

## Chapter 18.65 CRITICAL AREAS

Sections:

### Article I. General Provisions and Administration

- 18.65.010 Purpose.
- 18.65.020 Applicability.
- 18.65.030 Appeals.
- 18.65.040 Critical areas rules.
- 18.65.045 Relationship to other regulations.
- 18.65.046 Fees.
- 18.65.047 Exemptions.
- 18.65.048 Partial exemptions.
- 18.65.049 Unauthorized alterations and enforcement.
- 18.65.050 Allowed alterations of critical areas.
- 18.65.060 Agricultural and keeping of livestock activities development standards.
- 18.65.062 Shoreline variance required.
- 18.65.070 Public agency/utility exceptions.
- 18.65.075 Reasonable use exception.
- 18.65.090 Disclosure by applicant.
- 18.65.100 Critical area review.
- 18.65.110 Critical area report requirement.
- 18.65.120 Sequential steps for mitigation, including avoiding impacts.
- 18.65.130 Mitigation and monitoring.
- 18.65.135 Off-site mitigation.
- 18.65.140 Financial guarantees.
- 18.65.160 Critical area markers, signs, fencing and installation.
- 18.65.170 Recording notice on title of critical areas.
- 18.65.180 Critical area tracts and designations on site plans.
- 18.65.200 Building setbacks from critical area buffer.

### Article II. Frequently Flooded Areas

- 18.65.230 Frequently flooded areas.

### Article III. Geologically Hazardous Areas

- 18.65.250 Applicability and designation – Geologically hazardous areas.
- 18.65.260 Erosion hazard areas – Development standards and permitted alterations.
- 18.65.270 Erosion and seismic hazard areas – Protection measures and specific mitigation.
- 18.65.280 Landslide hazard areas – Development standards and alterations.
- 18.65.290 Steep slope hazard areas – Development standards and alterations.
- 18.65.300 Additional critical area report requirements – Geologically hazardous areas.

### Article IV. Critical Aquifer Recharge Areas

- 18.65.311 Critical aquifer recharge areas – Designation.
- 18.65.312 Critical aquifer recharge areas – Reclassification or declassification.
- 18.65.313 Critical aquifer recharge areas – Categories.
- 18.65.314 Critical aquifer recharge areas – Protection.
- 18.65.315 Critical aquifer recharge areas – Development regulations.
- 18.65.316 Critical aquifer recharge areas – Evaluation and implementation.

#### Article V. Wetlands

- 18.65.318 Wetland – Identification and evaluation.
- 18.65.319 Wetlands – Classes and categories.
- 18.65.320 Wetlands – Buffers.
- 18.65.340 Wetlands – Specific mitigation requirements.

#### Article VI. Fish and Wildlife Habitat Conservation Areas

- 18.65.350 Fish and wildlife habitat conservation areas – Applicability.
- 18.65.355 Fish and wildlife habitat conservation areas – Designation and purpose.
- 18.65.358 Fish and wildlife habitat conservation areas – Classification.
- 18.65.360 Streams – Standard buffers.
- 18.65.365 Streams and associated buffers – Development standards and alterations.
- 18.65.370 Streams – Permitted alterations.
- 18.65.375 Streams – Removal from culverts and pipes.
- 18.65.380 Streams – Specific mitigation requirements.
- 18.65.385 Naturally occurring ponds, less than 20 acres in area, and their submerged aquatic beds that provide fish or wildlife habitat.
- 18.65.390 Other fish and wildlife habitat conservation areas – Development standards.
- 18.65.395 Fish and wildlife habitat corridors and networks.
- 18.65.400 Fish and wildlife habitat conservation areas – Modification.
- 18.65.405 Fish and wildlife habitat conservation areas – Mitigation standards.
- 18.65.410 Fish and wildlife habitat conservation areas – Additional provisions for critical areas report.
- 18.65.420 Process to identify additional species and habitat of local importance.
- 18.65.430 Fish protection measures.
- 18.65.440 Endangered, threatened, and sensitive species protection measures.

#### Article I. General Provisions and Administration

##### **18.65.010 Purpose.**

The purpose of this chapter is to implement the goals and policies of the Growth Management Act, Chapter 36.70A RCW, Washington State Environmental Policy Act, Chapter 43.21C RCW, and the Covington Comprehensive Plan, which call for protection of the natural environment and the public health and safety by:

- (1) Establishing development and alteration standards to protect functions and values of critical areas;
- (2) Protecting members of the general public and public resources and facilities from injury, loss of life, property damage or financial loss due to flooding, erosion, landslides, seismic and volcanic events, soil subsidence or steep slope failures;
- (3) Protecting unique, fragile and valuable elements of the environment including but not limited to fish and wildlife and their habitats and maintaining and promoting City-wide native biodiversity;
- (4) Requiring mitigation of unavoidable impacts to critical areas by regulating alterations in or near critical areas;
- (5) Preventing cumulative adverse environmental impacts on water availability, water quality, ground water, wetlands and streams;
- (6) Measuring the quantity and quality of wetland and stream resources and preventing overall net loss of wetland and stream functions;
- (7) Protecting the public trust as to navigable waters, aquatic resources, and fish and wildlife and their habitat;
- (8) Meeting the requirements of the National Flood Insurance Program;

(9) Alerting members of the public including but not limited to appraisers, owners, potential buyers or lessees to the development limitations of critical areas; and

(10) Providing City officials with sufficient information to protect critical areas. (Ord. 06-17 § 4 (Exh. B))

**18.65.020 Applicability.**

(1) This chapter applies to all land uses, activity, and development in the City of Covington, and all persons within the City shall comply with this chapter.

(2) City shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water or vegetation or to construct or alter any structure or improvement without first ensuring compliance with this chapter.

(3) Approval of a development proposal in accordance with this chapter does not discharge the obligation of the applicant to comply with this chapter.

(4) This chapter applies to all forest practices over which the City has jurisdiction under Chapter 76.09 RCW and WAC Title 222.

(5) Unless exempted in CMC 18.65.047 or 18.65.048, these critical area regulations shall apply to all developments within one or more of the following critical areas or their associated buffers, regardless of whether the site has been previously identified as a critical area. Critical areas include any of the following areas or ecosystems as defined in RCW 36.70A.030 and WAC 365-190.030 and the corresponding buffers and setbacks:

- (a) Frequently flooded areas;
- (b) Geologically hazardous areas;
- (c) Critical aquifer recharge areas;
- (d) Wetlands; and
- (e) Fish and wildlife habitat conservation areas (includes streams). (Ord. 06-17 § 4 (Exh. B))

**18.65.030 Appeals.**

An applicant may appeal a decision under this chapter to approve, condition or deny a development proposal according to and as part of the appeal procedure for the underlying permit or approval involved. (Ord. 06-17 § 4 (Exh. B))

**18.65.040 Critical areas rules.**

The City of Covington is authorized to adopt, in accordance with Chapter 2.75 CMC, such public rules and regulations as are necessary and appropriate to implement this chapter and to prepare and require the use of such forms as are necessary to its administration. (Ord. 06-17 § 4 (Exh. B))

**18.65.045 Relationship to other regulations.**

(1) Nothing in this chapter in any way limits, or may be construed to limit, the authority of the City under any other applicable law, nor in any way decreases the responsibility of the applicant to comply with all applicable local, State and Federal laws and regulations.

(2) These critical areas regulations shall apply in addition to zoning and other regulations adopted by the City.

(3) When any other chapter of the Covington Municipal Code conflicts with this chapter or when the provisions of this chapter are in conflict, the provision that provides more protection to environmentally critical areas shall apply unless specifically provided in this chapter or unless the provision conflicts with Federal or State laws or regulations.

(4) Compliance with the provisions of this chapter does not constitute compliance with other Federal, State, and local regulations and permit requirements that may be required. The applicant is responsible for complying with these requirements, in addition to the process established in this chapter.

(5) If any provisions of this chapter are in conflict with any part of the City's Shoreline Master Program, herein referenced as the City's SMP, ~~adopted under Ordinance No. 05-11~~ and codified as Chapter 16.05 CMC, the regulations in RCW 90.58.020 shall apply, as determined by the City.

(6) Provisions of this chapter that are not consistent with the State Shoreline Management Act, Chapter 90.58 RCW and supporting Washington Administrative Code chapters, shall not apply to the City's shoreline jurisdiction.

(7) Critical areas within shoreline jurisdiction. ~~Critical areas, critical area buffers, and shoreline buffers located within shoreline jurisdiction, as defined in CMC 16.05.040, shall be regulated by this chapter, with the following clarifications and modifications. Additional clarifications and modifications are included where applicable in the body of this chapter, are regulated by the City of Covington Critical Areas Regulations for Shoreline Jurisdiction, as contained in and herein referenced as SMP Appendix A. Although these regulations are similar to the critical areas regulations codified in this chapter, pursuant to the requirements of the Shoreline Management Act, these regulations are distinct. Certain key critical area provisions, including the reasonable use exception, do not apply in shoreline jurisdiction. Deviations from the critical areas regulations as set forth in SMP Appendix A are processed as a shoreline variance process provided in the City's SMP Chapter 8: Administration for discussion of shoreline permits. If there are conflicts between the regulations contained in the SMP, those that are the most protective of shoreline ecological functions will apply. (Ord. 06-17 § 4 (Exh. B))~~

~~(a) The reasonable use exception provisions (CMC 18.65.075) and the public agency/utility exception provisions (CMC 18.65.070) of this chapter shall not apply in shoreline jurisdiction. Exceptions within shoreline jurisdiction shall require a shoreline variance based on the variance criteria listed in CMC 16.05.090 and WAC 173-27-170.~~

~~(b) The allowed alteration provisions of CMC 16.05.050 shall not apply to Type S waters (shorelines of the state) or their buffers (shoreline buffers). Activities and alterations to shorelines of the state and their buffers shall be subject to the provisions of Chapter 16.05 CMC.~~

~~(c) Shoreline buffer widths are defined in CMC 16.05.280.~~

~~(d) Future amendments to this chapter shall require Ecology approval of an amendment to Chapter 16.05 CMC to incorporate updated language.~~

~~(e) If provisions of this chapter conflict with provisions of Chapter 16.05 CMC, the provisions most protective of the ecological resource shall apply, as determined by the City.~~

~~(f) If there are provisions of this chapter that are not consistent with the Shoreline Management Act, Chapter 90.58 RCW, and supporting Washington Administrative Code chapters, those provisions shall not apply in shoreline jurisdiction.~~

#### **18.65.046 Fees.**

(1) Fees shall be collected for the permit administration, plan review and other services provided by the City for critical areas review consistent with the critical area review fees set forth in the current fee resolution. Fees shall include but not be limited to cost recovery for engineering and planning review time, site inspection time, administration, third-party peer review, and any other special costs attributable to the critical areas review process.

(2) The applicant shall be responsible for the initiation, preparation, submission, and expense of all required reports, assessments, studies, plans, reconnaissance, or other work prepared in support of or necessary to review the application, unless otherwise provided in this title.

(3) In addition to critical area review fees, as set forth in this section, other fees required by the Covington Municipal Code may be applicable to the critical area review and associated application, including but not limited to Shoreline Management Act, SEPA, tree preservation, and clearing and grading review fees. (Ord. 06-17 § 4 (Exh. B))

**18.65.047 Exemptions.**

The following activities and developments are exempt from the provisions of this chapter. All exempted activities shall use reasonable methods to avoid potential impacts to critical areas. An exemption from this chapter is not an endorsement to degrade a critical area, ignore risk from natural hazards, or otherwise limit the ability of the Director to identify and abate such actions that may cause degradation to a critical area.

- (1) Activities and development in response to emergencies that threaten public health, safety or welfare, or that pose an immediate risk of damage to property and that require remedial or preventive action in a time frame too short to allow for compliance with the requirements of this chapter. In the event a person determines that the need to take emergency action is so urgent that there is insufficient time for review by the Department, such emergency action may be taken immediately. Such action shall be reported to the Department within one working day of the commencement of the emergency activity on a form provided by the City. The Director will determine if the action was in response to an emergency and if any mitigation shall be required to protect health, safety, welfare, or environment or to repair any resource damage.
- (2) Operation, maintenance, or repair of existing public improvements, utilities, public roads, parks, trails, or drainage systems if the activity does not further alter or increase impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair, and no new clearing of native vegetation beyond routine pruning.
- (3) Normal maintenance and repair, internal reconstruction or remodeling or improvements to existing structures that do not increase the previously approved building footprint, provided the improvements or repairs are not the result of or required due to a flood or floodplain hazard.
- (4) Recreation, education, and scientific research activities that do not require grading, native vegetation clearing, or placement of structures.
- (5) Site reconnaissance necessary for preparing land use or building permit applications. Any disturbance of the critical area shall be the minimum necessary to conduct the site reconnaissance and the area shall immediately be restored to its previous condition.
- (6) Removal by hand of invasive and noxious vegetation. Removal by hand does not include using mechanical equipment or the use of herbicides.
- (7) Excavation of cemetery graves in established and approved cemetery. Maintenance, operation, or repair of the cemetery graves as long as any such alteration does not involve the expansion of improvements. (Ord. 06-17 § 4 (Exh. B))

**18.65.048 Partial exemptions.**

The following activities are partial exemptions to the provisions of this chapter and will require land use approval from the Director. The Director may require supporting application materials, such as documentation, prepared by a qualified professional to demonstrate compliance with partial exemptions:

- (1) Landscaping. Normal maintenance and continuation of existing landscaping and gardens, within an identified critical area, that were legally established prior to City incorporation, provided the area is not expanded. This partial exemption shall be documented by photographs, statements, and/or other evidence provided by the applicant. The use of herbicide is permitted in wetlands and streams and their buffers only for the control of invasive vegetation. A State and Federally approved registered aquatic formulation shall be applied by a licensed aquatic herbicide applicator in wetlands and streams.
- (2) Agricultural. Expansion or creation of agricultural uses within an identified critical area is not allowed subject to the provisions of this chapter. Agricultural activities in existence before the date of incorporation, in continuous operation, and for which the activity is supporting agricultural activity, are partially exempted from this chapter as follows:
  - (a) Mowing of hay, grass or grain crops;

(b) Tilling, dicing, planting, seeding, harvesting and related activities for pasture, food crops, grass seed or sod if such activities do not take place on steep slopes;

(c) Normal and routine maintenance of existing irrigation and drainage ditches not used by salmonids; and

(d) Normal and routine maintenance of farm ponds, fish ponds, manure lagoons and livestock watering ponds.

(3) Demolition of Structures. The applicant shall submit demolition permit(s) and associated temporary erosion and sedimentation control plan, as applicable.

(4) Normal and Routine Maintenance. Clearing, pruning, removal of nuisance vegetation, and normal and routine maintenance of trees and vegetation shall be subject to permitting requirements in Chapters 14.60, [16.05](#), and 18.45 CMC. (Ord. 06-17 § 4 (Exh. B))

**18.65.049 Unauthorized alterations and enforcement.**

(1) When a critical area or its buffer has been altered in violation of this chapter, all ongoing development work shall stop and the critical area shall immediately and completely be restored prior to resuming development work. The City shall have the authority to issue a stop work order to cease all ongoing development work and order restoration, rehabilitation, or replacement measures at the owner's or violator's expense to compensate for violation of provisions of this chapter.

(2) Restoration Plan. All development work shall remain stopped until a restoration plan is prepared at the expense of the owner or violator and approved by the City. The plan shall be prepared by a qualified professional using the best available science and shall describe how the actions proposed meet the minimum requirements described in subsections (2)(a) and (b) of this section. The Director may, at the owner or violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the owner or violator for revision and resubmittal.

(a) For alterations to critical aquifer recharge areas, frequently flooded areas, wetlands, and fish and wildlife habitat conservation areas, the following minimum performance standards shall be met for the restoration of a critical area:

(i) The historic structural and functional values shall be restored, including water quality and habitat functions;

(ii) The historic soil types and configuration shall be replicated;

(iii) The critical area and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities. The historic functions and values should be replicated at the location of the alteration; and

(iv) Information demonstrating compliance with CMC 18.65.130 (Mitigation and monitoring) shall be submitted to the Director.

(b) For alterations to flood hazard areas and geologically hazardous areas, the following minimum performance standards shall be met for the restoration of critical area:

(i) The hazard shall be reduced to a level equal to, or less than, the predevelopment hazard;

(ii) Any risk of personal injury resulting from the alteration shall be eliminated or minimized; and

(iii) The hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.

(3) Minimum performance standards identified in subsections (2)(a) and (b) of this section may be modified if the owner or violator can demonstrate that greater functional and habitat values can be obtained.

(4) Site Investigations. Site investigations necessary to enforce this chapter are authorized pursuant to Chapter 1.30 CMC.

(5) Penalties. Any development carried out contrary to the provisions of this chapter shall constitute a public nuisance and be subject to provisions of Chapter 1.30 CMC. (Ord. 06-17 § 4 (Exh. B))

**18.65.050 Allowed alterations of critical areas.**

(1) Within the following critical areas and their buffers alterations are allowed if the alteration complies with the sequential steps for mitigation, including avoiding impacts, applicable development standards, mitigation requirements, and other applicable requirements established in this chapter:

- (a) Critical aquifer recharge area;
- (b) Geologically hazardous areas:
  - (i) Landslide hazard area under 40 percent slope;
  - (ii) Erosion hazard area.

(2) Within the following four critical areas and their buffers only the alterations on the table in subsection (6) of this section are allowed if the alteration complies with conditions in subsection (7) of this section and the development standards, mitigation requirements and other applicable requirements established in this chapter:

- (a) Channel migration zone (CMZ) and riparian buffer zone (RBZ);
- (b) Geologically hazardous areas:
  - (i) Landslide hazard area with a 40 percent or greater slope;
  - (ii) Steep slope hazard area;
- (c) Wetland; and
- (d) Wildlife habitat conservation areas (including streams and natural ponds).

(3) The City may require other construction techniques, conditions, and restrictions on development in order to minimize adverse impacts on critical areas.

(4) The applicant is responsible for obtaining permits from the City for the allowed alterations pursuant to CMC 18.65.100. The request for an alteration may be submitted sequentially with other identified City permits or development review. The City may collect fees for the review of the alteration in accordance with CMC 18.65.046. The applicant is responsible for obtaining associated State and Federal permits as applicable and conditioned in this chapter.

(5) Activities and allowed alterations within a shoreline jurisdiction as identified in the City's SMP (Chapter 16.05 CMC), including Pipe Lake and Type S streams and shoreline buffers, shall ~~only comply with the shoreline modification regulations in Chapter 7 of the SMP~~, be subject only to the provisions set forth in Chapter 16.05 CMC, unless otherwise specified in that chapter.

(6) In the following table where an alteration is included in more than one activity category, the numbered conditions applicable to the most specific description of the alteration govern. Where more than one numbered condition appears for a listed alteration, each of the relevant conditions specified for that alteration within the given critical area applies. For alterations involving more than one critical area, compliance with the conditions applicable to each critical area is required.

Alteration*	Landslide Hazard Over 40% and Buffer	Steep Slope Hazard and Buffer	Wetland and Buffer	Stream and Buffer	Fish and Wildlife Conservation Area/Corridor Area
<p>KEY: Letter "A" in a cell means alteration is allowed consistent with the requirements of this chapter. If it is blank it is not allowed.  *Activities within a shoreline jurisdiction must also comply with Table 4 of the City Shoreline Master Program (Ord. 05-11).</p>					
Construction of single detached dwelling unit			A 1, 2		
Construction of nonresidential structure			A 1, 2	A 1, 2	A 1, 2, 3
Construction of new dock or pier			A 4	A 4, 5	
Maintenance, repair or replacement of dock or pier			A 6	A 6	A 3
<b>Clearing and Grading</b>					
Grading (Chapter 14.60 CMC)		A 7		A 8	
Construction of new slope stabilization	A 9	A 9	A 9	A 9	
Maintenance of existing slope stabilization	A 10	A 7, 10	A 10	A 10	A 3, 10
Clearing (Chapters 14.60 and 18.45 CMC). Includes removal of brush, trees, noxious weeds or invasive vegetation and general maintenance not exempt in CMC 18.65.047 and 18.65.048	A 11	A 11, 12	A 11, 13	A 8, 11, 13	A 11
<b>Forest Practices</b>					
Nonconversion Class IV-G forest practice	A 14	A 14	A 14	A 14	A 14, 15
<b>Roads</b>					
Construction of new public road right-of-way	A 16	A 16	A 16	A 5, 16	A 16
Expansion of public right-of-way structure/facility, beyond established right-of-way for the purpose of maintenance, operation, repair, modification installation, or construction	A 9, 16	A 16	A 16	A 16	A 16
Construction of new driveway or private access road			A 2	A 2	A 2
<b>Bridges or Culverts</b>					
Maintenance or repair of bridge or culvert	A 10	A 10	A 10	A 10	A 10
Replacement of bridge or culvert	A 10	A 10	A 10	A 10, 17	A 10
Expansion of bridge or culvert	A 10	A 10	A 18	A 18	A 3
<b>Utilities and Other Infrastructure</b>					
Expansion or construction of new utility corridor or minor utility facility located beyond the established right-of-way or easement	A 19	A 19	A 29	A 29	A 3
Construction of a new well or on-site sewage disposal			A 30	A 30	
Maintenance, repair, expansion of a new well or on-site sewage disposal	A 2, 20, 21	A 2, 20, 21	A 2, 20, 21	A 2, 20, 21	A 3, 20, 21
Construction, maintenance, or expansion of surface water run off system, designed in accordance with Chapter 13.25 CMC, to provide surface water quality treatment	A 19	A 19	A 22		A 3

Alteration*	Landslide Hazard Over 40% and Buffer	Steep Slope Hazard and Buffer	Wetland and Buffer	Stream and Buffer	Fish and Wildlife Conservation Area/Corridor Area
KEY: Letter "A" in a cell means alteration is allowed consistent with the requirements of this chapter. If it is blank it is not allowed. <del>*Activities within a shoreline jurisdiction must also comply with Table 4 of the City Shoreline Master Program (Ord. 05-11).</del>					
Maintenance, repair, or replacement of flood protection facility	A 23	A 23	A 23	A 23	A 23
Construction of new in-stream structure or in-stream work or maintenance or repair of in-stream structure	A 10	A 10	A 10	A 10, 24	A 3
<b>Recreation Areas</b>					
Construction of a new publicly accessible nonmotorized trail	A 25	A 25	A 25	A 5, 25	A 3, 25
Maintenance of outdoor public park facility, trail, or improved recreation area	A 26	A 26	A 26	A 26	A 3, 26
<b>Habitat and Science Projects</b>					
Habitat restoration or enhancement project	A 27	A 27	A 27	A 27	A 3, 27
Scientific sampling for salmonids			A 28	A 28	A 3, 28

(7) The following alteration conditions apply to the table in subsection (6) of this section:

1. May be permitted pursuant to the reasonable use exception permit process in CMC 18.65.075.
2. Pursuant to sequential avoidance measures and specific mitigation requirements for the impacted critical area in CMC 18.65.120 through 18.65.130.
3. Allowed if no clearing, external construction or other disturbance in a wildlife habitat conservation area occurs during active breeding seasons of any species with a habitat that is identified as requiring protection pursuant to CMC 18.65.390.
4. Limited to seasonal floating docks or piers in a Category II, III or IV wetland or stream and associated buffers. Docks and piers proposed along a shoreline, designated as a shoreline of the State, are subject to the regulations in the SMP ~~Appendix A~~.
  - a. The existing and zoned density of all properties abutting the entire lake shoreline averages three dwelling units per acre or more;
  - b. At least 75 percent of the lots abutting the shoreline or 75 percent of the lake frontage, whichever constitutes the most lake frontage, has been developed with dwelling units;
  - c. There is not any significant vegetation where the alteration is proposed and the loss of vegetation was not the result of any violation of law; and
  - d. The wetland or lake shoreline is not a salmonid spawning area.
5. Not allowed within a severe channel migration hazard area portion of a stream buffer.
6. Allowed in Category II, III or IV wetland or streams and associated buffers subject to the following conditions. Maintenance, repair or replacement of a dock or pier along a shoreline, designated as a shoreline of the State, is subject to the regulations in the SMP-Appendix A:
  - a. There is not an increase in the number of pilings or the overall width and length of the dock or pier;

- b. Hazardous substances or toxic materials are not used;
  - c. All piers and docks shall result in no net loss of ecological functions. Docks and piers, including those accessory to single-family residences, shall minimize and mitigate adverse impacts to the stream ~~shoreline~~ and its buffers; and
  - d. There is not an increase in shade for predator species.
7. Limited to regrading and stabilizing of a slope formed as a result of a legal grading activity consistent with Chapter 14.60 CMC.
8. The following are allowed if conducted more than 115 feet from the ordinary high water line:
- a. Grading of up to 50 cubic yards on lot less than five acres, with an approved clearing and grading permit consistent with Chapter 14.60 CMC; and
  - b. Clearing of up to 1,000 square feet or up to a cumulative 35 percent of the lot, with an approved clearing and grading permit consistent with Chapter 14.60 CMC.
9. Only permitted where erosion or landsliding threatens a structure, utility facility, roadway, driveway, public trails, stream or wetland if, to the maximum extent practical, stabilization work does not disturb the slope and its vegetative cover and any associated critical areas as evaluated in a critical area report prepared by a geotechnical engineer or engineering geologist licensed in the State.
- ~~a. Within a shoreline jurisdiction area new stabilization structures for existing primary residential structures are allowed only where no alternatives (including relocation or reconstruction of existing structures) are feasible and less expensive than the proposed stabilization measures, and then only if no net loss of ecological functions will result.~~
10. Allowed when performed by or at the direction of a government agency as follows:
- a. Construction methods will reduce or not adversely affect geologic hazards;
  - b. Use of retaining walls that allow maintenance of existing natural slope areas are preferred over graded artificial slopes, unless an alternative design provides equivalent or greater long-term slope stability;
  - c. The maintenance does not involve the use of herbicides, hazardous substances, sealants, or other liquid oily substances in streams, wetlands or their buffers; and
  - d. When maintenance involves work over and within water:
    - i. The maintenance is compliant with Washington State Department of Ecology and other applicable State and Federal agencies; and
    - ii. The maintenance of culverts is limited to removal of sediment and debris from the culvert and its inlet, invert and outlet and the stabilization of the disturbed or damaged bank or channel immediately adjacent to the culvert and shall not involve the excavation of a new sediment trap adjacent to the inlet.
11. Allowed for the removal of hazard trees and vegetation as necessary pursuant to the following:
- a. Vegetation removal allowed only in buffers for the purpose of enhancing tree growth within the tree canopy area, as determined by a certified biologist in a critical area report subject to mitigation measures as applicable.
  - b. Removal of noxious and invasive weeds shall be undertaken with hand labor unless otherwise authorized by the King County Noxious Weed Control Board to use riding mowers or light mechanical cultivating equipment and herbicides or biological control methods:

- i. The area is stabilized to avoid re-growth or regeneration of noxious weeds, and
  - ii. The cleared area is revegetated with native or noninvasive vegetation and stabilized against erosion.
- c. Clearing, pruning, removing, and normal and routine maintenance of trees shall be subject to the regulation, mitigation and permit requirements set forth in Chapters 14.60 and 18.45 CMC.
12. The limited trimming and pruning of vegetation if the soils are not disturbed and the activity will not adversely affect the long-term stability of the slope, erosion or water quality.
13. Harvesting of plants and plant materials, such as plugs, stakes, seeds or fruits, for restoration and enhancement projects is allowed.
14. Only if in accordance with Chapter 76.09 RCW and WAC Title 222 and:
  - a. A long-term management plan is approved for the site by the City; and
  - b. The property owner provides a notice of intent in accordance with RCW 76.09.060 that the site will not be converted to nonforestry uses within six years.
15. Only if in compliance with published Washington State Department of Fish and Wildlife and Washington State Department of Natural Resources management standards for the species. If there are no published Washington State standards, only if in compliance with management standards determined by the Director to be consistent with best available science.
16. Allowed only if:
  - a. There is not another feasible location with less adverse impact on the critical area and its buffer, consistent with CMC 18.65.120;
  - b. The roadway is not located over habitat used for salmonid rearing or spawning or by a species listed as endangered or threatened by the State or Federal government unless the Department determines there is no other feasible crossing site;
  - c. The roadway width is minimized to the extent practical;
  - d. The construction occurs during approved periods for in-stream and wetland work; and
  - e. The roadway will not change or diminish the overall stream flow peaks, duration or volume, flood storage capacity and wetland function.
17. Allowed only if:
  - a. The replacement is made fish passable in accordance with Washington State Department of Fish and Wildlife Habitat and Lands Environmental Engineering Division's Fish Passage Design Manual or with the National Marine and Fisheries Services Guidelines for Salmonid Passage at Stream Crossings for Federally listed salmonid species; and
  - b. The site is restored with appropriate native vegetation.
18. Allowed if necessary to bring the bridge or culvert up to current standards and if:
  - a. There is not another feasible alternative available with less impact on the stream and wetlands and their buffer; and
  - b. To the maximum extent practical, the bridge or culvert is located to minimize impacts to the stream and wetland and their buffers.

19. Limited to transmission pipelines, underground power lines, transmission powerlines, cables, wires, stormwater and support structures of utility facilities if:

- a. There is no other feasible alternative available with less impact on the critical area;
- b. The alterations will not subject the critical area to an increased risk of landslide or erosion;
- c. Significant risk of personal injury is eliminated or minimized in the landslide hazard area;
- d. Vegetation removal is the minimum necessary to locate the utility or construct the corridor;
- e. Any crossing over a stream or wetland shall be generally perpendicular to the critical area and shall be accomplished by bridging or other technique designed to minimize critical area disturbance. It shall also be the minimum width necessary to accommodate the intended function or objective;
- f. New utility corridors meet all of the following to the maximum extent practical:
  - i. Are not located over habitat used for salmonid rearing or spawning or by a species listed as endangered or threatened by the State or Federal government unless the Department determines that there is no other feasible crossing site;
  - ii. The mean annual flow rate is less than 20 cubic feet per second; and
  - iii. Paralleling the channel or following a down-valley route near the channel is avoided;
- g. To the maximum extent practical, utility corridors are located so that:
  - i. The width is minimized;
  - ii. The removal of trees shall be minimized to the extent feasible and is in accordance with Chapter 18.45 CMC; and
  - iii. An additional, contiguous and undisturbed critical area buffer, equal in area to the disturbed critical area buffer area including any allowed maintenance roads, is provided to protect the critical area;
- h. To the maximum extent practical, access for maintenance is at limited access points into the critical area buffer rather than by a parallel maintenance road. If a parallel maintenance road is necessary the following standards are met:
  - i. To the maximum extent practical the width of the maintenance road is minimized and in no event greater than 15 feet; and
  - ii. The location of the maintenance road is contiguous to the utility corridor on the side of the utility corridor farthest from the critical area;
- i. The utility corridor or utility facility will not change or diminish the overall critical area hydrology or flood storage capacity;
- j. The construction occurs during approved periods for in-stream work;
- k. The utility corridor serves multiple purposes and properties to the maximum extent practical;
- l. Bridges or other construction techniques that do not disturb the critical areas are used to the maximum extent practical;
- m. Bored crossing meets the following criteria:

- i. Are laterally drilled and located at a depth of four feet below the maximum depth of scour for the base flood; and
    - ii. The channel is crossed close to perpendicular and never more than 30 degrees from perpendicular;
  - n. Open trenching is only used during low flow periods and only within streams when they are dry. The Department may approve open trenching of Type S or F streams only if there is not a feasible alternative and equivalent or greater environmental protection can be achieved; and
  - o. Minor communication facilities may collocate on existing utility facilities if: no new transmission support structure is required; and equipment cabinets are located on the transmission support structure.
20. Allowed for private individual utility service connections on site or to public utilities or utilities regulated by the Washington Utilities and Transportation Commission if the disturbed area is not expanded and no hazardous substances, pesticides or fertilizers are applied.
21. Allowed if the disturbed area is not expanded, clearing is limited to the maximum extent practical and no hazardous substances, pesticides or fertilizers are applied.
22. New surface water discharges in the form of dispersion trenches, outfalls and bioretention cells are allowed within the outer 25 percent of a wetland buffer; provided, that the discharge meets the requirements of the surface water management regulations in Chapter 13.25 CMC, if no other location is feasible and it will not degrade the functions or values of the wetland or stream. Where differences exist between these regulations and Chapter 13.25 CMC, these regulations will take precedence.
23. Applies to lawfully established existing structures if:
  - a. Maintained by a public agency;
  - b. The height of the facility is not increased;
  - c. The linear length of the affected edge of the facility is not increased;
  - d. The footprint of the facility is not expanded waterward;
  - e. Consistent with King County's Guidelines for Bank Stabilization Projects (King County Surface Water Management) and bioengineering techniques are used to the maximum extent practical; and
  - f. The site is restored with appropriate native vegetation.
24. Allowed in Type S, F, Np and Ns streams if:
  - a. Work is completed in the least impactful way during the least impactful time of year;
  - b. In conformance with applicable best management practices;
  - c. All affected in-stream and buffer features are restored;
  - d. Proposed in-stream work will restore or improve habitat; and
  - e. Work is compliant with other applicable State and Federal agencies and permitting requirements.
25. Nonmotorized publicly accessible trails are allowed with an approved critical area report. Trail planning, design, construction, and maintenance shall adhere to the following criteria:
  - a. The trail shall be located and designed using best management practices in accordance with an approved critical area report and the following standards:

- i. Trail location and design shall result in the least impacts on the critical area or required buffers. Critical areas buffers shall be expanded, where possible, equal to the width of the trail corridor including disturbed areas;
    - ii. Trails should be generally located within the outer 25 percent of the standard critical area buffer when applicable;
    - iii. Trails located within a stream or wetland critical area shall be designed to limit minor crossings and having no adverse impact on water quality. The trail should be generally parallel to the perimeter of the wetland or stream. Trails should not be constructed of impervious surfaces that will contribute to surface water runoff, unless the construction is necessary for soil stabilization or soil erosion prevention or unless the trail system is specifically designed and intended to be accessible to handicapped persons. Except that publicly accessible nonmotorized trails connecting to the City's trail network may use impervious materials if they meet all other City requirements;
    - iv. Raised boardwalks utilizing nontreated pilings may be acceptable;
    - v. Trails shall be the minimum width necessary to accommodate the intended function or objective; however, in no event shall the trail be more than eight feet in width, except that publicly accessible nonmotorized trails may be made wider and use impervious materials if they meet all other requirements including water quality, as identified in Chapter 13.25 CMC, or the construction using impervious materials is necessary for soil stabilization or soil erosion prevention; and
    - vi. Trails shall avoid the removal of mature trees and limit disturbance of native understory vegetation;
  - b. Trails shall be designed and maintained using best management practices to complement and enhance the environmental, educational, and social functions and values of the critical area with trail design and construction focused on managing and controlling public access and limiting uncontrolled access;
  - c. When salmonids are present, the construction of the trail shall be in compliance with applicable State and Federal agencies and permitting requirements; and
  - d. The trail surface shall meet all other City standards and requirements, including water quality standards set forth in Chapter 13.25 CMC.
26. Only if the maintenance:
- a. Does not involve the use of herbicides or other hazardous substances except for the removal of noxious weeds or invasive vegetation;
  - b. When salmonids are present, the maintenance of the trail shall be in compliance with applicable State and Federal agencies and permitting requirements; and
  - c. Does not involve any expansion of the roadway, lawn, landscaping, ditch, culvert, engineered slope or other improved area being maintained.
27. Limited to:
- a. Projects sponsored by a public agency that has natural resource management as a primary function or by a Federally recognized tribe; or
  - b. Restoration and enhancement plans prepared by a qualified biologist or a landscape architect in conformance with Chapter 18.96 RCW and subject to City review and approval.
28. Allowed in accordance with a scientific sampling permit issued by Washington State Department of Fish and Wildlife or an incidental take permit issued under Section 10 of the Endangered Species Act.

29. Limited to the transmission pipelines, cables, wires and support structures of utility facilities within utility corridors if:

- a. There is not another feasible location with less adverse impact on the critical area and its buffer, consistent with CMC 18.65.120;
- b. New utility corridors meet all of the following to the maximum extent practical:
  - i. Are not located over habitat used for salmonid rearing or spawning or by a species listed as endangered or threatened by the State or Federal government unless the Department determines that there is no other feasible crossing site;
  - ii. The mean annual flow rate is less than 20 cubic feet per second; and
  - iii. Paralleling the channel or following a down-valley route near the channel is avoided;
- c. To the maximum extent practical, utility corridors are located so that:
  - i. The width is minimized;
  - ii. The removal of trees shall be minimized and in accordance with Chapter 18.45 CMC;
  - iii. An additional, contiguous and undisturbed critical area buffer, equal in area to the disturbed critical area buffer area including any allowed maintenance roads, is provided to protect the critical area; and
  - iv. Mitigation and monitoring shall be in accordance with CMC 18.65.130;
- d. To the maximum extent practical, access for maintenance is at limited access points into the critical area buffer rather than by a parallel maintenance road. If a parallel maintenance road is necessary the following standards are met:
  - i. To the maximum extent practical the width of the maintenance road is minimized and in no event greater than 15 feet; and
  - ii. The location of the maintenance road is contiguous to the utility corridor on the side of the utility corridor farthest from the critical area;
- e. The utility corridor or utility facility will not change or diminish the overall critical area hydrology or flood storage capacity;
- f. The construction occurs during approved periods for in-stream work;
- g. The utility corridor serves multiple purposes and properties to the maximum extent practical;
- h. Bridges or other construction techniques that do not disturb the critical areas are used to the maximum extent practical;
- i. Bored crossings meet the following criteria:
  - i. Are laterally drilled and located at a depth of four feet below the maximum depth of scour for the base flood; and
  - ii. The channel is crossed close to perpendicular and never more than 30 degrees from perpendicular;
- j. Bridge piers or abutments for bridge crossings are not placed within the FEMA floodway or the ordinary high water line;

k. Open trenching is only used during low flow periods and only within aquatic areas when they are dry. The Department may approve open trenching of Type S or F aquatic areas only if there is not a feasible alternative and equivalent or greater environmental protection can be achieved; and

l. Minor communication facilities may collocate on existing utility facilities if: no new transmission support structure is required; and equipment cabinets are located on the transmission support structure.

30. Permitted if:

a. There is not another feasible location with less adverse impact on the critical area and its buffer, consistent with CMC 18.65.120; and

b. Consistent with public utility connection requirements in CMC Titles 13 and 17. (Ord. 06-17 § 4 (Exh. B))

**18.65.060 Agricultural and keeping of livestock activities development standards.**

(1) Agricultural activities are allowed to continue within identified critical areas if the agricultural activity and the alteration is in compliance with an approved farm conservation plan in accordance with this chapter and Chapter 18.80 CMC.

(2) This section does not waive the requirement that the property owner obtain permits for activities covered by an approved farm conservation plan.

(3) A farm conservation plan prepared and approved by the King Conservation District shall be submitted to the City for any livestock facilities, structures housing fowl, confinement areas, grazing areas, and construction of any access drive to service the keeping of livestock or agriculture activities located on properties with critical areas and critical area buffers. The farm conservation plan shall include the following information, but not limited to:

(a) A site inventory identifying critical areas, structures, cleared and forested areas, and other significant features on the site;

(b) Site-specific performance standards and best management practices to protect and enhance critical areas and their buffers and maintain and enhance native vegetation on the site including the best management practices for the installation and maintenance of farm field access drives and agricultural drainages;

(c) A plan for future changes to any existing structures or for any changes to the landscape that involve clearing or grading;

(d) A plan for implementation of performance standards and best management practices;

(e) A plan for monitoring the effectiveness of measures taken to protect critical areas and their buffers and to modify the farm conservation plan if adverse impacts occur; and

(f) Documentation of compliance with flood compensatory storage and flood conveyance in accordance with Chapter 16.15 CMC.

(4) The farm conservation plan shall address the following goals, which are listed in order of priority:

(a) To maintain the productive agricultural land base and economic viability of agriculture on the site;

(b) To restore and enhance critical areas to the maximum extent practical in accordance with the site-specific goals of the landowner;

(c) To the maximum extent practical in accordance with the site-specific goals of the landowner, maintain and enhance natural hydrologic systems on the site;

(d) To use Federal, State and local best management practices and best available science to achieve the goals of the farm conservation plan; and

(e) To monitor the effectiveness of best management practices and implement additional practices through adaptive management to achieve the goals of the farm conservation plan.

(5) Any in-water or wetland impacts will need to be reviewed and approved by State and Federal agencies.

(6) Prior to approving a farm conservation plan, the City shall conduct a site inspection, to verify that the conditions identified in the plan are in place and that the plan is reasonably likely to accomplish the goals outlined in this section. (Ord. 06-17 § 4 (Exh. B))

**18.65.062 Shoreline variance required.**

Any alteration of critical areas, critical area setbacks, critical area buffers, or other specific bulk, dimensional, or performance standards located within the shoreline jurisdiction as set forth in the [SMP Appendix A \(Ord. No. 05-11 Chapter 18.65 CMC\)](#), other than those allowed explicitly in [the SMP standards Chapter 16.05 CMC](#), shall require a shoreline variance based on the variance criteria listed in [Chapter 6 of the SMP CMC 16.05.090](#) and WAC 173-27-170. (Ord. 06-17 § 4 (Exh. B))

**18.65.070 Public agency/utility exceptions.**

This section applies only to critical areas outside of the shoreline jurisdiction and is not applicable to critical areas within a shoreline jurisdiction. The City's approved SMP governs the permitted alterations within a shoreline jurisdiction.

Unless otherwise specified as an alteration in CMC 18.65.050, the public agency/utility exception is a mechanism by which the City may approve limited use and disturbance of a critical area and critical area buffer when no other use of the property constitutes a reasonable alternative.

(1) If the application of this chapter prohibits a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this subsection along with the required fees as set forth in CMC 18.65.046. An exception shall not be granted for properties wholly or partially located within a shoreline of the State as regulated in Chapter 16.05 CMC or floodplain as regulated in Chapter 16.15 CMC.

(a) The agency or utility shall apply to the Department and provide related project documents such as permit approvals from other agencies, special studies, and SEPA documents. The Department shall prepare a recommendation to the Director for review and approval subject to the following criteria:

- (i) There is no other practical alternative to the proposed development with less impact on the critical area;
- (ii) The proposal minimizes the impact on critical areas and buffers, including modifying the noncritical area setbacks to the maximum extent allowed in this chapter;
- (iii) Associated development, including access driveways, and utility infrastructure, shall be located outside of the critical area or critical area buffer to the maximum extent technically feasible;
- (iv) Areas of disturbance for associated development, including access and utility infrastructure, shall be consolidated to the maximum extent technically feasible;
- (v) All areas of temporary disturbance associated with utility installation, construction staging, and other development shall be determined by the Director and delineated in the field prior to construction and temporary disturbance shall be restored consistent with a restoration plan approved by the City;
- (vi) Areas of permanent disturbance shall be mitigated to the maximum extent feasible on site pursuant to a mitigation plan meeting the requirements of this chapter; and
- (vii) Fencing, signage, and/or additional buffer planting should be incorporated into the site development in order to prevent long-term disturbance within the critical area or buffer. (Ord. 06-17 § 4 (Exh. B))

**18.65.075 Reasonable use exception.**

(1) If the application of this chapter would deny all reasonable use of the property, the applicant may apply for an exception pursuant to this section upon payment of the fee as set forth in CMC 18.65.046. The exception shall not be granted for properties wholly or partially located within a shoreline of the State as regulated in Covington's SMP as regulated in Chapter 16.05 CMC or floodplain as regulated in Chapter 16.15 CMC.

(2) Reasonable use exceptions do not apply in the City's shoreline jurisdictions. Exceptions within the City's shoreline jurisdictions are processed as a shoreline permit or variance pursuant to CMC ~~18.65.062~~ 16.05.090.

(3) A reasonable use exception is a Type 3 permit process. The Director shall prepare a staff report to the Hearing Examiner for a decision.

(4) A reasonable use exception request shall be on a form as determined by the City and shall include a critical area report in accordance with CMC 18.65.110. The critical area report shall address the following additional criteria:

(a) An analysis of whether any other reasonable use with less impact on the critical area and critical area buffer is possible;

(b) Site design and construction staging of the proposal shall have the least impact to the critical area and critical area buffer;

(c) The footprint of all proposed structures and improvements including;

(i) Buildings;

(ii) Garages and parking areas;

(iii) Driveways;

(iv) Paved surfaces, such as walking paths;

(v) Patios, decks, and similar structures;

(vi) Location of utility and storm water improvements and easements;

(vii) Yard landscaping; and

(viii) Retaining walls and rockeries;

(d) A description of protective measures that will be undertaken to avoid interference with wildlife and fisheries rearing, nesting, or spawning activities;

(e) An analysis of the impact that the proposed development would have on the critical area and the critical area buffer;

(f) How the proposal mitigates for impacts to the critical areas and buffers;

(g) How the proposal minimizes to the greatest extent possible net loss of critical area functions;

(h) Whether the improvement is located away from the critical area and the critical area buffer to the greatest extent possible; and

(i) City may request additional information or studies necessary to make a recommendation.

(5) The Hearing Examiner shall review the application and staff report and hold a public hearing pursuant to Chapter 2.25 CMC and CMC Title 14. The Hearing Examiner shall base the decision on the following criteria:

(a) The application of this chapter would deny all reasonable use of the property; and

- (b) There is no other feasible or reasonable use or on-site alternatives with less impact on the critical area, such as changes to site layout and/or reduction of impervious improvements; and
  - (c) It is solely the implementation of this chapter, and not other factors, that precludes all reasonable use of the subject property; and
  - (d) The applicant has in no way created or exacerbated the condition that forms the limitation on the use of the subject property, nor in any way contributed to such limitation; and
  - (e) The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this chapter and the public interest; and
  - (f) Any alterations permitted to the critical area shall be the minimum necessary to allow for reasonable use of the property; and
  - (g) The granting of the exception will not grant the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures under similar circumstances.
- (6) If the City grants a request under this section, it shall grant the minimum necessary to provide the applicant with some reasonable use of the subject property, considering the factors described in subsections (5)(a) through (g) of this section. Any approval or waiver of requirements shall result in the minimum possible impacts to the function and values and/or risks associated with proposed improvements on affected critical areas. The City may impose limitations, mitigation under an approved mitigation plan, conditions and/or restrictions it considers appropriate to reduce or eliminate any undesirable effects or adverse impacts of granting a request under this section.
- (7) The reasonable use exception approval expires and is void if the applicant fails to file a complete building permit application within five years of the final decision granting or approving the exception.
- (8) The City may approve a subsequent modification to a specific use and site plan that has been approved through the reasonable use exception, provided the change meets the standards of this chapter. Otherwise, the applicant is required to apply for and obtain approval through a Type 2 land use process pursuant to Chapter 14.35 CMC for a new reasonable use exception. (Ord. 06-17 § 4 (Exh. B))

**18.65.090 Disclosure by applicant.**

If a development proposal site contains or is within a critical area, the applicant shall submit an affidavit that declares whether the applicant has knowledge of any illegal alteration to any or all critical areas on the development proposal site and whether the applicant previously has been found in violation of this chapter, pursuant to Chapter 1.30 CMC. If the applicant previously has been found in violation, the applicant shall declare whether the violation has been corrected to the satisfaction of the City of Covington. (Ord. 06-17 § 4 (Exh. B))

**18.65.100 Critical area review.**

(1) The applicant shall submit a critical area report consistent with CMC 18.65.110. The Department shall review for any development proposal application, permit or other request to alter a site which includes a critical area or is within a critical area buffer. The applicant shall pay a critical area review fee as set forth in CMC 18.65.046.

(2) As part of the critical area review, the City shall determine whether:

- (a) A critical area exists on the property and confirm the nature and type, and applicable buffer;
- (b) An alteration will occur to a critical area or a critical area buffer;
- (c) A critical area report is required, and if so, evaluate the critical area report to ensure:
  - (i) The development proposal is consistent with this chapter;

(ii) The sequence outlined in CMC 18.65.120 has been followed to avoid impacts to critical areas and critical area buffers; and

(iii) Mitigation to compensate for adverse impacts to critical areas is required, enhancements to degraded critical areas (including buffers) and whether the mitigation and monitoring plans and bonding measures proposed by the applicant are sufficient to protect the general public health, safety, and welfare, consistent with the goals, purposes, objectives, and requirements of this chapter. (Ord. 06-17 § 4 (Exh. B))

**18.65.110 Critical area report requirement.**

(1) Unless waived or modified by the Director, an applicant proposing activities which include impacts or alteration of a critical area or its associated buffer shall submit a critical areas report that adequately evaluates the proposal and probable impacts, and proposed mitigation.

(2) The critical area report shall be prepared by a qualified professional, incorporate best available science, and include, at the minimum, the following items:

- (a) The name and contact information of the applicant, the name and a description of the proposal;
- (b) Vicinity map;
- (c) The dates, names, and qualifications of the persons preparing the report;
- (d) A scaled site plan depicting critical areas, buffers, setbacks, and proposed improvements;
- (e) Photographs of the site and critical areas;
- (f) Identification and classification of all critical areas and critical area buffers on the site;
- (g) Identification and characterization of all critical areas on those properties immediately adjacent to the proposed improvements;
- (h) Identification of each regulation or standard of this chapter proposed to be modified;
- (i) A habitat assessment consistent with the requirements of CMC 18.65.350;
- (j) A comparison of the level of protection of critical area functions and values provided by the regulations or standards of this chapter, compared with the level of protection provided by the proposal. The analysis shall include:
  - (i) A discussion of the functions and values currently provided by the critical area and critical area buffer on the site and their relative importance to the ecosystem in which they exist;
  - (ii) A discussion of the functions and values likely to be provided by the critical area and critical area buffer on the site as a result of the proposal over the anticipated life of the proposed development;
- (k) A description of the proposed impacts to critical areas and/or their associated buffers;
- (l) A description of efforts made to apply mitigation sequencing pursuant to CMC 18.65.120 to avoid, minimize, and mitigate impacts to critical areas;
- (m) A discussion of the mitigation requirements applicable to the proposal pursuant to this chapter and a recommendation for additional or modified mitigation or enhancement, if any;
- (n) Additional information required for the individual critical area;
- (o) Any additional information determined by the Director to adequately review the proposed activity; and

(p) A detailed mitigation plan, including required elements in CMC 18.65.130, may be requested by the Director.

(3) Critical area reports may be reviewed by the City's third party consultant at the applicant's expense, at the City's discretion. (Ord. 06-17 § 4 (Exh. B))

**18.65.120 Sequential steps for mitigation, including avoiding impacts.**

(1) An applicant for a development proposal or alteration shall sequentially adhere to the following measures, which appear in order of priority, to avoid and provide compensation for impacts to critical areas and critical area buffers:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) Minimizing the 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 critical areas by repairing, rehabilitating or restoring the affected critical area and/or its buffer;
- (d) Minimizing or eliminating a hazard by restoring or stabilizing the critical area through engineered or other methods;
- (e) Reducing or eliminating the impact over time by preservation and/or maintenance operations during the life of the development proposal;
- (f) Compensating for the adverse impact by enhancing critical areas and their buffers or creating replacement critical areas and their buffers; and
- (g) Monitoring the hazard and/or success of required mitigation and taking remedial action as necessary.

(2) The specific mitigation requirements of this chapter for each critical area apply when compensation for adverse impacts is required by the sequence in subsection (1) of this section. (Ord. 06-17 § 4 (Exh. B))

**18.65.130 Mitigation and monitoring.**

(1) If mitigation is allowed under this chapter to compensate for adverse impact and alterations to the critical area and associated buffer, unless otherwise provided, an applicant shall:

- (a) Mitigate adverse impacts to critical areas and their buffers;
- (b) Provide enhancements to degraded critical areas and their buffers;
- (c) Monitor the performance of any required mitigation and enhancements; and
- (d) Take remedial action, as necessary.

(2) The Department shall not approve a development proposal until mitigation and monitoring plans have been reviewed and approved to mitigate for alterations to critical areas and buffers.

(3) Whenever mitigation is required, an applicant shall submit a mitigation plan that includes:

- (a) Existing Conditions and Proposed Impacts. A description of existing critical areas and/or buffer conditions, functions and values and a description of the anticipated impacts;
- (b) Proposed Mitigation. A description of the proposed mitigation for each impacted critical area including at a minimum type, site selection criteria, method of construction, conceptual design, and landscape plans;

(c) Environmental Goals and Objectives. A description of the goals and objectives of proposed mitigation. The goals and objectives shall be related to the function and values of the impacted critical area and provide an analysis of the likelihood of success of the compensation project;

(d) Best Available Science. A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed;

(e) Performance Standards. A description of specific measurable criteria for evaluating whether the goals and objectives of the mitigation project have been successfully attained and whether the requirements of this chapter have been met;

(f) Timing. Mitigation shall be completed concurrently with project construction, unless a phased schedule that assures completion has been approved by the Director;

(g) Detailed Construction Plans. Detailed site diagrams, scaled cross-sectional drawings, topographic maps with slope percentage and final grade elevations, and any other drawing appropriate to show construction techniques or anticipated final outcome. The plans shall include specifications and descriptions of the following:

(i) Proposed construction sequence, timing, and duration;

(ii) Grading and excavation details;

(iii) Erosion and sediment control features;

(iv) Planting plan specifying plant species, quantities, locations, size, spacing, and density; and

(v) Measures to protect and maintain plants until established;

(h) Monitoring Plan. A monitoring plan that includes:

(i) A demonstration of compliance with this chapter; and

(ii) Monitoring Program. The mitigation plan shall include a program for monitoring construction of the compensation project and for assessing a completed project. A record drawing of the completed mitigation will be submitted to the City upon completion. A protocol shall also be included outlining the schedule for annual site monitoring and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted annually to document milestones, success, problems, and contingency actions of the compensation project. The monitoring period shall be not less than five years;

(i) Contingency Plan. A contingency plan in the event of a failure of mitigation or of unforeseen impacts if:

(i) The Department determines that failure of the mitigation would result in a significant impact on the critical area or buffer; or

(ii) The mitigation involves the creation of a wetland; and

(iii) A monitoring schedule that may extend throughout the impact of the activity or for hazard areas, for as long as the hazard exists;

(j) Financial Guarantees. The mitigation plan shall include financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented, in accordance with CMC 18.65.140.

(4) Mitigation shall not be implemented until after the City approves the mitigation and monitoring plan. The applicant shall notify the City when mitigation is installed and monitoring is commenced and shall provide City with reasonable access to the mitigation for the purpose of inspection during any monitoring period.

(5) If monitoring reveals a significant deviation from predicted impact or a failure of mitigation, the applicant shall implement an approved contingency plan. The contingency plan constitutes new mitigation and is subject to all mitigation including a monitoring plan and financial guarantee requirements. (Ord. 06-17 § 4 (Exh. B))

**18.65.135 Off-site mitigation.**

(1) To the maximum extent practical, an applicant shall mitigate adverse impacts to a wetland, stream, wildlife habitat conservation area or wildlife habitat network on or contiguous to the development site. The Director may approve mitigation that is off the development site, at the Director's sole discretion, if an applicant demonstrates that:

- (a) It is not practical to mitigate on or contiguous to the development proposal site; and
- (b) The off-site mitigation will achieve equivalent or greater hydrological, water quality and wetland or stream habitat functions.

(2) When off-site mitigation is authorized, the Director shall give priority to locations identified through a watershed assessment, preferably within the same drainage sub-basin as the development proposal site, that meet the following:

- (a) ~~Approved-Certified~~ mitigation banks whose service areas include the City of Covington;
- (b) King County mitigation reserves in-lieu-fee program mitigation sites; or
- (c) Other public or nonprofit mitigation sites approved by the Interagency Review Team (IRT) as part of an in-lieu fee program that have been ranked in a process that has been supported by ecological assessments, including wetland and streams established as priorities for mitigation in City of Covington sub-basin plans or other WRIA No. 9 watershed plans.

(3) The Director may require documentation that the mitigation site has been permanently preserved from future development or alteration that would be inconsistent with the function of the mitigation. The documentation may include, but need not be limited to, a conservation easement or other agreement between the applicant and owner of the mitigation site. The City of Covington may enter into agreements or become a party to any easement or other agreement necessary to ensure that the site continues to exist in its mitigated condition.

(4) The City of Covington may develop a program to allow the payment of a fee in lieu of providing mitigation on a development site. Once approved by the IRT, the program should address:

- (a) When the payment of a fee is allowed considering the availability of a site in geographic proximity with comparable hydrologic and biological functions and potential for future habitat fragmentation and degradation; and
- (b) The use of the fees for mitigation on public or private sites that have been ranked according to ecological criteria. (Ord. 06-17 § 4 (Exh. B))

**18.65.140 Financial guarantees.**

Financial guarantees shall be required consistent with the provisions of Chapter 14.105 CMC and this chapter.

(1) Financial guarantees for mitigation required pursuant to this chapter shall be sufficient to guarantee that all required mitigation measures will be completed no later than the time established by the City.

(2) Financial guarantees shall also be required for restoration of a critical area or buffer not performed as part of a mitigation or maintenance plan except that no financial guarantee shall be required for minor stream restoration.

(3) If the development proposal is subject to mitigation, maintenance, or monitoring plans, the applicant shall post a financial guarantee in the amount deemed acceptable by the City. The financial guarantee shall be sufficient to guarantee satisfactory workmanship on, materials in and performance of or related to structures and improvements allowed or required by this chapter for a period of five years. The duration of maintenance/monitoring obligations

shall be established by the City, based upon the nature of the proposed mitigation, maintenance, or monitoring and the likelihood and expense of correcting mitigation or maintenance failures.

(4) When mitigation is required pursuant to a development proposal and is not completed prior to the City finally approving the proposal, the City may delay final approval until mitigation is completed or may require the applicant to post a financial guarantee in an amount deemed acceptable to the City. The financial guarantee shall be sufficient to guarantee that all required mitigation measures will be completed no later than the time established by the City in accordance with this chapter.

(5) For financial guarantees associated with mitigation, corrective work, restoration, or enhancement, the financial guarantee shall be sufficient to cover the time and cost to guarantee satisfactory workmanship, materials and performance of structures and improvements required by this chapter and any monitoring of those structures and improvements required by approved plans and conditions.

(6) Depletion, failure or collection of the financial guarantee shall not relieve an applicant or violator from completing the required mitigation, maintenance, monitoring, or restoration as required under this chapter.

(7) Public development proposals shall be relieved from having to comply with the provisions of this section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration. (Ord. 06-17 § 4 (Exh. B))

**18.65.160 Critical area markers, signs, fencing and installation.**

(1) Markers. Development proposals shall include permanent survey stakes delineating the boundary between adjoining property and critical area tracts, using markers capable of being magnetically located and as established by current survey standards.

(2) Signs. The applicant shall identify the boundary between a critical area tract and contiguous land with permanent signs. Permanent signs shall be City-approved type designed for high durability.

(a) Signs must be posted at an interval of one per lot or every 100 feet, whichever is less, and must be maintained by the property owner or homeowner's association in perpetuity.

(b) City of Covington may require signs and fences to delineate and protect critical areas and critical area buffers that are not in critical area tracts.

(c) The applicant is responsible for obtaining the signs at their sole expense.

(d) The wording, number and placement of the signs may be modified by the Director based on specific site conditions.

(3) Fencing. Permanent fencing shall be required at the outer edge of the critical area buffer under the following circumstances:

(a) As part of any development proposal for:

(i) Plats;

(ii) Short plats;

(iii) Parks;

(iv) Other development proposals, including but not limited to multifamily, mixed use, and commercial development where the Director determines that such fencing is necessary to protect the functions of the critical area;

(b) When buffer reductions are employed as part of a development proposal;

(c) When buffer averaging is employed as part of a development proposal; and

(d) At the Director's discretion to protect the values and functions of a critical area. (Ord. 06-17 § 4 (Exh. B))

**18.65.170 Recording notice on title of critical areas.**

(1) The owner of any property containing critical areas or buffers on which a development proposal is submitted or any property on which mitigation is established as a result of a development proposal, except a public right-of-way or the site of a permanent public facility, shall file a notice approved by the Director with the King County Division of Records and Elections. The property owner receiving approval of a use or development with critical areas pursuant to this chapter shall record a site plan or other instrument clearly delineating the critical area, critical area buffer, and critical area structure setback with the King County Division of Records and Elections. The site plans must include a statement that the provisions of this chapter as now, or hereafter amended, control the use and development of the subject property.

The notice shall inform the public of the presence of critical areas or buffers or mitigation sites on the property, the application of this chapter to the property and the possible existence of limitations on actions in or affecting the critical areas or buffers or the fact that mitigation sites may exist.

(2) The applicant shall submit proof that the notice on title has been filed for public record before City of Covington approves any development proposal for the property or, in the case of subdivisions, short subdivisions, commercial site development and binding site plans, at or before recording of the subdivision, short subdivision, commercial site development or binding site plan. (Ord. 06-17 § 4 (Exh. B))

**18.65.180 Critical area tracts and designations on site plans.**

(1) The applicant shall use critical area tracts to delineate and protect those critical areas and buffers listed below in development proposals and shall record on all documents of title of record for all affected lots:

- (a) All landslide hazard areas and buffers;
- (b) All steep slope hazard areas and buffers;
- (c) All wetlands and buffers; and
- (d) All fish and wildlife habitat conservation areas and buffers.

(2) Critical area tracts shall be designated on the plat. A plat note shall include the following restriction:

Critical area tracts shall be preserved for the purpose of preventing harm to property and the environment, including but not limited to controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat. Removal or disturbance of vegetation and landscaping within the tract is prohibited, except as necessary for maintenance or replacement with approval by the City of Covington.

(3) The City may require that any required critical area tract be dedicated to the City, be held in an undivided interest by each owner of a building lot within the development with this ownership interest passing with the ownership of the lot, or be held by an incorporated homeowners' association or other legal entity that ensures the ownership, maintenance, and protection of the tract.

(4) Site plans submitted as part of building permits, clearing and grading permits, or other development permits shall include all critical areas, buffers, and building setbacks and delineate all flood hazard areas as determined by the City in accordance with CMC 18.65.230, landslide and steep slope hazard areas in accordance with CMC 18.65.250 through 18.65.300, fish and wildlife habitat conservation areas in accordance with CMC 18.65.350 through 18.65.440, and wetlands in accordance with CMC 18.65.318 through 18.65.340. If only a part of the development site has been mapped pursuant to CMC 18.65.110, the part of the site that has not been mapped shall be clearly identified and labeled on the site plans. Site plans shall be attached to the notice on title required by CMC 18.65.170. (Ord. 06-17 § 4 (Exh. B))

**18.65.200 Building setbacks from critical area buffer.**

Buildings and other structures shall be set back a distance of 15 feet from the edges of all critical area buffers or from the edges of all critical areas, if no buffers are required. Except the following is allowed in this building setback:

- (1) Landscaping;
- (2) Uncovered decks lower than 30 inches in height above existing grade;
- (3) Building overhangs if the overhangs do not extend more than 18 inches into the setback area;
- (4) Impervious surface areas, such as driveways and patios; but these improvements are required to meet any special drainage provisions specified in public rules adopted for the various critical areas; and
- (5) Utility service connections as long as the excavation for installation avoids impacts to the buffer. (Ord. 06-17 § 4 (Exh. B))

**Article II. Frequently Flooded Areas**

**18.65.230 Frequently flooded areas.**

Frequently flooded areas are defined as a critical area under RCW 36.70A.030. Criteria for identification and classification of frequently flooded areas and for protection standards for frequently flooded areas are included under Chapter 16.15 CMC. (Ord. 06-17 § 4 (Exh. B))

**Article III. Geologically Hazardous Areas**

**18.65.250 Applicability and designation – Geologically hazardous areas.**

(1) This article regulates development activities on or within 50 feet of a geologically hazardous area.

(2) Geologically hazardous areas include areas susceptible to erosion, landsliding, seismic, or other geological events. ~~Areas susceptible to one or more of the following types of hazards shall be designated as geologically hazardous areas:~~ The following areas are designated as geologically hazardous areas:

(a) Erosion hazard areas, defined as those areas underlain by soils that are subject to severe erosion when disturbed, including areas likely to become unstable, such as bluffs, steep slopes, and areas with unconsolidated soils. The soils subject to severe erosion include, but are not limited to, those classified as having a severe to very severe erosion hazard according to the United States Department of Agriculture Soil Conservation Service, the 1973 King County Soils Survey, or any subsequent revisions or addition by or to these sources such as any occurrence of river wash (“Rh”) and any of the following when the soils occur on slopes inclined at 15 percent or more:

- (i) The Alderwood gravelly sandy loam (“AgD”);
- (ii) The Alderwood and Kitsap soils (“AkF”);
- (iii) The Beausite gravelly sandy loam (“BeD” and “BeF”);
- (iv) The Kitsap silt loam (“KpD”);
- (v) The Ovall gravelly loam (“OvD” and “OvF”);
- (vi) The Ragnar fine sandy loam (“RaD”); and
- (vii) The Ragnar-Indianola Association (“RdE”);

(b) Landslide hazard areas, defined as those areas subject to severe risk of landside, based on a combination of geologic, topographic, and hydrologic factors. They include any areas susceptible to landslide because of any

combination of bedrock, soil, slope (gradient), slope aspect, structure hydrology, or other factors, and include, at a minimum, the following:

(i) An area with a combination of:

(A) Slopes steeper than 15 percent of inclination;

(B) Impermeable soils, such as silt and clay, interbedded with granular soils, such as sand and gravel; and

(C) Springs or seasonal ground water seepage;

(ii) Areas of historic failures such as:

(A) An area that has shown movement during the Holocene epoch, which is from 10,000 years ago to the present, or that is underlain by mass wastage debris from that epoch;

(B) Those areas delineated by the United States Department of Agricultural Natural Resources Conservation Service as having a significant limitation for building site development;

(C) Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the United States Geological Survey or Washington Department of Natural Resources;

(iii) An area potentially unstable as a result of rapid stream incision, stream bank erosion or undercutting by wave action including stream channel migration zones;

(iv) An area that shows evidence of or is at risk from snow avalanches;

(v) An area located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows, or catastrophic flooding, or deposition of stream-transported sediments;

(vi) Any area with a slope of 40 percent or steeper and with a vertical relief of 10 or more feet except areas composed of bedrock;

(vii) Slopes having gradients steeper than 80 percent subject to rockfall during seismic shaking; and

(viii) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials.;

(c) Steep slope hazard areas, defined as those areas on a slope of 40 percent inclination or more within a vertical elevation change of at least 20 feet. For the purpose of this definition, a slope is delineated by establishing its toe and top, as defined in CMC 18.20.1230, and is measured by averaging the inclination over at least 10 feet of vertical relief; and

(d) Seismic hazard areas, defined as those areas in the City of Covington subject to severe risk of earthquake damage as a result of ground movement, ground displacement, or soil liquefaction in areas underlain by cohesionless soils of low density and usually in association with a shallow ground water table or other seismically induced settlement.

(3) Alterations within geological hazard areas are allowed pursuant to CMC 18.65.050.

(4) The critical area report shall include a geotechnical evaluation prepared by a geotechnical engineer or engineering geologist licensed in the State of Washington.

(5) The Director may approve a permit for development activities within 50 feet, but not less than 15 feet, of a steep slope area or a landslide hazard area, based on the findings of critical area report that the development will not be at risk of damage due to the geologic hazard and will not lead to nor create any increased slide, seismic or erosion hazard.

(6) Allowed alteration within a steep slope, erosion, or landslide hazard area shall minimize alterations to the natural contour of the slope and foundations shall be tiered where possible to conform to existing topography in accordance with Chapter 14.60 CMC. Freestanding retaining devices are only permitted when they cannot be designed as structural elements of the building foundation. Structures and improvement shall be located to preserve the most critical portions of the site and its natural landforms and vegetation. (Ord. 06-17 § 4 (Exh. B))

**18.65.260 Erosion hazard areas – Development standards and permitted alterations.**

Development proposals and other alterations to sites containing erosion hazard areas shall be allowed, pursuant to applicable permits and approvals, only if they or any other alteration complies with applicable requirements as set forth in this chapter, including but not limited to mitigation requirements and the following standards:

(1) Clearing on an erosion hazard area is allowed only from April 1st to September 1st, unless otherwise determined by the Director and based on an approved erosion and sediment control plan. Timber harvesting may be allowed pursuant to an approved forest practice permit issued by the Washington Department of Natural Resources or pursuant to an approved tree removal permit as required by Chapter 18.45 CMC.

(2) All development proposals, including but not limited to subdivisions, short subdivisions, or commercial site development or binding site plans, shall retain existing vegetation on all lots, in accordance with Chapter 14.60 CMC, until the City has approved engineering plans and issued the development proposal construction permits.

(3) Limited clearing of vegetation on lots may only be allowed for the installation of erosion and sediment control in accordance with a submitted grading permit or engineering plans. (Ord. 06-17 § 4 (Exh. B))

**18.65.270 Erosion and seismic hazard areas – Protection measures and specific mitigation.**

(1) All proposed improvements within an erosion hazard area or seismic hazard area shall follow the recommendations within the critical area report, and supplemental geotechnical evaluation required in CMC 18.65.250(4), to ensure the improvements will not adversely affect geologic hazards and the improvements are at minimal risk by the geologic hazard as designed under anticipated conditions.

(2) For any development proposal on a site containing an erosion hazard or seismic hazard area, an erosion and sediment control plan shall be required and included as part of the mitigation plan. The erosion and sediment control plan shall be prepared in compliance with the adopted City standards and stormwater manual.

(3) Proposed improvements within an erosion hazard area shall also demonstrate all the following via the critical area report:

(a) The improvement will not increase surface water discharge or sedimentation to adjacent properties and/or stormwater systems beyond predevelopment conditions;

(b) The improvement will not decrease slope stability on adjacent properties; and

(c) The improvement will not adversely impact other critical areas.

(4) If vegetation is removed beyond the scope of the approved clearing and grading permit and erosion and sediment control plan associated with the construction of development infrastructure, the City may stop work and the applicant shall be required to submit a restoration plan to the City for review and approval prior to further construction activity allowed on site. Following approval, the applicant shall be required to implement the plan. The City may require a financial guarantee to ensure implementation of the restoration plan.

(5) Where the City determines that erosion from a development site poses a significant risk of damage to downstream receiving waters, based either on the size of the project, the proximity to the receiving water or the sensitivity of the receiving water, the applicant shall be required to provide continuous monitoring of surface water discharge, turbidity, and suspended sediment concentrations from the site. If the project does not meet water quality standards established by law or administrative rules, the City may suspend further development work on the site until such standards can be met.

(6) Unless otherwise provided in CMC 18.65.050 or part of an allowed exemption, the use of hazardous substances, pesticides and fertilizers in erosion hazard areas may be prohibited by the City. (Ord. 06-17 § 4 (Exh. B))

**18.65.280      Landslide hazard areas – Development standards and alterations.**

The following standards apply to development proposals and alterations on sites containing landslide hazard areas:

(1) Only the alterations identified in CMC 18.65.050 are allowed within a landslide hazard area with a slope of 40 percent or greater;

(2) The critical area report shall include an engineer's evaluation prepared by an engineer or geologist licensed in the State of Washington;

(3) A buffer is required from all edges of the landslide hazard area. The width of the buffer is based upon a critical area report that shall reflect the sensitivity of the landslide hazard area in question and the types and density of uses proposed on or adjacent to the geologic hazard. The Director may allow buffers to be reduced, no less than 15 feet, if the supplemental engineer evaluation identifies that the reduction will adequately protect the proposed and surrounding development from the critical landslide hazard. To eliminate or minimize the risk of property damage or injury resulting from landslides caused in whole or part by the development, the Director shall determine the size of the buffer based upon the findings and recommendations of a critical area report and supplemental engineer evaluation required in subsection (2) of this section. If a critical area report is not submitted to the City, the minimum buffer shall be 50 feet. If the landslide hazard area has a vertical rise of more than 200 feet, the Department may increase the minimum buffer to 100 feet;

(4) Unless otherwise provided in CMC 18.65.050 or part of an allowed exemption, removal of any vegetation from a landslide hazard area or buffer is prohibited. The buffer shall be extended beyond these limits if they are deemed necessary to mitigate steep slope and erosion hazards, or as otherwise necessary to protect the public health, welfare or safety;

(5) All alterations shall minimize disturbance to the landslide hazard area, slope, and vegetation unless necessary for slope stabilization; and

(6) Alterations in a landslide hazard area located on a slope less than 40 percent are allowed if:

(a) The proposed alteration will not decrease slope stability on contiguous properties; and

(b) The risk of property damage or injury resulting from landsliding is eliminated or minimized; based on criteria including altering of drainage patterns and subsurface flow, and the development proposal on that site is certified as safe by a licensed engineering geologist or geotechnical engineer. (Ord. 06-17 § 4 (Exh. B))

**18.65.290      Steep slope hazard areas – Development standards and alterations.**

Steep slope hazard areas and associated buffers shall not be altered except as expressly authorized below. The following standards apply to development proposals and alterations on sites containing steep slope hazard areas:

(1) Only the alterations identified in CMC 18.65.050 are allowed within a steep slope hazard area;

(2) A buffer or setback of 50 feet is required from all edges of the steep slope hazard area. To eliminate or minimize the risk of property damage or injury resulting from slope instability, landsliding, or erosion caused in whole or part by the development, the City shall determine the size of the buffer or setback, which may increase or decrease the buffer, based upon a critical area report prepared by a geotechnical engineer or geologist. If a critical area report is not submitted to the City, the minimum buffer is 50 feet. In no case shall the buffer be less than 15 feet, and the buffer may only be reduced pursuant to the findings of the critical area report that demonstrates that the reduction will not reduce the level of protection to the proposed development and the critical area as provided by the 50-foot buffer. An occupied building shall not be closer than 25 feet (including buffer from the top or the toe of a steep slope (or altered steep slope)); and

(3) Unless otherwise provided in CMC 18.65.050 or part of an allowed exemption, removal of any vegetation from a steep slope hazard area or buffer is prohibited. (Ord. 06-17 § 4 (Exh. B))

**18.65.300 Additional critical area report requirements – Geologically hazardous areas.**

(1) Before approving any alteration or development under this article, the City may require the applicant to submit the following information in addition to or as part of the critical areas report:

(a) A geotechnical report prepared by a geotechnical engineer or engineering geologist licensed in the State of Washington that describes how the proposed development will impact or be impacted by each of the following on the subject property and nearby properties:

- (i) Slope stability, landslide hazard, and sloughing;
- (ii) Erosion hazards;
- (iii) Seismic hazards;
- (iv) Ground water;
- (v) Seeps, springs, streams and other surface waters;
- (vi) Existing vegetation, including size and type of significant trees;
- (vii) Identification of existing fill areas;
- (viii) Soil description in accordance with United Soil Classification System; and
- (ix) Depth to ground water and estimates of potential seasonal fluctuations;

(b) A topographic survey, in two-foot contours, that identifies the type and extent of geologically hazardous areas on site and off site that are likely to impact or be impacted by the proposal;

(c) Delineation of areas containing slopes 15 percent or greater and 40 percent or greater;

(d) The location of storm drainage facilities on the subject property;

(e) Recommended foundation and retaining wall design criteria and optimal location for buildings, roadways and other improvements. Including bearing layer(s), allowable capacities, minimum width, minimum depth, estimated settlements (total and differential, lateral loads, and other pertinent recommendations);

(f) Grading and earthwork, including compaction and fill material requirements, use of site solids as fill or backfill, imported fill or backfill requirements, height and inclination of both cut and fill slopes and erosion control and wet weather construction considerations and/or limitations;

(g) Surface and subsurface drainage requirements and drainage material requirements;

(h) Recommended methods for mitigating identified impacts and a description of how these mitigating measures may impact adjacent properties;

(i) Assessment of seismic ground motion amplification and liquefaction potential; and

(j) Any other information the City determines is reasonably necessary to evaluate the proposal.

(2) A decision by the Director to reduce the buffer shall be based on a critical area report that includes the following assessment criteria:

(a) Steep slope and landslide hazard development areas shall be subject to site-specific geotechnical studies;

(b) Steep slope and landslide hazard development areas shall be subject to engineering design considerations that ensure the stability of steep slope areas. Engineering design considerations shall include but are not limited to the following:

- (i) Soil cuts require slope stability analysis to evaluate the change in relative stability. Based on the results of the stability analysis, retaining structures will be required to replace any lateral soil support lost. In no case shall the factor of safety be less than one and one-half;
  - (ii) Soil fills require slope stability analysis and engineering design measures, including keying the fill, compaction, drainage measures, reinforced earth, and structural retaining walls;
  - (iii) Foundations must be extended to firm, undisturbed native soil, and embedded deep enough to resist lateral loads caused by soil creep (surficial slope movement inherent to all steep slope areas) and other lateral loads which the foundation may be subject to (i.e., seismic and deep seated slope failures);
  - (iv) Provide subgrade (i.e., reinforced compacted subgrade) or retaining wall design that replaces the support of cuts; designed with a factor of safety of at least one and one-half. Compacted subgrade without reinforcement or retaining structures will not be considered for the support of cuts;
  - (v) Provide effective, positive drainage for all underground elements of structures or facilities; and
  - (vi) All utility connections within steep slope and landslide hazards shall have sufficient flexible connections to avoid utility failure;
- (c) The City may employ an outside geotechnical engineer at the applicant's expense for third-party review of any geotechnical analyses.
- (3) The decision by the Director to reduce the buffer shall include the following conditions:
- (a) The applicant shall establish a mechanism that is acceptable to the Director that notifies all future buyers of the lot that the steep slope buffer was reduced and that development has occurred within 50 feet of the steep slope or the steep slope has been eliminated (e.g., notice on title); and
  - (b) The applicant shall execute an agreement on a form approved by the City Attorney, which indemnifies and holds the City harmless for development within 50 feet of the steep slope.

Both conditions shall be met prior to the issuance of a building permit. The Director may attach additional conditions as necessary to achieve the purpose and intent of this section.

- (4) If the City approves any development under this section, it may, among other appropriate conditions, impose the following conditions of approval:
- (a) The recommendations of the geotechnical report are followed;
  - (b) A geotechnical engineer or engineering geologist shall be present on site during all development activities. As an alternative, the City may require minimum site visits by the geotechnical engineer or engineering geologist, as required by the City engineer, to establish proper methods, techniques and adherence to plan drawings;
  - (c) Trees, shrubs and groundcover are retained except where necessary for approved development activities on the subject property;
  - (d) Additional vegetation is planted in disturbed areas; and
  - (e) Submit a letter by the geotechnical engineer or engineering geologist stating that they have reviewed the project plan drawings and in their opinion the plans and specifications meet the intent of the geotechnical report. (Ord. 06-17 § 4 (Exh. B))

## Article IV. Critical Aquifer Recharge Areas

### 18.65.311 Critical aquifer recharge areas –Designation.

(1) Critical aquifer recharge areas include those areas with a critical recharging effect on aquifers used for potable water where an aquifer that is a source of drinking water is vulnerable or susceptible to contamination that would affect the potability of water. Susceptibility to ground water contamination occurs where there is a combination of permeable soils, permeable subsurface geology, and decreasing hydraulic head with depth. See [Exhibit D the Natural Resources Element of the Covington Comprehensive Plan](#) –of the ordinance codified in this chapter for a map of potential aquifer recharge areas within the City of Covington.

(2) Critical aquifer recharge areas are categorized as Category I, II, or III as follows:

(a) Category I critical aquifer recharge areas are mapped areas that Covington determined are highly susceptible to ground water contamination and that are located within a sole source aquifer or wellhead protection area.

(b) Category II critical aquifer recharge areas are mapped areas that Covington determined to have medium susceptibility to ground water contamination and that are located within a sole source aquifer or within an area approved in accordance with Chapter 246-290 WAC as a wellhead protection area for a municipal or district drinking water system, or an area over a sole source aquifer for a private potable water well in compliance with Department of Ecology and Public Health standards, or are highly susceptible to ground water contamination and are not located in a sole source aquifer or wellhead protection area.

(c) Category III critical aquifer recharge areas are mapped areas that Covington has determined have low susceptibility to ground water contamination.

(3) The Director may upon consultation with affected jurisdictions, and the affected local water purveyor, determine the location of aquifer recharge areas based on additional information about areas with susceptibility to ground water contamination or on changes to sole source aquifers or wellhead protection areas as identified in wellhead protection programs. See [Exhibit D of the ordinance codified in this chapter for a map of potential aquifer recharge areas within the City of Covington.](#) (Ord. 06-17 § 4 (Exh. B))

### 18.65.312 Critical aquifer recharge areas – Reclassification or declassification.

Upon application supported by a critical areas report that includes a hydrogeologic site evaluation, the Director may upon consultation with the affected local water purveyor determine that an area that is classified as a critical aquifer recharge area on the map adopted and amended by public rule as follows:

(1) Does not meet the criteria for a critical aquifer recharge area and declassify that area; or

(2) Has the wrong critical aquifer recharge area classification and determine the correct classification. (Ord. 06-17 § 4 (Exh. B))

### 18.65.313 Critical aquifer recharge areas – Categories.

Critical aquifer recharge areas are categorized pursuant to King County critical aquifer recharge areas as follows:

(1) Category I critical aquifer recharge areas include those mapped areas that Covington has determined are highly susceptible to ground water contamination and that are located within a sole source aquifer or a wellhead protection area;

(2) Category II critical aquifer recharge areas include those mapped areas that Covington has determined:

(a) Have a medium susceptibility to ground water contamination and are located in a sole source aquifer or a wellhead protection area; or

(b) Are highly susceptible to ground water contamination and are not located in a sole source aquifer or wellhead protection area; and

(3) Category III critical aquifer recharge areas include those mapped areas that Covington has determined have low susceptibility to ground water contamination. (Ord. 06-17 § 4 (Exh. B))

**18.65.314 Critical aquifer recharge areas – Protection.**

To protect critical aquifer recharge areas, in accordance with Chapter 36.70A RCW, in addition to the terms of this chapter the following code provisions are established to further protect critical aquifer recharge areas: Chapters 13.25, 13.30, 14.60 and 16.15 CMC.

(1) Development that will not cause contaminants to enter the aquifer may be permitted in critical aquifer recharge areas.

(2) The City shall impose development conditions to prevent degradation of critical aquifer recharge areas. Development conditions shall be based on all known, available, and reasonable methods of prevention, control and treatment (“AKART”).

(3) The proposed activity must comply with the water source protection requirements and recommendations of the Federal Environmental Protection Agency, State Department of Ecology, State Department of Health, and Public Health – Seattle and King County.

(4) The proposed activity must be designed and constructed in accordance with the City’s stormwater manuals adopted in Chapter 13.25 CMC. (Ord. 06-17 § 4 (Exh. B))

**18.65.315 Critical aquifer recharge areas – Development regulations.**

(1) Any proposed development located in critical aquifer recharge areas shall submit a hazardous materials inventory statement with a permit, land use, or business license application. Ongoing operation and maintenance activities of public wells by public water providers are exempt from these requirements.

(2) The City will review the hazardous materials inventory statement along with the permit, land use, or business license application to determine whether hazardous materials will be used, stored, transported or disposed of in connection with the proposed activity. The City shall make the following determinations and apply the appropriate capture zone protection measures:

(a) No hazardous materials are involved;

(b) Hazardous materials are involved; however, existing laws or regulations adequately mitigate any potential impact, and documentation is provided to demonstrate compliance; or

(c) Hazardous materials are involved and the proposal has the potential to significantly impact critical aquifer recharge areas. The City may require a hydrogeologic assessment with a critical areas report to be prepared by a qualified professional in order to determine the potential impacts of contamination on the aquifer. The report shall include the following site and proposal-related information:

(i) Information regarding geologic and hydrogeologic characteristics of the site, including the surface location of the capture zone in which it is located and the type of infiltration of the site;

(ii) Ground water depth, flow direction, and gradient;

(iii) Location of other critical areas, including surface waters, within 200 feet of the site;

(iv) Best management practices and integrated pest management proposed to be used, including:

(A) Predictive evaluation of ground water withdrawal effects on nearby wells and surface water features;

(B) Predictive evaluation of contaminant transport based on potential releases to ground water; and

(C) Predictive evaluation of changes in the infiltration/recharge rate.

- (3) A spill containment and response plan may be required to identify equipment and/or structures that could fail, and shall include provisions for inspection as required by the applicable State regulations.
- (4) A ground water monitoring plan may be required to monitor quality and quantity of ground water, surface water runoff, and/or site soils. The City may require the owner of a facility to install one or more ground water monitoring wells to accommodate the required ground water monitoring. Criteria used to determine the need for site monitoring shall include, but not be limited to, the proximity of the facility to production or monitoring wells, the type and quantity of hazardous materials on site, and whether or not the hazardous materials are stored in underground vessels.
- (5) The City may employ an outside consultant at the applicant's expense for third-party review of the critical areas report, hydrogeologic assessment, the spill containment and response plan, and the ground water monitoring plan.
- (6) The following new development proposals and alterations are not allowed on a site if any portion of the site is located in a Category I critical aquifer recharge area:
- (a) Transmission pipelines carrying petroleum or petroleum products;
  - (b) Sand and gravel, and hard rock mining on land that is not zoned for mining;
  - (c) Mining of any type below the upper surface of the saturated ground water that could be used for potable water supply;
  - (d) Processing, storage, and disposal of radioactive wastes, as defined in Chapter 43.200 RCW;
  - (e) Hydrocarbon extraction;
  - (f) Commercial wood treatment facilities on permeable surfaces;
  - (g) Underground storage tanks with hazardous substances, as defined in Chapter 70.105 RCW;
  - (h) Above-ground storage tanks for hazardous substances, as defined in Chapter 70.105 RCW, unless protected with primary and secondary containment areas and a spill protection plan;
  - (i) Golf courses;
  - (j) Cemeteries;
  - (k) Wrecking yards;
  - (l) Landfills for hazardous waste, municipal solid waste, or special waste; and
  - (m) On lots smaller than one acre, on-site septic systems that are not approved by the Washington State Department of Health and either:
    - (i) Do not use an up-flow media filter system or a proprietary packed-bed filter system; or
    - (ii) Are not designed to achieve approximately 80 percent total nitrogen removal for typical domestic wastewater.

(7) The following new development proposals and alterations are not allowed on a site if any portion of the site is located in a Category II critical aquifer recharge area:

- (a) Mining of any type below the upper surface of the saturated ground water that could be used for potable water supply;
- (b) Processing, storage, and disposal of radioactive wastes, as defined in Chapter 43.200 RCW;

- (c) Hydrocarbon extraction;
  - (d) Commercial wood treatment facilities located on permeable surfaces;
  - (e) Underground storage tanks with hazardous substances, as defined in Chapter 70.105 RCW, that do not meet the requirements of Chapter 173-360 WAC and the International Fire Code;
  - (f) Above-ground storage tanks for hazardous substances, as defined in Chapter 70.105 RCW, unless protected with primary and secondary containment areas and a spill protection plan;
  - (g) Wrecking yards;
  - (h) Landfills for hazardous waste, municipal solid waste, or special waste; and
  - (i) On lots smaller than one acre, on-site septic systems that are not approved by the Washington State Department of Health and either:
    - (i) Do not use an up-flow media filter system or a proprietary packed-bed filter system; or
    - (ii) Are not designed to achieve approximately 80 percent total nitrogen removal for typical domestic wastewater.
- (8) The following new development proposals and alterations are not allowed on a site if any portion of the site is located in a Category III critical aquifer recharge area:
- (a) Processing, storage, and disposal of radioactive wastes, as defined in Chapter 43.200 RCW;
  - (b) Hydrocarbon extraction;
  - (c) Commercial wood treatment facilities located on permeable surfaces;
  - (d) Underground storage tanks with hazardous substances, as defined in Chapter 70.105 RCW, that do not meet the requirements of Chapter 173-360 WAC and the International Fire Code;
  - (e) Above-ground storage tanks for hazardous substances, as defined in Chapter 70.105 RCW, unless protected with primary and secondary containment areas and a spill protection plan;
  - (f) Wrecking yards; and
  - (g) Landfills for hazardous waste, municipal solid waste, or special waste.
- (9) The following standards apply to development proposals and alterations that are substantial improvements on a site if any portion of the site is located in a critical aquifer recharge area:
- (a) The owner of an underground storage tank in a Category I critical aquifer recharge area shall properly decommission or remove the tank; and
  - (b) The owner of an underground storage tank in a Category II or III critical aquifer recharge area shall meet the requirements of Chapter 173-360 WAC and the International Fire Code or shall properly decommission or remove the tank.
- (10) In any critical aquifer recharge area, the property owner shall properly decommission an abandoned well.
- (11) On sites located in a critical aquifer recharge area, development proposals and alterations for new development, including, but not limited to, a subdivision, short subdivision, commercial site development, binding site plan, or dwelling unit, shall incorporate best management practices pursuant to the stormwater manuals adopted in Chapter 13.25 CMC into the site design in order to manage stormwater runoff.

(12) The City may approve a development proposal otherwise prohibited by subsection (6), (7) or (8) of this section if the applicant demonstrates through a critical areas report that the development proposal is located outside of the critical aquifer recharge area and that the development proposal will not cause an unmitigated significant adverse environmental impact to the critical aquifer recharge area. (Ord. 06-17 § 4 (Exh. B))

**18.65.316 Critical aquifer recharge areas – Evaluation and implementation.**

The City may evaluate and implement, as appropriate, ground water management plans and wellhead protection programs to further protect ground water resources as the critical aquifer protection program. In order to protect ground water quality, the City may require a ground water monitoring plan and/or a hydrogeologic critical area assessment report for new development projects. (Ord. 06-17 § 4 (Exh. B))

**Article V. Wetlands**

**18.65.318 Wetland – Identification and evaluation.**

(1) Generally. Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done using the U.S. Army Corps of Engineers Wetlands Delineation Manual (Environmental Laboratory 1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0) (U.S. Army Corps of Engineers 2010), or as amended. All areas within the City meeting the wetland criteria are hereby designated critical areas and are subject to the provisions of this chapter. Wetland delineations are valid for five years, after such date the City shall determine whether a revision or additional assessment is necessary.

(2) Evaluation. The developer shall determine if a wetland exists on or within 225 feet of the subject property, and shall submit a wetland report prepared by a qualified professional. The City will verify the findings in the report based on current studies and field verification. The wetland report and the accompanying plan sheets shall contain the following information:

- (a) Critical area report information identified in CMC 18.65.110;
- (b) Identification of all local, State, and/or Federal wetland related permit(s) required for the proposal;
- (c) Documentation of fieldwork, including field data sheets, rating forms, and baseline hydrologic data;
- (d) Description of the methodologies used to conduct the wetland delineations, rating forms, or impact analyses, including references;
- (e) Identification and characterization of all wetlands and buffers on and within 225 feet of the subject property. For off-site areas with limited or no access, estimate conditions using best available information;
- (f) Provide the following for each wetland identified on and/or within 225 feet of the subject property. Acreage estimates, classifications, and ratings shall be based on entire wetland complexes, not only the portion present on the subject property:
  - (i) Wetland rating and score for each function;
  - (ii) Required buffers;
  - (iii) Hydrogeomorphic classification;
  - (iv) Wetland acreage;
  - (v) U.S. Fish and Wildlife Service (Cowardin) classification of vegetation communities;
  - (vi) Habitat elements;
  - (vii) Soil conditions based on site assessment and/or soil survey information; and

(viii) Hydrologic information such as location and condition of inlets/outlets, estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g., algal mats, drift lines, and flood debris);

(g) An evaluation of the functions of the wetland and adjacent buffer. Include reference for the method used and supporting documentation.

(3) No development or improvements may be located within a wetland except as provided in this chapter. (Ord. 06-17 § 4 (Exh. B))

**18.65.319 Wetlands – Classes and categories.**

(1) Different types of wetlands are separated from one another on the basis of wetland class and wetland category. Wetland class is determined by using a scientific system based upon dominant plant communities, substrate conditions, hydrologic regime, and location in the watershed. Wetland category is determined by using a rating system based on specific attributes such as rarity, sensitivity to disturbance, and the functions they provide.

(2) Wetland Class. Two classification systems are commonly used to describe wetlands. The first is a science-based classification system used by the U.S. Fish and Wildlife Service as described in Classification of Wetlands and Deepwater Habitats of the United States, Second Edition (Federal Geographic Data Committee. 2013. FGDC-STD-004-2013).

The second is the hydrogeomorphic method (HGM) classification (Brinson 1993), a system WDOE incorporated for use in the Washington State Wetland Rating System for Western Washington (WDOE Publication No. 14-06-029, or as hereafter amended).

(3) Wetland Category. Wetland category is used to regulate activities in a wetland and in determining the standard width of the required wetland buffer. The wetland category is determined after a wetland has been identified and delineated in accordance with the approved wetland delineation manual.

WDOE Publication No. 14-06-029, or as amended, contains the definitions and scoring methods used for determining wetlands functions and rating. The wetland category of an individual wetland is determined by the total score for the functions which is recorded on the first page of the wetland rating form included in WDOE Publication No. 14-06-029, or as amended. Wetlands are also rated for “special characteristics,” when applicable, the value of which is included in the final category rating.

(a) Category I. Category I wetlands are: (i) wetlands of high conservation value as identified by scientists of the Washington Natural Heritage Program/DNR; (ii) bogs; (iii) mature and old-growth forested wetlands larger than one acre; (iv) wetlands that perform functions at high levels (scoring 23 points or more). These wetlands: (i) represent unique or rare wetland types; (ii) are more sensitive to disturbance than most wetlands; (iii) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (iv) provide a high level of functions.

(b) Category II. Category II wetlands are wetlands that perform functions well (scoring between 20 and 22 points).

(c) Category III. Category III wetlands are: (i) wetlands with a moderate level of functions (scoring between 16 and 19 points); and (ii) can often be adequately replaced with a well-planned mitigation project. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

(d) Category IV. Category IV wetlands have the lowest levels of functions (scores less than 16 points) and are often heavily disturbed. (Ord. 06-17 § 4 (Exh. B))

**18.65.320 Wetlands – Buffers.**

(1) Wetland – Buffers. Except as otherwise provided in this section, buffers shall be provided from the wetland edge in accordance with the following standards:

(a) The standard buffer widths of the following table shall apply if impact minimization measures are included in accordance with subsection (2), (3), or (4) of this section:

WETLAND CATEGORY AND CHARACTERISTICS	BUFFER
<b>Category I</b>	
Bog	225 feet
Habitat score from 8 to 9 points	225 feet
Habitat score from 6 to 7 points	<del>465-110</del> feet
Category I wetlands not meeting any of the criteria above	<del>425-75</del> feet
<b>Category II</b>	
Habitat score from 8 to 9 points	225 feet
Habitat score from 6 to 7 points	<del>465-110</del> feet
Category II wetlands not meeting any of the criteria above	<del>400-75</del> feet
<b>Category III</b>	
<del>Habitat score from 8-9 points</del>	<del>225</del> feet
Habitat score from 6 to 7 points	<del>465-110</del> feet
Category III wetlands not meeting any of the criteria above	<del>75-60</del> feet
<b>Category IV</b>	<del>50-40</del> feet

(2) Buffer Impact Minimization Measures. The following measures shall be implemented in order to utilize the standard buffer widths as noted in subsection (1) of this section.

(a) The following measures shall be used by an applicant to obtain a standard buffer width under subsection (1) of this section:

Disturbance	Required Measures to Minimize Impacts
Lights	Direct lights away from wetland
Noise	Locate activity that generates noise away from wetland
	If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source
	For activities that generate relatively continuous, potentially disruptive noise, such as heavy industry, establish an additional 10-foot heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
Toxic runoff	Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered
	Establish covenants limiting use of pesticides within 150 feet of wetland
	Apply integrated pest management
Change in water regime	Infiltrate or treat, detain and disperse into buffer new runoff from impervious surfaces and new lawns

Disturbance	Required Measures to Minimize Impacts
Pets and human disturbance	Use privacy fencing or plant dense vegetation to delineate buffer edge and to discourage disturbance of wildlife by humans and pets using vegetation appropriate for the ecoregion
	Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	Use best management practices to control dust
Degraded buffer condition	Nonnative plants to be removed and replaced with native vegetation per an approved landscaping plan to be bonded and monitored for not less than a five-year period after completion to assure at least 80% survival of plantings
Stormwater runoff	Retrofit stormwater detention and treatment for roads and existing adjacent development
	Prevent channelized flow from lawns that directly enters the buffer
	Use low intensity development techniques
Disruption of corridors or potential or existing wildlife habitat connections	Maintain connections to off-site areas that are undisturbed
	Restore corridors or connections to off-site habitats by replanting

(3) If a Category I or II wetland with habitat score seven points or greater is located within 300 feet of a priority habitat area as defined by the Washington State Department of Fish and Wildlife, the buffer established by subsection (1) of this section shall be increased by 50 feet unless:

(a) The applicant provides a relatively undisturbed vegetated corridor at least 100 feet wide between the wetland and all priority habitat areas located within 300 feet of the wetland. The corridor shall be protected for the entire distance between the wetland and the priority habitat through dedication to the City of a conservation easement, native or the equivalent; and

(b) The applicable mitigation measures in subsections (3) and (4)(b) of this section shall be applied.

(4) Buffer Averaging. The Director may approve a modification of the standard buffer widths required on a case-by-case basis by averaging buffer widths, based on review of a critical area report prepared by a qualified professional describing the current functions of the wetland and its buffer and the measures that will be taken to ensure that there is no loss of wetland function due to buffer averaging, if:

(a) The Director determines that the ecological structure and function of the buffer after averaging are equivalent to or greater than the structure and function before averaging;

(b) The resulting buffer meets the following standards:

(i) The total area of the buffer after averaging is equivalent to or greater than the area of the buffer before averaging;

(ii) The additional buffer is contiguous with the standard buffer; and

(iii) Averaging does not occur into the buffer of another wetland or stream except as otherwise allowed.

(c) Additional buffer reductions as allowed in this subsection (4) may be applied to a request for buffer averaging as provided in this section;

(d) In no case shall a standard averaged buffer width be reduced to less than 75 percent of the standard buffer at any location;

(e) Averaging does not result in any impact to other critical areas; and

(f) Averaging does not result in a significant adverse impact to habitat associated with species of local importance.

(5) Where a legally established street transects a wetland buffer, the Director may approve a modification of the minimum required buffer width to the edge of the roadway if part of the buffer is on the other side of the roadway:

- (a) Does not provide additional protection of the proposed development or the wetland;
- (b) Does not perform any biological, geological or hydrological buffer functions relating to the undisturbed portions of the wetland buffer;
- (c) The alterations allowed in CMC 18.65.050 are not allowed in buffers established in accordance with this subsection; and
- (d) The buffer widths established in accordance with this subsection are not further modified as provided for in subsections (3) and (4) of this section.

(6) The City may establish minimum buffer widths for wetlands that are created as a result of enhancement or restoration projects that are not mitigation for a development proposal or alteration. (Ord. 06-17 § 4 (Exh. B))

**18.65.340 Wetlands – Specific mitigation requirements.**

In addition to the requirements in CMC 18.65.130 and 18.65.135, the following applies to mitigation to compensate for the adverse impacts associated with an alteration to a wetland:

(1) Mitigation measures must achieve equivalent or greater wetland functions, including, but not limited to:

- (a) Habitat complexity, connectivity and other biological functions; and
- (b) Seasonal hydrological dynamics, water storage capacity and water quality;

(2) The following ratios of area of mitigation to area of alteration apply to determine mitigation area required for permanent alterations:

Category	Creation or Re-establishment	Rehabilitation	Creation (C) and Rehabilitation (R) or Enhancement (E)	Enhancement Only
IV	1.5:1	3:1	1:1 C and 1:1 R or 2:1 E	6:1
III	2:1	4:1	1:1 C and 2:1 R or 4:1 E	8:1
II	3:1	6:1	1:1 C and 4:1 R or 8:1 E	12:1
I – forested	6:1	12:1	1:1 C and 10:1 R or 20:1 E	24:1
I – based on score for functions	4:1	8:1	1:1 C and 6:1 R or 12:1 E	16:1
I – bog	Not allowed	Case-by-case	Not possible	Case-by-case

(3) As an alternative to mitigation ratios provided in the table in subsection (2) of this section, the City of Covington may approve mitigation using the WDOE Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington (Publication No. 10-06-011) (Hruby 2012) or as revised. This tool can be used to determine mitigation needs by estimating the functions and values lost when a wetland is altered, and estimating the gain in functions and values that result from the mitigation. This method must be applied by individuals trained and approved by Ecology in the use of this method;

(4) The City may consider two or more contiguous sites under common ownership as one site for the purpose of mitigation ratios when:

- (a) All applicable sites are in the same drainage sub-basin;

- (b) Equivalent or greater wetland functions will be achieved; and
  - (c) A notice on title, identifying the location, interconnectivity, and requirement for mitigation are recorded against each site pursuant to CMC 18.65.170;
- (5) For temporary alterations to a wetland or its buffer that are predominantly woody vegetation, the City may require mitigation in addition to restoration of the altered wetland or buffer;
- (6) For rectifying an illegal alteration to any category wetland or its buffer, the ratio of area of mitigation to area of alteration for repair, rehabilitation or restoration is one and one-half to one and the mitigation measures shall replicate the natural pre-alteration wetland configuration at its natural pre-alteration location to the maximum extent practical, including:
- (a) The wetland edge and buffer configuration;
  - (b) The depth, width, length and gradient;
  - (c) The soil type, conditions and physical features;
  - (d) Similar species diversity and density; and
  - (e) The hydrologic, water quality, and biologic functions;
- (7) Mitigation for an alteration to a buffer of a wetland that occurs along an aquatic area lake shoreline in accordance with an alteration identified in CMC 18.65.050 shall include, but not be limited to, on-site revegetation, maintenance and other restoration of the buffer or setback area to the maximum extent practical and shall be evaluated against the requirements of the City's SMP if applicable; and
- (8) The City may allow mitigation for adverse impacts to buffers off the development proposal site at a ratio higher than that required for mitigation on site if the applicant demonstrates that it is not feasible to mitigate on the development proposal site, in the same wetland or wetland complex, pursuant to off-site mitigation requirements in CMC 18.65.135. (Ord. 06-17 § 4 (Exh. B))

## Article VI. Fish and Wildlife Habitat Conservation Areas

### 18.65.350 Fish and wildlife habitat conservation areas – Applicability.

(1) This article regulates development in fish and wildlife habitat conservation areas ("FWHCA") and their associated buffers. FWHCAs in the City include subsections (2) through (6) of this section. All areas within the City meeting one or more of these criteria, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter and shall be managed consistent with best available science, such as the current edition of the Washington Department of Fish and Wildlife's Management Recommendations for Priority Habitats and Species.

(2) Streams and Shorelines. Streams and shoreline waterbodies shall be classified in accordance with the Washington Department of Natural Resources permanent water typing system (WAC 222-16-030), or as amended, which is hereby adopted in its entirety by reference and summarized as follows:

- (a) Type S: streams and water bodies inventoried as "shorelines of the State" under Chapter 90.58 RCW and the rules promulgated pursuant to Chapter 90.58 RCW;
  - (b) Type F: streams that contain fish habitat;
  - (c) Type Np: perennial nonfish habitat streams; and
  - (d) Type Ns: seasonal nonfish habitat streams.
- (3) Naturally Occurring Ponds. Those ponds that are less than 20 acres in size and not regulated as "shorelines of the State." Naturally occurring ponds are those ponds under 20 acres and their submerged aquatic beds that provide fish

or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds, and landscape amenities, unless such artificial ponds were intentionally created for mitigation.

(4) Areas with State or Federally Designated Endangered, Threatened, and Sensitive Species Having a Primary Association.

(a) Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and NOAA Fisheries 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.

(b) 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.

(5) 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.

(6) Habitats and Species of Local Importance. Habitats and species of local importance are those identified by the City of Covington, including but not limited to those habitats and species that, due to the population status or sensitivity to habitat manipulation, warrant protection. Habitats may include a seasonal range or habitat element where a species has a primary association, and if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. The City of Covington has determined habitats and species in subsection (5) of this section are habitats and species of local importance. Additional habitats and species of local importance are those identified by the City including:

(a) Land essential for preserving connections between habitat blocks and critical areas, such as wildlife habitat networks or corridors; and

(b) Areas of rare plant species and high quality ecosystems. (Ord. 06-17 § 4 (Exh. B))

**18.65.355 Fish and wildlife habitat conservation areas – Designation and purpose.**

(1) Fish and wildlife habitat conservation areas include nesting and breeding grounds for State and Federal threatened, endangered, sensitive or priority species listed by the Washington State Department of Fish and Wildlife, including corridors or networks which connect priority habitat, and those areas which provide habitat for species of local importance which have been or may be identified by the City of Covington.

(2) The purpose of fish and wildlife habitat conservation areas shall be to provide opportunities for food, cover, nesting, breeding and movement for fish and wildlife within the City; maintain and promote diversity of species and habitat within the City; coordinate habitat protection with elements of the City's established or planned wildlife corridors wherever possible; help to maintain air and water quality; control erosion; provide areas for recreation, education and scientific study and aesthetic appreciation; and contribute to the established character of the City.

(3) The City of Covington has given special consideration to the identification and regulation of fish and wildlife habitat conservation areas that support anadromous fisheries in order to preserve and enhance species which are or may be listed as endangered, threatened or priority species by State and Federal agencies. (Ord. 06-17 § 4 (Exh. B))

**18.65.358 Fish and wildlife habitat conservation areas – Classification.<sup>1</sup>**

(1) Fish and wildlife habitat conservation areas are those areas designated by the City based on review of the best available science; input from Washington Department of Fish and Wildlife, Washington Department of Ecology, and other agencies; and any of the following criteria:

- (a) The presence of species proposed or listed by the Federal government or the State of Washington as endangered, threatened, sensitive, or priority; or
- (b) Streams and wetlands and their associated buffers that provide significant habitat for fish and wildlife.

(2) The City designates the following fish and wildlife habitat conservation areas that meet the above criteria, and this designation does not preclude designation of additional areas as provided in subsection (1) of this section:

- (a) All regulated shorelines, streams, and wetlands and their associated buffers as determined by a qualified specialist, and as approved by the Director;
- (b) Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat; and
- (c) Habitat associated with species of local importance as provided in CMC 18.65.350. (Ord. 06-17 § 4 (Exh. B))

**18.65.360 Streams & Waters of the State Shorelines – Standard buffers.**

(1) Streams ~~and Waters of the State Shorelines~~ – Buffers. No development may take place within a stream ~~or waters of the state shoreline waterbody~~ or within the following standard buffer areas except as allowed within this chapter ~~or the SMP~~. Buffer widths shall be measured outward on a horizontal plane from the ordinary high water line or top of bank if ordinary high water line cannot be identified:

- (a) If the stream or shoreline buffer does not include a steep slope hazard area or landslide hazard area:
  - (i) A Type S waterbody (shoreline) buffer is ~~115 feet or as required in the adopted Shoreline Master Program (SMP); defined in the Shoreline Master Program (SMP) (Table 1.05.280-2 CMC). for all waters of the state.~~
  - (ii) A Type F aquatic stream buffer ~~area~~ is 115 feet;
  - (iii) A Type Np stream buffer is 60 feet; and
  - (iv) A Type Ns stream buffer is 30 feet;
- (b) If the stream or shoreline buffer does include a steep slope hazard area or landslide hazard area, the ~~stream-~~buffer width is the greater of either the ~~stream-~~buffer in this section, or the SMP, or 25 feet beyond the top of the hazard area; and
- (c) The stream or shoreline buffer includes the entire mapped severe channel migration hazard area plus the appropriate stream buffer required by this section measured from the outer edge of the severe channel migration hazard area.

(2) Buffer Averaging. The Director may approve a modification of the minimum required standard buffer widths, on a case-by-case basis by averaging buffer widths, based on review of a critical area report prepared by a qualified professional describing the current function of the stream and the stream buffer and the measures that will be taken to ensure that there is no loss of stream function due to buffer averaging if:

(a) The Director determines that the ecological structure and function of the buffer after averaging is equivalent to or greater than the structure and function before averaging;

(b) The resulting buffer meets the following standards:

(i) The total area of the buffer after averaging is equivalent to or greater than the area of the buffer before averaging;

(ii) The additional buffer is contiguous with the standard buffer;

(iii) Averaging does not occur waterward of the top of the associated steep slopes or into a channel migration zone; and

(iv) Averaging does not occur into the buffer of a wetland except as otherwise allowed;

(c) In no case shall a standard average stream buffer be reduced to less than 60 percent of the standard buffer in any location;

(d) Averaging does not result in any impact to another critical area;

(e) Averaging does not result in a significant adverse impact to habitat associated with species of local importance; and

(f) Buffer averaging within a shoreline jurisdiction shall also be subject to the City's SMP regulations and Appendix A as set forth in Chapter CMC 16.05.280(2)(c)-CMC.

(3) Buffer Reduction. The Director may approve a modification of the minimum required buffer width for a development proposal if the applicant demonstrates that the buffer cannot provide certain functions because of soils, geology or topography subject to the following:

(a) The Director shall establish the buffer width based on the ecological functions that the buffer can provide based on soils, geology and topography;

(b) The buffer widths established in accordance with this subsection are not further modified as provided for in subsection (2) of this section; and

(c) Within ~~the~~ shoreline jurisdiction, stream and Pipe Lake shoreline buffer reductions and mitigation is-are implemented pursuant to CMC ~~18.65.380~~16.05.280(3)c and CMC 16.05.230(3).

(4) Where a legally established street transects a stream buffer, the Director may approve a modification of the minimum required buffer width to the edge of the roadway if the part of the buffer on the other side of the roadway:

(a) Does not provide additional protection of the proposed development or the stream;

(b) Does not perform any biological, geological or hydrological buffer functions relating to the undisturbed portions of the stream buffer;

(c) The alterations allowed in CMC 18.65.050 are not allowed in buffers established in accordance with this subsection; and

(d) The buffer widths established in accordance with this subsection are not further modified as provided for in subsections (2) and (3) of this section.

(5) The Director may establish minimum buffer widths for streams that are created as a result of enhancement or restoration projects that are not mitigation for a development proposal or alteration.

(6) The buffer areas established by this section do not apply to any segment of a stream that is presently within a culvert, unless that stream will be taken out of the culvert as part of development of the subject property.

(7) Permanently Altered Buffer. The Director may provide written approval for a buffer reduction when existing conditions are such that portions of the required buffer exist in a permanently altered state (e.g., roadways, paved parking lots, and permanent structures) and do not provide any buffer function, based on review of a critical area report prepared by a qualified professional. The buffer may be reduced up to the area where the altered conditions exist.

(8) Increased Buffer Widths. The Director may require increased buffer widths that are necessary to protect habitat, health, safety, and welfare on site-specific areas as follows:

- (a) When the Director determines that the buffer width is insufficient to prevent habitat degradation;
- (b) When a channel migration zone is present. The stream buffer width shall be measured from the outer edge of the channel migration zone; or
- (c) When the stream buffer area is within an erosion or landslide hazard area. (Ord. 06-17 § 4 (Exh. B))

**18.65.365 Streams and shoreline associated buffers – Development standards and alterations.**

The following standards apply to development proposals and alterations on sites containing stream and shoreline buffers:

- (1) Only the alterations identified in CMC 18.65.050 are allowed in non-shoreline streams and stream buffers. ~~Activities and alterations to shoreline buffers shall be subject to the provisions of the SMP, CMC 16.05, unless specifically allowed under another provision of the City's SMP;~~
- (2) Grading for allowed alterations in stream buffers is only allowed from May 1st to October 1st;
- (3) The soil duff layer should not be disturbed to the maximum extent practical. The disturbed duff layer should be redistributed to other areas of the project site where feasible;
- (4) The moisture-holding capacity of the topsoil layer should be maintained by minimizing soil compacting or re-establishing natural soil structure and the capacity to infiltrate on all areas of the site that impervious surfaces do not cover;
- (5) To the maximum extent practical, vegetation outside the stream buffer is spatially connected to the vegetation in the buffer to prevent creation of windthrow hazards in the buffer;
- (6) New structures within a stream buffer, permitted in accordance with this chapter, shall be sited to avoid the creation of future hazard trees and to minimize the impact on ground water movement from the structure;
- (7) To the maximum extent practical, hazard trees are retained in stream buffers and are topped to reduce the hazard or pushed over toward the stream; and
- (8) Alterations may only be permitted if also approved by State and/or Federal permits, if applicable. (Ord. 06-17 § 4 (Exh. B))

**18.65.370 Streams – Permitted alterations.**

Alterations to shoreline streams, waterbodies and buffers are allowed pursuant to the SMP, CMC 16.05. Alterations to non-shoreline streams and their buffers may be allowed pursuant to CMC 18.65.050 and as follows:

~~(1) The City's SMP shall be consulted for any activities within the shoreline jurisdiction. In Covington, three areas have been designated as areas within a shoreline jurisdiction: Pipe Lake; the lower reaches of Jenkins Creek; and the lower reaches of Big Soos Creek. This information is listed here for informational purposes only. Critical area regulations for activities within the shoreline jurisdiction are located in Appendix A of the SMP, or as provided in the City's SMP, as defined in CMC 16.05.040;~~

(1) Alterations may only be permitted if based upon a critical area report prepared in accordance with CMC 18.65.110;

(32) Upon application for critical area review or associated development proposal, the City will notify affected agencies and native tribes of the proposed alterations prior to any alteration if a stream is in a frequently flooded area. The applicant will be required to provide a response or additional documentation based on requests by affected agencies and native tribes;

(43) There shall be no introduction of any plant or wildlife which is not indigenous to the City into any stream or buffer unless authorized by a State or Federal permit or approval;

(54) Surface water discharge to a stream buffer from a stormwater management facility may be allowed if there are no significant adverse impacts to the stream or required buffer and the discharge is in compliance with the stormwater manuals adopted in Chapter 13.25 CMC and in accordance with CMC 18.65.050;

(65) New Stream Crossings. New stream crossings will be reviewed and decided upon using the Type 2 decision process in CMC Title 14. Responses to decisional critical and design requirements in this section shall be included in the critical areas report. Stream crossings may be allowed and may encroach on the otherwise required stream buffer if:

(a) Any new crossing over a stream shall be generally perpendicular to the critical area and shall be accomplished by bridging or other technique designed to minimize critical area disturbance. It shall also be the minimum width necessary to accommodate the intended function or objective;

(b) Culverts and bridges are designed and installed consistent with an approved permit from the applicable State and Federal agencies with review authority;

(c) All crossings are constructed during the summer low flow and are timed to avoid stream disturbance during periods when use is critical to salmonids;

(d) Crossings do not occur over salmonid spawning areas unless City determines that no other possible crossing site exists;

(e) Bridge piers or abutments are not placed within the FEMA floodway or the ordinary high water line;

(f) Crossings do not diminish the flood-carrying capacity of the stream;

(g) Utility lines and facilities may be permitted to cross streams if they are laterally drilled and located at a depth beneath the scour depth for the water body predicted by a civil engineer licensed by the State of Washington, or as directed by State or Federal permitting agencies. Temporary bore pits to perform such crossings may be permitted within the stream buffer established in CMC 18.65.360;

(h) Crossings are minimized and serve multiple purposes and properties whenever possible;

(i) Disturbances to the stream buffer are adequately compensated by a stream buffer enhancement plan; and

(j) No reasonable alternative exists to access the subject property;

(76) Stream Relocations. Stream relocations may be allowed only for:

(a) As part of a public road project for which a public agency and utility exception is granted pursuant to CMC 18.65.070; and

(b) The purpose of enhancing and restoring resources in the stream if:

(i) Appropriate floodplain protection measures are used; and

(ii) The relocation occurs on the site, except that relocation off the site may be allowed if the applicant demonstrates that any on-site relocation is impracticable, the applicant provides all necessary easements and waivers from affected property owners and the off-site location is in the same drainage sub-basin as the original stream;

(c) As part of any request under this section, the applicant must submit a stream relocation plan that has been reviewed and approved by Washington Department of Fish and Wildlife with the critical areas report that shows the following:

- (i) The creation of a natural meander pattern;
- (ii) The formation of gentle side slopes, at least two feet horizontally to one foot vertically, and the installation of erosion control features for stream side slopes;
- (iii) The creation of a narrow sub-channel, where feasible, against the south or west bank;
- (iv) The utilization of natural materials, wherever possible;
- (v) The use of vegetation normally associated with streams, including primarily native riparian vegetation;
- (vi) The creation of spawning and nesting areas, wherever appropriate;
- (vii) The re-establishment of the fish population, wherever feasible;
- (viii) The restoration of water flow characteristics compatible with fish habitat areas, wherever feasible;
- (ix) The filling and revegetation of the prior channel; and
- (x) A proposed phasing plan specifying time of year for all project phases;

(d) For any relocation allowed by this section, the applicant shall demonstrate, based on information provided by a civil engineer and a qualified biologist, and included in the critical area report that:

- (i) The equivalent base flood storage volume and function will be maintained;
- (ii) There will be no adverse impact to local ground water;
- (iii) There will be no increase in velocity;
- (iv) There will be no interbasin transfer of water;
- (v) There will be no increase in sediment load;
- (vi) Requirements set out in the mitigation plan are met;
- (vii) The relocation conforms to other applicable laws; and
- (viii) All work will be carried out under the direct supervision of a qualified biologist;

(e) The City will allow a stream to be relocated only if water quality, habitat and stormwater retention capability of the streams will be the equivalent or improved by the relocation. Convenience to the applicant in order to facilitate general site design shall not be considered;

(f) Prior to diverting water into the new channel, a qualified professional shall inspect the new channel following its completion and issue a written report to the Director stating that the channel complies with the requirements of this section;

(~~8~~7) A stream channel may be stabilized if:

(a) Movement of the stream channel threatens existing residential or commercial structures, public facilities or improvements, unique natural resources or the only existing access to property; and

(b) The stabilization is done in compliance with the requirements of Chapter 16.15 CMC and administrative rules promulgated pursuant to this chapter;

(98) Stream enhancement not associated with any other development proposal may be allowed if accomplished according to a plan for its design, implementation, maintenance and monitoring prepared by a civil engineer, a landscape architect or a qualified biologist and carried out under the direction of a qualified biologist or landscape architect;

(409) A minor stream restoration project for fish habitat enhancement may be allowed if:

- (a) The restoration is sponsored by a public agency with a mandate to do such work;
- (b) The restoration is unassociated with mitigation of a specific development proposal;
- (c) The restoration is limited to placement of rock weirs, log controls, spawning gravel and other specific salmonid habitat improvements;
- (d) The restoration only involves the use of hand labor and light equipment; or the use of helicopters and cranes which deliver supplies to the project site; provided, that they have no contact with sensitive areas or their buffers; and
- (e) The restoration is performed under the direction of a qualified biologist or landscape architect; and

(410) Roadside drainage ditches which carry streams with salmonids may be maintained through the use of best management practices developed in consultation with relevant City, County, State and Federal agencies. (Ord. 06-17 § 4 (Exh. B))

**18.65.375 Streams – Removal from culverts and pipes.**

If development of the subject property requires City approval, the City may require the stream to be taken out of the culvert and pipes, and restored to a natural-like configuration as part of the City's approval of development of the subject property. (Ord. 06-17 § 4 (Exh. B))

**18.65.380 Streams – Specific mitigation requirements.**

In addition to the requirements in CMC 18.65.130, the following applies to mitigation to compensate for the adverse impacts associated with an alteration to a stream or stream buffer ~~not located in the shoreline jurisdiction~~:

(1) Mitigation measures shall be addressed in the critical area report and must achieve equivalent or greater stream functions including, but not limited to:

- (a) Habitat complexity, connectivity and other biological functions;
- (b) Seasonal hydrological dynamics, water storage capacity and water quality; and
- (c) Geomorphic and habitat processes and functions;

(2) To the maximum extent practical, permanent alterations that require restoration or enhancement of the altered stream, stream buffer or another stream or stream buffer must consider the following design factors, as applicable to the function being mitigated:

- (a) The natural channel or shoreline reach dimensions including its depth, width, length and gradient;
- (b) The horizontal alignment and sinuosity;
- (c) The channel bed or lake bottom with identical or similar substrate and similar erosion and sediment transport dynamics;
- (d) Bank and buffer configuration and erosion and sedimentation rates;

- (e) Similar vegetation species, diversity, size and densities in the channel or lake bottom and on the riparian bank or buffer; and
  - (f) Include all conditions in State and Federal permits or approvals;
- (3) Mitigation to compensate for adverse impacts shall meet the following standards:
- (a) Not upstream of a barrier to fish passage;
  - (b) Is equal or greater in biological function; and
  - (c) To the maximum extent practical is located on the site of the alteration or within one-half mile of the site and in the same stream reach at a 1:1 ratio for the length of mitigation to area of alteration; or
  - (d) Is located in the same stream drainage sub-basin and attains the following ratios of area of functional mitigation to area of alteration:
    - (i) A 3:1 ratio for a Type S stream;
    - (ii) A 3:1 ratio for a Type F stream; and
    - (iii) A 2:1 ratio for a Type Np or Ns stream;
- (4) For purposes of subsection (3) of this section, a mitigation measure is in the same stream reach if the length of stream bank meets the following criteria:
- (a) Similar geomorphic conditions including slope, soil, aspect and substrate;
  - (b) Similar processes including erosion and transport of sediment and woody debris;
  - (c) Equivalent or better biological conditions including invertebrates, fish, wildlife and vegetation; and
  - (d) Equivalent or better biological functions including mating, reproduction, rearing, migration and refuge; or
  - (e) For tributary streams, a distance of no more than one-half mile;
- (5) The City may reduce the mitigation ratios in subsection (3) of this section to 2:1 for Type S or F streams and 1.5:1 for Type Np or Ns streams if the applicant provides a scientifically rigorous mitigation monitoring program that includes the following elements:
- (a) Monitoring methods that ensure the mitigation meets the approved performance standards identified by the Director;
  - (b) Financial guarantees for the duration of the monitoring program; and
  - (c) Experienced, qualified staff to perform the monitoring;
- (6) For rectifying an illegal alteration to any type of stream or its buffer, mitigation measures must meet the following standards:
- (a) Located on the site of the illegal alteration at a 1:1 ratio of area of mitigation to area of alteration; and
  - (b) To the maximum extent practical, replicates the natural pre-alteration configuration at its natural pre-alteration location including the factors in subsection (2) of this section;
- (7) The City may modify the requirements in this section if the applicant demonstrates that, with respect to each stream function, greater functions can be obtained in the affected hydrologic unit that the Director may determine to be the drainage sub-basin through alternative mitigation measures. (Ord. 06-17 § 4 (Exh. B))

**18.65.385 Naturally occurring ponds, less than 20 acres in area, and their submerged aquatic beds that provide fish or wildlife habitat.**

(1) No development may take place within naturally occurring ponds or within buffer areas from the naturally occurring ponds except as allowed in this chapter.

(2) Naturally occurring ponds may also be considered wetlands based on CMC 18.65.319. If the naturally occurring pond is deemed a wetland then the applicable wetland buffer, based on the wetland category, shall apply. A determination by the City does not preclude the applicant from meeting State and Federal agency determinations and permitting requirements. (Ord. 06-17 § 4 (Exh. B))

**18.65.390 Other fish and wildlife habitat conservation areas – Development standards.**

The following standards apply to development proposals and alterations on sites containing fish and wildlife habitat conservation areas, in accordance with the wildlife management plan developed by the Washington State Department of Fish and Wildlife for such species. Where the habitat does not include any other critical area or critical area buffer, compliance with the wildlife management plan shall constitute compliance with this chapter.

The Director shall require protection of an active breeding site of any species with habitat that is identified as requiring protection; provided, that the Washington State Department of Fish and Wildlife has adopted management recommendations. The City shall follow those adopted management recommendations that are published in Priority Habitats and Species Program Management Recommendations for Region IV, current edition. If management recommendations have not been adopted, the City shall base protection administrative rules and any decisions on best available science as presented in a qualified professional's report prepared by applicant, at applicant expense.

(1) General Requirements. Habitat conservation areas ~~that are associated with a shoreline shall be governed by the requirements of the City's SMP. Other habitat conservation areas are~~ subject to the following provisions:

(a) The Department shall require the establishment of buffer areas for development activities in, or adjacent to, habitat conservation areas when needed to protect habitat conservation areas. Buffers shall consist of an undisturbed area of native vegetation, or areas identified for restoration, established to protect the integrity and functions of the habitat. Required buffer widths shall consider the management recommendations identified in this section and reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby. When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Development activities may be further restricted and buffers may be increased during the specified season;

(b) Where applicable, a fish and wildlife habitat corridor shall be established as required in CMC 18.65.350;

(c) A habitat conservation area may be altered only if the proposed alteration of the habitat or the mitigation proposed does not reduce the quantitative and qualitative functions and values of the habitat, except in accordance with this chapter;

(d) Removal of any native vegetation or woody debris from the habitat conservation area may be allowed only as part of an approved habitat management plan, critical areas report, and/or alteration plan;

(e) Low impact uses and development activities which are consistent with the purpose and function of the habitat conservation area and do not detract from its integrity may be permitted within the conservation area depending on the sensitivity of the habitat area. Examples of uses and development activities which may be permitted in appropriate cases include trails that are pervious, viewing platforms, stormwater management facilities such as grass-lined swales, utility easements and other similar uses and development activities; provided, that any impacts to the habitat resulting from such permitted facilities shall be fully mitigated;

(f) Whenever development activities are proposed in or adjacent to a habitat conservation area with which State or Federally endangered or threatened species have a primary association, such area shall be protected through the application of measures in accordance with a critical areas report prepared by a qualified professional with guidance provided by the appropriate State and/or Federal agencies;

(g) Plant, wildlife, or fish species not indigenous to the coastal region of the Pacific Northwest shall not be introduced into habitat conservation areas unless authorized by this chapter and by any required State or Federal permit or approval;

(h) Mitigation sites shall be located to achieve contiguous wildlife habitat corridors in accordance with a mitigation plan that is part of an approved critical areas report to minimize the isolating effects of development on habitat areas, so long as mitigation of aquatic habitat is located within the same aquatic ecosystem as the area disturbed;

(i) The Director shall condition approvals of development activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary, to minimize or mitigate any potential adverse impacts. Conditions may include, but are not limited to, the following:

- (i) Establishment of buffer zones;
- (ii) Preservation of critically important vegetation;
- (iii) Limitation of public access to the habitat area, including fencing to deter unauthorized access;
- (iv) Seasonal restriction of development activities;
- (v) Establishment of a duration and timetable for periodic review of mitigation activities; and
- (vi) Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation; and

(j) Mitigation of alterations to habitat conservation areas shall achieve equivalent or greater biologic functions, and shall include mitigation for adverse impacts from the proposed development as appropriate. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per-function basis. (Ord. 06-17 § 4 (Exh. B))

**18.65.395 Fish and wildlife habitat corridors and networks.**

On development proposal sites that contain Type F or Np streams and/or wetlands with a high habitat score greater than or equal to seven, that are also located within 200 feet of an on-site or off-site Type F or Np stream and/or wetland with a high habitat score greater than or equal to seven, a fish and wildlife habitat corridor shall be set aside and protected as follows:

(1) New development proposals, subdivisions, short subdivisions, commercial site plans, and binding site plans shall place the corridor in a contiguous permanent critical area tract with all developable lots sited on the remaining portion of the project site.

(2) The fish and wildlife habitat corridor shall be sited on the development in order to meet the following conditions, where feasible:

- (a) Forms one contiguous tract that connects on-site high value habitat areas to other on-site or off-site high value habitat areas;
- (b) New development proposals shall provide a minimum fish and wildlife habitat corridor width of 300 feet or a corridor width that is consistent with an approved habitat management plan. The corridor width should not be less than 150 feet wide at any point;
- (c) New development proposals on sites constrained by a fish and wildlife habitat corridor and where development already exists shall maintain a minimum fish and wildlife habitat corridor width of 300 feet unless, through an approved habitat management plan, it can be shown that a lesser habitat corridor width supports and maintains the corridor's function and value;

- (d) Be contiguous with and include and/or connect critical areas, buffers, wildlife habitat corridors, native growth protection easements, and open space tracts or wooded areas on site or on adjacent properties, if present; and
  - (e) The Director may modify corridor widths based on supporting documentation from an approved habitat management plan.
- (3) Fish and wildlife habitat corridors do not parallel Type Np streams, except as required to provide a connection between two features as described above.
- (4) A management plan for the wildlife corridor contained within a tract or tracts shall be prepared that specifies the permissible extent of recreation, forestry or other uses compatible with preserving and enhancing the wildlife habitat value of the tract or tracts. The management plan shall be reviewed and approved by the Department. The approved management plan for a development proposal shall be contained within and recorded on title or with the covenants, conditions and restrictions (CCRs). If the wildlife corridor is contained in a conservation easement, a management plan is not required, but may be submitted to the Department for review and approval and recorded with the conservation easement.
- (5) Clearing within the wildlife corridor contained in a tract or tracts shall be limited to that allowed by the management plan or as otherwise allowed by this chapter. No clearing, including the removal of woody debris, shall be allowed within a wildlife corridor contained within a conservation easement on individual lots, unless the property owner has an approved management plan.
- (6) Where feasible, a homeowners' association or other entity capable of long-term maintenance and operation shall be established to monitor and assure compliance with the management plan. The association shall provide homeowners with information on the Washington Department of Fish and Wildlife's backyard wildlife sanctuary program.
- (7) Low impact uses and activities which are consistent with the purpose and function of the habitat corridor and do not detract from its integrity may be permitted within the corridor depending on the sensitivity of the habitat area. Examples of uses and activities which may be permitted in appropriate cases include trails that are pervious, viewing platforms, stormwater management facilities such as grass-lined swales, utility easements and other similar uses, or activities otherwise described and approved by the Washington Department of Fish and Wildlife; provided, that any impacts to the corridor resulting from such permitted facilities shall be fully mitigated.
- (8) At the discretion of the Director, these standards may be waived or reduced for public facilities such as public schools, fire stations, public parks, and public road projects.
- (9) The wildlife corridor tract or easement shall be permanently marked and fenced consistent with the methods contained in CMC 18.65.160 and the City's Design and Construction Standards in effect at the time of application. (Ord. 06-17 § 4 (Exh. B))

**18.65.400 Fish and wildlife habitat conservation areas – Modification.**

Upon request of the applicant and based upon a site-specific critical areas report that includes, but is not limited to, an evaluation of the tolerance of the animals occupying the nest or rookery to the existing level of development in the vicinity of the nest or rookery, the Director may approve a reduction of the wildlife habitat conservation area or corridor for any species listed on the current version of the Washington Department of Fish and Wildlife Priority Habitat and Species List for Region IV, as amended. (Ord. 06-17 § 4 (Exh. B))

**18.65.405 Fish and wildlife habitat conservation areas – Mitigation standards.**

- (1) Relevant standards for other critical areas (such as wetlands and streams) that may be located within the fish and wildlife habitat conservation area, as determined by the City, shall be incorporated into mitigation plans.
- (2) The following additional mitigation measures shall be reflected in fish and wildlife habitat conservation area mitigation planning:
  - (a) The maintenance and protection of habitat values shall be considered a priority in site planning and design;

- (b) Buildings and structures shall be located in a manner that preserves and minimizes adverse impacts to important habitat areas. This may include clustering buildings and locating fences outside of habitat areas;
- (c) Retained habitat shall be integrated into open space and landscaping;
- (d) Where possible, habitat and vegetated open space shall be consolidated in contiguous blocks;
- (e) Habitat shall be located contiguous to other habitat areas, open space or landscaped areas both on and off site to contribute to a continuous system or corridor that provides connections to adjacent habitat areas;
- (f) Native species shall be used in any landscaping of disturbed or undeveloped areas and in any enhancement of habitat or buffers;
- (g) The heterogeneity and structural diversity of vegetation shall be emphasized in landscaping; and
- (h) Significant trees, preferably in groups, shall be preserved, consistent with the requirements of Chapter 18.45 CMC. (Ord. 06-17 § 4 (Exh. B))

**18.65.410 Fish and wildlife habitat conservation areas – Additional provisions for critical areas report.**

In addition to the general critical areas report requirements of CMC 18.65.110, proposals to modify the performance standards for habitat for species of local importance must meet the requirements of this section.

(1) Habitat Assessment. A habitat assessment is an investigation of the site to evaluate the potential presence or absence of designated species of local importance or habitat for the species of local importance. A critical area report for habitat for species of local importance shall contain an assessment of habitats including the following site- and proposal-related information at a minimum:

- (a) Identification of any species of local importance including but not limited to endangered, threatened, sensitive or candidate species that has a primary association with habitat on or adjacent to the project area, and an assessment of potential project impacts to the species;
- (b) Detailed description of vegetation on and adjacent to the site;
- (c) A discussion of any Federal, State, or local special management recommendations, including Washington Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the site;
- (d) A detailed discussion of the direct and indirect potential impacts on habitat by the project, including potential impacts to water quality;
- (e) A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing habitats and coordination and efforts to restore any habitat that was degraded prior to the current proposed use or activity and to be conducted in accordance with the mitigation sequence set forth in CMC 18.65.120;
- (f) A discussion of ongoing management practices that will protect habitat after the site has been developed, including proposed monitoring, maintenance and adaptive management programs;
- (g) When appropriate due to the type of habitat or species present or the site conditions, the Director may also require the habitat management plan to include an evaluation by the Washington Department of Fish and Wildlife, local Native American Indian Tribe, or other qualified professional regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate; and
- (h) When appropriate, information from the Washington Department of Fish and Wildlife's backyard wildlife sanctuary program shall be included. (Ord. 06-17 § 4 (Exh. B))

**18.65.420 Process to identify additional species and habitat of local importance.**

(1) Designation Process. Any person may nominate for designation, or propose de-designation, of a species or habitat of local importance in accordance with a Type IV permit process pursuant to CMC Title 14. Additional species and habitat of local importance may be designated pursuant to this section.

(2) Decision Criteria. A species may be designated a species of local importance only if it demonstrates the following characteristics:

- (a) Local populations of native species are in danger of extirpation based on existing trends:
  - (i) Local populations of native species that are likely to become endangered; or
  - (ii) Local populations of native species that are vulnerable or declining;
- (b) The species or habitat has recreational, commercial, cultural, tribal, or other special value;
- (c) Long-term persistence of a species is dependent on the protection of the species or habitat through the provisions of this chapter;
- (d) Protection by other County, State, or Federal polices, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat in the City; and
- (e) Without protection, there is a likelihood that the species or habitat will be diminished over the long term.

(3) Nominations for habitats or species of local importance shall include the following:

- (a) Identification of the habitat or species being nominated. Identification shall include, at a minimum, the following information:
  - (i) A legible map or maps of species and/or habitat location(s);
  - (ii) Specific features to be protected (for example, nest sites, breeding areas, nurseries, vegetation communities) or, if a habitat is being nominated in its entirety, a description of the habitat, its structure, function, species, and geographic boundaries of the habitat(s) encompassed, and any other relevant attributes; and
  - (iii) An analysis of the habitat and hydrological functions and location of the area relative to already designated critical areas and the nearest similar habitat if known;
  - (iv) The Director has the authority to alter these requirements if he/she determines that alternative methods of identification or characterization are more accurate or reliable;
- (b) Proposed management strategies for the species or habitats. Management strategies must be supported by best available science;
- (c) Identification of effects on property ownership and use; and
- (d) The Director may, on a case-by-case basis, require additional information needed to evaluate the resource being nominated.

(4) Effect of Designation. Designation of a species and habitat of local importance under this section shall not impact projects or proposals with a vested application or approved permit. (Ord. 06-17 § 4 (Exh. B))

**18.65.430 Fish protection measures.**

(1) All activities, uses, and alterations proposed to be located in water bodies used by fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, the following standards:

- (a) Activities shall be timed to occur only during the allowable work window as designated by the Washington Department of Fish and Wildlife;
- (b) The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas; and
- (c) Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved critical area report.

(2) Structures that prevent the migration of fish shall not be allowed in the portion of water bodies currently or historically used by fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed. (Ord. 06-17 § 4 (Exh. B))

**18.65.440 Endangered, threatened, and sensitive species protection measures.**

- (1) No development shall be allowed within a habitat conservation area or buffer where State or Federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a management plan established by Washington Department of Fish and Wildlife or applicable State or Federal agency.
- (2) Whenever activities are proposed adjacent to a habitat conservation area where State or Federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with a critical area report prepared by a qualified professional and approved by the City. Approval for alteration of land adjacent to the habitat conservation area or its buffer shall not occur prior to consultation with the Washington Department of Fish and Wildlife and other appropriate Federal or State agencies. (Ord. 06-17 § 4 (Exh. B))

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<sup>1</sup> Code reviser's note: Ord. 06-17 adds this section as 18.65.360. It has been editorially renumbered to prevent duplication of numbering.

<sup>2</sup> ~~Covington's SMP (Ord. No. 05-11), as set forth in Chapter 16.05 CMC, should be consulted for any activities within the shoreline jurisdiction. In Covington, three areas have been designated as areas within a shoreline jurisdiction: Pipe Lake, the lower reaches of Jenkins Creek, and the lower reaches of Big Soos Creek. Critical area regulations for activities within the shoreline jurisdiction are located in Appendix A of the SMP.~~