are based on the determination that certain areas require additional scrutiny of the potential impacts of a proposed land use with consideration given to hydro-geologic vulnerability. All designated areas are subject to change as data and information are updated or become available.

Section 5.4 Designation Categories:

Category I areas are those so designated because of the need to provide them special protection due to a specific pre-existing land use, or because they are identified by the Town, county, state, tribal or federal government as areas in need of special aquifer protection where a proposed land use may pose a potential risk which increases aquifer vulnerability.

Category I includes areas served by groundwater which have been designated as a "Sole Source Aquifer Area" under the Federal Safe Drinking Water Act; areas identified

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within a "closed" or "low-flow" stream watershed designated by the Department of Ecology pursuant to RCW 90.22; and areas designated as "Wellhead Protection Areas" pursuant to WAC 246-290-135(3) and the groundwater contribution area in WAC 246-290-135(4) and the groundwater contribution area in WAC 246-291-100(2)(e).

Wellhead protection areas shall, for the purpose of this regulation, include the identified recharge areas associated with either Group A public water supply wells, those Group B wells with a wellhead protection plan filed with the

Okanogan County Health Department, or plats served by five (5) or more individual wells where the average lot size is equal to or less than two (2) acres for which a well head protection plan has been completed and filed with the Okanogan County Health Department, Category I areas are shown on the Aquifer Recharge Area map.

Category II is designated as areas throughout the Town not identified as Category I areas. When any portion of the proposed project area lies partly within a Category I area, the proposed project shall be subject to the level of scrutiny provided for Category I area.

Section 5.5 Applicability:

All development projects are subject to the provisions of this Section, except for the following:

- a) Existing activities that currently and legally exist at the time this Section became effective. However, expansions or changes in use are subject to this Section and the review process contained herein.
- b) Single-family residential building permits, including accessory building permits, which are outside Category I areas.
- c) Residential short plats outside Category I areas where each lot is 2.5 acres or greater.
- d) Single-family residential building permits where a site assessment report were required to be completed for the land division, in which case, to meet the conditions of this exemption, the Applicant must comply with the recorded plat notes and the applicable mitigations contained in the site assessment report.

Section 5.6 Prohibited Activities:

The following activities are prohibited in Category I areas due to the probability and/or potential magnitude of their adverse effects on groundwater:

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- a) Landfill activities as defined in WAC 173-304 and WAC 173-351.
- b) Class V injection wells, including:
 - 1) Agricultural drainage wells.
 - 2) Untreated sewage waste disposal wells.
 - 3) Cesspools.
 - 4) Industrial process water and disposal wells.
- c) Radioactive water disposal.
- d) Radioactive disposal sites.

Section 5.7 Critical Aquifer Recharge Areas (CARAs):

"Critical aquifer recharge areas" are Category I areas designated by WAC 365-190-100(3) that are determined to have a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(3). Critical aquifer recharge areas 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.

Section 5.8 Prohibited Activities:

Prohibited activities in Category I areas:

- a) Mining.
 - 1) Metals and hard rock mining.
 - 2) Sand and gravel mining are prohibited in critical aquifer recharge areas determined to be highly susceptible or vulnerable unless a storm water quality management plan is approved by the Town Council.
- b) Wood Treatment Facilities. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade).
- c) Other prohibited uses or activities:
 - 1) Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source.

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- 2) Activities that would significantly reduce the recharge to aquifers that are a source of significant base-flow 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 5.9 Performance Standards-General Requirements:

Activities may only be permitted in a critical aquifer recharge area if the applicant can show that the proposed activity will not cause contaminants to enter the aquifer and that the proposed activity will not adversely affect the recharging of the aquifer.

The proposed activity must comply with the water source protection requirements and recommendations of the U.S. Environmental Protection

Agency, Washington State Department of Health, and the Okanogan County Health Department.

Section 5.10 Performance Standards-Specific Uses:

- a) 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.
 - i. Prevent releases due to corrosion or structural failure for the operational life of the tank.
 - ii. Be protected against corrosion, constructed of non-corrosive material, steel clad with a non-corrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substances.
 - iii. Use material in the construction or lining of the tank that is compatible with the substance to be stored.
 - b) Above ground tanks. All new above ground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to.
 - 1) Not allow the release of a hazardous substance to the ground, ground waters, or surface waters.

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- 2) Have a primary containment area enclosing or underlying the tank or part thereof.
 - 3) A secondary containment system built into the tank structure of 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 Washington Department of Ecology prior to commencement of the proposed activity.
- d) Use of reclaimed water for surface percolation or direct recharge. Water re-use projects for reclaimed water must be in accordance with the adopted water or sewer comprehensive plans that have been approved by the State Department of Ecology and Health.
- e) Use of reclaimed water for surface percolation must meet the ground water recharge criteria given in Chapter 90.46.080(1) and Chapter 90.46.010(10) RCW. The Department of Ecology may establish additional discharge limits in accordance with Chapter 90.46.080(2) RCW.
- f) Direct injection must be in accordance with the standards developed by authority of Chapter 90.46.042 RCW.
- g) 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.

Section 5.11 Streams and Stream Buffers:

Any development or construction adjacent to streams shall preserve an undisturbed buffer which is wide enough to maintain the natural hydraulic and habitat functions of that stream as it relates to an urban environment.

The dimensions of stream buffers are as follows:

- a. The following buffers of undisturbed native vegetation shall be provided for different

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classes of streams. Dimensions are measured from the ordinary high-water elevation of the stream or watercourse, or from the top of the bank or dike:

Type 1	150 feet
Type 2	100 feet
Type 3	75 feet
Type 4	50 feet
Type 5	25 feet

Where the FEMA floodplain is wider than these buffers, the width of the floodplain shall be considered to be the buffer width.

Stream buffers shall be increased to include streamside wetlands that provide overflow storage for storm waters, feed water back to the stream during low flows or provide shelter and food for fish.

SECTION 6- CRITICAL WILFLIFE HABITAT

Section 6.1 Fish and Wildlife Habitat Conservation Areas:

Fish and wildlife habitat conservation areas (FWHCA) include:

- a) Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association.
 - 1) Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted for current listing status.
 - 2) State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the State of Washington identified by the Washington Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC 232- 12-014 (state endangered species) and WAC 232-12-011 (state threatened and sensitive species). The State Department of Fish and Wildlife maintains the most current listing and should be consulted for current listing status.

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- b) State priority habitats and areas associated with state priority species priority habitats and species are considered to be priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/ or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the State Department of Fish and Wildlife and may be designated as appropriate through the process detailed in the next section (Section 6.2).
- c) Habitats and species of local importance. Habitats and species of local importance are those identified by the Town, including but not limited to those habitats and species that, due to their population status or sensitivity to habitat manipulation, warrant protection. Habitats may include a seasonal range or habitat element with which a species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

Section 6.2 Designation Process:

- a) The Town shall consider nominations for habitat areas and species to be designated as locally important on an annual basis, following the procedures set forth in the Town Comprehensive Plan.
- b) Habitats and species to be designated shall exhibit the following characteristics:
 - 1) Local populations of native species are in danger of extinction based on existing trends.
 - 2) Local populations of native species that are likely to become endangered.
 - 3) Local populations of native species that are vulnerable or declining.
 - 4) The species or habitat has recreation, commercial, game, tribal, or other special value.
 - 5) Long-term persistence of a species is dependent on the protection, maintenance, and/ or restoration of the nominated habitat.
 - 6) Protection by other county, state, tribal or federal policies, laws, regulations, or non-regulatory tools is not adequate to prevent degradation of the species.

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- 7) Without protection, there is a likelihood that the species or habitat will be diminished over the long term.
- 8) Areas nominated to protect a particular habitat or species must represent either high-quality native habitat or habitat that has a high potential to recover to a suitable condition and which is of limited availability, highly vulnerable to alteration, or provides landscape connectivity which contributes to the integrity of the surrounding landscape.

Habitats and species may be nominated for designation by any person. The nomination should indicate whether specific habitat features are to be protected (for example, nest sites, breeding areas, and nurseries), or whether the habitat or ecosystem is being nominated in its entirety. The nomination may include management strategies for the species or habitats. Management strategies must be supported by professional scientific analysis, and where restoration of habitat is proposed, a specific plan for restoration must be provided prior to nomination.

The Administrator shall determine whether the nomination proposal is complete, and if complete, shall evaluate it according to the characteristics enumerated in this section and make a recommendation to the Town Council based on those findings.

The Town Council shall hold a public hearing for proposals found to be complete in accordance with Town hearing procedures and make a recommendation to the Administrator based on the characteristics enumerated in this section.

Following the recommendation of the Town Council, the Administrator shall determine whether the nominated habitat or species shall be designated a Habitat or Species of Local Importance. Approved nominations will be subject to the provisions of this section (i.e., the species or habitat has recreation, commercial, game, tribal, or other special value).

c) The following areas are designated as habitats of local importance:

- 1) Naturally occurring ponds under twenty (20) acres but larger than 2,500 feet. 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, water or wastewater treatment facilities, farm ponds, temporary construction ponds, and landscape amenities, unless such artificial ponds were intentionally created for mitigation.
- 2) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity.
- 3) State Natural Area Preserves and Natural Resource Conservation Areas.

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Natural area preserves and natural resource conservation areas are defined and established by the Washington State Department of Natural Resources.

- 4) Areas of Rare Plant Species and High-Quality Ecosystems. Areas of rare plant species and high-quality ecosystems are identified by the Washington State Department of Natural Resources through the Natural Heritage Program as designated.
- d) The Applicant that proposed development in a Critical Areas Overlay Zone that may impact FWHCA shall provide a habitat management plan, prepared

by a qualified expert in the species in question, for evaluation by local, state, tribal and federal agencies.
- e) The habitat management plan shall be based on best available science and best management practices and shall be designed to achieve specific habitat objectives and shall include, at a minimum:
 - 1) A detailed description of vegetation on and adjacent to the project area.
 - 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, tribal or local special management recommendations, including Department of Fish and Wildlife or tribal 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 potential impact on habitat by the project, including potential impact 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.
 - 6) A discussion of continuing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.
- f) A habitat conservation area may be altered only if the proposed alteration of

the habitat or the mitigation proposed does not degrade the functions and values of the habitat.
- g) No plant, wildlife, or fish species not indigenous to the region shall be introduced into a habitat conservation area unless authorized by a state or federal permit or

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approval.

- h) The habitat management plan shall address the project area of the proposed activity, all habitat conservation areas, and recommended buffers within 300 feet of the project area and all other Critical Areas within 300 feet of the project area.

SECTION 7 - FREQUENTLY FLOODED AREAS

Section 7.1 Specific Standards:

In all frequently flooded areas where base flood elevation data has been provided, the following provisions are required:

a) Residential Construction

- 1) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one foot or more above the base flood elevation.
- 2) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - ii. The bottom of all openings shall be no higher than one foot above grade.
 - iii. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

b) Nonresidential Construction. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including basement, elevated one foot or more above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

- 1) Be flood-proofed so that below one foot or more above the base flood level the structure is watertight with walls substantially impermeable to the passage of water.

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- 2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- 3) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/ or review of the structural design, specifications, and plans.
- 4) Nonresidential structures that are elevated, not flood-proofed, must meet the same standards for space below the lowest floor as described above.
- 5) Applicants flood proofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the flood-proofed level (e.g., a building flood-proofed to the base flood level will be rated as one foot below).

c) Manufactured Homes.

1) All manufactured homes to be placed or substantially improved on sites:

- i. Outside of a manufactured home park or subdivision.
- ii. In a new manufactured home park or subdivision.
- iii. In an expansion to an existing manufactured home park or subdivision.
- iv. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood.

shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot or more above the base flood elevation and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

d) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the above manufactured home provisions be elevated so that either:

- 1) The lowest floor of the manufactured home is elevated one foot or more above the base flood elevation, or
- 2) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36") inches in height above grade and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

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SECTION 8 - GEOLOGICALLY HAZARDOUS AREAS

Section 8.1 Classification of Geologically Hazardous Areas:

All Geologic Hazard Areas shall be classified according to the following categories for each geologic hazard type:

Classification	Documentation and Data Sources
Known or Suspected Risk	Documentation or projection of the hazard by a qualified professional exists
Risk Unknown	Documentation or projection of the lack of hazard by a qualified professional exists, or data is not available to determine the presence or absence of a geological hazard.

Section 8.2 Mapping of Geologically Hazardous Areas:

The approximate location and extent of Geologically Hazardous Areas are shown on the adopted Critical Areas maps. The adopted Critical Areas maps include:

- U.S. Geological Survey landslide hazard, seismic hazard, and volcano hazard maps.
- Washington State Department of Natural Resources slope stability maps.
- Federal Emergency Management Administration flood insurance maps.

These maps are to be used as a guide for the Town, project applicants, and/or property owners and may be continuously updated as new Critical Areas are identified. They are a reference and do not provide a final Critical Area designation.

Section 8.3 Allowed Activities:

Activities allowed in Geologically Hazardous Areas:

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- a) Erosion and landslide hazard areas. Except as otherwise provided for in this CAO, only those activities approved and permitted consistent with an approved Critical Area report in accordance with this CAO shall be allowed in erosion or landslide hazard areas.
- b) Seismic hazard areas. The following activities are allowed within seismic hazard areas:
 - 1) Construction of new buildings with less than 2,500 square feet of floor area or roof area, whichever is greater, and which are not residential structures or used as places of employment or public assembly.
 - 2) Additions to existing single-story residences that are 250 square feet or less; and
 - 3) Installation of fences.
- c) Volcanic hazard areas. The following activities are allowed within volcanic hazard areas:
 - 1) Construction of new buildings with less than 2,500 square feet of floor area or roof area, whichever is greater, and which are not residential structures or used as places of employment or public assembly.
 - 2) Additions to exiting residences that are 250 square feet or less.
 - 3) Installation of fences.

Section 8.4 Allowed Activities-Other Hazard Areas:

The Administrator may allow the following activities within other Geologically Hazardous Areas, if the activity will not increase the risk of the hazard:

- a) Construction of new buildings with less than 2,500 square feet of floor area or roof area, whichever is greater, and which are not residential structures or used as places of employment or public assembly.
- b) Additions to existing residences that are 250 square feet or less; and
- c) Installation of fences.

Section 8.5 Critical Area Report Requirements:

A Critical Areas report for a Geologically Hazardous Area shall be prepared by an engineer or geologist, licensed in the State of Washington, with experience

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analyzing geologic, hydrologic, and ground water flow systems, and who has experience preparing reports for the relevant type of hazard.

Section 8.6 Areas Addressed in Critical Area Report:

The following areas shall be addressed in a Critical Area report for Geologically Hazardous Areas:

- a) The project area of the proposed activity.
- b) All Geologically Hazardous Areas within two hundred (200') feet of the project area or that have potential to be affected by the proposal.
- c) The presence, nature, and location of wetlands, FWHCAs, and/ or aquifer recharge zones.

Section 8.7 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.
- d) Critical facilities shall not be sited within Geologically Hazardous Areas unless there is no other practical alternative.

Section 8.8 Performance Standards-Specific Hazards:

- a) Erosion and Landslide Hazard Areas. Activities on sites containing erosion or landslide hazards shall meet the Performance Standards in this Section 8.8 and the specific following requirements:
 - 1) Buffer requirement. A buffer shall be established from all edges of landslide hazard areas. The size of the buffer shall be determined by the Administrator 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

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review of and concurrence with a Critical Area report prepared by a qualified professional.

- 2) Minimum Buffer. The minimum buffer shall be equal to the height of the slope or fifty (50') feet, whichever is greater.
 - 3) Buffer Reduction. The buffer may be reduced to a minimum of ten (10) feet when a qualified professional demonstrates to the Administrator's satisfaction that the reduction will adequately protect the proposed development, adjacent developments, and uses and the subject Critical Area.
 - 4) Increased Buffer. The buffer may be increased where the Administrator determines a larger buffer is necessary to prevent risk of damage to proposed and existing development.
- b) 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:
- 1) The development will not increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions.
 - 2) The development will not decrease slope stability on adjacent properties; and
 - 3) Such alterations will not adversely impact other Critical Areas.
- c) Design Standards. Development and land clearing 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 CAO. 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:
- 1) 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 International Building Code.
 - 2) Structures and improvements shall be clustered to avoid Geologically Hazardous Areas and other Critical Areas.
 - 3) 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.

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- 4) Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation.
- 5) The proposed development shall not result in greater risk or a need for increased buffers on neighboring properties.
- 6) The use of retaining walls that allow the maintenance of existing natural slope area is preferred over graded artificial slopes.
- 7) Development shall be designed to minimize impervious lot coverage.
- 8) Vegetation retention. 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.
- 9) Seasonal restriction. Clearing shall be allowed only from May 1 to October 1 of each year, *provided* that the Town may extend or shorten the dry season on a case-by-case basis depending on actual weather conditions.
- 10) 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. Storm water conveyance shall be allowed only through a high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior.

- 11) Point Discharges. Point discharges from surface facilities and roof drains onto or upstream from an erosion or landslide hazard area shall be prohibited except as follows:
 - i. Conveyed via continuous storm pipe downslope to a point where there are no erosion hazards areas downstream from the discharge.
 - ii. Discharged at flow durations matching pre-developed conditions, with adequate energy dissipation, into existing channels that previously conveyed storm water runoff in the pre-developed state.
 - iii. Dispersed discharge upslope of the steep slope onto a low-gradient undisturbed buffer demonstrated to be adequate to infiltrate all surface and storm water runoff, and where it can be demonstrated that such discharge will not increase the saturation of the slope.

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12) Subdivisions. The division of land in landslide hazard areas and associated buffers is subject to the following:

- i. 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.
- ii. Access roads and utilities may be permitted within the Landslide hazard area and associated buffers if the Town determines that no other feasible alternative exists; and
- iii. Prohibited development. Onsite sewage disposal systems, including drain fields, shall be prohibited within erosion and landslide hazard areas and related buffers.

d) Seismic Hazard Areas. Activities proposed to be located in seismic hazard areas shall meet the Performance Standards in Section 8.8.

SECTION 9 - SEVERABILITY

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this Ordinance.

SECTION 10 - EFFECTIVE DATE

This Critical Areas Ordinance shall become effective from and after passage by Town Council, approval by the Mayor for the Town of Nespelem, and publication as required by law.

Passed by Town Council for the Town of Nespelem, Washington at the regular meeting this 11th day May of 2022.


DARCY EPPERSON, Mayor

Attest:


KELLY ROSS, Clerk/Treasurer

