COUPEVILLE PLANNING COMMISSION
Island County Annex Building - Commissioners Hearing Room
(1 NE 6th Street, Coupeville)
September 1, 2026
6:00 pm

CALL TO ORDER

LAND ACKNOWLEDGEMENT

The Town of Coupeville is located on the homelands of the Lower Skagit People. For thousands of years, Coast Salish tribes have stewarded the lands, waterways, plants and animals in our region. We pay respect to the elders and their families, past, present, and emerging for they hold the memories, traditions and culture of their people. The Town of Coupeville is committed to respecting this long history as we honor and acknowledge the continued presence and rights of all Indigenous people. We will advocate for and partner with our Indigenous neighbors as we continue to work together as an inclusive community.

CHANGES AND APPROVAL OF AGENDA

APPROVAL OF MINUTES:

- July 7, 2026

PUBLIC INPUT

DISCUSSION

- CTC 16.34 – Critical Area Ordinance amendments
- 2027 Staff work plan

COMMISSIONER COMMENTS

PUBLIC INPUT

ADJOURNMENT

You may also join the meeting from your computer, tablet, or smartphone.
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Access Code: 205-095-981
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2026 Planning Commission Schedule *(Tentative / Subject to change)*:

Date (1st Tuesday)	Topic
January 6, 2026	**New Planning Commissioners** • Ricardo Reyes • Brandon Roos **Project Timeline** • Comprehensive Plan - Periodic Update • Other Code Updates **Periodic Update** • Zoning Changes (discussion)
February 3, 2026	**Countywide Planning Policies (discussion)** **Portable Signs (discussion)**
March 3, 2026	**Countywide Planning Policies (recommendation)** **MOA (discussion)**
April 7, 2026	**Supportive Housing (discussion)** **MOA (discussion)**
May 5, 2026	**Temporary Homeless Encampments – Religious Organizations (discussion)** **Density Bonus – Affordable Housing (discussion)**
June 2, 2026	**2025 Coupeville Comprehensive Plan (discussion)** **CTC Title 16 - Development Regulations (discussion)**
July 7, 2026	**Comprehensive Plan (recommendation)** **Zoning Maps (recommendation)** **Code Amendments (recommendation)**
August 4, 2026	**CANCELLED**
September 1, 2026	**CTC 16.34 – Critical Area Ordinance (discussion)** **2027 Staff Work Plan (discussion)**
October 6, 2026	**CTC 16.34 – Critical Area Ordinance (recommendation)**
November 3, 2026	
December 1, 2026	

TOWN OF COUPEVILLE
PLANNING COMMISSION
Regular Meeting
July 7, 2026
6:00pm

CALL TO ORDER

At 6:00pm, Commission Chair Upchurch called the meeting to order and read the Land Acknowledgement.

PRESENT

Chair Susan Upchurch, Commissioners Ricardo Reyes, Von Summers, and Michelle Cook

STAFF PRESENT

Community Planning Director Josh Pitts, and Clerk-Treasurer Corine Jackson

APPROVAL OF AGENDA

Action: A motion was made by Commissioner Summers, seconded by Commissioner Cook, to approve the agenda of the July 7, 2026 Regular Meeting as submitted. The motion passed unanimously.

APPROVAL OF MINUTES

Action: A motion was made by Commissioner Cook, seconded by Commissioner Reyes, to approve the minutes of the June 2, 2026 Regular Meeting as submitted. The motion passed unanimously.

PUBLIC HEARING

Comprehensive Plan Periodic Update

At 6:03pm, Chair Upchurch opened the Public Hearing and turned the floor over to Community Planning Director Pitts to present on the Comprehensive Plan Periodic Update. After the presentation, Chair Upchurch opened the floor to public input.

- Jeanette Gulbronsen addressed the Commission and referenced a letter sent by attorney Rick Aramburu. Jeanette says she is in full agreement with the document and hopes the expectations of the letter are met.
- Bob Schutt addressed the Commission to express appreciation for being able to be part of the Comp Plan update process. Schutt requested the update be delayed until 2027.
- Pat Powell addressed the Commission with concerns about upzoning and high density without an affordability requirement.
- Rick Aramburu addressed the Commission regarding the MOA and dwelling credit allocation. Aramburu has significant concerns about adopting the Comp Plan.

Commissioners discussed their questions and concerns. Chair Upchurch cited concerns with the dwelling credit table in the Comp Plan Appendix.

Chair Upchurch closed the Public Hearing at 6:29pm.

Discussion
Commissioner Cook suggested several amendments prior to adopting the Comp Plan Update. Commissioner Reyes addressed some typos and has some concerns about adopting the current version of the Comp Plan.

Motion
Action: A motion was made by Chair Upchurch, seconded by Commissioner Summers, that the Planning Commission adopt the Findings of Fact and recommend that the Town Council approve and adopt the proposed 2025 Comprehensive Plan Periodic Update, finding that it is consistent with the requirements of the Washington State Growth Management Act and fulfills the periodic review and update requirements of RCW 26.70A.130. The motion failed unanimously.

- Action: An amended motion was made by Commissioner Cook, seconded by Commissioner Summers, to replace Exhibit 4 of Draft Comprehensive Plan Appendix A with a different chart to account for two Subarea A homes against Subarea B's remaining dwelling unit credits, consistent with the 2023 Comprehensive Plan table, to remove all references to 45 remaining dwelling units within the MOA area and replace them with 39, including, but not limited to, Exhibits 7, 10, 11, and 14 of the Land Use Appendix, to remove Land Use Policy 1.14, to recommend rescinding Resolution No. 22-06 while protecting innocent purchasers of transferred lots, and provide that the two lots added in Subarea A are counted toward the maximum of 108 dwelling units permitted within the MOA area, to confirm that Lots 1 and 2 of Krueger Farm Division 3 are legal building lots and are counted toward the maximum of 108 dwelling units permitted within the MOA area, to confirm that the property conveyed to the Whidbey Camano Land Trust through the Grant Deed of Conservation Easement recorded under Island County Auditor's File No. 4122084 utilizes the development rights assigned to Subareas C, G, and I, thereby extinguishing the 19 assigned dwelling unit credits, to confirm that the Town lacks authority to modify the MOA or the maximum allowed number of dwelling units through the GMA planning process, and to affirm that the MOA remains in effect, runs with the land, binds the Town and all owners, successors, and assigns, and may be amended only with the consent of all owners, successors, and assigns as provided in Paragraph 1.8 of the MOA. The motion passed unanimously.

PUBLIC HEARING

Zoning Map
At 6:46pm, Chair Upchurch opened the Public Hearing and turned the floor over to Community Planning Director Pitts to present on the updated Zoning Map. After the presentation, Chair Upchurch opened the floor to public input.

- Susan McClellan addressed the Commission with concerns about upzoning the 2-acre parcel behind the Chauncey House. McClellan cites concerns about emergency access, as the parcel is only served by one narrow access road.
- Deborah Washington addressed the Commission with concerns about upzoning the parcel behind the Chauncey House. Washington asked how people and emergency vehicles are supposed to access the lot.

DRAFT

- Michelle Connor addressed the Commission with concerns about upzoning that is not tied to workforce housing.

Commissioners expressed concerns about upzoning the parcel behind the Chauncey House. Planning Director Pitts said a potential developer in the future would have the option of upzoning that parcel in the future, if the Commission does not recommend upzoning now. Chair Upchurch closed the Public Hearing at 7:07pm.

Motion

Action: A motion was made by Chair Upchurch, seconded by Commissioner Reyes, that the Planning Commission adopt the Findings of Fact and recommend that the Town Council approve and adopt the proposed amendments to the Official Zoning Map, finding that the amendments are consistent with the Comprehensive Plan and comply with the requirements of RCW 36.70A.130, provided that the parcel proposed for redesignation from Medium-Density Residential to High-Density Residential, identified as Parcel No. R13104-488-3610, retain its existing Medium-Density Residential designation. The motion passed unanimously.

PUBLIC HEARING

Development Regulations

At 7:10pm, Chair Upchurch opened the Public Hearing and turned the floor over the Community Planning Director Pitts to present on the updates to Coupeville's Development Regulations. After the presentation, Chair Upchurch opened the floor to public input. No public input was provided. At 7:13pm, Chair Upchurch closed the Public Hearing.

Motion

Action: A motion was made by Chair Upchurch, seconded by Commissioner Cook, that the Planning Commission adopt the Findings of Fact and recommend that the Town Council approve and adopt the proposed amendments to the Town's development regulations, finding that the amendments are consistent with the Comprehensive Plan and comply with the requirements of RCW 36.70A.130. The motion passed unanimously.

COMMISSIONER COMMENTS

- Commissioner Cook made comments about how government works and the importance of public engagement and voting. Cook referred to some comments made at the last Open House for the Comprehensive Plan update, and reminded the public that it is their responsibility to elect representatives that will vote in the interest of the public.
- Chair Upchurch made comments along the same lines of Commissioner Cook's comments, reminding the public that the Planning Commission is an advisory board made up of volunteers.

ADJOURNMENT

At 7:18pm, Chair Upchurch adjourned the meeting.

DRAFT

GOOD EVENING

MY NAME IS SUSAN McCLELLAN AND MY HUSBAND BRUCE AND I LIVE @ 208 S MAIN ST.

OUR HISTORIC HOME WAS BUILT IN 1893 FOR CHAUNCEY HOUSE + HIS BRIDE MARGARET CROCKETT, DAUGHTER OF EARLY SETTLER JOHN CROCKETT. THIS HOME IS KNOWN AS THE CHAUSEY HOUSE, ALSO THE BENNETT/NICHOLS HOUSE. THIS HOME HAS BEEN REFURBISHED FROM THE FOUNDATION UP OVER THE LAST 10 YEARS.

WE ~~ARE~~ HERE TONIGHT BECAUSE WE ARE NOT IN FAVOR OF UPZONING THE 2 ACRE PARCEL BEHIND US FROM MEDIUM TO HIGH DENSITY. UPZONING IS NOT NECESSARY AT THIS TIME. I WANT TO EMPHASIZE THAT WE ARE NOT ~~AGAINST~~ OPPOSED TO REZONING FOR AFFORDABLE HOUSING, BUT NOT FOR = FOR PROFIT = HOUSING.

~~THE~~ THE ONLY ACCESS TO THIS PARCEL IS A SINGLE LANE EASEMENT SHARED BY 204, 206, AND 208 S MAIN ST. HIGH DENSITY ZONING WOULD HAVE HUNDREDS OF CARS USING THIS SINGLE LANE DAILY, WHICH IS

DANGEROUS AND INAPPROPRIATE. AND SHOULD AN EVALUATION FOR A NATURAL DISASTER (SUCH AS A WILDFIRE) BE REQUIRED, THE CHAOTIC RESULTS COULD BE DEADLY.

WE DON'T CONSIDER OURSELVES OWNERS OF THIS HISTORIC HOME, RATHER AS STEWARDS MAINTAINING AND PRESERVING IT FOR FUTURE GENERATIONS. WE STRIVE TO BE GOOD CARETAKERS AND GOOD NEIGHBORS TO THE TOWN OF COUPEVILLE.

BUT THE TOWN HAS NOT BEEN GOOD STEWARDS OR NEIGHBORS IN RETURN. DESPITE OUR OBJECTIONS THE LOT IN FRONT OF US WAS REZONED FROM MEDIUM DENSITY TO COMMERCIAL. WE FACE THE POSSIBILITY THAT THE VIEW FROM OUR FRONT WINDOWS WILL BE A BUSINESS' GARBAGE CANS. AND ~~[redacted]~~ (NOW) THE TOWN WANTS TO UPZONE THE PARCEL BEHIND US FROM MEDIUM TO HIGH DENSITY, TURNING THE DRIVEWAY INTO A RACE TRACK. THROUGH

NO FAULT OF ITS OWN, THE CHANSEY HOUSE NOW HAS 2 MAJOR STRIKES AGAINST IT.

VISITORS COME TO THIS AREA BEAUSE OF THE NATURAL BEAUTY AND HISTORY. THE CHANSEY HOUSE IS PART OF THIS HISTORY. PLEASE HELP PRESERVE IT. DO NOT UPZONE THE PARCEL FROM MEDIUM TO HIGH DENSITY

THANK YOU

Testimony. Planning Commission. July 7, 2026

My name is Bob Schutt, residing at 502E NW Kruger St.

As a relative newcomer to Coupeville, I attended a community meeting to view and discuss the 2023 Comp Plan. Regrettably, despite opportunities to do so, I did not follow closely the Comp Plan process until late 2025. Since then, I have been pleased to witness active involvement of many community members expressing views, raising concerns and asking questions on the MOA, transportation, land use and other elements of the 2025 Comp Plan. I don't believe that all issues have been satisfactorily addressed, whether it be affordable vs. workforce housing; housing development incentive and options; and the MOA dwelling credit count, among others elements covered the Comp Plan.

Respectfully, I ask that Planning Community and Town Council delay a final vote of the Comp Plan for 6 months, to allow time for further community engagement and input. Otherwise, I ask that the Planning Commission and Town of Coupeville commit to provide an opportunity the amend the Comp Plan in 2027. I am sure that there are committed community members who would be prepared to help facilitate a broad community outreach that would help inform all community members, including the Planning Commission and Town Council, on these important issues.

TOWN OF COUPEVILLE

MEMORANDUM

Meeting Date:	September 1, 2026
To:	Town of Coupeville Planning Commission
From:	Josh Pitts, Community Planning Director
Subject:	Amendments to CTC 16.34 - Critical Area Ordinance

BACKGROUND

As part of the Town's 2025 comprehensive plan update, the Town must also update its Critical Areas Ordinance (CTC Chapter 16.34) as required by the Growth Management Act (GMA), including RCW 36.70A.060. The GMA provides for an additional 12-month extension to complete these updates.

The GMA requires cities and counties to designate and adopt development regulations that protect critical areas. These regulations are intended to preserve natural resources and fish and wildlife habitat, protect drinking water, and reduce risks associated with hazards such as flooding and landslides. Because critical area functions and values can be costly or impossible to restore once lost, the regulations must be based on the best available science (BAS).

RCW 36.70A.030 identifies five types of critical areas:

- Wetlands;
- Critical aquifer recharge areas;
- Frequently flooded areas;
- Geologically hazardous areas; and
- Fish and wildlife habitat conservation areas (FWHCAs).

The GMA also requires jurisdictions to give special consideration to conservation and protection measures necessary to preserve or enhance anadromous fisheries.

Staff has coordinated with the Washington State Department of Ecology (Ecology), Washington Department of Fish and Wildlife (WDFW), and other agencies and stakeholders in preparing the proposed amendments. Ecology provides a checklist of required provisions to help ensure local critical area regulations remain consistent with state requirements and current scientific guidance. The proposed amendments address wetlands, critical aquifer recharge areas, frequently flooded areas, geologically hazardous areas, FWHCAs, reasonable use exceptions, and definitions.

SUMMARY OF PROPOSED CHANGES

Wetlands

Wetlands are areas inundated or saturated by surface or groundwater with sufficient frequency and duration to support, under normal circumstances, a prevalence of vegetation adapted to saturated soil conditions.

Proposed amendments to CTC 16.34.330 revised wetland categorization and associated buffer requirements. Table 2, which identifies the potential level of wetland impact associated with different land use types, has also been updated.

Critical Aquifer Recharge Areas
Critical aquifer recharge areas are areas designated under state law that have a critical recharging effect on aquifers used for potable water.

No substantive changes are proposed to this section. Only section headings have been updated.

Frequently Flooded Areas
Frequently flooded areas include lands within floodplains that have a one-percent or greater chance of flooding in any given year, as well as areas that provide important flood storage, conveyance, and attenuation functions.

These areas are regulated under CTC Chapter 16.45. No changes to the critical areas ordinance are proposed at this time other than updated section headings.

Geologically Hazardous Areas
Geologically hazardous areas are areas susceptible to erosion, landslides, earthquakes, or other geological events that may make them unsuitable for development because of public health and safety concerns.

Proposed amendments to CTC 16.34.470 include updating the examples used to identify landslide hazard areas. Examples include:

- Areas with a history of landslides or slope failure;
- Slopes greater than 15 percent; and
- Slopes greater than 80 percent that are susceptible to rockfall, including during seismic events.

The amendments will also clarify that the Town may designate additional landslide hazard areas based on site-specific information, geotechnical analysis, or other scientifically valid information demonstrating the presence of a landslide hazard.

Fish and Wildlife Habitat Conservation Areas
FWHCAs are areas that play a critical role in sustaining habitats and species necessary for the functional integrity of an ecosystem and whose alteration could reduce the likelihood that species will persist over the long term.

The most significant proposed change to this section is in CTC 16.34.550. When a development proposal is located within 500 feet of an identified FWHCA or its buffer, a Biological Site Assessment (BSA) would be required. The section also establishes the required contents of a BSA and provides for potential habitat management plans.

Definitions and Appendix
Several definitions in CTC 16.34.580 have been updated, including definitions for critical areas, FWHCAs, and geologically hazardous areas. Wetland category definitions have been removed because they duplicate information provided in the wetland provisions.

The appendix is also proposed for elimination. CTC 16.34.540 currently references species and habitat areas of concern. Rather than maintaining a list in Town Code that could become outdated, the proposed approach references the Washington Department of Fish and Wildlife's current species and habitats of importance.

NEXT STEPS

Staff has provided the draft amendments to Ecology and WDFW for review and requested comments by mid-September. If the agencies do not identify significant changes, staff anticipates returning the proposed ordinance to the Planning Commission on October 6, 2026, for consideration and a recommendation to the Town Council.

Following adoption of the amended Critical Areas Ordinance, the Town will have completed the critical areas component of its GMA update, along with the Comprehensive Plan and Development Regulations updates.

Enclosures

1. CTC 16.34 – Critical Area Ordinance DRAFT

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 ~~t~~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)

16.34.020 Authority.

A. As provided herein, the ~~town planner~~ planning director 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)

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~~ Areas of critical recharging effect on aquifers used for potable water;
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 ~~t~~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.

A. 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.

B. To demonstrate that avoidance has been adequately assessed, the applicant must, at a minimum, address the following considerations where applicable:

1. Alternative building locations on the property;
2. Adjustments to the project footprint and orientation;

3. Modification of non-critical area setbacks, where feasible, as a first option before encroaching into critical areas or their buffers; and/or

4. Multi-story design or alternate building design.

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

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~~ planning director that describes the activity and states the exemption listed in this section that applies. The ~~town planner~~ planning director 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 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~~ planning director shall determine if the action taken was within the scope of the emergency actions allowed in this Subsection. If the ~~town planner~~ planning director 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~~ planning director 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~~ Planning Director Review. The ~~town planner~~ planning director shall review the application and ~~town planner's~~ planning director'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.

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~~ planning director 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 ~~t~~Town ~~c~~Council.

C. ~~Town Planner~~ planning Director Review. The ~~town planner~~ planning director shall review the application and provide public notice of application pursuant to the provisions of the CTC 16.06.030F. The ~~town planner~~ planning director 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

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~~ planning director 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:

    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~~ planning director 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~~ planning director:

    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~~ prior to authorizing complete tree removal, the applicant shall submit a report from a certified arborist, registered landscape architect, or professional forester that assess whether the tree can feasibly be converted to a wildlife snag consistent with habitat management objectives;

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;

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 or 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);
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~~ planning director shall conduct a site inspection to review critical area conditions on site. The ~~town planner~~ planning director 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~~ planning director 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~~ planning director'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~~ planning director 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~~ planning director 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~~ planning director 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~~ planning director 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~~ Planning Director's Determination Subject to Reconsideration.

1. A determination regarding the apparent presence or absence of one or more critical areas by the ~~town planner~~ planning director is not an expert certification and the determination is subject to possible reconsideration and reopening if new information is received.

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~~ planning director 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. Where applicable, the report shall identify other required state or federal approvals associated with the proposal, including, but not limited to, a Hydraulic Project Approval (HPA), particularly for development within or adjacent to marine shorelines and other areas subject to state hydraulic permitting requirements.

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.

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~~ planning director.

(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~~ planning director 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~~ planning director 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~~ planning director 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)

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 or riparian protection 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:

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~~ planning director 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

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~~ planning director 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;

   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~~ planning director

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~~ planning director , the hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.

D. Site Investigations. The ~~town planner~~ planning director is authorized to make site inspections and take such actions as are necessary to enforce this chapter. The ~~town planner~~ planning director 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)

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)

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)

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 Wetlands – 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 in accordance with WAC 173-22-035. 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 ~~t~~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 ~~e~~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).~~

a. Large Undisturbed Estuarine Wetlands

b. Wetlands of High Conservation Value

c. Bogs

d. Wetlands with Mature and Old-Growth Forests

e. Wetlands in Coastal Lagoons

f. Interdunal Wetlands Larger than 1 ac and Score High for Habitat

g. Wetlands That Perform Functions at High Levels

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).~~

a. Smaller Estuarine Wetlands

b. Wetlands That Perform Functions Well

c. Interdunal Wetlands Larger than 1 Ac or Those in a Mosaic

3. Category III. Category III wetlands are:

a. Wetlands with a moderate level of functions ~~(scoring between sixteen (16) and nineteen (19) points);~~

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~~ are often 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 Wetlands – Allowed 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)

16.34.350 Wetlands – 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 ~~t~~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;
    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.

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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~~ planning director 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~~ planning director 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~~ Wetlands—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.

1. 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.~~

Table 1. Wetland Buffer Requirements			
Wetland Category	Land Use with Low Impact	Land Use with Moderate Impact	Land Use with High Impact
I	150 ft.	225 ft.	300 ft.
II	150 ft.	225 ft.	300 ft.
III	75 ft.	110 ft.	150 ft.
IV	25 ft.	40 ft.	50 ft.

Table 2. Levels of Impacts from Proposed Land Use Types	
Level of Impact from Proposed Change in Land Use	Examples of Types of Land Use
High	• Commercial
	• Urban
	• Industrial
	• Institutional
	• Retail sales
	• Residential (more than 1 unit/acre)
	• ~~Conversion to high-intensity agriculture~~ Agriculture with high-intensity activities (dairies, nurseries, greenhouses, growing and harvesting crops requiring annual tilling and raising and maintaining animals, etc.)
	• ~~High-intensity recreation~~ Open/recreational space with high-intensity uses (golf courses, ball fields, etc.)
	• Hobby farms
	• Solar farms (utility scale)
	• Home occupations
Moderate	• Residential (1 unit/acre or less)
	• ~~Moderate-intensity open space~~ Open/recreational space with moderate-intensity uses (parks with biking, jogging, etc.)
	• ~~Conversion to moderate-intensity agriculture~~ Agriculture with moderate-intensity uses (orchards, hay fields, etc.)
	• Paved trails
	• Building of logging roads
	• Utility corridor or right-of-way shared by several utilities and including access/maintenance road
Low	• Forestry/silviculture (cutting of trees only)
	• ~~Low-intensity open space~~ Open/recreational space with low intensity uses (hiking, bird-watching, preservation of natural resources, etc.)
	• Unpaved trails
	• Utility corridor without a maintenance road and little or no vegetation management
	• Cell tower

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

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~~ planning director 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~~ planning director may allow modification of the standard wetland buffer width in accordance with an approved critical area report and the best available science on a case-by-case basis by averaging buffer widths. Averaging of buffer widths may only be allowed where a qualified 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.

H. Fencing of Wetlands.

1. The ~~town planner~~ planning director shall determine if fencing is necessary to protect the functions and values of the critical area. If found to be necessary, the ~~town planner~~ planning director 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~~ Wetlands —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

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~~ Wetlands —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)

16.34.400 Critical aquifer recharge areas – 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 Critical aquifer recharge areas – Allowed 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~~ Critical aquifer recharge areas—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~~ Critical aquifer recharge areas—Specific uses.

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

1. Underground Tanks. All new underground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:

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 Critical aquifer recharge areas – Prohibited uses ~~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 f~~Frequently flooded areas.

Frequently flooded areas, also referred herein to as floodplains, are regulated pursuant to Coupeville Town Code Chapter ~~16.40~~ 16.45 as it now exists or may be hereinafter amended.

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

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 Geologically hazardous areas – 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. Examples of these may include, but are not limited to, the following:

1. ~~Areas of historic failures, such as~~ Areas with a history of landslides or slope failure, including:

~~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.~~

a. Areas identified by the United States Department of Agriculture Natural Resources Conservation Service as having significant limitations for building site development due to slope instability;

b. Coastal areas mapped as unstable, unstable old slides, or unstable recent slides in the Washington Department of Ecology Washington Coastal Atlas; and

c. Areas mapped by the United States Geological Survey or the Washington Department of Natural Resources as quaternary slumps, earthflows, mudflows, lahars, or landslides.

2. Areas meeting all of the following conditions:

a. Slopes greater than 15 percent;

b. Hillsides where relatively permeable sediments overlie relatively impermeable sediments or bedrock; and

c. Springs or groundwater seepage.

3. Areas that have experienced movement during the Holocene Epoch (approximately the last 10,000 years) or are underlain by Holocene-age mass wasting deposits.

4. Slopes that are parallel or subparallel to planes of weakness in underlying materials, including bedding planes, joints, or faults.

5. Slopes greater than 80 percent that are susceptible to rockfall, including during seismic events.

6. Areas subject to instability from stream incision, streambank erosion, wave undercutting, or channel migration.

7. Areas with evidence of, or susceptibility to, snow avalanches.

8. Areas located within canyons or on active alluvial fans that are subject to debris flows or catastrophic flooding.

9. Areas with slopes of 40 percent or greater and at least 10 feet of vertical relief, excluding slopes composed of competent bedrock. Slope shall be measured by averaging the inclination between the top and toe of the slope over a minimum of 10 feet of vertical relief.

C. The Town may designate additional landslide hazard areas based on site-specific information, geotechnical analysis, or other scientifically valid information demonstrating the presence of landslide hazards.

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

16.34.480 Geologically hazardous areas – 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 Geologically hazardous areas – 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 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~~ planning director:

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
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~~ Geologically hazardous areas—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~~ Geologically hazardous areas—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~~ planning director to eliminate or minimize the risk of property damage, death, or injury resulting from landslides caused in whole or part by the development, based upon review of and concurrence with a critical area report prepared by a qualified professional.

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~~ planning director'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~~ planning director 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 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 Geologically hazardous areas – Covenant.

The ~~town planner~~ planning director 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;

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 Geologically hazardous areas – 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 (FWHCA) – Designation.

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 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.

vi. The town planner shall determine whether the nomination proposal is complete, and if complete, shall evaluate it according to the characteristics

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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.

1. Areas where 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 (WDFW), that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC 232-12-014 (state endangered species) and WAC 232-12-011 (state threatened and sensitive species), as they now exist or may be hereinafter amended. The WDFW maintains the most current listing and should be consulted for current listing status.

2. Habitats and species of local importance, as determined locally.

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.

vi. The planning director 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.

3. 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.

4. Kelp and eelgrass beds; herring, smelt, and other forage fish spawning areas. Kelp and eelgrass beds are identified by the Washington State Department of Natural Resources and the Department of Ecology. Herring, smelt, and other forage fish spawning times and locations are outlined in WAC 220-110-240 through 220-110-271.

5. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat. Naturally occurring ponds do not include ponds deliberately designed and

created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farmponds, temporary construction ponds (of less than three years duration) and landscape amenities. However, naturally occurring ponds may include those artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority.

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. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity.

8. State natural area preserves, natural resource conservation areas, and state wildlife areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the Department of Natural Resources. State wildlife areas are defined, established, and managed by the WDFW, which provides information about state wildlife areas for each county.

9. State priority habitats and habitats with which state priority species have a primary association that are in the Town. The Town shall defer to WDFW regarding classification, mapping, and interpretation of priority habitats and species using the WDFW Priority Habitats and Species List, current or as amended.

10. 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.

11. Land Useful or Essential for Preserving Connections Between Habitat Blocks and Open Spaces.

B. All areas within the ~~t~~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. 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.

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;

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.

D. Conveyance. Conveyance of a habitat and its buffer(s) or riparian protection area(s) identified as part of project review to a land trust, state, or federal agency is encouraged when such conveyance will ensure the permanent protection of the species and/or habitat.

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

16.34.550 ~~Critical area report—Additional requirements for habitat conservation areas~~ Fish and wildlife habitat conservation areas – Biological Site Assessment.

~~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.~~

~~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.~~

A. When a development proposal is located within 500 feet of an identified FWHCA or its buffer, a biological site assessment (BSA) shall be required.

B. The planning director may waive the requirement for a BSA for activities listed in Section 16.34.120, Exemptions, and the following activities, provided no clearing of established native shrubs or trees is required, and the activity is located outside of the designated FWHCA, buffer, or riparian habitat area:

1. Additions to a legally established, primary residence less than 300 square feet in size without changes to the existing septic capacity; or
2. New residential gardening and landscaping, including construction of ancillary structures (such as a greenhouse or tool shed) not to exceed 200 square feet in size; or
3. Installation of accessory solar energy generation equipment for residential solar energy production;
4. New agricultural activities with implementation of applicable best management practices.

C. Biological Site Assessment Contents. A qualified professional shall prepare a BSA at the expense of the applicant. Unless modified by the planning director, a BSA shall include:

1. A site plan showing all critical areas and associated critical area buffers or protection areas on or within 500 feet of the portion of the subject property proposed for development. The site plan shall also clearly show the location and extent of all proposed clearing, earthwork, grading, excavation, filling, structures, utilities, septic system components, wells, roads, parking areas, driveways, and other development; and
2. Descriptions of all critical areas shown on the site plan, including, but not limited to, areas which may act as wildlife corridors, ravines, or steep slopes; and
3. Description of the proposed development, including, but not limited to, quantity and spatial extent (area) of any proposed development, clearing, earthwork, grading, excavation, and filling, the location and dimensions of all proposed structures, utilities, septic system components, and wells; and
4. Analysis of impacts to the protected species, habitats, designated FWHCA, or buffers or protection areas. A discussion of impacts to all critical areas and critical area buffers or protection areas as well as downstream/downgradient impacts must be included; and
5. The spatial extent of impact to critical areas and their buffers or protection areas shall be quantified; and
6. Regulatory summary, identifying other agencies with jurisdiction; and
7. Best management practices, including a discussion of ongoing maintenance practices that will assure protection of all critical areas on site after the project has been completed. If monitoring is required, this section shall include a description of proposed monitoring criteria, methods, and schedule.

8. The recommendations of the BSA, once approved, shall be included as conditions of approval of the underlying permit.

D. If impacts are determined by a qualified professional in the BSA, a habitat management plan shall be required to determine the appropriate buffer width for the proposed development based on the site-specific analysis. The preparation and submission of this report is the responsibility of the applicant and subject to approval by the Town. The report shall rely on best available science and may include mitigation measures. The habitat management plan shall contain a map prepared at an easily readable scale, showing:

1. The location of the proposed development site;
2. The relationship of the site to surrounding topographic, water, and cultural features;
3. Proposed building locations and arrangements;
4. A legend that includes a complete legal description, acreage of the parcel, scale, north arrow, and date of map revision; and
5. 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.

E. In addition to the requirements of subsection 16.34.550.D, the habitat management plan shall also contain a report which describes:

1. The nature and intensity of the proposed development;
2. An analysis of the direct and indirect potential impacts of the proposed development, activity or land use change upon the wildlife species and habitat identified for protection, including potential impacts to water quality;
3. A mitigation sequencing analysis that meets the requirements of Section 16.34.210;
4. A detailed description of vegetation on and adjacent to the project area and its associated buffer or riparian protection area;
5. A discussion of any federal, state, or local special management recommendations, including WDFW habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;
6. A mitigation plan shall be provided that ensures no net loss of ecological functions. Mitigation sites must be located to preserve or achieve contiguous wildlife habitat corridors to minimize the isolating effects of development on habitat areas. The mitigation of aquatic habitat shall be located within the same aquatic ecosystem as the area disturbed. The mitigation plan shall include standards for ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.

F. The following development activities shall be exempt from the habitat management plan and mitigation requirements of this section:

1. Development undertaken for the sole purpose of creating, restoring, or enhancing the natural functions of floodplains, streams, watercourses, fish and wildlife habitat, and riparian areas; provided that:

i. The project complies with all other applicable federal, state, and local permit requirements and regulations;

ii. The development activities do not include the placement of fill or the creation of additional impervious surface areas.

2. Enhancement projects sponsored by Island County, Washington Department of Fish and Wildlife, Whidbey Island Conservation District, U.S. Natural Resources Conservation Service, U.S. Fish and Wildlife Service, Washington Department of Natural Resources, or other public agency approved by the administrator which are consistent with the Town Comprehensive Plan and other plans adopted by the city council.

G. Previously Undocumented Priority Species or Habitat Reports. If a species or habitat of local importance is observed in a location that was not previously subject to FWCHA regulations, a report may be submitted to the Town documenting the new location. The planning director shall investigate all reported sightings or evidence of protected species in the vicinity of proposed development once a complete report is received prior to any land use approval.

1. Reports shall contain the following:

i. Date and time of observation;

ii. Name of individuals submitting report;

iii. Name of individuals who made the observation;

iv. Location observed;

v. Species observed;

vi. Observation details, which detail how the species was sighted or heard, nature of observation, length of observation;

vii. Names of others present who also observed the species; and

viii. Supporting documentation, including photographs, field notes or sound recording, if available.

2. The planning director or designee may visit the location to verify observations.

3. The planning director shall consult with the DNR Natural Heritage Program, WDFW, NOAA, USFWS, or other regulatory authorities as appropriate.

4. The planning director shall require a BSA consistent with the requirements of section 16.34.550 should evidence warrant further investigation.

5. Should the report be verified, the location will be included in the Town's FWCHA maps.

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

16.34.560 ~~Performance standards~~ Fish and wildlife habitat conservation areas—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~~ planning director 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~~ planning director 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~~ WDFW . 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.

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~~ planning director 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~~

planning director 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~~ Fish and wildlife habitat conservation areas—Performance Standards: Specific habitats.

A. Endangered, Threatened, and Sensitive Species. 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.

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~~ WDFW 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~~ WDFW 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)~~ the federal Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act, as they now exist or may be hereinafter amended. Approval of 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~~ the US Fish and Wildlife Service. 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~~ WDFW 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;

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;

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~~ wetlands; areas with a critical recharging effect on aquifers used for potable water; fish and wildlife habitat conservation areas; frequently flooded areas; and geologically hazardous areas. "Fish and wildlife habitat conservation areas" does 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, 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.

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 necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created as designated by WAC 365-190-080(5), as it now exists or may be hereinafter amended.~~ 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. 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, and other forage fish 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.

K. Salmonid habitats.

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~~ planning director 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. Some critical areas, such as wetlands and fish and wildlife habitat conservation areas, may constitute ecosystems or parts of ecosystems that transcend the boundaries of individual parcels and jurisdictions, so that protection of their function, and values should be considered on a larger scale. 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 may not be suited to development consistent with public health, safety, or environmental standards, because of their susceptibility to erosion, sliding, earthquake, or 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.~~ 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.

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.

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;

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

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

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 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.

Protection – Means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety.

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

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.

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 that 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;~~

~~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	*Haliaeetus leucocephalus*	Delisted	Threatened
Bull trout	*Salvelinus confluentus*	Threatened	Candidate
Chinook salmon (Puget Sound)	*Oncorhynchus tshawytscha*	Threatened	Candidate
Pacific herring	*Clupea pallasi*	None	PHS
Surf smelt	*Hypomesus pretiosus*	None	PHS
Sand lance	*Ammodytes hexapterus*	None	PHS
Hardshell clam beds		None	PHS
— Butter clam	*Saxidomus giganteus*		
— Littleneck clam	*Protothaca staminea*		
— Japanese littleneck clam	*Tapes philippinarum*		
Eelgrass beds	*Zostera spp.*	None	PHS
Coastal cutthroat	*Oncorhynchus clarki clarki*	Species of Concern	PHS
Coho salmon (Puget Sound)	*Oncorhynchus kisutch*	Species of Concern	PHS
Vegetated marine/estuarine zone			
— Eelgrass	*Zostera spp.*		
— Kelp	*Macrocystis spp. or Nereocystis spp.*		
— Turf algae	Various red, brown and green algae		

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)

TOWN OF COUPEVILLE

MEMORANDUM

Meeting Date:	September 1, 2026
To:	Town of Coupeville Planning Commission
From:	Josh Pitts, Community Planning Director
Subject:	2027 Community Planning Work Plan

BACKGROUND

Staff is preparing a 2027 Planning and Community Development Department Work Plan to establish and prioritize planning projects for the upcoming year. The Work Plan is intended to provide a structured framework for allocating staff resources and advancing projects consistent with Town Council goals, Planning Commission priorities, identified community needs, and available staff capacity. While the Work Plan will remain flexible enough to address emerging issues and legislative requirements, it is intended to provide clear direction for the year's work and reduce the need for unplanned or ad hoc projects.

SUMMARY OF PROPOSED CHANGES

The draft 2027 Work Plan includes a range of proposed code amendments, planning studies, and long-term planning initiatives. Code-related projects include updates to fire code enforcement, the Ebey's Code and Design Guidelines, and the procedures governing conditional use permits and variances, to name a few. Several of these projects are intended to clarify existing regulations, improve administrative efficiency, address identified gaps in the Town Code, or respond to changes in state law.

The Work Plan also identifies several planning studies and initiatives for consideration, including affordable housing requirements in High-Density Residential zones, identification of future trails and pedestrian connections, and continued planning work associated with the RCO grant application for improvements at Capt. Coupe Park.

The draft identifies each project's proposed priority, whether the work is mandated, estimated staff time, and the party that proposed the project. The accompanying work plan table provides additional detail regarding the scope and purpose of each proposed item.

NEXT STEPS

Following the Planning Commission's discussion of the draft Work Plan, staff will incorporate the Commission's comments and present the draft Work Plan, along with the Commission's input, to the Town Council as part of its budget workshop. Following further refinement based on Town

Council direction and available resources, the Work Plan will return to the Planning Commission for review and recommendation to the Town Council.

Enclosures

1. 2027 Community Planning Work Plan DRAFT

2027 Planning and Community Development Department Work Plan - DRAFT

Project Title	Description	Staff Priority	PC Priority	Mandated	Notes	Estimated Time	Proposed By
Coupeville Town Code							
15.12 - Fire Code Enforcement	Review and amend CTC 15.12 to clarify that the property owner is responsible for fire code compliance and inspection fees. The amendment will eliminate ambiguity between occupant and property owner responsibilities and provide a clear basis for enforcement.	5		No	The current code creates a significant administrative burden for staff, who must continually determine and track the responsible party, particularly as occupants and property uses change over time. Assigning responsibility directly to the property owner would provide a consistent and administratively efficient enforcement process. *Dependent on Civil Code Enforcement being approved.	2-3 months	Staff
16.10.100 - Home Occupations	Revise to replace the current list of prohibited home occupations with a table of permitted home occupation types. The table would also identify the residential structure types in which each home occupation is allowed, providing clearer and more user-friendly standards.	2		No	Example ICC 17.06.310 - Home based businesses. See Table A	3-6 months	Staff
16.10.110 - Transient accommodation	Review whether Bed and Breakfasts should continue to be permitted in all residential zones. Additionally, consider whether they should be permitted in ADUs.	4		No	Consider limiting this use to lower-density residential zones or areas with larger parcels, where the use may be more compatible with surrounding residential development.	2-3 months	Staff
16.13 - Ebey's Code	Has not been comprehensively updated since 2011. Priority should be given to CTC 16.13.090–16.13.120, which establish the requirements and procedures for Certificates of Appropriateness (COAs).	5		No	This must be done in coordination with Island County. This must be done in conjunction with Ebey's Guidelines update. Island County has stated that they will let the Town run lead on this.	6-9 moths	Staff
Ebey's Design Guidelines	Revise the Ebey's Design Guidelines to make the standards clearer, more concise, and easier to use. Update the imagery and improve the overall formatting and organization to create a more accessible and visually cohesive document.	5		No	This must be done in coordination with Island County. This must be done in conjunction with Ebey's Code update. Island County has stated that they will let the Town run lead on this.	6-9 months	Staff
16.28 - Signs	Continue efforts to permit sandwich board signs and review the current sign area allowance. Consider whether the cumulative permanent sign area limit of five percent of the largest building façade is appropriate and should be revised. Review the standard to ensure sign allowances are workable for existing and future development while maintaining appropriate visual character.	4		No	CTC 16.28.070 states the "Sign Area Allowance. The cumulative permanent sign area for any lot or parcel shall not exceed five percent of the area of the largest building facade." Coupe's Village provides a clear example of how the current sign area standard may be overly restrictive or impractical.	3-6 months	Business Owners / Staff

Civil Code Enforcement	A nuisance ordinance establishing clear standards for identifying and addressing conditions or activities that adversely affect public health, safety, or neighborhood quality. This ordinance also establishes a clear enforcement framework for violations of Town ordinances, including when violations may constitute a civil infraction or criminal offense.	5		No	The Town's attorney, Nikki Thompson, has already put together Draft language for this ordinance	2-3 months	Town Council / Residents
2.52 / 6.06 / 16.14 - CUP & Variance Authority and Duties	Review and clarify all Town Code provisions governing conditional use permits and variances to ensure the appropriate review and decision-making authority is clearly identified.	4		No	The code should consistently distinguish the respective roles and duties of the Planning Commission, Town Council, and Hearing Examiner.	2-3 months	Staff
Studies							
Mandatory Affordable Housing in High Density Residential Zones	Evaluate whether the Town should require an affordable housing component when High-Density Residential (HDR) properties are developed or redeveloped. Consider the potential benefits, feasibility, and appropriate standards for incorporating affordable housing into HDR development.	1		No		6-9 months	Planning Commission Member
Street Level Residential in Commercial Zones	Evaluate whether the Town should allow long-term residential occupancy at street level in commercial zones as live/work spaces. Consider appropriate locations and development standards to ensure compatibility with commercial uses and the character of the area.	2		No	Standards could require residential areas to be located away from the primary street frontage and limit the percentage of street-level space dedicated to residential use.	6-9 months	Business Owners / Planning Commission
Commercial Overlay in Residential Zones	Evaluate whether the Town should establish commercial overlay zones within select residential areas to allow small-scale commercial uses, such as restaurants or neighborhood convenience stores. Consider appropriate locations, uses, and development standards to ensure compatibility with surrounding residential areas.	2		No		6-9 months	Town Council Member
Future Paths/Trails Identification	Develop a map of existing and potential future trails and pedestrian paths to guide the long-term development of a connected Town-wide network.	3		No	Identifying future connections, particularly in undeveloped areas, will help preserve opportunities as parcels are divided and developed. Additonally, being clear regarding type of walkability Coupeville desires (recreation, services, other).	6-9 months	Town Council Member
Future Road Identification	Develop a map of existing and potential future roads to guide the long-term development of a connected Town-wide network.	3		No	Identifying future connections, particularly in undeveloped areas, will help preserve opportunities as parcels are divided and developed.	6-9 months	Staff

RCO Grant - Capt. Coupe Park	Continue work on RCO grant for Capt. Coupe's Park.	5		No	Staff recently prepared an application for the Washington Recreation and Conservation Office's Planning for Recreation Access grant to support planning, technical analysis, and community engagement for future improvements at Capt. Coupe Park. Potential work includes evaluating upgrades to the boat ramp, dock, and associated infrastructure to position the project for future design, permitting, and construction funding opportunities.	12+ months	Staff