TITLE 15
TOWN OF LYMAN CODE
CHAPTER 15.15
CRITICAL AREAS ORDINANCE

Sections:

GENERAL

15.15.010 Introduction

A. This chapter shall be known as the Critical Area Ordinance and it is adopted to assist in orderly development, conserve the value of property, safeguard the public welfare, and provide protection for defined critical areas.

B. The ordinance codified in this chapter was developed under the directives of the Growth Management Act to designate and protect critical areas, using Best Available Science, pursuant to RCW 36.70A.172. Critical areas are defined as wetlands, aquifer recharge areas, flood hazard areas, geologically hazardous areas, and fish and wildlife habitat conservation areas. Some of these areas, such as geologic hazards and flood hazard areas, are critical because of the hazard they represent to public health. Others, such as fish and wildlife habitats and wetlands are critical because of their public value.

C. Maps are useful primarily as an indicator of the distribution and extent of critical areas. Maps will be used wherever possible as part of the screening process for evaluating individual permit applications. Although a number of map resources are utilized in this chapter, regulatory measures such as buffer requirements are based upon the identification of critical areas during the permit, development authorization, or other approval processes and shall incorporate field assessments as necessary.

D. Critical areas will be designated by definition and then classified through site assessments so that they can be identified using scientifically based criteria and protected. The use of site assessments to confirm the actual presence and classification of critical areas is central to the management approach developed under this chapter.

E. The ordinance codified in this chapter was drafted to provide regulatory structure for identification, designation and protection of critical areas. This chapter allows staff to provide site visits, preliminary reviews, and pre-application meetings to assist in the identification of critical areas.

15.15.015 Findings of Fact

The Town of Lyman hereby finds that:

A. Critical areas and their buffers are valuable and fragile natural resources with significant development constraints due to earthquakes, landslides, steep slopes, mine hazards, and other geological events.

B. The State of Washington has enacted the Growth Management Act (RCW 36.70A), and under this Act the Town of Lyman is adopting regulations protecting critical

areas, including wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.

1. RCW 36.70A.170 requires the designation of critical areas.

2. RCW 36.70A.172 requires local governments to give special consideration to the conservation and protection measures necessary to preserve or enhance anadromous fisheries.

C. In their natural state, wetlands provide many valuable social and ecological services, including, but not limited to:

1. Controlling flooding and stormwater runoff by storing or regulating natural flows;

2. Protecting water resources by filtering out water pollutants, processing biological and chemical oxygen demand, recycling and storing nutrients, and serving as settling basins for naturally occurring sedimentation;

3. Providing areas for surface water recharge;

4. Preventing shoreline erosion by stabilizing the substrate;

5. Providing habitat areas for many species of fish, wildlife, and vegetation, many of which are dependent on wetlands for their survival, and many of which are on Washington State and Federal Endangered Species lists;

6. Providing open space and visual relief from intense development in urbanized area;

7. Providing recreation opportunities; and

8. Serving as areas for scientific study and natural resource education.

D. Frequently flooded and geologically hazardous areas shall be preserved in order to protect public and private resources and facilities from injury, loss of life, and property or financial damage due to flooding, erosion, landslides, steep slope failure, seismic, mine hazard, and other geological events including tsunamis, mass wasting, debris flows, rock falls, and differential settlement.

E. Development in critical areas can result in:

1. Increased soil erosion and sedimentation of downstream water bodies;

2. Increased shoreline erosion;

3. Degraded water quality due to increased turbidity and loss of pollutant removal processes;

4. Elimination or degradation of wildlife and fisheries habitat;

5. Loss of fishery resources from water quality degradation, increased peak flow rates, decreased summer low flows, and changes in the stream flow regimen.

6. Loss of stormwater retention capacity and slow release detention resulting in flooding, degraded water quality, and changes in the stream flow regimen of watersheds;

7. Loss of groundwater recharge areas;

8. Loss of slope and soil stability caused by the removal of trees, shrubs, and root systems of vegetative cover on steep slopes.

F. Buffer areas and building setbacks (if required) surrounding critical areas are essential to maintenance and protection of some critical areas functions and values. Buffer areas protect critical areas from degradation by:

a) Stabilizing soil and preventing erosion;

b) Filtering suspended solids, nutrients and harmful or toxic substances;

c) Moderating impacts of stormwater runoff;

d) Moderating system microclimate;

e) Protecting wetland wildlife habitat from adverse impacts;

f) Maintaining and enhancing habitat diversity and/or integrity;

g) Supporting and protecting wetlands plant and animal species and biotic communities;

h) Reducing disturbances to wetland resources caused by intrusion of humans and domestic animals;

i) Protecting steep slopes from erosion and landslides.

G. The Town of Lyman is experiencing increased development pressure and resulting natural system changes and must plan for protection of its natural resources. It is therefore the policy of the Town of Lyman to ensure protection for critical areas by ensuring no net loss of ecological values and functions.

H. Protection standards for one critical area often provide protection for one or more other critical areas. In determining what particular degree of protection critical areas are to be afforded, the Town has evaluated a wide range of the best science available with respect to the critical areas to make informed decisions that meet the intent of the Growth Management Act and that are also reflective of local needs.

I. Critical areas may also be protected by other actions by the Town, such as stormwater management standards, critical area restoration, and public education; and from other regulations, such as the Forest Practices Act, the Shoreline Management Act, and the State Environmental Policy Act.

J. The U.S. Constitution prohibits the taking of private property without just compensation.

K. In their natural state, riparian areas provide many valuable social and ecological services, including:

1. Filtering pollutants, nutrients, and sediments from surface runoff, thereby protecting water quality;

2. Shading streams to regulate water temperature, which is essential for supporting cold-water fish species such as salmon and trout;

3. Stabilizing streambanks and reducing erosion through deep-rooted native vegetation;

4. Slowing and absorbing floodwaters, reducing downstream flood risk and property damage;

5. Supporting groundwater recharge and maintaining base flows in streams during dry periods;

6. Providing essential habitat for fish, wildlife, and plant species, including those listed as threatened or endangered at the state or federal level;

7. Connecting fragmented habitats and serving as wildlife movement corridors that promote genetic exchange and ecosystem resilience;

8. Sequestering carbon in vegetation and soils, contributing to climate regulation;

9. Offering opportunities for passive recreation, scenic value, and natural resource education; and

10. Recruiting large woody debris that creates complex aquatic habitat structures critical for fish and amphibian species.

15.15.020 Application and Purpose

A. This chapter shall apply to land use, development and platting located in the Town limits of Lyman, within the geographical areas that meet the definitions and criteria for critical areas regulation as set forth in this chapter.

B. The purpose of these regulations is to:

1. Protect human life, property, and the public health and safety of the citizens of Lyman;

2. Minimize the expenditure of public money;

3. Maintain the Town's flood insurance eligibility while avoiding regulations which are unnecessarily restrictive or difficult to administer;

4. Ensure that wetland and other critical area functions and values are protected to provide public benefits.

C. The following shall constitute critical areas:

1. Wetlands and riparian corridors. Wetlands serve many important ecological and environmental functions and help to protect public health, safety and welfare by providing flood storage and conveyance, erosion control, fish and shellfish production, fish and wildlife habitat, recreation, water quality protection, water storage, education, scientific research and other public benefits. It is the purpose of this chapter to protect these functions to prevent the continual loss of wetlands, and where practical to enhance or restore wetlands functions and values.

2. Areas with a critical recharging effect on aquifers used for potable water. Potable water is an essential life-sustaining element. Lyman’s drinking water comes from groundwater supplies. Once groundwater is contaminated, it is difficult, costly, and sometimes impossible to clean up. It is the purpose of this chapter to prevent contamination and depletion, avoid exorbitant cleanup costs, hardships and potential physical harm to people. There are some existing wells used for irrigation in the Town limits that are not mapped.

3. Fish and wildlife habitat conservation areas. In addition to their intrinsic value, certain species of fish and wildlife represent important historic, cultural, recreational and economic resources. Many species serve as indicators of the condition of the environment and the quality of life that local residents have invested in, enjoy and respect. It is the purpose of this chapter to protect, restore where practical, and enhance fish and wildlife populations and their associated habitats.

4. Frequently flooded areas. It is the purpose of managing frequently flooded areas to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in the floodplain and the floodway according to the provisions established under the flood code and relevant provisions of this ordinance; and

5. Geologically hazardous areas. Geologically hazardous areas include areas susceptible to the effects of earthquakes, landslides, steep slopes, mine hazards, and other geological events. They pose a threat to the health and safety of citizens when incompatible residential, commercial, industrial, or infrastructure development is 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 by engineering, design, or modified construction practices so that risks to health and safety are acceptable. When technology cannot reduce risks to acceptable levels, building and other construction within identified geologically hazardous areas shall be prohibited.

15.15.025 Definitions

"Aquifer recharge areas, critical" refer to areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of water.

"Basement" means any area of the building having its floor subgrade (below ground level on all sides).

"Best management practices (BMPs)" refers to physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce water pollution. Source control BMPs include those which keep the pollutant from ever coming in contact with storm water, and storm water treatment BMPs include those which consist of various methods of treating storm water.

“Best available science” (BAS) means scientifically valid information derived in accordance with WAC 365-195-900 through 365-195-925 as well as Section 36.70A.172 RCW, or as amended, that is used to develop and implement critical areas policies or regulations.

"Buffer, critical area" is an area which provides a reasonable margin of safety through protection of slope stability, attenuation of surface water flows and landslide hazards reasonably necessary to minimize risk to the public from loss of life or well-being or property damage resulting from natural disasters; or an area which is an integral part of a stream or wetland ecosystem and which provides shading, input of organic debris and coarse sediments, room for variation in stream or wetland boundaries, habitat for wildlife, and protection from harmful intrusion necessary to protect the public from

losses suffered when the functions and values of aquatic resources are degraded.

“Channel Migration Zone” means the area within which a river channel is likely to move laterally over a specified period (e.g., 100 years).

"Compensatory mitigation" is replacing project-induced critical area losses or impacts, and includes, but is not limited to, restoration, creation, or enhancement.

"Critical areas" include the following areas and ecosystems:

A. Wetlands;

B. Areas with a critical recharging effect on aquifers used for potable water;

C. Fish and wildlife habitat conservation areas;

D. Frequently flooded areas; and

E. Geologically hazardous areas.

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

"Delineation" is the precise determination of wetland boundaries in the field according to the application of specific methodology as described in the approved federal wetland delineation manual and applicable regional supplement.

"Development" means any manmade change to the land or improvements occurring after the effective date of the ordinance codified in this chapter including structures, mining, dredging, drilling, filling, grading, paving or excavation, storage of equipment and materials, and excluding the removal of vegetation; provided, that development located within the area of special flood hazard includes removal of substantial amounts of vegetation, or alteration of natural site characteristics. Where a project is dividable into parts, the entire scope of such changes or improvements constituting an integral, functional project should be considered the development for purposes of determining whether such development is allowed or requires a permit.

“Ecosystem Functions” are the products, physical and biological conditions, and environmental qualities of an ecosystem that result from interactions among ecosystem processes and ecosystem structures. Ecosystem functions include, but are not limited to, sequestered carbon, attenuated peak streamflows, aquifer water level, reduced pollutant concentrations in surface and ground waters, cool summer in-stream water temperatures, and fish and wildlife habitats.

“Ecosystem values” are the cultural, social, economic, and ecological benefits attributed to ecosystem functions.

"FEMA" means the Federal Emergency Management Agency and its predecessor and successor agencies.

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

"Flood fringe" means those portions of the floodplain other than floodways and special flood risk zones.

"Floodplain" or "frequently flooded areas" are lands subject to a one percent or greater chance of flooding in any given year, which means all lands that would be covered by the 100-year flood (A zones), together with all B zones, as established by FEMA on the flood insurance rate map (FIRM), dated January 3, 1985.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot.

"Geologically hazardous areas" are areas that, because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to siting commercial, residential, or industrial development consistent with public health or safety concerns.

"Habitats of local importance" 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 alteration, such as cliffs, talus, and wetlands.

“Hazard tree” means a tree that a jurisdiction’s building official or other recognized professional (e.g. certified arborist, registered landscape architect, or certified forester) has determined is a threat to life, property, or public safety. Due to their high habitat value, hazard tree removal shall not adversely affect ecosystem functions to the extent practicable, encourage the creation of snags (Priority Habitat features) rather than complete tree removal, involve an avoidance and minimization of damage to remaining trees and vegetation, and require a qualified arborist to evaluate requests for hazard tree removal.

“Low Impact Development (LID)” is a stormwater and land use management strategy that strives to mimic natural hydrologic conditions by emphasizing the pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration.

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

"Mean sea level" means the average height of the sea for all stages of tide; also equals National Geodetic Vertical Datum.

"Mobile home" or "manufactured home" means any structure designed or used as a permanent residence, built on a permanent chassis, and transportable to site of placement in one or more sections.

"Mobile home park" or "manufactured home park" means a parcel of land in one ownership containing two or more mobile homes or manufactured homes, sited for habitation.

“No Net Loss of Critical Areas” means the actions taken to achieve and ensure no overall reduction in existing ecosystem functions and values or the natural systems constituting the protected critical areas. This may involve fully offsetting any unavoidable impacts to critical area functions and values pursuant to the Growth Management Act, WAC 365-196- 830 ‘Protection of critical areas,’ or as amended.

"One-hundred-year flood" means that flood having a one percent chance of being equaled or exceeded in any given year, as established by FEMA.

"Open space land" means (a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly; or (b) any land area, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply, or (iii) promote conservation of soils, wetlands, beaches or tidal marshes, or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space, or (v) enhance recreation opportunities, or (vi) preserve historic sites, or (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification; or (c) any land meeting the definition of farm and agricultural conservation land under subsection (8) of this section. As a condition of granting open space classification, the legislative body may not require public access on land classified under (b)(iii) of this subsection for the purpose of promoting conservation of wetlands.

“Priority Habitat” means a habitat type with unique or significant value to many species. An area identified and mapped as priority habitat has one or more of the following attributes: comparatively high fish and wildlife density, comparatively high fish and

wildlife species diversity, important fish and wildlife breeding habitat, important fish and wildlife seasonal ranges, important fish and wildlife movement corridors, limited availability, high vulnerability to habitat alteration, and unique or dependent species.

“Priority Species” are fish and wildlife species requiring protective measures and/or management actions to ensure their survival. A species identified and mapped as priority species fit one or more of the following criteria: State-listed candidate species, vulnerable aggregations, and Species of recreational, commercial, and/or Tribal importance.

"Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreation facilities, and schools.

"Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

“Qualified wetland professional” is a person with professional wetland experience that meets the following criteria:
(a) A Bachelor of Science or Bachelor of Arts or equivalent degree in hydrology, soil science, botany, ecology, resource management, or related field, or four years of full time work experience as a wetland professional may substitute for a degree, and
(b) At least two additional years of full-time work experience as a wetland professional; including delineating wetlands, preparing wetland reports, conducting function assessments, and developing and implementing mitigation plans, and
(c) Completion of additional wetland-specific training programs. This could include a more comprehensive program such as the University of Washington Wetland Science and Management Certificate Program or individual workshops on topics such as wetland delineation, function assessment, mitigation design, hydrophytic plant or hydric soil identification. A person certified as a Professional Wetland Scientist through the Society of Wetland Scientists professional certification program meets the above criteria.

"Residential health care facilities" means facilities caring for elderly or infirm persons wherein clients are partly or entirely residents or detainees thereof. Includes hospitals, convalescent homes and homes for the elderly where some supervision or health care is provided.

“Riparian habitat” are areas adjacent to aquatic systems with flowing water that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other. The width of these areas extends to that portion of the terrestrial landscape that directly influences the aquatic ecosystem by providing shade, fine or large woody material, nutrients, organic and inorganic debris, terrestrial insects, or habitat for riparian-associated wildlife. Widths shall be measured from the edge of the channel migration zone, if present. If not present, the width shall be measured from the ordinary high water

mark or from the top of bank if the ordinary high water mark cannot be identified. It includes the entire extent of the floodplain and the extent of vegetation adapted to wet conditions as well as adjacent upland plant communities that directly influence the stream system. Riparian habitat areas include those riparian areas severely altered or damaged due to human development activities.

“Riparian Management Zone (RMZ)” is thew area that has the potential to provide full riparian functions. In forested ecosystems, this is the area that is within one SPTH200yr (minimum 100 feet) measured from the wider of the channel mitigation zone, ordinary high water mark, or active floodplain.

"Seismic hazard areas" are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, or soil liquefaction. The Town of Lyman is located in Seismic Zone 3 and construction is required to comply with the International Building Code seismic standards.

"Species of local importance" are those species that are of local concern due to their population status or their sensitivity to habitat manipulation or that are game species.

"Steep slope areas" are areas with slopes greater than 15 percent.

"Structure" means a walled and roofed building or mobile home, or gas or liquid storage tank, that is principally above ground.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. "Substantial improvement" means any repair, reconstruction, or improvement to a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

A. Before the improvement is started; or

B. If the structure has been damaged and is being restored, before the damage occurred.

This term does not, however, include either:

A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are necessary to assure safe living conditions; or
B. Any alteration of a structure listed in the National or State Register of Historic Places.

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

“Water Typing System” means waters classified according to WAC 222-16-030 as follows:

A. ***"Type S Water"*** means all waters, within their bankfull width, as inventoried as "shorelines of the state" under chapter 90.58 RCW and the rules promulgated pursuant to chapter 90.58 RCW including periodically inundated areas of their associated wetlands.

B. ***"Type F Water"*** means segments of natural waters other than Type S Waters, which are within the bankfull widths of defined channels and periodically inundated areas of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low water and which in any case contain fish habitat or are described by one of the following four categories:

1. Waters, which are diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type F Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

2. Waters, which are diverted for use by federal, state, tribal or private fish hatcheries. Such waters shall be considered Type F Water upstream from the point of diversion for 1,500 feet, including tributaries if highly significant for protection of downstream water quality. The department may allow additional harvest beyond the requirements of Type F Water designation provided the department determines after a landowner-requested on-site assessment by the department of fish and wildlife, department of ecology, the affected tribes and interested parties that:

    a. The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and

b. Such additional harvest meets the requirements of the water type designation that would apply in the absence of the hatchery;

3. Waters, which are within a federal, state, local, or private campground having more than 10 camping units: Provided, That the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within 100 feet of a camping unit, trail or other park improvement;

4. Riverine ponds, wall-based channels, and other channel features that are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria:

a. The site must be connected to a fish habitat stream and accessible during some period of the year; and

b. The off-channel water must be accessible to fish.

C. ***"Type Np Water"*** means all segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry any time of a year of normal rainfall and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.

D. ***"Type Ns Water"*** means all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np Water. Ns Waters must be physically connected by an above-ground channel system to Type S, F, or Np Waters.

“Waters of the State” means the 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, or as further amended under Section 90.48.020 RCW.

“Wetland” or “wetlands” means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from 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 non-wetland areas created to mitigate conversion of wetlands.

15.15.030 Legislative Authority

The ordinance codified in this chapter is adopted under the authority of chapter 36.70 RCW and chapter 36.70A RCW, and Article 11 of the Washington State Constitution.

15.15.040 Applicability, jurisdiction and coordination

A. Relationship to Other Federal, State and County Jurisdictional Agencies' Regulations. Many state, federal and regional regulations apply to projects conducted within critical areas. Uses otherwise allowed by local codes do not eliminate other agency regulatory requirements.

1. Federal regulations include:

    a. Clean Water Act, Section 404,401;

    b. Coastal Zone Management Act;

    c. Endangered Species Act;

    d. Federal Water Pollution Control Act;

    e. Water Conservation - Swampbuster;

    f. National Environmental Policy Act;

    g. National Floodplain Insurance Program;

    h. River and Harbor Act, Section 10.

2. State regulations include:

    a. Chapter 43.21C RCW, State Environmental Policy Act;

    b. Chapter 75.20 RCW, Hydraulic Project Approval;

    c. Chapter 76.09 RCW, Forest Practices Regulations;

    d. Chapter 78.44 RCW, Surface Mining Act;

    e. Chapter 86.16 RCW, Floodplains;

f. Chapter 90.03 RCW, State Water Code;

g. Chapter 90.48 RCW, State Water Pollution Control Act;

h. Chapter 90.58 RCW, Shoreline Management Act.

B. Jurisdictional Substitution. In cases where other agencies possess jurisdictional control over critical areas and it is determined by the director that the permit conditions satisfy the requirements of this chapter, those requirements may substitute for the requirements of this chapter. Such requirements shall be a condition of critical area approval and be enforceable under this chapter. Such agencies may include, but are not limited to, the United States Army Corps of Engineers, Environmental Protection Agency, and Fish and Wildlife Service, the Swinomish Tribe, and the Washington State Department of Ecology, Department of Natural Resources and Department of Fish and Wildlife. The applicant shall be notified in writing when any such substitution is made.

15.15.045 Relationship to Other Regulations

A. These critical area regulations shall apply as an overlay and in addition to zoning, land use and other regulations established by the Town of Lyman. In the event of any conflict between these regulations and any other regulations of the Town, the regulations that provide greater protection to environmentally sensitive areas or greater protection from environmental hazards shall apply.

B. It is recognized that many Town, county, state, and federal permit conditions may be applied to the proposed action, and that compliance with the provisions of this ordinance does not constitute compliance with other such requirements.

C. Satisfaction of the requirements of this ordinance shall also be sufficient to satisfy the requirement for critical areas analysis and mitigation pursuant to Chapter 43.21C RCW and the Lyman Municipal Code.

15.15.050 Resource information and maps

A. Critical areas defined and identified in this chapter shall be mapped whenever possible. These maps shall be advisory and used by the director to provide guidance in determining applicability of the standards to a property. Sites which include critical areas which are not mapped shall be subject to the provisions of this chapter. Aerial Topographic Maps, wetland delineation maps in the Town of Lyman land use files, are the advisory maps, along with the accompanying flood insurance rate map (FIRM), dated January 3, 1985. That document is on file at Lyman Town Hall. These maps are hereby adopted by reference and declared to

be part of this chapter, and any subsequent revisions. Washington Department of Fish and Wildlife Priority Habitats and Species Web Map, Washington Department of Natural Resources and Washington Geological Information Portal, and Skagit County's Flood Warning Map are hereby adopted by reference in this ordinance.

B. Recognizing the necessity for accurate geographic information, a comprehensive inventory identifying the location, size, and other characteristics of critical areas shall be compiled as new data is available.

C. The results of the inventory shall be transferred to maps and published. These maps shall be available at the Town Hall for public inspection.

D. When completed, critical area maps shall serve as guides to the location and extent of such critical areas.

E. Critical area maps, with the exception of the Flood Insurance Rate Map used to designate certain flood hazard areas, are provided only as a general guide to alert the user to the possible distribution, location and extent of critical areas. Map identification of critical areas provides only approximate boundaries and locations. The actual locations and boundaries of critical areas, as well as their quality and quantity, shall be based upon the presence of the features applicable to each critical area element in this chapter. Maps shall not be considered a regulatory standard or substitute for site-specific assessments. The application of definitions, methodologies and performance standards pursuant to the site-specific assessment requirements provided in this chapter is the controlling factor in determining the actual presence and extent of critical areas.

F. The critical area maps utilize the best information currently available and will be updated on a continual basis.

G. On a regular basis, formal requests shall be made for updated information to the resource agencies responsible for updating their respective map information. Incorporation of such updated information into the critical areas maps shall be made.

H. Critical areas mapped under the site assessment requirements of this chapter shall be compiled in a database and incorporated into critical area maps. This map information shall be utilized to facilitate tracking of compliance with the requirements of this chapter to ensure long-term protection of critical areas.

I. The Town will make interpretations where needed as to exact location of the boundaries of the areas of special flood hazard (e.g., where there appears to be a conflict between a mapped boundary and actual field conditions). If there is a disagreement about the location of the boundary, additional information from a licensed surveyor may be needed, and the application shall be given a

reasonable opportunity to appeal the interpretation. Such appeals shall be granted consistent with the standards of Section 60.6 of the rules and regulations of the National Flood Insurance Program (44 CFR 59-76).

15.15.060 General requirements and authorizations required

A. All proposals specified in Section 15.15.020, and located in critical areas shall meet the following general requirements:

1. Site. Complete stabilization of all portions of a site which are disturbed or impacted by the proposed development, including all development coverage and construction activity areas, shall be required. Complete stabilization of all portions of a site refers to the process and actions necessary to ensure that existing and proposed site improvements are stabilized, and that all on-site areas and adjacent properties which are disturbed or impacted are stabilized. The proposed development shall be limited and controlled to avoid adverse impacts and potential harm and ensure safe, stable and compatible development appropriate to site conditions. Other reasonable and appropriate solutions to solve site stability problems may be required by the director.

2. Adjacent Site, Surrounding Area, and Drainage Basin. The proposed development shall ensure safe, stable and compatible development which avoids adverse environmental impacts and potential harm to adjacent sites, the surrounding neighborhood, and the drainage basin.

   Detailed analysis of impacts of the development upon wetlands, riparian corridors, native vegetation and wildlife habitats, water quality, natural water temperature, slope and soil conditions, and surface water drainage may be required at the request of the director when site and area conditions indicate the need for this analysis. Supplemental technical reports may be required by the director to specify measures to preserve, protect, and maintain adjacent sites and the drainage basin and ensure safe, stable and compatible development.

B. With the exception of activities identified as exempt under Section C, any land use activity that can impair the functions and values of critical areas or their buffers through a development activity or by disturbance of the soil or water, and/or by removal of, or damage to, existing vegetation shall require critical areas review and written authorization pursuant to this chapter. Vegetation destruction or removal, other than the normal maintenance of existing landscaping identified as exempt, shall be prohibited within a critical area or its required buffer, unless there is an approved buffer management plan pursuant to the requirements of the particular critical area that demonstrates there will be no adverse impact to the critical area with the proposed vegetation removal and disturbance of the soil or water and includes any mitigation or buffer

enhancement necessary to address critical areas impacts. Authorizations required under this chapter overlay other permit and approval requirements of the Lyman Municipal Code. Regardless of whether a development permit or approval is required, any proposed alteration that can adversely affect a critical area or its standard buffers' functions must comply with the substantive and procedural requirements of this chapter. Critical areas review pursuant to this chapter shall be conducted as part of the underlying permit or approval, where applicable. It is the responsibility of the landowner, or designee, who conducts or proposes to undertake land use activities that can adversely impact critical areas or their buffers to obtain authorization prior to commencing such activities. In some cases, the typical thresholds that trigger review and permits have been reduced to zero for any development activity located within a critical area or its required buffer.

C. Procedures. No land use development permit, land division, development approval, or other authorization required shall be granted until the applicant has demonstrated compliance with the applicable provisions of this chapter.

1. The applicant shall demonstrate that the proposal submitted conforms to the purposes and standards of this chapter, assesses impacts on the critical area from activities and uses proposed, and identifies protective mechanisms adequate to meet the requirements of this chapter.

2. The director or designee shall review each proposal and determine if the proposal is consistent with applicable regulations of this chapter and if the protective mechanisms proposed are sufficient to protect the critical area, public health, safety and welfare, and if so, shall condition approval accordingly. If not, the director shall specify conditions of approval. If the director determines that there are no conditions under which the proposal could be approved, then the director shall deny the proposal.
Any proposed development or land division shall be conditioned as necessary to mitigate impacts to critical areas as required by this chapter and any project that cannot adequately mitigate its impacts to critical areas shall be denied. If any provision of this Chapter conflicts with any other applicable code provision, the more restrictive shall apply unless specifically excepted in this chapter.

3. Satisfaction of the requirements of this chapter shall also be sufficient to satisfy the requirement for critical areas analysis and mitigation pursuant to Chapter 43.21C RCW, State Environmental Policy Act and the Lyman SEPA Ordinance.

4. SEPA Compliance. The goals, policies and purposes set forth in this chapter shall be considered policies of the State Environmental Policy Act. When applicable the applicant must meet SEPA requirements.

5. Other Permits Required. It is recognized that many local, State, and/or Federal permit conditions may apply to the proposed action, and that compliance with the provisions of the chapter may not necessarily constitute compliance with other such requirements.

15.15.065 Public notice and records

A. Public notice for projects subject to the provisions of this chapter shall be provided pursuant to the requirements of Chapter 10.68 LMC, Land Use Permit Process.

B. Records of all critical area assessments and related land use approvals and conditioning shall be maintained and be made available to the public upon request.

15.15.070 Application submittal requirements

In addition to the application submittal requirements specified in other codes, all development proposals subject to this chapter shall include the following additional information:

A. Surveyed Site Plan. A surveyed site plan shall be prepared by a state of Washington licensed surveyor and shall include the following, when required by the director:

1. Existing topography at two-foot contour intervals on site within 25 feet of the site's abutting boundaries, and within the full width of abutting public and private rights-of-way and easements;

2. Terrain and drainage flow characteristics within the site, within 25 feet of the site's abutting boundaries, and within the full width of abutting public and private rights-of-way and easements;

3. Proposed location and boundaries of all required undisturbed fenced areas and buffers on- site and on adjacent lands;

4. Location of all vegetation, including location and description of all trees over six inches in diameter measured five feet above the base of the trunk, shrubs over eight feet tall or six feet wide, and noting their species;

5. Location and boundaries of all existing and proposed site improvements on the site and within 25 feet of the site's property boundaries, and the full width of abutting public and private rights-of-way and easements. This shall include the limits of development coverage, impervious surfaces and construction activity areas (noting total square footage and percentage of site occupied);

6. Location of all grading activities in progress or proposed, and all drainage control facilities or systems in existence in progress or proposed within 25 feet of the site's property boundaries, and the full width of abutting public and private rights-of-way and easements;

7. Location of all existing and proposed utilities (water, sewer, gas, electric, phone, cable, etc.), both above and below ground, on-site, on adjacent lands within 25 feet of the site's property lines, and in the full width of abutting public rights-of-way, and proposed methods and locations for the proposed development to hookup to these services;

8. Such other additional site plan information as necessary to complete review of a project or waive specific submittal requirements when not necessary for project review.

B. Technical Reports. Technical reports shall be prepared as required by a qualified professional detailing geological, hydrological, drainage, and other site conditions, to comply with the development standards in LMC 15.15.060. The reports shall be used to condition development to prevent potential harm and to protect the critical nature of the site, adjacent properties, and the drainage basin.

15.15.080 Administration

A. The planning director, in consultation with the Town engineer and the building official, shall be responsible for the administration of this chapter, including:

1. Review applications for development in the Town limits to verify compliance with this chapter;

2. Reviewing applications for development in the Town limits to assure that all necessary permits have been obtained from those Federal, State or local government agencies from which prior approval is required;

3. Recording and maintaining records of:

a. As-built elevation above mean sea level of the lowest floor including basement of all new and substantially improved structures requiring a floodplain approval and whether same structure contains a basement;

b. Certification by registered professional engineer or architect as required by this chapter;

c. Floodplain approvals and other actions pursuant to the administration of this chapter;

4. Notification to adjacent communities and the Department of Ecology prior to any alteration or relocation of a watercourse with copy to FEMA, and maintenance within the altered or relocated portion of said watercourse so that flood-carrying capacity is not diminished;

5. When base flood elevation data has not been provided, obtaining, reviewing, and reasonably utilizing any base flood elevation and floodway data that should become available from a federal, state or other source in order to administer standards and floodways;

6. Issuance of development permits, before construction or development begins within the Town limits;

7. Maintain for public inspection all records pertaining to the provisions of this code.

B. This Chapter shall be administered in accordance with Chapter 86.16 RCW and Chapter 508-60 WAC. This Chapter shall be revised as necessary to conform with any changes in state rules pertaining to flood control zones which may be adopted by the State Department of Ecology subsequent to the effective date of delegation of the State's permit program to the Town.

C. The administrative procedure for critical areas review shall be as follows:

1. Determination that an Activity Requires Standard Review. All applications for approval of activities requiring written authorization pursuant to this Chapter require the submission of a critical areas checklist completed and filed by the applicant on the forms provided by the Town. If not otherwise required, all applications for critical areas review shall include a description of the proposed activity and a site plan showing the location of the proposed activity and associated area of disturbance in relation to all known critical areas or critical area indicators. Upon receipt of the application, the director shall determine whether the proposed activity fits within any of the exempt activities found in this Chapter. If the proposed activity is so allowed and meets the associated conditions for such an allowance, no other critical areas review shall be required, except as necessary for the director to ensure that any conditions for such an allowance are met in practice. The director shall note this determination in the application file and provide written authorization for the project or activity to proceed as proposed in the application when undertaken in accordance with any conditions for such an allowance.

   Proposed activities that do not meet the conditions for such an allowance or that the director determines may result in significant adverse impacts to a critical area or its buffer shall be subject to standard critical areas review.

2. Method for Initial Determination of Critical Areas. Upon determination that the proposed activity requires detailed critical areas review, and upon receipt of a completed critical areas checklist, the director shall use the following method to determine whether critical areas or their required buffers will possibly be affected by the proposed activity:

    a. Review the critical areas checklist together with the maps and other critical areas resources identified in the relevant sections of this chapter;

    b. Complete the critical areas staff checklist;

    c. Inspect the site; and

    d. Complete the critical areas field indicator form.

3. Determination that Critical Areas Are Not Affected. If the director determines that critical area indicators are not present within 300 feet of the proposed activity or within a distance otherwise specified in this Chapter, then the review required pursuant to this Chapter is complete, except as necessary for the director to ensure that the proposed activity is undertaken as described in the application and as shown on the site plan. The director shall note this determination in the application file and provide written authorization for the project or activity to proceed as proposed in the application or, where applicable, with any specific conditions of approval. This determination shall not constitute approval of any use or activity or its compliance with the requirements of this Chapter, outside the scope of that stated in the application. Any proposed change in use or scope of activity from that contained in the application shall be subject to further review under this Chapter. The applicant shall acknowledge in writing that this determination by the director regarding the apparent absence of critical area indicators and the likelihood that critical areas will not be affected is not intended as an expert certification regarding the presence or absence of critical areas and that the critical areas review process is subject to possible reopening if new information is received as described in subsection (4) below. If the applicant wants greater assurance of the accuracy of any such critical area indicators determination, the applicant shall hire a qualified critical areas expert to provide such assurances.

4. Re-opening of Review Process.

    a. If at any time prior to completion of the public input process on the associated permit or approval, the director receives new evidence that a critical area may be present within 300 feet of the project area or within a distance otherwise specified in this Chapter, then

the director shall reopen the critical areas review process pursuant to this chapter and shall require whatever level of critical areas review and mitigation as is required by this chapter.

b. Once the public input process on the associated permit or approval is completed and the record is closed, then the director's determination regarding critical areas pursuant to this chapter shall be final; provided, however, that the director shall not be prevented from reopening the critical areas review process if staff relied on misinformation provided by the applicant in the application or checklist. For the purposes of this subsection, "misinformation" means information regarding the nature and/or location of the proposed activity as presented in the application or regarding the presence of a critical area or critical area indicators on the subject property which the applicant knew or should have known was relevant at the time of the submittal of the checklist. Prior to reopening a critical areas review under this subsection, the director shall make a site visit. No critical areas review shall be reopened under this section unless the director determines, after the site visit, that the applicant provided misinformation.

c. If a critical areas review is reopened under this subsection after a permit or approval is granted, the burden of proof on whether the applicant submitted "misinformation" at the time of the submittal of the checklist shall be on the director. The applicant or landowner who submitted the critical areas checklist upon which the misinformation was discovered shall be the responsible party for compliance with this chapter, including any necessary mitigation.

5. Determination that Critical Areas Are Affected. If the director determines that critical area indicators are present within 300 feet of the proposed activity or within a distance otherwise specified in this Chapter, then the director shall note this determination in the application file and the applicant shall be required to provide the critical areas site assessment specified in this Chapter. Development of a site assessment may precede a site visit, provided that no disturbance of vegetation or land surface occurs prior to authorization.

D. Critical Areas Determination and Conditions of Approval. Based on the critical areas site assessment report and other available critical areas information, the director shall make a determination on the proposed activity. A determination to approve a proposed activity shall include designation of protected critical areas (PCAs) and stipulation of binding conditions and required mitigation, monitoring, maintenance or other conditions of approval pursuant to this chapter. If the director determines that there are no conditions under which the proposed activity could be approved, then the director shall deny the proposal.

E. Best Available Science. The director shall make a determination during this administrative procedure for critical area review that the proposal, inclusive of any mitigation, protects the critical area functions and values consistent with best available science.

F. No Net Loss. The director shall make a determination during this administrative procedure for critical area review that the proposal, inclusive of any mitigation, results in no net loss of critical area functions and values.

15.15.090 Critical areas checklist, site assessment and conditions of approval

A. Critical Areas Checklist. Every application for an activity that might alter or adversely affect a critical area or associated buffer shall include a critical area checklist on a form provided by the director. The checklist shall identify all critical area indicators and/or all known critical areas within 300 feet of the proposed activity or within a distance otherwise specified in this Chapter. The checklist shall be signed by the applicant and shall inform the applicant that if the information on the checklist is later determined incorrect, then any permit or approval issued based on misinformation could be rescinded and the site required to be restored to its original condition prior to disturbance.

B. Site Assessment Required. If, after the site visit, the director determines that the proposed activity area is within 300 feet, or within a distance otherwise specified in this chapter, of an area that may contain critical area indicators, or if the director determines that the proposed activity will adversely impact a critical area or its associated buffer, then a complete critical areas site assessment shall be required. Critical areas site assessments, as described in more detail in the various sections for each type of critical area, shall be submitted as part of a complete application for a development permit or other approval of land use activities having the potential to impact critical areas or their buffers, by a qualified expert.

C. Site Assessment Preparation. The critical area site assessment shall be prepared by a qualified expert for the type of critical area or areas involved and shall contain the information specified for each type of critical area. In general, the site assessment shall include critical area inventory, assessment of impacts and, where applicable, proposed mitigation, land-use restrictions and landowner management, maintenance and monitoring responsibilities. The qualified expert may consult with the director prior to or during preparation of the site assessment to obtain approval of modifications to the contents of the site assessment where, in the judgment of the qualified expert, more or less information is required to adequately address the critical area impacts and required mitigation. The director shall allow for peer review and receipt of recommendations from qualified resource agency personnel as part of the process for approval of qualified experts.

D. Any site plans required by this chapter may be combined into a single site plan wherever possible.

E. Critical Areas Determination and Conditions of Approval. Upon receipt of a properly completed site assessment report, the director shall make a formal determination on the proposed activity as to whether it meets the requirements of this chapter and under what conditions. In making this determination, the director shall utilize the information provided in the site assessment report and all other resource information available. If the director determines that additional technical information or input is necessary or warranted, the director shall contact appropriate federal, state or tribal agencies to provide review and comment on the proposed activity. Formal determinations made by the director shall include the basis and rationale for the determination, as well as detailed specification of related conditions of approval, land use prohibitions, and required landowner mitigation, management, monitoring and/or maintenance. All such requirements shall be clearly shown on plans filed with the director.

F. Complete Record. A complete record of all formal determinations by the director, along with related critical areas checklists, site assessments, binding agreements, conditions of approval, land use prohibitions, required mitigation and a full record of comments received from federal, state or tribal agencies, shall be maintained and made available to the public upon request.

15.15.100 Application of standards

The standards of this chapter shall apply to all public and private proposals for new structures, proposed additions to structures, short subdivisions and subdivisions, and grading and drainage activity located on either public or private property. Projects may be exempted from the detailed critical area review requirements of this chapter when the following situations and/or conditions apply:

A. Emergencies that threaten public health, safety and welfare. An emergency is an unanticipated and imminent threat to the public health or safety or to the environment which requires immediate action within a period of time too short to allow full compliance with this chapter. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods that can address the emergency but also that have the least possible impact to the critical area or its buffer. The responsible party shall restore the critical area and buffer after the emergency within one year of the end date of the emergency to achieve no net loss of ecological functions and values. The person or agency undertaking such action shall notify the director within one working day or as soon as practical following commencement of the emergency activity. Following such notification, the director shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the director determines that the action taken or any part of the action taken was beyond the scope of allowed emergency actions, then the enforcement provision shall apply.

B. Normal and routine maintenance or repair of existing structures, utilities, sewage disposal systems, potable water systems, drainage facilities, ponds, or public and private roads and driveways associated with pre-existing residential or commercial development, provided any maintenance or repair activities shall use reasonable methods to avoid potential impact to the critical areas and any unavoidable impact to a critical area or its buffer shall be restored after the maintenance to achieve no net loss of ecological functions and values.

C. Normal maintenance, repair, or operation of existing structures, facilities, and improved areas accessory to a single-family residential use, provided any maintenance or repair activities shall use reasonable methods to avoid potential impact to the critical area and any impact to a critical area or its buffer shall be restored after the maintenance to achieve no net loss of ecological functions and values.

D. Modification of an existing single-family residence that does not change the use from residential, does not expand the building footprint or increase septic effluent, and does not adversely impact critical areas or their buffers.

E. Modification of other than a single-family use which does not expand the building footprint, alter the use or increase septic effluent, pursuant to the requirements of the nonconforming use and structure provisions, and does not adversely impact critical areas or their buffers.

F. Outdoor recreational activities which do not adversely impact critical areas or their buffers.

G. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling soil, planting crops, or changing existing topography, water conditions or water sources and provided further that the activity does not adversely impact critical areas or their buffers.

H. The operation and maintenance, construction and reconstruction of diking and drainage systems which protect life and property along the Skagit River.

I. Education and scientific research activities which do not adversely impact critical areas or their buffers.

J. Construction or modification of navigational aids and channels markers.

K. Site investigation work necessary for land use applications such as surveys, soil logs, percolation tests and other related activities which do not adversely impact critical areas or their buffers. In every case, critical area impacts shall be minimized and disturbed areas shall be immediately restored.

L. Maintenance activities such as mowing and normal pruning, provided that such maintenance activities are limited to existing landscaping improvements and do not expand into critical areas or associated buffers, do not expose soils, do not alter topography, do not destroy or clear native vegetation, and do not diminish water quality or quantity.

M. Fish, wildlife, wetland and/or riparian enhancement activities not required as mitigation provided that the project is approved by the U. 5. Department of Fish and Wildlife, the Washington State Department of Fish and Wildlife or the Washington State Department of Ecology.

N. Developments in the floodplain other than the following shall require a floodplain approval:

1. Minor structures and additions for which a building permit is not required and which create no new residence such as a slab on grade, or a storage building less than 120 square feet in area, or other structures exempt from permits in the International Building Code;

2. Fills of less than 12 cubic yards or which will not raise the level of the land above that of the surrounding area;

3. Normal maintenance, resurfacing and rebuilding, at comparable grade of streets, and accessways;

4. Underground improvements and excavations;

5. Maintenance and minor repair of existing improvements;

6. Improvements to structures listed on the National or State Register of Historic Places;

7. Other minor developments which cause no significant impoundment or displacement of floodwaters, such as open fences, signs and small unenclosed structures.

All such activities shall be carried out in ways that avoid impacts to critical areas and their buffers to the greatest extent feasible. If any damage is caused to a critical area or buffer in connection with such activity, the critical area and its buffer must be restored to achieve no net loss of ecological functions and values. To be exempt does not give permission to destroy a critical area or ignore risk. Proponents of such activities shall be responsible for notifying the director if any damage occurs and shall provide all necessary restoration or mitigation. For information on identifying, protecting or mitigating adverse impacts to critical areas, refer to sections in this chapter on wetlands, aquifer recharge areas, geologically hazardous areas, fish and wildlife habitat conservation areas, and

flood hazard areas.

15.15.115 Non-Conforming Exceptions

A regulated activity that was approved prior to the passage of this ordinance but which is not in conformity with the provisions of this ordinance may be continued subject to the following:

A. No such activity shall be expanded, changed, enlarged, or altered in any way that increases the extent of its non-conformity except for the development exemptions outlined in section 3.9.

B. Except for cases of discontinuance as part of normal agricultural practices, if a non-conforming activity is discontinued for twelve consecutive months, any resumption of the activity shall conform to this ordinance.

C. Repair or replacement of nonconforming structures damaged or destroyed by fire, vandalism, wind, flood, or other natural disasters shall be permitted by this ordinance subject to the proscription against any increase in the extent of nonconformity stated above.

15.15.120 General construction and maintenance standards

All proposals specified in Section 15.15.050 LMC and located in critical areas shall meet the following general construction and maintenance standards:

A. All buffer areas and other designated protected areas shall be fenced with a highly visible and durable protective barrier during construction to prevent access and protect critical areas.

B. All disturbed areas on the site, including development coverage and construction activity areas, shall be controlled in a manner sufficient to control drainage and prevent erosion during construction, and revegetated to promote drainage control and prevent erosion after construction. In cases where erosion potential is severe, the director may require a vegetation and revegetation report to be prepared by a qualified professional with landscaping, plant ecology and botany education and experience. All revegetation shall consist of trees, shrubs, and groundcover that is suitable for the location and does not require permanent irrigation systems for long-term survival.

C. When development is proposed in critical areas, grading activities shall be strictly limited to areas located on the most environmentally suitable portion of the site, as determined by the director in consultation with qualified experts.

D. All drainage associated with the development shall be connected to approved drainage control systems with approved discharge points in compliance with

standards set by the Town engineer.

E. A development proposal's design shall demonstrate compliance with the minimum requirements for storm water management.

F. A development proposal's design shall account for a one-in-100-year seismic and flood event, unless a design for a greater event is required by other applicable codes. The International Building Code's construction standards for seismic design shall constitute compliance with this section.

G. All grading in critical areas shall not occur prior to March 31st and shall be stabilized by October 31st unless demonstrated to the satisfaction of the director based on approved technical analysis that no environmental harm or safety issues would result from grading between November 1st and March 31st.

H. Construction activity shall adhere to a prepared schedule to be approved by the director prior to issuance of a building permit. This schedule shall include, but not be limited to a schedule for compliance with project conditions, limits of construction and work activities, equipment to be used, start and duration of each phase, and work sequencing.

I. The director may require additional construction practices and methods and requirements, including, but not limited to best management practices and limitations on construction equipment permitted on the site, to protect critical areas on-site, on adjacent sites, and within the drainage basin.

J. Dumping or filling is prohibited in critical areas and their buffers. Dumping includes deposit of yard waste, trash, litter, refuse, dirt, concrete, asphalt, rocks or similar materials, but shall not include work authorized by approved plans and permits.

15.15.150 Reasonable use exception

If the application of this chapter would result in denial of reasonable and economically viable use of a property, then a landowner may seek a reasonable use exception from the standards of this chapter, except for the Flood Hazard Critical Area where no exceptions are allowed. Reasonable use exceptions shall only apply to legal lots of record established prior to the effective date of this chapter. Reasonable use exceptions are intended as a "last resort" when no plan for mitigation can meet the requirements of this chapter and allow the applicant a reasonable economically viable use of their property. The reasonable use exception shall only be granted under the following conditions:

A. The application of this Chapter would deny all reasonable and economically viable use of the property so that there is no reasonable and economically viable use with a lesser impact on the critical area than that proposed; and

B. The proposed development does not pose a threat to the public health and safety; and any proposed modification to a critical area will be evaluated by the planning commission through consideration of a site assessment and mitigation plan prepared by the applicant's qualified consultant pursuant to the requirements of this chapter, and will be the minimum necessary to allow reasonable and economically viable use of the property; and

C. The Town Council may issue, as part of the findings in any decision made under this subsection, conditions of approval, including modifications to the size and placement of structures and facilities to minimize impacts to critical areas and associated buffers. As part of the findings, the Town Council may also specify mitigation requirements that ensure that all impacts are mitigated to the maximum extent feasible; and

D. The Town Council shall provide opportunity for public comment before a decision on a request for a reasonable use exception is made, including comments from appropriate Federal, State and tribal natural resource agencies. The director shall maintain a record of all information, including public comments, which were used in making a decision on a request for a reasonable use exception. This record shall be made available to the public upon request.

E. The proposal protects the critical area functions and values consistent with best available science.

F. The proposal results in no net loss of critical area functions and values.

G. The inability to derive reasonable economic use is not the result of the applicant’s actions or that of a previous property owner, including, but not limited to, segregating or dividing the property in a manner that created an undevelopable condition, or exacerbating an existing condition to such a degree that reasonable economic use is no longer possible under the terms of this chapter.

15.15.155 Non-Conforming Exceptions

A regulated activity that was approved prior to the passage of this ordinance but which is not in conformity with the provisions of this ordinance may be continued subject to the following:

A. No such activity shall be expanded, changed, enlarged, or altered in any way that increases the extent of its non-conformity except for the development exemptions outlined in section 15.15.155.

B. Except for cases of discontinuance as part of normal agricultural practices, if a non-conforming activity is discontinued for twelve consecutive months, any resumption of the activity shall conform to this ordinance.

C. Repair or replacement of nonconforming structures damaged or destroyed by fire, vandalism, wind, flood, or other natural disasters shall be permitted by this ordinance subject to the proscription against any increase in the extent of nonconformity stated above.

15.15.160 Critical area and buffer mitigation requirements - General provisions

A. Buffers.

1. As described in more detail in each relevant section, buffers have in some cases been determined necessary and appropriate to protect critical areas and their functions or to prevent risk from a critical area hazard. In those sections of this chapter where specific buffers are identified, those buffers are deemed "required" or "standard" buffers. If a project or activity does not propose any alteration of those buffers or of the associated critical area and the director determines that these buffers are adequate to protect the critical area or to prevent risk of a hazard from the critical area, then no additional mitigation will be required. Once the critical area and its buffer have properly been delineated through a critical areas assessment and any conditions of approval have been established to ensure protection of the critical area function, no further critical areas mitigation assessment is required, except as necessary to ensure that long-term protection of critical areas and buffers is met in practice. The applicant shall ensure the protection of critical area by performing a site assessment on the entire parcel.

2. If, however, based on a site assessment by a qualified expert, unique features of the particular critical area or its buffer or of the proposed development, the qualified expert determines that additional buffers and/or mitigation measures beyond these buffers are necessary to adequately protect the function of the critical area or to prevent risk of a hazard from the critical area, the director may impose such additional mitigation requirements, provided the qualified expert can demonstrate, based on best available science and no net loss of critical area functions and values, why that additional mitigation or buffering is required to adequately protect the critical area function or to prevent hazard from a critical area.

3. Further, if the applicant proposes to reduce these buffers or to alter the critical area or its required buffer, then the applicant shall demonstrate, based on best available science and no net loss of critical area functions and values, why such buffer and/or critical area modification, together with such alternative mitigation proposed in the critical areas assessment, is sufficient to provide equal or better protection of the critical area function or provide no increased risk of a hazard from the critical area.

4. The critical areas assessment and the conditions of approval shall make adequate provision for long-term protection related to critical areas and buffers.

   However, critical areas and/or buffers identified as protected critical areas (PCAs) as defined in this chapter do not require any provisions for public access, and appropriate restrictions may be included in the easement or title documents. Critical areas and/or buffers identified as PCAs are however subject to periodic inspection by the director, upon prior notification to the landowner, to ensure long-term protection.

5. Protected Critical Areas (PCAs).

   a. For proposed land divisions, critical areas and their associated buffers identified through the site assessment and Town review process shall be designated as PCAs and placed in separate tracts or easements and protected through protective covenants shown on the face of the recorded plat.

   b. For development projects or land use activities not involving a new land division, the critical area and its associated buffer identified through the site assessment process shall instead be identified as a PCA by either easement, open space designation or permit conditions, all including restrictive covenants and recorded with the auditor on a site plan to insure long-term protection. Critical areas and/or buffers identified as PCAs are subject to periodic inspection, upon prior notification to the landowner, to ensure long-term protection.

6. Open Space - Protected Area. If a portion of a parcel contains a proposed development project that triggers a development permit, and has not had its critical areas and associated buffers delineated because it was outside the project or area affected by the project, then further critical areas assessment may be required in the future prior to any change of use, or new development permit for that portion of the site.

B. Mitigation. All proposed alterations to critical areas or associated buffers shall require mitigation sufficient to provide for and maintain the functional values of the critical area or to prevent risk from a critical area hazard and shall give adequate consideration to the reasonable economically viable use of the property. Mitigation of one critical area impact should not result in unmitigated impacts to another critical area. Mitigation may include, but is not limited to: buffers, setbacks, limits on clearing and grading, best management practices for erosion control and maintenance of water quality, or other conditions appropriate to avoid or mitigate identified adverse impacts.

C. Preferred Mitigation Sequence. Mitigation includes avoiding, minimizing or compensating for adverse impacts to regulated critical areas or their buffers. The preferred sequence of mitigation is defined below:

1. Avoid the impact altogether by not taking a certain action or parts of an action;

2. Minimize the impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

3. Rectify the impact by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project or activity;

4. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action;

5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments;

6. All proposed mitigation shall be included in the critical areas assessment. The critical areas mitigation shall include the following:

   a. Description of proposed mitigations (critical areas lost/critical areas gained);
   b. Analysis of avoidance, minimization, reduction, and compensation;

   c. Functional analysis of mitigation/analysis of prevention of risk hazard;

   d. Proposed applicant or landowner monitoring or inspection measures and schedule, including specification of method and frequency of submittal of reports on results; and

   e. Contingency plan.

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

   a. Alternative building locations on the property;

   b. Adjustments to the project footprint and orientation;

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

d. Multi-story design or alternate building design.

D. The director shall make the final determination regarding required mitigation. Required mitigation shall be included in an approved mitigation plan.

E. Financial Assurance. The director or their designee shall require the complete mitigation proposed in the site assessment to be completed prior to final approval of the development permit. For all projects with an estimated mitigation cost of $4,000 or over, the director shall require financial assurance that will assure compliance with the mitigation plan if the complete mitigation proposed in the site assessment cannot be completed prior to final approval of the development permit. Financial assurance shall be in the form of either 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, shall be in the amount of 125 percent of the estimated cost of the uncompleted actions or construction, and shall be assigned in favor of the Town of Lyman. The term of the financial assurance shall remain in place until the required mitigation is complete.

F. Monitoring and Adaptive Management of Critical Areas Mitigation. On a regular basis, but no longer than once every two years, the director shall make a significant sampling of projects and activities for which critical area site assessments were required, including mitigation plans, potentially impacting fish-bearing streams and/or Category I, II or III wetlands. The sample shall be taken from permits or approvals issued more than 10 months prior to the sampling date. The selected sites shall be inspected for critical area and buffer size and condition and for compliance with any required mitigation or other conditions of approval. Results of such sampling shall be included in the permanent record for the project or activity, shall be reported to the Town Council, and shall also be utilized for enforcement purposes.

15.15.170 Protected critical area (PCA) requirements

A. PCA Identification and Recording.

1. PCA Identification. Approval of development projects which trigger a development permit and other land-use activities that can cause adverse impacts to critical areas and/or their buffers shall require the identification and designation of PCAs by the director. This section is intended to apply to unique critical area elements such as buffers or wellhead protection areas that can cause adverse impacts; location in the floodplain unless adjacent to a wetland or riparian corridor does not require recording of a PCA. PCAs shall include all critical areas and associated buffers on the

proposed project site which have been identified through the site assessment process.

2. PCA Recording. All PCAs shall be recorded with the county auditor in accordance with the procedures established under this section. The applicant shall be responsible for all fees and other costs associated with recording of PCAs.

3. Binding Agreements. For each project or activity that requires recording of PCAs, the following information shall be recorded with the auditor as part of a binding agreement between the landowner and the Town which shall run with the land and be readily available to the public upon request:

    a. Binding agreement signed by the landowner and the director or designee which stipulates any special conditions of approval, protective covenants, binding conditions, or other requirements such as use restrictions, required mitigation, and/or landowner maintenance or monitoring requirements established at the time of approval;

    b. Required final plat map or site plan clearly showing the locations of PCAs, existing vegetation and permanent buffer edge markers;

    c. Additional information necessary to document the critical areas inventory at the time of approval, including descriptions of identified critical areas, their locations, functions and values, and existing critical areas or buffer vegetation;

    d. Identification of any local responsibilities beyond those required by this Chapter;

    e. Reference to the file containing the complete record of information pertaining to approval of the project or activity.

4. Permanent Buffer Edge Markers. Except as provided under subsection (a) below, the outer edges of all PCAs, with the exception of aquifer recharge areas, shall be clearly marked on-site by the applicant or landowner with permanent rebar stakes and critical area markers. Critical area markers may be either approved critical area signs or inexpensive steel posts painted a standard color approved by the director that is clearly identifiable as a critical area marker. Installation of permanent markers shall be the responsibility of the landowner.

    a. The director may waive or modify the requirement for permanent buffer edge markers provided that any such decision shall be based on a site-specific determination that future verification of PCA

locations will not be substantially more difficult without the placement of permanent markers and that such waiver or modification will not result in reduced long-term protection of critical areas. The determination shall be included in the permanent record and made available to the public upon request.

b. Where such permanent markers are required, the director shall specify their frequency of placement and general location. Permanent markers shall be placed to locate the edge of the PCA to an approximate accuracy of within five percent of the specified buffer width or within five feet, whichever is larger. The spacing intervals of the markers shall be such as to provide comparable accuracy of line-of-sight determination of buffer edges. The locations of all required stakes/markers shall be shown on the plat map or site map recorded with the auditor.

B. Protected Critical Area (PCA) Designations for New Land Divisions.

1. For land divisions where site assessments have occurred, all PCAs shall be placed into separate tracts or easements, whose uses shall be regulated by the provisions of this chapter and any conditions of approval, including protective covenants and binding agreements as provided for under subsection (A) of this section. Area within a PCA can be included in total acreage for development purposes and may be used in lot area or density calculations. PCAs may be owned and maintained by the owner of the lot of which they are a part or transferred to the homeowners association or land trust.

2. Recording. PCA designations shall be recorded with the auditor as part of the plat approval process.

3. The auditor file number referencing the agreement shall be on the face of the plat and its provisions shall run with the land.

4. PCA Descriptions. The location of PCAs shall be clearly identified on site plans and on preliminary and final plat maps. PCAs shall be labeled using the letters A through Z, or another labeling system approved by the director. Where more than one lot is involved, each lot shall carry independent labeling as described further in this Section.

5. Ingress, Egress and Use. Owners of PCAs shall grant ingress and egress by the director or their agent for monitoring and evaluation of compliance with established conditions of approval, binding conditions or any required mitigation. As part of an approved land division, the use limitations required of a designated and regulated critical area according to the provisions of this chapter, including the conclusions of the critical areas site

assessment report and any conditions of approval, protective covenants and other binding conditions, shall be clearly stated on the face of the recorded plat.

C. PCAs on Pre-Existing Lots.

1. For development proposals and other land use activities that can adversely impact critical areas on pre-existing lots, not part of a proposed land division or other form of multiple lot development, PCAs shall be identified on a scaled site plan showing the location of the PCA, structures (existing and proposed) and their distances from the PCA and lot lines to show relative location within the subject parcel(s). The project or activity shall be conditioned for critical area protection and the resulting information recorded with the auditor as defined under subsection (A) above. The site plan may be prepared by the applicant and all distances and locations of structures may be measured from the established PCA boundary to within plus or minus five feet.

2. Ingress and Egress. Owners of PCAs shall grant ingress and egress by the director or designee for monitoring and evaluation of compliance with established conditions of approval, binding conditions or any required mitigation.

D. PCA Mapping, Labeling, and Area Calculations.

1. All PCAs shall be mapped. The area shall be delineated on the final plat map or on a site plan to an accuracy of plus or minus five feet horizontal and monumented in the field by a qualified expert pursuant to LMC 15.15.170(A)(4). If a survey was not used to map the critical area, a note on the final plat map shall be recorded stating that a legal survey was not performed to delineate the critical area and that the surveyor is not incurring liability for the exact boundaries of the critical area on the plat map.

2. During construction phases of development, clear temporary marking using flagging and staking shall be maintained along the outer limits of the delineated PCA or the limits of the proposed site disturbance outside of the PCA. Prior to the start of construction activity, and as necessary during construction, temporary markings shall be inspected and approved by the director or designer. The person responsible for inspecting the temporary flagging shall provide written confirmation to be included in the record as to whether or not the flagging has been installed consistent with the permit requirements prior to commencement of the permitted activity.

3. All PCAs shall include the necessary labeling to show calculated area (in square feet or acreage), and type and/or class of critical area within each lot. This information shall be noted on the face of the approved plat or site plan.

4. Signs or fencing required as part of critical area mitigation. The director shall require permanent signs or fencing where the director determines that it is a necessary component of a mitigation plan. Examples include situations where variances to the dimensional requirement of this chapter have been granted and the development will occur within a PCA; or where the sensitivity of the PCA will be impacted unless access to the PCA is limited (such as changes of use to farming where livestock is involved).

   The intent is to provide clear and sufficient notice, identification and protection of critical areas on-site where damage to a critical area or buffer by humans or livestock is probable due to the proximity of the adjacent activity.

5. Sign, Marker and Fence Maintenance. It is the responsibility of the landowner, or any subsequent landowner, to maintain the required PCA markers, signs or fences in working order throughout the duration of the development project or land use activity. Maintenance includes any necessary replacement. Removal of required signs, markers or fences without prior written approval of the director shall be considered a violation of this chapter.

15.15.180 Incentives

The following incentives are intended to minimize the burden to individual property owners from application of the provisions of this Chapter and assist the county in achieving the goals of this Chapter:

A. Open Space. Any property owner on whose property a critical area or its associated buffer is located and who proposes to put the critical area and buffer in a separate open space tract may apply for current use property tax assessment on that separate tract pursuant to Chapter 84.34 RCW.

B. Conservation Easement. Any person who owns an identified critical area or its associated buffer may place a conservation easement over that portion of the property by naming a qualified designee under Section 64.04.130 RCW as beneficiary of the conservation easement. This conservation easement can be used in lieu of the creation of a separate critical areas tract to qualify for open space tax assessment described in subsection (A) of this section.
   The purpose of the easement shall be to preserve, protect, maintain, restore and limit future use of the property affected. The terms of the conservation easement may include prohibitions or restrictions on access and shall be approved by the property owner and the qualified designee.

WETLANDS

15.15.200 Wetlands Designations

Wetlands shall be identified and designated through a site visit and/or a site assessment utilizingthe definitions and methods set forth in the Washington State Wetland Identification and Delineation Manual, Department of Ecology Publication # 96-94.

A. Designation. 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. All areas within the town meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this Chapter. Wetland delineations are valid for five years; after such date thetown shall determine whether a revision or additional assessment is necessary.

B. Rating. Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in *the Washington State Wetland Rating System for Western Washington: 2014 Update* or as revised and approved by Ecology, which contains the definitions and methods for determining whether the criteria below are met. Wetland rating categories shall not change due to illegal modifications. Wetland categories and their buffers for the Town of Lyman are demonstrated in Table 1 in Section 15.15.205 below. The Town follows the Department of Ecology's recommended moderate risk approach to protecting wetland functions. By adopting Ecology's recommendations, there is a moderate risk that wetland functions will be impacted. Ecology's buffer recommendations are based on the assumption that the buffer area is well vegetated with native species appropriate to the ecoregion.

Category I. Category I wetlands are wetlands that:

1. represent a unique or rare wetland type; or

2. are more sensitive to disturbance than most wetlands; or

3. are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or

4. provide a very high level of functions.

Category II. Wetlands that are difficult, though not impossible, to replace, and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but still need a relatively high level of protection. Water-dependent activities may be allowed in Category II and III wetlands where there are no practical alternatives that would have a less adverse impact on the wetland and other critical areas. Category II wetlands in western Washington

include:

1. smaller estuarine wetlands; and

2. wetlands that perform functions well; and

3. interdunal wetlands larger than 1 acre or those in a mosaic.

Category III. Wetlands that include:

1. wetlands with a moderate level of functions (scores between 16-19 points), and

2. can often be adequately replaced with a well-planned mitigation project, and

3. interdunal wetlands between 0.1 and 1 ac in size.

Category IV. Wetlands that have the lowest levels of functions (scores fewer than 16 points) and are often heavily disturbed. Activities and uses that result in unavoidable and necessary impacts may be permitted in Category IV wetlands and associated buffers in accordance with an approved critical area report and mitigation plan, and only if the proposed activity is the only practical alternative that will accomplish the applicant's objectives.

Table 1

Criteria for Each Category of Wetlands
Category I Wetlands
Category I wetlands means wetlands that meet any of the following criteria:
1. Wetlands that are relatively undisturbed estuarine wetlands larger than one acre; or
2. Wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as high-quality wetlands; or
3. Bogs; or
4. Mature and old-growth forested wetlands larger than one acre; or
5. Wetlands that perform many functions well (scoring 23 points or more). These wetlands:
a. Represent unique or rare wetland types;
b. Are more sensitive to disturbance than most wetlands;
c. Are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or
d. Provide a high level of functions.
Category II Wetlands
Category II wetlands satisfy no Category I criteria and are:

1. Wetlands with a moderately high level of functions (scoring between 20 and 22 points).
Category III Wetlands
Category III wetlands satisfy no Category I, II, or IV criteria and are:
1. Wetlands with a moderate level of functions (scoring between 16 and 19 points).
Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.
Category IV Wetlands
Category IV wetlands satisfy no Category I, II, or III criteria and are:
1. Wetlands that have the lowest levels of functions (scoring less than 16 points) and are often heavily disturbed.

C. Buffer Requirements**.** The standard buffer widths in Table 15.15.200-1 have been established in accordance with the best available science and results in no net loss in critical area functions and values. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington state wetland rating system for western Washington.

1. The standard buffer widths assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

2. Measurement of Wetland Buffers**.** All buffers shall be measured perpendicular from the wetland boundary as delineated in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland.

3. Performance Standards – Basic Requirement. A regulated wetland or its required buffer can only be altered if the wetland detailed study shows that the proposed alteration does not degrade the quantitative and qualitative functioning of the wetland, or any degradation can be adequately mitigated to protect the wetland function. Any proposed alteration approved pursuant to this section shall include mitigation necessary to mitigate the impacts of the proposed alteration on the wetland as described in this section.

Table 15.15.200-1. Width of buffers needed to protect wetlands in western Washington.

Overall Wetland Rating	Wetland Characteristics	Buffer Distance
Category I	Habitat score of 8 – 9 points	225 feet
Category I	Habitat score of 6 – 7 points	110 feet
Category I	Water quality score of 8 – 9 points and a habitat score of less than 6 points	75 feet
Category I	Wetlands that do not meet the characteristics described above for Category I wetlands	75 feet
Category II	Habitat score of 8 – 9 points	225 feet
Category II	Habitat score of 6 – 7 points	110 feet
Category II	Water quality score of 8 – 9 points and a habitat score of less than 6 points	75 feet
Category II	Wetlands that do not meet the characteristics described above for Category II wetlands	75 feet
Category III	Habitat score of 8 – 9 points	225 feet
Category III	Habitat score of 6 – 7 points	110 feet
Category III	Habitat score of 3 – 5 points	60 feet
Category IV	Scores for all 3 basic functions are less than 16 points	40 feet

**See Table 15-15.200-2 below for types of land uses that can result in low, moderate, and highimpacts to wetlands.*

4. Increased Wetland Buffer Area Width. Buffer widths shall be increased on a case-by-case basis as determined by the director when a larger buffer is necessary to protect wetland functions and values. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the wetland. The documentation must include but not be limited to the following criteria:

    a. The wetland is used by a plant or animal species listed by the federal governmentor the state as endangered, threatened, candidate, sensitive, monitored or documented priority species or habitats, or essential or outstanding habitat for those species or has unusual nesting or resting sites; or

b. The adjacent land is susceptible to severe erosion, and erosion-control measureswill not effectively prevent adverse wetland impacts; or

c. The adjacent land has minimal vegetative cover or slopes greater than 30 percent.

5. Buffer averaging to *improve wetland protection* may be permitted when all of thefollowing conditions are met:

a. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a “dual-rated” wetland with a Category I area adjacent toa lower-rated area.

b. The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas report from a qualified wetland professional.

c. The total area of the buffer after averaging is equal to the area required without averaging.

d. The buffer at its narrowest point is never less than either ¾ of the required width or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for CategoryIV, whichever is greater.

6. Averaging to *allow reasonable use* of a parcel may be permitted when all of thefollowing are met:

a. There are no feasible alternatives to the site design that could be accomplished without buffer averaging.

b. The averaged buffer will not result in degradation of the wetland’s functions andvalues as demonstrated by a critical areas report from a qualified wetland professional.

c. The total buffer area after averaging is equal to the area required without averaging.

d. The buffer at its narrowest point is never less than either ¾ of the required widthor 75 feet for Category I and II, 50 feet for Category III and 25 feet for CategoryIV, whichever category is applicable.

D. Buffers on Mitigation Sites**.** All mitigation sites shall have buffers consistent with the bufferrequirements of this Chapter. Buffers shall be based on the expected or target category of the proposed wetland mitigation site.

E. Buffer Maintenance**.** Except as otherwise specified or allowed in accordance with this Chapter, wetland buffers shall be retained in an undisturbed or enhanced condition. In the caseof compensatory mitigation sites, removal of invasive non-native weeds is required for the duration of the mitigation bond (Section 15.15.240 LMC).

F. Impacts to Buffers**.** Requirements for the compensation for impacts to buffers are outlined in Section 15.15.240 LMC.

G. Overlapping Critical Area Buffers. If buffers for two contiguous critical areas overlap (suchas buffers for a stream and a wetland), the wider buffer applies.

H. Allowed Buffer Uses. The following uses may be allowed 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 bufferand adjacent wetland:

1. Conservation and Restoration Activities. Conservation or restoration activitiesaimed at protecting the soil, water, vegetation, or wildlife.

2. Passive recreation. Passive recreation facilities designed and in accordance withan approved critical area report, including:

   a. Walkways and trails, provided that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent (25%) of the wetland buffer area, and located to avoid removal of significant trees. They should be limited to pervious surfaces nomore than five (5) feet in width for pedestrian use only. Raised boardwalks utilizing non-treated pilings may be acceptable.

   b. Wildlife-viewing structures.

3. Educational and scientific research activities.

4. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, provided that the maintenance or repairdoes not increase the footprint or use of the facility or right-of-way.

5. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling ofsoil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.

6. Drilling for utilities/utility corridors under a buffer, with entrance/exit portals located completely outside of the wetland buffer boundary, provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by ahydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column is disturbed.

7. Enhancement of a wetland buffer through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Revegetation with appropriate native species at natural densities is allowed inconjunction with removal of invasive plant species.

8. Stormwater management facilities**.** Stormwater management facilities are limitedto stormwater dispersion outfalls and bioswales. They may be allowed within theouter twenty-five percent (25%) of the buffer of Category III or IV wetlands only, provided that:

   a. No other location is feasible; and

   b. The location of such facilities will not degrade the functions or values of thewetland; and

   c. Stormwater management facilities are not allowed in buffers of Category I or II wetlands.

9. Non-Conforming Uses**.** Repair and maintenance of non-conforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity.

I. Signs and Fencing of Wetlands and Buffers:

1. Temporary markers. The outer perimeter of the wetland buffer and the clearinglimits identified by an approved permit or authorization shall be marked in the field with temporary “clearing limits” fencing in such a way

as to ensure that nounauthorized intrusion will occur. The marking is subject to inspection by the director prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.

2. Permanent signs. As a condition of any permit or authorization issued pursuant tothis Chapter, the director may require the applicant to install permanent signs along the boundary of a wetland or buffer.

   a. Permanent signs shall be made of an enamel-coated metal face and attached toa metal post or another non-treated material of equal durability. Signs must beposted at an interval of one (1) per lot or every fifty (50) feet, whichever is less, and must be maintained by the property owner in perpetuity. The signs shall be worded as follows or with alternative language approved by the director:

Protected Wetland Area
Do Not Disturb
Contact Town of Lyman
Regarding Uses, Restrictions, and Opportunities for Stewardship

   b. The provisions of Subsection (a) may be modified as necessary to assureprotection of sensitive features or wildlife.

3. Fencing

   a. 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.

   b. 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.

15.15.210 Wetlands initial project review

A. A site visit shall be conducted to confirm the presence of wetland indicators listed in the critical areas checklist or identified on critical areas map references as being within 300 feet of a proposed project or activity. A positive confirmation by the director that site indicators are present or that the proposed project may impact the wetland area will then require a professionalsite assessment.

B. The director shall use the following map references to assist in making a determination:

1. Wetlands mapped under the National Wetland Inventory by the U. S. Departmentof Interior; Fish and Wildlife Service;

2. Areas mapped as hydric soils under the Soil Survey of Skagit County Area, Washington by the United States Department of Agriculture; Soil Conservation Service;

3. A Water of the State as defined under WAC 222-16-030 and maintained in the Washington State Department of Natural Resources Stream Type Maps; and

4. Wetlands previously identified through the methodology specified under LMC 15.15.200 for another project.

15.15.220 Wetlands site assessment requirements

If a wetlands site assessment is required, it shall meet the following requirements:

A. A wetland reconnaissance shall be performed by a qualified wetlands professional. The reconnaissance shall identify the presence of wetlands within 300 feet of the project or activity area. If this wetland reconnaissance demonstrates no wetlands within 300 feet of theactivity area, then no further study is required.

B. A wetland delineation shall be performed as part of a site assessment where a wetlandreconnaissance confirms the presence of a wetland or the applicant chooses to perform adelineation instead of a wetland reconnaissance. The delineation shall be performed by aqualified wetland professional trained in conducting delineations in accordance with the methodology specified under LMC 15.15.200.

C. If the director determines that the site of a proposed development includes, is likely to include, or is adjacent to a wetland, a wetland report, prepared by a qualified professional, shallbe required. The expense of preparing the wetland report shall be borne by the applicant.

D. Minimum Standards for Wetland Reports. The written report and the accompanying plansheets shall contain the following information, at a minimum:

1. The written report shall include at a minimum:

a. The name and contact information of the applicant; the name, qualifications,and contact information for the primary author(s) of the wetland critical areareport; a description of the proposal; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinitymap for the project.

b. A statement specifying the accuracy of the report and all assumptions madeand relied upon.

c. Documentation of any fieldwork performed on the site, including field datasheets for delineations, rating system forms, baseline hydrologic data, etc.

d. A description of the methodologies used to conduct the wetland delineations,rating system forms, or impact analyses including references.

e. Identification and characterization of all critical areas, wetlands, water bodies,shorelines, floodplains, and buffers on or adjacent to the proposed project area. For areas off site of the project site, estimate conditions within 300 feet of the project boundaries using the best available information.

f. For each wetland identified on site and within 300 feet of the project site provide: the wetland rating, including a description of and score for each function, per *Wetland Ratings* (Section 15.15.200.B) of this Chapter; required buffers; hydrogeomorphic classification; wetland acreage based on a professional survey from the field delineation (acreages for on-site portion andentire wetland area including off-site portions); Cowardin classification of vegetation communities; habitat elements; soil conditions based on site assessment and/or soil survey information; and to the extent possible, hydrologic information such as location and condition of inlet/outlets (if they can be legally accessed), estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g., algal mats, drift lines, flood debris, etc.). Provide acreage estimates, classifications, and ratingsbased on entire wetland complexes, not only the portion present on the proposed project site.

g. A description of the proposed actions, including an estimation of acreages of impacts to wetlands and buffers based on the field delineation and survey andan analysis of site development alternatives, including a no-development alternative.

h. An assessment of the probable cumulative impacts to the wetlands and buffer resulting from the proposed development.

i. A description of reasonable efforts made to apply mitigation sequencing pursuant to *Mitigation Sequencing* (Chapter 15.15.240) to avoid, minimize,and mitigate impacts to critical areas.

j. A discussion of measures, including avoidance, minimization, and compensation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land-use activity.

k. A conservation strategy for habitat and native vegetation that addressesmethods to protect and enhance on-site habitat and wetland functions.

l. An evaluation of the functions of the wetland and adjacent buffer. Includereference for the method used and data sheets.

2. A copy of the site plan sheet(s) for the project must be included with the written report and must include, at a minimum:

a. Maps (to scale) depicting delineated and surveyed wetland and required buffers on site, including buffers for off-site critical areas that extend onto theproject site; the development proposal; other critical areas; grading and clearing limits; areas of proposed impacts to wetlands and/or buffers (includesquare footage estimates).

b. A depiction of the proposed stormwater management facilities and outlets (to scale) for the development, including estimated areas of intrusion into the buffers of any critical areas. The written report shall contain a discussion of the potential impacts to the wetland(s) associated with anticipated hydroperiodalterations from the project.

15.15.240 Wetland Compensatory Mitigation Standards

A. As a condition of any development permit or approval which results in on-site loss or degradation of regulated wetlands and/or wetland buffers, or as an enforcement action, the Town may require of the applicant compensatory mitigation to offset impacts resulting from the actions of the applicant or violator. The following standards shall apply:

1. The mitigation shall be conducted on property which shall be protected and managed to avoid further loss or degradation. The applicant or violator shall provide for long-term preservation of the mitigation area.

2. The ratios in the following table apply as a minimum to creation, restoration, or enhancement of wetlands which is in kind (that is, the same type of wetland), on site, and is accomplished prior to, or concurrent with, loss. The Town shall have discretion to increase these ratios where mitigation is to occur off site or in other appropriate circumstances based on the recommendations of a wetlands report that includes best available science and is prepared by a qualified professional. The first number specifies the acreage of wetlands to be restored, created, or enhanced and the second specifies the acreage of wetlands lost:

Table 3 - Compensation ratios for permanent impacts

Category of impacted wetland (based on score for function)	Re-establishment or creation	Rehabilitation	Preservation	Enhancement
Category I	4:1	8:1	16:1	16:1
Category II	3:1	6:1	12:1	12:1
Category III	2:1	4:1	8:1	8:1
Category IV	1.5:1	3:1	6:1	6:1

3. Mitigation shall follow an approved mitigation plan and reflect the restoration/creation/enhancement ratios specified above.

4. Mitigation sites shall be monitored for a minimum of five years.

5. Mitigation shall be completed prior to, or concurrent with, wetland loss, or, in the case of an enforcement action, prior to continuation of the activity by the applicant or violator.

6. Mitigation shall be located within a watershed that drains to a common waterway.

7. Off-site mitigation allows replacement of wetlands away from the site on which the wetland has been impacted by a regulated activity. Off-site mitigation will be conducted in accordance with the restoration/creation ratios described above or through the purchase of credits from a certified wetland mitigation bank or approved in-lieu fee site. Off-site mitigation shall occur within the same drainage basin as the wetland loss occurs; provided, that Category IV wetlands may be replaced outside of the watershed if there is no reasonable alternative. In such instances, the stormwater storage function provided by Category IV wetlands must be provided for within the design of the development project. Off-site mitigation may be allowed only under one or more of the following circumstances:

a) On-site mitigation is not feasible due to hydrology, soils, or other factors.

b) On-site mitigation is not practical due to probable adverse impacts from surrounding land uses or would conflict with a federal, state or local public safety directive.

c) Potential functional values at the site of the proposed restoration are greater than the lost wetland functional values.

8. When the wetland to be altered is of a limited functional value and is degraded, mitigation shall be of the wetland community types needed most in the location of mitigation and those most likely to succeed with the highest functional value possible.

9. Out-of-kind mitigation can be allowed when out-of-kind replacement will best meet the provisions of this section. For wetlands, out-of-kind mitigation shall replace wetland types and functions that will best meet watershed goals formally identified by the Town, such as replacement of historically diminished wetland types.

10. Where out-of-kind replacement is accepted, greater restoration/creation/ enhancement ratios may be required.

11. Construction of mitigation projects shall be timed to reduce impacts to existing wildlife and plants. Construction shall be timed to assure that grading and soil movement occur during the dry season and planting of vegetation shall be specifically timed to needs of the target species.

B. Mitigation Requirement Exceptions

Requirements for compensatory mitigation do not apply when a wetland alteration is intended exclusively for the enhancement or restoration of an existing regulated wetland and the proposal will not result in a loss of wetland function and value, subject to the following conditions:

1. The enhancement or restoration project shall not be associated with a development activity.

2. An enhancement or restoration plan shall be prepared and approved.

C. Restoration

1. Restoration is required when a wetland or its buffer has been altered in violation of this ordinance. The following minimum performance standards shall be met for the restoration of a wetland; provided, that if it can be demonstrated by the applicant that greater functional and habitat values

can be obtained, these standards may be modified:

a) The original wetland configuration should be replicated, including depth, width, and length at the original location.
b) The original soil types and configuration shall be replicated.
c) The wetland and buffer areas shall be replanted with native vegetation which replicates the original in species, sizes, and densities.
d) The original functional values shall be restored, including water quality and wildlife habitat functions.
e) Required replacement ratios are shown in the table.

2. A restoration plan shall be prepared and approved prior to commencement of restoration work. Such a plan shall be prepared by a qualified wetland biologist and shall describe how the actions proposed meet the minimum requirements described above. The Town shall, at the applicant's or 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.

D. Wetland Mitigation Banks.

1. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

a. The bank is certified under state rules;

b. The Administrator determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and

c. The proposed use of credits is consistent with the terms and conditions of the certified bank instrument.

2. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument.

3. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the certified bank instrument. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

E. In-Lieu Fee.

To aid in the implementation of off-site mitigation, the Town may develop an in-lieu fee program. This program shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu fee mitigation, and state water quality regulations. An approved in-lieu fee program sells compensatory mitigation

credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor, a governmental or non-profit natural resource management entity. Credits from an approved in-lieu fee program may be used when paragraphs 1-6 below apply:

1. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts.

2. The mitigation will occur on a site identified using the site selection and prioritization process in the approved in-lieu fee program instrument.

3. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu fee program instrument.

4. Land acquisition and initial physical and biological improvements of the mitigation site must be completed within three years of the credit sale.

5. Projects using in-lieu fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland scientist using the method consistent with the credit assessment method specified in the approved instrument for the in-lieu fee program.

6. Credits from an approved in-lieu fee program may be used to compensate for impacts located within the service area specified in the approved in-lieu-fee instrument.

CRITICAL AQUIFER RECHARGE AREAS

15.15.300 Critical Aquifer Recharge Areas

A. Intent. This section establishes areas determined to be critical in maintaining both groundwater quantity and quality through protection of the Waters of the State. This section specifies regulatory requirements to be enacted when development within these areas is proposed to occur and provides a methodology by which the level of review and any mitigation required is determined. The intent of this section is to:

1. Define minimum regulatory requirements to protect groundwater quality and quantity for existing and future use; and

2. Identify the practices, alternatives, or mitigations that can minimize the adverse impacts of proposed projects; and

3. Ensure adequate design, construction, management, and operations to protect groundwater quality and quantity.

B. Existing and future beneficial uses of groundwater shall be maintained and protected and degradation of groundwater quality that would interfere with or become injurious to beneficial uses shall be avoided or minimized.

C. Wherever groundwaters are determined to be of a higher quality than the criteria established for said waters under this section, the existing water quality shall be protected, and contaminants that will reduce the existing quality thereof shall not be allowed to enter such waters, except in those instances where it can be demonstrated that:

1. An overriding consideration of the public interest will be served; and

2. All contaminants proposed for entry into said groundwater(s) shall be provided with all known, available, and reasonable methods of prevention, control, and treatment prior to entry.

D. It is the intent of this regulation to be consistent with and implement the requirements of Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 173-200 WAC, Chapter 173-201A WAC, Chapter 173-160 WAC, Chapter 246-290 WAC, and Chapter 246-291 WAC, as the same may hereafter be amended.

15.15.310 Critical Aquifer Recharge Area designations

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

A. Those aquifer recharge areas that have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water.

B. Wellhead protection areas defined by the boundaries of the ten (10) year time of ground water travel, or boundaries established using alternate criteria approved by the Department of Health in those settings where ground water time of travel is not a reasonable delineation criterion, in accordance with WAC 246-290-135.

C. Those critical aquifer recharge areas delineated by a hydrogeologic study prepared in accordance with the state Department of Ecology guidelines.

D. Susceptible ground water management areas as designated pursuant to Chapters 173-100 WAC.

E. Special protection areas as defined by WAC 173-200-090.

F. Those aquifer recharge areas meeting the criteria for susceptibility or vulnerability established by the state Department of Ecology.

G. Sole source aquifers as designated by the U.S. Environmental Protection Agency pursuant to the Federal Safe Drinking Water Act.

H. Areas overlying unprotected aquifers. Unprotected aquifers are those aquifers which are neither confined nor protected by overlying surface or subsurface impermeable layers. Occurrences of such aquifers shall be identified through any existing competent hydrogeologic studies.

I. Areas with no identified unprotected aquifers but possessing the following characteristics:

    1. Slopes less than 15 percent; and

    2. Coarse alluvium or sand and gravel in the soil profile and no known impermeable layers;

J. Susceptible groundwater management areas as designated pursuant to Chapter 173-100 WAC.

K. Special protection areas as defined by WAC 173-200-090.

L. Those aquifer recharge areas meeting the criteria for susceptibility or vulnerability established by the State Department of Ecology.

M. In considering aquifer designations or soil classifications that have been mapped, any project area located within 200 feet of the mapped area shall be treated as if it is within the mapped area.

N. All areas within the Town of Lyman meeting these criteria, regardless of the presence or lack of any formal identification as such, are hereby designated as critical areas and are subject to the provisions of this ordinance.

15.15.320 Aquifer recharge applicability and prohibited activities

A. Applicability. All development projects are subject to the provisions of this Section except for the following:

1. Existing activities that currently and legally exist at the time this chapter became effective. However, expansions or changes in use are subject to this Section and the review process contained herein.
2. Single-family residential building permits, including accessory building permits, which are outside Category I areas.

3. Residential short plats outside Category I areas where each lot is 2.5 acres or greater.

4. Single-family residential building permits where a site assessment report was required to be completed for the land division, in which case, to meet the conditions of this exemption, the applicant must comply with the recorded plat notes and the applicable mitigations contained in the site assessment report.

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

1. Landfill activities as defined in Chapter 173-304 WAC and Chapter 173-351 WAC.

2. Class V injection wells, including:

a. Agricultural drainage wells;

b. Untreated sewage waste disposal wells;

c. Cesspools;

d. Industrial process water and disposal wells; and

e. Radioactive waste disposal.

3. Radioactive disposal sites.

15.15.330 Aquifer recharge initial project review

A. General Procedures. Applicants for all development projects not allowed under Section 15.15.100 LMC or Section 15.15.320 LMC shall be required, through a site assessment report prepared pursuant to Section 15.15.340 LMC, to evaluate potential impacts to aquifer recharge areas, and appropriate mitigation measures to reduce or eliminate the potential for adversely impacting aquifer recharge areas shall be identified. The level of study and report detail required will be determined by the director based on the type of land use being proposed, the designated aquifer recharge area category, and the vulnerability of the underlying aquifer(s) to contamination. The goal of this section is to require applicants to identify and characterize vulnerability only to the level necessary to determine appropriate mitigation measures necessary, to either reduce potential adverse impacts to established parameters or eliminate potential adverse impacts to underlying aquifer(s).

B. Scoping. The level of study which will be required of the applicant by the director for a given development will be based on an initial project review that may include staff from the planning and health departments, and a hydrogeologist.

Elements for the report that are required at a minimum and other elements that may be required as part of the scope for the study are listed in Section 15.15.340 LMC. Subsequent findings from the study or other information made available after the initial project review may obligate the applicant to additional evaluation, development of a mitigation plan, and/or development of a groundwater monitoring plan. The following outlines the review process:

1. The director and health officer shall review the project and determine the required scope of the site assessment report. The scope of site assessment required shall be conveyed to the applicant and/or their representative in writing. The applicant may present evidence to the director and health officer to justify reduction in the scope for the site assessment report.

2. The site assessment report shall be submitted for review. The director and/or health officer shall either approve the site assessment report as submitted, require additional evaluation, or require development of a mitigation plan. If additional information is required beyond the initial site assessment report, the applicant and/or their representative shall be notified in writing of the specifics of the information required. The applicant may present evidence in writing to the reviewing official to justify modification of the requirement for additional information or present alternative or additional mitigation measures in lieu of further study.

3. When, to the satisfaction of the director, all information is provided and mitigation(s) established as being in compliance with this section, the director shall make appropriate recommendations for project permit approval.

15.15.340 Aquifer recharge site assessment report

A. The scope of the site assessment report shall be determined based on the initial project review specified in Section 15.15.330 LMC. The scope of the report may be reduced by utilizing appropriate mitigation measures, or if the water quality or quantity issue(s) are already known.

B. The site assessment report shall be prepared by, or under the direction of, and signed by a professional engineer, licensed in the state of Washington, trained and qualified to analyze geologic, hydrologic, and groundwater flow systems; or by a geologist or hydrogeologist who earns their livelihood from the field of geology and/or hydrogeology and has received a degree in geological sciences from an accredited four-year institution of higher education and who has relevant training and experience analyzing geologic, hydrologic, and groundwater flow systems.

C. Site Assessment Report Requirements. A site plan shall be prepared in accordance with the requirements of this code. In addition, a site assessment report shall include:

1. A description of the project including those activities, practices, materials, or chemicals that have a potential to adversely affect the quantity or quality of underlying aquifer(s).

2. Identification of appropriate mitigation measures and description of how they will prevent degradation of underlying aquifer(s).

3. A site plan or another appropriately scaled map showing the approximate location of known or geologically representative well(s) (abandoned and active), spring(s), and surface watercourses within 1,000 feet of the subject project property. All well logs available through the health department for identified wells within 1,000 feet of the project property shall be included.

4. A description of the site-specific hydrogeologic characteristics regarding impact to the quantity or quality of underlying aquifer(s). At a minimum this will include a description of the lithology, depth to and static water level of known underlying aquifer(s), and depiction of groundwater flow direction and patterns on the appropriate map.

5. Identification of the initial receptors of potential adverse impacts located hydraulically down-gradient from the project within 1,000 feet or as otherwise directed by the director and/or health officer.

D. Additional Site Assessment Elements. After the initial project review, one or more of the site assessment elements listed below may be required based upon the proposed project activity, aquifer recharge area classification, complexity of underlying hydrogeologic conditions, and/or the perceived potential to adversely impact hydraulically downgradient receptors. One or more of these additional elements may also be required if the applicant chooses to demonstrate that certain mitigation measures are not necessary to protect the quantity or quality of the underlying aquifer(s), or that the project does not pose a detrimental risk to hydraulically downgradient receptors.

1. Lithologic characteristics and stratigraphic relationships of the affected aquifer(s) and overlying geologic units (includes soil types) including thickness, horizontal and vertical extent, permeability, and infiltration rates of surface soils.

2. Delineation of identified structural features such as faults, fractures, and fissures.

3. Aquifer characteristics including determination of recharge and discharge areas, transmissivity, storage, hydraulic conductivity, porosity, and estimate of groundwater flow direction, velocity and patterns for the affected aquifer(s).

4. Estimate of precipitation, evaporation, and evapotranspiration rates for the project area.

5. Preparation of appropriate hydrogeologic cross sections depicting at a minimum underlying lithology and stratigraphy, aquifer(s), and potential or probable contaminant pathways from a chemical release.

6. Contaminant fate and transport including probable migration pathways and travel time of potential contaminant release(s) from the site through the unsaturated zone to the aquifer(s) and through the aquifer(s), and how the contaminant(s) may be attenuated within the unsaturated zone and the aquifer(s). Includes consideration of advection, dispersion, and diffusion of contaminants in the groundwater.

7. Delineation of areas potentially affected by contaminant migration on the ground surface and/or through the affected aquifer(s).

8. Determination of background or existing groundwater quality underlying the project area.

9. Development of a groundwater monitoring program to measure potential impacts of the development to underlying aquifer(s).

10. Development of a spill plan and/or contingency plan describing the specific actions, which will be taken if a release of a contaminant(s) occurs, or if groundwater monitoring results indicate a contaminant(s) from the site has entered the underlying aquifer(s).

11. The degree of continuity between groundwater and nearby surface water including potential impact to "closed" or "low-flow" streams (as described in Section 15.15.350 LMC) from proposed groundwater withdrawals, and potential impacts to surface water quality from site runoff or contaminated groundwater discharge.

12. In conjunction with the Department of Ecology Seawater Intrusion Policy and subsequent policies or ordinances, applicable projects shall be required to determine appropriate pumping rates and schedules that maintain dynamic drawdown levels above mean sea level.

13. Applicable projects such as special use permits, short plats, or long plats shall test existing and/or test wells for nitrate levels and where appropriate calculate the nitrate loading rate at full build-out of the project. If the calculated nitrate loading in the intended water supply equals or exceeds five mg/L nitrate as nitrogen, the proposal will need to develop a mitigation plan. The point of compliance shall be determined based on project specifics.

15.15.350 Critical Aquifer Recharge Area mitigation

A. The Skagit County Health Department shall review development proposals to assess aquifer(s) vulnerability and establish needed mitigation. Where determined to be necessary through the site assessment process, development approvals shall include conditions designed to prevent significant degradation of water quality or reduction in water quantity in aquifer recharge areas. The project shall not cause degradation of the groundwater quality below the standards described in Chapter 173-200 WAC or Department of Ecology's Seawater Intrusion Policy.

B. Wellhead Protection Mitigation. Where a wellhead protection plan that addresses the project area exists, the director and/or health officer shall use the recommendations contained in the wellhead protection plan as a basis for formulating mitigations. In the absence of such a mitigation plan, the Skagit County Health Department and the Town shall jointly develop mitigations, a summary of which shall be signed by the applicant and recorded with the applicant's property title. All new development shall be required to connect to the Lyman Water System.

15.15.360 Critical Aquifer Recharge Area Susceptibility Ratings

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

15.15.370 Critical Aquifer Recharge Area Performance Standards

A. The proposed activity must comply with the water source protection requirements and recommendations of the federal Environmental Protection Agency, state Department of Health, and the health district.

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

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

    a. Prevent releases due to corrosion or structural failure for the operational life of the tank;

    b. Be protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substances; and,

    c. Use material in the construction or lining of the tank that is compatible with the substance to be stored.

2. **Aboveground Tanks.** All new aboveground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:

    a. Not allow the release of a hazardous substance to the ground, ground waters, or surface waters;

    b. Have a primary containment area enclosing or underlying the tank or part thereof; and

    c. A secondary containment system either built into the tank structure or a dike system built outside the tank for all tanks.

C. **Vehicle repair and servicing**

1. Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.

2. No dry wells shall be allowed in critical aquifer recharge areas on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by the state Department of Ecology prior to commencement of the proposed activity.

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

1. Surface spreading must meet the ground water recharge criteria given in Chapter 90.46.080 RCW and Chapter 90.46.010(10).

2. Direct injection must be in accordance with the standards developed by authority of Chapter 90.46.042 RCW.

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

Table 3
Statutes, Regulations, and Guidance Pertaining to Ground Water Impacting Activities

Activity	Statute - Regulation - Guidance
Above Ground Storage Tanks	Chapter 173-303 -640 WAC
Animal Feedlots	Chapter 173-216 WAC, Chapter 173-220 WAC
Automobile Washers	Chapter 173-216 WAC, Best Management Practices for Vehicle and Equipment Discharges (WDOE WQ-R-95-56)
Below Ground Storage Tanks	Chapter 173-360 WAC
Chemical Treatment Storage and Disposal Facilities	Chapter 173-303-182 WAC
Hazardous Waste Generator (*Boat Repair Shops, Biological Research Facility, Dry Cleaners, Furniture*	Chapter 173-303 WAC

Activity	Statute - Regulation - Guidance
Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, etc.)	
Injection Wells	Federal 40 CFR Parts 144 and 146, Chapter 173-218 WAC
Junk Yards and Salvage Yards	Chapter 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Vehicles Recycler Facilities (WDOE 94-146)
Oil and Gas Drilling	Chapter 332-12-450 WAC, WAC , Chapter 173-218 WAC
On-Site Sewage Systems (Large Scale)	Chapter 173-240 WAC
On-Site Sewage Systems (< 14,500 gal/day)	Chapter 246-272 WAC, Local Health Ordinances
Pesticide Storage and Use	Chapter 15.54 RCW, Chapter 17.21 RCW
Sawmills	Chapter 173-303 WAC, 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Log Yards (WDOE 95-53)
Solid Waste Handling and Recycling Facilities	Chapter 173-304 WAC
Surface Mining	Chapter 332-18-015 WAC
Waste Water Application to Land Surface	Chapter 173-216 WAC, Chapter 173-200 WAC, WDOE Land Application Guidelines, Best Management Practices for Irrigated Agriculture

15.15.380 Aquifer recharge public notice and review

In addition to the provisions for public notice provided under Section 15.15.070 LMC, the director shall make the site assessment report available for public review upon approval of the following projects which have undergone critical areas review pursuant to this chapter:

A. All projects occurring in Category I areas, except single-family residence or accessory building permits, and short subdivisions;

B. All activities identified under Section 15.15.320 LMC, regardless of location; and

C. Commercial or industrial projects or subdivisions that have the potential to adversely affect the quality or availability of potable water.

GEOLOGICALLY HAZARDOUS AREAS

15.15.400 Geologically hazardous area designations

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

A. Erosion hazard

B. Landslide hazard

C. Seismic hazard

D. Mine hazard

E. Other geological events including tsunamis, mass wasting, debris flows, rock falls, and differential settlement.

15.15.405 Specific Geologically Hazardous Area Designation.

The following designation of geologically hazardous areas conform to information provided in the Washington Geologic Information Portal:

A. **Erosion hazard areas.** Erosion hazard areas are at least those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "moderate to severe," "severe," or "very severe" rill and inter-rill erosion hazard.

B. **Landslide hazard areas.** Landslide hazard areas are areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Example of these may include, but are not limited to the following:

    1. Areas of historic failures, such as:

        a. Those areas delineated by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "severe" limitation for building site development;

b. Those areas mapped by the Department of Ecology (Coastal Zone Atlas) or the Department of Natural Resources (slope stability mapping) as unstable ("U" or class 3), unstable old slides ("UOS" or class 4), or unstable recent slides ("URS" or class 5); or

c. Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the U.S. Geological Survey or Department of Natural Resources;

2. Areas with all three of the following characteristics:

a. Slopes steeper than fifteen percent (15%); and

b. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

c. Springs or ground water seepage;

3. Areas that have shown movement during the Holocene epoch (from ten thousand years ago to the present) or that are underlain or covered by mass wastage debris of that epoch;

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

5. Slopes having gradients steeper than eighty percent (80%) subject to rock fall during seismic shaking;

6. Areas potentially unstable because of rapid stream incision, stream bank erosion, and undercutting by wave action;

7. Areas that show evidence of, or are at risk from snow avalanches;

8. Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and

9. Any area with a slope of forty percent (40%) or steeper and with a vertical relief of ten (10) or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten (10) feet of vertical relief.

C. **Seismic hazard areas.** Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, or surface faulting. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington. The strength of

ground shaking is primarily affected by:

1. The magnitude of an earthquake.

2. The distance from the source of an earthquake.

3. The type of thickness of geologic materials at the surface.

4. The type of subsurface geologic structure.

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

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

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

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

15.15.410 Geologically hazardous area initial project review

A site visit shall be conducted by the director to determine whether: (1) "Areas of Known or Suspected Risk" identified below are or may be present within 200 feet of the project or activity; (2) the proposed project or activity is or may be within a distance from the base of an adjacent landslide hazard area equal to the vertical relief of said hazard area; (3) the proposed activity may result in or contribute to an increase in hazard; and (4) whether the project or hazard areas pose a risk to life, property, or other critical areas on or off the project area sufficient to require a site assessment. Areas of known or suspected risk:

A. Erosion Hazard Indicators.

1. Those project areas located within 200 feet of map unit delineations #51 Dystric Xerorthents, #99 Mundt and #117 Saxon or mapped as moderate to severe, severe or very severe erosion hazard or as having severe rill and inter-rill erosion hazard as identified in the U.S. Department of Agriculture Natural Resources Conservation Service Soil Survey of Skagit

County Area, WA (1989).

2. Those project areas that fall within any soil sloping greater than or equal to 30 percent.

3. The project area falls within areas designated in the Department of Ecology, Coastal Zone Atlas, Washington, Volume Two Skagit County (1978) as U (Unstable), UB (Unstable Bluff), URS (Unstable Recent Slide), or UOS (Unstable Old Slide);

4. Those project areas that may be considered to have an erosion hazard as a result of rapid stream incision or stream bank erosion.

B. Landslide Hazards Indicators.

1. The project area falls within or 200 feet from areas designated in the Department of Ecology, Coastal Zone Atlas, Washington, Volume Two, Skagit County (1978) as U (Unstable), UB (Unstable Bluff), URS (Unstable Recent Slide), or UOS (Unstable Old Slide);

2. The project area falls within or 200 feet from slopes having the following characteristics: Gradients of 15 percent or greater intersecting geologic contacts with permeable sediments overlying low permeability sediment or bedrock and springs or groundwater seepage are present;

3. The project area falls within or 200 feet from any area having a 40 percent slope or steeper and with a vertical relief of 10 feet or more;

4. The project area falls within or 200 feet from any areas of historic failure such as areas designated as quaternary earth slumps, earthflows, mudflows, lahars, debris flows, rock slides, landslides or other slope failures on maps or technical reports published by the U.S. Geological Survey such as topographic or geologic maps, or the Geology and Earth Resources Division of the Washington Department of Natural Resources, or other documents authorized by government agencies;

5. The project area falls within or 200 feet from any areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action shall be addressed as a flood hazard consistent with this chapter;

6. Areas that have shown movement during the Holocene epoch or which are underlain or covered by wastage debris of that epoch;

7. The project area falls within or 200 feet from any slopes that are parallel or sub-parallel to planes of weakness (such as bedding planes, joint

systems, and fault planes) in subsurface materials;

8. The project area falls within or 200 feet from any slopes with a gradient greater than 80 percent and subject to rock fall during seismic shaking;

9. The project area falls within or 200 feet from any areas that show evidence of or are at risk from snow avalanches.

C. Seismic Hazards. Seismic hazard areas shall include areas that are subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction or surface faulting.

1. The project includes structures (as defined in the Uniform Building Code) proposed to be located in any of the areas described in subsection (A) or (B) of this section or located in areas to have a potential for soil liquefaction and soil strength loss during ground shaking as identified on the U.S. Geologic Survey Relative Slope Stability Map of the Port Townsend Quadrangle, Puget Sound Region, Washington (1985), or as identified in the field. A geologic hazard site assessment is not required for soil liquefaction and soil strength loss resulting from seismic activity unless other criteria provided in this section apply. The building official shall require evaluation using the provisions set forth in the adopted building code.

2. The structures or critical facilities are proposed to be located on a Holocene fault line. (No critical facilities shall be located on a Holocene fault line as indicated on investigative maps or described in studies by the United States Geologic Survey, Washington Geological Survey at Washington Department of Natural Resources, or other documents authorized by government agencies, or as identified in the field.) All developments on a Holocene fault line shall require a disclosure statement indicating the property is located on an active fault and may be geologically hazardous.

D. Volcanic Hazards. The project area is located in a volcanic hazard zone for Glacier Peak, Washington (Open-File Report 95-499); or in a volcanic hazard area of Mount Baker, Washington (Open-File Report 95-498). A site assessment is not required for volcanic hazard areas unless other criteria provided in this section apply.

E. Other Geologic Hazard Indicators.

1. The project area falls within or 200 feet from an alluvial fan as designated on the Skagit County Alluvial Fan Study Orthophoto Maps;

2. The project area falls within or 200 feet from a mine hazard area as designated on the Department of Natural Resources Map: Coal Measures of Skagit County (1924) or within 200 feet of any other current or historic mine operations determined to be geologic hazards as described in Section 15.15.020 LMC, geologically hazardous areas;

3. Areas of Unknown Geologic Hazards. As part of any development application where no current information is available to confirm that the items identified in this section are present on the project area, the critical areas review required by Section 15.15.060 LMC will provide a description of the known and visible site features and be used by the director in evaluating whether a geologically hazardous area site assessment is required pursuant to this section.

15.15.420 Geologically hazardous area site assessment requirements

A. Site Visit Determination. The director shall make a determination using the following progressive order:

1. No Site Assessment. Where the director determines that the project or activity area has no potential for impacting adjacent ownership and property, other types of critical areas, public property (such as roads and other facilities) or living quarters of any kind, including any existing or proposed off-site, the director shall not require additional site assessments prior to approval under the provisions of this chapter.

2. Site Assessment Required. If the director determines during the site visit that the proposed development activity falls within 200 feet of an "Area of Known or Suspected Risk" and the geologic condition may pose a risk to life and property on or off the project area, then a geologically hazardous area site assessment of the project area by a qualified professional as described in subsection (B) of this section shall be required as part of the complete development permit application.

B. Geologically Hazardous Area Site Assessment. When required by the director, a site assessment report shall be prepared by a qualified professional. Portions of the report relating to recommended design or mitigation shall be prepared under supervision of a qualified professional. A qualified professional shall mean an engineer, licensed in the state of Washington, with training and experience analyzing geologic, hydrologic, and groundwater flow systems in Washington state; or by a geologist who earns their livelihood from the field of geology and/or geotechnical analysis, with training and experience analyzing geologic, hydrologic and groundwater flow systems in Washington State, who has received a relevant degree from an accredited four-year institution of higher education.

The geologically hazardous area site assessment report shall classify the type of hazard in accordance with this chapter. The site assessment report shall include the following as appropriate:

1. A site plan must be prepared in accordance with the development permit requirements. The site plan shall depict the height of slope, slope gradient and cross section of the site. The site plan shall indicate the location of all existing structures, proposed structures and any significant known geologic features on the subject site. The site plan shall also include the location of springs, seeps, or other surface expressions of groundwater. The site plan shall also depict any evidence of surface water or storm water runoff;

2. A detailed description of the project, its relationship to potential geologic hazard(s), and its potential impact upon the hazard area(s), the subject property and adjacent properties. The description shall make a determination if a geologically hazardous area(s) is present on the subject site.

   The narrative shall include a full discussion of the geologic factors and conditions on the subject site resulting in the qualified professionals conclusions;

3. An assessment of the geologic characteristics and engineering properties of the soils, sediments, and/or rock of the subject property and potentially affected adjacent properties. Soils analysis shall be accomplished in accordance with the Unified Soil Classification System;

4. A description of load intensity including surface water and groundwater conditions, public and private sewage disposal systems, fills and excavations and all structural development;

5. An assessment describing the extent and type of vegetative cover to include tree attitude;

6. For potential landslide hazards: Estimate slope stability and the effect construction and placement of structures will have on the slope over the estimated life of the structure. Quantitative analysis of slope stability or slope stability modeling may be required by the director;

7. Additional site assessment standards may be required by the director.

C. Site Assessment Conclusions.

1. Where the qualified professional determines that a geologically hazardous condition is not present on the subject site and/or will not occur as a result

of the proposed project, will have no potential for impacting adjacent ownership and property, other types of critical areas, public property (such as roads and other facilities) or living quarters of any kind, including any existing or proposed off-site, the director shall not require additional site assessments prior to approval under the provisions of this Chapter. The qualified professional shall be required to certify that a geologic hazard is not present on the subject parcel.

2. Properties identified by the director and the qualified professional containing geologically hazardous conditions shall require a geologically hazardous area mitigation plan. Critical facilities shall not be sited within designated geologically hazardous areas (Exception: volcanic hazard areas). No residential structures shall be located in geologically hazardous areas or their buffers that cannot be fully mitigated.

15.15.430 Geologically hazardous area mitigation standards

The mitigation plan shall be prepared by a professional engineer or geologist under supervision of a professional engineer and include a discussion on how the project has been designed to avoid and minimize the impacts. The plan shall also make a recommendation for the minimum building setback from any bluff or slope edge and/or other geologic hazard shall be based upon the geotechnical analysis required. Mitigation plans shall include the location and methods of drainage, locations and methods of erosion control, a vegetation management and/or restoration plan and/or other means for maintaining long-term stability of geologic hazards. The plan shall also address the potential impact of mitigation on the hazard area, the subject property and affected adjacent properties. The mitigation plan must be approved by the director and be implemented as a condition of project approval.

Within designated geologic hazards, mitigation plans shall address the appropriate items listed below as required by the site assessment. One or more of the following mitigation standards, as required by the director, shall be included as components of a mitigation plan. Other mitigation standards, other than those listed below, may be required by the director depending on the geologic hazard and the site conditions.

A. Mitigation Standards.

1. A temporary erosion and sedimentation control plan.

2. A drainage plan for the collection, transport, treatment, discharge and/or recycle of water.

3. All proposals involving excavations and placement of fills shall be subject to structural review under the appropriate provisions as found in the International Building Code.

4. Critical facilities shall not be sited within designated geologically hazardous areas. (Exception: volcanic hazard areas).

5. Surface drainage shall not be directed across the face of a landslide hazard (including ravines). If drainage must be discharged from the hazard area into adjacent waters, it shall be collected above the hazard and directed to the water by tight line drain and provided with an energy dissipating device at the point of discharge.

6. All infiltration systems such as, storm water detention and retention facilities, and curtain drains utilizing buried pipe or French drain, are prohibited in geologically hazardous areas and their buffers unless a site assessment report indicates such facilities or systems will not affect slope stability and the systems are designed by a licensed civil engineer. The engineer shall also certify that the system and/or facilities are installed as designed.

7. Vegetation Removal and Replanting. Removal of vegetation in landslide hazard, erosion hazard and coastal bluff hazard areas shall be minimized. Any replanting that occurs shall consist of trees, shrubs, and ground cover that is compatible with the existing surrounding vegetation, meets the objectives of erosion prevention and site stabilization, and does not require permanent irrigation for long-term survival.

8. A minimum buffer with a width of 30 feet shall be established from the top, toe and all edges of all landslide hazardous areas. Existing native vegetation shall be maintained in accordance with mitigation recommendations within the buffer area. Any modifications to the buffer requirement shall be based on the report and recommendations of the professional geologist under supervision of a licensed professional engineer. The buffer may be reduced to a minimum of 10 feet when an applicant demonstrates to the director that the reduction will adequately protect the proposed development, adjacent developments and uses and the subject critical area. The buffer may be increased by the director for development adjacent to a ravine which is designated as unstable on the Coastal Zone Atlas, Washington, Volume Two Skagit County (1978) or where the director determines a larger buffer is necessary to prevent risk of damage to proposed and existing development (as in the case where the area potentially impacted by a landslide exceeds 30 feet). Normal non-destructive pruning and trimming of vegetation for maintenance purposes; or thinning of limbs of individual trees to provide a view corridor, shall not be subject to these buffer requirements.

9. Seismic Hazard Areas. Structural development proposals shall meet all applicable provisions of the International Building Code.

The director shall evaluate documentation submitted pursuant to the site assessment report, and condition permit approvals to minimize the risk on both the subject property and affected adjacent properties. All conditions on approvals shall be based on known, available, and reasonable methods of prevention, control and treatment. Evaluation of geotechnical reports may also constitute grounds for denial of the proposal.

B. Alterations of the Buffer and/or Geologically Hazardous Area. Alterations of the buffer and/or geologically hazardous area may occur for development meeting the following criteria:

1. No reasonable alternative exists; and

2. A site assessment report is submitted and certifies that:

a. There is a minimal hazard as proven by evidence of no landslide activity in the past in the vicinity of the proposed development and a qualitative analysis of slope stability indicates no significant risk to the development proposal and adjacent properties; or the geologically hazardous area can be modified or the development proposal can be designed so that the hazard is eliminated or mitigated so that the site is as safe as a site without a geologically hazardous area;

b. The development will not significantly increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions;

c. The development will not decrease slope stability on adjacent properties; and

d. Such alterations will not adversely impact other critical areas.

C. Noncompliance and Failed Mitigation Plans.

1. Projects found to be in noncompliance with the mitigation conditions issued as part of the development approval are subject to enforcement actions necessary to bring the development into compliance with this chapter.

2. Mitigation plans which do not fulfill the performance required based on the site assessment/geotechnical report findings or otherwise fail to meet the intent of this chapter shall be revised and the subject development brought into compliance with the revised mitigation plan.

D. Mitigation Plan Certification. Upon completion of the project, a qualified professional shall certify that the mitigation plan has been properly implemented. The certification shall be required prior to final approval of the project by the director.

15.15.440 Geologically Hazardous Areas Performance Standards

A. Alterations of geologically hazardous areas or associated buffers may only occur for activities that:

1. Will not increase the threat of the geological hazard to adjacent properties beyond pre-development conditions;

2. Will not adversely impact other critical areas;

3. Are designed so that the hazard to the project is eliminated or mitigated to a level equal to or less than pre-development conditions; and

4. Are certified as safe as designed and under anticipated conditions by a qualified engineer or geologist, licensed in the state of Washington.

B. **Critical facilities prohibited.** Critical facilities shall not be sited within geologically hazardous areas unless there is no other practical alternative.

15.15.440 Geologically Hazardous Area Public Review and Record

In addition to the provisions for public notice, the director shall provide official notice of decision and make the site assessment report available for public review upon approval of any project requiring a geologically hazardous area site assessment and shall maintain a public record of all materials pertinent to approval decisions.

FISH AND WILDLIFE HABITAT CONSERVATION AREAS

15.15.500 Fish and wildlife habitat conservation area designations

A. Fish and wildlife habitat conservation areas (HCAs) shall be designated and classified as provided for in the definition section of this Chapter. The map and species references indicated are intended to serve only as a guide during development review. In all cases, actual presence or absence for the listed species or habitat shall prevail.

B. In addition to the HCAs identified, additional species and habitats of local importance may be designated by the director based on declining populations, sensitivity to habitat manipulation or special value including but not limited to commercial, game or public appeal.

C. In order to nominate an area or a species to the category of habitats and species of local importance, an individual or organization must:

1. Demonstrate a need for special consideration based on:

a. Declining population,

b. Sensitivity to habitat manipulation, or

c. Commercial or game value or other special value, such as public appeal;

2. Propose relevant management strategies considered effective and within the scope of this Chapter;

3. Provide species habitat location(s) on a map (scale 1:24,000). Submitted proposals will be reviewed by the director and forwarded to the Washington Department of Fish and Wildlife, Natural Resources, and/or other County and State agencies or experts for comments and recommendations regarding accuracy of data and effectiveness of proposed management strategies. A public hearing will be held for proposals found to be complete, accurate, potentially effective and within the scope of this chapter. Approved nominations will become designated "Habitats/Species of Local Importance" and will be subject to the provisions of this chapter.

D. Species and their associated habitats designated by the Washington State Department of Fish and Wildlife's Priority Habitats and Species Map, as amended:

1. Great Blue Heron (ardea herodias);

2. Vaux's Swifts (chaetura vauxi);

3. Townsend's Big-Eared Bat (corynorhinus townsendii);

4. Trumpeter Swan (cygnus buccinator);

5. Harlequin Duck (histrionicus histrionicus);

6. Coho (oncorhynchus kisutch)

7. Cutthroat (oncorhynchus clarki)

8. Dolly Varden / Bull Trout (salvellinus malma / S. confluentus)

9. Winter Steelhead (oncorhynchus mykiss)

10. Fall Chum (oncorhynchus keta)

11. Elk (cervus elaphus)

E. Wildlife Habitat Corridors. State Route 20 passing through the Town of Hamilton was identified as a Wildlife Habitat Corridor. The Town will regulate Wildlife Habitat Corridors in compliance with WAS 365-196-335.

F. Riparian Management Zones.

15.15.510 Fish and wildlife habitat conservation areas initial project review

A. A site visit shall be conducted by the director to determine whether HCAs identified on a critical area checklist or on available map resources or whether HCAs not previously identified are present within 200 feet of the project or activity site.

B. Habitat Conservation Areas are designated by definition and are referenced as follows:

1. An area with which anadromous fish, endangered, threatened or sensitive species have a primary association and/or their habitat such as those designated and mapped by the Washington State Department of Fish and Wildlife, Priority Habitats and Species Program;

2. A water of the state as defined under Section 90.48.020 RCW;

3. A Critical Biological Area as designated and mapped by the Department of Ecology Coastal Zone Atlas dated June 1978 and/or the maps;

4. Designated species and habitats of local importance;

5. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;

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

7. Areas with which anadromous fish species have a primary association; and

8. State Natural Area Preserves and Natural Resource Conservation Areas.

C. If the director determines through the site visit described in subsection (A) of this section that a fish and wildlife habitat conservation area (HCA) may be present within 200 feet of the proposed project or activity area, then a site assessment/habitat management plan shall be required as part of the complete application.

15.15.520 Fish and wildlife habitat conservation area site assessment requirements

Site assessment/habitat management plans shall be prepared by a qualified fish and wildlife biologist with experience assessing the relevant species and habitats and include at a minimum, the following requirements:

A. Site plan prepared in accordance with the permit requirements indicating all fish and wildlife habitat conservation areas falling within 200 feet of the subject property. This site plan may be prepared by the applicant subject to review by the qualified fish and wildlife biologist;

B. Project narrative describing the proposal including, but not limited to, associated grading and filling, structures, utilities, adjacent land uses, description of vegetation both within and adjacent to the habitat conservation area, and when deemed necessary by the administrative officer, surface and subsurface hydrologic analysis;

C. Impact analysis identifying and documenting the presence of all habitat conservation areas and discussing the project's effects on the fish and wildlife habitat conservation areas;

D. Regulatory analysis including a discussion of any federal, state, tribal, and/or local requirements or special management recommendations which have been developed for species and/or habitats located on the site;

E. Mitigation report including a discussion of proposed measures of mitigating adverse impacts of the project and an evaluation of their potential effectiveness. Measures may include but are not limited to: establishment of buffer zones, preservation of critically important plants, and trees, limitation of access to habitat areas, seasonal restrictions of construction activities, establishment of a timetable for periodic review of the plan and/or establishment of performance or maintenance bonds;

F. Management and maintenance practices including a discussion of ongoing maintenance practices that will assure protection of all fish and wildlife habitat conservation areas on-site after the project has been completed. This section should include a discussion of proposed monitoring criteria, methods and schedule;

G. Approval of any activity that can adversely affect fish and wildlife habitat conservation areas shall conform to the requirements set forth in this Chapter.

15.15.530 Fish and wildlife habitat conservation area mitigation standards

Fish and wildlife habitat conservation areas shall be protected in accordance with local determination of appropriate conditions considering the site-specific recommendations from agencies with jurisdictions over the specific area, which may include but not be limited to the Washington State Department of Fish and Wildlife, Department of Ecology, Federally recognized Tribes located within Skagit County, WDFW Management Recommendations for Washington Priority Habitats and Species, and site-specific information supplied by the applicant.

Development proposals shall be reviewed for potential impacts to fish and wildlife habitat conservation areas. The determination of potential impacts shall be dictated by site conditions and made by the director in consultation with the Washington State Departments of Ecology, Fish and Wildlife and Natural Resources and Federally recognized Tribes located in Skagit County. If it is determined that a proposed project may have an adverse effect on a fish and wildlife habitat conservation area, the applicant shall implement a habitat management plan including mitigation measures in conformity with the performance standards outlined below.

A. Riparian Performance Standards. Riparian management zones shall be measured from the wider of the channel mitigation zone, ordinary high water mark, or active floodplain. The intent of the riparian management zone is to protect five basic riparian forest functions that influence in-stream and near-stream habitat quality. These are:

1. Recruitment of large woody debris (LWD) to the stream: LWD recruitment creates habitat structures necessary to maintain salmon/trout productive capacity and species diversity.

2. Shade. Shading by the forest canopy maintains cooler water temperatures and influences the availability of oxygen for salmon/trout.

3. Bank Integrity (Root Reinforcement). Bank integrity helps maintain habitat quality and water quality by reducing bank erosion and creating habitat structure and instream hiding cover for salmon and trout.

4. Runoff Filtration. Filtration of nutrients and sediments in runoff (surface and shallow subsurface flows) helps maintain water quality.

5. Wildlife Habitat. Functional wildlife habitat for riparian-dependent species is based on sufficient amounts of riparian vegetation to provide protection for nesting and feeding.

B. Standard Riparian Management Zone Widths. Riparian management zones have the following standard buffer requirements (Note: Riparian management zones do not extend beyond the toe of the slope on the landward side of existing dikes or levees unless specifically exempt from Federal Vegetation Management requirements. See also Section 15.15.100 LMC for list of activities allowed within critical areas, including riparian areas:

Riparian Management Zone Widths

Riparian Management Zones	
Stream Type	**RHA Buffer Width**
Type S; shorelines of the state; or shorelines of statewide significance	200 feet
Type F	125 feet
Type Np	100 feet
Type Ns	100 feet

In areas adjacent to lakes having Urban or Rural Residential designations under the Skagit County Shorelines Master Program, the standard riparian management zone shall be consistent with the standard setback associated with the Shorelines designation. Once buffers are established, they shall not be altered except as allowed below. Riparian management zones not currently meeting the minimum standards shall be restored; provided, that such restoration does not conflict with other provisions of this chapter. In implementing buffer widths other than the standard riparian management zones identified above, the director shall provide opportunity for review and comment from appropriate Federal, State or Tribal natural resource agencies to ensure the use of best available science and no net loss of critical area functions and values. These comments shall be included in the public record along with the basis and rationale for requirement or approval of any such non-standard buffers.

1. Increasing Buffer Widths. The director has the authority to increase the standard buffer widths on a case-by-case basis, or to establish non-

riparian management zone widths, when such buffers are necessary to protect priority fish or wildlife using the HCA. This determination shall be supported by appropriate documentation from the Washington Departments of Ecology and Fish and Wildlife, showing that the increased buffer width is reasonably related to the protection of the fish and/or wildlife using the HCA. The riparian management zone shall be measured from the outer edge of the channel migration zone when a channel migration zone is present.

2. Decreasing Buffer Widths. Decreasing standard buffers will be allowed pursuant to Section 15.15.150 LMC only if the applicant demonstrates that all of the following criteria are met:

   a. A decrease is necessary to accomplish the purposes of the proposal and no reasonable alternative is available; and

   b. Decreasing width will not adversely affect the fish and wildlife habitat functions and values; and

   c. If a portion of a buffer is to be reduced, the remaining buffer area will be enhanced, using native vegetation, artificial habitat features, vegetative screening and/or barrier fencing as appropriate to improve the functional attributes of the buffer and to provide equivalent or better protection for fish and wildlife habitat functions and values; and

   d. The buffer width shall not be reduced below 50 percent of the standard buffer width unless the director determines that no other reasonable alternative exists and that no net loss of HCA riparian functional values will result, based on a functional assessment provided by the applicant utilizing a methodology approved by the director.

3. Limitations. Buffer averaging is not permitted:

   (a) Where the buffer contains documented habitat for state or federally listed threatened or endangered species, unless approved in writing by the Washington Department of Fish and Wildlife or other applicable agency.

   (b) For Category I wetlands, unless the area proposed for averaging is of demonstrably lower habitat value and the proposal is consistent with Ecology guidance;

   (c) Where buffer averaging would interrupt hydrologic or habitat connectivity between wetlands, riparian corridors, or other habitat features;

(d) In circumstances where cumulative development impacts would further degrade critical area function;

(e) In areas where averaging would impair floodplain processes or the long-term ecological health of the basin or watershed.

(f) Within Riparian management zones, unless a qualified professional demonstrates, based on best available science, that the portion proposed for reduction does not provide ecological functions or values.

C. Allowed Uses in RMZs or Buffers.

1. Docks. Docks designed to facilitate low-impact uses, such as education and/or private, non- commercial recreation may be permitted within fish and wildlife HCAs under the following conditions:

a. The activity will have minimum adverse impact to the fish and wildlife habitat conservation area;
b. The activity will not significantly degrade surface water or groundwater;

c. The intrusion into the fish and wildlife habitat conservation area and its buffers is fully mitigated;

d. The director shall provide opportunity for review and comment by a Federal, State and Tribal natural resource agencies; and

e. The director shall provide opportunity for review and comment by a Technical Team in which participation has been solicited from Federal, State and Tribal natural resource agencies.

2. Limited park or recreational access to a fish and wildlife habitat area or its required buffer, provided that all of the following are satisfied:

a. The access is part of a public park or a recreational resort development that is dependent on the access for its location and recreational function;

b. The access is limited to the minimum necessary to accomplish the recreational function;

c. The access and the balance of the development is consistent with other requirements of the Lyman Municipal Code and the Skagit

County Shoreline Management Master Program; and

d. The proponent obtains a written approval from the Town Council for the limited access and associated mitigation.

3. Low impact uses and activities which are consistent with the purpose and function of the habitat buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the habitat involved provided, that such activity shall not result in a decrease in riparian functional values and shall not prevent or inhibit the buffer's recovery to at least pre-altered condition or function. Examples of uses and activities which may be permitted in appropriate cases, as long as the activity does not retard the overall recovery of the buffer, include removal of noxious vegetation, pedestrian trails, viewing platforms, and storm water management facilities such as grass-lined swales.

4. In the riparian management zone, removal of hazardous, diseased or dead trees and vegetation when necessary to control fire, or to halt the spread of disease or damaging insects consistent with the State Forest Practices Act, Chapter 76.09 RCW, or when the removal is necessary to avoid a hazard such as landslides or pose a threat to existing structures may be permitted with prior written approval. Any removed tree or vegetation shall first consider the creation of snags rather than complete tree removal and be replaced with appropriate species. Replacement shall be performed consistent with accepted restoration standards for riparian areas within one calendar year. The director may approve alternative tree species to promote fish and wildlife habitat.

   Prior to commencement of tree or vegetation removal and/or replacement, the landowner must obtain written approval from the director.

D. Prohibited uses in RMZs or Buffers.

   1. On-site Sewage Systems. On-site sewage systems are prohibited in riparian management zones due to the potential to contaminate water.

E. Aquatic habitat. The following specific activities may be permitted within a riparian habitat area, pond, lake, water of the state, or associated buffer when the activity complies with the following standards and the adopted shoreline master program.

   1. Clearing and Grading. When clearing and grading is permitted as part of an authorized activity or as otherwise allowed in these standards, the following shall apply:

a. Grading is allowed only during the dry season, which is typically regarded as beginning on May 1st and ending on October 1st of each year, provided that the City may extend or shorten the dry season on a case-by-case basis, determined on actual weather conditions.
b. Filling or modification of a wetland or wetland buffer is permitted only if it is conducted as part of an approved wetland alteration.
c. The soil duff layer shall remain undisturbed to the maximum extent possible. Where feasible, any soil disturbed shall be redistributed to other areas of the project area.
d. The moisture-holding capacity of the topsoil layer shall be maintained by minimizing soil compaction or reestablishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces.
e. Erosion and sediment control that meets or exceeds the standards set forth in the adopted stormwater management regulations shall be provided.

2. Shoreline erosion control measures. New, replacement, or substantially improved, shoreline erosion control measures may be permitted be in accordance with an approved critical area report that demonstrates the following:

a. Natural shoreline processes will be maintained. The project will not result in increased beach erosion or alterations to, or loss of, shoreline substrate within one-quarter (1/4) mile of the project area.

b. The shoreline erosion control measures will not degrade fish or wildlife habitat conservation areas or associated wetlands.

a. Adequate mitigation measures ensure that there is no net loss of the functions or values of riparian habitat as a result of the proposed shoreline erosion control measures.

b. New hard shoreline stabilization measures (e.g., riprap, concrete walls, or similar structural armoring) shall be prohibited for all newly constructed primary structures within shoreline jurisdiction or adjacent to water bodies regulated under this chapter. This provision shall not apply to the repair or replacement of existing, legally established hard armoring, provided such repair does not expand the footprint or alter the original function of the structure, and is consistent with applicable state and federal requirements.

3. Streambank stabilization. Streambank stabilization to protect new structures from future channel migration is not permitted except when such stabilization is achieved through bioengineering or soft armoring techniques in accordance with an approved critical area report.

4. Launching ramps – Public or private. Launching ramps may be permitted in accordance with an approved critical area report that has demonstrated the following:

    a. The project will not result in increased beach erosion or alterations to, or loss of, shoreline substrate within one-quarter (1/4) mile of the site;

    b. The ramp will not adversely impact critical fish or wildlife habitat areas or associated wetlands;

    c. Adequate mitigation measures ensure that there is no net loss of the functions or values of riparian habitat as a result of the ramp; and

5. Docks. Repair and maintenance of an existing dock or pier may be permitted in accordance with an approved critical area report subject to the following:

    a. There is no increase in the use of materials creating shade for predator species or eelgrass;

    b. There is no expansion in overwater coverage;

    c. There is no new spanning of waters between three (3) and thirteen (13) feet deep;

    d. There is no increase in the size and number of pilings; and

    e. There is no use of toxic materials (such as creosote) that come in contact with the water.

6. Roads, trails, bridges, and rights-of-way. Construction of trails, roadways, and minor road bridging, less than or equal to thirty (30) feet wide, may be permitted in accordance with an approved critical area report subject to the following standards:

    a. There is no other feasible alternative route with less impact on the environment;

    b. The crossing minimizes interruption of downstream movement of wood and gravel;

    c. Roads in riparian management zones or their buffers shall not run parallel to the water body;

    d. Trails shall be located on the outer edge of the riparian area or buffer, except for limited viewing platforms and crossings;

e. Crossings, where necessary, shall only occur as near to perpendicular with the water body as possible;

f. Mitigation for impacts is provided pursuant to a mitigation plan of an approved critical area report;

g. Road bridges are designed according to the Department of Fish and Wildlife *Fish Passage Design at Road Culverts*, March 1999, and the National Marine Fisheries Service *Guidelines for Salmonid Passage at Stream Crossings*, 2000; and

h. Trails and associated viewing platforms shall not be made of continuous impervious materials.

7. Utility Facilities. New utility lines and facilities may be permitted to cross watercourses in accordance with an approved critical area report if they comply with the following standards:

a. Fish and wildlife habitat areas shall be avoided to the maximum extent possible;

b. Installation shall be accomplished by boring beneath the scour depth and hyporheic zone of the water body and channel migration zone, where feasible;

c. The utilities shall cross at an angle greater than sixty (60) degrees to the centerline of the channel in streams or perpendicular to the channel centerline whenever boring under the channel is not feasible;

d. Crossings shall be contained within the footprint of an existing road or utility crossing where possible;

e. The utility route shall avoid paralleling the stream or following a down-valley course near the channel; and

f. The utility installation shall not increase or decrease the natural rate of shore migration or channel migration.

8. Public flood protection measures. New public flood protection measures and expansion of existing ones may be permitted, subject to the City's review and approval of a critical area report and the approval of a Federal Biological Assessment by the federal agency responsible for reviewing actions related to a federally listed species.

9. Instream structures. Instream structures, such as, but not limited to, high flow bypasses, sediment ponds, instream ponds, retention and detention facilities, tide gates, dams, and weirs, shall be allowed only as part of an approved watershed basin restoration project approved by the City and upon acquisition of any required state or federal permits. The structure shall be designed to avoid modifying flows and water quality in ways that may adversely affect habitat conservation areas.

10. Stormwater conveyance facilities. Conveyance structures may be permitted in accordance with an approved critical area report subject to the following standards:

    a. No other feasible alternatives with less impact exist;

    b. Mitigation for impacts is provided;

    c. Stormwater conveyance facilities shall incorporate fish habitat features; and

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

11. On-site sewage systems and wells. All new development must avoid locating on-site sewage systems within riparian areas and their buffers to the greatest extent feasible, due to the high risk of system failure and the sensitivity of these hydrologically dynamic and ecologically critical areas.

    a. New on-site sewage systems and individual wells may be permitted in accordance with an approved critical area report only if accessory to an approved primary structure for which it is not feasible to connect to a public system.

    b. Repairs to failing on-site sewage systems associated with an existing structure shall be accomplished by utilizing one of the following methods that result in the least impact:

        i. Connection to an available public sanitary sewer system;
        ii. Replacement with a new on-site sewage system located in a portion of the site that has already been disturbed by development and is located landward as far as possible, provided the proposed sewage system is in compliance with the health district standards; or
        iii. Repair to the existing on-site septic system.

FREQUENTLY FLOODED AREAS

15.15.600 Frequently Flooded Areas

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

15.15.610 Biological Opinion Compliance

In 2011, FEMA and NFIP established the Biological Opinion (BiOp) Compliance, which applies to all waterbodies that directly or indirectly drain to the Puget Sound or the Strait of San Juan de Fuca. The BiOp also factors in requirements from the Endangered Species Act (ESA), factoring in the species and habitats from the wider Puget Sound watershed. FEMA and NFIP now require jurisdictions to implement protection under the BiOp, which has three implementation strategies, all subject to FEMA's approval. These strategies include:

A. Adopting a Model Ordinance prepared by FEMA.
B. Demonstrating how local regulations meet the requirements of BiOp.
C. Requiring that all floodplain developments are completed on a permit-by-permit basis and refrain from negatively affecting ESA-listed species in the area.

The Town of Lyman is addressing the BiOp compliance through the second implementation strategy, demonstrating that the Town's code and regulations comply with the requirements of FEMA and NFIP.

COMPLIANCE, ENFORCEMENT AND OTHER PROVISIONS

15.15.700 Enforcement of the critical areas regulations

A. Violations.

1. It is a violation of this chapter for any person to initiate or maintain or cause to be initiated or maintained the use of any structure, land or property within the Town without first obtaining the permits or authorization required for the use by this Chapter.

2. It is a violation of this chapter for any person to use, construct, locate, demolish or cause to be used, constructed, located, or demolished any structure, land or property within the Town in any manner that is not permitted by the terms of any permit or authorization issued pursuant to this Chapter; provided, that the terms or conditions are explicitly stated on the permit or the approved plans.

3. It is a violation of this chapter to remove or deface any sign, notice, complaint or order required by or posted in accordance with this chapter.

4. It is a violation of this chapter to misrepresent any material fact in any application, plans or other information submitted to obtain any critical areas authorization.

5. It is a violation of this chapter for anyone to fail to comply with the requirements of this chapter.

B. Duty to Enforce.

1. It shall be the duty of the director to enforce this Chapter. The director may call upon the police, fire, health or other appropriate Town departments to assist in enforcement.

2. Upon presentation of proper credentials, the director or duly authorized representative of the director may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or premises subject to the consent or warrant to perform the duties imposed by the critical areas code.

3. The critical areas code shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

4. It is the intent of this critical areas code to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land, wetlands, shorelines, and buildings within the scope of this code.

5. No provision of or term used in this code is intended to impose any duty upon the Town or any of its officers or employees which would subject them to damages in a civil action.

C. Investigation and Notice of Violation.

1. The director shall investigate any structure or use which the director reasonably believes does not comply with the standards and requirements of the critical areas code.

2. If after investigation the director determines that the standards or requirements have been violated, the director shall serve a notice of violation upon the owner, tenant or other person responsible for the condition. The notice of violation shall state separately each standard or requirement violated, shall state what corrective action, if any, is necessary to comply with the standards or requirements; and shall set a reasonable time for compliance. The notice shall state that any subsequent violation may result in criminal prosecution as provided in subsection (J) of this section. In the event of violation of the standards or requirements of this chapter required corrective action shall include, if appropriate, but shall not be limited to, mitigating measures such as restoration of the area and replacement of damaged or destroyed trees.

3. The notice shall be served upon the owner, tenant or other person responsible for the condition by personal service, registered mail, or certified mail with return receipt requested, addressed to the last known address of such person. If, after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person or persons is unknown or service cannot be accomplished and the director makes an affidavit to that effect, then service of the notice upon such person or persons may be made by:

   a. Publishing the notice once each week for two consecutive weeks in the Town official newspaper; and

   b. Mailing a copy of the notice to each person named on the notice of violation by first class mail to the last known address if known, or if unknown, to the address of the property involved in the proceedings.

4. A copy of the notice shall be posted at a conspicuous place on the property, unless posting the notice is not physically possible.

5. Nothing in this section shall be deemed to limit or preclude any action or proceeding pursuant to this section.

6. The director may mail, or cause to be delivered to all residential and/or nonresidential rental units in the structure or post at a conspicuous place on the property, a notice which informs each recipient or resident about the notice of violation, stop work order or emergency order and the applicable requirements and procedures.

7. A notice or order may be amended at any time in order to:

   a. Correct clerical errors; or

   b. Cite additional authority for a stated violation.

D. Time to Comply.

1. When calculating a reasonable time for compliance, the director shall consider the following criteria:

   a. The type and degree of violation cited in the notice;

   b. The stated intent, if any, of a responsible party to take steps to comply;

   c. The procedural requirements for obtaining a permit to carry out corrective action;

   d. The complexity of the corrective action, including seasonal considerations, construction requirements and the legal prerogatives of landlords and tenants; and

   e. Any other circumstances beyond the control of the responsible party.

2. Unless a request for review before the director is made in accordance with this Section, the notice of violation shall become the final order of the director. A copy of the notice shall be filed with the Skagit County Auditor. The director may choose not to file a copy of the notice or order if the notice or order is directed only to a responsible person other than the owner of the property.

E. Stop Work Order. Whenever a continuing violation of this code will materially impair the director's ability to secure compliance with this code, or when the continuing violation threatens the health or safety of the public, the director may issue a stop work order specifying the violation and prohibiting any work or other activity at the site. A failure to comply with a stop work order shall constitute a violation of this code.

F. Emergency Order.

1. Whenever any use or activity in violation of this code threatens the health and safety of the occupants of the premises or any member of the public, the director may issue an emergency order directing that the use or activity be discontinued and the condition causing the threat to the public health and safety be corrected. The emergency order shall specify the time for compliance and shall be posted in a conspicuous place on the property, if posting is physically possible. A failure to comply with an emergency order shall constitute a violation of this code.

2. Any condition described in the emergency order which is not corrected within the time specified is declared to be a public nuisance and the director is authorized to abate such nuisance summarily by such means as may be available. The cost of such abatement shall be recovered from the owner or person responsible or both in the manner provided by law.

G. Review by the director.

1. Any person significantly affected by or interested in a notice of violation issued by the director pursuant to subsection (C) of this section may obtain a review of the notice by requesting such review within 15 days after service of the notice. When the last day of the period so computed is a Saturday, Sunday or Federal or Town holiday, the period shall run until 5:00 p.m. on the next business day. The request shall be in writing, and upon receipt of the request, the director shall notify any persons served the notice of violation and the complainant, if any, of the date, time and place set for the review, which shall be not less than 10 nor more than 20 days after the request is received, unless otherwise agreed by all persons served with the notice of violation. Before the date set for the review, any person significantly affected by or interested in the notice of violation may submit any written material to the director for consideration at the review.

2. The review will consist of an informal review meeting held at the department. A representative of the director who is familiar with the case and the applicable ordinances will attend. The director's representative will explain the reasons for the director's issuance of the notice and will listen to any additional information presented by the persons attending. At or after the review, the director may:

a. Sustain the notice of violation;

b. Withdraw the notice of violation;

c. Continue the review to a date certain for receipt of additional information; or

d. Modify the notice of violation, which may include an extension of the compliance date.

3. The director shall issue an order of the director containing the decision within seven days of the date of completion of the review and shall cause the same to be mailed by regular first class mail to the person or persons named on the notice of violation, mailed to the complainant, if possible, and filed with Skagit County Auditor.

H. Extension of Compliance Date.

1. The director may grant an extension of time for compliance with any notice or order, whether pending or final, upon the director's finding that substantial progress toward compliance has been made and that the public will not be adversely affected by the extension.

2. An extension of time may be revoked by the director if it is shown that the conditions at the time the extension was granted have changed, the director determines that the conditions at the time the extension was granted have changed, the director determines that a party is not performing corrective actions as agreed, or if the extension creates an adverse effect on the public. The date of revocation shall then be considered as the compliance date. The procedures for revocation, notification of parties, and appeal of the revocation shall be established by rule.

I. Civil Penalty.

1. In addition to any other sanction or remedial procedure which may be available, any person violating or failing to comply with any of the provisions of this chapter shall be subject to a cumulative penalty in the amount of $75.00 per day for each violation from the date set for compliance until the order is complied with.

2. The penalty imposed by this section shall be collected by civil action brought in the name of the Town. The director shall notify the Town attorney in writing of the name of any person subject to the penalty, and the Town Attorney shall, with the assistance of the director, take appropriate action to collect the penalty.

3. The violator may show as full or partial mitigation of liability:

   a. That the violation giving rise to the action was caused by the willful act, or neglect, or abuse of another; or

   b. That correction of the violation was commenced promptly upon receipt of the notice thereof, but the full compliance within the time specified was prevented by inability to gain access to the subject structure, or other condition or circumstance beyond the control of the defendant.

J. Criminal Penalties.

1. Any person violating or failing to comply with any of provisions of this critical areas code and who has had a judgment entered against him or her pursuant to this Section or its predecessors within the past five years shall be subject to criminal prosecution and upon conviction of a subsequent violation shall be fined in a sum not exceeding $5,000 or be imprisoned in jail for a term not exceeding one year or be both fined and imprisoned. Each day of noncompliance with any of the provisions of this code shall constitute a separate offense.

2. A criminal penalty, not to exceed $5,000 per occurrence, may be imposed:

   a. For violations of this Section;

   b. For any other violation of this code for which corrective action is not possible;

   c. For any willful, intentional, or bad faith failure or refusal to comply with the standards or requirements of this code.

K. Additional Relief. The director may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of this critical areas code when civil or criminal penalties are inadequate to effect compliance.

15.15.710 Compliance with critical area regulations

No permit for a development proposal described in Lyman shall be issued unless it also complies with the regulations of this chapter.

15.15.720 Construction

In any case where the provisions of this chapter conflict with the provisions of the underlying zoning, the provisions of this Chapter shall apply.

15.15.730 Severability

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person, owner, or circumstance shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons, owners or circumstances.

15.15.740 State Environmental Protection Act

This Chapter establishes minimum standards which are to be applied to specific land use and platting actions in order to prevent further degradation of critical areas in the Town, and is not intended to limit the application of the State Environmental Protection Act (SEPA). Projects subject to SEPA shall be reviewed and may also be conditioned or denied.

15.15.750 Liability Disclaimer

Since floods more severe than the 100-year flood occur on rare occasions, reliance on this chapter will not altogether guarantee freedom from flood damage, nor shall this chapter create liability on the part of the Town for such damage. It is further noted that other data regarding 100-year floodplain elevations may exist which indicate a more severe threat than the data established by FEMA. Information on these other data sources shall be kept and made available at Lyman Town Hall.