

## Title 16

# DEVELOPMENT REGULATIONS\*

\* Prior ordinance history: Ords. 381, 381A, 381B, 381C, 381D, 381F, 381I, 381K, 381L, 381M, 381T, 395, 428, 501, 506, 510, 513, 520, 521, 527 and 532.

### Chapter 16.04 GENERAL PROVISIONS AND DEFINITIONS

#### **16.04.010 Title.**

This title shall be known as the "Coupeville development regulations."

(Ord. 566 § 2 Exh. A (part), 1998)

#### **16.04.020 Purpose.**

The text of this title and official maps herein adopted are established as one means of implementing the comprehensive plans for the Town of Coupeville; to serve the public health, safety and general welfare and to provide economic, social and aesthetic advantages resulting from a planned use of land resources; to provide for orderly growth within the Town and its extraterritorial planning area; and to retain the unique and open character of Coupeville's small town qualities and the area's historic rural land use patterns.

(Ord. 566 § 2 Exh. A (part), 1998)

#### **16.04.030 Applicability.**

This title shall be applicable to all lands within the Town of Coupeville.

(Ord. 566 § 2 Exh. A (part), 1998)

#### **16.04.040 Authority.**

The Coupeville development regulations are enacted under the authority granted the Town of Coupeville by the Constitution of the state of Washington, the Municipal Code (RCW 35) and other sections of the Revised Code of Washington.

(Ord. 566 § 2 Exh. A (part), 1998)

#### **16.04.050 Severability.**

The Coupeville development regulations enacted under divisions, chapters, sections, clauses and other portions, is declared to be severable. If any division, chapter, section, paragraph, clause or other portion or any part adopted by reference is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of the development regulations.

(Ord. 566 § 2 Exh. A (part), 1998)

**16.04.060 Definitions.**

- A. Interpretation Generally. General interpretation as used in this title:
  - 1. Words in the present tense include the future tense;
  - 2. Words in the singular number include the plural;
  - 3. The word "person" may be taken for "persons," "association," "firm," "partnership" or "corporation";
  - 4. The word "shall" is always mandatory. The words "may" or "should" are permissive;
  - 5. The word "lot" includes the words "plot" or "parcel";
  - 6. The word "used" or "occupied" as applied to any land or building, shall be construed to include the words "intended, arranged, or designed to be used or occupied."
- B. Specific Definitions:

**A**

"Accessory building or structure" means a building or structure, or part of a building or structure which is subordinate to, and customarily incidental to that of the main building or structure on the same lot.

"Accessory dwelling unit" (ADU) means a building or portion of a building, containing provisions for sleeping, eating, cooking and sanitation for not more than one household, which is accessory to a residential principal use.

- "Detached ADU": A separate and standalone residential unit located on the same lot as the principal building.
- "Attached ADU": A residential unit added as an addition to the principal residential building.
- "Internal ADU": Conversion of existing space within the principal residential building into a sperate living space that is a fully functional. These units must meet all building codes and shall be considered separate and independent residential units from the primary structure.

"Adequate" means at or above the level of service standard specified in the current version of the Coupeville comprehensive plan.

"Adjacent" means the condition where a property shares a common border or portion of a border with another property or is across a public right-of-way or private access tract and would abut if the property lines are extended across the public right-of-way or private access tract.

"Administrator" means the town planner or his/her authorized agent, who is authorized to administer the provisions of this title.

"Adult business" means an establishment consisting, or including or having characteristics involving conduct or materials depicting, describing or relating to sexual activities or anatomical genital areas.

"Adult family home" means a residential care facility for six or fewer adults, and operated under a license as provided for in RCW 18.48.010.

"Affordable housing" means, unless the context clearly indicates otherwise, residential housing whose monthly costs, including utilities other than telephone, do not exceed thirty percent of the gross monthly income of a household:

- (a) For rental housing, 60 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development; or

- (b) For owner-occupied housing, 80 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

Agriculture, Small-Scale. "Small-scale agriculture" means the tilling of soil, raising of crops, horticulture, viticulture, livestock, farming, poultry, dairying, and animal husbandry including all uses customarily incidental thereto.

"Alteration" means a change or rearrangement of the structural parts of existing facilities, or an enlargement by extending the size or increasing the height or depth, or the moving from one location to another. In buildings for business, commercial, industrial or similar uses, the installation or rearrangement of partitions affecting more than one-third of a single floor area shall be considered an alteration.

"Applicant" means a person or entity that has applied for a project permit.

"Aquaculture" means the culture or farming for fish food, shellfish or other aquatic plants and animals but not including the harvesting of natural resources.

"Assisted care facility" means an establishment which provides living quarters and a variety of personal care and supportive health care to individuals who are unable to live independently due to infirmity of age, physical or mental handicap, but who do not need the skilled nursing care of an extended care facility.

"Automobile sales" means a place outside a building where four or more automobiles, used or new, are offered for sale.

## B

"Basement" means that portion of a building partly underground and having at least one-half of its perimeter length more than five feet below the adjoining finished grade.

"Battery electric vehicle (BEV)" means any vehicle that operates exclusively on electrical energy from an off-board source that is stored in the vehicle's batteries, and produces zero tailpipe emissions or pollution when stationary or operating.

"Bed and breakfast inn" means a private residence, portion thereof, or accessory structure, where sleeping quarters are provided as transient accommodation and food service may be provided to guests consistent with requirements and limitations in this title.

"Binding site plan" means a drawing to a scale specified by local ordinance which: (a) identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by Town regulations; (b) contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the local government body having authority to approve the site plan; and (c) contains provisions making any development be in conformity with the site plan.

"Boarding or rooming house" means a dwelling in which not more than four roomers, lodgers and/or boarders are housed or fed.

"Building" means any structure having a roof for the shelter of persons or property, but excluding all forms of vehicles even though immobilized. When a use is required to be within a building, or where special authority granted pursuant to this title requires that a use shall be within an entirely enclosed building, then the term "building" means one so designed and constructed that all exterior walls of the structure shall be solid from the ground to the roof line, and shall contain no openings except for windows and doors which are designed so that they may be closed.

"Building area" means the portion of a lot within which a principal or accessory building or structure may be built, bounded by the minimum required setbacks.

"Building footprint" means the portion of a lot covered by a principal or accessory building, measure from the outside edge of all structural components greater than forty-two (42) inches in height.

Building, nonconforming. "Nonconforming building" means a building which was lawful at the time the ordinance codified in this title became effective but which use, because of the passage of said ordinance, does not conform to the regulations of the district in which the building exists.

"Building official" means officer charged with enforcement and administration of the building codes or ~~his or her~~ their regular authorized deputy.

"Bulk storage of flammable liquids" means flammable liquid stored in a tank or other container of over three hundred (300) gallons capacity.

### C

"Capacity" means the maximum extent to which a concurrency facility or service provider can supply that facility or service without further expansion.

"Capacity, available" means facility or service capacity above and beyond the minimum levels of service established in the comprehensive plan.

"Capacity, notice of" means notification issued by the Coupeville town planner indicating that the anticipated need for concurrency facilities and services by a specific project permit can be accommodated within the available and planned capacity. The notice of capacity may be conditioned or have an expiration date.

"Capacity, planned" means capacity for a concurrency facility or service which does not yet exist, but for which construction, expansion or modification is identified as a capital improvement project in the capital facilities element of the comprehensive plan and scheduled to be completed within six years.

"Capital improvement" means any expenditure for physical facilities for government.

"Carport" means a structure to house or protect motor vehicles owned or operated by occupants of the main building and which is at least forty (40) percent of the total area of its sides, open to the weather.

"Certificate of occupancy" means a permit to occupy a premises issued by the building official after inspection has verified compliance with the requirements and provisions of this title and applicable building and fire codes.

"Certificate to plat" means a certificate prepared by a title company authorized by the laws of the state of Washington to write the same, showing the names of all persons having any record title interest in the land to be platted together with the nature of their respective interests therein.

~~"Class I Group Home" means a small residential facility that provides care, supervision, or treatment to a limited number of individuals in a non-institutional setting and are generally integrated into residential neighborhoods and offer services for people with special needs, such as individuals with physical or developmental disabilities, mental health conditions, or those recovering from substance abuse.~~

~~"Class II Group Home" means a residential facility that typically houses individuals who may have physical or developmental disabilities, mental health issues, or other special needs and are licensed and regulated by the Washington State Department of Social and Health Services (DSHS) or other appropriate agencies, depending on the specific population served.~~

"Clinic" means a building or portion of a building containing offices for providing medical, dental or psychiatric services for out-patient only.

"Closed record appeal" means an administrative appeal to the town council based on the existing record. No or limited new evidence or information is allowed to be submitted.

"Club" means an incorporated or unincorporated association of persons organized for a social, fraternal, athletic, educational, literary or charitable purpose. Property occupied by a club shall be deemed to be semiprivate in character and shall be subject to the regulations governing public buildings and places, excluding groups organized primarily to render a service which is normally considered a business.

"Commercial use" means an activity with goods, merchandise or services for sale or involving a rental fee.

"Commercial vehicle" means a motor vehicle used for purposes other than a household car, such as a taxi, delivery or service vehicle.

"Commission" means the planning commission of the Town of Coupeville.

"Common Area" means portion of a Unit Lot Subdivision or subdivision that are not owned by individual unit lot owners but are owned and maintained by a collective ownership entity.

"Comprehensive plan" means the adopted guide for land use development and for the design and location of public facilities which sets forth goals and policies for future development of the community.

"Concurrency facilities and services" means those public facilities and services for which a concurrency test is required in accordance with the provisions of this chapter. The list of concurrency facilities and services may be found in the capital facilities element of the comprehensive plan.

"Concurrency test" means an evaluation of a project permit which compares the anticipated impact on concurrency facilities and services against the available and planned capacity of the concurrency facilities and services.

"Conditional use permit" means a documental evidence of authority granted by the town council to locate a conditional use at a particular location.

"Condominium" means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is not a condominium unless the undivided interests in the common elements are vested in the unit owners, and unless a declaration and a survey map and plans have been recorded pursuant to RCW 64.34.

"Condominium apartment" means the building or portion of a building arranged or designed to be occupied as three or more separate dwelling units where units are for purchase or lease.

"Congregate care retirement facility" means an establishment which provides self-contained efficiency living quarters and the option of a range of personal care and support offered on a congregate level, such as eating or leisure services. Limited health care may also be available to individuals who require periodic care.

"Contiguous property" means land adjoining and touching other property having the same owner regardless of whether or not portions of the property have separate tax lot numbers or were purchased at different times.

"Continuing care retirement facility" means a place or residence for several families or individuals in dwelling units or rooms, either rented, cooperative, or condominium, which may feature services to retired persons ranging from semi-independent living to extended care and support.

"Contract rezone" means a technique which attaches specific conditions in connection to a rezoning which binds both the contractor and the Town to terms not specifically spelled out in the zoning ordinance.

"Cottage" means a small, detached dwelling unit that is developed at a density greater than or equal to the underlying zone.

"Cottage housing development" means detached single-household dwelling in a cluster of dwelling units around a central open space and has the following characteristics:

1. Each unit is of a size and function suitable for a single person or small household;
2. Each unit has the construction characteristics of a traditional "single-family" house;
3. Cottages are units in a condominium or common interest community and may share use of a community building that may include such common uses as a party room, a tool shed, a workshop, a studio or similar types of uses. Separate covered common parking structures shall also be owned in common;
4. The site is designed with a coherent concept in mind, including: shared functional open space, off-street parking, access within the site and from the site, and consistent landscaping.

"Council" means the town council of the Town of Coupeville.

"Covenant" means a private legal restriction on the use of land contained in the deed to the property or otherwise formally recorded.

"Critical areas" means the following areas and ecosystems: wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas.

"Cul-de-sac" means a street opening at one end and having a turnaround at the other end.

## D

"Day" means one calendar day for the purpose of counting days.

"Day care center" means a state-licensed facility, which may or may not be located in a residence, providing supervised care for thirteen (13) or more children for periods of less than twenty-four (24) hours.

Day Care Center, Family. "Family day care center" means a state-licensed home which provides supervision for twelve (12) or fewer children for periods of less than twenty-four (24) hours.

"Dedication" means the deliberate appropriation of land or rights in land by its owner for the general or public use, reserving to the owner no other rights than such as are compatible with the full exercise and enjoyment of the public use to which the property has been devoted. The intention to dedicate shall be evidenced by the owner by the presentment for filing of final plat or short plat showing the dedication thereon; and the acceptance by the public shall be evidenced by the approval of such plat for filing by the Town of Coupeville.

"Density" means the number of permitted dwelling units allowed to exist on each acre of land or fraction thereof, in accordance with Section 16.16.070(C) of this title.

"Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

"Development standards" means controls placed by the city on building or site design and development including parking requirements, floor area allowances, density allowances, minimum lot coverage, and other dimensional standards.

"Duplex" means a building containing exactly two dwelling units.

"Dwelling unit" means a building or portion of a building that contains living facilities, including provisions for sleeping, eating, cooking and sanitation, for not more than one household. The term "dwelling unit" does not

include rooms in a motel, hotel, bed and breakfast inn, rooming house, continuing care facility, adult family home, or group home.

Dwelling unit, multifamily. "Multifamily dwelling unit" means a room or suite of two or more rooms in a multiple-family or commercial building, occupied or suitable for occupancy as a residence for one household.

## E

"Easement" means a grant by the property owner to the public, a corporation, or persons of the use of a strip or parcel of land for a specific purpose and on or over which the owner will not place or erect any permanent improvements which would interfere with the free exercising of that right.

"Electric scooters and motorcycles" means any two-wheel vehicle that operates exclusively on electrical energy from an off-board source that is stored in the vehicle's batteries and produces zero emissions or pollution when stationary or operating.

"Electric vehicle" means any vehicle that operates, either partially or exclusively, on electrical energy from the grid or an off-board source that is stored onboard for motive purpose. "Electric vehicle" includes: (1) a battery electric vehicle; (2) a plug-in hybrid electric vehicle; (3) a neighborhood electric vehicle; and (4) a medium-speed electric vehicle.

"Electric vehicle charging station" means a public or private parking space that is served by battery charging station equipment that has as its primary purpose the transfer of electric energy (by conductive or inductive means) to a battery or other energy storage device in an electric vehicle. An electric vehicle charging station equipped with level 1 or level 2 charging equipment is permitted outright as an accessory use to any principal use.

"Electric vehicle charging station—Public" means an electric vehicle charging station that is (1) publicly owned and publicly available (e.g., park-and-ride parking, public library parking lot, on-street parking) or (2) privately owned and publicly available (e.g., shopping center parking, non-reserved parking in multi-family parking lots).

"Electric vehicle charging station—Restricted" means an electric vehicle charging station that is (1) privately owned and restricted access (e.g., single-household, executive parking, designated employee parking) or (2) publicly owned and restricted (e.g., fleet parking with no access to the general public).

"Electric vehicle parking space" means any marked parking space that identifies the use to be exclusively for the parking of an electric vehicle.

"Engineer" means a registered professional civil engineer authorized to practice engineering in the state of Washington.

"Extended care retirement facility" means a congregate care facility in which nursing, dietary and other personal services are furnished to convalescents, invalids, and aged persons but in which congregate care facilities are kept no persons suffering from an acute mental sickness or from a contagious or communicable disease and in which no persons are kept or served who normally would be admitted to a mental hospital.

## F

"Facility and service provider" means the department, district or entity responsible for providing concurrency facilities and services identified in the comprehensive plan. Examples include, but are not limited to, the Town of Coupeville, Coupeville School District No. 204, Central Whidbey Fire and Rescue, Sno-Isle Regional Library District and the Port of Coupeville.

~~"Family day care center" means a state-licensed home which provides supervision for twelve (12) or fewer children for periods of less than twenty-four (24) hours.~~

"Final plat" means the final drawing of the subdivision and dedication prepared for filing of record with the Island County auditor, and containing all elements and requirements set forth in Chapter 16.16 of the Coupeville Town Code.

"Floor area" means the sum or the gross horizontal areas of the floors of a building or buildings, measured from the exterior faces of exterior walls and from the centerline or division walls. Floor area shall include: basement space, elevator shafts and stairwells at each floor, mechanical equipment rooms or attic spaces with headroom of seven feet six inches or more, penthouse floors, interior balconies and mezzanines and enclosed porches. Floor area shall not include: accessory water tanks and cooling towers, mechanical equipment or attic spaces with headroom of less than seven feet six inches, exterior steps or stairs, terraces, breezeways and open spaces.

## G

Garage, commercial. "Commercial garage" means a building or portion thereof designed and used for storage, repair or servicing of motor vehicles.

Garage, private. "Private garage" means an accessory building or an accessory portion of the main building designed and/or used for noncommercial shelter or storage of vehicles.

"Gasoline service station" means any area of land, including the structure thereon, that is used for the sale of gasoline or other motor vehicles, oil, lubricants or auto accessories and other minor servicing.

"Grade" means the average of the finished ground level at the center of all walls of a building. In case walls are parallel to and within five feet of the street side of a sidewalk, the above-ground level shall be measured at the sidewalks.

"Greenbelts or buffer parks" means a strip or parcel of land, privately restricted or publicly dedicated as open space for the purpose of protecting and enhancing the environment.

Greenhouse, commercial. "Commercial greenhouse" means an establishment where flowers, shrubbery, vegetables, trees and other horticultural products are grown in the open and in an enclosed building for sale on a retail or wholesale basis.

"Group home" means a facility, including foster family homes, halfway houses and group homes, licensed by the state of Washington Department of Social and Health Services and maintained and operated for the care of juveniles, adults or both on a twenty-four (24) hour basis.

[Group Home, Class I.](#) "Class I Group Home" means a small residential facility that provides care, supervision, or treatment to a limited number of individuals in a non-institutional setting and are generally integrated into residential neighborhoods and offer services for people with special needs, such as individuals with physical or developmental disabilities, mental health conditions, or those recovering from substance abuse.

[Group Home, Class II.](#) "Class II Group Home" means a residential facility that typically houses individuals who may have physical or developmental disabilities, mental health issues, or other special needs and are licensed and regulated by the Washington State Department of Social and Health Services (DSHS) or other appropriate agencies, depending on the specific population served.

"Guest room" means a separate room or suite that may be separately rented for transient accommodation sleeping quarters as part of a hotel, motel, or licensed bed and breakfast inn.

## H

"Height" means the measurement from the vertical datum to the highest point of the roof line. On any building constructed seaward of mean higher high water, the vertical datum shall be the elevation of the extreme high tide, as shown on the official United States tide table for the year in which the permit is issued.

"Historic buildings and structures" means those buildings and structures determined to be significant in the Building and Landscape Inventory (1995) prepared for the Ebey's Landing National Historical Reserve as updated by the Town and County. The Building and Landscape Inventory may be updated by the Town and County on an annual basis, following review by the trust board.

Home occupation, Class I. "Class I home occupation" means an accessory and subordinate use carried out for gain or profit within a principal dwelling unit or building accessory to the principal dwelling unit. Class I home occupations have a negligible impact on the surrounding residential properties.

Home occupation, Class II. "Class II home occupation" means an accessory and subordinate use carried out for gain or profit within a principal dwelling unit or a building accessory to the principal dwelling unit. Class II home occupations have a minor impact on the surrounding residential properties.

"Homeowner's Association" A legal entity created to manage and maintain common areas and shared facilities.

"Hospital" means a quasi-public establishment which provides accommodations, facilities and services over a continuous period of twenty-four (24) hours or more, for observation, diagnosis and care, of individuals, suffering from illness, injury, deformity, or abnormality, or from any condition requiring obstetrical, medical or surgical services.

"Hotel" means a building, or portion thereof, in which guest rooms are provided and offered to the public for compensation as transient accommodation. A hotel is distinguished from a motel by the provision of common entrances, which lead to interior corridors giving access to guest rooms.

"Household" mean one or more persons living together in a single dwelling unit as a family, or the functional equivalent of a family, sharing common access to and use of the living, cooking, eating, and sanitation facilities within the dwelling unit. The persons comprising a household may include:

- A family, which typically consists of one or more individuals related by blood, marriage, adoption, or legal guardianship.
- For the purposes of this definition and notwithstanding any other provision of this code, children with familial status within the meaning of Title 42 United States Code Section 3602(k) and persons with handicaps within the meaning of Title 42 United States Code Section 3602(h) will not be counted as unrelated persons.
- Adult family homes, as defined herein, shall be included within this definition of family.
- Facilities housing individuals who are incarcerated as the result of a conviction or other court order shall not be included within this definition of "Household".

Housing, Permanent Supportive. "Permanent supportive housing" means subsidized, leased housing with no limit on length of stay that prioritizes people who need comprehensive support services to retain tenancy and utilizes admissions practices designed to use lower barriers to entry than would be typical for other subsidized or unsubsidized rental housing, especially related to rental history, criminal history, and personal behaviors. Permanent supportive housing is paired with on-site or off-site voluntary services designed to support a person living with a complex and disabling behavioral health or physical health condition who was experiencing homelessness or was at imminent risk of homelessness prior to moving into housing to retain their housing and be a successful tenant in a housing arrangement, improve the resident's health status, and connect the resident of the housing with community-based health care, treatment, or employment services.

Housing, Transitional Housing. "Transitional housing" means a project that provides housing and supportive services to homeless persons or families for up to two years and that has as its purpose facilitating the movement of homeless persons and families into independent living.

Housing, Emergency. "Emergency housing" means a project that provides housing and supportive services to homeless persons or families for up to sixty days.

I

Industry, light. "Light industry" means the manufacture and assembly of light and small items made from previously repaired materials and includes operations which do not create noise, smoke, odor, vibration or other objectionable nuisances to the extent that they are detrimental to surrounding uses.

J

"Junk yard" means a lot, land or structure, or part thereof, used for the collecting, storage and sale of waste paper, rags, scrap metal or discarded material or for the collecting, dismantling, storage, salvaging, handling or sale of parts of machinery or vehicles not in running condition. "Junk yard" includes an auto wrecking yard but does not include uses established entirely within an enclosed building.

K

L

"Landscape plan" means a component of a development plan on which is shown proposed landscape species, proposals for protection of existing vegetation during and after construction, proposed treatment of hard and soft surfaces, proposed decorative features, existing and proposed topography, buffers and screening devices.

"Legal access" means access to a dedicated street or road which is connected to and a part of the legally dedicated improved transportation network of the Town.

"Level of service standard" means the minimum level of service specified for a particular concurrency facility or service in the current comprehensive plan.

"Local improvement district (LID)" means a special district whereby property owners representing a majority can make an improvement benefiting their neighborhood and distribute the costs equitably among all owners.

"Lot" means a single tract of land no matter how legally described, whether by metes and bounds and/or by lot or lots and block designations in a recorded plat, which at the time of applying for a building permit is designated by its owner or developer as the tract to be used, developed or built upon as a unit of land under single ownership or control and assigned to the particular use for which the building permit is being secured and having frontage on or access to a public street.

"Lot area" means the total horizontal area within the boundary lines of a lot, excluding access easements.

"Lot combination" means the elimination of interior lot lines not involving the vacation of dedicated streets, easements or public areas

Lot, conforming. "Conforming lot" means a fractional part of subdivided lands having fixed boundaries and being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include tracts, parcels or combinations of tracts or parcels, meeting the requirements of Chapter 16.12 of the Coueville Town Code.

Lot, corner. "Corner lot" means a lot at the junction of and fronting on two or more intersecting streets.

"Lot coverage" means that portion of a lot covered by buildings or structures over forty-two (42) inches in height.

"Lot depth" is the mean dimension of the lot from the front street line to the rear line. The depth of such lot is measured on a line approximately perpendicular to the front street and midway between the side lines of such lot.

Lot, interior. "Interior lot" means a lot that fronts on one street only.

"Lot line" means the fixed boundaries of a lot described by survey located on a plat filed for record.

Lot, Parent "Parent Lot" means a lot or parcel from which unit lots are created within a unit lot subdivision.

Lot line, rear. "Rear lot line" means that boundary of a lot which is most parallel to the street lot line and does not intersect the front lot line. In the case of a triangular lot, a line twenty (20) feet in length within the lot parallel to and at the maximum distance from the street lot line.

Lot line, side. "Side lot line" means that boundary of a lot which is neither a street or rear lot line.

Lot line, street. "Street lot line" means that boundary of a lot measured along the edge of the right-of-way of a dedicated street, private street or access easement, which abuts that line. In the case of a corner lot, either line which meets the above description provided the other is considered to be a side lot line.

Lot, nonconforming. "Nonconforming lot" means a lawfully subdivided lot which does not conform to the provisions of this title which pertain to the zoning district in which the lot is located.

Lot, through. "Through lot" means a lot that fronts on two streets that do not intersect on the parcel's lot lines.

Lot, Unit "Unit lot" or "Child lot" means a legally defined portion of Unit Lot Subdivision intended for individual ownership or common ownership between unit lot owners.

"Lot width" means the dimension of the lot line at the street or in an irregularly shaped lot the dimension across the lot at the building line, or in a corner lot the narrow dimension of the lot at a street or building line.

## M

"Manufactured home" means a structure, transportable in one or more sections upon the public streets and highways on its own running gear, which, when erected on site, is designed to be connected to required utilities and utilized as a dwelling which is built to HUD standards and manufactured after June 15, 1976, and bears the insignia of Washington State Department of Labor and Industries.

"Manufactured home park" means any tract of land that is divided into rental spaces under common ownership or management for the purpose of locating two or more manufactured homes for dwelling purposes.

"Marina" means a facility which provides boat launching, storage, supplies and services for boats.

"Medium-speed electric vehicle" means a self-propelled, electrically-powered four-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one mile is more than twenty-five (25) miles per hour but not more than thirty-five (35) miles per hour and otherwise meets or exceeds the federal regulations set forth in 49 C.F.R. Sec. 571.500.

"Microbrewery" means an establishment or premises designed for the manufacture of beer, and using ten thousand (10,000) or less gallons of water during an average month.

"Middle housing" means buildings that are compatible in scale, form, and character with traditional "single-family" houses and contain two or more attached, stacked, or clustered homes including duplexes, triplexes, fourplexes, townhouses, cottage housing, and Accessory Dwelling Units.

"Mixed use" means a combination of residential and nonresidential uses within the same building or site as part of an integrated development with functional interrelationships and coherent physical design.

"Monument" means a permanent survey control point.

"Moorage" means a place to tie up or anchor a boat or vessel.

"Motel" means a building or buildings, or portions thereof, in which guest rooms are provided and offered to the public for compensation as transient accommodation. A motel is distinguished from a hotel by the provision of a separate outside entrance to each guest room.

"Multifamily" means a single building, which contains four or more dwelling units or two or more residential dwelling units in a mixed-use building.

"Museum" means a building or room used primarily for preserving and exhibiting artistic, cultural, historical or scientific objects, and is operated by a non-profit, tax exempt organization.

## N

"Neighborhood electric vehicle" means a self-propelled, electrically-powered four-wheeled motor vehicle whose speed attainable in one mile is more than twenty (20) miles per hour and not more than twenty-five (25) miles per hour and conforms to federal regulations under Title 49 C.F.R. Part 571.500.

"Non-electric vehicle" means any motor vehicle that does not meet the definition of "electric vehicle."

"Nursery school" means a school or organized program for the care and instruction of preschool aged children whether public or private and whether operated for profit or not.

## O

"Off-street parking" means parking facilities for motor vehicles on other than a public street, right-of-way or alley.

"Open record public hearing" means a hearing that creates a record on proposed land use actions through testimony and submission of evidence and information. An open record public hearing may be held on an appeal if no previous hearing has been held on the proposed action.

"Open space" means any part of a lot unobstructed from the ground upward including areas dedicated to the public or deeded to a nonprofit corporation under the laws of the state that has the power to control and funds to maintain said open area.

"Outdoor display" means an open air area used for the display or sale of goods or materials that are being actively marketed for sale, rent or lease. Plant materials kept in open air for sale, rent or lease shall not be considered outdoor display.

"Outdoor storage" means the keeping of goods and materials that are not actively marketed for sale, rent, or lease in an open air or non-walled building or membrane structure in the same place for more than twenty-four (24) hours, excluding the storage of debris or junk.

"Overlay zone" means a set of zoning requirements that are described in the ordinance text, are mapped, and then subsequently imposed in addition to those of the underlying zoning district. The requirements of the overlay zone shall take precedence over similar requirements in the underlying zoning district.

"Owner" means the person or persons, corporation, or other legal entity, holding title to land, or as vendees under land contract, or holding other title or interest in land whether said interest be equitable, legal, joint, reputed, recorded or otherwise.

P

"Parcel" means an area of land shown as a unit or as continuous units on the last preceding county real property tax roll.

"Parking space" means a space within or outside a building used to temporarily park a motor vehicle and having access to a public street or alley.

"Person" means and includes individual, individuals, association, firm, partnership or corporation.

"Planned unit development (PUD)" means a development which is designed and developed as a single entity for a number of dwelling units, the plan for which clusters buildings, provides common open space density increases, and land uses.

"Planning commission" means the planning commission of the Town of Coupeville.

"Plat" means a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys or other divisions and dedications.

"Plug-in hybrid electric vehicle (PHEV)" means an electric vehicle that (1) contains an internal combustion engine and also allows power to be delivered to drive wheels by an electric motor; (2) charges its battery primarily by connecting to the grid or other off-board electrical source; (3) may additionally be able to sustain battery charge using an on-board internal-combustion-driven generator; and (4) has the ability to travel powered by electricity.

"Preliminary short subdivision approval" means approval of the basic design features of a short subdivision, authorizing the preparation and submittal of a short plat for final approval by the Town and recording with the Island County auditor.

"Preliminary subdivision approval" means approval of the basic design features of a subdivision, authorizing the preparation and submittal of a plat for final approval by the Town and recording with the Island County auditor.

"Premises" means a structure or object and grounds to its property lines.

"Preschool" means a school, public or private, whether operated for profit or not, giving preschool instruction to children under the age of seven years.

"Professional office" means an office maintained and used as a place of business, such as doctors, dentists, engineers, attorneys, architects, accountants and other persons providing services.

"Project permit" means any land use or environmental permit or license required from the Town of Coupeville for a project action, as defined in 36.70B.020(4) RCW.

"Public facility" means parks, government buildings, schools, libraries, utility buildings and structures and other capital improvements provided and maintained by public funds for public purposes.

"Public improvements" means street grading or graveling, permanent street and corner monuments, street pavement, curbs and sidewalks, pedestrian ways, water mains, storm and sanitary sewers.

"Public meeting" means an informal opportunity provided prior to a final decision by the planning commission, Ebey's Reserve Historic Preservation Commission (HPC), or town council to obtain public or agency comments on proposed land use actions or in the case of the HPC on the issuance of a certificate of appropriateness. A public meeting does not include an open record hearing, although the proceedings may be recorded and a report or recommendation may be included in the project application file.

"Public services" means schools, police and fire protection, maintenance of utilities, parks and other services, provided with public funds for public use.

"Public utility" means a public service corporation performing some public service and subject to special governmental regulations, or a governmental agency performing similar public services, the services by either of which are paid for directly by the recipients thereof. Such services shall include, but are not limited to, water supply, electric power, sanitary sewer and storm sewer systems for persons and freight.

## Q

"Quasi-public facility" means a facility operated by a nonprofit private community, educational, religious, charitable, medical institution or service organization having the primary purpose of serving the general public. Examples include religious institutions, churches, private schools and museums.

## R

"Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels and that meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

Recreation facility, commercial. "Commercial recreation facility" means a building or property designed and equipped for the conduct of sports and leisure-time activities which is operated as a business and open to the public or members for a fee.

Recreation facility, public. "Public recreation facility" means a facility providing for relaxation, play or amusement operated as a public benefit and not to make a profit. Examples include an assembly or recreation hall, park, playground or playfield, swimming pools or athletic, boat and golf club.

"Recreational vehicle park" means an area or tract of land used or designed to accommodate two or more trailers, or recreational vehicles used for travel, vacation, or recreational purposes, occupied in any one place for thirty (30) days or less.

"Residential development" means the development of land and/or the construction or erection of dwelling units for the purpose of residential occupancy.

"Restaurant" means an establishment where food and drink are prepared, served, and consumed primarily within the principal building.

Restaurant, drive-up. "Drive-up restaurant" means an establishment where food and drink are prepared and served, and consumed either within the principal building or picked up at an outside window and consumed off the premises.

"Resubdivision" means the redelineation of an existing lot, block, tract or parcel of a previously recorded subdivision involving the change of property lines and/or, after vacation, the altering of dedicated streets, easements or public areas.

"Retail sales and service" means establishments engaged in selling goods, merchandise or services to the general public for personal or household consumption.

"Rezone" means a change in classifications of an area from one zoning district to another.

"Riding stables" means any establishment where horses are kept for riding, driving or stabling for compensation or as an accessory use in the operation of a club, association, ranch or similar establishment.

"Right-of-way" means a strip of land dedicated or acquired for use as a road, path or for utility lines.

"Runoff, storm or surface water" means the amount of rain or other water which flows in excess of the amount absorbed by the ground.

**S**

"Sanitary sewage system" means the system which collects sewage from the plumbing systems of buildings and carries it to a sewage treatment plant.

"Scale" means representing proportionate size, amount and/or level of intensity.

"Setback" means the lot area between the lot lines and the building area.

Setback, rear. "Rear setback" means the lot area extending from forty-two (42) inches above the general ground level at the rear lot line to the building line and including the full width of the lot to its side lot lines.

Setback, side. "Side setback" means the lot area extending from eighteen (18) inches above the general level at the front setback to the rear setback and from the building line to the side lot line.

Setback, street. "Street setback" means the lot area extending from forty-two (42) inches above the general ground level at the principal and secondary street lot lines to the building line and including the full width of the lot to its side lot lines.

"Shore defense work" means the structures or modifications for the purpose of retarding shore erosion from wave or current action, encouraging deposition of beach materials, preventing shoreline overflow and retaining uplands.

"Shorelines" means all the water areas of the Town of Coupeville, more specifically Penn Cove, including those lands extending landward for two hundred (200) feet in all directions as measured on a horizontal plane from the ordinary high water line which are subject to the Shoreline Management Act.

"Short plat" means the map or representation of a short subdivision.

"Short subdivision" means the division or redivision of land into four or fewer lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership.

"Short-term rental" means a complete dwelling unit used for transient accommodation.

"Single-family" means one dwelling unit serving as the principal use on one lot.

"Single Household" means one dwelling unit serving as the principal use on one lot.

"Site plan" means a detailed map, diagram or other physical means of communicating pictorially the arrangement of structures, streets, open spaces, landscaping or other features of a proposed development.

"Storm and surface water drainage system" means the method used to collect and carry rain or surface water in such a way as to prevent flooding.

"Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of the building included between the upper surface of the topmost floor and the ceiling or roof above.

"Street" means a way of travel more than twenty (20) feet wide which has been dedicated or deeded to the public for public use.

"Structure" means a combination of materials constructed and erected permanently on the ground or attached to something having a permanent location on the ground. Not included are residential fences less than six feet in height, retaining walls, rockeries and similar improvements of a minor character less than three feet in height.

"Subdivider, proprietor or developer" means a person, firm, municipality, association, partnership, corporation or combination of any of these which may hold any recorded or unrecorded ownership interest in land being subdivided. The proprietor is also commonly referred to as the owner.

"Subdivision" means the division or redivision of land into five or more lots, tracts, parcels, sites or other divisions for the purpose, whether immediate or future, of sale, lease, or other conveyance or development.

Subdivision, unit lot. "Unit Lot Subdivision" means the division of a parent lot into two or more unit lots within a development and approved through the unit lot subdivision process.

"Surveyor" means either a land surveyor or a civil engineer who is registered in the state of Washington as a registered professional surveyor or engineer.

Structure, temporary. "Temporary structure" means a structure not having or requiring permanent attachment to the ground.

## I

"Tattoo parlor" means an establishment providing tattooing services.

"Topographic map" means a map showing contour elevation lines and other significant physical and cultural features.

"Townhouse" means a building containing three or more attached dwelling units that extend from foundation to roof and that have a yard or public way on not less than two sides and which share one or more common walls with other dwelling units and with each dwelling unit occupying individually owned parcel of land with no side yards between adjacent townhouses.

"Tract" means an area of land which has been defined, but has not been designated by lot and block numbers.

"Transient accommodation" means a dwelling unit or sleeping unit provided for monetary compensation for periods of thirty (30) or fewer consecutive days.

"Travel trailer, recreation vehicle" means a recreational vehicle which is designed to be transported on public streets or highways and not designed for use as a permanent residence.

"Triplex" means a building containing exactly three dwelling units.

## U

"Upland" means beach and land forms landward of a water body.

"Useable area" means that portion of a lot or parcel physically suited for supporting buildings. Land not considered useable area includes, but is not limited to, tidelands, shorelines, bluffs, unstable slopes, wetlands, areas of poor drainage, access easements to back lots, and areas devoted solely to utility purposes such as stormwater retention ponds. The extent of usable area of a lot or parcel shall be determined by the town planner.

"Use" means the purpose which land or buildings or structures now serve, or for which they are occupied, maintained, arranged, designed or intended.

Use, accessory. "Accessory use" means a use of property or of a building or portion thereof customarily incidental and subordinate to the principal use of the land or building, and located on the same lot with the principal use.

Use, conditional. "Conditional use" means a use permitted in one or more zones but which, because of characteristics peculiar to such use or because of size, technological processes or equipment, or because of the exact location with reference to surroundings, streets, and existing improvements or demands upon public facilities, requires a special degree of control to make such uses consistent with and compatible to other existing or permissible uses in the same zone or zones. A conditional use is a form of special exception.

Use, nonconforming. "Nonconforming use" means a use which lawfully occupies a building or land at the time the ordinance codified in this title became effective, and which does not conform with the use regulations of the zoning district in which it is located.

Use, principal. "Principal use" means the primary or predominant use to which the property or building is or may be devoted, and to which all other uses on the same lot are accessory.

Use, prohibited. "Prohibited use" means any use not specifically enumerated as a principal, accessory or conditional use in specific zones or areas.

V

"Vacation" means the act of making legally void any right-of-way, easement, public area, or other public interest.

"Variance" means an adjustment in the application of the specific regulations of this title to a particular piece of property, which property, because of special circumstances applicable to it, is deprived of privileges commonly enjoyed by other properties in the same zone or vicinity and which adjustment remedies disparity in privileges.

"Vertical datum" means the base elevation used for measuring height. It is calculated by adding the lowest elevation within five feet of an exterior wall to the highest elevation within five feet of an exterior wall on the same building, then dividing the result by two. The highest and lowest points shall be located on the historical or original grade, as determined by the building official.

"Veterinary clinic/hospital" means a building or premises for the medical or surgical treatment of animals or pets, including the indoor boarding of hospitalized animals, but excluding the boarding of animals not subjected to medical or surgical treatment.

W

Waste, hazardous. "Hazardous waste" means all dangerous and extremely hazardous waste as defined in RCW 70.105.010(15), except for moderate risk waste as defined in RCW 70.105.010(17).

Waste, hazardous—Off-site treatment and storage facility. "Off-site hazardous waste treatment and storage facility" means treatment and storage facilities which treat and store hazardous wastes generated on properties other than those on which the off-site facilities are located.

Waste, hazardous—On-site treatment and storage facility. "On-site hazardous waste treatment and storage facility" means treatment and storage facilities which treat and store hazardous wastes generated on the same property.

Waste, hazardous—Storage of. "Storage of hazardous waste" means the holding of hazardous waste for a temporary period as regulated by the State Dangerous Waste Regulations, Chapter 173-303 WAC.

Waste, hazardous—Treatment of. "Treatment of hazardous waste" means the physical, chemical or biological processing of hazardous waste for the purpose of rendering these wastes non-dangerous or less dangerous, safer for transport, amenable for energy or material resource recovery, amenable for storage, or reduced in volume as regulated by the State Dangerous Waste Regulations, Chapter 173-303 WAC.

X

Y

Yard, service. "Service yard" means an open area, usually paved, with access to a street or alley, to allow vehicular access to a building or use for purposes of loading or unloading equipment, freight, livestock or people.

Z

"Zone, Single-family" means those zones where the traditional "single-family" detached residences are the predominant land use.

"Zoning" means a police power measure in which the community is divided into districts or zones within which permitted and special uses are established as are governing regulations for lot size, bulk and other development standards.

"Zoning district" means a defined area of Coupeville within which the use of land is regulated and certain uses permitted and other uses excluded as set forth in this title.

(Ord. 648 § 3 Exh. B (part), 2005; Ord. 614 § 4 Exh. D (part), 2001; Ord. 604 § 1, 2000; Ord. 586 § 2, 1999; Ord. 566 § 2 Exhs. A (part), B (part), 1998)

(Ord. No. 690, § 1, 4-26-2011; Ord. No. 692, § 2, 10-3-2011; Ord. No. 701, § 1, 3-27-2012; Ord. No. 751, § 2, 8-27-2019)

**16.04.070 Interpretation generally.**

The provisions of the development regulations shall be the minimum requirements adopted for the promotion and protection of the public health, safety and general welfare. The development regulations are not intended to interfere with, advocate or annul any easements, covenants, or other agreements between parties, except where the arrangements may conflict with the enforcement of the development regulations.

(Ord. 566 § 2 Exh. A (part), 1998)

**16.04.080 Conflict of provisions.**

In the case of conflicts between the parts of the development regulations and other rules, regulations, resolutions, ordinances or status lawfully adopted by other authority having jurisdiction within the Town, the most restrictive shall govern. In the case of conflicts between the text, maps and charts of the development regulations, the text shall govern unless otherwise stated.

(Ord. 566 § 2 Exh. A (part), 1998)

**16.04.090 Jurisdiction.**

The development regulations shall not limit the legislative discretion of the town council in further restricting permitted uses, or in withholding or revoking permits for uses where those actions are found necessary for the promotion and protection of the public peace, health, safety and general welfare.

(Ord. 566 § 2 Exh. A (part), 1998)

**16.04.100 No special duty created.**

- A. It is the purpose of this title to provide for the health, welfare, and safety of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this title. No provision or term used in this title is intended to impose any duty upon the Town or any of its officers, agents, or employees for whom the implementation or enforcement of this title shall be discretionary and not mandatory.

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- B. Nothing contained in this title is intended to be nor shall be construed to create or form the basis for any liability on the part of the Town or its officers, agents, and employees for any injury or damage resulting from the failure of any premises to abate a nuisance or to comply with the provisions of this title or be a reason or a consequence of any inspection, notice, or order, in connection with the implementation or enforcement of this title, or by reason or a consequence of any inspection, notice or order, in connection with the implementation or enforcement of this title, or by reason of any action of the Town related in any manner to enforcement of this title by its officers, agents or employees.

(Ord. No. 751 , § 3, 8-27-2019)

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## Chapter 16.06 ADMINISTRATION

### 16.06.010 Purpose.

It is the purpose of this chapter to ensure that all development proposals and other actions are processed, reviewed and acted upon in a timely, fair, predictable, efficient and effective manner.

(Ord. 566 § 2 Exh. A (part), 1998)

### 16.06.020 Assignment of review authority.

It is the purpose of this section to designate the specific responsibilities for land use administration within the Town of Coupeville.

- A. Town Planner. The town planner may act administratively for certain prescribed actions.
  - 1. Authority. With the exception of Chapter 16.24, the development standards, the Coupeville Town Planner is responsible for the administration of Title 16 of the Coupeville Town Code.
  - 2. Administrative Interpretations. In response to a clearly identified written request, or as needed, the town planner shall interpret the meaning or application of the Coupeville Development Regulations. This interpretation shall be in writing and a complete record of administrative interpretations shall be maintained by the town clerk-treasurer.
  - 3. Administrative Approvals. The town planner shall act on requests or applications listed under Section 16.06.050(A), (B) and (C).
- B. Public Works Director. The public works director may act administratively for certain prescribed actions.
  - 1. Authority. The public works director is responsible for the administration of Chapter 16.24, the development standards, of the Coupeville Town Code.
  - 2. Administrative Interpretations. In response to a clearly identified written request, or as needed, the public works director shall interpret the meaning or application of the Coupeville Development Regulations. This interpretation shall be in writing and a complete record of administrative interpretations shall be maintained by the town clerk-treasurer.
  - 3. Administrative Approvals. The public works director shall act on requests or applications listed under Section 16.06.050 A. and C.
- C. Town Council. In addition to its legislative responsibilities, the Coupeville Town Council shall review and act on the following:
  - 1. Recommendations of the planning commission;
  - 2. Appeal of administrative determinations;
  - 3. Appeal of administrative approvals as set forth in Section 16.06.050A., B. and C.;
  - 4. Appeal of Ebey's Reserve Historic Preservation Commission decisions;
  - 5. Appeal of a SEPA determinations.

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- D. Coupeville Planning Commission. The planning commission shall review and make recommendations on the following applications and requests:
    - 1. Amendments to the comprehensive plan;
    - 2. Amendments to Title 16, the Coupeville Development Regulations;
    - 3. Applications listed under Section 16.06.050D.2. and 4.;
    - 4. Amendments to the shoreline master program;
    - 5. Other actions as requested or remanded by the town council.
  - E. Ebey's Reserve Historic Preservation Commission. The Ebey's Reserve Historic Preservation Commission shall review and act on requests or applications listed under Section 16.13.120.

(Ord. 648 § 3 Exh. B (part), 2005; Ord. 566 § 2 Exh. A (part), 1998)

(Ord. No. 677, § 5, 10-13-2009; Ord. No. 692, § 3, 10-3-2011)

### **16.06.030 Consolidated application and review process.**

The purpose of this section is to ensure that all requests for approval shown in this title are integrated to facilitate review and avoid duplication or unnecessary delay.

- A. Pre-Application Conference. The appropriate Town staff shall meet with an applicant before submittal of an application for Town action under this title. The intent of this conference shall be to provide a clear understanding between the applicant and the Town on the general nature of the proposed action, the applicable local, state and national regulations, the submittal requirements and the applicable fees and expenses which will be incurred by the applicant in the review process.
- B. Submittal Requirements. For each type of application under this title, the town planner shall determine the type, amount and flow of information necessary to adequately review the proposal for compliance. The required submittals, by type of application, are contained in the consolidated land use application, which is adopted as part of this title.
- C. Supplemental Submittal Requirements. The Town may require, in addition to the requirements listed in the consolidated land use application, supplemental information deemed necessary to evaluate the proposed action or listed elsewhere in this or other titles. When possible, this supplemental information shall be identified at the pre-application conference.
- D. Modification of Application. If the general nature of the proposed action changes, either through modification of the proposal by the applicant or through disclosure of unforeseen or misrepresented information, the Town shall be responsible for determining whether or not the agreed upon course of action is still appropriate to the application.
- E. Notice of Completeness.
  - 1. The town planner shall review for completeness all submittals accompanying an application, and make a determination of completeness within twenty-eight (28) days of the application filing date. Complete applications will be issued a written notice of completeness. Completeness shall be defined as containing the following:
    - a. A filled-out, signed and notarized consolidated land use application form, and all application fees;
    - b. A filled-out and signed environmental checklist for all projects subject to review under the State Environmental Policy Act;

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- c. All accompanying items listed in the application matrix section of the consolidated land use application form;
  - d. Any supplemental information or special studies identified during the pre-application conference or during the completeness review.
2. Incomplete Applications. If the Town determines that the application is incomplete, the missing items will be noted in writing within twenty-eight (28) days of the application filing date. The applicant shall have ninety (90) days to submit all items necessary to complete the application, or the application shall become null and void with no refund of fees on the ninety-first day following the written notification to the applicant. The Town shall, within fourteen (14) days of receiving the new information, issue a notice of completeness or identify and further notify whether additional information is required.
  3. The issuance of a notice of completeness does not constitute a commitment by the Town for project approval or indicate that the information provided with the application is adequate to complete town staff and environmental review.
- F. Notice of Application. Within fourteen (14) days after issuing the notice of completeness, the Town shall issue a notice of application, except as exempted under Section 16.06.050(A), Administrative Approval without Notice of Application. The notice shall be posted on the subject property, sent to agencies with jurisdiction, written notification to property owners within three hundred (300) feet and published once in the official newspaper. The notice shall include:
1. Name of the applicant;
  2. Date of application;
  3. Date of notice of completeness;
  4. Description of the project;
  5. List of known permits and existing environmental documents;
  6. List of requested studies to date;
  7. A fourteen (14) day comment period with instructions for how to submit comments, including a contact name and number.
- G. Town Staff Review. Once the Town has issued a notice of completeness, town staff shall review the application for compliance with Town plans and regulations, coordinate necessary permit review and identify the proposal's environmental impacts.
- H. Environmental Review. Proposals subject to review under the provisions of the State Environmental Policy Act (SEPA) shall be reviewed in accordance with Chapter 16.36 CTC, Environmental Management. This review shall be conducted concurrently with town staff review.
- I. Additional Information. If additional information is required to complete town staff and environmental review, the Town shall request this information in writing within fourteen (14) days following the issuance of a notice of completeness. The applicant shall have one hundred twenty (120) days from the date of the written request to provide the requested information. The application shall become null and void with no refund of fees on the one hundred twenty-first day.

(Ord. 566 § 2 Exh. A (part), 1998)

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### **16.06.040 Public notification.**

It is the purpose of this section to provide minimum standards for ensuring that neighbors to project proposals and the public in general are notified of impending actions within the Town. Public notification requirements for actions of the Ebey's Reserve Historic Preservation Commission are specified [in Section] 16.13.120.

- A. Notice of Administrative Approval. Actions taken by the town planner or public works director listed under Section 16.06.050(C), Administrative Approval Subject to Public Notice, are subject to the following notification requirements:
  - 1. Notification of Preliminary Approval. The Town shall notify adjacent property owners by mail of the Town's intent to grant approval. The notice shall include the following:
    - a. A description of the proposal, including any conditions attached to the approval;
    - b. A place and contact name where further information may be obtained;
    - c. A statement that final approval will be granted on a certain date unless an appeal requesting a public hearing is received by the town clerk-treasurer within fifteen (15) days of the notification of preliminary approval.
- B. Notice of Public Hearing. Applications or appeals which require an open record public hearing shall be subject to the following notification requirements:
  - 1. Content. Public notification shall include a general description of the proposed action, a non-legal description of the property, the time, date and place of the public hearing, and a place and phone number where further information may be obtained.
  - 2. Publication. At least ten (10) days and not more than twenty (20) days before the date of a public hearing, a legal notice shall be published in the official newspaper of the Town, or a newspaper of general circulation in the Town.
  - 3. Mailing. At least ten (10) days and not more than twenty (20) days before the date of a public hearing, a mailing shall be sent to all property owners, as shown on the records of the Island County Assessor, within three hundred (300) feet of the boundaries of the property subject to the public hearing.
  - 4. Posting of Site. Within ten (10) days of the notice of completeness, the Town shall, if physically possible, post the site in a prominent location. When known, the time, date and place of the public hearing shall be added to the posting notice.
  - 5. Additional Posting. At least ten (10) days and not more than twenty (20) days before the public hearing, a notice shall be posted in at least three public places in the Town.
  - 6. Continuations. If, for any reason, a public hearing on a pending action under this title cannot be completed on the date set in the public notice, the public hearing may be continued and no further notice is required, in accordance with RCW 42.30.090.
- C. Notice of Appeal Hearings. Appeal hearings shall be subject to the notification requirements listed in subsection B. of this section, Notice of Public Hearing, with the following exceptions:
  - 1. For appeals of administrative approval, mailing notices shall be sent to adjacent property owners only;
  - 2. For appeals of Ebey's Reserve Historic Preservation Commission decisions on certificates of appropriateness, all parties of record shall be notified.

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(Ord. 566 § 2 Exh. A (part), 1998)

(Ord. No. 692, § 4, 10-3-2011)

### **16.06.050 Review and approval.**

The purpose of this section is to establish procedures through which a timely decision can be reached on land use applications and requests as required under RCW 36.70B.110. For projects not exempt from review under SEPA, the Town adopts the optional DNS process under WAC 197-11-355.

- A. Administrative Approval Without Notice of Application. The town planner or public works director may approve, approve with conditions or deny the following applications without issuing a notice of application, except in cases where the request is associated with an application which does require notice:
  - 1. Boundary line adjustments;
  - 2. Extensions of time for approved actions;
  - 3. Minor amendments to approved permits. "Minor" shall be defined as changes which do not affect overall project character, increase the number of lots, dwelling units or density, or decrease the amount or quality of public improvements or open space;
  - 4. Building and utility actions exempt from SEPA review;
  - 5. Shoreline exemptions;
  - 6. Right-of-way use permits;
  - 7. Clearing and grading permits exempt from SEPA review;
  - 8. Interpretations of Title 16 requirements;
  - 9. Sign permits and sign variances;
  - 10. Administrative design review approvals authorized under CTC Chapter 16.13.
- B. Administrative Approval With Notice of Application. The town planner or public works director may approve, approve with conditions or deny the following requests, subject to the notice of application procedures listed under Section 16.06.030F., Notice of Application:
  - 1. Building and utility actions subject to review under SEPA.
  - 2. Clearing and grading permits subject to review under SEPA.
  - 3. Preliminary short subdivisions.
- C. Administrative Approval Subject to Public Notice. The town planner or public works director may grant preliminary approval to the following applications or requests, subject to the public notification requirements under Section 16.06.040A., Notice of Administrative Approval:
  - 1. Sign variance;
  - 2. Class II home occupations.
- D. Planning Commission Review and Recommendation.
  - 1. Staff Report. The town planner shall prepare a staff report on the proposed action which summarizes town staff and environmental review, and which evaluates the action for consistency

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with the Coupeville Development Regulations, comprehensive plan and other adopted plans and regulations. The report shall contain staff findings, conclusions and a recommendation for action.

2. Open Record Public Hearings. The planning commission shall conduct an open record public hearing on the following actions:
  - a. Amendments to the comprehensive plan;
  - b. Amendments to Title 16, the Coupeville Development Regulations;
  - c. Amendments to the Shoreline Master Program.
  - d. Request for parcel-specific zoning change.
  - e. Planned unit development overlay districts.
  - f. Preliminary long subdivisions.
  - g. Shoreline development permits, shoreline conditional use permits, shoreline variances.
  - h. Conditional use permits.
  - i. Variances.
  - j. [Comprehensive Plan Amendment Docketing](#)
- E. Ebey's Reserve Historic Preservation Commission. The review procedures, standards of review, and authorities of the Ebey's Reserve Historic Preservation Commission are specified in CTC Chapter 16.13.
- F. Town Council Review and Action. Upon receiving a recommendation from the planning commission or notice of any matter requiring the council's attention, the council shall perform the following actions as appropriate:
  1. Make a decision on a planning commission recommendation;
  2. Hold an open record public hearing and make a decision on the following matters:
    - a. Appeal of administrative interpretations;
    - b. Appeal of administrative approvals including those of the Ebey's Landing Reserve Committee;
    - c. Appeal of determinations of significance;
    - d. All legislative actions listed under subsection D.2. of this section;
    - e. Other matters not prohibited by state law.
  3. Hold a closed record hearing and make a ruling on the following matters:
    - a. Appeal of historic preservation commission decision when an open record hearing has already been held by the commission as part of their decision-making process.
- G. Town Council Decisions. The town council shall make its decision by motion, resolution or ordinance as appropriate.
  1. A council decision under subsections F.1. and 2. of this section shall include one of the following actions:
    - a. Approve as recommended;
    - b. Approve with additional conditions;

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- c. Modify, with or without concurrence by the applicant, provided that the modifications do not enlarge the area or scope, increase the density or building size, or significantly increase potential environmental impacts;
  - d. Deny (reapplication allowed after one year);
  - e. Deny without prejudice (reapplication allowed);
  - f. Remand for further proceedings.
  - g. If, after considering a preliminary plat or preliminary binding site plan at a public meeting, the council deems a change in the planning commission's recommendation approving or disapproving the preliminary plat or binding site plan is necessary, the council shall adopt its own recommendations and approve or disapprove the preliminary plat or binding site plan. Every decision or recommendation made under this section shall be in writing and shall include findings of fact and conclusions to support the decision or recommendation.
2. A council decision under subsection F.3. of this section shall include one of the following actions:
    - a. Grant the appeal in whole or in part;
    - b. Deny the appeal in whole or in part;
    - c. Remand for further proceedings.

(Ord. 648 § 3 Exh. B (part), 2005; Ord. 614 § 4 Exh. D (part), 2001; Ord. 566 § 2 Exh. A (part), B (part), 1998)

(Ord. No. 677, § 5, 10-13-2009; Ord. No. 692, § 5, 10-3-2011)

### **16.06.060 Appeals.**

The intent of this section is to designate the appropriate body to hear appeals of final decisions on Title 16 actions.

- A. Appeal of Administrative Interpretations and Approvals. Administrative interpretations and approvals may be appealed to the town council.
- B. Appeal of Ebey's Reserve Historic Preservation Commission Decisions. Decisions by the Ebey's Reserve Historic Preservation Commission on certificates of appropriateness may be appealed to the town council.
- C. Appeal to the Town Council. Appeals shall be filed with the town clerk-treasurer within fifteen (15) days following the date of the decision on the matter being appealed. The appeal shall contain the following information:
  1. The decision being appealed;
  2. The name and address of the appellant and ~~his or her~~their interest(s) in the matter;
  3. The specific reason(s) why the appellant believes the decision to be incorrect. The appellant shall bear the burden of proving the decision was incorrect;
  4. The desired outcome or change to the decision;
  5. The appeal fee.
- D. Judicial Appeal.
  1. Appeals of final decisions by the town council, for which all other appeals specifically authorized have been timely exhausted, shall be made to the Island County Superior Court within thirty (30)

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days of the date of the decision or action becomes final, unless another time period set by state law or local ordinance preempts this time frame.

2. The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant shall be borne by the appellant. The appellant shall post with the town clerk-treasurer prior to the preparation of any records an advance fee deposit in the amount specified by the town clerk-treasurer.

(Ord. 566 § 1 Exhs. A (part), B (part), 1998)

(Ord. No. 692, § 6, 10-3-2011)

### **16.06.070 Amendments.**

Whenever the public necessity, convenience or general welfare requires, the Town may, under the following procedure and by ordinance, amend or repeal these regulations and change the boundaries of zones.

A. Procedure.

1. Initiation of Change. Changes in the title may be initiated by the following means:
  - a. By the town council on its own motion;
  - b. By the planning commission on its own motion;
  - c. By petition signed by the owners of fifty (50) percent of the property within an area proposed for rezoning. Said petition shall be filed with the administrative official. Besides the necessary signatures, the petition shall contain:
    - i. A legal description of the property involved,
    - ii. Reasons for the proposed change and a statement describing the effect of the proposed change on the objectives of the comprehensive plan;
  - d. By the mayor.
2. Planning Commission Report.
  - a. Before any proposed zoning change may be acted upon by the town council the planning commission shall study the proposed change and shall make a report in writing to the town council. Said report shall include:
    - i. Findings as to need and justification for the proposed change, including findings as to the effect which the proposed change would have on the objectives of the comprehensive plan;
    - ii. Recommendation as to the approval or disapproval of the change.
  - b. The planning commission may recommend that less area be rezoned and/or that more restrictive rezoning than applied for be approved, but it may not increase the area or recommend less restrictive zoning than that applied for, unless the planning commission initiates a new request on its own behalf.
3. Town Council Ordinance. Before the town council may take any action on the proposed zoning change, a public hearing shall be held at which time all interested parties shall have an opportunity to be heard. The town council is not bound by majority opinion but by the facts presented and the testimony given. If it is determined that the public necessity, convenience or

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general welfare requires the change or amendment, the town council shall, by ordinance, effect the proposed zone change.

4. All changes of zone boundaries shall be filed with the administrative official and shall be noted on the zoning map as specified in Section 16.08.020.

(Ord. 566 § 2 Exh. A (part), 1998)

### **16.06.080 Enforcement and penalties.**

- A. Administrative Official. An administrative official designated by the mayor shall administer and enforce this title. ~~He or she~~They may be provided with the assistance of such other persons as the town council deems necessary. If the administrative official shall find that any of the provisions of this chapter are being violated, ~~they~~~~he or she~~ shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. ~~They~~~~He or she~~ shall order discontinuance of illegal uses of land, buildings or structures; removal of illegal buildings or structures or of additions, alterations or structural changes thereto; take any other action authorized by this chapter to ensure compliance with or to prevent violation of its provisions.
- B. Permits and Inspection—Permits Required. No person, firm or corporation shall erect, construct, alter, enlarge, move, improve or convert any building in the Town or cause the same to be done, without obtaining a building permit from the building official. The building official shall maintain a record of all permits, and copies shall be furnished upon request to any person. Failure to obtain a permit shall be a violation of this chapter and punishable under subsection D of this section. All applications for permits shall be accompanied by plans in duplicate, drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and location on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the building official, including existing or proposed building or alteration existing or proposed uses of the building and land; the number of families, housekeeping units or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with and provide for the enforcement of this chapter. The building official shall render ~~his or her~~their decision within thirty (30) days of the filing of the application of a permit. However, this time limit may be extended by common consent and agreement signed by both the applicant and the building official. One copy of said plans shall be returned to the applicant by the building official after ~~he or she~~they shall either attach a permit or mark the plans as disapproved and attested to same by ~~his or her~~their signature on such copy. The second copy of the plans, similarly marked, shall be retained by the building official.
- C. Complaints Regarding Violations. Whenever a violation occurs, any person may file a complaint in regard thereto. All such complaints shall be brought to the attention of the building official or town planner, who shall record such complaint and immediately investigate and report thereon to the mayor.
- D. Penalties for Violations. For any and every violation of the provisions of this chapter the owner, agent or contractor of a building or premises where such violations have been committed or shall exist, or any other person who maintains any building or premises in which any violation shall exist, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars (\$500.00) or imprisoned in jail not to exceed thirty (30) days, or both such fine and imprisonment. Each and every day that such violation continues shall be deemed a separate and distinct violation. Any building or structure set up, erected, built, moved or maintained or any use of property contrary to the provisions of this chapter shall be declared to be unlawful and a public nuisance, and the mayor shall immediately commence action for the removal thereof, in the manner provided by law, and shall apply to such court or courts as may have

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jurisdiction to remove such building, structure or use. All remedies provided for herein shall be cumulative and not exclusive.

(Ord. 566 § 2 Exh. A (part), 1998)

### **16.06.090 Concurrency management program.**

- A. Intent. The intent of this section is to establish a concurrency management program to ensure that public facilities and services for which a level of service (LOS) has been established keep pace with new development. Adequate LOS, as described in the capital facilities element of the Coupeville comprehensive plan, shall be maintained concurrent with, or within a reasonable time after, development, occupancy or use. A concurrency test will be required for those project permits which, subject to approval, will lead to an increase in the number of building lots, a significant increase in the intensity of land use and/or a major expansion of an existing land use. This chapter is not intended to require a concurrency test for the construction of single-family residences or accessory buildings on existing lots, for proposed changes in land use intensity which results in less, equal to or marginally higher intensity than the existing use, or for minor expansions of existing land uses.
- B. Concurrency Test. This section provides rules for reviewing and making a determination on available and planned capacity for individual project permits.
1. Effective Date. Except as exempted by subsection D of this section, all project permits are subject to a concurrency test. The concurrency test will be conducted based on the effective date of the notice of completeness, as defined in Section 16.06.030(E). If no notice of completeness is required for the particular project permit, the effective date will be the date of receipt of a complete application. The concurrency test shall be completed within thirty (30) days of the effective date of the application.
  2. Review Responsibility. The concurrency test will be conducted by the town planner, in conjunction with other facility and service providers, during the timelines established for project review in Section 16.06.030 of this title.
    - a. The town planner shall coordinate the concurrency test by notifying all concurrency facility and service providers that the Town has received an application for a project permit which is subject to concurrency review, notifying applicants of the test results and notifying the facility and service providers of the final decision on the project permit. In addition, the town planner shall, in the first quarter of each year, notify facility and service providers of all exempt applications processed during the previous year which used capacity and of any expired project permit approvals or discontinued notices of capacity.
    - b. All facility and service providers shall be responsible for maintaining and monitoring their available and planned capacity, and for conducting the concurrency test for their specific facility or service for all applications subject to concurrency review. Each provider is responsible for reserving the capacity needed for each application, for notifying the town planner of the results of each concurrency test, for annually reducing available capacity by the amount needed for exempt applications (as reported by the town planner), and for reinstating any unused capacity as set forth in subsection C of this section.
    - c. Each facility and service provider shall be responsible for reporting to the Town by June 30th of each year the total available and planned capacity for their particular facility or service.
  3. Basis for Capacity Analysis. When conducting a concurrency test, capacity shall be measured in the following manner:

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- a. Available capacity shall be the basis of the concurrency test for water supply, power, sanitary sewer, septic systems, stormwater management and fire flow.
  - b. Available and planned capacity shall be the basis of the concurrency test for streets, solid waste collection, public transit, fire protection, law enforcement, ambulance, library services, schools and parks.
4. Conducting the Test. Project permits requiring a concurrency test shall be compared against the available and planned capacity to ensure that concurrency facilities and services will not be reduced below the level of service standard adopted in the comprehensive plan.
- a. If the capacity of concurrency facilities and services is equal to or greater than the capacity required to serve the proposed project permit, the concurrency test is passed. A notice of capacity will be issued in accordance with subsection C of this section.
  - b. If the capacity of concurrency facilities and services is less than the capacity required to serve the proposed project permit, the concurrency test is not passed. The applicant may:
    1. Accept a ninety-day reservation of concurrency facilities and services for which there is adequate capacity, and modify the application to reduce the need for facilities and services for which there is not adequate capacity.
    2. Accept a ninety-day reservation of concurrency facilities and services for which there is adequate capacity, and demonstrate to the town's satisfaction that the proposed project will have a lower demand for capacity than similar projects and that available capacity is therefore adequate.
    3. Accept a ninety-day reservation of concurrency facilities and services for which there is adequate capacity, and arrange with the appropriate facility or service provider for the provision of additional capacity to serve the proposed project.
    4. Appeal the decision of the town planner to the town council, in accordance with Section 16.06.060(C) and subsection E of this section.
- [5. Accept the denial of an application based on insufficient capacity.](#)
- C. Notice of Capacity. If a proposed project permit passes the concurrency test, a notice of capacity shall be issued at the same time the project permit is issued, subject to any fees or performance of any condition required by a facility or service provider.
1. Applicability. A notice of capacity shall apply only to the specific location, land uses, densities, intensities and site plan described in the project permit application.
  2. Transferability. A notice of capacity is not transferable to other property, but may be transferred to subsequent owners of the property for which the project permit was approved. A transfer of ownership shall have no effect on the expiration date of the notice of capacity.
  3. Expiration and Extensions. A notice of capacity shall expire if the associated project permit expires or is revoked. The notice of capacity may be extended only if the associated project permit is granted an extension according to the terms and conditions of the permit. If the associated project permit does not have an expiration date, the notice of capacity shall be valid for three years from the date of issuance.

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4. Unused Capacity. Any capacity that is not used because the applicant or developer decides not to develop, decides to develop at a lower density or intensity than approved by the project permit, or the project permit or notice of capacity expires, shall be returned to available capacity.
- D. Exemptions. Certain project permits are exempt from the concurrency test described in this chapter, either because they have no impact on available capacity, or because their impact on available capacity is minor enough to manage on an annual basis.
1. No Impact. Project permits for development which create no additional impact on concurrency facilities and services for which a level of service standard has been adopted are exempt from the requirements, of this chapter. Examples include, but are not limited to, the following proposals.
    - a. An addition or accessory building or structure to an existing residential, commercial or public/quasi-public use with no change or increase in use or increase in the number of dwelling units.
    - b. Interior or exterior modifications to existing structures with no increase in the number of dwelling units.
    - c. Interior or exterior modifications to existing structures to accommodate a new use with the same or less intensity as the existing use.
    - d. A replacement structure with no change or increase in use or increase in the number of dwelling units.
    - e. Temporary structures.
    - f. Site improvements such as resurfacing, restriping, landscaping, lighting, or fencing.
    - g. Signs.
    - h. Demolitions.
    - i. Conditional use permits and variances which allow a new or additional use of an existing structure with no increase in land use intensity or number of dwelling units.
  2. Exempt Project Permits. The following permits are exempt from the requirements of this chapter, but are subject to the annual reporting requirements to public facility and service providers described in subsection (B)(1) of this section.
    - a. Final plats.
    - b. Boundary line adjustments.
    - c. Building permits for single family residences.
    - d. Public works permits (right-of-way, clear and grade, stormwater).
    - e. Project permits for developments with complete applications submitted prior to the effective date of this chapter.
- E. Appeals. Concurrency test results may be appealed by the applicant or a citizen of Coupeville in accordance with the appeal procedures in Section 16.06.060 of this title. The basis for the appeal must be at least one of the following grounds:

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1. A technical error;
  2. The applicant provided alternative data or a mitigation plan to meet LOS standards which was rejected by a facility or service provider;
  3. An unwarranted delay in vesting a complete application that allowed available capacity to be given to another applicant.

(Ord. 586 §§ 1, 3—6, 1999)

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## **Chapter 16.07 COMPREHENSIVE PLAN AMENDMENT PROCESS**

### **16.07.010 Purpose.**

This chapter establishes the authority, process, format, and criteria by which the comprehensive plan be amended in accordance with Chapter 36.70A RCW.

### **16.07.020 Applicability**

- A. This chapter shall apply to updates, amendments or revisions to the comprehensive plan that are considered by the Town Council no more frequently than once a year. At the discretion of the mayor, amendments may be considered more frequently than once a year for the following circumstances:
1. The initial adoption of a subarea plan that does not modify the general vision, goals and policies of the comprehensive plan;
  2. The adoption or amendment of a shoreline master program under the procedures set forth in Chapter 90.58 RCW;
  3. The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of the city budget.
- B. Although sometimes referred to as the annual docket, nothing in this chapter shall be deemed as requiring that amendments be undertaken every year.

### **16.07.030 Responsibility.**

- A. The Planning Director shall have the responsibility to:
1. Administer this chapter.
  2. Establish application and administrative procedures that may also include fee collection, refunds, etc.
  3. Review the applications and make a determination of completeness for inclusion in the preliminary docket for planning commission review.
  4. Place amendments on the preliminary docket for planning commission and city council consideration.
  5. Make a recommendation to the planning commission and the city council on the annual docket and work program.
- B. The planning commission shall have the responsibility to:
1. Review proposed amendments to the comprehensive plan that are included in the annual preliminary docket.
  2. Hold a public hearing, deliberate, and make recommendations to the city council on the said annual preliminary docket.
  3. Place items, as determined by majority vote, on the preliminary docket for city council consideration.

4. Review and study proposed amendments to the comprehensive plan that are included in the city council-approved annual docket for each year and hold a public hearing, deliberate, and make recommendations to the city council on said proposals.

C. The Town Council shall have the responsibility to:

1. Review each proposal on the preliminary docket to amend the comprehensive plan and make a final decision that results in establishing the planning commission's annual docket work program for each year.
2. Place items, as determined by majority vote, on the annual docket.
3. Make a final decision on the amendments pursuant to this section after the planning commission has held a public hearing and provided a recommendation to the Town Council.

### **16.07.040 Amendment process and schedule.**

The comprehensive plan shall be amended pursuant to this chapter, no more frequently than once a year as part of the amendment cycle established in this chapter, except as provided in OHMC 18.15.020.

- A. The public shall be made aware of the deadline to submit proposed amendments to the comprehensive plan by means of one publication in the local newspaper of general circulation in the Town, with the notice published at least 30 days prior to the deadline.
- B. The deadline for submitting an application for amendments pursuant to this chapter is close of business, December 1st of each year, or the next business day if December 1st falls on a Saturday or Sunday.
- C. Only applications that fulfill the requirements of CTC 16.07.060 by the deadline in subsection (B) of this section shall be placed on the preliminary docket for consideration in the next annual amendment process.
- D. The planning commission may recommend amendments be added to the preliminary docket, but such recommendation shall be made before December 1st of each year so that they may be published along with other proposed amendments. Only such amendments that have received a majority vote by the planning commission shall be included in the preliminary docket for consideration.
- E. The Planning Director shall review all complete applications submitted by the deadline set forth in subsection (2) of this section based upon the threshold criteria set forth in CTC 16.07.070(1) and place them on the preliminary docket along with the discretionary and mandated items in accordance with CTC 16.07.050.
- F. The Planning Director shall advertise the preliminary docket in the local newspaper of general circulation prior to its consideration for recommendation by the planning commission.
- G. The planning commission shall hold a public hearing on the preliminary docket and review said docket based on the criteria set forth in CTC 16.07.070(2) and make a recommendation to the Town council before January 31st of each year.
- H. The Town Council shall review the preliminary docket and, after such review and deliberation, establish an annual docket before March 31st of each year.
- I. A draft of the proposed amendments on the annual docket shall be transmitted to the Washington State Department of Commerce in accordance with the requirements of RCW 36.70A.106 not later than August 31st of each year.
- J. The planning commission shall hold a public hearing on the proposed amendments in the annual docket based on the criteria set forth in CTC 16.07.080 and make a recommendation on each proposal to the city council before October 31st of each year.

K. The Town council shall hold a public hearing on the proposed amendments in the annual docket and take action on such amendments before December 31st of each year.

### **16.07.050 Docket.**

A. Responsibility. The Planning Director shall have responsibility to manage the preliminary docket as set forth in this section and assure that the process and schedule set forth in CTC 16.07.040 are followed.

B. Format.

1. The docket shall not span a term of more than one year.
2. The items on the preliminary docket shall be categorized by the type of amendments as set forth in subsection (C) of this section.
3. Each agenda item on the preliminary docket shall be assigned a predetermined priority based on the criteria established in subsection (D) of this section.

C. Types of Amendments.

1. Sponsored Amendments. These are amendments that are proposed through the application process submitted prior to December 1st of each year for consideration in the annual docket. Sponsored amendments are limited to those amendments as set forth in CTC 16.07.060.
2. Mandated Amendments. These amendments are proposed for the annual docket in response to existing and scheduled mandates from the state and the countywide planning policies. The Planning Director shall be responsible for placing proposals to meet such mandates on the preliminary docket for the year in which the mandate requires action.
3. Discretionary Amendments. These amendments are added to the annual docket to proactively add, amend, revise, delete or further goals and policies in the comprehensive plan. Discretionary items can be added to the docket by boards, commissions or the council and by the Planning Director. Discretionary items from boards and commissions shall be added to the docket only after such items have received a majority vote by said board, commission or council.

D. Prioritization. Each item on the preliminary docket shall be assigned a pre-determined priority by the director based on the following criteria:

1. Priority A – Mandated. Amendments and updates that are in response to an existing or scheduled mandate from the state or countywide planning policies shall automatically be considered during the appropriate amendment cycle.
2. Priority B – Sponsored.
  - a. Private amendments that are sponsored by an individual property owner or a group, that impact specific properties.
  - b. Public amendments that meet the requirements set forth in CTC 16.07.060(2).
3. Priority C – Discretionary. Discretionary amendments that are generated by boards, commissions and the council to further the goals and policies of the comprehensive plan.

E. Approval. The Town Council shall establish by resolution the annual docket. The annual docket shall specifically apply only to the amendments listed for the current year.

### **16.07.060 Sponsored amendments.**

Sponsored amendments are initiated by the public through the application process. Sponsored amendments are classified into two categories as described below:

A. Private Amendments. These are applications initiated by an individual property owner or a group of property owners who are requesting changes that will primarily impact properties that they own or control.

1. Application Requirements.

- a. An application form provided by the department of development services and completed by the applicant that includes, at minimum, the applicant's name, address, contact information, property address and location, parcel number(s), existing land use designation, proposed land use designation and zoning designation.
- b. A map of the property clearly showing the subject properties and its surrounding context.
- c. A narrative clearly stating the proposal and what the amendment is attempting to accomplish.
- d. A completed environmental checklist, if required.
- e. An application processing fee in accordance with RCW 82.02.020.

B. Public Amendments. These are applications initiated by the public requesting changes, additions, or updates to elements, maps, data, goals and policies that have an areawide or citywide significance. Since these requests can have an impact to the community at large, the application requirements vary from the private amendments.

1. Application Requirements.

- a. A narrative clearly stating the proposal and what the amendment is attempting to accomplish.
- b. Identification, address and contact information of the lead person or group initiating the proposed amendment.
- c. Identify the goals and policies within the comprehensive plan that are proposed to be amended.
- d. Proposed new or replacement language.
- e. Identify goals and policies that support the proposed amendment.
- f. Supporting studies or findings that justify the proposed amendments.
- g. petition supporting the proposed amendment that includes the signatures and names and addresses of one of the following:
  - i. No less than 250 residents or property owners of the Town; or
  - ii. Sixty percent of the property owners impacted by the proposed amendments.
- h. An application processing fee is waived for public amendments.

**16.07.070 Preliminary docket review criteria.**

A. Applications. The Planning Director shall review all complete applications submitted by the deadline set forth in CTC 16.07.040 and make a decision whether each application should be placed on the preliminary docket based upon the following criteria:

- 1. The application is complete and all relevant information in accordance with the requirements of CTC 16.07.060.A.1 or .B.1 has been provided.

2. The application was submitted by the deadline established in CTC 16.07.040.
  3. The correct application processing fee has been paid in full by the deadline established in CTC 16.07.040.
- B. The Preliminary Docket. The planning commission will review the proposed amendments on the preliminary docket and make a recommendation to the Town Council. Recommendations on whether agenda items shall be included in the annual docket should be based on one or more of the following criteria:
1. The proposed amendments are consistent with the Growth Management Act and the countywide planning policies.
  2. The proposal does not appear to contradict other elements, goals and policies within the comprehensive plan.
  3. The proposal will implement or further existing goals and policies in the comprehensive plan.
  4. The proposal would correct an inconsistency within or make a clarification to a provision of the comprehensive plan.
  5. The proposed amendments have been clearly defined to determine a fairly accurate scope of work.
  6. The proposed amendments respond to an expressed desire by the community.
  7. The public interest would be best served by considering the proposal in the current year.

#### **16.07.080 Annual amendment decision criteria.**

The planning commission shall review and the city council shall decide on all proposed amendments based on the following decision criteria, where applicable:

- A. The amendment will not adversely affect the public health, safety and welfare in any significant way.
- B. The proposed amendment is consistent with the overall goals and intent of the comprehensive plan.
- C. The amendment is in compliance with the Growth Management Act and the countywide planning policies.
- D. The amendment addresses the needs or changing circumstances of the community as a whole or resolves inconsistencies in the Town's comprehensive plan.
- E. Environmental impacts from the amendments have been addressed through SEPA review and/or measures have been included that reduce possible impacts.
- F. The amendment is consistent with the land uses and growth projections which were the basis of the comprehensive plan or to subsequent updates to growth allocations.
- G. The amendment is generally compatible with neighboring land uses and surrounding neighborhoods.
- H. The proposed amendment accommodates new policy direction from the Town Council.
- I. Other specific criteria that may have been identified at the beginning of the process.

#### **16.07.090 Public participation – Notice provisions.**

- A. The public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes,

government agencies, businesses, school districts, and organizations of proposed amendments to comprehensive plans and development regulation. Examples of reasonable notice provisions include:

1. Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located or that will be affected by the proposal;
2. Posting the property for site-specific proposals;
3. Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;
4. Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and
5. Publishing notice in agency newsletters or sending notice to agency mailing lists, including general lists or lists for specific proposals or subject areas.

B. Changes to Proposed Amendments.

1. Except as otherwise provided in subsection .B.2 of this section, if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the city's procedures, an opportunity for review and comment on the proposed change shall be provided before the council votes on the proposed change.
2. An additional opportunity for public review and comment is not required under subsection .B.1 of this section if:
  - a. An environmental impact statement has been prepared under Chapter 43.21C RCW for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact statement;
  - b. The proposed change is within the scope of the alternatives available for public comment;
  - c. The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;
  - d. The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or
  - e. The proposed change is to a resolution or ordinance enacting a moratorium or interim control adopted under RCW 36.70A.390.

## Chapter 16.08 ZONING DISTRICTS

### 16.08.010 Purpose and intent.

The land use element of the Coupeville comprehensive plan provides a long-range vision through which all uses—housing, commerce, recreation, public facilities, open space, culture and transportation—are integrated to maintain and enhance the Town's desirable characteristics. Land use planning strives to facilitate the best use of all lands, developed and undeveloped. Toward this purpose, zoning districts are established to fulfill the following intent:

- A. To be the primary tool for implementing the adopted comprehensive plan future land use map. This map identifies the general distribution, location and extent of different land uses within the Town;
- B. To promote the social and economic stability of existing and future land uses by regulating the use of individual parcels of land to prevent unreasonable detrimental effects or encroachment by incompatible uses on neighboring properties;
- C. To preserve the historic, aesthetic and natural features of the Town by establishing high standards for community design, environmental protection and cultural/historic enhancement;
- D. To encourage active and appropriate stewardship of the land to protect and preserve the historic and natural features of the Ebey's Landing National Historical Reserve, pursuant to Public Law No. 95-625.

(Ord. 566 § 2 Ex. A (part), 1998)16.08.020 Establishment of zoning districts and provisions for official zoning map.

- A. The Town of Coupeville is divided into zoning districts as shown on the official zoning map, which together with all explanatory matter thereon is adopted by reference and declared to be a part of Title 16.
- B. Regulations applying to each zone as set forth in this title are adopted.
- C. The official zoning map shall be identified by the signature of the mayor, under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 16.08.020(A) of the Coupeville Town Code, as adopted under Ordinance No. [number of ordinance adopting new map]." The official zoning map shall be kept in town hall.
- D. In the event that the official zoning map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the town council may by resolution adopt a new official zoning map. The new official zoning map may correct drafting or other errors or omissions, but no such correction shall have the effect of amending the zoning district designation for any land within the Town of Coupeville.

(Ord. 566 § 2 Ex. A (part), 1998)

### 16.08.030 Interpretation of zoning district boundaries.

Where uncertainty exists as to the boundaries of zoning districts as shown on the official zoning map, the following rules shall apply:

- A. Boundaries indicated as approximately following the centerlines of streets, highways or alleys shall be construed to follow such centerlines.
- B. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
- C. Boundaries indicated as approximately following the Town limits shall be construed as following the Town limits.

- D. Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as moving with the actual shoreline.
- E. Boundaries indicated as parallel to or extensions of features indicated in Subsections A through D of this section shall be so construed. The scale of the map shall determine distances not specifically indicated on the official zoning map.
- F. All areas within the corporate limits of the Town which are under water and are not shown as included within any zone shall be subject to all of the regulations of the zone which immediately adjoins the water area.
- G. The zoning regulations shall apply equally to private and public property.
- H. Property which has not been specifically included within a zone shall be classified as LDR, low density residential district, until such classification is changed by amendment of the zoning ordinance as provided by law.
- I. Where the street or property layout existing on the ground is at variance with that shown on the official zoning map, or in other circumstances not covered by subsections A through E of this section, the town planner shall interpret the zone boundaries.

(Ord. 566 § 2 Ex. A (part), 1998)

### 16.08.040 Residential zoning districts.

It is the intent of the four primary residential zoning districts in Coupeville to provide housing options for all social and economic segments of the community, to provide for efficient public and private utility services, to promote efficient traffic patterns, to preserve and protect historic sites and structures, to recognize historic development patterns and to reflect the intent of the Coupeville comprehensive plan. The specific intents of each predominantly residential zoning districts are described below:

- A. *Residential Reserve ~~District~~ overlay (RR)*. This ~~zoning district~~ overlay implements the residential reserve use designation on the comprehensive plan future land use map. It is intended to allow for very low density residential, agricultural, horticultural and floricultural uses, encouraging the retention of open space and rural character. It is intended further to maintain large areas free of impervious surfaces in order to increase the potential for natural infiltration of rainfall and the retention of natural drainage water patterns, minimizing the need for stormwater facilities and increasing the protection of groundwater resources.

Allowed uses within the residential reserve district are as follows:

<b>Principal Uses</b>	<b>Accessory Uses</b>	<b>Conditional Uses</b>
Single-household dwellings	Accessory structures less than	Public/quasi-public facilities
Duplexes	1,200 square feet*	
Small-scale agriculture	Family day care centers	Golf courses
Public parks and playgrounds	Produce stands	Riding stables
Production of forest products	Home occupations*	<del>Day care centers</del>
Adult family homes*	Accessory dwelling units*	Accessory structures greater than
		1,200 square feet*
Class I group homes*		Class II group homes*
Bed and breakfast inns*		
<u>Day care centers</u>		

\* Subject to special conditions and restrictions in Chapter 16.10.

B. *Low Density Residential District (LDR)*. This zoning district implements the low density residential use designation on the comprehensive plan future land use map. It is intended to provide for rural lifestyles, promote open space and minimize impervious surfaces, and to provide a buffer to separate agricultural areas from the suburban and urban residential uses. Allowed uses within the low density residential district are as follows:

<b>Principal Uses</b>	<b>Accessory Uses</b>	<b>Conditional Uses</b>
Single-household dwellings	Accessory structures less than 800 square feet*	Public/quasi-public facilities
Small-scale agriculture	Family day care centers	Class II group homes*
Public parks and playgrounds	Produce stands	<del>Day care centers</del>
Duplexes	Home occupations*	Accessory structures greater than 800 square feet*
Cottages*		
Adult family homes*	Poultry raising	
Class I group homes*	Accessory dwelling units*	
Bed and breakfast inns*		

[Day care centers](#)

\* Subject to special conditions and restrictions in Chapter 16.10.

C. *Medium Density Residential District (MDR)*. This zoning district implements the medium density residential use designation on the comprehensive plan future land use map. These areas provide a stable environment for residential development, adequate public services to serve residential development and prohibit uses that would violate the single-family nature of the neighborhood. Allowed uses within the medium density residential district are as follows:

<b>Principal Uses</b>	<b>Accessory Uses</b>	<b>Conditional Uses</b>
Single-household dwellings	Accessory structures less than 800 square feet*	Public/quasi-public facilities
Adult family homes*	Family day care centers	Private schools
Class I group homes*	Private greenhouses*	<del>Day care centers</del>
Bed and breakfast inns*	Home occupations*	Class II group homes*
Duplexes	Accessory dwelling units*	
Cottages*		
Triplexes		

[Day care centers](#)

\* Subject to special conditions and restrictions in Chapter 16.10.

D. High Density Residential District (HDR). This zoning district implements the high density residential use designation on the comprehensive plan future land use map. It is intended to provide areas for higher density residential uses near commercial services and located to permit efficient delivery of public services. Allowed uses within the high density residential district are as follows:

<b>Principal Uses</b>	<b>Accessory Uses</b>	<b>Conditional Uses</b>
Duplexes	Accessory structures less than 800 square feet*	Public/quasi-public facilities
Triplexes*	Family day care centers	Manufactured housing parks*
Cottages*	Home occupations*	Professional offices
Multifamily dwellings	Bed and breakfast inns*	
Townhomes*		
<a href="#">Day care centers</a>		<b>Day care centers</b> Accessory structures greater than 800 square feet* Continuing care retirement facilities*

\* Subject to special conditions and restrictions in Chapter 16.10.

Maximum Density. Except as provided for elsewhere in this title, the maximum density for multifamily dwellings is one dwelling unit for each ~~four~~ two thousand (42,000) square feet of gross lot area.

E. Manufactured Home Park Overlay (MHP). This overlay zone is intended to promote the retention of manufactured home parks as a source of affordable detached single-family and senior housing. This classification is assigned to certain existing manufactured home parks. The Manufactured Home Park zoning classification limits development to manufactured home parks unless and until a comprehensive plan and zoning amendment for another type of land use is requested, considered and adopted. Allowed uses within the Manufactured Home Park Overlay are as follows:

<b>Principal Uses</b>	<b>Accessory Uses</b>	<b>Conditional Uses</b>
<a href="#">Manufactured Home Parks</a>	<a href="#">Mobile and/or manufactured homes, in manufactured home parks</a> <a href="#">Accessory structures less than 800 square feet*</a> <a href="#">Family day care centers</a>	<a href="#">Public/quasi-public facilities</a>  <a href="#">Accessory Structures greater than 800 square feet</a>
	<a href="#">Home occupations*</a>	

\* [Subject to special conditions and restrictions in Chapter 16.10.](#)

(Ord. 614 § 4 Exh. D (part), 2001; Ord. 566 § 2 Exhs. A (part), B (part), 1998)

(Ord. No. 751 , § 4, 8-27-2019)

### 16.08.050 Commercial zoning districts.

It is the intent of the three primary commercial zoning districts to provide for areas of predominantly commercial land uses in appropriate areas of Coupeville, to assure that commercial development is harmonious in size and scale to the community and adjacent buildings, to provide for efficient vehicular and pedestrian traffic, to

preserve the Town's historic, rural character, including but not limited to the residential use of a designated historic building that was originally constructed as a traditional "single-family" home, and to reflect the intent of the Coupeville comprehensive plan. The specific intent and allowed uses within each predominantly commercial zoning district are described below:

- A. **Historic Commercial Center (HCC).** This zoning district implements in part the commercial designation on the comprehensive plan future land use map. This zoning district is reserved for the historic Front Street area between Alexander and Haller Streets (north of Coveland and Ninth Streets), including the Coupeville Wharf, and is intended to accommodate water-oriented uses, along with small-scale commercial uses which are compatible in size, scale and visual character with the district's historic character. Mixed use, adaptive reuse and preservation within a pedestrian scale environment are hallmarks of this district. Allowed uses within the Historic Commercial Center zoning district are as follows:

<b>Principal Uses</b>	<b>Accessory Uses</b>	<b>Conditional Uses</b>
Retail sales and service (no drive-up service)	Accessory structures less than 800 square feet*	Public/quasi-public facilities
Professional offices (no drive-up service)	Family day care centers	<del>Day care centers</del>
Restaurants (no drive-up service)	Home occupations* Not at street-level residential west of Main Street (mixed use)	Multifamily dwellings east of Main Street
Marine-related sales and service	Parking facilities	Parking facilities
Personal services	Accessory dwelling units for single-household residential use of a designated historic home	Hotels*
Clubs, lodges, and fraternal organizations		Outdoor storage and display
Bed and breakfast inns*		Microbreweries
Single- household residences east of Main Street		New single-household residential buildings that are not accessory structures
Short-term rentals, except the short-term rentals west of North Main Street shall be part of a mixed use development and the short-term rental is not allowed at street level*		<a href="#">Permanent Supportive Housing</a> <a href="#">Transitional Housing</a> <a href="#">Emergency Housing</a>
Marine fueling station		
Marine research facilities		
Marine repair and sales		
Moorage facility/marina		
Single-household residential use of a designated historic home		
Mixed Use structures*		
<a href="#">Day care centers</a>		

\* Subject to special conditions and restrictions in Chapter 16.10.

- B. **Town Commercial (TC).** This zoning district implements in part the commercial designation on the comprehensive plan future land use map. It encompasses most the commercial areas outside of the Front Street historic area, including North and South Main Street, Coveland Street, and Birch Street NE. It is intended to provide for a wide range of commercial uses that are proportional in scale and compatible in character with historic uses in the Town, and that cater to both vehicular and

nonmotorized access. More intensive, larger or automobile-dependent commercial land uses are not appropriate for this district. Allowed uses within the town commercial zoning district are as follows, provided that only professional offices are allowed as principal uses adjacent to SR 20:

Principal Uses	Accessory Uses	Conditional Uses
Retail sales and service	Accessory structures less than 800 square feet*	Public/quasi-public facilities
Professional offices	Parking facilities	<del>Day care centers</del>
Restaurants (no drive-up service)	Not at street-level residential (mixed use)	Parking facilities
Theaters	Accessory dwelling units for single-household residential use of a designated historic home	Outdoor storage and display
Professional services	<a href="#">Family Day Care Centers</a>	Commercial recreation
Microbreweries		Hotels*
Clubs, lodges, and fraternal organizations		Single-household residences that are not designated historic homes or accessory structures
Bed and breakfast inns*		<a href="#">Permanent Supportive Housing</a> <a href="#">Transitional Housing</a> <a href="#">Emergency Housing</a>
Short-term rentals*		
Single-household residential use of a designated historic home		
Multifamily Residential*		
Mixed Use structures*		
<a href="#">Day care centers</a>		

\* Subject to special conditions and restrictions in Chapter 16.10.

- C. **General Commercial (GC).** This zoning district implements in part the commercial designation on the comprehensive plan future land use map. It is reserved for specific locations in Coupeville where commercial uses which are larger in scale, more automobile-oriented or more likely to impact neighboring properties may be sited without detracting unduly from the Town's historic character. The conditional use permit process is used to insure that all measurable impacts from these uses are identified and, if possible, mitigated through specific performance conditions. Allowed uses within the general commercial zoning district are as follows, provided that only professional offices are allowed as principal uses adjacent to SR 20:

Principal Uses	Accessory Uses	Conditional Uses
Retail sales and service	Accessory structures less than 800 square feet*	Public/quasi-public facilities
Professional offices	Parking facilities	Motels*
Restaurants (no drive-up service)	Not at street-level residential (mixed use)	Light industrial
Theaters		Adult businesses

Personal services  
 Microbreweries  
 Clubs, lodges, and fraternal organizations  
 Gasoline service stations  
 Bed and breakfast inns\*  
 Short-term rentals\*  
 Mixed Use structures\*

Tattoo parlors  
 Parking facilities  
 Outdoor storage and display  
 Commercial recreation  
  
 Heliports, helistops  
 Automobile sales  
 Automobile repair  
 Drive-up businesses  
 Veterinary clinics  
 Hotels\*  
 Mini-storage warehouses  
 Single-household residences that are not designated historic homes or accessory structures

\* Subject to special conditions and restrictions in Chapter 16.10.

(Ord. 596 § 1, 2000; Ord. 566 § 2 Exhs. A (part), B (part), 1998; Ord. No. 677, § 4, 10-13-2009; Ord. No. 690, § 1, 4-26-2011; Ord. No. 751, § 5, 8-27-2019)

**16.08.060 ~~Public/quasi-public zoning district~~ Civic.**

It is the intent of this district to provide adequate land for uses which serve governmental functions, provide a wider community purpose ~~or for areas designated as open space or future park development~~. Collectively, these uses serve the cultural, educational, ~~recreational, religious, transportation and~~ religious, and public service needs of the community. Allowed uses within the public/quasi-public zoning district are as follows:

-Principal Uses	Accessory Uses	Conditional Uses
Public facilities	Accessory structures Less than 800 square feet	Accessory structures greater than 800 square feet
Quasi-public facilities, <u>including those allowed under RCW 36.01.290</u>	Restaurant (no drive-up services)	
	-Parking facilities	
	-Retail sales	

(Ord. 566 § 2 Exhs. A (part), B (part), 1998)

**16.08.070 ~~Reserved~~ Parks and Open Space.**

It is the intent of this district to provide adequate lands for areas designated as open space or future park development. These uses serve the recreational and transportation needs of the community. Allowed uses within the Parks and Open Space district are as follows:

<u>Principal Uses</u>	<u>Accessory Uses</u>	<u>Conditional Uses</u>
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[Public facilities](#)

[Accessory structures Less than  
800 square feet](#)

[Accessory structures greater than  
800 square feet](#)

[Quasi-public facilities](#)

[Parking facilities](#)

Editor's note(s)—Ord. No. 692, § 7, adopted Oct. 3, 2011, repealed § 16.08.070 in its entirety, which pertained to historic restoration overlay district and derived from Ord. 566 § 2 Ex. A (part), 1998.

### **16.08.080 Planned unit development overlay district (PUD).**

- A. Intent and Purpose. The purpose of this chapter, providing for the establishment of a planned unit development overlay district, is to:
1. Encourage flexibility in design and development that will encourage a more creative approach in the development of land and which will result in a more efficient, aesthetic and desirable use of the land.
  2. Permit flexibility of design, placement of buildings, use of required open spaces, circulation facilities, off-street parking areas, and otherwise to better utilize the potentials of sites characterized by special features of geography, topography, size or shape.
  3. Facilitate the adequate and economical provisions of streets and utilities.
  4. Preserve the natural and scenic qualities of open area.
- B. Minimum Area. The minimum area of a PUD, planned unit development shall be five acres.
- C. Pre-application Conference. In accordance with Section 16.06.030(A) of this title, appropriate Town staff shall meet with the applicant for the purpose of gathering general information and guidelines before entering into binding commitments or incurring substantial expense in the preparation of plans. Particular attention shall be given to the following:
1. The present uses and character of the area;
  2. The road and street system in the area, especially:
    - a. Neighborhood through routes,
    - b. Designated collector and arterial streets, both existing or proposed,
    - c. The right-of-way widths for all roads and streets,
    - d. Whether streets or ways are to be public or private.
  3. Public and private open areas, parks and trails;
  4. Public and private utilities and services or their counterparts:
    - a. Water,
    - b. Sewer,
    - c. Fire protection,
    - d. Surface drainage,
    - e. Electricity (underground),
    - f. Telephone (underground),
    - g. Street and common area lights,
    - h. Television cable (underground),

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- i. General concept of the developer.
- D. Rezone to Planned Unit Development Overlay District. The applicant may submit a verified rezone application requesting a change to planned unit development overlay district pursuant to Section 16.06.070 of this title which shall be accompanied by an outline development plan and program containing the elements and meeting the density, open space and all other requirements enumerated in subsections G through H of this section.
- E. Review Process.
- 1. The application for a planned unit development overlay district shall be considered first by the planning commission at a public meeting within the time and in the manner provided by Section 16.06.050(D)(4) of this title. If a preliminary subdivision is part of the application, requirements for public meetings and plat content contained in Chapter 16.16 shall also be complied with.
  - 2. The minutes of the planning commission public meeting, along with any recommendation, shall be forwarded to the town council for a public hearing on the application. The public hearing and notice of decision shall be conducted in accordance with Sections 16.06.040 and 16.06.050 of this title.
- F. Decision Criteria. Approval or denial of the proposal to rezone shall be based on the following criteria:
- 1. Substantial conformance to the comprehensive plan;
  - 2. The proposal's harmony with the surrounding area, or its potential future use;
  - 3. The system of ownership and means of development, preserving and maintaining open space;
  - 4. The adequacy of the size of the proposed overlay district to accommodate the contemplated development.
- G. Outline Development Plan and Program—Plan Elements. The elements of the outline development plan shall be as follows:
- 1. Existing maps drawn to a scale of not less than one inch to one hundred (100) feet and proposed contour map;
  - 2. Location, with the names, of all existing and proposed streets, public ways, utility rights-of-way, parks or other open spaces and all land uses within five hundred (500) feet of the boundary of the development;
  - 3. Existing sewers, water mains and other underground facilities within and adjacent to the development and their certified capacities;
  - 4. Proposed sewer or other waste disposal facilities, water mains and other underground utilities;
  - 5. Preliminary subdivision plan;
  - 6. Proposed land use plan;
  - 7. Community facilities plan;
  - 8. Location and amount of open space, screening and landscaped areas;
  - 9. Traffic flow plan;
  - 10. Location and dimension of walks, trails or easements;
  - 11. Location, arrangement, number and dimensions of truck loading and unloading spaces and docks;
  - 12. Approximate location of building and/or structures, indicating general height, bulk, and number of dwelling units;

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13. Indication of stages of development.
- H. Outline Development Plan and Program—Program Elements. The elements of the outline development program shall be as follows:
1. Statement of goals and objective (i.e., why it would be in the public interest and be consistent with the comprehensive plan);
  2. Evidence of resources available to develop the project;
  3. Tables showing total number of areas, distribution of area by use, percent designated for each dwelling type, type of off-street parking, streets, parks, playgrounds, schools and open spaces;
  4. Tables indicating overall densities and density by dwelling types and any proposal for the limitation of density;
  5. Time table of development;
  6. Preliminary storm water drainage plan.
- I. Common Open Space—Requirements Generally.
1. Common open space in a planned unit development overlay district shall meet the following requirements:
    - a. The location, shape, size and character of the open space must be suitable for the planned unit development.
    - b. Common open space must be used for amenity or recreational purposes. The uses authorized for the common open space must be appropriate to the scale and character of the planned unit development, considering its size, density, expected population, topography, number and type of dwelling units to be provided.
    - c. Common open space must be suitably improved for its intended use, but common open space containing natural features may be left unimproved. The buildings, structures and improvements which are permitted in the common open space must be appropriate to the uses which are authorized for common open space and must conserve and enhance the amenities of the common open space in regard to its topography and unimproved condition.
  2. The development schedule, which is part of the development plan, must coordinate improvement of common open space, construction of buildings, structures and improvements in the common open space, and the construction of residential dwellings in the planned unit development.
- J. Detail Plan. The purpose of the detail plan is to provide a specific plan upon which the town council can base their decision and with which substantial compliance is necessary for preparation of the final plan. When seeking approval of the planned development, the detail plan shall be filed:
1. As the initial plan for the entire development if no outline plan has been approved at the time application is made.
  2. As the second step when an outline plan has been approved:
    - a. Such detail plan may be filed in phases.
    - b. The first phase of the entire detail plan shall be submitted within twelve (12) months following approval of the outline plan, unless an extension has been granted.
    - c. Detail plans for subsequent phases, if more than one phase is used, shall be filed at least sixty (60) days prior to the construction date set forth in the timetable unless an extension has been granted as herein provided.

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- K. Maps, Written Statements and Application. The detail plan shall be accompanied by an application on a form supplied by the Town. The detail plan shall include the following information and shall be prepared on material which is suitable for printing by the ozalid (blueline) process:
1. A scale map showing the following for the planned development site:
    - a. The topography in sufficient detail to determine the grades and character of the site as they relate to the improvements and to the adjacent area;
    - b. The location of all thoroughfares and walks, their widths and the nature of their improvements and whether they are to be public or private;
    - c. The location, layout and the surfacing of all off-street parking areas;
    - d. The property boundary lines;
    - e. The individual lot lines of each parcel that is to be created for separate ownership;
    - f. The location of easements for the water lines, fire hydrants, sewer and storm sewer lines, and the location of the electric, gas and telephone lines, television cable, and the lighting plans;
    - g. The landscaping and tree planting plan, including species and size, with a notation indicating the existing trees and shrubs which are to be retained;
    - h. The common facilities, open areas and spaces, and the particular uses which are intended for them;
    - i. The areas proposed to be conveyed, dedicated, reserved or used for parks, scenic-ways, playgrounds, schools, public buildings and similar public and semipublic uses and whether such areas are to be public or private;
    - j. If the planned development is to be constructed in phases, indicate the area of each phase on the map; and
    - k. A plan showing the following for each existing or proposed building or structure for all sites, except Single-household lots:
      - i. Its location on the lot and within the planned development,
      - ii. The intended use,
      - iii. The number of dwelling units in each residential building.
  2. Elevation drawings of all typical proposed structures except Single-household residences. The drawings shall be accurate and to scale but need not be the final working drawings.
  3. The location of all buildings on abutting properties. If accurate information was submitted for the outline plan, this will be sufficient.
  4. The manner of financing for the planned development.
  5. The present ownership of all of the land in the planned development.
  6. A development time schedule indicating:
    - a. The approximate date when construction of the project will begin;
    - b. The phases in which the project will be built and the approximate date when construction of each phase will begin;
    - c. The approximate dates when development of each phase will be completed;
    - d. The area and location of open space that will be provided at each phase.

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7. Proposed documents providing for ownership, maintenance, operation of common facilities and open space, restrictive covenants, and architectural design review.
  8. Detailed storm drainage management plan.
- L. Detail Plan Approval.
1. The detail plan shall be considered in the same manner as provided in subsection E of this section.
  2. Approval of the detail plan in whole or in phases is contingent upon substantial conformance to the outline plan and to the standards set forth in this chapter. The town council may impose reasonable conditions upon its approval to insure conformance to the approved plan. This substantial conformance is intended solely to facilitate the minor modifications from one planning step to another. It is not the intent, nor shall these modifications be used to increase the total area covered or decrease the total open space as approved by the town council. The town council may fail to find substantial conformance to exist if, in their opinion, the adjustments provided in subsection (L)(3) of this section are being used to significantly modify the approved plan.
  3. Substantial conformance shall exist when the comparison of the detail plan to the approved outline plan shall show that:
    - a. There are the same or fewer number of dwelling units;
    - b. The open space is in the same general location and in the same general amount, or a greater amount;
    - c. The buildings have the same or less number of stories;
    - d. The roads and drives follow approximately the same course, have the same or greater width, have the same public or private rights therein and have the same termini and serve the same or fewer dwelling units; and
    - e. The detail plan is within the intent and purpose of the outline plan.
  4. The detail plan approved, either for a phase or for the entire plan, shall be valid for a twelve (12) month period. The town planner may extend approval for additional six month periods.
- M. Disapproval of Detail Plan. If the detail plan is not in substantial conformance to the purpose and intent of the outline plan, or an applicable portion thereof, the town council shall not approve the detail plan. If it is not modified to conform to the outline plan, the developer may request a new public meeting before the planning commission and public hearing before the town council. The revised detail plan shall be considered as if it were a new application.
- N. Site Improvements. The developer may place street improvements, sidewalks, utilities and other permanent site improvements or stake the location of the buildings and make application for building permits after detail plan approval; however, the placing of improvements will not obligate the town council to grant approval of the final plan. Under no circumstances will any building permit be issued until final approval has been granted and the necessary portions of the final plan recorded.
- O. Final Plan. The purpose of the final plan is to formalize into the final, legal document form the plans which were approved in the detail plan step. The final plan, when properly filed in the county deed records shall serve as the permanent public record of the planned development.
- P. Contents. The final plan shall contain the information required in subsection K of this section for the detail plan. The final plan will be prepared or printed on permanent high grade paper in a form suitable for inclusion in the deed records of the county. If parcels of land are to be sold, a "hard copy" subdivision plat in the form prescribed by Section 16.16.120(B) of this title shall also be filed with the final plan. Condominium

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plats shall conform to Washington law and shall not be reviewed by the planning commission or town council.

- Q. Filing. The final plan shall be filed within twelve (12) months of the date of the granting of the detail plan approval.
- R. Placing of Improvements. The Town of Coupeville shall require, as a condition to granting final approval, that the street, utility, parking, sidewalk, landscaping, common facilities and open space improvements will be placed. In lieu of the installation of the foregoing required improvements, the Town may permit the developer to deposit a performance bond with the town council in an amount not less than one hundred twenty-five (125) percent of the estimate for all required improvements. This amount of the estimate shall be prepared by the applicant for approval by the public works director. If a subdivision plat is used to divide property, the conditions of approval contained in Section 16.16.040 shall apply. All required improvements are to be completed by the subdivider within one year from the date of the approval of the final plan by the town council. If said improvements are not completed in the specified time, the town council may use the bond or any portion thereof to complete the same.
- S. Final Plan Approval.
  - 1. The planning commission and council shall review and approve the final plan if it is in substantial conformance with the detail plan. Nothing in these provisions shall limit reduction of the number of dwelling units or increasing open space, provided that if this is done for one phase the number of dwelling units shall not be transferred to another phase, nor the open space be reduced below that permitted in the detail plan. This substantial conformance provision is intended solely to facilitate the minor modifications from one planning step to another. It is not the intent, nor shall these modifications be used to increase the total area covered or decrease the total open space as approved by the town council. The council may fail to find substantial conformance to exist, if in their opinion, the adjustments provided below are being used to significantly modify the approved plan.
  - 2. Substantial conformance shall exist when the comparison of the detail plan with the final plan shows that:
    - a. The number of dwelling units are within ten (10) percent of those shown on the approved detail plan but in no case shall any change exceed the limits established in this code;
    - b. The yard depths and distances between main buildings are within ten (10) percent of those shown on the approved detail plan, but in no case shall these distances be reduced below the minimum established within this code;
    - c. The open space is within ninety (90) percent or more of that provided on the detail plan;
    - d. The building size does not exceed the building sizes shown on the detail plan by more than ten (10) percent nor that the building location does not depart by more than ten (10) percent from the location shown on the final plan.
- T. Filing or Recording. Upon final approval and after all conditions have been met, the developer shall record the final plan in the county deed records. If parcels are to be sold, the developer will also process and record a subdivision plat as provided in Chapter 58, Revised Code of Washington.
- U. Amending the Recorded Final Plan. The recorded final plan may be amended by filing the amended plan in the same manner as either an outline plan or a detail plan. A public hearing must be held and the manner processed in the same manner as if it were a new application. Such amendments shall be recorded in the same manner as the final plan and the amendment noted on the original recorded copy of the final plan.
- V. Common Open Space—Retention and Maintenance.

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1. The final development plan and program shall include a provision approved by the town council as being sufficient to assure permanent retention and maintenance of the common open space in a planned unit development overlay district. Such assurance may be in the form of restrictive covenants, dedication of open space to the public where such dedication will be accepted by the town council, an undertaking by an association of owners of the property within the planned unit development overlay district, or in any other form or by any other method approved by the town council as being practical and legally sufficient to assure the permanent retention and maintenance of the common open space. All legal documents to carry out the plan and program in this regard shall be filed by the applicant with the final development plan and program, and shall be subject to approval as to form by the town attorney. All such plans and programs shall contain provisions whereby the Town will be vested with the right to enforce the permanent retention and maintenance of the common open space, and further that in the event the common open space is permitted to deteriorate, or is not maintained in a condition consistent with the approved plan and program, then in such event the Town may, at its option, cause necessary maintenance to be performed and assess the costs thereof to the owners of the property within the planned unit development overlay district.
  2. No common open space may be put to any use other than as specified in the approved final development plan unless the development plan has been modified to permit such other use pursuant to subsection U of this section. No such modification of use shall be deemed as a waiver of any of the provisions of the approved final development plan assuring the permanent retention and maintenance of the common open space.
- W. **Underground Utilities.** In any planned development which is primarily designed for or occupied by dwellings, all electric lines, telephone facilities, fire alarm conduits, street light wiring and other wiring must be placed underground less this requirement is waived by the town council.
- X. **Building Permits—Issuance after Final Plan Approval.** Building permits shall be issued for construction only in accordance with the plan and program elements of the plan as finally approved by the town council.
- Y. **Modifications to Development.**
1. **Major Modifications.** Application for major modifications in the final development plan and program must be submitted to the planning commission and town council, as if such application were an original application for a planned unit development overlay district.
  2. **Minor Modifications.** Minor modifications in the final development plan and program may be approved by the town planner. Such changes may include minor shifting of the location of buildings, proposed streets, public or private ways between the easements, parks or other features of the plan, but shall not include those changes of boundaries, changes in land use or other changes of location which are not devoted to specified land uses.
- Z. **Violation of Terms of Approvals—Penalty—Enforcement.** Deviation from any condition upon which final approval was granted, or from any condition shown on the approved final development plan and program, without prior compliance with subsection U of this section shall constitute a violation of this title punishable and enforceable in the manner provided for in Section 16.06.080.
- AA. **Action on Nondevelopment.** If, within three years after an application for a planned unit development overlay district, substantial construction has not been performed on the approved project, the overlay district will be voided unless the town council grants a longer period of time. This section shall not be construed so as to divest the town council of authority to change the underlying zoning of property within a planned unit development overlay district pursuant to and in accordance with the provisions of Section 16.06.070.
- BB. **Damaged Building Restoration.** Replacement or reconstruction of any buildings or improvements to buildings damaged or destroyed shall substantially conform to the originally approved planned unit development.

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(Ord. 566 § 2 Exh. A (part), 1998)

**16.08.085 [Reserved](#)**

**16.08.090 Public utilities.**

The provisions of this title shall not be construed to limit or interfere with the installation, maintenance and operation of public utility pipe lines and electric or telephone transmission lines when located in accordance with the applicable rules and regulations of the state of Washington within rights-of-way, easements, franchise or ownerships of such public utilities.

(Ord. 566 § 2 Exh. A (part), 1998)

**16.08.100 Zoning of annexed lands.**

Any land annexed to the Town is made an LDR district until it is zoned otherwise.

(Ord. 566 § 2 Exh. A (part), 1998)

**16.08.110 Waiver or delay of collection of hookup fees.**

The Town may waive or delay collection of tap-in charges, Connection fees, or hook-up fees for low-income persons, a class of low-income persons, or a nonprofit organization, public development authority, housing authority, or local agency that provides emergency shelter, transitional housing, permanent supportive housing, or affordable housing to connect to lines or pipes used by the town to provide utility service, the waiver or delay shall be pursuant to a program established by ordinance. As used in this section, the provision of “utility service” includes, but is not limited to, water, sanitary sewer or stormwater service.

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**Chapter 16.10 SUPPLEMENTAL USE STANDARDS**

**Chapter 16.12 DEVELOPMENT STANDARDS<sup>1</sup>**

**Chapter 16.13 EBAY'S LANDING NATIONAL HISTORICAL RESERVE DESIGN  
REVIEW AND COMMUNITY DESIGN STANDARDS**

**Chapter 16.14 SPECIAL USE PERMITS**

**Chapter 16.16 SUBDIVISIONS**

**Chapter 16.18 CONDOMINIUM BINDING SITE PLAN**

**Chapter 16.19 UNIT LOT SUBDIVISIONS**

**Chapter 16.20 CLEARING AND GRADING<sup>2</sup>**

**Chapter 16.24 DEVELOPMENT REGULATIONS**

**Chapter 16.28 SIGNS<sup>3</sup>**

**Chapter 16.30 SHORELINE MASTER PROGRAM<sup>4</sup>**

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<sup>1</sup>Editor's note(s)—Ord. No. 692, § 13, adopted Oct. 3, 2011, changed the title of Ch. 16.12 from "Development and design standards" to "Development standards."

<sup>2</sup>Editor's note(s)—Ord. No. 688, § 2(Exh. B), adopted Jan. 11, 2011, amended ch. 16.20, §§ 16.20.010—16.20.150 in its entirety as set out herein. The former ch. 16.20, §§ 16.20.010—16.20.150, pertained to similar subject matter. See also the Code Comparative Table and Disposition List.

<sup>3</sup>Editor's note(s)—Ord. No. 736, § 1, adopted June 13, 2017, amended Ch. 16.28 in its entirety to read as set out herein. Former Ch. 16.28, §§ 16.28.010—16.28.060, pertained to similar subject matter and derived from Dev. regs §§ 10.60.010—16.60.060, adopted 1996; Ord. No. 692, § 20, adopted Oct. 3, 2011.

<sup>4</sup>Editor's note(s)—Ord. No. 773, § 2(Exh. A), adopted Mar. 22, 2022, amended Ch. 16.30 in its entirety to read as herein set out. Former Ch. 16.30, §§ 16.30.010—16.30.740, pertained to similar subject matter, and derived from Ord. No. 671, § 3(Exh. C), adopted Mar. 25, 2008; and Ord. No. 692, § 21, adopted Oct. 3, 2011.

## Chapter 16.34 CRITICAL AREAS ORDINANCE

### 16.34.010 Purpose.

- A. The purpose of this chapter is to designate and classify ecologically sensitive and hazardous areas and to protect these areas and their functions and values, while also allowing for reasonable use of private property.
- B. This chapter is to implement the goals, policies, guidelines, and requirements of the town comprehensive and shoreline plans and the Shoreline Management and Growth Management Acts.
- C. The Town finds that critical areas provide a variety of valuable and beneficial biological and physical functions that benefit the Town and its residents, and/or may pose a threat to human safety or to public and private property. The beneficial functions and values provided by critical areas include, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation of floodwaters, groundwater recharge and discharge, erosion control, wave attenuation, protection from hazards, historical, archaeological, and aesthetic value protection, and recreation. These beneficial functions are not listed in order of priority.
- D. Goals. By limiting development and alteration of critical areas, this chapter seeks to:
  - 1. Protect members of the public and public resources and facilities from injury, loss of life, or property damage due to landslides and steep slope failures, erosion, or flooding;
  - 2. Maintain healthy, functioning ecosystems through the protection of unique, fragile, and valuable elements of the environment, including ground and surface waters, wetlands, and fish and wildlife and their habitats, and to conserve the biodiversity of plant and animal species;
  - 3. Direct activities not dependent on critical areas resources to less ecologically sensitive sites and mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to critical areas; and
  - 4. Prevent cumulative adverse environmental impacts to water quality, wetlands, and fish and wildlife habitat, and the overall net loss of wetlands, frequently flooded areas, and habitat conservation areas.
- E. The regulations of this chapter are intended to protect critical areas in accordance with the Growth Management Act and Shoreline Management Act through the application of the best available science, as determined according to WAC 365-195-900 through 365-195-925, as they now exist or may be hereinafter amended, and in consultation with state and federal agencies and other qualified professionals.
- F. This Chapter is to be administered with flexibility and attention to site-specific characteristics. It is not the intent of this chapter to make a parcel of property unusable by denying its owner reasonable economic use of the property or to prevent the provision of public facilities and services necessary to support existing development and planned for by the community without decreasing current service levels below minimum standards.
- G. The Town's enactment or enforcement of this chapter shall not be construed for the benefit of any individual person or group of persons other than the general public.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

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#### **16.34.020 Authority.**

- A. As provided herein, the town planner is given the authority to interpret and apply, and the responsibility to enforce this chapter to accomplish the stated purpose.
- B. The Town may withhold, condition, or deny development permits or activity approvals to ensure that the proposed action is consistent with this chapter.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

#### **16.34.030 Relationship to other regulations.**

- A. These critical areas regulations shall apply as an overlay and in addition to zoning and other regulations adopted by the Town.
- B. Any individual critical area adjoined by another type of critical area shall have the buffer and meet the requirements that provide the most protection to the critical areas involved. When any provision of this chapter or any existing regulation, easement, covenant, or deed restriction conflicts with this chapter, that which provides more protection to the critical areas shall apply.
- C. These critical areas regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as locally adopted. Any potential impacts of a development and conditions required pursuant to this chapter shall be considered in the SEPA review process.
- D. 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 (for example, shoreline substantial development permits, Hydraulic Permit Act (HPA) permits, Section 106 of the National Historic Preservation Act, U.S. Army Corps of Engineers Section 404 permits, National Pollution Discharge Elimination System permits). The applicant is responsible for complying with these requirements, apart from the process established in this chapter.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

#### **16.34.040 Applicant responsible for reports required under this chapter.**

Unless otherwise indicated in this chapter, the applicant shall be responsible for the initiation, preparation, submission, and expense of all required reports, assessment(s), studies, plans, reconnaissance(s), peer review(s) by qualified consultants, and other work prepared in support of or necessary to review the application.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

#### **16.34.050 Severability.**

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

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

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### **16.34.060 Interpretation.**

In the interpretation and application of this chapter, the provisions of this chapter shall be considered to be the minimum requirements necessary, shall be liberally construed to serve the purpose of this ordinance, and shall be deemed to neither limit nor repeal any other provisions under state statute.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

### **16.34.070 Jurisdiction—Critical areas.**

- A. The Town shall regulate all uses, activities, and developments within, adjacent to, or likely to affect, one or more critical areas, consistent with the best available science and the provisions herein. The Town Critical Area map is attached as Exhibit A.
- B. Critical areas regulated by this chapter include:
  - 1. Wetlands;
  - 2. Critical aquifer recharge areas;
  - 3. Frequently flooded areas as regulated in Chapter 16.45;
  - 4. Geologically hazardous areas; and
  - 5. Fish and wildlife habitat conservation areas.
- C. All areas within the town meeting the definition of one or more critical areas, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

### **16.34.080 Activities likely to affect critical areas subject to regulation.**

Activities likely to affect critical areas shall be considered to be within the jurisdiction of these requirements and regulations to support the intent of this chapter and ensure protection of the functions and values of critical areas.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

### **16.34.090 Protection of critical areas.**

Any action taken pursuant to this chapter shall result in equivalent or greater functions and values of the critical areas associated with the proposed action, as determined by the best available science. All actions and developments shall be designed and constructed in accordance with Mitigation Sequencing (Section 16.34.210) to avoid, minimize, and restore all adverse impacts. Applicants must first demonstrate an inability to avoid or reduce impacts, before restoration and compensation of impacts will be allowed. No activity or use shall be allowed that results in a net loss of the functions or values of critical areas except under the reasonable use provisions of this chapter.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

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### **16.34.100 Best available science.**

- A. Protect Functions and Values of Critical Areas With Special Consideration to Anadromous Fish. Critical area reports and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish, such as salmon and bull trout, and their habitat.
- B. Best Available Science to be Consistent With Criteria. The best available science is that scientific information applicable to the critical area prepared by local, state, or federal natural resource agencies, a qualified scientific professional, or team of qualified scientific professionals that is consistent with criteria established in WAC 365-195-900 through WAC 365-195-925, as they now exist or may be hereinafter amended.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

### **16.34.110 Applicability.**

- A. The provisions of this chapter shall apply to all lands, all land uses and development activity, and all structures and facilities in the Town, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the Town. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purposes and requirements of this chapter.
- B. The Town shall not approve any permit or otherwise issue any authorization not expressly exempted by this chapter to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated buffer, without first ensuring compliance with the requirements of this chapter.
- C. Approval of a permit or development proposal pursuant to the provisions of this chapter does not discharge the obligation of the applicant to comply with the provisions of this chapter.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

### **16.34.120 Exemptions.**

- A. Exemption Request and Review Process. The proponent of the activity may submit a written request for exemption to the town planner that describes the activity and states the exemption listed in this section that applies. The town planner shall review the exemption request to verify that it complies with this chapter and approve or deny the exemption. If the exemption is denied, the proponent may continue in the review process and shall be subject to the requirements of this chapter.
- B. Exempt Activities and Impacts to Critical Areas. All exempted activities shall use reasonable methods to avoid potential impacts to critical areas. To be exempt from this chapter does not give permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense.
- C. Exempt Activities. The following developments, activities, and associated uses shall be exempt from the provisions of this chapter, provided that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements:
  - 1. Emergencies. Those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or

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preventative action in a timeframe too short to allow for compliance with the requirements of this chapter.

- a. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. The person or agency undertaking such action shall notify the Town within one working day following commencement of the emergency activity. Within thirty (30) days, the town planner shall determine if the action taken was within the scope of the emergency actions allowed in this Subsection. If the town planner determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions of unauthorized alterations and enforcement (Section 16.34.260) shall apply.
  - b. After the emergency, the person or agency undertaking the action shall fully fund and conduct necessary restoration and/or mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved critical area report and mitigation plan. The person or agency undertaking the action shall apply for review, and the alteration, critical area report, and mitigation plan shall be reviewed by the Town in accordance with the review procedures contained herein. Restoration and/or mitigation activities must be initiated within one year of the date of the emergency, and completed in a timely manner.
2. Operation, Maintenance, or Repair. Operation, maintenance, or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair. Operation and maintenance includes vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities, provided that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species.
  3. Passive Outdoor Activities. Recreation, education, and scientific research activities that do not degrade the critical area, including fishing, hiking, and bird watching.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

### **16.34.130 Exception—Public agency and utility.**

- A. If the application of this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.
- B. Exception Request and Review Process. An application for a public agency and utility exception shall be made to the Town and shall include a critical area identification form; critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW, as it now exists or may be hereinafter amended). The town planner shall issue a decision based on review of the submitted information, a site inspection, and the proposal's ability to comply with public agency and utility exception review criteria in Subsection D.
- C. Town Planner Review. The town planner shall review the application and town planner's recommendation, and conduct a public hearing pursuant to the provisions of CTC 16.06.040. The town planner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use exception review criteria in Subsection D.

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- D. Public Agency and Utility Review Criteria. The criteria for review and approval of public agency and utility exceptions follow:
1. There is no other practical alternative to the proposed development with less impact on the critical areas;
  2. The application of this chapter would unreasonably restrict the ability to provide utility services to the public;
  3. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
  4. The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science; and
  5. The proposal is consistent with other applicable regulations and standards.
- E. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

#### **16.34.140 Exception—Reasonable use.**

- A. If the application of this chapter would deny all reasonable economic use of the subject property, the Town the property owner may apply for an exception pursuant to this section. Reasonable Use exceptions within the jurisdiction of the Shoreline Management Act are processed as a shoreline variance.
- B. Exception Request and Review Process. An application for a reasonable use exception shall be made to the Town and shall include a critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW, as it now exists or may be hereinafter amended) (SEPA documents). The town planner shall issue a decision based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in Subsection D. The decision may be appealed by the applicant to the town council.
- C. Town Planner Review. The town planner shall review the application and provide public notice of application pursuant to the provisions of the CTC 16.06.030F. The Town Planner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use exception review criteria in Subsection D.
- D. Reasonable Use Review Criteria. Criteria for review and approval of reasonable use exceptions follow:
1. The application of this chapter would deny all reasonable economic use of the property;
  2. No other reasonable economic use of the property has less impact on the critical area;
  3. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;
  4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this chapter;
  5. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
  6. The proposal will result in no net loss of critical area functions and values consistent with the best available science; or

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7. The proposal is consistent with other applicable regulations and standards.
- E. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.
- (Ord. No. 671, § 2(Exh. B), 3-25-2008)

### **16.34.150 Allowed activities.**

- A. Critical Area Report. Activities allowed under this chapter shall have been reviewed and permitted or approved by the Town or other agency with jurisdiction, but do not require submittal of a separate critical area identification form or critical area report, unless such submittal was required previously for the underlying permit. The town planner may apply conditions to the underlying permit or approval to ensure that the allowed activity is consistent with the provisions of this chapter to protect critical areas.
- B. Required Use of Best Management Practices. All allowed activities shall be conducted using the best management practices that result in the least amount of impact to the critical areas. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The Town shall observe the use of best management practices to ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense.
- C. Allowed Activities. The following activities are allowed:
1. Permit Requests Subsequent to Previous Critical Area Review. Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits), and construction approvals (such as building permits) if all of the following conditions have been met:
    - a. The provisions of this chapter have been previously addressed as part of another approval;
    - b. There have been no material changes in the potential impact to the critical area or buffer since the prior review;
    - c. There is no new information available that is applicable to any critical area review of the site or particular critical area;
    - d. The permit or approval has not expired or, if no expiration date, no more than five years has elapsed since the issuance of that permit or approval; and
    - e. Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured.
  2. Modification to Existing Structures. Structural modification of, addition to, or replacement of an existing legally constructed structure that does not further alter or increase the impact to the critical area or buffer and there is no increased risk to life or property as a result of the proposed modification or replacement, provided that restoration of structures substantially damaged by fire, flood, or act of nature must be initiated within one year of the date of such damage, as evidenced by the issuance of a valid building permit, and diligently pursued to completion.
  3. Activities Within the Improved Right-of-Way. Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a Town authorized private roadway except those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater; subject to the following:

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- a. Critical area and/or buffer widths shall be increased, where possible, equal to the width of the right-of-way improvement, including disturbed areas; and
  - b. Retention and replanting of native vegetation shall occur wherever possible along the right-of-way improvement and resulting disturbance.
4. Minor Utility Projects. Utility projects which have minor or short-duration impacts to critical areas, as determined by the town planner in accordance with the criteria below, and which do not significantly impact the function or values of a critical area(s), provided that such projects are constructed with best management practices and additional restoration measures are provided. Minor activities shall not result in the transport of sediment or increased stormwater. Such allowed minor utility projects shall meet the following criteria:
    - a. There is no practical alternative to the proposed activity with less impact on critical areas;
    - b. The activity involves the placement of a utility pole, street signs, anchor, or vault or other small component of a utility facility; and
    - c. The activity involves disturbance of an area less than seventy-five (75) square feet.
  5. Public and Private Pedestrian Trails. Public and private pedestrian trails, except in wetlands, fish and wildlife habitat conservation areas, or their buffers, subject to the following:
    - a. The trail surface shall meet all other requirements including water quality standards set forth in CTC 13.20;
    - b. Critical area and/or buffer widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas; and
    - c. Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report.
  6. Select Vegetation Removal Activities. The following vegetation removal activities, provided that no vegetation shall be removed from a critical area or its buffer without approval from the town planner:
    - a. The removal of the following vegetation with hand labor and light equipment:
      - i. Invasive and noxious weeds;
      - ii. English Ivy (*Hedera helix*);
      - iii. Himalayan blackberry (*Rubus discolor*, *R. procerus*); and
      - iv. Evergreen blackberry (*Rubus laciniatus*).
    - b. The removal of trees from critical areas and buffers that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property, provided that:
      - i. The applicant submits a report from a certified arborist, registered landscape architect, or professional forester that documents the hazard and provides a replanting schedule for the replacement trees;
      - ii. Tree cutting shall be limited to pruning and crown thinning, unless otherwise justified by a qualified professional. Where pruning or crown thinning is not sufficient to address the hazard, trees should be removed or converted to wildlife snags;
      - iii. All vegetation cut (tree stems, branches, etc.) shall be left within the critical area or buffer unless removal is warranted due to the potential for disease or pest transmittal to other healthy vegetation;

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- iv. The landowner shall replace any trees that are removed with new trees at a ratio of two replacement trees for each tree removed (2:1) within one year in accordance with an approved restoration plan. Replacement trees may be planted at a different, nearby location if it can be determined that planting in the same location would create a new hazard or potentially damage the critical area. Replacement trees shall be species that are native and indigenous to the site and a minimum of one inch in diameter at breast height (dbh) for deciduous trees and a minimum of six feet in height for evergreen trees as measured from the top of the root ball;
  - v. If a tree to be removed provides critical habitat, such as an eagle perch, a qualified wildlife biologist shall be consulted to determine timing and methods of removal that will minimize impacts; and
  - vi. Hazard trees determined to pose an imminent threat or danger to public health or safety, to public or private property, or of serious environmental degradation may be removed or pruned by the landowner prior to receiving written approval from Town provided that within fourteen (14) days following such action, the landowner shall submit a restoration plan that demonstrates compliance with the provisions of this chapter.
- c. Measures to control a fire or halt the spread of disease or damaging insects consistent with the state Forest Practices Act; Chapter 76.09 RCW, as it now exists or may be hereinafter amended, provided that the removed vegetation shall be replaced in-kind or with similar native species within one year in accordance with an approved restoration plan; and
  - d. Unless otherwise provided, or as a necessary part of an approved alteration, removal of any vegetation or woody debris from a habitat conservation area or wetland shall be prohibited.
- 7. Minor Site Investigative Work. Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored.
  - 8. Navigational Aids and Boundary Markers. Construction or modification of navigational aids and boundary markers.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

### **16.34.160 General requirements—Critical area project review process.**

- A. As part of this review, the Town shall:
  - 1. Verify the information submitted by the applicant;
  - 2. Evaluate the project area and vicinity for critical areas;
  - 3. Determine whether the proposed project is likely to impact the functions or values of critical areas; and
  - 4. Determine if the proposed project adequately addresses the impacts and avoids impacts to the critical area associated with the project.
- B. If the proposed project is within, or is likely to impact a critical area, the Town shall:
  - 1. Require a critical area report from the applicant that has been prepared by a qualified professional;
  - 2. Review and evaluate the critical area report;
  - 3. Determine whether the development proposal conforms to the purposes and performance standards of this chapter, including the criteria in review criteria (Section 16.34.230);

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4. Assess the potential impacts to the critical area and determine if they can be avoided or minimized; and
  5. Determine if any mitigation proposed by the applicant is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of this chapter.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

### **16.34.170 Critical area identification process.**

- A. **Site Inspection.** Prior to the Town's consideration of any proposed activity not found to be exempt under exemptions (Section 16.34.120) or allowed pursuant to allowed activities (Section 16.34.150), the town planner shall conduct a site inspection to review critical area conditions on site. The town planner shall notify the property owner of the inspection prior to the site visit. Reasonable access to the site shall be provided by the property owner for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period.
- B. Following a site inspection and review of any other information available pertaining to the site and the proposal, the town planner shall make a determination as to whether any critical areas may be affected by the proposal and if a more detailed critical area report shall be submitted.
- C. **Decision.**
  1. **No Critical Areas Present.** If after a site visit the town planner's analysis indicates that the project area is not within or adjacent to a critical area or buffer and that the proposed activity is unlikely to degrade the functions or values of a critical area, then the town planner shall rule that the critical area review is complete and no further review is required. A summary of this information shall be included in any staff report or decision on the underlying permit.
  2. **Critical Areas Present, But No Impact—Waiver.** If the town planner determines that there are critical areas within or adjacent to the project area, but that the best available science shows that the proposed activity is unlikely to degrade the functions or values of the critical area, the town planner may waive the requirement for a critical area report. A waiver may be granted if there is substantial evidence that all of the following requirements will be met:
    - a. There will be no alteration of the critical area or buffer;
    - b. The development proposal will not impact the critical area in a manner contrary to the purpose, intent, and requirements of this chapter; and
    - c. The proposal is consistent with other applicable regulations and standards.
    - d. A summary of this analysis and the findings shall be included in any staff report or decision on the underlying permit.
  3. **Critical Areas May Be Affected by Proposal.** If the town planner determines that a critical area or areas may be affected by the proposal, or is unable to determine if critical areas may be affected by the proposal, then the town planner shall notify the applicant that a critical area report must be submitted prior to further review of the project, and indicate each of the critical area types that should be addressed in the report.
- D. **Town Planner's Determination Subject to Reconsideration.**
  1. A determination regarding the apparent presence or absence of one or more critical areas by the town planner is not an expert certification and the determination is subject to possible reconsideration and reopening if new information is received.

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2. If the applicant wants greater assurance of the accuracy of the critical area review determination, the applicant may choose to hire a qualified professional to provide such assurances.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

### **16.34.180 Critical area report—Requirements.**

- A. Preparation by Qualified Professional. If required by the town planner in accordance with general requirements—critical area project review process (Section 16.34.160), the applicant shall submit a critical area report prepared by a qualified professional as defined herein.
- B. Incorporating Best Available Science. The critical area report shall use scientifically valid methods and studies in the analysis of critical area data and field reconnaissance and reference the source of science used. The critical area report shall evaluate the proposal and all probable impacts to critical areas in accordance with the provisions of this chapter.
- C. Minimum Report Contents. At a minimum, the report shall contain the following:
  1. The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;
  2. A copy of the site plan for the development proposal including:
    - a. A map to scale depicting critical areas, buffers, the development proposal, and any areas to be cleared; and
    - b. A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations.
  3. The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
  4. Identification and characterization of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area;
  5. A statement specifying the accuracy of the report, and all assumptions made and relied upon;
  6. An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;
  7. An analysis of site development alternatives including a no development alternative;
  8. A description of reasonable efforts made to apply mitigation sequencing pursuant to mitigation sequencing (Section 16.34.210) to avoid, minimize, and mitigate impacts to critical areas;
  9. Plans for adequate mitigation, as needed, to offset any impacts, in accordance with mitigation plan requirements (Section 16.34.220), including: but not limited to:
    - a. The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and
    - b. The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment;
  10. A discussion of the performance standards applicable to the critical area and proposed activity;
  11. Financial guarantees to ensure compliance; and
  12. Any additional information required for the critical area as specified in the corresponding chapter.

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- D. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.
  - E. Unless otherwise provided, a critical area report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the town planner.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

#### **16.34.190 Critical area report—Modifications to requirements.**

- A. Limitations to Study Area. The town planner may limit the required geographic area of the critical area report as appropriate if:
  - 1. The applicant, with assistance from the Town, cannot obtain permission to access properties adjacent to the project area; or
  - 2. The proposed activity will affect only a limited part of the subject site.
- B. Modifications to Required Contents. The applicant may consult with the town planner prior to or during preparation of the critical area report to obtain Town approval of modifications to the required contents of the report where, in the judgment of a qualified professional, more or less information is required to adequately address the potential critical area impacts and required mitigation.
- C. Additional Information Requirements. The town planner may require additional information to be included in the critical area report when determined to be necessary to the review of the proposed activity in accordance with this chapter. Additional information that may be required, includes, but is not limited to:
  - 1. Historical data, including original and subsequent mapping, aerial photographs, data compilations and summaries, and available reports and records relating to the site or past operations at the site;
  - 2. Grading and drainage plans; and
  - 3. Information specific to the type, location, and nature of the critical area.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

#### **16.34.200 Mitigation requirements.**

- A. The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas. Unless otherwise provided in this chapter, if alteration to the critical area is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a development proposal or alteration shall be mitigated using the best available science in accordance with an approved critical area report and SEPA documents, so as to result in no net loss of critical area functions and values.
- B. Mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.
- C. Mitigation shall not be implemented until after Town approval of a critical area report that includes a mitigation plan, and mitigation shall be in accordance with the provisions of the approved critical area report.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

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### **16.34.210 Mitigation sequencing.**

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

- A. Avoiding the impact altogether by not taking a certain action or parts of an action;
- B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
- C. Rectifying the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;
- D. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;
- E. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
- F. Compensating for the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
- G. Monitoring the hazard or other required mitigation and taking remedial action when necessary.

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

### **16.34.220 Mitigation plan requirements.**

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

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

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1. The proposed construction sequence, timing, and duration;
  2. Grading and excavation details;
  3. Erosion and sediment control features;
  4. A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
  5. Measures to protect and maintain plants until established.
- D. These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.
- E. **Monitoring Program.** The mitigation plan shall include a program for monitoring the mitigation measures and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring (for example, monitoring shall occur in years one, three, five, and seven after site construction), and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the project. The project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five years. Where the goal is establishment of a forested wetland system, the monitoring period shall be at least ten (10) years.
- F. **Contingency Plan.** The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.
- G. **Financial Guarantees.** The mitigation plan shall include financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures shall be posted in accordance with bonds to ensure mitigation, maintenance, and monitoring (Section 16.34.310).

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

### **16.34.230 Review criteria.**

The town planner shall make a determination as to whether the proposed activity and mitigation, if any, is consistent with the provisions of this chapter, based on the following criteria:

- A. Any alteration to a critical area, unless otherwise provided for in this chapter, shall be reviewed and approved, approved with conditions, or denied based on the proposal's ability to comply with all of the following criteria:
1. The proposal minimizes the impact on critical areas in accordance with mitigation sequencing (Section 16.34.210);
  2. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
  3. The proposal is consistent with the general purposes of this chapter and the public interest;
  4. Any alterations permitted to the critical area are mitigated in accordance with mitigation requirements (Section 16.34.200);
  5. The proposal protects the critical area functions and values consistent with the best available science and results in no net loss of critical area functions and values; and

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6. The proposal is consistent with other applicable regulations and standards.
  - B. The Town may condition the proposed activity as necessary to mitigate impacts to critical areas and to conform to the standards required by this chapter.
  - C. Except as provided for by this chapter, any project that cannot adequately mitigate its impacts to critical areas in the sequencing order of preferences in mitigation sequencing (Section 16.34.210) shall be denied.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

#### **16.34.240 Completion of the critical area review.**

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

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

#### **16.34.250 Appeals.**

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

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

#### **16.34.260 Unauthorized critical area alterations and enforcement.**

- A. 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 be restored. The Town 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 other responsible party's expense to compensate for violation of provisions of this chapter.
- B. Requirement for Restoration Plan. All development work shall remain stopped until a restoration plan is prepared and approved by the Town. Such a 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 Subsection C. The town planner shall, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.
- C. Minimum Performance Standards for Restoration.
  1. For alterations to critical aquifer recharge areas, frequently flooded areas, wetlands, and habitat conservation areas, the following minimum performance standards shall be met for the restoration of a critical area, provided that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:
    - a. The historic structural and functional values shall be restored, including water quality and habitat functions;
    - b. The historic soil types and configuration shall be replicated;

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- c. 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
  - d. Information demonstrating compliance with the requirements in mitigation plan requirements (Section 16.34.220) shall be submitted to the town planner.
2. For alterations to frequently flooded and geologically hazardous areas, the following minimum performance standards shall be met for the restoration of a critical area, provided that, if the violator can demonstrate that greater safety can be obtained, these standards may be modified:
- a. The hazard shall be reduced to a level equal to, or less than, the predevelopment hazard;
  - b. Any risk of personal injury resulting from the alteration shall be eliminated or minimized; and
  - c. Upon the determination of the town planner, the hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.
- D. Site Investigations. The town planner is authorized to make site inspections and take such actions as are necessary to enforce this chapter. The town planner shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.
- E. Penalties. Any person, party, firm, corporation, or other legal entity convicted of violating any of the provisions of this chapter shall be guilty of a misdemeanor. Each day or portion of a day during which a violation of this chapter is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of this chapter shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington. The Town may levy civil penalties against any person, party, firm, corporation, or other legal entity for violation of any of the provisions of this chapter. The civil penalty shall be assessed at a maximum rate of one thousand dollars (\$1,000.00) per day per violation.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

### **16.34.270 Notice on title.**

- A. In order to inform subsequent purchasers of real property of the existence of critical areas, the owner of any property containing a critical area or buffer on which a development proposal is submitted shall file a notice with the Island County Auditor's office according to the direction of the Town. The notice shall state the presence of the critical area or buffer on the property, the application of this chapter to the property, and the fact that limitations on actions in or affecting the critical area or buffer may exist. The notice shall "run with the land."
- B. This notice on title shall not be required for a development proposal by a public agency or public or private utility:
  - 1. Within a recorded easement or right-of-way;
  - 2. Where the agency or utility has been adjudicated the right to an easement or right-of-way; or
  - 3. On the site of a permanent public facility.
- C. The applicant shall submit proof that the notice has been filed for public record before the Town approves any site development or construction for the property or, in the case of subdivisions, short subdivisions, planned unit developments, and binding site plans, at or before recording.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

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### **16.34.280 Native growth protection areas.**

- A. Unless otherwise required in this chapter, native growth protection areas shall be used in development proposals for subdivisions, short subdivisions, planned unit developments, and binding site plans to delineate and protect those contiguous critical areas and buffers listed below:
  - 1. All landslide hazard areas and buffers;
  - 2. All wetlands and buffers;
  - 3. All habitat conservation areas; and
  - 4. All other lands to be protected from alterations as conditioned by project approval.
- B. Native growth protection areas shall be recorded on all documents of title of record for all affected lots.
- C. Native growth protection areas shall be designated on the face of the plat or recorded drawing in a format approved by the Town. The designation shall include the following restrictions:
  - 1. An assurance that native vegetation will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and
  - 2. The right of the Town to enforce the terms of the restriction.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

### **16.34.290 Critical area tracts.**

- A. Critical area tracts shall be used in development proposals for subdivisions, short subdivisions, planned unit developments, and binding site plans to delineate and protect those contiguous critical areas and buffers listed below that total five thousand (5,000) or more square feet:
  - 1. All landslide hazard areas and buffers;
  - 2. All wetlands and buffers;
  - 3. All habitat conservation areas; and
  - 4. All other lands to be protected from alterations as conditioned by project approval.
- B. Critical area tracts shall be recorded on all documents of title of record for all affected lots.
- C. Critical area tracts shall be designated on the face of the plat or recorded drawing in a format approved by the Town. The designation shall include the following restriction:
  - 1. An assurance that native vegetation will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and
  - 2. The right of the Town to enforce the terms of the restriction.
- D. The Town may require that any required critical area tract be dedicated to the Town, held in an undivided interest by each owner of a building lot within the development with the ownership interest passing with the ownership of the lot, or held by an incorporated homeowner's association or other legal entity (such as a land trust, which ensures the ownership, maintenance, and protection of the tract).

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

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### **16.34.300 Building setbacks.**

Unless otherwise provided, buildings and other structures shall be set back a distance of fifteen (15) feet from the edges of all critical area buffers or from the edges of all critical areas, if no buffers are required. The following may be allowed in the building setback area:

- A. Landscaping;
- B. Uncovered decks;
- C. Building overhangs, if such overhangs do not extend more than eighteen (18) inches into the setback area; and
- D. Impervious ground surfaces, such as driveways and patios.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

### **16.34.310 Bonds to ensure mitigation, maintenance, and monitoring.**

- A. When mitigation required pursuant to a development proposal is not completed prior to the Town final permit approval, such as final plat approval or final building inspection, the Town shall require the applicant to post a performance bond or other security in a form and amount deemed acceptable by the Town. If the development proposal is subject to mitigation, the applicant shall post a mitigation bond or other security in a form and amount deemed acceptable by the Town to ensure mitigation is fully functional.
- B. The bond shall be in the amount of one hundred twenty-five (125) percent of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater.
- C. The bond shall be in the form of a surety bond, performance bond, assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the Town attorney.
- D. Bonds or other security authorized by this section shall remain in effect until the Town determines, in writing, that the standards bonded for have been met. Bonds or other security shall be held by the Town for a minimum of five years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.
- E. Depletion, failure, or collection of bond funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.
- F. Public development proposals shall be relieved from having to comply with the bonding requirements of this section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.
- G. Any failure to satisfy critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within thirty (30) days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default, and the Town may demand payment of any financial guarantees or require other action authorized by the Town code or any other law.
- H. Any funds recovered pursuant to this section shall be used to complete the required mitigation.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

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### **16.34.320 Critical area inspections.**

Reasonable access to the site shall be provided to the Town, state, and federal agency review staff for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

### **16.34.330 Designation, rating, and mapping of wetlands.**

- A. Designating Wetlands. Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. Wetlands are those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. All areas within the town meeting the wetland designation criteria of an approved federal wetland delineation manual and applicable regional supplements, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter.
- B. Wetlands Rating Categories. Wetlands shall be rated according to Ecology's Washington State Wetland Rating System for Western Washington—Revised (Ecology Publication #14-06-029), or as revised by ecology. Wetland rating categories shall be applied as the wetland exists at the time of the adoption of this chapter or as it exists at the time of an associated permit application. Wetland rating categories shall not change due to illegal modifications. Wetlands shall be rated according to the following categories:
1. Category I. Category I wetlands are:
    - a. Relatively undisturbed estuarine wetlands larger than one acre;
    - b. Wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as high-quality wetlands;
    - c. Bogs;
    - d. Mature and old-growth forested wetlands larger than one acre;
    - e. Wetlands in coastal lagoons; or
    - f. Wetlands that perform many functions well (scoring twenty-three (23) points or more).
  2. Category II. Category II wetlands are:
    - a. Estuarine wetlands smaller than one acre, or disturbed estuarine wetlands larger than one acre;
    - b. A wetland identified by the Washington State Department of Natural Resources as containing "sensitive" plant species;
    - c. A bog between one-quarter and one-half acre in size;
    - d. An interdunal wetland larger than one acre; or
    - e. Wetlands with a moderately high level of functions (scoring between twenty (20) and twenty-two (22) points).
  3. Category III. Category III wetlands are:
    - a. Wetlands with a moderate level of functions (scoring between sixteen (16) and nineteen (19) points);

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- b. Often adequately replaced with a well-planned mitigation project; or
  - c. Interdunal wetlands between one-tenth and one acre in size.
4. Category IV. Category IV wetlands have the lowest levels of functions and may be heavily disturbed (scoring less than sixteen (16) points).
- C. Wetland Size Thresholds.
- 1. Wetlands less than one thousand (1,000) square feet in size that are not associated with the shoreline or a riparian corridor, are not part of a wetland mosaic, and do not contain habitat identified as essential for local populations of priority species, shall be exempt from the buffer provisions of this chapter. These small wetlands may be filled if the loss of wetland function is fully mitigated (through the purchase of mitigation bank credits or other means) according to the provisions of this chapter.
  - 2. Category III and IV wetlands between one thousand (1,000) and four thousand (4,000) square feet that are not associated with the shoreline or a riparian corridor, are not part of a wetland mosaic, do not contain habitat identified as essential for local populations of priority species, and the wetlands scores less than six points for habitat using ecology's Washington State Wetland Rating System for Western Washington—Revised (Ecology Publication #14-06-029), or as revised by ecology, shall be exempt from the restrictions on avoiding impacts within wetlands contained in this section, but shall be subject to mitigation requirements for any wetlands impacts.
- D. Mapping. Island County's critical areas maps and the National Wetlands Inventory critical area maps depict the approximate location and extent of known or suspected wetlands, and are hereby adopted. Additionally, soil maps produced by U.S. Department of Agriculture National Resources Conservation Service may be useful in helping to identify potential wetland areas.
- 1. These maps are to be used as a guide for the Town, project applicants, and/or property owners, and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.
  - 2. The exact location of a wetland's boundary shall be determined through the performance of a field investigation by a qualified professional wetland scientist applying the Washington State Wetlands Identification and Delineation Manual as required by RCW 36.70A.175 (Ecology Publication #96-94, 1997), as it now exists or may be hereinafter amended.

(Ord. No. 671, § 2(Exh. B), 3-25-2008; Ord. No. 773, § 2(Exh. B), 3-22-2022)

### **16.34.340 Activities allowed in wetlands.**

The activities listed below are allowed in wetlands in addition to those activities listed in, and consistent with, the provisions established in allowed activities (Section 16.34.150), and do not require submission of a critical area report, except where such activities result in a loss to the functions and values of a wetland or wetland buffer. These activities include:

- A. Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife that does not entail changing the structure or functions of the existing wetland.
- B. Enhancement of a wetland through the removal of non-native invasive species. Weeding shall be restricted to hand removal and weed material shall be removed from the site. Bare areas that remain after weed removal shall be revegetated with native shrubs and trees at natural densities. Some hand seeding may also be done over the bare areas with native herbs.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

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### **16.34.350 Critical area report—Additional requirements for wetlands.**

In addition to the general critical area report requirements of Section 16.34.180, critical area reports for wetlands must meet the requirements of this section.

- A. Preparation by a Qualified Professional. A critical area report for wetlands shall be prepared by a qualified professional wetland scientist.
- B. Area Addressed in Critical Area Report. The following areas shall be addressed in a critical area report for wetlands:
  - 1. The project area of the proposed activity;
  - 2. All wetlands, shoreline areas, water features, floodplains, and other critical areas, and related buffers within one hundred (100) feet of the project area.
- C. Wetland analysis. In addition to the minimum required contents of critical area reports—requirements (Section 16.34.180), a critical area report for wetlands may, upon the determination of the town planner, contain an analysis of the wetlands including the following site- and proposal-related information:
  - 1. A written assessment and accompanying maps of the wetlands and buffers within one hundred (100) feet of the project area, including the following information at a minimum:
    - a. Wetland delineation and required buffers;
    - b. Estimated wetland acreage;
    - c. Wetland category;
    - d. Vegetative, faunal, and hydrologic characteristics;
    - e. Soil and substrate conditions;
    - f. Topographic elevations, and
    - g. A discussion of the water sources supplying the wetland and documentation of hydrologic regime (locations of inlet and outlet features, water depths throughout the wetland, evidence of recharge or discharge, evidence of water depths throughout the year—drift lines, algal layers, moss lines, and sediment deposits).
  - 2. A description of the functions provided by the wetland and discussion of the relative degree to which the wetland is capable of providing the identified functions.
  - 3. A scale map of the development proposal site and adjacent area.
  - 4. As appropriate, a discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing wetlands, habitat and native vegetation and restore any wetlands that were degraded prior to the current proposed land use activity.
  - 5. Proposed mitigation, if needed, including a written assessment and accompanying maps of the mitigation area, including the following information at a minimum:
    - a. Existing and proposed wetland acreage;
    - b. Vegetative and faunal conditions;
    - c. Surface and subsurface hydrologic conditions including an analysis of existing and future hydrologic regime and proposed hydrologic regime for enhanced, created, or restored mitigation areas;

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- d. Relationship within watershed and to existing waterbodies;
  - e. Soil and substrate conditions, topographic elevations;
  - f. Existing and proposed adjacent site conditions;
  - g. Required wetland buffers (including any buffer reduction and mitigation proposed to increase the plant densities, remove weedy vegetation, and replant the buffers);
  - h. A description of the nature and timing of any previous alterations to the wetland and buffer;
  - i. Property ownership; and
  - j. Other wetlands and critical areas that may be functionally related to or associated with the subject wetland.
- 6. A discussion of any ongoing management practices that will protect wetlands after the project site has been developed, including proposed monitoring and maintenance programs.
  - 7. A bond estimate for any installation (including site preparation, plant materials and installation, fertilizers, mulch, stakes) and the proposed monitoring and maintenance work for the required number of years.
- D. When appropriate, the town planner may also require the critical area report to include an evaluation by the state department of ecology or an independent qualified expert regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, and to include any recommendations as appropriate.
  - E. The town planner shall determine if the mitigation and monitoring plans and bonding measures proposed by the applicant are sufficient to protect the public health, safety, and welfare, consistent with the goals, purposes, objectives and requirements of this chapter.

(Ord. No. 671, § 2(Exh. B), 3-25-2008; Ord. No. 773, § 2(Exh. B), 3-22-2022)

### **16.34.360 Performance standards—General requirements.**

- A. Activities may only be permitted in a wetland or wetland buffer if the applicant can show that the proposed activity will not degrade the functions and functional performance of the wetland and other critical areas.
- B. Activities and uses shall be prohibited in wetlands and wetland buffers, except as provided for in this chapter.
- C. Category I and II Wetlands. Activities and uses shall be prohibited from Category I and II wetlands, except as provided for in the public agency and utility exception, and reasonable use exception sections of this chapter.
- D. Category III and IV Wetlands. With respect to activities proposed in Category III and IV wetlands, the following standards shall apply:
  - 1. It shall be presumed that alternative locations are available, and activities and uses shall be prohibited, unless the applicant demonstrates that:
    - a. The basic project purpose cannot reasonably be accomplished and successfully avoid, or result in less adverse impact on, identified wetlands; and
    - b. All alternative designs of the project as proposed, that would avoid or result in less of an adverse impact on a wetland or its buffer, such as a reduction in the size, scope, configuration, or density of the project, are not feasible.

E. Wetland Buffers.

- Standard Buffer Widths. The standard buffer widths presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. If the vegetation is inadequate, then the buffer width shall be increased or the buffer should be planted to maintain the standard width. Required standard wetland buffers, based on wetland category and land use intensity, are as follows:

Wetland Category	Land Use with Low Impact	Land Use with Moderate Impact	Land Use with High Impact
IV	25 ft.	40 ft.	50 ft.
III	75 ft.	110 ft.	150 ft.
II	150 ft.	225 ft.	300 ft.
I	150 ft.	225 ft.	300 ft.

Level of Impact from Proposed Change in Land Use	Examples of Types of Land Use
High	<ul style="list-style-type: none"> <li>Commercial</li> <li>Urban</li> <li>Industrial</li> <li>Institutional</li> <li>Retail sales</li> <li>Residential (more than 1 unit/acre)</li> <li>Conversion to high-intensity agriculture (dairies, nurseries, greenhouses, growing and harvesting crops requiring annual tilling and raising and maintaining animals, etc.)</li> <li>High-intensity recreation (golf courses, ball fields, etc.)</li> <li>Hobby farms</li> </ul>
Moderate	<ul style="list-style-type: none"> <li>Residential (1 unit/acre or less)</li> <li>Moderate-intensity open space (parks with biking, jogging, etc.)</li> <li>Conversion to moderate-intensity agriculture (orchards, hay fields, etc.)</li> <li>Paved trails</li> <li>Building of logging roads</li> <li>Utility corridor or right-of-way shared by several utilities and including access/maintenance road</li> </ul>
Low	<ul style="list-style-type: none"> <li>Forestry (cutting of trees only)</li> <li>Low-intensity open space (hiking, bird-watching, preservation of natural resources, etc.)</li> <li>Unpaved trails</li> <li>Utility corridor without a maintenance road and little or no vegetation management</li> </ul>

The above are examples only. The town planner shall determine the level of impact of proposed land uses.

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2. Measurement of Wetland Buffers. All buffers shall be measured from the wetland boundary as surveyed in the field. The width of the wetland buffer shall be determined according to the wetland category and the proposed land use. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers will be considered. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers.
  3. Increased Wetland Buffer Widths. The town planner may require increased buffer widths in accordance with the recommendations of an experienced, qualified professional wetland scientist, and the best available science on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values based on site-specific characteristics.
  4. In lieu of increasing the buffer width where existing buffer vegetation is inadequate to project the wetland functions and values, implementation of a buffer planting plan may substitute. Existing buffer vegetation is considered "inadequate" and will need to be enhanced through additional native plantings and (if appropriate) removal of non-native plants when: (1) non-native or invasive plant species provide the dominant cover, (2) vegetation is lacking due to disturbance and wetland resources could be adversely affected, or (3) enhancement plantings in the buffer could significantly improve buffer functions.
- F. Wetland Buffer Width Averaging. The town planner may allow modification of the standard wetland buffer width in accordance with an approved critical area report and the best available science on a case-by-case basis by averaging buffer widths. Averaging of buffer widths may only be allowed where a qualified professional wetland scientist demonstrates that:
1. It will not reduce wetland functions or functional performance;
  2. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;
  3. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and
  4. The buffer width is not reduced to less than seventy-five (75) percent of the standard width or thirty-five (35) feet.
- G. Buffer Uses. The following uses may be permitted within a wetland buffer in accordance with the review procedures of this chapter, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland:
1. Conservation and Restoration Activities. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.
  2. Passive Recreation. In the outer twenty-five (25) percent of wetland buffers, passive recreation facilities designed and in accordance with an approved critical area report, including pedestrian-only walkways, trails and wildlife viewing structures constructed with a surface that does not interfere with the permeability.
  3. Stormwater Management Facilities. Stormwater management facilities, limited to stormwater dispersion outfalls and bioswales, may be allowed within the outer twenty-five (25) percent of the buffer of Category III or IV wetlands, provided that:
    - a. No other location is feasible; and
    - b. The location of such facilities will not degrade the functions or values of the wetland.

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H. Fencing of Wetlands.

1. The town planner shall determine if fencing is necessary to protect the functions and values of the critical area. If found to be necessary, the town planner shall condition any permit or authorization issued pursuant to this chapter to require the applicant to install a permanent fence at the edge of the wetland buffer, when fencing will prevent future impacts to the wetland.
2. The applicant shall be required to install a permanent fence around the wetland or buffer when domestic grazing animals are present or may be introduced on site.
3. Fencing installed as part of a proposed activity or as required in this Subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

**16.34.370 Performance standards—Compensatory mitigation requirements.**

Compensatory mitigation for alterations to wetlands shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with the state Department of Ecology's Guidance on Wetland Mitigation in Washington State: Parts 1 and 2 (Publication #04-065-013A and #04-06-013B, April 2004), as revised.

- A. Mitigation for Lost or Affected Functions. Compensatory mitigation actions shall address functions affected by the alteration to achieve functional equivalency or improvement and shall provide similar wetland functions as those lost, except when out-of-kind replacement will best meet formally identified watershed goals, such as replacement of historically diminished wetland types.
- B. Preference of Mitigation Actions. Mitigation actions that require compensation by replacing, enhancing, or substitution shall occur in the following order of preference:
  1. Restoring wetlands on upland sites that were formerly wetlands.
  2. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of non-native introduced species. This should only be attempted when there is a consistent source of hydrology and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is being designed.
  3. Enhancing significantly degraded wetlands in combination with restoration or creation. Such enhancement should be part of a mitigation package that includes replacing the impacted area meeting appropriate ratio requirements.
- C. Type and Location of Mitigation. Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach, compensatory mitigation for ecological functions shall be either in-kind and on-site, or in-kind and within the same sub-basin or drift cell. Mitigation actions shall be conducted within the same subdrainage basin and on the site as the alteration except when the all of the following apply:
  1. There are no reasonable on-site or in-subdrainage basin opportunities or on-site and in-subdrainage basin opportunities do not have a high likelihood of success, after a determination of the natural capacity of the site to mitigate for the impacts. Consideration should include: anticipated wetland mitigation replacement ratios, buffer conditions and proposed widths, hydrogeomorphic classes of on-site wetlands when restored, proposed flood storage capacity, potential to mitigate riparian fish and wildlife impacts (such as connectivity);
  2. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and

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3. Off-site locations shall be in the same subdrainage basin.
- D. Mitigation Timing. Mitigation projects shall be completed with an approved monitoring plan prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.
  - E. Mitigation Ratios. The following ratios shall apply to creation or restoration that is in-kind, is on-site, is the same category, is timed prior to or concurrent with alteration, and has a high probability of success. Greater ratios may apply in those cases of remedial actions resulting from unauthorized alterations. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.
    1. Category I: 6-to-1
    2. Category II: 3-to-1
    3. Category III: 2:1
    4. Category IV: 1.5:1
    5. For wetland enhancement projects used for mitigation, ratios shall be double those indicated above.
  - F. Credits from a certified mitigation bank may be used to compensate for unavoidable impacts.  
(Ord. No. 671, § 2(Exh. B), 3-25-2008; Ord. No. 773, § 2(Exh. B), 3-22-2022)

#### **16.34.380 Performance standards—Subdivisions.**

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

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

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

#### **16.34.390 Critical aquifer recharge areas.**

Critical aquifer recharge areas (CARAs) are those areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2), as it now exists or may be hereinafter amended. Within the Town, these critical aquifer recharge areas are wellhead protection areas as established in the integrated stormwater management plan. In the event that the wells specifically identified in the integrated stormwater management plan are either decommissioned or no longer used as a source of potable water for the Town of Coupeville the provisions specified below for CARAs are no longer applicable to the wellhead protection area(s).

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

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#### **16.34.400 Mapping of critical aquifer recharge areas.**

- A. The approximate location and extent of wellhead protection areas are shown on the adopted critical areas maps.
- B. These maps are to be used as a guide for the Town, project applicants, and/or property owners and may be continuously updated as new issues are identified.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

#### **16.34.410 Activities allowed in critical aquifer recharge areas.**

The following activities are allowed in critical aquifer recharge areas pursuant to allowed activities (Section 16.34.150) and do not require compliance with additional requirements of Section 16.34.420.

- A. Construction of structures and improvements, including additions, resulting in no more than seventy (70) percent or five thousand (5,000) square feet (whichever is greater) total site impervious surface area that does not result in a change of use or increase the use of a hazardous substance.
- B. Development and improvement of parks, recreation facilities, open space, or conservation areas resulting in less than ten (10) percent total site impervious surface area that do not increase the use of a hazardous substance.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

#### **16.34.420 Performance standards—General requirements.**

- A. Activities may only be permitted in a critical aquifer recharge area if the applicant can show that the proposed activity will not cause contaminants to enter the aquifer and that the proposed activity will not adversely affect the recharging of the aquifer.
- B. Disposal of substances in public sewers shall be in compliance with the water and sewer ordinance (No. 499) and CTC 13.12.080.
- C. Illicit discharges into stormwater drainage shall be a violation Title 13.12 of the CTC and subject to the enforcement and penalties of CTC 13.20.110.
- D. Storage and disposal of hazardous chemicals shall comply with the water source protection requirements and recommendations of the U.S. Environmental Protection Agency, Washington State Department of Health, and the Island County Health Department, including Island County Code Chapters 8.08A and 8.09.
- E. All activities within critical aquifer recharge areas shall implement and maintain water quality best management practices recommended in the 2001 Washington Department of Ecology Stormwater Manual for Western Washington, as it now exists or may be hereinafter amended.
- F. All drainage systems must be designed and constructed in accordance with CTC 13.20.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

#### **16.34.430 Performance standards—Specific uses.**

- A. Storage Tanks. All storage tanks proposed to be located in a critical aquifer recharge area must comply with local building code requirements and must conform to the following requirements:

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1. Underground Tanks. All new underground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:
    - a. Prevent releases due to corrosion or structural failure for the operational life of the tank;
    - b. Be protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substances; and
    - c. Use material in the construction or lining of the tank that is compatible with the substance to be stored.
  2. Aboveground Tanks. All new aboveground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:
    - a. Not allow the release of a hazardous substance to the ground, groundwaters, or surface waters;
    - b. Have a primary containment area enclosing or underlying the tank or part thereof; and
    - c. A secondary containment system either built into the tank structure or a dike system built outside the tank for all tanks.
- B. Vehicle Repair and Servicing.
1. Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.
  2. No dry wells shall be allowed in critical aquifer recharge areas on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by the state department of ecology prior to commencement of the proposed activity.
- C. Residential Use of Pesticides and Nutrients. Application of household pesticides, herbicides, and fertilizers shall not exceed times and rates specified on the packaging.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

#### **16.34.440 Uses prohibited from critical aquifer recharge areas.**

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

- A. Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source.
- B. Activities requiring sewer service that are not connected to an available sanitary sewer system.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

#### **16.34.450 Designation of frequently flooded areas.**

Frequently flooded areas, also referred herein to as floodplains, are regulated pursuant to Coupeville Town Code Chapter 16.40 as it now exists or may be hereinafter amended.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

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#### **16.34.460 Geologically hazardous areas.**

Geologically hazardous areas include areas susceptible to erosion, land sliding, bluff failures, or other geological events. They pose a threat to the health and safety of citizens when incompatible development is sited in areas of significant hazard. Such incompatible development may not only place itself at risk, but also may increase the hazard to surrounding development and use.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

#### **16.34.470 Designation of specific hazard areas.**

- A. Erosion Hazard Areas. Erosion hazard areas are at least those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "moderate to severe," "severe," or "very severe" rill and inter-rill erosion hazard. Erosion hazard areas are also those areas impacted by shore land erosion.
- B. Landslide Hazard Areas. Landslide hazard areas are areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Example of these may include, but are not limited to, the following:
  - 1. Areas of historic failures, such as:
    - a. Those areas mapped by the 1979 Washington State Department of Ecology (Coastal Zone Atlas) for Island County, as it may be amended or revised, as land which has had recent or historical slide activity and/or has unstable slope conditions, including those lands within one hundred (100) feet (either top or base) thereof.
    - b. Any area with a slope of forty (40) percent or steeper and with a vertical relief of ten (10) or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least ten (10) feet of vertical relief.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

#### **16.34.480 Mapping of geologically hazardous areas.**

- A. The approximate location and extent of geologically hazardous areas are shown on the adopted critical area maps. The adopted critical areas maps include:
  - 1. Coastal Zone Atlas; and,
  - 2. Locally adopted maps.
- B. These maps are to be used as a guide for the Town, project applicants and/or property owners and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

#### **16.34.490 Critical area report—Additional requirements for geologically hazardous areas.**

- A. Preparation by a Qualified Professional. A critical areas report for a geologically hazardous area shall be prepared by an engineer or geologist, licensed in the State of Washington, with experience analyzing

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

- B. Site Plan. The critical area report shall include a copy of the site plan for the proposal showing, as appropriate:
1. The height of slope, slope gradient, and cross-section of the project area;
  2. The location of springs, seeps, or other surface expressions of groundwater on or within two hundred (200) feet of the project area or that have potential to be affected by the proposal; and
  3. The top and toe of all unstable slopes and locations of erosion hazard areas.
  4. The location and description of surface water runoff features;
  5. Proposed development, including the location of existing and proposed structures, fill, storage of materials, and drainage facilities, with dimensions indicating distances to the floodplain, if available;
  6. Clearing limits; and
  7. The topography, in two-foot contours, of the project area and all hazard areas addressed in the report.
- C. Hazards Analysis. The hazards analysis component of the critical areas report shall include, as determined by the town planner:
1. A description of the extent and type of vegetative cover;
  2. A description of subsurface conditions based on data from site-specific explorations;
  3. Descriptions of surface and groundwater conditions, public and private sewage disposal systems, fills and excavations, and all structural improvements;
  4. An estimate of slope stability and the effect construction and placement of structures will have on the slope over the estimated life of the structure;
  5. An estimate of the bluff retreat rate that recognizes and reflects potential catastrophic events such as seismic activity or a 100-year storm event;
  6. Consideration of the run-out hazard of landslide debris and/or the impacts of landslide run-out on down slope properties.
  7. A study of slope stability including an analysis of proposed cuts, fills, and other site grading;
  8. Recommendations for building siting limitations; and
  9. An analysis of proposed surface and subsurface drainage, and the vulnerability of the site to erosion.
- D. Geotechnical Engineering Report. The technical information for a project within a landslide hazard area shall include a geotechnical engineering report prepared by a licensed engineer that presents engineering recommendations for the following:
1. Parameters for design of site improvements including appropriate foundations and retaining structures. These should include allowable load and resistance capacities for bearing and lateral loads, installation considerations, and estimates of settlement performance;
  2. Recommendations for drainage and subdrainage improvements;
  3. Earthwork recommendations including clearing and site preparation criteria, fill placement and compaction criteria, temporary and permanent slope inclinations and protection, and temporary excavation support, if necessary; and

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- 4. Mitigation of adverse site conditions including slope stabilization measures and seismically unstable soils, if appropriate.
  - E. Minimum Buffer and Building Setback. The report shall make a recommendation for the minimum no-disturbance buffer and minimum building setback from any geologic hazard based upon the geotechnical analysis.
  - F. Erosion and Sediment Control Plan. For any development proposal on a site containing an erosion hazard area, an erosion and sediment control plan shall be required.
  - G. Drainage Plan. The technical information shall include a drainage plan for the collection, transport, treatment, discharge, and/or recycle of water prepared in accordance with the CTC 13.20. The drainage plan should consider on-site septic system disposal volumes where the additional volume will affect the erosion or landslide hazard area.
  - H. Mitigation Plans. Hazard and environmental mitigation plans for erosion and landslide hazard areas shall include the location and methods of drainage, surface water management, locations and methods of erosion control, a vegetation management and/or replanting plan, and/or other means for maintaining long-term soil stability.
  - I. Incorporation of Previous Study. Where a valid critical areas report has been prepared within the last five years for a specific site, and where the proposed land use activity and surrounding site conditions are unchanged, said report may be incorporated into the required critical area report in partial fulfillment of the requirements of this section. The applicant shall submit a hazards assessment detailing any changed environmental conditions associated with the site.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

#### **16.34.500 Performance standards—General requirements.**

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

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

#### **16.34.510 Performance standards—Specific hazards.**

- A. Erosion and Landslide Hazard Areas. Activities on sites containing erosion or landslide hazards shall meet the standards of performance standards—general requirements (Section 16.34.510) and the specific following requirements:
- B. Buffer Requirement. A buffer shall be established from all edges of landslide hazard areas. The size of the buffer shall be determined by the town planner to eliminate or minimize the risk of property damage, death,

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

1. **Minimum Buffer.** The minimum buffer shall be equal to the height of the slope or fifty (50) feet, whichever is greater.
2. **Buffer Reduction.** The buffer may be reduced to a minimum of ten (10) feet when a qualified professional demonstrates to the town planner's satisfaction that the reduction will adequately protect the proposed development, adjacent developments, and uses and the subject critical area.
3. **Increased Buffer.** The buffer may be increased where the town planner determines a larger buffer is necessary to prevent risk of damage to proposed and existing development.
4. **Alterations.** Alterations of an erosion or landslide hazard area and/or buffer may only occur for activities for which a hazards analysis is submitted and certifies that:
  - a. The development will not increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions;
  - b. The development will not decrease slope stability on adjacent properties; and
  - c. Such alterations will not adversely impact other critical areas.
5. **Design Standards.** Development within an erosion or landslide hazard area and/or buffer shall be designed to meet the following basic requirements unless it can be demonstrated that an alternative design that deviates from one or more of these standards provides greater long-term slope stability while meeting all other provisions of this chapter. The requirement for long-term slope stability shall exclude designs that require regular and periodic maintenance to maintain their level of function. The basic development design standards are:
  - a. The proposed development shall not decrease the factor of safety for landslide occurrences below the limits of 1.5 for static conditions and 1.2 for dynamic conditions. Analysis of dynamic conditions shall be based on a minimum horizontal acceleration as established by the current version of the Uniform Building Code;
  - b. Structures and improvements shall be clustered to avoid geologically hazardous areas and other critical areas;
  - c. Structures and improvements shall minimize alterations to the natural contour of the slope, and foundations shall be tiered where possible to conform to existing topography;
  - d. Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation;
  - e. The proposed development shall not result in greater risk or a need for increased buffers on neighboring properties;
  - f. The use of retaining walls that allow the maintenance of existing natural slope area is preferred over graded artificial slopes; and
  - g. Development shall be designed to minimize impervious lot coverage.
6. **Vegetation Retention.** Unless otherwise provided or as part of an approved alteration, removal of vegetation from an erosion or landslide hazard area or related buffer shall be prohibited.
7. **Seasonal Restriction.** Clearing shall be allowed only from May 1 to October 1 of each year provided that the Town may extend or shorten the dry season on a case-by-case basis depending on actual weather conditions, except that timber harvest, not including brush clearing or stump removal, may be allowed

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pursuant to an approved forest practice permit issued by the Town or the Washington State Department of Natural Resources.

8. Utility Lines and Pipes. Utility lines and pipes shall be permitted in erosion and landslide hazard areas only when the applicant demonstrates that no other practical alternative is available. The line or pipe shall be located above ground and properly anchored and/or designed so that it will continue to function in the event of an underlying slide. Stormwater conveyance shall be allowed only through a high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior.
9. Point Discharges. Point discharges from surface water facilities and roof drains onto or upstream from an erosion or landslide hazard area shall be prohibited except as follows:
  - a. Conveyed via continuous storm pipe downslope to a point where there are no erosion hazards areas downstream from the discharge;
  - b. Discharged at flow durations matching predeveloped conditions, with adequate energy dissipation, into existing channels that previously conveyed stormwater runoff in the predeveloped state; or
  - c. Dispersed discharge upslope of the steep slope onto a low-gradient undisturbed buffer demonstrated to be adequate to infiltrate all surface and stormwater runoff, and where it can be demonstrated that such discharge will not increase the saturation of the slope.
10. Subdivisions. The division of land in landslide hazard areas and associated buffers is subject to the following:
  - a. Land that is located wholly within a landslide hazard area or its buffer may not be subdivided. Land that is located partially within a landslide hazard area or its buffer may be divided provided that each resulting lot has sufficient buildable area outside of, and will not affect, the landslide hazard or its buffer.
  - b. Access roads and utilities may be permitted within the landslide hazard area and associated buffers if the Town determines that no other feasible alternative exists.
11. Prohibited Development. On-site sewage disposal systems, including drain fields, shall be prohibited within erosion and landslide hazard areas and related buffers.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

### **16.34.520 Covenant.**

The town planner may require a covenant between the owner(s) of the property and the Town of Coupeville. The covenant shall be signed by the owner(s) of the site and notarized prior to issuance of any permit or approval in a potential geologically hazardous area or other area of potentially hazardous soils or drainage or erosion conditions. The covenant shall not be required where the permit or approval is for work done by the Town. The covenant shall include:

- A. A legal description of the property;
- B. A description of the property condition making this subsection applicable;
- C. A statement that the owner(s) of the property understands and accepts the responsibility for the risks associated with development on the property given the described condition, and agrees to inform future purchasers and other successors and assignees of the risks;

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- D. The application date, type, and number of the permit or approval for which the covenant is required; and,
  - E. A statement waiving the right of the owner(s), the owner's heirs, successors and assigns to assert any claim against the Town of Coupeville by reason of or arising out of issuance of the permit or approval by the Town of Coupeville for the development on the property, except only for such losses that may directly result from the negligence of the Town of Coupeville.

The covenant shall be filed for record by the owner with the Island County Auditor, at the expense of the owner, so as to become part of the Island County real property records.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

### **16.34.530 Disclosure.**

Pursuant to the requirements of this chapter, no person shall sell, lease, or offer for sale or lease any property within a geologically hazardous area that has been the subject of a geotechnical report required by this chapter, unless the prospective buyer or lessee has been given notice substantially as follows:

"To: \_\_\_\_\_

The property at \_\_\_\_\_ is located within a geologically hazardous area. Geologically hazardous areas include areas susceptible to the effects of erosion, landsliding, or other geologic events. They pose a threat to the health and safety of citizens when incompatible residential, commercial, industrial, or infrastructure development are sited in areas of a hazard. Geologic hazards pose a risk to life, property, and resources when steep slopes are destabilized by inappropriate activities and development or when structures or facilities are sited in areas susceptible to natural or human-caused geologic events.

Some geologic hazards can be reduced or mitigated, but not eliminated by engineering, design, or modified construction practices so that risks to health and safety are acceptable. The Town of Coupeville has placed certain restrictions on development and use of geologically hazardous areas.

Before purchasing or leasing the above property, you should consult the critical area ordinance CTC 16.34, and any previously issued permits or geotechnical reports to determine restrictions, if any, which have been placed on the subject property."

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

### **16.34.540 Designation of Fish and wildlife habitat conservation areas.**

- A. Fish and wildlife habitat conservation areas include:
  - 1. Areas With Which State or Federally Designated Endangered, Threatened, and Sensitive Species Have 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 the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted for current listing status.
    - 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

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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), as they now exist or may be hereinafter amended. The State Department of Fish and Wildlife maintains the most current listing and should be consulted for current listing status.

2. 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.
3. Habitats and Species of Local Importance. Habitats and species of local importance are those identified by the Town, including, but not limited to, those habitats and species that, due to their population status or sensitivity to habitat manipulation, warrant protection. Habitats may include a seasonal range or habitat element with which a species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.
  - a. Designation Process. The Town shall accept and consider nominations for habitat areas and species to be designated as locally important on an annual basis.
    - i. Habitats and species to be designated shall exhibit the following characteristics:
      - (1) Local populations of native species are in danger of extirpation based on existing trends;
      - (2) The species or habitat has recreation, commercial, game, tribal, or other special value;
      - (3) Long-term persistence of a species is dependent on the protection, maintenance, and/or restoration of the nominated habitat;
      - (4) Protection by other county, state, or federal policies, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat in Town; and
      - (5) Without protection, there is a likelihood that the species or habitat will be diminished over the long term.
    - ii. Areas nominated to protect a particular habitat or species must represent either high-quality native habitat or habitat that has a high potential to recover to a suitable condition and which is of limited availability, highly vulnerable to alteration, or provides landscape connectivity which contributes to the integrity of the surrounding landscape.
    - iii. Habitats and species may be nominated for designation by any person.
    - iv. The nomination should indicate whether specific habitat features are to be protected (for example, nest sites, breeding areas, and nurseries), or whether the habitat or ecosystem is being nominated in its entirety.
    - v. The nomination may include management strategies for the species or habitats. Management strategies must be supported by the best available science, and where restoration of habitat is proposed, a specific plan for restoration must be provided prior to nomination.

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- vi. The town planner shall determine whether the nomination proposal is complete, and if complete, shall evaluate it according to the characteristics enumerated in subsection i. and make a recommendation to the town council based on those findings.
  - vii. The town council shall hold a public hearing for proposals found to be complete and make a decision based on the characteristics enumerated in subsection i.
  - viii. Upon a finding that the characteristics enumerated in subsection i. are met, the town council shall designate a habitat or species of local importance.
  - ix. Approved nominations will be subject to the provisions of this chapter.

A combined list of federally and state identified species, state priority species, and state priority habitats, is included in Appendix A.

4. Commercial and Recreational Shellfish Areas. These areas include all public and private tidelands or bedlands suitable for shellfish harvest, including shellfish protection districts established pursuant to Chapter 90.72 RCW, as it now exists or may be hereinafter amended.
  5. Kelp and Eelgrass Beds and Herring, Sand Lance, and Smelt Spawning Areas.
  6. Waters of the State. Waters of the state include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the State of Washington, as classified in WAC 222-16, as it now exists or may be hereinafter amended.
  7. State Natural Area Preserves and Natural Resource Conservation Areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the Washington State Department of Natural Resources.
  8. Areas of Rare Plant Species and High-Quality Ecosystems. Areas of rare plant species and high-quality ecosystems are identified by the Washington State Department of Natural Resources through the Natural Heritage Program.
  9. Land Useful or Essential for Preserving Connections Between Habitat Blocks and Open Spaces.
- B. All areas within the town 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 the best available science, such as the Washington Department of Fish and Wildlife's Management Recommendations for Priority Habitat and Species.
- C. Mapping. The approximate location and extent of habitat conservation areas are shown on the critical area maps adopted by the Town, as most recently updated. These maps are to be used as a guide for the Town, project applicants, and/or property owners and should be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.

The following critical area maps are hereby adopted, as they now exist or may be hereinafter amended:

1. Washington Department of Fish and Wildlife Priority Habitat and Species maps;
2. Washington State Department of Natural Resources, Official Water Type Reference maps, as amended;
3. Washington State Department of Natural Resources Puget Sound Intertidal Habitat Inventory maps;
4. Washington State Department of Natural Resources Shorezone Inventory;
5. Washington State Department of Natural Resources Natural Heritage Program mapping data;
6. Washington State Department of Health Annual Inventory of Shellfish Harvest Areas;

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7. Anadromous and resident salmonid distribution maps contained in the Habitat Limiting Factors Reports published by the Washington Conservation Commission;
  8. Washington State Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area maps; and
  9. Town official habitat maps.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

### **16.34.550 Critical area report—Additional requirements for habitat conservation areas.**

In addition to the general critical area report requirements of Section 16.34.180, critical area reports for habitat conservation areas must meet the requirements of this section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

- A. Preparation by a Qualified Professional. A critical areas report for a habitat conservation area shall be prepared by a qualified professional who is a biologist with experience preparing reports for the relevant type of habitat.
- B. Areas Addressed in Critical Area Report. The following areas shall be addressed in a critical area report for habitat conservation areas:
  1. The project area of the proposed activity;
  2. All habitat conservation areas and recommended buffers within three hundred (300) feet of the project area; and
  3. All shoreline areas, floodplains, other critical areas, and related buffers within three hundred (300) feet of the project area.
- C. Habitat Assessment. A habitat assessment is an investigation of the project area to evaluate the potential presence or absence of designated critical fish or wildlife species or habitat. A critical area report for a habitat conservation area shall contain an assessment of habitats including the following site- and proposal-related information at a minimum:
  1. Detailed description of vegetation on and adjacent to the project area and its associated buffer;
  2. Identification of any species of local importance, priority species, or endangered, threatened, sensitive, or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;
  3. A discussion of any federal, state, or local special management recommendations, including Washington Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;
  4. A detailed discussion of the direct and indirect potential impacts on habitat by the project, including potential impacts to water quality;
  5. A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity and to be conducted in accordance with mitigation sequencing (Section 16.34.210); and
  6. A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.

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- D. Agency Consultation May Be Required. When appropriate due to the type of habitat or species present or the project area conditions, the town planner may also require the habitat management plan to include a request for consultation with the Washington Department of Fish and Wildlife or the local Native American Indian Tribe or other appropriate agency.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

### **16.34.560 Performance standards—General requirements.**

- A. Nonindigenous Species. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a habitat conservation area unless authorized by a state or federal permit or approval.
- B. Mitigation and Contiguous Corridors. Mitigation sites shall be located to preserve or achieve contiguous wildlife habitat corridors in accordance with a mitigation plan that is part of an approved critical area 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.
- C. Approvals of Activities. The town planner shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions shall be based on the best available science and may include, but are not limited to, the following:
  - 1. Establishment of buffer zones;
  - 2. Preservation of critically important vegetation and/or habitat features such as snags and downed wood;
  - 3. Limitation of access to the habitat area, including fencing to deter unauthorized access;
  - 4. Seasonal restriction of construction activities;
  - 5. Establishment of a duration and timetable for periodic review of mitigation activities; and
  - 6. Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation.
- D. Mitigation and Equivalent or Greater Biological Functions. Mitigation of alterations to habitat conservation areas shall achieve equivalent or greater biologic and hydrologic functions and shall include mitigation for adverse impacts upstream or downstream of the development proposal site. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per-function basis.
- E. Approvals and the Best Available Science. Any approval of alterations or impacts to a habitat conservation area shall be supported by the best available science.
- F. Establishment of Buffers. The town planner shall require the establishment of buffer areas for activities 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, functions, and values of the affected habitat. Required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby and shall be consistent with the management recommendations issued by the Washington Department of Fish and Wildlife. Habitat conservation areas and their buffers shall be preserved in perpetuity through the use of native growth protection areas and critical area tracts in accordance with Section 16.34.280 through Section 16.34.290.

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1. Seasonal Restrictions. When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger buffers may be required and activities may be further restricted during the specified season.
  2. Habitat Buffer Averaging. The town planner may allow the recommended habitat area buffer width to be reduced in accordance with a critical area report, only if:
    - a. It will not reduce stream or habitat functions;
    - b. It will not adversely affect salmonid habitat;
    - c. It will provide additional natural resource protection, such as buffer enhancement;
    - d. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and
    - e. The buffer area width is not reduced by more than twenty-five (25) percent in any location.
- G. Temporary Markers. The outer perimeter of the habitat conservation area or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that no unauthorized intrusion will occur and verified by the town planner prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction.
- H. Subdivisions. The subdivision and short subdivision of land in fish and wildlife habitat conservation areas and associated buffers is subject to the following:
1. Land that is located wholly within a habitat conservation area or its buffer may not be subdivided.
  2. Land that is located partially within a habitat conservation area or its buffer may be divided provided that the developable portion of each new lot and its access is located outside of the habitat conservation area or its buffer and meets the minimum lot size requirements of the zoning district.
  3. Access roads and utilities serving the proposed may be permitted within the habitat conservation area and associated buffers only if the Town determines that no other feasible alternative exists and when consistent with this chapter.

(Ord. No. 671, § 2,(Exh. B), 3-25-2008)

### **16.34.570 Performance standards—Specific habitats.**

- A. Endangered, Threatened, and Sensitive Species.
1. No development shall be allowed within a habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a management plan established by the Washington Department of Fish and Wildlife or applicable state or federal agency.
  2. Whenever activities are proposed adjacent to a habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with a critical area report prepared by a qualified professional and approved by the Town. 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 for animal species, the Washington State Department of Natural Resources for plant species, and other appropriate federal or state agencies.
  3. Bald eagle habitat shall be protected pursuant to RCW 77.12.655 and the Washington State Bald Eagle Protection Rules (WAC 232-12-292), as they now exist or may be hereinafter amended. Approval of

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activity adjacent to bald eagle sites shall not occur prior to approval of a habitat management plan by the Washington Department of Fish and Wildlife. Activities are adjacent to bald eagle sites when they are within eight hundred (800) feet or within one-half mile (2,640 feet) and in a shoreline foraging area. The Town shall verify the location of eagle management areas for each proposed activity.

B. Anadromous Fish.

1. All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:
  - a. Activities shall be timed to occur only during the allowable work window as designated by the Washington Department of Fish and Wildlife for the applicable species;
  - b. An alternative alignment or location for the activity is not feasible;
  - c. The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas;
  - d. Shoreline erosion control measures shall be designed to use bioengineering methods or soft armoring techniques, according to an approved critical area report; and
  - e. Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved critical area report.
2. Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

### 16.34.580 Definitions.

Words not defined in this chapter shall be as defined in the Town Code, the Washington Administrative Code, or the Revised Code of Washington. Words not found in either Code shall be as defined in the Webster's Third New International Dictionary, latest edition.

#### A

*Active fault*—A fault that is considered likely to undergo renewed movement within a period of concern to humans. Faults are commonly considered to be active if the fault has moved one or more times in the last ten thousand (10,000) years, but faults may also be considered active in some cases if movement has occurred in the last five hundred thousand (500,000) years.

*Adaptive management*—Adaptive management relies on scientific methods to evaluate how well regulatory and nonregulatory actions protect the critical area. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty.

*Adjacent*—Immediately adjoining (in contact with the boundary of the influence area) or within a distance that is less than that needed to separate activities from critical areas to ensure protection of the functions and values of the critical areas. Adjacent shall mean any activity or development located:

- A. On a site immediately adjoining a critical area;
- B. A distance equal to or less than the required critical area buffer width and building setback;
- C. A distance equal to or less than one-half mile (2,640 feet) from a bald eagle nest;

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- D. A distance equal to or less than three hundred (300) feet upland from a stream, wetland, or water body; or
  - E. Bordering or within the floodplain.

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

*Agricultural land*—Land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, as they now exist or may be hereinafter amended, or livestock, and or that has been designated as long-term commercial significance for agricultural production.

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

*Anadromous fish*—Fish that spawn and rear in freshwater and mature in the marine environment. While Pacific salmon die after their first spawning, adult char (bull trout) can live for many years, moving in and out of salt water and spawning each year. The life history of Pacific salmon and char contains critical periods of time when these fish are more susceptible to environmental and physical damage than at other times. The life history of salmon, for example, contains the following stages: upstream migration of adults, spawning, inter-gravel incubation, rearing, smoltification (the time period needed for juveniles to adjust their body functions to live in the marine environment), downstream migration, and ocean rearing to adults.

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

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

*Aquifer, sole source*—An area designated by the U.S. Environmental Protection Agency under the Safe Drinking Water Act of 1974, Section 1424(e). The aquifer(s) must supply fifty (50) percent or more of the drinking water for an area without a sufficient replacement available.

## B

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

*Basement*—Any area of the building having its floor below ground level on all sides.

*Best available science*—Current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 925, as they now exist or may be hereinafter amended. Sources of the best available science are included in Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas published by the Washington State Department of Community, Trade and Economic Development.

*Best management practices (BMPs)*—Conservation practices or systems of practices and management measures that:

- A. Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, and sediment;
- B. Minimize adverse impacts to surface water and groundwater flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;

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- C. Protect trees and vegetation designated to be retained during and following site construction and use native plant species appropriate to the site for revegetation of disturbed areas; and
  - D. Provide standards for proper use of chemical herbicides within critical areas.

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

*Biodiversity*—The variety of animal and plant life and its ecological processes and interconnections—represented by the richness of ecological systems and the life that depends on them, including human life and economies.

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

### C

*Compensation project*—Actions necessary to replace project-induced critical area and buffer losses, including land acquisition, planning, construction plans, monitoring, and contingency actions.

*Compensatory mitigation*—Replacing project-induced losses or impacts to a critical area, and includes, but is not limited to, the following:

- A. Restoration—Actions performed to re-establish wetland functional characteristics and processes that have been lost by alterations, activities, or catastrophic events within an area that no longer meets the definition of a wetland.
- B. Creation—Actions performed to intentionally establish a wetland at a site where it did not formerly exist.
- C. Enhancement—Actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality.
- D. Preservation—Actions taken to ensure the permanent protection of existing, high-quality wetlands.

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

*Critical aquifer recharge area*—Areas designated by WAC 365-190-080(2), as it now exists or may be hereinafter amended, that are determined to have a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2), as it now exists or may be hereinafter amended.

*Critical areas*—Critical areas include any of the following areas or ecosystems: aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, and wetlands, as defined in RCW 36.70A, as it now exists or may be hereinafter amended, and this chapter.

*Critical area tract*—Land held in private ownership and retained in an open condition in perpetuity for the protection of critical areas. Lands within this type of dedication may include, but are not limited to, portions and combinations of forest habitats, grasslands, shrub steppe, on-site watersheds, 100-year floodplains, shorelines or shorelines of statewide significance, riparian areas, and wetlands.

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

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

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

## D

*Developable area*—A site or portion of a site that may be utilized as the location of development, in accordance with the rules of this chapter.

*Development*—Any activity upon the land consisting of construction or alteration of structures, earth movement, dredging, dumping, grading, filling, mining, removal of any sand, gravel, or minerals, driving of piles, drilling operations, bulkheading, clearing of vegetation, or other land disturbance. Development includes the storage or use of equipment or materials inconsistent with the existing use. Development also includes approvals issued by the Town that binds land to specific patterns of use, including but not limited to, subdivisions, short subdivisions, zone changes, conditional use permits, and binding site plans. Development activity does not include the following activities:

- A. Interior building improvements.
- B. Exterior structure maintenance activities, including painting and roofing.
- C. Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning, and weeding.
- D. Maintenance of the following existing facilities that does not expand the affected area: septic tanks (routine cleaning); wells; individual utility service connections; and individual cemetery plots in established and approved cemeteries.

*Development permit*—Any permit issued by the Town, or other authorized agency, for construction, land use, or the alteration of land.

*Director*—The town planner of the Town planning department or other responsible official, or other city staff granted the authority to act on behalf of the director.

## E

*Emergent wetland*—A wetland with at least thirty (30) percent of the surface area covered by erect, rooted, herbaceous vegetation extending above the water surface as the uppermost vegetative strata.

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

*Erosion hazard areas*—At least those areas identified by the U.S. Department of Agriculture National Resources Conservation Service as having a "severe" rill and inter-rill erosion hazard.

*Exotic*—Any species of plants or animals, which are foreign to the Town.

## F

*Fish and wildlife habitat conservation areas*— [Areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. Fish and wildlife habitat conservation areas do not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company.](#) ~~Areas necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated~~

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~~subpopulations are not created as designated by WAC 365-190-080(5), as it now exists or may be hereinafter amended.~~ These areas include, but are not limited to:

- A. Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association;
- B. Habitats of local importance, including, but not limited to, areas designated as priority habitat by the Washington Department of Fish and Wildlife;
- C. Commercial and recreational shellfish areas;
- D. Kelp and eelgrass beds;
- E. Herring and smelt spawning areas;
- F. Naturally occurring ponds under twenty (20) acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds;
- G. Waters of the state, including lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the State of Washington;
- H. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;
- I. State natural area preserves and natural resource conservation areas; and
- J. Land essential for preserving connections between habitat blocks and open spaces.

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

*Flood or flooding*—A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation of runoff of surface waters from any source.

*Floodplain*—The total land area adjoining a river, stream, watercourse, or lake subject to inundation by the base flood.

*Frequently flooded areas*—Lands in the floodplain subject to a one percent or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance, and attenuation functions, as determined by the town planner in accordance with WAC 365-190-080(3), as it now exists or may be hereinafter amended. Frequently flooded areas perform important hydrologic functions and may present a risk to persons and property. Classifications of frequently flooded areas include, at a minimum, the 100-year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

*Functions and values*—The beneficial roles served by critical areas including, but are not limited to, water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage, conveyance and attenuation; groundwater recharge and discharge; erosion control; wave attenuation; protection from hazards; historical, archaeological, and aesthetic value protection; educational opportunities; and recreation. These beneficial roles are not listed in order of priority. Critical area functions can be used to help set targets (species composition, structure, etc.) for managed areas, including mitigation sites.

## G

*Geologically hazardous areas*— Areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns. ~~Areas that may not be suited to development consistent with public health, safety, or environmental standards, because of their susceptibility to erosion, sliding, earthquake, or~~

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~~other geological events as designated by WAC 365-190-080(4), as it now exists or may be hereinafter amended. Types of geologically hazardous areas include: erosion, landslide, seismic, mine, and volcanic hazards.~~

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

*Growth Management Act*—RCW 36.70A and 36.70B, as they now exist or may be hereinafter amended.

## H

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

*Habitats of local importance*—These areas include a seasonal range or habitat element with which a given species has a primary association, and which, if altered may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alterations such as cliffs, talus, and wetlands. (WAC 365-190-030, as it now exists or may be hereinafter amended)

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

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

*High intensity land use*—Land uses which are associated with high levels of human disturbance or substantial habitat impacts including, but not limited to, medium-density residential (more than two homes per acre), multifamily residential, some agricultural practices, and commercial and industrial land uses.

*High quality wetlands*—Those wetlands that meet the following criteria:

- A. No, or isolated, human alteration of the wetland topography;
- B. No human-caused alteration of the hydrology or the wetland appears to have recovered from the alteration;
- C. Low cover and frequency of exotic plant species;
- D. Relatively little human-related disturbance of the native vegetation, or recovery from past disturbance;
- E. If the wetland system is degraded, it still contains a viable and high-quality example of a native wetland community; and
- F. No known major water quality problems.

*Historic condition*—Condition of the land, including flora, fauna, soil, topography, and hydrology that existed before the area and vicinity were developed or altered by human activity.

*Hydraulic project approval (HPA)*—A permit issued by the Washington Department of Fish and Wildlife for modifications to waters of the state in accordance with Chapter 75.20 RCW, as it now exists or may be hereinafter amended.

*Hydric soil*—A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the Washington State Wetland Identification and Delineation Manual.

*Hydrophytic vegetation*—Macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the Washington State Wetland Identification and Delineation Manual.

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## I

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

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

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

*Infiltration*—The downward entry of water into the immediate surface of soil.

## J

*Joint aquatic resource permits application*—A single application form that may be used to apply for hydraulic project approvals, shoreline management permits, approvals of exceedance of water quality standards, water quality certifications, coast guard bridge permits, Washington State Department of Natural Resources use authorization, and U.S. Army Corps of Engineers permits.

## L

*Land use, high intensity*—See "High intensity land use."

*Land use, low intensity*—See "Low intensity land use."

*Land use, moderate intensity*—See "Moderate intensity land use."

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

*Low intensity land use*—Land uses which are associated with low levels of human disturbance or low habitat impacts, including, but not limited to, low-density residential (less than two homes per acre), passive recreation, open space, or forest management land uses.

## M

*Mitigation*—Avoiding, minimizing, or compensating for adverse critical areas impacts. Mitigation, in the following sequential order of preference, is:

- A. Avoiding the impact altogether by not taking a certain action or parts of an action;
- B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
- C. Rectifying the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project;
- D. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;

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- E. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
  - F. Compensating for the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
  - G. Monitoring the hazard or other required mitigation and taking remedial action when necessary.

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

*Moderate intensity land use*—Land uses which are associated with moderate levels of human disturbance or substantial habitat impacts including, but not limited to, low-density residential (no more than one home per five acres), active recreation, and moderate agricultural land uses.

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

## N

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

*Native growth protection area (NGPA)*—An area where native vegetation is 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 and animal habitat;

*Natural waters*—Waters, excluding water conveyance systems that are artificially constructed and actively maintained for irrigation.

*Nonconformity*—A legally established existing use or legally constructed structure that is not in compliance with current regulations.

*Nonindigenous*—See "Exotic."

## O

*Off-site compensation*—To replace critical areas away from the site on which a critical area has been impacted.

*On-site compensation*—To replace critical areas at or adjacent to the site on which a critical areas has been impacted.

*Ordinary high water mark (OHM)*—That mark which is found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, that the soil has a character distinct from that of the abutting upland in respect to vegetation.

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

## P

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

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

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

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

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

*Project area*—All areas within fifty (50) feet of the area proposed to be disturbed, altered, or used by the proposed activity or the construction of any proposed structures. When the action binds the land, such as a subdivision, short subdivision, binding site plan, planned unit development, or rezone, the project area shall include the entire parcel, at a minimum.

## Q

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

- A. A qualified professional for fish and wildlife habitats must have a degree in biology and professional experience related to the subject species.
- B. A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the State of Washington.
- C. A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.
- D. A qualified professional for wetlands shall be a certified professional wetland scientist or have, at a minimum: (1) a Bachelor's degree in hydrology, soil science, botany, ecology, or related field; and (2) at least two years of full-time work experience as a wetlands professional, including delineating wetlands using the state or federal manuals, preparing wetland reports, conducting function assessments, and developing and implementing mitigation plans.

## R

*Reasonable economic use*—The permitted or conditional use of a specific parcel of land which a person may be expected to conduct or maintain fairly and appropriately given the site specific conditions or characteristics of the parcel and uses allowed for all other properties within a similar zoning classification.

*Recharge*—The process involved in the absorption and addition of water to groundwater.

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

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

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

## S

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*Scientific process*—A valid scientific process is one that produces reliable information useful in understanding the consequences of a decision. The characteristics of a valid scientific process are as follows:

- A. Peer Review. The information has been critically reviewed by other qualified scientific experts in that scientific discipline.
- B. Methods. The methods that were used are standardized in the pertinent scientific discipline or the methods have been appropriately peer-reviewed to ensure their reliability and validity.
- C. Logical Conclusions and Reasonable Inferences. The conclusions presented are based on reasonable assumptions supported by other studies and are logically and reasonably derived from the assumptions and supported by the data presented.
- D. Quantitative Analysis. The data have been analyzed using appropriate statistical or quantitative methods.
- E. Context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.
- F. References. The assumptions, techniques, and conclusions are well referenced with citations to pertinent existing information.

*Seeps*—A spot where water oozes from the earth, often forming the source of a small stream.

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

*Serviceable*—Presently usable.

*Shorelines*—All of the water areas of the state as defined in RCW 90.58.030, as it now exists or may be hereinafter amended, including reservoirs and their associated shorelands, together with the lands underlying them except shorelines of statewide significance.

*Shorelines of the state*—The total of all "shorelines," as defined in RCW 90.58.030(2)(d), and "shorelines of statewide significance" within the state, as defined in RCW 90.58.030(2)(c), as they now exist or may be hereinafter amended.

*Shorelines of statewide significance*—Those areas defined in RCW 90.58.030(2)(e), as it now exists or may be hereinafter amended.

*Shorelands or shoreland areas*—Those lands extending landward for two hundred (200) feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred (200) feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of Chapter 90.58 RCW, as it now exists or may be hereinafter amended.

*Significant portion of its range*—That portion of a species range likely to be essential to the long-term survival of the population in Washington.

*Soil survey*—The most recent soil survey for the local area or county by the National Resources Conservation Service, U.S. Department of Agriculture.

*Sole source aquifer*—See "Aquifer, sole source."

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

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

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

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

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

*Stream*—See "Watercourse."

## U

*Unavoidable*—Adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved.

## W

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

*Water typing system*—Waters classified according to WAC 222-16-031, as it now exists or may be hereinafter amended.

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

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

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

*Wetlands categories*—

Category I. Category I wetlands are:

1. Relatively undisturbed estuarine wetlands larger than one acre;

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2. Wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as high-quality wetlands;
  3. Bogs;
  4. Mature and old-growth forested wetlands larger than one acre;
  5. Wetlands in coastal lagoons;
  6. Interdunal wetlands that score eight or nine habitat points are larger than one acre; and
  7. Wetlands that perform many functions well (scoring twenty-three (23) points or more).

These wetlands:

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

Category II. Category II wetlands are:

1. Estuarine wetlands smaller than one acre, or disturbed estuarine wetlands larger than one acre;
2. Interdunal wetlands larger than one acre or those found in a mosaic of wetlands; or
3. Wetlands with a moderately high level of functions (scoring between twenty (20) and twenty-two (22) points).

Category III. Category III wetlands are:

1. Wetlands with a moderate level of functions (scoring between sixteen (16) and nineteen (19) points); and
2. Interdunal wetlands between one-tenth and one acre. Wetlands scoring between sixteen (16) and nineteen (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.

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

*Wetland classes, classes of wetlands, or wetland types*—The descriptive classes of the wetlands taxonomic classification system of the U.S. Fish and Wildlife Service (Cowardin, et al. 1979).

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

*Wetlands mitigation bank*—A site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.

(Ord. No. 671, § 2(Exh. B), 3-25-2008; Ord. No. 773, § 2(Exh. B), 3-22-2022)

## APPENDIX A

Federal and state listed endangered, threatened, and sensitive species, and WDFW priority habitats and species, occurring within the Town of Coupeville.

Species or Habitat Common Name	Scientific Name	Federal Status	State Status
*Bald eagle	<i>Haliaeetus leucocephalus</i>	Delisted	Threatened
Bull trout	<i>Salvelinus confluentus</i>	Threatened	Candidate
Chinook salmon (Puget Sound)	<i>Oncorhynchus tshawytscha</i>	Threatened	Candidate
Pacific herring	<i>Clupea pallasii</i>	None	PHS
Surf smelt	<i>Hypomesus pretiosus</i>	None	PHS
Sand lance	<i>Ammodytes hexapterus</i>	None	PHS
Hardshell clam beds		None	PHS
Butter clam	<i>Saxidomus giganteus</i>		
Littleneck clam	<i>Protothaca staminea</i>		
Japanese littleneck clam	<i>Tapes philippinarum</i>		
Eelgrass beds	<i>Zostera spp.</i>	None	PHS
Coastal cutthroat	<i>Oncorhynchus clarki clarki</i>	Species of Concern	PHS
Coho salmon (Puget Sound)	<i>Oncorhynchus kisutch</i>	Species of Concern	PHS
Vegetated marine/estuarine zone			
Eelgrass	<i>Zostera spp.</i>		
Kelp	<i>Macrocystis spp. or Nereocystis spp.</i>		
Turf algae	Various red, brown and green algae		
<a href="#">Big Brown Bat</a>	<a href="#">Eptesicus fuscus</a>	<a href="#">None</a>	<a href="#">PHS</a>
<a href="#">Little Brown Bat</a>	<a href="#">Myotis lucifugus</a>	<a href="#">None</a>	<a href="#">PHS</a>
<a href="#">Townsend's Big-eared Bat</a>	<a href="#">Corynorhinus townsendii</a>	<a href="#">None</a>	<a href="#">Candidate</a>

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Washington Department of Fish and Wildlife should be consulted for current listing status.

\*In July 2007, the bald eagle was removed from protection under the Federal Endangered Species Act. However, two other federal laws still provide protection for the bald eagle, the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. Bald eagle habitat protection in Washington State is authorized by the Bald Eagle Protection Law of 1984, RCW 77.12.655. This law requires the establishment and enforcement of rules for buffer zones around bald eagle nest and roost sites.

(Ord. No. 671, § 2(Exh. B), 3-25-2008)

## Chapter 16.36 ENVIRONMENTAL MANAGEMENT

### Chapter 16.44 FEES AND CHARGES

### Chapter 16.45 FLOOD DAMAGE PREVENTION

