

13-02

CRITICAL AREAS ORDINANCE

AN ORDINANCE OF THE CITY OF COLFAX, WASHINGTON, AMENDING COLFAX MUNICIPAL CODE TITLE 17, ZONING, TO INCLUDE THE IDENTIFICATION, CLASSIFICATION AND REGULATION OF CRITICAL AREAS; RELATED TO CRITICAL AREAS PROTECTION; AND SETTING AN EFFECTIVE DATE.

THE CITY COUNCIL OF THE CITY OF COLFAX, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 17.04 of the Colfax Municipal Code is hereby amended to include the following definitions. Where a term here duplicates a term already defined tin the zoning ordinance, the definition in this ordinance prevails:

Administrative Official: means the City Manager or that person appointed by the City Manager to administer the regulations of this Ordinance

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

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

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

Aquifer Recharge Areas: Aquifer Recharge Areas are areas having a critical recharging effect on aquifers used for potable water where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the certifiable potability of water (WAC 365.190.030).

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

Area of shallow flooding: An area designated AO, or AH Zone on the flood insurance map(s). The base flood depths range from one to three feet; a clearly defined channel

does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

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

Best available science: Current scientific information used in the process to designate, protect or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 925. Sources of best available science are included in "Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas" published by the state Department of Commerce.

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

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

Critical aquifer recharge area: Areas designated by WAC 365-190-080(2) that are determined to have a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2).

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

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

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

- Interior building improvements.
- Exterior structure maintenance activities, including painting and roofing.

- Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning and weeding.
- Maintenance of following existing facilities that does not expand the affected area: septic tanks (routine cleaning); wells; individual utility service connections; and individual cemetery plots in established and approved cemeteries.

Erosion hazard areas: At least those areas identified by the United States Department of Agriculture Soil Conservation Service as having a “sever” rill and inter-rill erosion hazard.

Existing and ongoing agricultural activities: Those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops and livestock, including but not limited to operation, maintenance and conservation measures of farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and normal operation, maintenance or repair of existing serviceable structures, facilities or improved areas. Activities which bring an area into agricultural use are not part of an ongoing activity. An operation ceases to be ongoing when the area in which it was conducted is proposed for conversion to a nonagricultural use or has lain idle for a period of longer than five years, unless the idle land is registered in a federal or state soils conversation program. Forest practices are not included in this definition.

Flood insurance map: The official map on which the Federal Insurance Administration has delineated the areas of special flood hazards and include the risk premium zones applicable to the community. Also known as “flood insurance rate map” or “FIRM.”

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

Frequently flooded areas: Lands in the flood plain subject to a one percent (1%) or greater chance of flooding in any given year. Frequently flooded areas perform important hydrologic functions and may present a risk to persons and property as designated by WAC 365-190-080(3). Classifications of frequently flooded areas include, at a minimum, the 100-year flood plain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

Functions and values: The beneficial roles served by critical areas including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, ground water recharge and discharge, erosion control, wave attenuation, protection from hazards, historical and archaeological and aesthetic value protection and recreation. These beneficial roles are not listed in order of priority.

Geologically hazardous areas: Areas 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.

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

Mine hazard areas: Those areas directly underlain by, adjacent to, or affected by mine workings such as adits, tunnels, drifts, or air shafts.

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

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

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

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

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

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

Permeability: The capacity of an aquifer or confining bed to transmit water. It is a property of the aquifer or confining bed and is independent of the force causing movement.

Porous soil types: Soils, as identified by the National Resources Conservation Service, U.S. Department of Agriculture, that contain voids, pores, interstices or other openings which allow the passing of water.

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

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

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

Qualified professional: A person with experience and training in the applicable critical area. A qualified professional must have obtained a B.S. or B.A. or equivalent degree in

biology, engineering, environmental studies, fisheries, geomorphology or related field, and two years of related work experience.

- A qualified professional for wetlands must be a professional wetland scientist with at least two years of full-time work experience as a wetlands professional, including delineating wetlands using the federal manuals, preparing wetlands reports, conducting function assessments, and developing and implementing mitigation plans.
- A qualified professional for habitats must have a degree in biology and professional experience related to the subject species.
- A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.
- A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

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

A. Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and

B. Actions performed to reestablish structural and functional characteristics or the critical area that have been lost by alteration, past management activities, or catastrophic events.

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

Seismic hazard areas: Areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, debris flows, lahars, or tsunamis.

Special flood hazard areas: The land in the flood plain within an area subject to a one percent (1%) or greater chance of flooding in any given year. Designations of special flood hazard areas on flood insurance map(s) always include the letters A or V.

Special protection areas: Aquifer recharge areas defined by WAC 173-200-090 that require special consideration or increased protection because of unique characteristics, including, but not limited to:

A. Ground waters that support an ecological system requiring more stringent criteria than drinking water standards;

B. Ground water recharge areas and wellhead protection areas that are vulnerable to pollution because of hydrogeologic characteristics; and

C. Sole source aquifer status.

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

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

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

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

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

Water table: That surface in an unconfined aquifer at which the pressure is atmospheric. It is defined by the levels at which water stands in wells that penetrate the aquifer just far enough to hold standing water.

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

Wetland: "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 non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas created to mitigate conversion of wetlands.

Wetland category: "Wetland category" is one of four categories assigned to wetlands when using Ecology's *Washington State Wetland Rating System for Eastern Washington (revised) publication #04-06-15 (or as revised)*. The categories lump wetlands together which have similar sensitivity to disturbance, rarity, and functions. The three functions rated include water quality improvement, hydrologic support, and habitat.

Section 2. Section 18.12 of the Colfax Municipal Code relating to Critical Areas protection is repealed in its entirety and replaced by Section 17.14 establishing the Critical Areas Overlay District as follows:

Section 17.14 Critical Areas

Section 17.14.010 Purpose, Intent and Applicability. The purpose of this section is to designate, classify and protect the functions and values of critical areas in a manner consistent with State law while allowing for reasonable use of private property. By adopting this section, the City of Colfax acknowledges that critical areas provide a variety of important biological and physical functions that benefit the community and its residents or may pose a threat to human safety or property.

The Critical Areas within the City of Colfax consist of those areas of designated wetlands (as designated in Section 17.14.040.A) Aquifer recharge areas, critical wildlife habitat (as identified by the US Fish and Wildlife Service, the National Marine Fisheries Service, the Washington Department of Fish and Wildlife, the Department of Natural Resources and the Washington Conservation Commission), frequently flooded areas (within Zone A as shown on the National Flood Insurance Program maps) or geologically hazardous areas (as identified by the US Geological Survey and the Department of Natural Resources). Any development proposed on a parcel of land within the Critical Areas shall be subject to project review as required in this section unless specifically exempted.

Section 17.14.020 Permitted, Conditional and Prohibited Uses. Uses allowed by right or by conditional use permit or uses altogether prohibited within the Critical Areas shall be the same as those listed in the underlying zoning district.

Section 17.14.030 Project Review Required.

- A. Land use or building permits for clearing or development activities within the Critical Areas shall be subject to review under provisions of this ordinance unless specifically exempted in Subsection C below.
- B. For those projects determined by the Building Inspector or designee likely to have an impact to the critical areas, the applicant shall submit a technical study identifying the precise limits of the critical area and its function and resource value as part of the application. The study shall be prepared by experts with demonstrated qualifications in the area of concern and shall apply best available science as part of its analysis.
- C. The following activities shall be allowed in critical areas without a Critical Areas Permit provided they are conducted using best management practices and at a time and in a manner designed to minimize adverse impacts to the critical area:
 1. Conservation or preservation of soil, water, vegetation, fish, shell fish and other wildlife;
 2. Outdoor recreational activities which do not involve disturbance of the resource or site area, including fishing, hunting, bird watching, hiking, horseback riding and bicycling;
 3. Harvesting wild crops in a manner that is not injurious to the natural reproduction of such crops and provided the harvesting does not require tiling of soil, planting of crops or alteration of the resource by changing existing topography, vegetation, water conditions or water sources;
 4. Education, scientific research and use of nature trails;
 5. Existing and ongoing agriculture activities, including farming, horticulture, aquaculture, irrigation, ranching or grazing of animals.
 6. Normal and routine maintenance of legally constructed irrigation and drainage ditches;

7. Normal and routine maintenance, repair or operation of existing serviceable structures, facilities or improved areas, not including expansion, change in character or scope or construction of a maintenance road;
 8. Minor modification (such as construction of a patio, balcony or second story) of existing serviceable structures where the modification does not adversely impact the functions of the critical area.
- D. The City requires applicants to demonstrate that development on a site determined to have critical areas will protect the resource by taking one of the following steps (listed in order of preference):
1. Avoid impacts to the resource altogether.
 2. Minimize the impact by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
 3. Rectify the impact by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project.
 4. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action.
 5. Compensate for the impact by replacing, enhancing or providing substitute resources or environments.
 6. Monitoring the impact and taking appropriate corrective measures.
- E. If a critical resource on the property that is being developed in the City crosses a jurisdictional boundary, the City of Colfax shall coordinate with Whitman County in the review of the project. In the event of differences in the regulations, the more restrictive shall take precedence.

Section 17.14.035 Record of Notice

- A. **Signing.** The outer perimeter of identified critical areas shall be clearly marked throughout construction to ensure that no unauthorized intrusion will occur prior to the commencement of permitted activities. The administrative official may require permanent signs with specific and appropriate wording be installed along the boundary of a critical area as a condition of any permit or approval.

Section 17.14.037 Performance bonds. When a performance bond or other surety instrument is attached as a condition of approval to a development permit, or any mitigation associated with a development permit, the applicant shall be required to post a monetary amount determined to be acceptable by the City in addition to the following requirements:

- A. The amount shall be 125% of the estimated cost of uncompleted actions or the estimated cost of restoring the functions and values of the critical area that is at risk, whichever is greater.

- B. Depletion or collection of bond funds shall not discharge the applicant's or violator's obligation to complete any required mitigation, maintenance, monitoring, or restoration.
- C. Public development proposals shall be exempt from this Section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.
- D. Failure to satisfy any provisions attached to a development permit under the terms of this ordinance shall constitute a default and authorize the City to demand payment of any financial guarantees.

Any funds recovered pursuant to this Section shall be used to complete the required mitigation or other required actions.

Section 17.14.040 Wetlands

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

- A. Identification of wetlands and delineation of their boundaries pursuant to this Chapter shall be determined by a qualified professional in accordance with the most current approved federal wetland delineation manual and applicable regional supplements. All areas within the City meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this Chapter.
- B. Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the *Washington State Wetland Rating System for Eastern Washington* (Ecology Publication 304-06-015, or as revised and approved by Ecology), which contains the definitions and methods for determining whether the criteria below are met.

Wetland Category	Description
Category I Wetland	<p>1) alkali wetlands; 2) wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as high quality wetlands; 3) bogs; 4) mature and old-growth forested wetlands over ¼ acre with slow-growing trees; 5) forests with stands of aspen; and 6) wetlands that perform many functions very well (scores of 70 points or more).</p> <p>These wetlands are those 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 high level of function.</p>
Category II Wetland	<p>1) forested wetlands in the floodplains of rivers; 2) mature and old-growth forested wetlands over ¼ acre with fast-growing trees; 3) vernal pools; and 4) wetlands that perform functions well (scores between 51-69 points).</p> <p>These wetlands are difficult, though not impossible, to replace, and provide high levels of some functions.</p>
Category III Wetland	<p>Category III wetlands are 1) vernal pools that are isolated, and 2) wetlands with a moderate level of functions (scores between 30-50 points).</p>
Category IV Wetland	<p>Category IV wetlands have the lowest level of functions (scores less than 30 points) and are often heavily disturbed. These are wetlands that we should be able to replace, and in some cases be able to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions and also need to be protected.</p>

- C. Development near wetlands shall observe the following setbacks from the edge of the wetland. No development or activity shall occur within the required setbacks unless the applicant can demonstrate that the proposed use or activity will not degrade the functions and values of the wetland and other critical areas according to the evaluation criteria from Subsection E below. In no case shall any buffer be reduced to less than 75% of the required width.

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

- D. Buffer Zones may be increased if the City Council finds, on a case-by-case basis and based upon best available science, at least one of the following applies:

- a. A larger buffer is necessary to maintain viable populations of existing species, or
- b. The wetlands are used by species proposed or listed by the federal government or the State as endangered, threatened, rare, sensitive or being monitored as habitat for those species or has unusual nesting or resting sites, or
- c. The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts, or
- d. The adjacent land has minimal vegetative cover or slopes greater than 25%.

- E. Buffer averaging to *allow reasonable use* of a parcel may be permitted when **all** of the following 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 and values 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.
- e. The buffer at its narrowest point is never less than either half of the required width for each respective wetland category.

- F. Wetland buffer areas may be used for conservation and restoration activities, passive recreation (including trails, wildlife viewing structures and fishing access areas) and storm water management facilities.

- a. Walkways and trails should be 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 no more than five (5) feet in width for pedestrian use only. Raised boardwalks using non-treated pilings may be acceptable.

- b. Stormwater management facilities are limited to stormwater dispersion outfalls and bioswales. They may be not allowed within the inner twenty-five percent (25%) of the buffer of Category III or IV wetlands only and are allowed only within the outer seventy-five percent (75%) provided that:
 - 1. No other location is feasible; and
 - 2. The location of such facilities will not degrade the functions or values of the wetland; and
 - 3. Stormwater management facilities are not allowed in buffers of Category I or II wetlands.

G. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with *Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans--Version 1*, (Ecology Publication #06-06-01 1b, Olympia, WA, March 2006 or as revised, and *Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)* (Publication #09-06-32, December 2009).

H. Mitigation ratios shall be consistent with Subsection I of this Chapter.

I. Wetland Mitigation Ratios. Preferences for mitigation types and location should be consistent with *Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans--Version 1*, (Ecology Publication #06-06-01 1b, Olympia, WA, March 2006 or as revised).

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

Category II:	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

- J. Monitoring. Mitigation monitoring shall be required for a period necessary to establish that performance standards have been met, but not for a period less than five years. If a scrub-shrub or forested vegetation community is proposed, monitoring may be required for ten years or more. The project mitigation plan shall include monitoring elements that ensure certainty of success for the project's natural resource values and functions. If the mitigation goals are not obtained within the initial five-year period, the applicant remains responsible for restoration of the natural resource values and functions until the mitigation goals agreed to in the mitigation plan are achieved.

Section 17.14.050 Aquifer Protection Areas

Critical aquifer recharge areas are those areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2). Critical aquifer recharge areas have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water. These areas include the following:

- a) Wellhead protection areas: Wellhead protection areas may be defined by the boundaries of the ten-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.
- b) Sole source aquifers: Sole source aquifers are areas designated by the U.S. Environmental Protection Agency pursuant to the Federal Safe Water Drinking Act.
- c) Susceptible ground water management areas: Susceptible ground water management areas are areas that have been designated as moderately, or highly vulnerable or susceptible in an adopted ground water management program developed pursuant to Chapters 173-100 WAC.
- d) Special protection areas: Defined pursuant to WAC 173-200-090.
- e) Moderately, highly vulnerable or highly susceptible aquifer recharge areas: Aquifer recharge areas that are moderately, highly vulnerable or highly susceptible to degradation or depletion due to hydrogeologic characteristics are those areas delineated by a hydrogeologic study prepared in accordance with the state Department of Ecology guidelines or meeting the criteria established by the Department of Ecology

- A. In areas designated as high susceptibility for aquifer contamination, all uses shall be connected to the City's sewer system. No new uses on a septic system are permitted in high susceptibility areas of critical aquifer recharge.

- B. For uses locating with the critical aquifer recharge area and requiring site plan review, a disclosure form indicating activities and hazardous materials that will be used shall be provided for review and approval.
- C. Impervious surfaces shall be minimized within the critical aquifer recharge areas.
- D. Best management practices as defined by State and federal regulations shall be followed by commercial and industrial uses located in the critical aquifer recharge areas to ensure that potential contaminants do not reach the aquifer.
- E. A spill prevention and emergency response plan shall be prepared and submitted for review and approval by the City.
- F. The following shall be prohibited uses within a critical aquifer recharge areas:
 - a) Landfills, including hazardous waste, municipal solid waste, special waste, woodwaste, inert waste, and demolition waste.
 - b) Underground injection wells of classes I, III, and IV and subclasses 5FO1, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells.
 - c) Mining of metals and hard rock. Sand and gravel mining shall also be prohibited from critical aquifer recharge areas rated as highly susceptible or vulnerable.
 - d) Wood treatment facilities that allow any portion of the treatment process to occur over natural or manmade permeable surfaces.
 - e) Facilities that store, process, or dispose of radioactive substances.
 - f) Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source.
 - g) Activities that would significantly reduce the recharge to aquifers that are a source of significant baseflow to a regulated stream.
 - h) Activities that are not connected to an available sanitary sewer system in areas associated with sole source aquifers.

Section 17.14.060 Critical Wildlife Habitat

All areas within Colfax meeting one or more of the following criteria, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this ordinance. Fish and wildlife habitat conservation areas shall include:

- a) Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association.
- b) State priority habitats and areas associated with State priority species.
- c) Habitats and species of local importance.
- d) Naturally occurring ponds under 20 acres.
- e) Waters of the State. Including lakes, rivers, ponds, streams, inland waters, and all other surface waters and watercourses within the State of Washington as classified in WAC 222-16-031.
- f) Lakes, ponds, rivers, and streams planted with game fish by a government or tribal entity.
- g) State natural area preserves and natural resource conservation areas. Land essential for preserving connections between habitat blocks and open spaces.

- A. The applicant for development proposed in the Critical Areas Overlay Zone that may impact habitat conservation areas shall provide a habitat management plan, prepared by a qualified expert in the species in question, for evaluation by local, State and federal agencies.
- B. The habitat management plan shall be based on best available science and best management practices and shall be designed to achieve specific habitat objectives and shall include, at a minimum:
 - 1. A detailed description of vegetation on and adjacent to the project area;
 - 2. Identification of any species of local importance, priority species, or endangered, threatened, sensitive or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;
 - 3. A discussion of any federal, State or local special management recommendations, including Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;
 - 4. A detailed discussion of the potential impact on habitat by the project, including potential impact to water quality;
 - 5. A discussion of measures, including avoidance, minimization and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity; and
 - 6. A discussion of continuing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.
- C. A habitat conservation area may be altered only if the proposed alteration of the habitat or the mitigation proposed does not degrade the functions and values of the habitat.
- D. No plant, wildlife or fish species not indigenous to the region shall be introduced into a habitat conservation area unless authorized by a State or federal permit or approval.
- E. The habitat management plan shall address the project area of the proposed activity, all habitat conservation areas and recommended buffers within 300 feet of the project area and all other critical areas within 300 feet of the project area.
- F. Specific habitats: In addition to general performance standards required herein, the following standards shall be required for specific habitat conservation areas:
 - a) Endangered, threatened, and sensitive species
 - b) No development shall be allowed within a habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association.
 - c) Approval for alteration of land adjacent to a habitat conservation area or its buffer where endangered, threatened, and sensitive species have

a primary association shall not occur prior to consultation with the state Department of Fish and Wildlife and the appropriate federal agency.

- d) Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules, WAC 232-12-292 and any activity proposed within 800 feet, or within 2,640 feet and in a shoreline foraging area, of a verified nest territory or communal roost shall include a habitat management plan developed by a qualified professional. The habitat management plan shall be approved by the state Department of Fish and Wildlife prior to any final permit approvals.

G. Anadromous fish: All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall, at a minimum, adhere to the following standards:

- a) Activities shall be timed to occur only during the allowable work window as designated by the state Department of Fish and Wildlife for the applicable species.
- b) Alternative alignments or location for the activity is determined to be non-feasible
- c) The activity is designed so that it does not degrade the functions and values of the fish habitat or other critical areas. Any impacts to the functions and values of the habitat conservation area shall be mitigated in accordance with an approved critical areas report mitigation plan.

Section 17.14.070 Frequently Flooded Areas

Frequently flooded areas shall include the following:

A. Areas of special flood hazard: Areas identified by the Federal Insurance Administration Flood Insurance Study for the City of Colfax and accompanying maps, including Federal Emergency Management Agency Flood Insurance Rate Maps.

B. Areas identified by the administrative official: Areas of special flood hazard identified by the administrative official based on review of base flood elevation and floodway data available from federal, state, local agency, or other valid sources when base flood elevation data has not been provided by the Federal Insurance Administration.

Applicants for development within frequently flooded areas shall comply with provisions of the City's flood damage prevention ordinance.

Section 17.14.080 Geologically Hazardous Areas – according to the best information available, the City of Colfax is not aware of any seismic or mine hazard areas within the City boundaries, however, this does not preclude landowners from investigation and due diligence in these regards.

- A. A minimum 25-foot buffer shall be established from the top, toe or sides of an identified geological hazard, including landslide hazard areas, seismic hazard areas,

mine hazard areas, landfills or steep slope areas (40% or greater), except as specified below. The buffer may be increased if necessary to protect public health, safety and welfare, based on information contained in a geotechnical report prepared by a qualified geotechnical engineer.

B. Buffer zones may be decreased in size provided the geotechnical report substantiates the following findings:

1. The proposed development will not create a hazard to the subject property, surrounding properties or rights of way, erosion or sedimentation to off-site properties or bodies of water.
2. The proposal uses construction techniques that minimize destruction of existing topography and natural vegetation.
3. The proposal mitigates all impacts identified in the geotechnical report.

C. The following activities are allowed in seismic and mine hazard areas:

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

Section 17.14.090 Emergency permit The administrative official may issue a temporary emergency critical areas permit provided the following:

1. An imminent threat to public health, safety or the environment will occur if an emergency permit is not granted and the threat or loss may occur before a wetlands permit or fish and wildlife habitat conservation area review can be issued or conditioned under the procedures otherwise required by this ordinance.
2. Any emergency permit granted shall incorporate to the greatest reasonable extent the standards and criteria required for non-emergency activities.
3. The permit shall be limited in duration to the time required to complete the authorized emergency activity and not exceed ninety days without re-application.
4. Once the immediate threat has been addressed, any adverse impacts on critical areas should be minimized and mitigated.

The restoration of any wetland, fish and wildlife habitat conservation area or geologically hazardous area altered as a result of the emergency activity shall be done within 90 days following the emergency repair, or during the growing season following the emergency action.

Section 17.14.100 Reasonable Use means the minimum use to which a property owner is entitled under applicable state and federal constitutional provisions, including takings and

substantive due process. Reasonable use shall be liberally construed to protect the constitutional property rights of the applicant. A reasonable use exemption may only be secured by using the City's conditional use permit process.

A reasonable use exemption may be secured only if:

1. The strict application of the CAO would deny reasonable use of the property.
2. There is no other reasonable use that would result in less impact on the critical area.
3. Any alterations permitted to the critical area shall be the minimum necessary to allow for reasonable use of the property.
4. The inability to derive reasonable economic use is not the result of the applicant's actions or that of a previous property owner, such as by segregating or dividing the property and creating an undevelopable condition.
5. Any alteration of a critical area approved under this section shall be subject to appropriate conditions and will require mitigation under an approved mitigation plan.

Section 17.14.110 Private Property Rights Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and capricious actions. The City shall evaluate proposed regulatory or administrative actions to assure that such actions do not result in an unconstitutional taking of private property.

Section 17.14.120 Relief

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

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

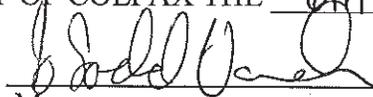
Section 17.14.130 Violation, penalties and enforcement

A. The City shall have the authority to issue a stop work order ceasing any unauthorized critical area alterations in violation of this ordinance and order restoration, rehabilitation, or replacement measures at the responsible party's expense to compensate for all violations. All development work shall remain stopped until a restoration plan is prepared and approved by the City. Such a plan shall be prepared by a qualified professional and shall describe how the proposed actions meet the minimum requirements of this ordinance. The administrative official shall, at the violator's expense, seek expert advice in determining the adequacy of the plan. Plans determined to be inadequate shall be returned to the applicant or violator for revision and re-submission.

B. The administrative official shall have the authority to enforce the provisions of this ordinance

Section 3 This ordinance shall be in full force and effect five days from and after its passage and publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF COLFAX THE 6th
DAY OF May, 2013.



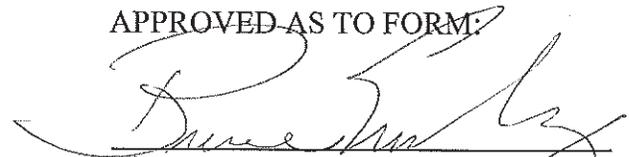
Mayor

ATTEST:

Connie Ellis

City Clerk

APPROVED AS TO FORM:



City Attorney