

**FIRCREST CITY COUNCIL
REGULAR MEETING AGENDA**

**TUESDAY, SEPTEMBER 08, 2026
7:00 P.M.**

**COUNCIL CHAMBERS
FIRCREST CITY HALL, 115 RAMSDELL STREET**

	Pg. #
1. CALL TO ORDER	
2. PLEDGE OF ALLEGIANCE	
3. ROLL CALL	
4. PRESIDING OFFICER'S REPORT	
A. Proclamation: Patriot Day	2
5. CITY MANAGER COMMENTS	
6. DEPARTMENT HEAD COMMENTS	
7. COUNCILMEMBER COMMENTS	
8. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA (If you would like to make a public comment, you may speak at the appropriate time using the raise your hand feature or by pressing *9 on your phone.)	
9. COMMITTEE, COMMISSION & LIAISON REPORTS	
A. Administration	
B. Built Environment, Planning, and Building	
C. Finance and Information Technology	
D. Pierce Transit	
E. South Sound Housing Affordability Partners	
F. Other Reports	
10. CONSENT CALENDAR	
A. Approval of vouchers /payroll checks	3
B. Approval of Minutes: August 17, 2026, Special Meeting	20
11. PUBLIC HEARING	
A. To receive comments on the Critical Areas Ordinance Update	22
12. UNFINISHED BUSINESS	
13. NEW BUSINESS	
14. CALL FOR FINAL COMMENTS	
15. EXECUTIVE SESSION	
A. To Review the Performance of a Public Employee, pursuant to RCW 42.30.110(1)(g)	
16. ADJOURNMENT	

Join the Zoom Meeting: *Dial-in Information: 1-253-215-8782 Webinar ID: 893 2632 0657 Password: 848037*



PROCLAMATION OF THE CITY COUNCIL

WHEREAS, on September 11, 2001, our nation endured one of the darkest days in its history when terrorist attacks took the lives of nearly 3,000 innocent people in New York City, at the Pentagon, and near Shanksville, Pennsylvania; and

WHEREAS, the year 2026 marks the 25th anniversary of September 11th, a solemn milestone that calls upon us to remember those whose lives were lost, honor those whose lives were forever changed, and reflect upon the enduring impact of that tragic day; and

WHEREAS, amid unimaginable loss, firefighters, law enforcement officers, emergency personnel, military members, and ordinary citizens demonstrated extraordinary courage and selflessness, risking and sacrificing their lives to save and protect others; and

WHEREAS, in the days and months that followed, Americans from all walks of life came together in a remarkable spirit of patriotism, compassion, generosity, and unity, reaffirming the values of service, strength, and community upon which our nation was built; and

WHEREAS, Congress has designated September 11th as **Patriot Day and a National Day of Service and Remembrance**, calling upon Americans to honor the victims and heroes of that day through reflection, volunteerism, and community service; and

WHEREAS, through acts of kindness and service, we remember the innocent victims, honor the heroes who responded with courage and sacrifice, support the families and loved ones who continue to carry the memory of those they lost, and carry forward the spirit of unity, compassion, and resilience that brought our nation together in the aftermath of September 11th.

NOW, THEREFORE, WE, MAYOR AND COUNCILMEMBERS of the City of Fircrest, do hereby proclaim September 11, 2026, as

PATRIOT DAY AND NATIONAL DAY OF SERVICE AND REMEMBRANCE

in the City of Fircrest and urge all residents to observe a moment of silence in memory of the innocent victims of September 11, 2001, reflect upon the courage and sacrifice of those who responded and served, and commemorate this 25th anniversary through acts of service and compassion, and a renewed commitment to the spirit of unity that brought our nation together.

Proclaimed this 8th day of September 2026.

Nikki Bufford, Mayor

ACCOUNTS PAYABLE

City Of Fircrest

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Accts Pay #	Received	Date Due	Vendor	Amount	Memo
38753	08/28/2026	09/08/2026	3647 Agrishop, Inc	145.55	Park Supplies - Trimmer Head, String & Oil
	576 80 31 02 Oper Supplies - Parks		001 000 576 General Fund	145.55	Park Supplies - Trimmer Head, String & Oil
38700	08/24/2026	09/08/2026	10562 Amazon Capital Services	18.47	Wireless Mouse
	514 23 31 00 Office & Oper Sup - Finance		001 000 514 General Fund	18.47	Wireless Mouse
38726	08/27/2026	09/08/2026	10562 Amazon Capital Services	93.63	Latex Gloves
	521 22 31 00 Office & Oper Sup - Police		001 000 521 General Fund	93.63	Latex Gloves
38757	08/28/2026	09/08/2026	10562 Amazon Capital Services	36.31	Silent Wireless Keyboard Mouse Combo
	518 81 35 00 Small Tools & Equip - I/S		001 000 518 General Fund	36.31	Silent Wireless Keyboard Mouse Combo
38763	09/01/2026	09/08/2026	10562 Amazon Capital Services	334.21	Firewall Appliance Rack Mount, Display Port Cable, USB VGA KVM Switch 4 Port, Compressed Air Duster, Cat 6 Ethernet Cable; Rechargeable Cordless Screwdriver, USB VGA KVM Cable
	518 81 35 00 Small Tools & Equip - I/S		001 000 518 General Fund	334.21	Firewall Appliance Rack Mount, Display Port Cable, USB VGA KVM Switch 4 Port, Compressed Air Duster, Cat 6 Ethernet Cable; Rechargeable Cordless Screwdriver, USB VGA KVM Cable
38764	09/01/2026	09/08/2026	10562 Amazon Capital Services	108.93	Logitech Silent Wireless Keyboard (Qty 3)
	514 23 35 00 Small Tools & Equip - Finance		001 000 514 General Fund	108.93	Logitech Silent Wireless Keyboard (Qty 3)
38765	09/01/2026	09/08/2026	10562 Amazon Capital Services	14.88	USB VGA KVM Cable for USB SVM Switch VGA
	518 81 35 00 Small Tools & Equip - I/S		001 000 518 General Fund	14.88	USB VGA KVM Cable for USB SVM Switch VGA
38766	09/01/2026	09/08/2026	10562 Amazon Capital Services	36.31	Logitech Silent Wireless Keyboard
	518 10 35 00 Small Tools & Equip - Non E		001 000 518 General Fund	36.31	Logitech Silent Wireless Keyboard
38784	09/01/2026	09/08/2026	10562 Amazon Capital Services	30.84	Two-Point Quick Adjust Sling
	521 22 35 00 Small Tools & Equip - Police		001 000 521 General Fund	30.84	Two-Point Quick Adjust Sling
38813	09/01/2026	09/08/2026	10562 Amazon Capital Services	460.74	Tennis Court Nets (Qty 2)
	576 80 35 00 Small Tools & Equip - Parks		001 000 576 General Fund	460.74	Tennis Court Nets (Qty 2)
Total Amazon Capital Services				1,134.32	

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38687	08/21/2026	09/08/2026	11013	Aramsco, Inc.	3,578.01 Yellow Paint (40 Gal), White Paint (40 Gal), Paint Thinner (5 Gal), & Pail w/Cover for Street Markings
	542 30 31 02 Oper Supplies - Street Reg		101 000 542 City Street Fund	3,578.01	Yellow Paint (40 Gal), White Paint (40 Gal), Paint Thinner (5 Gal), & Pail w/Cover for Street Markings
38759	08/28/2026	09/08/2026	11013	Aramsco, Inc.	323.41 Valve/Seal for Paint Machine (ERR# 634)
	548 65 48 12 O & M - Street		501 000 548 Equipment Rent	323.41	Valve/Seal for Paint Machine (ERR# 634)
			Total Aramsco, Inc.	3,901.42	
38812	09/01/2026	09/08/2026	4280	Builders' Hardware & Supply Co.	320.55 Whittier Door Lock Replacement
	576 80 31 02 Oper Supplies - Parks		001 000 576 General Fund	320.55	Whittier Door Lock Replacement
38749	08/28/2026	09/08/2026	3572	CED	98.39 Parts for Light Repair - City Hall
	518 30 31 04 Oper Supplies - CH		001 000 518 General Fund	98.39	Parts for Light Repair - City Hall
38723	08/27/2026	09/08/2026	6018	Canon Financial Services Inc	194.71 Police Copier/Fax Rental & Tax - August 2026
	521 22 45 00 Oper Rentals - Copier - Polic		001 000 521 General Fund	18.02	Police Copier/Fax Tax - August 2026
	591 21 70 22 Lease Payments - Police		001 000 591 General Fund	176.69	Police Copier/Fax Rental - August 2026
38780	09/01/2026	09/08/2026	5774	Cheng, Shelae	78.00 Library Reimbursement - 1 Year (Shelae)
	572 21 49 00 Library Services		001 000 572 General Fund	78.00	Library Reimbursement - 1 Year (Shelae)
38706	08/26/2026	09/08/2026	11058	City of Tacoma Washington	2,772.00 Q3 2026 Public Safety Radio System User Fee (22 devices)
	521 22 41 01 Radio Infrastructure Fees		001 000 521 General Fund	2,772.00	Q3 2026 Public Safety Radio System User Fee (22 devices)
38776	09/01/2026	09/08/2026	11163	Clay, Rachel	873.89 #10 Window Envelopes (2,500), #10 Regular Envelopes (2,500), 1,250 Court Forms
	512 51 31 00 Office & Oper Sup - Court		001 000 512 General Fund	873.89	#10 Window Envelopes (2,500), #10 Regular Envelopes (2,500), 1,250 Court Forms
38824	09/02/2026	09/08/2026	5972	Colyer, Marjorie	78.00 Library Reimbursement - 1 Year
	572 21 49 00 Library Services		001 000 572 General Fund	78.00	Library Reimbursement - 1 Year
38816	09/02/2026	09/08/2026	8188	Comcast Business Communications LLC	470.71 Internet Access Fee - September 2026

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518 81 42 00	Communication/Internet - I/	001 000 518	General Fund	470.71	Internet Access Fee - September 2026
38688	08/21/2026	09/08/2026	3573 Copiers Northwest Inc	54.50	Copier Usage 03/30/26-04/30/26
521 22 45 00	Oper Rentals - Copier - Polic	001 000 521	General Fund	54.50	Copier Usage 03/30/26-04/30/26
38815	09/02/2026	09/08/2026	3573 Copiers Northwest Inc	9.03	Copier Usage 08/01/26-08/31/26
521 22 45 00	Oper Rentals - Copier - Polic	001 000 521	General Fund	9.03	Copier Usage 08/01/26-08/31/26
Total Copiers Northwest Inc				63.53	
38689	08/21/2026	09/08/2026	7802 Core & Main LP	541.04	Traffic Rated Meter Boxes and Lids (Qty 2) for 1202 Eldorado Driveway
534 50 31 01	Oper Supplies - Water Main	425 000 534	Water Fund (dep	541.04	Traffic Rated Meter Boxes and Lids (Qty 2) for 1202 Eldorado Driveway
38794	09/01/2026	09/08/2026	10913 David Evans and Associates, Inc.	4,069.10	P#74 Regents West Grind & Overlay Construction Management - Professional Services 06/02/26-06/13/26
595 10 63 11	Regents Grind & Overlay #7	101 000 594	City Street Fund	4,069.10	P#74 Regents West Grind & Overlay Construction Management - Professional Services 06/02/26-06/13/26
38795	09/01/2026	09/08/2026	10913 David Evans and Associates, Inc.	29,349.86	P#74 Regents West Grind & Overlay Construction Management - Professional Services 06/14/26-07/18/26
595 10 63 11	Regents Grind & Overlay #7	101 000 594	City Street Fund	29,349.86	P#74 Regents West Grind & Overlay Construction Management - Professional Services 06/14/26-07/18/26
38796	09/01/2026	09/08/2026	10913 David Evans and Associates, Inc.	22,706.44	P#74 Regents West Grind & Overlay Construction Management - Professional Services 07/19/26-08/15/26
595 10 63 11	Regents Grind & Overlay #7	101 000 594	City Street Fund	22,706.44	P#74 Regents West Grind & Overlay Construction Management - Professional Services 07/19/26-08/15/26
Total David Evans and Associates, Inc.				56,125.40	
38773	09/01/2026	09/08/2026	5952 Dinwiddie II, Thomas	78.00	Library Reimbursement - 1 year (Heather)

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572 21 49 00	Library Services		001 000 572 General Fund	78.00	Library Reimbursement - 1 year (Heather)
38748	08/28/2026	09/08/2026	8532 Dog Waste Depot	369.98	Dog Waste Bags (2 Cases)
576 80 31 02	Oper Supplies - Parks		001 000 576 General Fund	369.98	Dog Waste Bags (2 Cases)
38842	09/03/2026	09/08/2026	10263 Dunbar, Julieanna R	38.50	Gym Fees Reimbursement - Jul-Aug 2026
514 23 20 00	Personnel Benefits - Finance		001 000 514 General Fund	38.50	Gym Fees Reimbursement - Jul-Aug 2026
38750	08/28/2026	09/08/2026	4858 Ewing Irrigation Products Inc	25.51	Sprinkler Repair - Whittier Park
576 80 31 02	Oper Supplies - Parks		001 000 576 General Fund	25.51	Sprinkler Repair - Whittier Park
38699	08/24/2026	09/08/2026	7211 Faric, Ruslan	3,912.50	Refund Invoice 8492 Permit 2026.0008.VP0001-Site: 1205 Contra Costa Ave
345 81 00 01	Planning Permits		001 000 340 General Fund	-3,250.00	Refund Invoice 8492 Permit 2026.0008.VP0001-Site: 1205 Contra Costa Ave
345 83 00 01	Plan Check Fees - Consultan		001 000 340 General Fund	-175.00	Refund Invoice 8492 Permit 2026.0008.VP0001-Site: 1205 Contra Costa Ave
345 89 00 00	Planning Administrative Fee:		001 000 340 General Fund	-487.50	Refund Invoice 8492 Permit 2026.0008.VP0001-Site: 1205 Contra Costa Ave
38730	08/27/2026	09/08/2026	3638 Fircrest Golf Club	1,429.24	Land Rental for Water Tank on Golf Course Property - September 2026
591 34 70 00	Lease Payments - Water Adr		425 000 591 Water Fund (dep	1,429.24	Land Rental for Water Tank on Golf Course Property - September 2026
38727	08/27/2026	09/08/2026	10618 First Responder Outfitters, Inc.	165.43	Uniform Alterations - P Sood
521 22 49 01	Uniforms/Clothing/Laundry		001 000 521 General Fund	165.43	Uniform Alterations - P Sood
38785	09/01/2026	09/08/2026	10618 First Responder Outfitters, Inc.	132.36	Uniform Alterations - M Bounds
521 22 49 01	Uniforms/Clothing/Laundry		001 000 521 General Fund	132.36	Uniform Alterations - M Bounds
38786	09/01/2026	09/08/2026	10618 First Responder Outfitters, Inc.	239.83	Uniform Alterations - M Bounds
521 22 49 01	Uniforms/Clothing/Laundry		001 000 521 General Fund	239.83	Uniform Alterations - M Bounds
38787	09/01/2026	09/08/2026	10618 First Responder Outfitters, Inc.	308.84	Uniform Alterations - M Bounds
521 22 49 01	Uniforms/Clothing/Laundry		001 000 521 General Fund	308.84	Uniform Alterations - M Bounds
Total First Responder Outfitters, Inc.				846.46	

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38790	09/01/2026	09/08/2026	6774	Greenleaf Landscaping 1 Inc	8,131.71 Monthly Landscape Service - August 2026
	518 30 41 01 Contract Maintenance		001 000 518 General Fund	3,659.27	Monthly Landscape Service - August 2026
	542 80 48 00 Street Tree Maintenance (co		101 000 542 City Street Fund	1,463.70	Monthly Landscape Service - August 2026
	542 80 49 03 Beautification Services (cont		101 000 542 City Street Fund	3,008.74	Monthly Landscape Service - August 2026
38834	09/03/2026	09/08/2026	10305	Gunderson Law Office PLLC	12,500.00 City of Fircrest - August 2026
	515 41 41 03 City Prosecutor		001 000 515 General Fund	12,500.00	City of Fircrest - August 2026
38841	09/03/2026	09/08/2026	11180	Gunderson, Kimberly	8,953.30 Contracted Services 08/01/26-08/31/26
	524 20 41 04 Prof Svcs - Consultants		001 000 524 General Fund	1,281.65	Contracted Services 08/01/26-08/31/26
	558 60 41 00 Prof Svcs - Planning		001 000 558 General Fund	7,671.65	Contracted Services 08/01/26-08/31/26
38772	09/01/2026	09/08/2026	10499	Hemley's Septic Tank Cleaning, Inc.	960.00 Rental of Portable Toilets and Hand Wash Station for Movie in the Park
	573 90 49 01 Community Events		001 000 573 General Fund	960.00	Rental of Portable Toilets and Hand Wash Station for Movie in the Park
38778	09/01/2026	09/08/2026	11432	Henki, Drew	300.00 Judge Pro Tempore for Fircrest Court - August 2026
	512 51 41 02 Prof Svcs - Pro Tem Judges -		001 000 512 General Fund	300.00	Judge Pro Tempore for Fircrest Court - August 2026
38729	08/27/2026	09/08/2026	6229	Holt Services Inc	30,161.74 Well #4 - Pump Removal/Installation, 3 Phase Motor Replacement, Pipe & Check Valve Replacement
	594 34 63 01 Other Improvements - Wate		426 000 594 Water Improver	30,161.74	Well #4 - Pump Removal/Installation, 3 Phase Motor Replacement, Pipe & Check Valve Replacement
38694	08/21/2026	09/08/2026	3692	Home Depot Credit Services	151.39 Tracer Wire (500 ft) for Locates
	534 80 31 02 Oper Supplies - Water Gen C		425 000 534 Water Fund (dep	151.39	Tracer Wire (500 ft) for Locates
38709	08/26/2026	09/08/2026	3692	Home Depot Credit Services	13.27 #59094D (2008 Ford Utility Truck with Crane) - Supplies for Repair
	548 65 48 14 O & M - Water/Sewer		501 000 548 Equipment Rent	13.27	#59094D (2008 Ford Utility Truck with Crane) - Supplies for Repair
38755	08/28/2026	09/08/2026	3692	Home Depot Credit Services	15.18 Battery for Alarm at Rec Center
	518 30 31 01 Oper Supplies - Rec Bldg		001 000 518 General Fund	15.18	Battery for Alarm at Rec Center
38756	08/28/2026	09/08/2026	3692	Home Depot Credit Services	27.71 Bee Spray

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	571 10 31 01 Oper Supplies - Rec		001 000 571 General Fund	27.71	Bee Spray
38799	09/01/2026	09/08/2026	3692 Home Depot Credit Services	8.82	Shop Supplies
	518 30 31 00 Oper Supplies - Facilities		001 000 518 General Fund	8.82	Shop Supplies
			Total Home Depot Credit Services	216.37	
38788	09/01/2026	09/08/2026	4131 Humane Society - Tacoma	1,437.18	September 2026 Boarding Contract
	554 30 41 00 Animal Control		001 000 554 General Fund	1,437.18	September 2026 Boarding Contract
38789	09/01/2026	09/08/2026	3703 Inland Technology Inc	344.32	5 Gallon Drum for Cleaning Rifles
	521 22 35 00 Small Tools & Equip - Police		001 000 521 General Fund	344.32	5 Gallon Drum for Cleaning Rifles
38705	08/25/2026	09/08/2026	11153 Insight Public Sector, Inc.	181.83	Microsoft G3 License (Qty 1)
	518 81 49 01 Software Licenses		001 000 518 General Fund	181.83	Microsoft G3 License (Qty 1)
38725	08/27/2026	09/08/2026	1496 Jonker*, Maria C	78.00	Library Reimbursement - 1 Year (Maria)
	572 21 49 00 Library Services		001 000 572 General Fund	78.00	Library Reimbursement - 1 Year (Maria)
38735	08/28/2026	09/08/2026	11132 Kieszling, Emily	78.00	Library Reimbursement - 1 Year
	572 21 49 00 Library Services		001 000 572 General Fund	78.00	Library Reimbursement - 1 Year
38697	08/24/2026	09/08/2026	11459 Kim Edwards	285.69	07-00312.2 - 1442 COTTONWOOD AVE
	343 10 00 00 Storm Drain Revenues		415 000 340 Storm Drain	-66.67	
	343 40 00 00 Sale Of Water		425 000 340 Water Fund (de	-71.67	
	343 50 00 00 Sewer Revenues		430 000 340 Sewer Fund (de	-147.35	
38702	08/24/2026	09/08/2026	11294 Kullman, Martha M.	160.00	Spanish Interpreting (2 hrs) - 26CR117182 & 26IN117181
	512 51 41 03 Prof Svcs - Interpreter - FMC		001 000 512 General Fund	160.00	Spanish Interpreting (2 hrs) - 26CR117182 & 26IN117181
38703	08/24/2026	09/08/2026	11294 Kullman, Martha M.	160.00	Spanish Interpreting (2 hrs) - 26IN66070
	512 52 41 03 Prof Svcs - Interpreter - RMC		001 000 512 General Fund	160.00	Spanish Interpreting (2 hrs) - 26IN66070
			Total Kullman, Martha M.	320.00	
38781	09/01/2026	09/08/2026	10264 Larson, Shari	601.30	Water Aerobics Classes (8/01/26-8/31/26)

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	571 10 49 04	Instructor Fees	001 000 571 General Fund	601.30	Water Aerobics Classes (8/01/26-8/31/26)
38782	09/01/2026	09/08/2026	10264 Larson, Shari	1,707.30	Gentle Yoga & Chair Yoga Classes (8/01/26-8/31/26)
	571 10 49 04	Instructor Fees	001 000 571 General Fund	1,707.30	Gentle Yoga & Chair Yoga Classes (8/01/26-8/31/26)
			Total Larson, Shari	2,308.60	
38817	09/02/2026	09/08/2026	3776 Lemay Mobile Shredding	118.82	Shredding 8/2026 - CH & Court
	512 51 49 00	Miscellaneous - Court	001 000 512 General Fund	59.41	Shredding 8/2026 - Court
	514 23 49 00	Miscellaneous - Finance	001 000 514 General Fund	59.41	Shredding 8/2026 - CH
38818	09/02/2026	09/08/2026	3776 Lemay Mobile Shredding	52.81	Shredding 8/2026 - PW
	531 50 49 00	Miscellaneous - Storm	415 000 531 Storm Drain	17.60	Shredding 8/2026 - PW
	534 10 49 00	Miscellaneous - Water Admi	425 000 534 Water Fund (dep	17.60	Shredding 8/2026 - PW
	535 10 49 00	Miscellaneous - Sewer Admi	430 000 535 Sewer Fund (dep	17.61	Shredding 8/2026 - PW
			Total Lemay Mobile Shredding	171.63	
38814	09/02/2026	09/08/2026	10459 Locke Systems Inc.	4,959.00	IT Managed Services - September 2026 (for August Services)
	518 81 41 01	Prof Svcs - I/S	001 000 518 General Fund	4,959.00	IT Managed Services - September 2026 (for August Services)
38779	09/01/2026	09/08/2026	3791 Lowe's Company-#338954	87.35	PVC Cutter, (4) Reciprocating Saw Blades
	534 80 35 00	Small Tools & Equip - Water	425 000 534 Water Fund (dep	87.35	PVC Cutter, (4) Reciprocating Saw Blades
38707	08/26/2026	09/08/2026	7134 Matthew, Scott	78.00	Library Reimbursement - 1 Year (Megan)
	572 21 49 00	Library Services	001 000 572 General Fund	78.00	Library Reimbursement - 1 Year (Megan)
38822	09/02/2026	09/08/2026	9415 Miles Resources LLC	322,557.15	P#74 Regents Blvd. Grind & Overlay Project - Progress Payment #2
	595 32 63 11	Street Improvements - Rege	101 000 594 City Street Fund	322,557.15	P#74 Regents Blvd. Grind & Overlay Project - Progress Payment #2
38775	09/01/2026	09/08/2026	3878 National Barricade Co LLC	1,091.20	Second Billing for Barricade Rentals for the 2026 Community Events: Strawberry Festival, Fun Days, NNO, and Derby Days

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521 22 49 08	National Night Out		001 000 521 General Fund	218.24	Second Billing for Barricade Rentals for the 2026 Community Events: NNO
573 90 49 01	Community Events		001 000 573 General Fund	872.96	Second Billing for Barricade Rentals for the 2026 Community Events: Strawberry Festival, Fun Days, and Derby Days
38693	08/21/2026	09/08/2026	3882	78.00	Library Reimbursement - 1 Year
572 21 49 00	Library Services		001 000 572 General Fund	78.00	Library Reimbursement - 1 Year
38724	08/27/2026	09/08/2026	9896	78.00	Library Reimbursement - 1 Year (Margaret)
572 21 49 00	Library Services		001 000 572 General Fund	78.00	Library Reimbursement - 1 Year (Margaret)
38710	08/26/2026	09/08/2026	4889	1,083.25	June & July 2026 Hearing Examiner Services (10.8 Hrs)
558 60 41 00	Prof Svcs - Planning		001 000 558 General Fund	1,083.25	June & July 2026 Hearing Examiner Services (10.8 Hrs)
38798	09/01/2026	09/08/2026	3923	797.50	Chlorine for All Wells - Hypochlorite Solution Sodium Hypochlorite 8 (155 Gallons)
534 80 31 03	Oper Supplies - Chlorine		425 000 534 Water Fund (dep	797.50	Chlorine for All Wells - Hypochlorite Solution Sodium Hypochlorite 8 (155 Gallons)
38800	09/01/2026	09/08/2026	3923	3,211.54	Hypochlorite Solution Sodium Hypochlorite 8 (500 Gal), Muriatic-Hydrochloric Acid (45 Gal)
576 20 31 01	Oper Supplies - Pool Chemi		001 000 576 General Fund	3,211.54	Hypochlorite Solution Sodium Hypochlorite 8 (500 Gal), Muriatic-Hydrochloric Acid (45 Gal)
Total Orca Pacific Inc				4,009.04	
38819	09/02/2026	09/08/2026	8993	549.59	Copier Lease 08/01/26-09/01/26
512 51 45 00	Oper Rentals - Copier - Cour		001 000 512 General Fund	9.58	Court 08/01/26-09/01/26
518 10 45 00	Oper Rentals - Copier - Non		001 000 518 General Fund	18.66	City Hall 08/01/26-09/01/26
531 50 45 00	Oper Rentals - Copier - Stori		415 000 531 Storm Drain	2.93	Storm 08/01/26-09/01/26
534 10 45 02	Oper Rentals - Copier - Wat		425 000 534 Water Fund (dep	2.93	Water 08/01/26-09/01/26
535 10 45 00	Oper Rentals - Copier - Sew		430 000 535 Sewer Fund (dep	2.92	Sewer 08/01/26-09/01/26
542 30 45 00	Oper Rentals - Copier - Stree		101 000 542 City Street Fund	2.92	Street 08/01/26-09/01/26
571 10 45 01	Oper Rentals - Copier - Rec		001 000 571 General Fund	9.42	Rec 08/01/26-09/01/26
576 80 45 00	Oper Rentals - Copier - Park		001 000 576 General Fund	1.05	Parks 08/01/26-09/01/26
591 12 70 00	Lease Payments - Court		001 000 591 General Fund	94.84	Court 08/01/26-09/01/26
591 18 70 10	Lease Payments - Non-Dept		001 000 591 General Fund	184.78	City Hall 08/01/26-09/01/26

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591 31 70 00	Lease Payments - Storm	415 000	591 Storm Drain	28.99	Storm 08/01/26-09/01/26
591 34 70 00	Lease Payments - Water Adr	425 000	591 Water Fund (de	28.99	Water 08/01/26-09/01/26
591 35 70 00	Lease Payments - Sewer	430 000	591 Sewer Fund (de	28.99	Sewer 08/01/26-09/01/26
591 71 70 00	Lease Payments - Recreatior	001 000	591 General Fund	93.23	Rec 08/01/26-09/01/26
591 76 70 80	Lease Payments - Parks	001 000	591 General Fund	10.36	Parks 08/01/26-09/01/26
591 95 70 00	Lease Payments - Street	101 000	591 City Street Fund	29.00	Street 08/01/26-09/01/26
38809	09/01/2026	09/08/2026	4108	Pape Machinery Inc.	6.85 ERR#633 - Lock Nut (Qty 4) & Bolts (Qty 4) for John Deere Mower 1570
548 65 48 11	O & M - Parks/Rec	501 000	548 Equipment Rent	8.03	ERR#633 - Lock Nut (Qty 4) & Bolts (Qty 4) for John Deere Mower 1570
548 65 48 11	O & M - Parks/Rec	501 000	548 Equipment Rent	-1.18	Credit for Return of Nuts/Bolts
38810	09/01/2026	09/08/2026	4108	Pape Machinery Inc.	27.32 ERR#633 - Screws (Qty 4) & Pin (Qty 1) for John Deere Mower 1570
548 65 48 11	O & M - Parks/Rec	501 000	548 Equipment Rent	27.32	ERR#633 - Screws (Qty 4) & Pin (Qty 1) for John Deere Mower 1570
				Total Pape Machinery Inc.	34.17
38836	09/03/2026	09/08/2026	3115	Paulson, Michelle	1,413.57 Refund to Customer for Over-Payment
343 10 00 00	Storm Drain Revenues	415 000	340 Storm Drain	-305.31	Refund of Sewer
343 40 00 00	Sale Of Water	425 000	340 Water Fund (de	-370.20	Refund of Water
343 50 00 00	Sewer Revenues	430 000	340 Sewer Fund (de	-738.06	Reund of Sewer
38698	08/24/2026	09/08/2026	10642	Peavley, Rita	50.54 Refund Permit 2026.0044.DR0002 Site: 1203 Buena Vista Ave
345 81 00 01	Planning Permits	001 000	340 General Fund	-50.54	Refund Permit 2026.0044.DR0002 Site: 1203 Buena Vista Ave
38690	08/21/2026	09/08/2026	11519	Phenom Fitness Distribution LLC	5,420.11 Gym Equipment - Functional Trainer Half Rack, Foot Stability Stubs, Spotter Arms, Bar, Bench, Kettlebells, Bumper Plates, Dumbbells, Storage Rack, Flooring Mats
521 22 35 00	Small Tools & Equip - Police	001 000	521 General Fund	5,420.11	Gym Equipment - Functional Trainer Half Rack, Foot Stability Stubs, Spotter Arms, Bar, Bench, Kettlebells, Bumper Plates, Dumbbells, Storage Rack, Flooring Mats
38823	09/02/2026	09/08/2026	11449	Plavan Commercial Fueling, Inc.	5,420.86 Gas/Fuel - 08/2026

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	548 65 31 05 Gas - Non Dept		501 000 548 Equipment Rent	0.00	Non Dept 08/2026
	548 65 31 06 Gas - Facilities		501 000 548 Equipment Rent	164.78	F&E 08/2026
	548 65 31 08 Gas - Police		501 000 548 Equipment Rent	2,818.42	Police 08/2026
	548 65 31 11 Gas - Parks/Rec		501 000 548 Equipment Rent	500.81	Parks 08/2026
	548 65 31 12 Gas - Street		501 000 548 Equipment Rent	675.22	Street 08/2026
	548 65 31 13 Gas - Storm		501 000 548 Equipment Rent	141.00	Storm 08/2026
	548 65 31 14 Gas - Water/Sewer		501 000 548 Equipment Rent	1,120.63	W/S 08/2026
38712	08/26/2026	09/08/2026	3751 Psomas, DBA KPG Psomas	2,486.00	P#88 Alameda Avenue West Sidewalk Project - 01/30/26-02/26/26
	595 32 63 10 Street Improvements - Alam		101 000 594 City Street Fund	2,486.00	P#88 Alameda Avenue West Sidewalk Project - 01/30/26-02/26/26
38713	08/26/2026	09/08/2026	3751 Psomas, DBA KPG Psomas	4,549.75	P#88 Alameda Avenue West Sidewalk Project - 02/27/26-03/26/26
	595 32 63 10 Street Improvements - Alam		101 000 594 City Street Fund	4,549.75	P#88 Alameda Avenue West Sidewalk Project - 02/27/26-03/26/26
38714	08/26/2026	09/08/2026	3751 Psomas, DBA KPG Psomas	22,532.02	P#88 Alameda Avenue West Sidewalk Project - 03/27/26-04/23/26
	595 32 63 10 Street Improvements - Alam		101 000 594 City Street Fund	22,532.02	P#88 Alameda Avenue West Sidewalk Project - 03/27/26-04/23/26
38715	08/26/2026	09/08/2026	3751 Psomas, DBA KPG Psomas	451.00	P#88 Alameda Avenue West Sidewalk Project - 06/26/26-07/23/26
	595 32 63 10 Street Improvements - Alam		101 000 594 City Street Fund	451.00	P#88 Alameda Avenue West Sidewalk Project - 06/26/26-07/23/26
38731	08/27/2026	09/08/2026	3751 Psomas, DBA KPG Psomas	936.00	Task Order 2025-02 - 514 Ramsdell Short Plat and Wetland Review - Services from 11/21/25-12/31/25
	558 60 41 00 Prof Svcs - Planning		001 000 558 General Fund	936.00	Task Order 2025-02 - 514 Ramsdell Short Plat and Wetland Review - Services from 11/21/25-12/31/25
38732	08/27/2026	09/08/2026	3751 Psomas, DBA KPG Psomas	550.00	Task Order 2026-05 - 1211 Arondale Drive Short Plat - Services from 03/27/26-04/23/26
	558 60 41 00 Prof Svcs - Planning		001 000 558 General Fund	550.00	Task Order 2026-05 - 1211 Arondale Drive Short Plat - Services from 03/27/26-04/23/26

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38733	08/27/2026	09/08/2026	3751 Psomas, DBA KPG Psomas	1,046.50	Task Order 2026-01 - 1205 Contra Costa SFR Reasonable Use Exception Review - Services from 02/27/26-04/23/26
	558 60 41 00 Prof Svcs - Planning		001 000 558 General Fund	1,046.50	Task Order 2026-01 - 1205 Contra Costa SFR Reasonable Use Exception Review - Services from 02/27/26-04/23/26
38734	08/27/2026	09/08/2026	3751 Psomas, DBA KPG Psomas	2,614.50	Task Order 2026-01 - 1205 Contra Costa SFR Reasonable Use Exception Review - Services from 06/26/26-07/23/26
	558 60 41 00 Prof Svcs - Planning		001 000 558 General Fund	2,614.50	Task Order 2026-01 - 1205 Contra Costa SFR Reasonable Use Exception Review - Services from 06/26/26-07/23/26
38843	09/03/2026	09/08/2026	3751 Psomas, DBA KPG Psomas	3,670.40	Task Order 2026-04 - Whittier School Civil Review - Services from 07/24/26-08/20/26
	558 60 41 00 Prof Svcs - Planning		001 000 558 General Fund	3,670.40	Task Order 2026-04 - Whittier School Civil Review - Services from 07/24/26-08/20/26
Total Psomas, DBA KPG Psomas				38,836.17	
38769	09/01/2026	09/08/2026	3986 Puget Sound Energy, BOT-01H	2,019.75	Natural Gas - Pool/Bathhouse - August 2026
	576 20 47 00 Public Utility Services - Pool		001 000 576 General Fund	2,019.75	Natural Gas - Pool/Bathhouse - August 2026
38770	09/01/2026	09/08/2026	3986 Puget Sound Energy, BOT-01H	100.30	Natural Gas - Rec Center - August 2026
	571 10 47 00 Public Utility Services - Rec		001 000 571 General Fund	100.30	Natural Gas - Rec Center - August 2026
Total Puget Sound Energy, BOT-01H				2,120.05	
38704	08/24/2026	09/08/2026	11191 Riordan, Richard	4,140.00	Refund on Permit 2026.0041.PL0001 Site: 514 Ramsdell St
	345 81 00 01 Planning Permits		001 000 340 General Fund	-4,140.00	Refund on Permit 2026.0041.PL0001 Site: 514 Ramsdell St
38777	09/01/2026	09/08/2026	10434 Romero, Stacey F	150.00	Spanish Interpreting (2 hrs) 26CR121806, 26CR120235, 26IN120233 - 08/26/2026
	512 51 41 03 Prof Svcs - Interpreter - FMC		001 000 512 General Fund	150.00	Spanish Interpreting (2 hrs) 26CR121806, 26CR120235, 26IN120233 - 08/26/2026

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38783	09/01/2026	09/08/2026	10398	Rubke, Patricia	276.50 Barre Classes (Beginning Barre, Barre HIIT, Barre) 8/01/26-8/31/26
	571 10 49 04 Instructor Fees		001 000 571 General Fund	276.50	Barre Classes (Beginning Barre, Barre HIIT, Barre) 8/01/26-8/31/26
38811	09/01/2026	09/08/2026	4035	Sarco Supply	14.99 Janitorial Supplies - Rec Bldg
	571 10 31 04 Janitorial Supplies - Rec Bldg		001 000 571 General Fund	14.99	Janitorial Supplies - Rec Bldg
38761	08/31/2026	09/08/2026	8344	Sawahata, Takao David	78.00 Library Reimbursement - 1 Year (Chiaki)
	572 21 49 00 Library Services		001 000 572 General Fund	78.00	Library Reimbursement - 1 Year (Chiaki)
38695	08/21/2026	09/08/2026	11164	Sehmel, AICP, Lindsey	5,300.00 Contracted Services from 07/01/26-08/20/26
	558 60 41 00 Prof Svcs - Planning		001 000 558 General Fund	5,300.00	Contracted Services from 07/01/26-08/20/26
38820	09/02/2026	09/08/2026	6088	Sentinel Pest Control Inc	141.96 Pest Control - City Hall - 09/2026
	518 30 48 02 Rep & Maint - City Hall		001 000 518 General Fund	141.96	Pest Control - City Hall - 09/2026
38821	09/02/2026	09/08/2026	6088	Sentinel Pest Control Inc	271.15 Pest Control - PW - 09/2026
	531 50 48 00 Rep & Maint - Storm		415 000 531 Storm Drain	67.79	Pest Control - PW - 09/2026
	534 50 48 01 Rep & Maint - Water Maint		425 000 534 Water Fund (de	67.79	Pest Control - PW - 09/2026
	535 50 48 00 Rep & Maint - Sewer Maint		430 000 535 Sewer Fund (de	67.79	Pest Control - PW - 09/2026
	542 30 48 01 Rep & Maint - Street Maint		101 000 542 City Street Fund	67.78	Pest Control - PW - 09/2026
			Total Sentinel Pest Control Inc	413.11	
38754	08/28/2026	09/08/2026	4056	Sherwin-Williams Company	78.55 Office Paint
	518 30 31 02 Oper Supplies - PSB Bldg		001 000 518 General Fund	78.55	Office Paint
38771	09/01/2026	09/08/2026	4060	Sir Speedy	220.40 Artwork Setup: Holiday Market & Tree Lighting Flyer
	573 90 49 01 Community Events		001 000 573 General Fund	220.40	Artwork Setup: Holiday Market & Tree Lighting Flyer
38838	09/03/2026	09/08/2026	11313	Sound Defenders, PLLC	480.00 Transfer and Warrant Cases - June 2026
	515 41 41 00 Assigned Counsel		001 000 515 General Fund	480.00	Transfer and Warrant Cases - June 2026
38839	09/03/2026	09/08/2026	11313	Sound Defenders, PLLC	6,500.00 Indigent Defense Services - July 2026
	515 41 41 00 Assigned Counsel		001 000 515 General Fund	6,500.00	Indigent Defense Services - July 2026

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38840	09/03/2026	09/08/2026	11313	Sound Defenders, PLLC	720.00 June 2026 - Post Sentencing Reviews and SOC's
	515 41 41 00	Assigned Counsel	001 000 515 General Fund	720.00	June 2026 - Post Sentencing Reviews and SOC's
Total Sound Defenders, PLLC				7,700.00	
38758	08/28/2026	09/08/2026	4707	Springbrook Holding Company LLC	500.00 Accounting Advisory Services
	524 20 41 03	Prof Svcs - Building	001 000 524 General Fund	250.00	Accounting Advisory Services
	558 60 41 00	Prof Svcs - Planning	001 000 558 General Fund	250.00	Accounting Advisory Services
38767	09/01/2026	09/08/2026	4084	Staples Business Advantage	17.07 Thermal Laminating Pouches - 5 MIL (50/PK)
	571 10 31 00	Office & Oper Sup - Rec	001 000 571 General Fund	17.07	Thermal Laminating Pouches - 5 MIL (50/PK)
38768	09/01/2026	09/08/2026	4084	Staples Business Advantage	91.09 Office Supplies - Central and Office Supplies - Rec
	518 10 34 01	Office & Oper Sup - Central	001 000 518 General Fund	41.22	Hanging File Folders - Legal size (20/box),Sheet Protectors (100/pk)
	571 10 31 00	Office & Oper Sup - Rec	001 000 571 General Fund	49.87	Thermal Laminating Pouches - 5 MIL (100/pk), Packing Tape w/Dispenser, Gorilla Glue
Total Staples Business Advantage				108.16	
38791	09/01/2026	09/08/2026	4087	Star Rentals	632.14 Man Lift for Car Show
	573 90 49 01	Community Events	001 000 573 General Fund	632.14	Man Lift for Car Show
38792	09/01/2026	09/08/2026	4087	Star Rentals	609.85 Man Lift for Fircrest Fun Days
	573 90 49 01	Community Events	001 000 573 General Fund	609.85	Man Lift for Fircrest Fun Days
Total Star Rentals				1,241.99	
38696	08/24/2026	09/08/2026	11463	Stephan, Nash Werner	327.10 01-00032.7 - 2302 ORCHARD ST W
	343 10 00 00	Storm Drain Revenues	415 000 340 Storm Drain	-73.63	
	343 40 00 00	Sale Of Water	425 000 340 Water Fund (de	-89.29	
	343 50 00 00	Sewer Revenues	430 000 340 Sewer Fund (de	-164.18	
38701	08/24/2026	09/08/2026	4107	Summit Law Group	1,693.00 Legal Consulting - July 2026
	515 41 41 02	Special Legal Counsel	001 000 515 General Fund	1,693.00	Legal Consulting - July 2026
38801	09/01/2026	09/08/2026	4110	Superior Linen Service	75.19 Linen Service 08/27/26 - Public Works
	518 30 48 03	Rep & Maint - PW	001 000 518 General Fund	75.19	Linen Service 08/27/26 - Public Works

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38802	09/01/2026	09/08/2026	4110 Superior Linen Service	73.34	Linen Service 08/13/26 - Public Works
	518 30 48 03 Rep & Maint - PW		001 000 518 General Fund	73.34	Linen Service 08/13/26 - Public Works
38803	09/01/2026	09/08/2026	4110 Superior Linen Service	79.86	Linen Service 08/27/26 - City Hall
	518 30 48 02 Rep & Maint - City Hall		001 000 518 General Fund	79.86	Linen Service 08/27/26 - City Hall
38804	09/01/2026	09/08/2026	4110 Superior Linen Service	79.86	Linen Service 08/13/26 - City Hall
	518 30 48 02 Rep & Maint - City Hall		001 000 518 General Fund	79.86	Linen Service 08/13/26 - City Hall
38805	09/01/2026	09/08/2026	4110 Superior Linen Service	120.89	Linen Service 08/20/26 - Rec Center
	518 30 48 01 Rep & Maint - Rec Bldg		001 000 518 General Fund	120.89	Linen Service 08/20/26 - Rec Center
38806	09/01/2026	09/08/2026	4110 Superior Linen Service	119.80	Linen Service 08/06/26 - Rec Center
	518 30 48 01 Rep & Maint - Rec Bldg		001 000 518 General Fund	119.80	Linen Service 08/06/26 - Rec Center
38807	09/01/2026	09/08/2026	4110 Superior Linen Service	53.56	Linen Service 08/20/26 - Pool Party Room
	576 20 49 02 Miscellaneous - Pool		001 000 576 General Fund	53.56	Linen Service 08/20/26 - Pool Party Room
38808	09/01/2026	09/08/2026	4110 Superior Linen Service	52.47	Linen Service 08/06/26 - Pool Party Room
	576 20 49 02 Miscellaneous - Pool		001 000 576 General Fund	52.47	Linen Service 08/06/26 - Pool Party Room
Total Superior Linen Service				654.97	
38711	08/26/2026	09/08/2026	4328 Systems for Public Safety Inc	206.45	#85155D - 2025 Ford Interceptor Utility - LOF
	548 65 48 08 O & M - Police		501 000 548 Equipment Rent	206.45	#85155D - 2025 Ford Interceptor Utility - LOF
38720	08/27/2026	09/08/2026	9888 T-Mobile (Cell Phone Bill)	132.59	JAMF Pro Monthly - 08/2026; Court, PW, City Hall Fax Lines - 07/2026
	512 51 42 00 Communication - Court		001 000 512 General Fund	12.39	Court Fax Line - 07/2026
	518 10 42 00 Communication - Non Dept		001 000 518 General Fund	3.67	Non Dept - 08/2026 - JAMF Pro Monthly
	518 10 42 00 Communication - Non Dept		001 000 518 General Fund	12.39	City Hall Fax Line - 07/2026
	518 30 42 00 Communication - Fac/Equip		001 000 518 General Fund	11.01	Maint. Lead, 2 Workers - 08/2026 - JAMF Pro Monthly
	521 22 42 00 Communication - Police		001 000 521 General Fund	36.70	Police Officers, Chief - 08/2026 - JAMF Pro Monthly
	524 20 42 00 Communication- Building		001 000 524 General Fund	1.83	Community Development Dir. - 08/2026 - JAMF Pro Monthly
	531 50 42 00 Communication - Storm		415 000 531 Storm Drain	7.34	Public Works Crew, Director, PW Office Coord. - 08/2026 - JAMF Pro Monthly

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531 50 42 00	Communication - Storm	415 000	531 Storm Drain	3.10	PW Fax Line - 07/2026
534 10 42 00	Communication - Water Adr	425 000	534 Water Fund (de	7.34	Public Works Crew, Director, PW Office Coord. - 08/2026 - JAMF Pro Monthly
534 10 42 00	Communication - Water Adr	425 000	534 Water Fund (de	3.10	PW Fax Line - 07/2026
535 10 42 01	Communication - Sewer Adr	430 000	535 Sewer Fund (de	7.34	Public Works Crew, Director, PW Office Coord. - 08/2026 - JAMF Pro Monthly
535 10 42 01	Communication - Sewer Adr	430 000	535 Sewer Fund (de	3.10	PW Fax Line - 07/2026
542 30 42 00	Communication - Street Reg	101 000	542 City Street Fund	7.34	Public Works Crew, Director, PW Office Coord. - 08/2026 - JAMF Pro Monthly
542 30 42 00	Communication - Street Reg	101 000	542 City Street Fund	3.10	PW Fax Line - 07/2026
558 60 42 00	Communication - Planning	001 000	558 General Fund	1.83	Community Development Dir. - 08/2026 - JAMF Pro Monthly
576 80 42 00	Communication - Parks	001 000	576 General Fund	11.01	P/R Director, Events, Maint. Worker - 08/2026 - JAMF Pro Monthly
38721 08/27/2026	09/08/2026	9888	T-Mobile (Cell Phone Bill)	20.00	Estate Place & 44th St Well - SIM Cards - 08/2026
534 10 42 00	Communication - Water Adr	425 000	534 Water Fund (de	20.00	Estate Place & 44th St Well - SIM Cards - 08/2026
38722 08/27/2026	09/08/2026	9888	T-Mobile (Cell Phone Bill)	1,224.80	Cell Phones & Air Cards - 08/2026
513 10 42 00	Communication - Admin	001 000	513 General Fund	31.85	City Manager 08/2026
518 30 42 00	Communication - Fac/Equip	001 000	518 General Fund	94.29	Maint. Lead, 2 Workers 08/2026
521 22 42 00	Communication - Police	001 000	521 General Fund	632.80	Police Officers, Chief and Air Cards 08/2026
531 50 42 00	Communication - Storm	415 000	531 Storm Drain	84.93	Public Works Crew, Director, PW Office Coord. 08/2026
534 10 42 00	Communication - Water Adr	425 000	534 Water Fund (de	116.78	Public Works Crew, Director, PW Office Coord., PW Water Meter Collector 08/2026
535 10 42 01	Communication - Sewer Adr	430 000	535 Sewer Fund (de	84.93	Public Works Crew, Director, PW Office Coord. 08/2026
542 30 42 00	Communication - Street Reg	101 000	542 City Street Fund	84.93	Public Works Crew, Director, PW Office Coord. 08/2026
576 80 42 00	Communication - Parks	001 000	576 General Fund	94.29	P/R Director, Events, Maint. Worker 08/2026
Total T-Mobile (Cell Phone Bill)				1,377.39	
38835 09/03/2026	09/08/2026	4120	Tacoma Daily Index	90.87	August 2026 Publications
511 60 41 01	Advertising - Legisl	001 000	511 General Fund	90.87	Notice of Cancelled Study Session Meeting - 08/13/26, Notice of Public Hearing on Critical Areas Ordinance - 08/27/26
38837 09/03/2026	09/08/2026	4322	Tacoma, City of - POWER	2,436.22	Power - Various Locations - 08/2026

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534 80 47 01	Utility Services/Pumping	425 000 534	Water Fund (dep	2,039.14	PW, Well #8, Weathervane Booster - 08/2026
535 80 47 01	Utility Services/Pumping	430 000 535	Sewer Fund (dep	356.06	Pumps/LS Power - 08/2026
542 30 47 03	Electricity/Traffic Lights	101 000 542	City Street Fund	27.73	Traffic Control - 08/2026
542 63 47 00	Electricity/Street Lights	101 000 542	City Street Fund	13.29	Street Lights - 08/2026
38728 08/27/2026	09/08/2026	4151	Tools Plus Industries LLC	1,026.19	DOT Road Cones with Reflective Tape (Qty 24)
542 30 35 00	Small Tools & Equip - Street	101 000 542	City Street Fund	1,026.19	DOT Road Cones with Reflective Tape (Qty 24)
38719 08/27/2026	09/08/2026	5934	US Bank, City Hall Account	889.08	P-Card Charges thru 08/19/26
511 60 49 04	Meals - Other Than Travel/T	001 000 511	General Fund	216.06	Council Goals Workshop - Meal, Refreshments & Snacks
517 90 31 01	Oper Supplies - Wellness Pro	001 000 517	General Fund	673.02	Wellness Program - Summer BBQ Supplies
38718 08/27/2026	09/08/2026	8482	US Bank, Police Department Account	3,907.40	P-Card Charges thru 08/25/26
521 22 35 00	Small Tools & Equip - Police	001 000 521	General Fund	3,457.40	Battle Arms Safety Selector, Row Machine & Bike with Monitor, Exercise Bike & Wind Guard
521 22 41 00	Prof Svcs - Police	001 000 521	General Fund	450.00	Psychological Evaluation - M Bounds
38762 09/01/2026	09/08/2026	8484	US Bank, Recreation Dept Account	1,126.06	P-Card Charges thru 08/24/26
571 10 31 01	Oper Supplies - Rec	001 000 571	General Fund	57.71	Poster Frame
571 10 31 02	Senior Program Supplies	001 000 571	General Fund	317.22	Senior Morning Supplies
573 90 49 01	Community Events	001 000 573	General Fund	586.90	Thank you Banner - Fun Days; Movie in the Park - Mama Fratelli's Jeep Vehicle Showing & Stickers; Haunted Trails Supplies
576 20 31 00	Office & Oper Sup - Pool	001 000 576	General Fund	57.28	Printer Toner for Pool Printer
576 20 31 03	Oper Supplies - Pool	001 000 576	General Fund	106.95	Pool Party Supplies
38751 08/28/2026	09/08/2026	4178	University Place Refuse Inc	2,595.68	Dumping Fees - 08/2026
531 50 47 01	Dumping Fees - Storm	415 000 531	Storm Drain	708.13	Dumping Fees - Storm 08/2026
534 80 47 02	Dumping Fees - Water	425 000 534	Water Fund (dep	471.89	Dumping Fees - Water 08/2026
535 80 47 02	Dumping Fees - Sewer	430 000 535	Sewer Fund (dep	471.89	Dumping Fees - Sewer 08/2026
542 30 47 01	Dumping Fees - Street	101 000 542	City Street Fund	471.88	Dumping Fees - Street 08/2026
576 80 47 01	Dumping Fees - Parks	001 000 576	General Fund	471.89	Dumping Fees - Parks 08/2026
38833 09/03/2026	09/08/2026	4179	Unum Life Insurance Company of America	69.20	W. Smith Retired Benefits - August 2026
521 22 20 02	LEOFF I Long Term Care Prei	001 000 521	General Fund	69.20	W. Smith Retired Benefits - August 2026
38797 09/01/2026	09/08/2026	4180	Utilities Underground	50.74	Locates 08/2026
534 10 49 00	Miscellaneous - Water Admi	425 000 534	Water Fund (dep	25.37	Locates 08/2026

ACCOUNTS PAYABLE

City Of Fircrest

Time: 08:47:39 Date: 09/04/2026

As Of: 09/08/2026

Page: 17

Accts

Pay #	Received	Date Due	Vendor	Amount	Memo
	535 10 49 00	Miscellaneous - Sewer Admi	430 000 535 Sewer Fund (de	25.37	Locates 08/2026
38825	09/02/2026	09/08/2026	4231 Water Mgmt Labs Inc	270.00	Coliform Testing - 08/2026
	534 80 41 00	Water Testing	425 000 534 Water Fund (de	270.00	Coliform Testing - 08/2026
38708	08/26/2026	09/08/2026	4806 Williams, Joanne	78.00	Library Reimbursement - 1 Year
	572 21 49 00	Library Services	001 000 572 General Fund	78.00	Library Reimbursement - 1 Year
38793	09/01/2026	09/08/2026	4252 Wimbles Logging & Tree	1,630.96	Remove & Limb Up Trees above 19th Street along Columbia St
	542 30 48 01	Rep & Maint - Street Maint	101 000 542 City Street Fund	1,630.96	Remove & Limb Up Trees above 19th Street along Columbia St
38752	08/28/2026	09/08/2026	4256 Winning Seasons	342.69	Public Works Shirts (Qty 11)
	531 50 20 01	Contract Benefits - Storm	415 000 531 Storm Drain	85.68	Public Works Shirts (Qty 11)
	534 10 20 01	Contract Benefits - Wtr Adm	425 000 534 Water Fund (de	85.67	Public Works Shirts (Qty 11)
	535 10 20 01	Contract Benefits - Sewer Ac	430 000 535 Sewer Fund (de	85.67	Public Works Shirts (Qty 11)
	542 30 20 01	Contract Benefits - Street Re	101 000 542 City Street Fund	85.67	Public Works Shirts (Qty 11)
38774	09/01/2026	09/08/2026	10035 Zoom Video Communications	1,433.67	Monthly Phone Rental - 8/31/26-9/29/26
	513 10 42 00	Communication - Admin	001 000 513 General Fund	84.08	Meeting Webinar & Recording - 8/31/26-9/29/26
	518 10 42 00	Communication - Non Dept	001 000 518 General Fund	1,047.63	Monthly Phone Service - 8/31/26-9/29/26
	591 18 70 10	Lease Payments - Non-Dept	001 000 591 General Fund	301.96	Monthly Phone Rental - 8/31/26-9/29/26

Report Total: 568,219.49

Fund

001 General Fund	101,509.39
101 City Street Fund	420,202.56
415 Storm Drain	1,452.10
425 Water Fund (department)	6,694.28
426 Water Improvement Fund	30,161.74
430 Sewer Fund (department)	2,201.26
501 Equipment Rental Fund	5,998.16

This report has been reviewed by:

REMARKS:

Signature & Title

Date

CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND ROLL CALL

Mayor Nikki Bufford called the special meeting to order at 3:00 P.M. and led the Pledge of Allegiance. Councilmembers David M. Viafore, Shannon Reynolds, Brett L. Wittner, Karen Mauer-Smith, Hunter T. George, and Joe Barrentine were present.

Staff present: City Manager Dawn Masko, Public Works Director Tyler Bemis, Finance Director Allison Deskins, and City Clerk Arlette Burkhart.

COUNCIL GOALS WORKSHOP

Council Strategic Planning Facilitator Andrew Neiditz provided an overview of the agenda and ground rules. The Council engaged in several exercises and discussed communication styles.

Councilmember Viafore expressed concern about the transparency and recording of the meeting under the Open Public Meetings Act. The Council briefly discussed Council Rules, meeting recording obligations, and legal opinion. There was a consensus to record the meeting after Council concluded dinner for historical purposes.

The Council reviewed the City's mission and value statements and existing Council goals and priorities.

Councilmember Reynolds left the meeting at 4:55 P.M.

It was noted for the record that the meeting recording started at 6:45 P.M.

Mr. Neiditz requested Council feedback on goals and priorities for 2027. Council discussions included financial sustainability, anticipated growth, facility maintenance, pedestrian and bicycle safety, employee satisfaction, community events, volunteer recognition, and long-term strategic planning. Council discussed the importance of developing a long-range financial plan that would provide a three- to five-year forecast of City revenues and expenditures. Discussion included using historical financial data, evaluating development-related and other one-time revenues, and making sure one-time revenues are directed toward one-time expenses rather than ongoing obligations. There was a brief discussion on the possibility of transitioning to a biennial budget. Council expressed interest in continuing discussions of biennial budgeting at a future study session.

Further discussions included competitive employee compensation, completing a salary survey, employee satisfaction, the Community Events Coordinator position, the IT Systems Coordinator position, and volunteer recognition.

Council discussed public safety staffing and potential funding sources, including the public safety sales tax and automated traffic-safety camera enforcement. City Manager Masko reported that the public safety sales tax was scheduled for further discussion at an upcoming study session. Council discussed the need for a long-term plan addressing the maintenance and replacement of City facilities and equipment.

There was a brief discussion on the pedestrian safety plan. Council also discussed economic development opportunities in the northwest Mildred Street area, including existing zoning, infrastructure and sewer-service limitations, form-based code requirements, and potential barriers to redevelopment. Council expressed interest in reviewing the zoning and economic development for the area.

Council reviewed its 2026 goals, including enhancing public safety, fiscal stability and economic development, communications and community engagement, equity and inclusion, and community wellness.

There was a Council consensus on the 2027 goals to include long-term financial planning and forecasting, community event coordination and volunteer recognition, public safety funding, long-term facility maintenance and equipment replacement, employee compensation, satisfaction, and retention, continued development of the pedestrian safety plan, and economic development in the northwest Mildred Street area.

Council requested that staff evaluate the goals and develop a proposed implementation schedule identifying work that could reasonably be completed in 2027 and work that may need to continue into 2028. Council also discussed presenting the proposed goals during a future public meeting to provide the opportunity for public input.

ADJOURNMENT

Councilmember Viafore MOVED to adjourn the meeting at 7:50 P.M., seconded by Councilmember Mauer-Smith.

The Motion Carried (6-0).

Nikki Bufford, Mayor

Arlette Burkhardt, City Clerk

FIRCREST CITY COUNCIL AGENDA SUMMARY

AGENDA TOPIC: Public Hearing - Fircrest Critical Areas Ordinance (CAO) Update
ITEM: 11A
DATE: September 8, 2026
FROM: Kim Gunderson, Mahoney Planning

RECOMMENDED MOTION: None. Public Hearing Only.

PROPOSAL: To receive public input on proposed amendments to various sections of the Fircrest Municipal Code (FMC) Title 22 relating to critical area regulations required under RCW 36.70A.070, Growth Management Act (GMA).

FISCAL IMPACT: None identified.

ADVANTAGE: Provides residents with an opportunity to comment on proposed amendments to the Fircrest Municipal Code (FMC) relating to critical area regulations. These amendments will ensure compliance with the GMA and restore the City's eligibility for monies sourced from RCW Chapter 43.155 (Public Works Projects) and RCW Chapter 70A.135 (Water Pollution Control Facilities Financing).

DISADVANTAGES: None identified.

ALTERNATIVES: None.

BACKGROUND: As a fully planning city subject to the GMA, Fircrest is required to update its CAO in alignment with the schedule set forth in RCW 36.70A.130(7)(a)(ii). Being a city in Pierce County, Fircrest's Periodic Comprehensive Plan Amendment and its implementing regulations were due in December 2024. As it relates specifically to regulations that protect critical area features in Fircrest, the Washington legislature allowed cities 12 months after the due date of their Comprehensive Plan update to amend their CAOs before deeming the city "out of compliance" with Comprehensive Planning deadlines established in the GMA. Therefore, Fircrest was due to update its CAO by December 2025. Fircrest has timely adopted its 2024 Periodic Comprehensive Plan Update, but had not advanced progress toward its CAO Update meaningfully enough to meet the December 2025 deadline, and is therefore noncompliant with the GMA in this manner. Cities that are noncompliant with the CAO Update deadline are ineligible for state monies issued under RCW Chapter 43.155 and RCW Chapter 70A.135.

The Planning Commission has been working with the City's contracted planning consultant, Mahoney Planning, on updating the Fircrest CAO to comply with the GMA, adopt evolving best available science, and represent the City's adopted goals and policies through its implementing critical area regulations. This effort began in winter 2025 and has undergone all required state noticing and SEPA review, receiving comments from numerous state agencies and no comments from the general public or Fircrest citizenry. All agreeable comments from agencies have been incorporated into the proposed ordinance.

The Planning Commission discussed the CAO Update draft ordinance at regular meetings on December 2, 2025, January 6, 2026, March 3, 2026, April 7, 2026, and July 7, 2026, and held a public hearing and passed Resolution No. 26-01 on August 18, 2026, recommending approval of the proposed CAO Update reflected in amendments to FMC Title 22. The City Council will hold a public hearing on this project on September 8, 2026.

ATTACHMENTS: [Mahoney Planning Memorandum](#)
[Exhibit A: Draft Ordinance and Exhibits A-F](#)
[Exhibit B: Planning Commission Resolution 26-01](#)
[Exhibit C: Commerce Notice of Intent & Agency Responses](#)
[Exhibit D: SEPA Determination of Nonsignificance](#)
[Exhibit E: Public Hearing Notice](#)
[Exhibit F: Critical Areas Checklist](#)
[PowerPoint Presentation](#)

September 3, 2026

City of Fircrest City Council
115 Ramsdell Street
Fircrest, WA 98466

Re: Critical Areas Ordinance Update, RCW 36.70A.070

Dear City Council,

The City of Fircrest is overdue to update its critical areas ordinance (“CAO”, chiefly codified as FMC Chapters 22.92, 22.93, 22.94, 22.97, 22.99, and 22.100). As a fully planning city subject to the Washington Growth Management Act (“GMA,” RCW Chapter 36.70A), Fircrest is required to update its CAO in alignment with the schedule set forth in RCW 36.70A.130(7)(a)(ii)¹. Being a city in Pierce County, Fircrest’s Periodic Comprehensive Plan Amendment and its implementing regulations were due in December 2024. As it relates specifically to regulations that protect critical area features in Fircrest, the Washington legislature allowed cities 12 months after the due date of their Comprehensive Plan update to amend their CAOs before deeming the city “out of compliance” with Comprehensive Planning deadlines established in the GMA. Therefore, Fircrest was due to update its CAO by December 2025.

Fircrest has timely adopted its 2024 Periodic Comprehensive Plan Update, but had not advanced progress toward its CAO Update meaningfully enough to meet the December 2025 deadline, and is therefore noncompliant with the GMA in this manner. Cities that are noncompliant with the CAO Update deadline are ineligible for state monies issued under RCW Chapter 43.155 (Public Works Projects) and RCW Chapter 70A.135 (Water Pollution Control Facilities Financing). While important for the City to progress toward GMA compliance, the City’s 2026 budget does not include any reliance on state monies from these RCWs, and so no projects planned in 2026 will be affected by the City’s ineligibility for these particular funds.

The effort of this project is to comply with the GMA, and also to adopt germane provisions of the RCW and WAC that afford protections to Fircrest’s critical areas based on today’s best available science (BAS). Mahoney Planning has prepared a project schedule that aims to complete this project by October 2026, positioning the City as an eligible recipient of funds sourced from RCW Chapters 43.155 and 70A.135 for 2027 projects, as needed.

¹ RCW 36.70A.130(7)(a)(ii): “The requirements imposed on counties and cities under this section shall be considered “requirements of this chapter” under the terms of RCW 36.70A.040(1). Only those counties and cities that meet the following criteria may receive grants, loans, pledges, or financial guarantees under chapter 43.155 or 70A.135 RCW...The county or city demonstrates substantial progress towards compliance with the deadlines in this section for development regulations that protect critical areas. For the purposes of this subsection (7)(a)(ii), a county or city that is fewer than 12 months out of compliance with the deadlines in this section for development regulations that protect critical areas is making substantial progress towards compliance with the deadlines in this section.”

Fircrest Guiding Context

Beyond simply complying with state mandates to update Fircrest's CAO, it is Fircrest's consistently outspoken intention to foster a sense of community that balances the enjoyment of its natural settings, accommodates the built environment needs of its citizens, and minds our evolving understanding of how critical area protections add value and resilience in our communities. These intentions are captured in Fircrest's guiding documents and offer important framework to inform the scope of this project.

Comprehensive Plan Principles

Principle 2: *Peaceful and connected to nature. This principle suggests the City aspires to remain a walkable and forested place that provides a peaceful setting to live in. The City will prioritize the walkability and protection of natural resources in Fircrest so that it remains a peaceful place that is connected to nature.*

Comprehensive Plan Goals

Goal CR-2: *Manage surface, ground, storm, waste, and creek waters in an ecologically responsible manner and as interconnected components of the region's watershed to achieve a healthy watershed that is resilient to climate change.*

Goal CR-4: *Protect vulnerable infrastructure and the local economy from climate impacts.*

Goal P-5: *Enhance Fircrest's landscape and provide habitat for wildlife by increasing the amount of property permanently dedicated for open space uses with preference given to properties having the greatest significance as critical areas, properties that can act as buffers between different land use types and intensities, and properties that represent a valuable natural or aesthetic asset to the community.*

Goal LU-10: *Guide land uses and development and redevelopment projects to preserve and improve the natural environment as well as the built environment and protect development from climate change impacts.*

Fircrest Critical Areas and the Basics of Regulating Critical Areas

Regulated critical areas in Fircrest include wetlands, critical aquifer recharge areas (CARAs), frequently flooded areas, fish and wildlife habitat conservation areas (FWHCAs), and geological hazards including erosion and landslide hazard areas. Descriptions of each critical area and local examples are included below to offer a brief introduction of the features that are subject to this project.

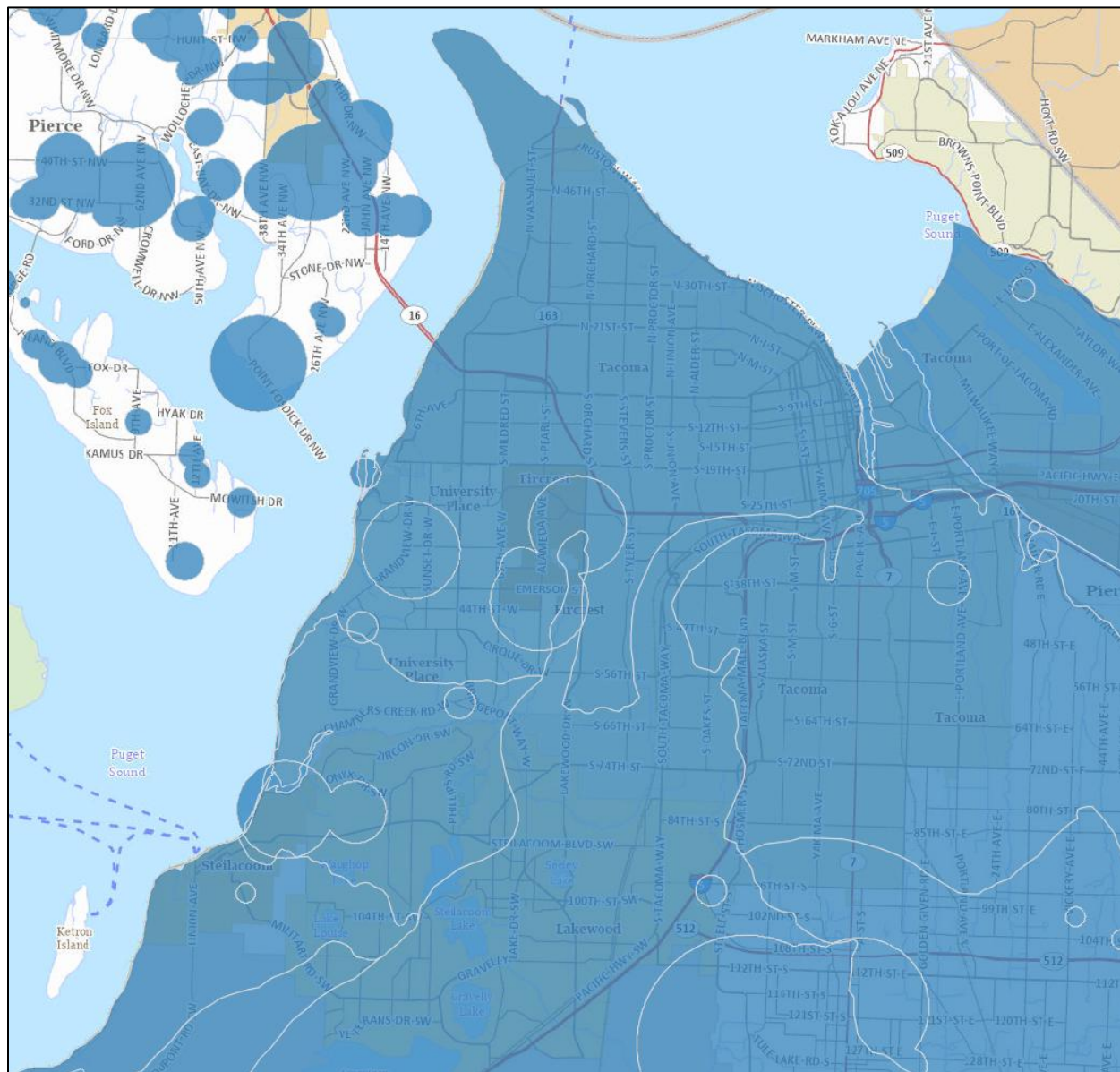
Wetlands

Fircrest governs wetlands in FMC Chapter 22.93. As a brief summary, wetlands are inundated or saturated surfaces that can typically support vegetation in saturated soil conditions. Artificially created wet features, such as drainage ditches or stormwater ponds, are not regulated wetlands unless the feature was created as mitigation for a project's impacts to wetlands.

CARAs

Critical aquifer recharge areas (CARAs) are regulated in FMC Chapter 22.94. CARAs “are those areas with a critical recharging effect on aquifers used for potable water” (FMC 22.94.010). All of Fircrest is a CARA; see Figure 1, which displays a blue polygon as representative of a CARA. Development in CARAs is less restricted than in other critical areas, as is typical across jurisdictions.

Figure 1
CARAs in Fircrest



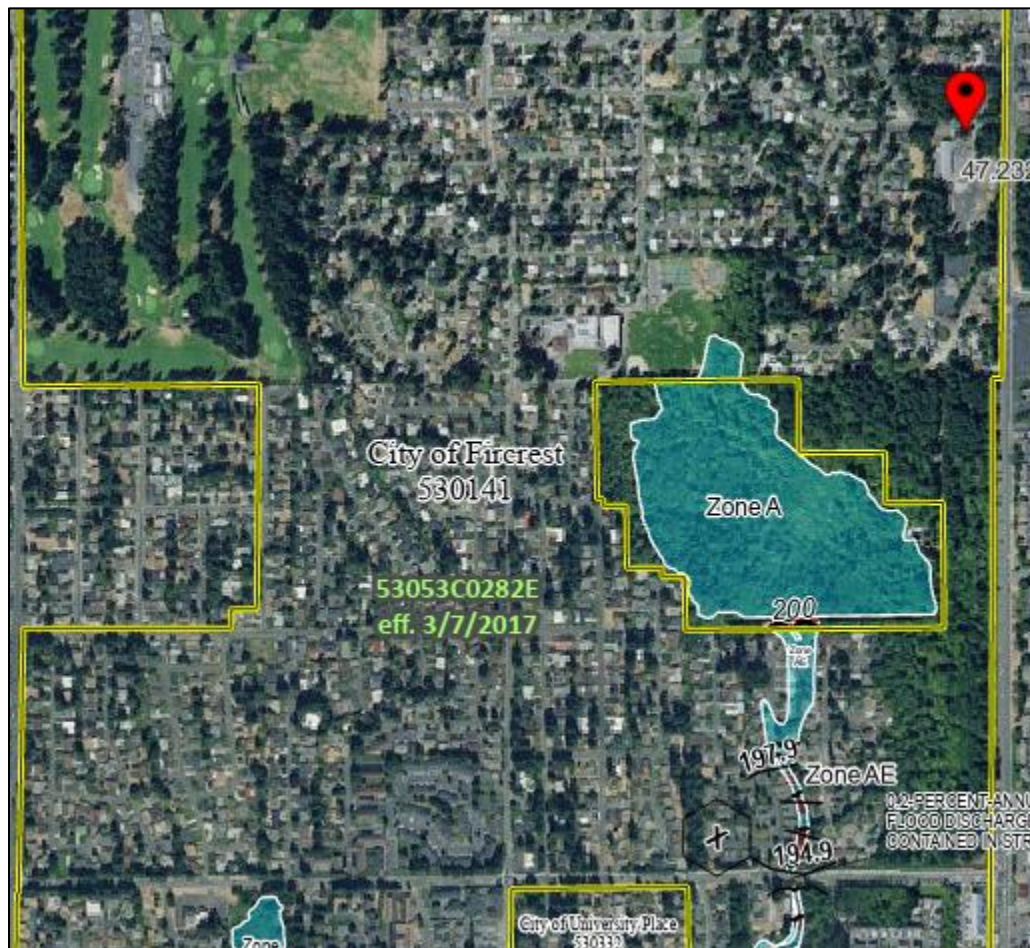
Pierce County CARA mapping, showing CARAs as blue polygons.

Frequently Flooded Areas

Fircrest’s frequently flooded areas are regulated under FMC Chapter 22.99. Predominantly, these areas are those listed as “special flood hazard” areas on flood insurance maps produced by the Federal Emergency Management Agency (FEMA). Development in frequently flooded areas is limited, and often is required to be constructed on tall foundations at the highest elevation possible to minimize the potential risks associated with floods. Frequently flooded areas in Fircrest, as

mapped by FEMA, are generally concentrated at the City of Tacoma Stormwater Facility south of Holly Drive and along Leach Creek. See Figure 2.

Figure 2
Frequently Flooded Areas in Fircrest



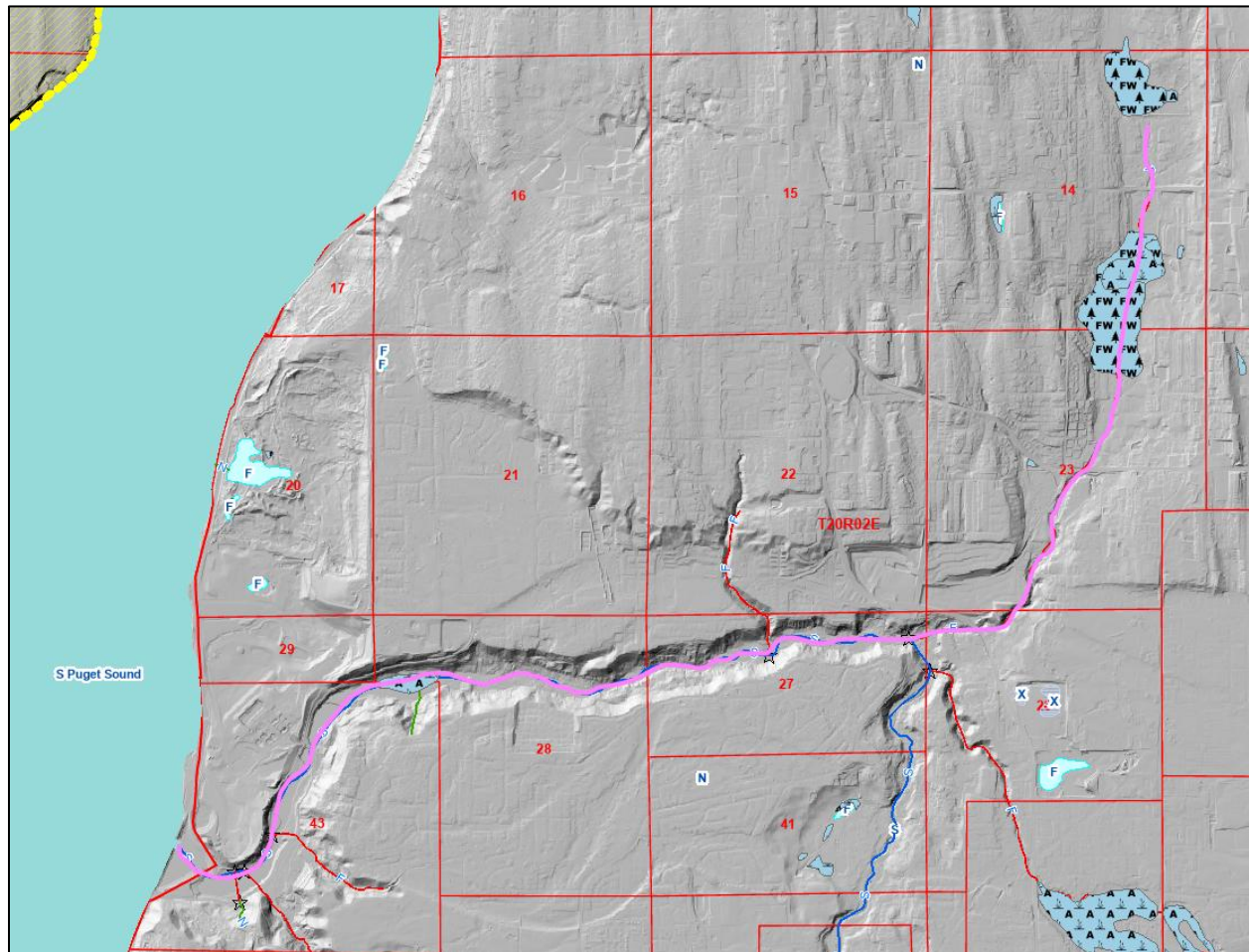
FEMA flood map of Fircrest. Zones A and AE represent special flood hazard areas that are regulated in Fircrest as frequently flooded areas.

FWHCAs

Fish and wildlife habitat conservation areas (FWHCAs) in Fircrest are protected under FMC Chapter 22.97. These areas include a broad array of natural spaces in Fircrest, including areas associated with protected species, waters of the state, high quality ecosystems identified by the Department of Natural Resources, and lands that are useful in preserving connections between habitat blocks and open spaces.

A well-known FWHCA in Fircrest is Leach Creek, particularly given its confluence with Chambers Creek and, eventually, the Puget Sound. See Figure 3.

Figure 3
Leach Creek FWHCA



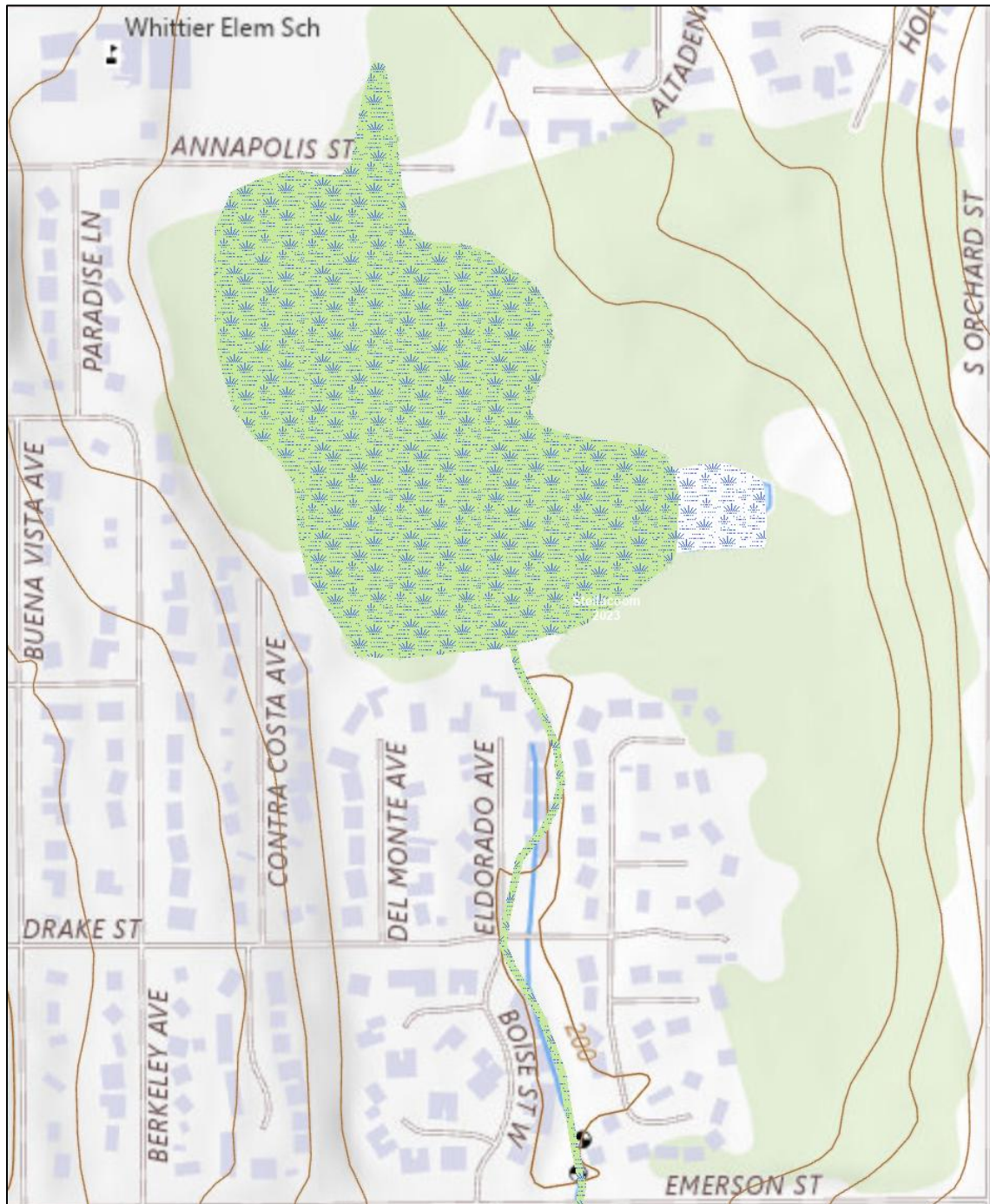
Washington Department of Natural Resources Forest Practices Application Mapping Tool, Leach Creek connection to Chambers Creek drawn in pink

Geological Hazards

Fircrest’s geological hazard regulations are codified in FMC Chapter 22.100 and include erosion hazards and landslide hazards. These areas are “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.”

Steep slopes are a common geological erosion hazard. Perhaps the most well-known erosion hazard in Fircrest is associated with the “Bourgaize property” at the intersection of Emerson Street and Orchard Street, where steep slopes run the length of Orchard Street; see Figure 4.

Figure 4
Fircrest Erosion Hazard



United States Geological Survey, map of Fircrest with 20' contours

At their core, critical area regulations established in a CAO aim to protect ecological function and reinforce safety to human life and infrastructure. Critical area regulations set a basis for

determining the presence and characterization of critical areas on best available science to ensure that the scientific community's developing understanding of natural features informs regulatory exposure and guides adequate protective measures.

Project Progress

Since December 2025, Planning Commission and Mahoney Planning have collaborated on amendments needed to bring Fircrest's CAO into alignment with current provisions of the RCW and WAC governing the relationship between development and critical areas; the resulting product is a statutorily compliant CAO, included as **Exhibit A** to this memo. Early efforts in the project employed the use of the Department of Commerce (Commerce) Critical Areas Checklist (**Exhibit F**) to inform what provisions of the Fircrest CAO were due for update to incorporate newer state guidance. Additional efforts included general edits for legibility and readability of the code, and administrative edits so that the CAO reflects true practices used by Fircrest. Draft work products were distributed to the state via the Commerce, and agreeable feedback from state agencies were incorporated into the draft Fircrest CAO Update. **Exhibit A** represents the cumulative result from this collaborative project.

Public Engagement

The City has invited the public to participate in the CAO Update. The draft CAO Update was submitted to Commerce via a Notice of Intent to Adopt on April 8, 2026 (**Exhibit C**). Commerce distributed the draft CAO to other state agencies and underwent a 60-day review process, during which any public state agency could offer comments to the City. Comments were received by the Department of Fish and Wildlife, the Department of Health, the Department of Ecology, and the Department of Natural Resources for the City's consideration (**Exhibit C**). Recommendations from these agencies were reviewed by the City and contemplated with Planning Commission. Those agreeable recommendations have been incorporated into the City's final draft CAO Update (**Exhibit A**).

The City's SEPA Responsible Official has also reviewed the project's SEPA Checklist and other germane information associated with the project and issued a Determination of Nonsignificance (DNS) threshold determination on May 1, 2026 (**Exhibit D**). The threshold determination was noticed to the public, who were offered a 14-day comment period. No comments in response to the noticed DNS were received by the City.

The City Council public hearing was noticed to the public on August 27, 2026 (**Exhibit E**). No comments have been received by the City in response to the Notice of Public Hearing as of the preparation of this memorandum.

Staff Recommendation

At the September 8, 2026 public hearing, Council will be presented with the status of the CAO Update project and with Planning Commission's recommendation by Resolution (**Exhibit B**). The

draft CAO Update (**Exhibit A**) achieves statutory compliance with the Washington GMA and reflects the Planning Commission's feedback and the agreeable feedback offered by other agencies. With the adoption of a revised CAO, the City will resume its eligibility for state monies issued under RCW Chapter 43.155 (Public Works Projects) and RCW Chapter 70A.135 (Water Pollution Control Facilities Financing).

As such, staff urge City Council to adopt Planning Commission's recommendation and make the following motion at their September 22 or October 13 regular meeting:

Recommended motion: I move to adopt Ordinance No. _____, amending Fircrest Municipal Code Title 22 to ensure consistency with Critical Area Ordinance update regulations in RCW 36.70A.070.

I look forward to discussing this project with Council at the September 8 public hearing!



Kimberly A. Gunderson
Mahoney Planning, LLC

Exhibits:

- A. Ordinance No. _____ (draft)
- B. Resolution No. 26-01
- C. Commerce Notice of Intent to Adopt & Agency Responses
- D. SEPA Threshold Determination, Checklist, and Notice
- E. Notice of City Council Public Hearing
- F. Commerce CAO Update Checklist

**CITY OF FIRCREST
ORDINANCE NO. _____**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIRCREST, WASHINGTON, RELATING TO UPDATES TO CRITICAL AREAS REGULATIONS; AMENDING FIRCREST MUNICIPAL CODE (FMC) SECTIONS 22.92.040, .090, .100, .110, .130, .150, .160, .180, .190, .290, .300, AND .340; AMENDING FMC SECTIONS 22.93.020, .040, .070, and .100; AMENDING FMC SECTIONS 22.94..010, .030, .050, AND .080; AMENDING FMC SECTIONS 22.97.010, .020, .030, AND .040; AMENDING FMC SECTIONS 22.98.179, .285, .298, .447, .579, .623, AND .753; AMENDING FMC SECTIONS 22.100.010, .020, .040, AND .050; REPEALING FMC SECTIONS 22.98.080, 22.98.180, 22.98.350, 22.98.544, 22.98.752, AND 22.98.785; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Fircrest's ("City") Critical Areas Ordinance ("CAO") is a collection of locally determined development regulations intended to conserve the functions of environmentally sensitive areas and protect the public from hazards that may be associated with developing in areas with certain environmental characteristics such as areas prone to flooding and posing geological hazards; and

WHEREAS, Chapter 365-190 of the Washington Administrative Code ("WAC") requires the protection of critical areas through buffer standards, mitigation requirements, and habitat conservation provisions; and

WHEREAS, Section 36.70A.130(5) of the Revised Code of Washington ("RCW") requires cities to incorporate development regulations involving wetlands, fish and wildlife habitat conservation areas, critical aquifer recharge areas, geologically hazardous areas, and flood hazard areas, and to evaluate and revise their Critical Areas Ordinance and associated development regulations every ten years; and

WHEREAS, the purpose of the City's critical areas regulations is to designate and classify ecologically sensitive and hazardous areas and to protect these areas and their functions and values, while also allowing for reasonable use of private property, and to implement the goals, policies, guidelines, and requirements of the City's Comprehensive Plan and the Growth Management Act (Chapter 36.70A RCW); and

WHEREAS, the Planning Commission reviewed the amendments contained in Exhibit A, including holding briefings on December 2, 2025, January 6, 2026, March 3, 2026, April 7, 2026, and July 7, 2026, and a public hearing regarding the same on August 18, 2026; and

WHEREAS, the Planning Commission adopted Resolution No. 26-01 on August 18, 2026, recommending the City Council approve the proposed amendments as they appear in Exhibit A; and

1 **WHEREAS**, the City Council of the City of Fircrest has reviewed and approves of the
2 findings of the Planning Commission as described in Planning Commission Resolution
3 No. 26-01, attached hereto as Exhibit B and incorporated by this reference; and

4 **WHEREAS**, the City Council has reviewed the proposed amendments in light of the
5 factors in FMC 22.92.040 and finds that such factors have been considered in reviewing
6 the proposed development regulation amendments in Exhibit A; and

7 **WHEREAS**, after providing legally required public notice, the City Council held a
8 public hearing on September 8, 2026, to accept public testimony and comment on the
9 proposed code amendments; and

10 **WHEREAS**, the City Council finds that the amendments to critical areas regulations as
11 proposed in Exhibits A-G attached hereto are consistent with and supportive of goals,
12 policies, and implementation strategies in the Fircrest Comprehensive Plan and Fircrest
13 Municipal Code ("FMC"), bear a substantial relation to public health, safety, and
14 welfare, and promote the best long-term interests of the community of the City of
15 Fircrest;

16 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FIRCREST DO**
17 **ORDAIN AS FOLLOWS:**

18 **Section 1.** FMC Chapter 22.92 (Critical Areas) Amendments. The following Sections
19 of Fircrest Municipal Code Chapters 22.92 (Critical Areas) are amended as set forth in
20 Exhibit A attached hereto and by this reference fully incorporated herein:

21 FMC 22.92.040 Jurisdiction – Critical Areas,
22 FMC 22.92.090 Exception – Public agency and utility,
23 FMC 22.92.100 Exception – Reasonable use,
24 FMC 22.92.110 Allowed activities,
25 FMC 22.92.130 Critical area preapplication consultation,
26 FMC 22.92.150 Public notice of initial determination,
27 FMC 22.92.160 Critical area report – Requirements,
28 FMC 22.92.180 Mitigation requirements,
29 FMC 22.92.190 Mitigation sequencing,
30 FMC 22.92.290 Unauthorized critical area alterations and enforcement,
FMC 22.92.300 Critical area markers and signs, and
FMC 22.92.340 Building setbacks.

31 **Section 2.** FMC Chapter 22.93 (Wetlands) Amendments. The following sections of
32 Fircrest Municipal Code Chapters 22.93 (Wetlands) are amended as set forth in Exhibit
33 B attached hereto and by this reference fully incorporated herein:

34 FMC 22.93.020 Regulated activities,
FMC 22.93.040 Wetland ratings,
FMC 22.93.070 Compensatory mitigation requirements, and
FMC 22.93.100 Wetland buffers.

1
2 **Section 3. FMC Chapter 22.94 (Critical Aquifer Recharge Areas) Amendments.**

3 The following sections of Fircrest Municipal Code Chapters 22.94 (Critical Aquifer
4 Recharge Areas) are amended as set forth in Exhibit C attached hereto and by this
5 reference fully incorporated herein:

- 6 FMC 22.94.010 Critical aquifer recharge areas designation,
7 FMC 22.94.030 Location and designation of critical aquifer recharge areas,
8 FMC 22.94.050 Critical area report – Additional requirements for critical
9 aquifer recharge areas, and
10 FMC 22.94.080 Uses prohibited from critical aquifer recharge areas.

11 **Section 4. FMC Chapter 22.97 (Fish and Wildlife Habitat Conservation Areas)**
12 **Amendments.** The following sections of Fircrest Municipal Code Chapters 22.97 (Fish
13 and Wildlife Habitat Conservation Areas) are amended as set forth in Exhibit D attached
14 hereto and by this reference fully incorporated herein:

- 15 FMC 22.97.010 Designation of fish and wildlife conservation areas,
16 FMC 22.97.020 Critical area report – Additional requirements for habitat
17 conservation areas,
18 FMC 22.97.030 Performance standards – General requirements, and
19 FMC 22.97.040 Performance standards – Specific habitats.

20 **Section 5. FMC Chapter 22.98 (Definitions) Amendments.** The following sections of
21 Fircrest Municipal Code Chapters 22.98 (Definitions) are amended as set forth in
22 Exhibit E attached hereto and by this reference fully incorporated herein:

- 23 FMC 22.98.179 Critical aquifer recharge area,
24 FMC 22.98.285 Fish and wildlife habitat conservation areas,
25 FMC 22.98.298 Frequently flooded areas,
26 FMC 22.98.447 Mitigation,
27 FMC 22.98.579 Qualified professional,
28 FMC 22.98.623 Seismic hazard areas, and
29 FMC 22.98.753 Wellhead protection area (WHPA).

30 **Section 6. FMC Chapter 22.100 (Geologically Hazardous Areas) Amendments.** The
following sections of Fircrest Municipal Code Chapters 22.100 Geologically Hazardous
Areas) are amended as set forth in Exhibit F attached hereto and by this reference fully
incorporated herein:

- FMC 22.100.010 Designation of geologically hazardous areas,
FMC 22.100.020 Designation of specific hazard areas,
FMC 22.100.040 Mapping of geologically hazardous areas, and
FMC 22.100.050 Activities allowed in geologically hazardous areas.

Section 7. FMC Section 22.98.080, Repealed. Fircrest Municipal Code Section
22.98.080 (Aquifer, confined) is hereby repealed in its entirety.

Section 8. FMC Section 22.98.180, Repealed. Fircrest Municipal Code Section
22.98.180 (Critical area inventory maps) is hereby repealed in its entirety.

Section 9. FMC Section 22.98.350, Repealed. Fircrest Municipal Code Section 22.98.350 (Hyporheic zone) is hereby repealed in its entirety.

Section 10. FMC Section 22.98.544, Repealed. Fircrest Municipal Code Section 22.98.544 (Porous soil types) is hereby repealed in its entirety.

Section 11. FMC Section 22.98.752, Repealed. Fircrest Municipal Code Section 22.98.752 (Well) is hereby repealed in its entirety.

Section 12. FMC Section 22.98.785, Repealed. Fircrest Municipal Code Section 22.98.785 (Zone of contribution) is hereby repealed in its entirety.

Section 13. Severability. If any section, sentence, clause, or phrase of this title shall be held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this title.

Section 14. Publication and Effective Date. A summary of this ordinance consisting of its title shall be published in the official newspaper of the City. This ordinance shall be effective five (5) days after such publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF FIRCREST, WASHINGTON, at a regular meeting thereof this ____ day of _____, 2026.

APPROVED:

Nikki Bufford, Mayor

ATTEST:

Arlette Burkhardt, City Clerk

APPROVED AS TO FORM:

Joanna Eide, City Attorney

Publication Date:
Effective Date:

EXHIBIT A

AMENDMENTS TO SECTIONS IN CHAPTER 22.92 FMC

Chapter 22.92 CRITICAL AREAS

Sections:

- 22.92.010 Purpose.
- 22.92.020 Authority.
- 22.92.030 Relationship to other regulations.
- 22.92.040 Jurisdiction – Critical areas.
- 22.92.050 Protection of critical areas.
- 22.92.060 Best available science.
- 22.92.070 Applicability.
- 22.92.080 Exemptions.
- 22.92.090 Exception – Public agency and utility.
- 22.92.100 Exception – Reasonable use.
- 22.92.110 Allowed activities.
- 22.92.120 General requirements.
- 22.92.130 Critical area preapplication consultation.
- 22.92.140 ~~Critical area identification form~~ [Repealed](#).
- 22.92.150 Public notice of initial determination.
- 22.92.160 Critical area report – Requirements.
- 22.92.170 Critical area report – Modifications to requirements.
- 22.92.180 Mitigation requirements.
- 22.92.190 Mitigation sequencing.
- 22.92.200 Mitigation plan requirements.
- 22.92.210 Innovative mitigation.
- 22.92.220 Determination.
- 22.92.230 Review criteria.
- 22.92.240 Favorable determination.
- 22.92.250 Unfavorable determination.
- 22.92.260 Completion of the critical area review.
- 22.92.270 Appeals.
- 22.92.280 Variances.
- 22.92.290 Unauthorized critical area alterations and enforcement.
- 22.92.300 Critical area markers and signs.
- 22.92.310 Title notice.
- 22.92.320 Native growth protection areas.
- 22.92.330 Critical area tracts.
- 22.92.340 Building setbacks.
- 22.92.350 Bonds to ensure mitigation, maintenance, and monitoring.
- 22.92.360 Critical area inspections.

22.92.010 Purpose.

(a) The purpose of the city's critical areas regulations contained in Chapters 22.92, 22.93, 22.94, 22.95, 22.96, 22.97, 22.99 and 22.100 FMC is to designate and classify ecologically sensitive and hazardous areas and to protect these areas and their functions and values, while also allowing for reasonable use of private property.

(b) These regulations are to implement the goals, policies, guidelines, and requirements of the city's comprehensive plan and the Growth Management Act.

(c) The city finds that critical areas provide a variety of valuable and beneficial biological and physical functions that benefit the city and its residents, and/or may pose a threat to human safety or to public and private property. The

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

(d) Goals. By limiting development and alteration of critical areas, these regulations seek to:

- (1) Protect members of the public and public resources and facilities from injury, loss of life, or property damage due to landslides and steep slope failures, erosion, seismic events, or flooding;
- (2) Maintain healthy, functioning ecosystems through the protection of unique, fragile, and valuable elements of the environment, including ground and surface waters, wetlands, and fish and wildlife and their habitats, and to conserve the biodiversity of plant and animal species;
- (3) Direct activities not dependent on critical areas resources to less ecologically sensitive sites and mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to critical areas; and
- (4) Prevent cumulative adverse environmental impacts to water quality, wetlands, and fish and wildlife habitat, and the overall net loss of wetlands, frequently flooded areas, and habitat conservation areas.

(e) These regulations are intended to protect critical areas in accordance with the Growth Management Act and through the application of the best available science, as determined according to WAC 365-195-900 through 365-195-925, and in consultation with state and federal agencies and other qualified professionals.

(f) These regulations are to be administered with flexibility and attention to site-specific characteristics. Consistent with RCW 36.70A.020(12), it is not the intent of these regulations to make a parcel of property unusable by denying its owner reasonable economic use of the property or to prevent the provision of public facilities and services necessary to support existing development and planned for by the community without decreasing current service levels below minimum standards.

(g) The city's enactment or enforcement of these regulations shall not be construed for the benefit of any individual person or group of persons other than the general public. (Ord. 1375 § 1, 2005).

22.92.020 Authority.

(a) As provided herein, the director is given the authority to interpret and apply, and the responsibility to enforce these regulations, to accomplish the stated purpose.

(b) The city may withhold, condition, or deny development permits or activity approvals to ensure that the proposed action is consistent with these regulations. (Ord. 1375 § 1, 2005).

22.92.030 Relationship to other regulations.

(a) These critical areas regulations shall apply as an overlay and in addition to zoning and other regulations adopted by the city.

(b) Any individual critical area adjoined by another type of critical area shall have the buffer and meet the requirements that provide the most protection to the critical areas involved. When any existing regulation, easement, covenant, or deed restriction conflicts with these critical areas regulations, that regulation which provides more protection to the critical areas shall apply.

(c) These critical areas regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as adopted by the city. Any conditions required pursuant to these regulations shall be included in the SEPA review and threshold determination.

(d) Compliance with these critical areas regulations does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Hydraulic Permit Act (HPA) permits, Section 106 of the National Historic Preservation Act, U.S. Army Corps of Engineers Section 404 permits, and National Pollution Discharge Elimination System (NPDES) permits). The applicant is responsible for complying

with these requirements, apart from the process established in the city's critical areas regulations. (Ord. 1375 § 1, 2005).

22.92.040 Jurisdiction – Critical areas.

(a) The city shall regulate all uses, activities, and developments within, adjacent to, or likely to affect, one or more critical areas, consistent with the best available science and the provisions herein.

(b) Critical areas regulated by this title include:

- (1) Wetlands as designated in Chapter 22.93 FMC;
- (2) Critical aquifer recharge areas as designated in Chapter 22.94 FMC;
- (3) Frequently flooded areas as designated in Chapter 22.99 FMC;
- (4) Fish and wildlife habitat conservation areas as designated in Chapter 22.97 FMC; and
- (5) Geologically hazardous areas as designated in Chapter 22.100 FMC.

(c) All areas within the city meeting the definition of one or more critical areas, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of the applicable critical areas chapters.

(d) Areas Adjacent to Critical Areas Subject to Regulation. Areas adjacent to critical areas shall be considered to be within the jurisdiction of these requirements and regulations to support the intent of the applicable critical areas chapters and ensure protection of the functions and values of critical areas. "Adjacent" shall mean any activity located:

- (1) On a site immediately adjoining a critical area;
- (2) A distance equal to or less than the required critical area buffer width- and [the building setback established in FMC 22.92.340](#);
- (3) A distance equal to or less than 800 feet from a bald eagle nest;
- (4) A distance equal to or less than 300 feet upland from a stream, wetland, or water body; or
- (5) Within the floodway, floodplain, or channel migration zone. (Ord. 1375 § 1, 2005).

22.92.050 Protection of critical areas.

Any action taken pursuant to the applicable critical areas chapters shall result in equivalent or greater functions and values of the critical areas associated with the proposed action, as determined by the best available science. All actions and developments shall be designed and constructed in accordance with the mitigation sequencing order specified in FMC 22.92.190 to avoid, minimize, and restore all adverse impacts. Applicants must first demonstrate an inability to avoid or reduce impacts before restoration and compensation of impacts will be allowed. No activity or use shall be allowed that results in a net loss of the functions or values of critical areas. (Ord. 1375 § 1, 2005).

22.92.060 Best available science.

(a) Protect Functions and Values of Critical Areas with Special Consideration to Anadromous Fish. Critical area reports and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish, such as salmon and bull trout, and their habitat, consistent with RCW 36.70A.172.1.

(b) Best Available Science to Be Consistent with Criteria. The best available science is that scientific information applicable to the critical area prepared by local, state, or federal natural resource agencies, a qualified scientific professional, or team of qualified scientific professionals that is consistent with criteria established in WAC 365-195-900 through 365-195-925.

(c) Characteristics of a Valid Scientific Process. In the context of critical areas protection, a valid scientific process is one that produces reliable information useful in understanding the consequences of a local government's regulatory decisions, and in developing critical areas policies and development regulations that will be effective in protecting the functions and values of critical areas. To determine whether information received during the permit review process is reliable scientific information, the director shall determine whether the source of the information displays the characteristics of a valid scientific process. Such characteristics are as follows:

(1) Peer Review. The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The proponents of the information have addressed the criticism of the peer reviewers. Publication in a refereed scientific journal usually indicates that the information has been appropriately peer-reviewed;

(2) Methods. The methods used to obtain the information are clearly stated and reproducible. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to ensure their reliability and validity;

(3) Logical Conclusions and Reasonable Inferences. The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained;

(4) Quantitative Analysis. The data have been analyzed using appropriate statistical or quantitative methods;

(5) Context. The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge; and

(6) References. The assumptions, analytical techniques, and conclusions are well-referenced with citations to relevant, credible literature and other pertinent existing information.

(d) Nonscientific Information. Nonscientific information may supplement scientific information, but it is not an adequate substitute for valid and available scientific information. Common sources of nonscientific information include the following:

(1) Anecdotal Information. One or more observations that are not part of an organized scientific effort (for example, "I saw a bald eagle in that area while I was hiking");

(2) Non-Expert Opinion. Opinion of a person who is not a qualified scientific expert in a pertinent scientific discipline (for example, "I do not believe there are bald eagles in that area"); and

(3) Hearsay. Information repeated from communication with others (for example, "At a lecture last week, Dr. Jones said there were no bald eagles in that area").

(e) Absence of Valid Scientific Information. Where there is an absence of valid scientific information or incomplete scientific information relating to a critical area leading to uncertainty about the risk to critical area function of permitting an alteration of or impact to the critical area, the director shall:

(1) Take a "precautionary" or a "no-risk approach," that strictly limits development and land use activities until the uncertainty is sufficiently resolved; and

(2) Require application of an effective adaptive management program that relies on scientific methods to evaluate how well regulatory and nonregulatory actions protect the critical area. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. An adaptive management program shall:

(A) Address funding for the research component of the adaptive management program;

(B) Change course based on the results and interpretation of new information that resolves uncertainties; and

(C) Commit to the appropriate timeframe and scale necessary to reliably evaluate regulatory and nonregulatory actions affecting protection of critical areas and anadromous fisheries. (Ord. 1375 § 1, 2005).

22.92.070 Applicability.

(a) The provisions of the critical areas chapters shall apply to all lands, all land uses and development activity, and all structures and facilities in the city, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the city. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purposes and requirements of these chapters.

(b) The city shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated buffer, without first ensuring compliance with the requirements of these chapters.

(c) Approval of a permit or development proposal pursuant to the provisions of these chapters does not discharge the obligation of the applicant to comply with the provisions of these chapters. (Ord. 1375 § 1, 2005).

22.92.080 Exemptions.

(a) Exemption Request and Review Process. The proponent of the activity may submit a written request for exemption to the director that describes the activity and states the exemption listed in this section that applies.

The director shall review the exemption request to verify that it complies with the applicable critical areas chapters and approve or deny the exemption. If the exemption is approved, it shall be placed on file with the department. If the exemption is denied, the proponent may continue in the review process and shall be subject to the requirements of these chapters.

(b) Exempt Activities and Impacts to Critical Areas. All exempted activities shall use reasonable methods to avoid potential impacts to critical areas. To be exempt from the applicable critical areas chapters does not give permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense.

(c) Exempt Activities. The following developments, activities, and associated uses shall be exempt from the provisions of the applicable critical areas chapters; provided, that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements:

(1) Emergencies. Those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of these chapters.

Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. The person or agency undertaking such action shall notify the city within one working day following commencement of the emergency activity. Within 30 days, 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 an allowed emergency action, then enforcement provisions of FMC 22.92.290 shall apply.

After the emergency, the person or agency undertaking the action shall fully fund and conduct necessary restoration and/or mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved critical area report and mitigation plan. The person or agency undertaking the action shall apply for review, and the alteration, critical area report, and mitigation plan shall be reviewed by the city in accordance with the review procedures contained herein. Restoration and/or

mitigation activities must be initiated within one year of the date of the emergency, and completed in a timely manner;

(2) Operation, Maintenance, or Repair. Operation, maintenance, or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems, that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair. Operation and maintenance includes vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities; provided, that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species;

(3) Passive Outdoor Activities. Recreation, education, and scientific research activities that do not degrade the critical area, including fishing, hiking, and bird watching. Trails must be constructed pursuant to the public and private pedestrian trails standards specified in FMC 22.92.110(c)(5);

(4) Forest Practices. Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practices regulations, WAC Title 222;

(5) Construction within Previously Approved Planned Developments. Construction or reconstruction of a single-family, duplex or condominium unit on a lot that was platted or approved within a planned development subsequent to the city's adoption of interim critical areas regulations in 1993 and prior to the effective date of the ordinance codified in this chapter, provided such unit is constructed in accordance with all applicable critical areas regulations in effect at the time of platting or approval; and

(6) Structural Modification of, Additions to, or Replacement of, Existing Residential Structures. Structural modification of, additions to, or replacement of, existing principal residential structures lawfully established prior to the effective date of the ordinance codified in this chapter that do not meet the critical area buffer or building setback requirements; provided, that:

(A) The structure is located within a wetland buffer, fish and wildlife habitat conservation area buffer, or associated buffer building setback;

(B) The structure is not located within a frequently flooded area, geologically hazardous area buffer, or associated buffer building setback;

(C) The modification, addition, replacement or related activity will not increase impervious surface by more than 500 square feet, in total, on the site;

(D) There is no other practicable location within the site that will accommodate the activity, meet the buffer and building setback requirements, and satisfy all other requirements of this title; and

(E) For lots adjoining Leach Creek or Ross Creek, the proposed activity will not encroach into the required buffer beyond that of the existing principal residential structure, and any increase in impervious surface will be compensated for by the planting of native plants within the buffer at a 1:1 ratio of native planting area to increased impervious surface area (i.e., 100 square feet of native planting area would need to be installed in the buffer for 100 square feet of new impervious surface). (Ord. 1375 § 1, 2005).

22.92.090 Exception – Public agency and utility.

(a) If the application of a critical areas chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.

(b) Exception Request and Review Process. An application for a public agency and utility exception shall be made to the city and shall include a ~~critical area identification form;~~ critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW). The

director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with public agency and utility exception review criteria in subsection (d) of this section.

(c) Hearing Examiner Review. The hearing examiner shall review the application and director's recommendation, and conduct a public hearing pursuant to the provisions of Chapter 22.09 FMC. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the public agency and utility exception criteria in subsection (d) of this section.

(d) Public Agency and Utility Review Criteria. The criteria for review and approval of public agency and utility exceptions follow:

- (1) There is no other practical alternative to the proposed development with less impact on the critical areas;
- (2) The application of the critical areas chapter would unreasonably restrict the ability to provide utility services to the public;
- (3) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
- (4) The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science; and
- (5) The proposal is consistent with other applicable regulations and standards.
- (6) All proposed activities will be conducted using the best management practices adopted by the city, as described in FMC 22.92.110(b).

(e) Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application. (Ord. 1638 § 60, 2019; Ord. 1375 § 1, 2005).

22.92.100 Exception – Reasonable use.

(a) If the application of a critical areas chapter would deny all reasonable economic use of the subject property, the city shall determine if compensation is an appropriate action, or the property owner may apply for an exception pursuant to this section.

(b) Exception Request and Review Process. An application for a reasonable use exception shall be made to the city and shall include a ~~critical area identification form~~; critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW) (SEPA documents). The director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in subsection (d) of this section.

(c) Hearing Examiner Review. The hearing examiner shall review the application and conduct a public hearing pursuant to the provisions of Chapter 22.09 FMC. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use exception review criteria in subsection (d) of this section.

(d) Reasonable Use Review Criteria. Criteria for review and approval of reasonable use exceptions follow; one or more may apply:

- (1) The application of the critical areas chapters would deny all reasonable economic use of the property;
- (2) No other reasonable economic use of the property has less impact on the critical area;

(3) The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;

(4) The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant, or its predecessor, after the effective date of the critical area chapters;

(5) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site; and

(6) The proposal will result in no net loss of critical area functions and values consistent with the best available science.

(7) All proposed activities will be conducted using best available management practices adopted by the city, as described in FMC 22.92.110(b).

(e) Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application. (Ord. 1638 § 61, 2019; Ord. 1375 § 1, 2005).

22.92.110 Allowed activities.

(a) Critical Area Report. Activities allowed under the applicable critical areas chapter(s) shall have been reviewed and permitted or approved by the city or other agency with jurisdiction, but do not require submittal of a separate ~~critical area identification form or~~ critical area report, unless such submittal was required previously for the underlying permit. The director may apply conditions to the underlying permit or approval to ensure that the allowed activity is consistent with the provisions of these chapters to protect critical areas.

(b) Required Use of Best Management Practices. All allowed activities shall be conducted using the best management practices adopted by the city, including but not limited to those contained within the Department of Ecology Stormwater Management Manual for Western Washington, that result in the least amount of impact to the critical areas. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The city shall observe the use of best management practices to ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense.

(c) Allowed Activities. The following activities are allowed:

(1) Permit Requests Subsequent to Previous Critical Area Review. Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits), and construction approvals (such as building permits) if all of the following conditions have been met:

(A) The provisions of the applicable critical areas chapter(s) have been previously addressed as part of another approval;

(B) There have been no material changes in the potential impact to the critical area or buffer since the prior review;

(C) There is no new information available that is applicable to any critical area review of the site or particular critical area;

(D) The permit or approval has not expired or, if no expiration date, no more than five years has elapsed since the issuance of that permit or approval; and

(E) Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured;

(2) Modification to Existing Structures. Structural modification of, addition to, or replacement of an existing legally constructed structure that does not further alter or increase the impact to the critical area or buffer and

there is no increased risk to life or property as a result of the proposed modification or replacement; provided, that restoration of structures substantially damaged by fire, flood, or act of nature must be initiated within one year of the date of such damage, as evidenced by the issuance of a valid building permit, and diligently pursued to completion;

(3) Activities within the Improved Right-of-Way. Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a city-authorized private roadway except those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater, subject to the following:

(A) Critical area and/or buffer widths shall be increased, where possible, equal to the width of the right-of-way improvement, including disturbed areas; and

(B) Retention and replanting of native vegetation shall occur wherever possible along the right-of-way improvement and resulting disturbance;

(4) Minor Utility Projects. Utility projects that have minor or short-duration impacts to critical areas, as determined by the director in accordance with the criteria below, and that do not significantly impact the function or values of a critical area(s); provided, that such projects are constructed with best management practices and additional restoration measures are provided. Minor activities shall not result in the transport of sediment or increased stormwater. Such allowed minor utility projects shall meet the following criteria:

(A) There is no practical alternative to the proposed activity with less impact on critical areas;

(B) The activity involves the placement of a utility pole, street signs, anchor, or vault or other small component of a utility facility; and

(C) The activity involves disturbance of an area less than 75 square feet;

(5) Public and Private Pedestrian Trails. Public and private pedestrian trails, subject to the following:

(A) The trail surface shall meet all other requirements including water quality standards set forth in the Department of Ecology Stormwater Management Manual for Western Washington;

(B) Critical area and/or buffer widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas;

(C) Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report; and

(D) Trails proposed to be located in ~~wetlands, fish and wildlife habitat conservation areas, or their~~ the outer 25 percent of wetland or fish and wildlife habitat conservation area buffers ~~which are, should be~~ limited to permeable surfaces no more than five feet wide and designed for pedestrian use only, ~~located only in the outer 25 percent of a buffer~~, and located to avoid removal of significant trees, old growth trees, or mature trees.

(6) Select Vegetation Removal Activities. The following vegetation removal activities; provided, that no vegetation shall be removed from a critical area or its buffer without approval from the director:

(A) The removal of the following vegetation with hand labor and light equipment:

(i) Invasive and noxious weeds classified by the Washington State Noxious Weed Board;

(ii) English ivy (*Hedera helix*);

(iii) Himalayan blackberry (*Rubus armeniacus*, *R. procerus*); and

- (iv) Evergreen blackberry (*Rubus laciniatus*);
- (B) The removal of trees from critical areas and buffers that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property; provided, that:
 - (i) The applicant submits a report from a certified arborist, registered landscape architect, or professional forester that documents the hazard and provides a replanting schedule for the replacement trees;
 - (ii) Tree cutting shall be limited to pruning and crown thinning, unless otherwise justified by a qualified professional. Where pruning or crown thinning is not sufficient to address the hazard, trees should be removed or converted to wildlife snags;
 - (iii) All vegetation cut (tree stems, branches, etc.) shall be left within the critical area or buffer unless removal is warranted due to the potential for disease or pest transmittal to other healthy vegetation;
 - (iv) The landowner shall replace any trees that are removed with new trees at a ratio of two replacement trees for each tree removed (2:1) within one year in accordance with an approved restoration plan. Replacement trees may be planted at a different nearby location if it can be determined that planting in the same location would create a new hazard or potentially damage the critical area. Replacement trees shall be species that are native and indigenous to the site and a minimum of one inch in diameter at breast height (dbh) for deciduous trees and a minimum of six feet in height for evergreen trees as measured from the top of the root ball;
 - (v) If a tree to be removed provides critical habitat, such as an eagle perch, a qualified wildlife biologist shall be consulted to determine timing and methods of removal that will minimize impacts; and
 - (vi) Hazard trees determined to pose an imminent threat or danger to public health or safety, to public or private property, or of serious environmental degradation may be removed or pruned by the landowner prior to receiving written approval from the city; provided, that within 14 days following such action, the landowner shall submit a restoration plan that demonstrates compliance with the provisions of this chapter;
- (C) Measures to control a fire or halt the spread of disease or damaging insects consistent with the State Forest Practices Act, Chapter 76.09 RCW; provided, that the removed vegetation shall be replaced in-kind or with similar native species within one year in accordance with an approved restoration plan; and
- (D) Unless otherwise provided, or as a necessary part of an approved alteration, removal of any vegetation or woody debris from a habitat conservation area or wetland shall be prohibited;
- (7) Chemical Applications. The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary, as approved by the city; provided, that their use shall be restricted in accordance ~~with State Department of Fish and Wildlife management recommendations and~~ the regulations of the State Department of Agriculture, the State Department of Ecology, and the U.S. Environmental Protection Agency;
- (8) Minor Site Investigative Work. Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored; and
- (9) Boundary Markers. Construction or modification of boundary markers. (Ord. 1574 § 1, 2016; Ord. 1375 § 1, 2005).

22.92.120 General requirements.

- (a) As part of this review, the city shall:

- (1) Verify the information submitted by the applicant;
 - (2) Evaluate the project area and vicinity for critical areas;
 - (3) Determine whether the proposed project is likely to impact the functions or values of critical areas; and
 - (4) Determine if the proposed project adequately addresses the impacts and avoids impacts to the critical area associated with the project.
- (b) If the proposed project is within, adjacent to, or is likely to impact a critical area, the city shall:
- (1) Require a critical area report from the applicant that has been prepared by a qualified professional;
 - (2) Review and evaluate the critical area report;
 - (3) Determine whether the development proposal conforms to the purposes and performance standards of the applicable critical areas chapters, including the review criteria in FMC 22.92.230;
 - (4) Assess the potential impacts to the critical area and determine if they can be avoided or minimized; and
 - (5) Determine if any mitigation proposed by the applicant is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of the applicable critical areas chapters. (Ord. 1375 § 1, 2005).

22.92.130 Critical area preapplication consultation.

Any person preparing to submit an application for development or use of land that may be regulated by the provisions of a critical areas chapter ~~shall~~ may conduct a consultation meeting with the director prior to submitting an application for development or other approval. At this meeting, the director shall discuss the requirements of these chapters; provide critical area maps, scientific information, and other source materials, if available; outline the review process; and work with the activity proponent to identify any potential concerns that might arise during the review process, in addition to discussing other permit procedures and requirements. (Ord. 1375 § 1, 2005).

22.92.140 ~~Repealed. Critical area identification form.~~

- ~~(a) Submittal. Prior to the city's consideration of any proposed activity not found to be exempt under FMC 22.92.080 or allowed pursuant to FMC 22.92.110, the applicant shall submit to the department a complete critical area identification form on forms provided by the city.~~
- ~~(b) Site Inspection. Upon receipt of a project application and a critical area identification form, the director shall conduct a site inspection to review critical area conditions on site. The director shall notify the property owner of the inspection prior to the site visit. Reasonable access to the site shall be provided by the property owner for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period.~~
- ~~(c) Critical Area Identification Form Review Process. The director or his/her designee shall review the critical area identification form, conduct a site inspection, and review other information available pertaining to the site and the proposal and make a determination as to whether any critical areas may be affected by the proposal and if a more detailed critical area report shall be submitted.~~
- ~~(1) Decision Indicators. The director may use the following indicators to assist in determining the need for a critical area report:~~
- ~~(A) Indication of a critical area on the city critical areas maps that may be impacted by the proposed activity;~~
- ~~(B) Information and scientific opinions from appropriate agencies, including but not limited to the Departments of Fish and Wildlife, Natural Resources, and Ecology;~~
- ~~(C) Documentation, from a scientific or other reasonable source, of the possible presence of a critical area; or~~
- ~~(D) A finding by a qualified professional or a reasonable belief by the director that a critical area may exist on or adjacent to the site of the proposed activity.~~
- ~~(d) Decision on Identification Form.~~
- ~~(1) No Critical Areas Present. If after a site visit the director's analysis indicates that the project area is not within or adjacent to a critical area or buffer and that the proposed activity is unlikely to degrade the functions or values of a critical area, then the director shall rule that the critical area review is complete and note on the identification form~~

~~the reasons that no further review is required. A summary of this information shall be included in any staff report or decision on the underlying permit.~~

~~(2) Critical Areas Present, But No Impact—Waiver. If the director determines that there are critical areas within or adjacent to the project area, but that the best available science shows that the proposed activity is unlikely to degrade the functions or values of the critical area, the director may waive the requirement for a critical area report. A waiver may be granted if there is substantial evidence that all of the following requirements will be met:~~

~~(A) There will be no alteration of the critical area or buffer;~~

~~(B) The development proposal will not impact the critical area in a manner contrary to the purpose, intent, and requirements of the applicable critical areas chapter(s); and~~

~~(C) The proposal is consistent with other applicable regulations and standards.~~

~~A summary of this analysis and the findings shall be included in any staff report or decision on the underlying permit.~~

~~(3) Critical Areas May Be Affected by Proposal. If the director determines that a critical area or areas may be affected by the proposal, then the director shall notify the applicant that a critical area report must be submitted prior to further review of the project, and indicate each of the critical area types that should be addressed in the report.~~

~~(e) Director's Determination Subject to Reconsideration. A determination regarding the apparent absence of one or more critical areas by the director is not an expert certification regarding the presence of critical areas and the determination is subject to possible reconsideration and reopening if new information is received.~~

~~If the applicant wants greater assurance of the accuracy of the critical area review determination, the applicant may choose to hire a qualified professional to provide such assurances. (Ord. 1375 § 1, 2005).~~

22.92.150 Public notice of initial determination.

The city shall notify the public of proposals in accordance with Chapter 22.07 FMC.

(a) If the director determines that no critical area report is necessary, the city shall state the reasons for this determination in the notice of application issued by the city for the proposal.

~~(b) If the director determines that there are critical areas on the site that the proposed project is unlikely to impact and the project meets the requirements for and has been granted a waiver from the requirement to complete a critical area report, a summary of the analysis and findings for this decision shall be stated in the notice of application for the proposal.~~

~~(e)~~ (b) If the director determines that critical areas may be affected by the proposal and a critical area report is required, public notice of the application shall include a description of the critical area that might be affected and state that a critical area report is required. (Ord. 1375 § 1, 2005).

22.92.160 Critical area report – Requirements.

(a) Preparation by Qualified Professional. If required by ~~the director in accordance with FMC 22.92.140(d)(3)~~ [this chapter](#), the applicant shall submit a critical area report prepared by a qualified professional as defined herein, ~~and as defined in FMC Chapter 22.98, Definitions.~~

(b) Incorporating of Best Available Science. The critical area report shall use scientifically valid methods and studies in the analysis of critical area data and field reconnaissance and reference the source of science used. The critical area report shall evaluate the proposal and all probable impacts to critical areas in accordance with the provisions of the applicable critical areas chapters.

(c) Minimum Report Contents. At a minimum, the report shall contain the following:

(1) The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;

(2) A copy of the site plan for the development proposal including:

(A) A map to scale depicting critical areas, buffers, the development proposal, and any areas to be cleared; and

(B) A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations;

- (3) The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
 - (4) Identification and characterization of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area;
 - (5) A statement specifying the accuracy of the report, and all assumptions made and relied upon;
 - (6) An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;
 - (7) An analysis of site development alternatives including a no development alternative;
 - (8) A description of reasonable efforts made to apply mitigation sequencing pursuant to FMC 22.92.190 to avoid, minimize, and mitigate impacts to critical areas;
 - (9) Plans for adequate mitigation, as needed, to offset any impacts, in accordance with FMC 22.92.200, including, but not limited to:
 - (A) The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and
 - (B) The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment;
 - (10) A discussion of the performance standards applicable to the critical area and proposed activity;
 - (11) Financial guarantees to ensure compliance; and
 - (12) Any additional information required for the critical area as specified in the corresponding chapter.
- (d) Unless otherwise provided, a critical area report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the director. (Ord. 1375 § 1, 2005).

22.92.170 Critical area report – Modifications to requirements.

(a) Limitations to Study Area. The director may limit the required geographic area of the critical area report as appropriate if:

- (1) The applicant, with assistance from the city, cannot obtain permission to access properties adjacent to the project area; or
- (2) The proposed activity will affect only a limited part of the subject site.

(b) Modifications to Required Contents. The applicant may consult with the director prior to or during preparation of the critical area report to obtain city approval of modifications to the required contents of the report where, in the judgment of a qualified professional, more or less information is required to adequately address the potential critical area impacts and required mitigation.

(c) Additional Information Requirements. The director may require additional information to be included in the critical area report when determined to be necessary to the review of the proposed activity in accordance with the applicable critical areas chapters. Additional information that may be required includes, but is not limited to:

- (1) Historical data, including original and subsequent mapping, aerial photographs, data compilations and summaries, and available reports and records relating to the site or past operations at the site;
- (2) Grading and drainage plans; and

(3) Information specific to the type, location, and nature of the critical area. (Ord. 1375 § 1, 2005).

22.92.180 Mitigation requirements.

(a) The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas. Unless otherwise provided in the applicable critical areas chapter, if alteration to the critical area is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a development proposal or alteration shall be mitigated using the best available science in accordance with an approved critical area report and SEPA documents, so as to result in no net loss of critical area functions and values.

(b) Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach such as the use of off-site mitigation, mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.

(c) Mitigation shall not be implemented until after city approval of a critical area report that includes a mitigation plan, and mitigation shall be in accordance with the provisions of the approved critical area report.

(d) Mitigation proposed for impacts to critical aquifer recharge areas shall refer to FMC Chapter 22.94, and not this chapter. (Ord. 1574 § 2, 2016; Ord. 1375 § 1, 2005).

22.92.190 Mitigation sequencing.

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

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;

(c) Rectifying the impact to wetlands, critical aquifer recharge areas, geologically hazardous areas, frequently flooded areas, and fish and wildlife habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;

(d) Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;

(e) Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;

(f) Compensating for the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and fish and wildlife habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and

(g) Monitoring the hazard or other required mitigation and taking remedial action when necessary. Monitoring shall occur at least annually for five (5) years, unless best available science would inform otherwise. A monitoring report shall be provided to the City following each monitoring event and shall document the success of the mitigation against performance standards established in the mitigation plan accepted by the City.

Mitigation for individual actions may include a combination of the above measures. (Ord. 1375 § 1, 2005).

22.92.200 Mitigation plan requirements.

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

(a) Environmental Goals and Objectives. The mitigation plan shall include a written report identifying environmental goals and objectives of the compensation proposed and including:

- (1) A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area;
 - (2) A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed; and
 - (3) An analysis of the likelihood of success of the compensation project.
- (b) Performance Standards. The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of the applicable critical areas chapters have been met.
- (c) Detailed Construction Plans. The mitigation plan shall include written specifications and descriptions of the mitigation proposed, such as:
- (1) The proposed construction sequence, timing, and duration;
 - (2) Grading and excavation details;
 - (3) Erosion and sediment control features;
 - (4) A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
 - (5) Measures to protect and maintain plants until established.

These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.

(d) Monitoring Program. The mitigation plan shall include a program for monitoring construction of the compensation project and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring (for example, monitoring shall occur in years one, two, three, five, seven and 10 after site construction), and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five years, or 10 years for forested and scrub-shrub wetland communities.

(e) Contingency Plan. The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.

(f) Financial Guarantees. The mitigation plan shall include financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures shall be posted in accordance with FMC 22.92.350. (Ord. 1375 § 1, 2005).

22.92.210 Innovative mitigation.

(a) The city may encourage, facilitate, and approve innovative mitigation projects that are based on the best available science. Advance mitigation or mitigation banking are examples of alternative mitigation projects allowed under the provisions of this section wherein one or more applicants, or an organization with demonstrated capability, may undertake a mitigation project together if it is demonstrated that all of the following circumstances exist:

- (1) Creation or enhancement of a larger system of critical areas and open space is preferable to the preservation of many individual habitat areas;

- (2) The group demonstrates the organizational and fiscal capability to act cooperatively;
- (3) The group demonstrates that long-term management of the habitat area will be provided; and
- (4) There is a clear potential for success of the proposed mitigation at the identified mitigation site.

(b) Conducting mitigation as part of a cooperative process does not reduce or eliminate the required replacement ratios. (Ord. 1375 § 1, 2005).

22.92.220 Determination.

The director shall make a determination as to whether the proposed activity and mitigation, if any, is consistent with the provisions of the applicable critical areas chapters. The director's determination shall be based on the criteria of FMC 22.92.230. (Ord. 1375 § 1, 2005).

22.92.230 Review criteria.

(a) Any alteration to a critical area, unless otherwise provided for in the applicable critical areas chapters, shall be reviewed and approved, approved with conditions, or denied based on the proposal's ability to comply with all of the following criteria:

- (1) The proposal minimizes the impact on critical areas in accordance with the mitigation sequencing order specified in FMC 22.92.190;
- (2) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
- (3) The proposal is consistent with the general purposes of the applicable critical areas chapters and the public interest;
- (4) Any alterations permitted to the critical area are mitigated in accordance with FMC 22.92.180;
- (5) The proposal protects the critical area functions and values consistent with the best available science and results in no net loss of critical area functions and values; and
- (6) The proposal is consistent with other applicable regulations and standards.

(b) The city may condition the proposed activity as necessary to mitigate impacts to critical areas and to conform to the standards required by the applicable critical areas chapters.

(c) Except as provided for by the applicable critical areas chapters, any project that cannot adequately mitigate its impacts to critical areas in the sequencing order of preferences in FMC 22.92.190 shall be denied. (Ord. 1375 § 1, 2005).

22.92.240 Favorable determination.

If the director determines that the proposed activity meets the criteria in FMC 22.92.230 and complies with the applicable provisions of the applicable critical areas chapters, the director shall prepare a written notice of determination and identify any required conditions of approval. The notice of determination and conditions of approval shall be included in the project file and be considered in the next phase of the city's review of the proposed activity in accordance with any other applicable codes or regulations.

Any conditions of approval included in a notice of determination shall be attached to the underlying permit or approval. Any subsequent changes to the conditions of approval shall void the previous determination pending re-review of the proposal and conditions of approval by the director.

A favorable determination should not be construed as endorsement or approval of any underlying permit or approval. (Ord. 1375 § 1, 2005).

22.92.250 Unfavorable determination.

If the director determines that a proposed activity does not adequately mitigate its impacts on the critical areas and/or does not comply with the criteria in FMC 22.92.230 and the provisions of the applicable critical areas chapters, the director shall prepare written notice of the determination that includes findings of noncompliance.

No proposed activity or permit shall be approved or issued if it is determined that the proposed activity does not adequately mitigate its impacts on the critical areas and/or does not comply with the provisions of the applicable critical areas chapters.

Following notice of determination that the proposed activity does not meet the review criteria and/or does not comply with the applicable critical areas chapters, the applicant may request consideration of a revised critical area report. If the revision is found to be substantial and relevant to the critical area review, the director may reopen the critical area review and make a new determination based on the revised report. (Ord. 1375 § 1, 2005).

22.92.260 Completion of the critical area review.

The city's determination regarding critical areas pursuant to the applicable critical areas chapters shall be final concurrent with the final decision to approve, condition, or deny the development proposal or other activity involved. (Ord. 1375 § 1, 2005).

22.92.270 Appeals.

Any decision to approve, condition, or deny a development proposal or other activity based on the requirements of a critical areas chapter may be appealed according to, and as part of, the appeal procedure for the permit or approval involved. (Ord. 1375 § 1, 2005).

22.92.280 Variances.

(a) Variances from the standards of a critical areas chapter may be authorized by the city in accordance with the procedures set forth in Chapter 22.74 FMC. The director or hearing examiner, as authorized, shall review the request and make a written finding that the request meets or fails to meet the variance criteria.

(b) Variance Criteria. A variance may be granted only if the applicant demonstrates that the requested action conforms to all of the criteria set forth in FMC 22.74.003 and as follows:

- (1) A literal interpretation of the provisions of this chapter would deprive the applicant of all reasonable economic uses and privileges permitted to other properties in the vicinity and zone of the subject property under the terms of this chapter, and the variance requested is the minimum necessary to provide the applicant with such rights;
- (2) The granting of the variance is consistent with the general purpose and intent of this chapter, and will not further degrade the functions or values of the associated critical areas; and
- (3) The decision to grant the variance includes the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat.

(c) Conditions May Be Required. In granting any variance, the city may prescribe such conditions and safeguards as are necessary to secure adequate protection of critical areas from adverse impacts, and to ensure conformity with this chapter.

(d) Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and upon which any decision has to be made on the application. (Ord. 1638 § 62, 2019; Ord. 1375 § 1, 2005).

22.92.290 Unauthorized critical area alterations and enforcement.

(a) When a critical area or its buffer has been altered in violation of a critical areas chapter, all ongoing development work shall stop and the critical area shall be restored. The city shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation, or replacement measures at the owner's or other responsible party's expense to compensate for violation of provisions of the applicable critical areas chapter.

(b) Requirement for Restoration Plan. 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 using the best available science and shall describe how the actions proposed meet the minimum requirements described in subsection (c) of this section. The director shall, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

(c) Minimum Performance Standards for Restoration.

(1) For alterations to critical aquifer recharge areas, frequently flooded areas, wetlands, and habitat conservation areas, the following minimum performance standards shall be met for the restoration of a critical area; provided, that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:

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

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

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

(D) Information demonstrating compliance with the requirements in FMC 22.92.250 shall be submitted to the director.

(2) For alterations to flood and geological hazards, the following minimum performance standards shall be met for the restoration of a critical area; provided, that if the violator can demonstrate that greater safety can be obtained, these standards may be modified:

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

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

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

(d) Site Investigations. The director is authorized to make site inspections and take such actions as are necessary to enforce the city's critical areas regulations pursuant to Chapters 22.92, 22.93, 22.94, 22.95, 22.96, 22.97, 22.99, and 22.100 FMC, and as provided on the permit applications regarding the same. The director shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property. (Ord. 1375 § 1, 2005).

22.92.300 Critical area markers and signs.

(a) The boundary at the outer edge of critical area tracts and easements shall be delineated with permanent survey stakes, using iron or concrete markers as established by local survey standards.

(b) The boundary at the outer edge of the critical area or buffer shall be identified with temporary signs prior to any site alteration. Such temporary signs shall be replaced with permanent signs prior to occupancy or use of the site.

(c) These provisions may be modified by the director as necessary to ensure protection of sensitive features or wildlife needs, and are inapplicable to critical aquifer recharge areas. (Ord. 1375 § 1, 2005).

22.92.310 Title notice.

(a) In order to inform subsequent purchasers of real property of the existence of critical areas, the owner of any property containing a critical area or buffer on which a development proposal is submitted shall file a notice with the county auditor according to the direction of the city. The notice shall state the presence of the critical area or buffer on the property, the application of the critical areas regulations to the property, and the fact that limitations on actions in or affecting the critical area or buffer may exist. The notice shall "run with the land."

(b) This title notice shall not be required for a development proposal by a public agency or public or private utility:

- (1) Within a recorded easement or right-of-way;
- (2) Where the agency or utility has been adjudicated the right to an easement or right-of-way; or
- (3) On the site of a permanent public facility.

(c) The applicant shall submit proof that the notice has been filed for public record before the city approves any site development or construction for the property or, in the case of subdivisions, short subdivisions, and planned unit developments, at or before recording. (Ord. 1375 § 1, 2005).

22.92.320 Native growth protection areas.

(a) Unless otherwise required in the applicable critical areas chapters, native growth protection areas shall be used in development proposals for subdivisions, short subdivisions, and planned unit developments to delineate and protect those contiguous critical areas and buffers listed below:

- (1) All landslide hazard areas and buffers;
- (2) All wetlands and buffers;
- (3) All habitat conservation areas; and
- (4) All other lands to be protected from alterations as conditioned by project approval.

(b) Native growth protection areas shall be recorded on all documents of title of record for all affected lots.

(c) Native growth protection areas shall be designated on the face of the plat of recorded drawing in a format approved by the city. The designation shall include the following restrictions:

- (1) An assurance that native vegetation will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and
- (2) The right of the city to enforce the terms of the restriction. (Ord. 1375 § 1, 2005).

22.92.330 Critical area tracts.

(a) Critical area tracts shall be used in development proposals for subdivisions, short subdivisions, and planned unit developments to delineate and protect those contiguous critical areas and buffers listed below that total 5,000 or more square feet:

- (1) All landslide hazard areas and buffers;
- (2) All wetlands and buffers;
- (3) All habitat conservation areas; and
- (4) All other lands to be protected from alterations as conditioned by project approval.

(b) Critical area tracts shall be recorded on all documents of title of record for all affected lots.

(c) Critical area tracts shall be designated on the face of the plat or recorded drawing in a format approved by the city. The designation shall include the following restriction:

- (1) An assurance that native vegetation will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and
- (2) The right of the city to enforce the terms of the restriction.

(d) The city may require that any required critical area tract be dedicated to the city, held in an undivided interest by each owner of a building lot within the development with the ownership interest passing with the ownership of the lot, or held by an incorporated homeowner's association or other legal entity (such as a land trust, which ensures the ownership, maintenance, and protection of the tract). (Ord. 1375 § 1, 2005).

22.92.340 Building setbacks.

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

- (a) Landscaping;
- (b) Uncovered decks;
- (c) Building overhangs, if such overhangs do not extend more than 18 inches into the setback area; and
- (d) Impervious and pervious ground surfaces, such as driveways and patios; provided, that such improvements may be subject to water quality regulations as adopted in the Department of Ecology Stormwater Management Manual for Western Washington. (Ord. 1375 § 1, 2005).

22.92.350 Bonds to ensure mitigation, maintenance, and monitoring.

- (a) When mitigation required pursuant to a development proposal is not completed prior to the city final permit approval, such as final plat approval or final building inspection, the city shall require the applicant to post a performance bond or other security in a form and amount deemed acceptable by the city. If the development proposal is subject to mitigation, the applicant shall post a mitigation bond or other security in a form and amount deemed acceptable by the city to ensure mitigation is fully functional.
- (b) The bond shall be in the amount of 125 percent of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater.
- (c) The bond shall be in the form of a surety bond, performance bond, assignment of a savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the city attorney.
- (d) Bonds or other security authorized by this section shall remain in effect until the city determines, in writing, that the standards bonded for have been met. Bonds or other security shall be held by the city for a minimum of five years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.
- (e) Depletion, failure, or collection of bond funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.
- (f) Public development proposals shall be relieved from having to comply with the bonding requirements of this section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.
- (g) Any failure to satisfy critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within 30 days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default, and the city may demand payment of any financial guarantees or require other action authorized by the city code or any other law.
- (h) Any funds recovered pursuant to this section shall be used to complete the required mitigation. (Ord. 1375 § 1, 2005).

22.92.360 Critical area inspections.

Reasonable access to the site shall be provided to the city, state, and federal agency review staff for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period. (Ord. 1375 § 1, 2005).

|

EXHIBIT B

AMENDMENTS TO SECTIONS IN CHAPTER 22.93 FMC

Chapter 22.93 **WETLANDS**

Sections:

- 22.93.010 Designating, defining, identifying, and mapping wetlands.
- 22.93.020 Regulated activities.
- 22.93.030 Activities allowed in wetlands.
- 22.93.040 Wetland ratings.
- 22.93.050 Standards – General requirements.
- 22.93.060 Critical area report – Additional requirements for wetlands.
- 22.93.070 Compensatory mitigation requirements.
- 22.93.080 Standards – Subdivisions.
- 22.93.090 Signs and fencing of wetlands.
- 22.93.100 Wetland buffers.
- 22.93.110 Residential density and on-site density transfer.
- 22.93.120 *Repealed.*
- 22.93.130 Alternate review process – Army Corps of Engineers Section 404 individual permits.

22.93.010 Designating, defining, identifying, and mapping wetlands.

(a) Designating, Defining and Identifying Wetlands. Wetlands are those areas designated in accordance with the procedures outlined in WAC 173-22-035.

All areas within the city meeting the wetland definition criteria, regardless of whether these areas have previously been identified or mapped, are hereby designated critical areas and are subject to the provisions of Chapter 22.92 FMC and this chapter.

(b) Mapping. The approximate location and extent of wetlands are shown on the adopted critical area map contained within the comprehensive plan. In addition, the maps contained within the National Wetlands Inventory are hereby adopted. Additionally, soil maps produced by the U.S. Department of Agriculture National Resources Conservation Service may be useful in helping to identify potential wetland areas. These maps are to be used as a guide for the city, project applicants, and/or property owners, and may be continuously updated as new critical areas are identified.

It is the actual presence of a wetland on a parcel, as delineated by WAC 173-22-035, which triggers the requirements of Chapter 22.92 FMC and this chapter, whether or not the wetland is identified on the adopted maps. The exact location of a wetland's boundary shall be determined through the performance of a field delineation by a qualified wetlands professional in accordance with the approved federal wetland delineation manual and applicable regional supplements pursuant to WAC 173-22-035. (Ord. 1512 § 6, 2011; Ord. 1375 § 2, 2005).

22.93.020 Regulated activities.

~~The following activities are regulated~~Regulated activities, if they occur in a regulated wetland or its buffer, include but are not limited to:

- (a) The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
- (b) The dumping, discharging, or filling with any material;
- (c) The draining, flooding, or disturbing of the water level or water table;
- (d) The driving of pilings;

- (e) The placing of obstructions;
- (f) The construction, reconstruction, demolition, or expansion of any structure;
- (g) The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland; provided, that these activities are not part of a forest practice governed under Chapter 76.09 RCW and its rules; or
- (h) Activities that result in:
 - (1) A significant change of water temperature;
 - (2) A significant change of physical or chemical characteristics of the sources of water to the wetland;
 - (3) A significant change in the quantity, timing or duration of the water entering the wetland; or
 - (4) The introduction of pollutants. (Ord. 1375 § 2, 2005).

22.93.030 Activities allowed in wetlands.

The activities listed below are allowed in wetlands in addition to those activities listed in, and consistent with, the provisions established in FMC 22.92.110. These activities do not require submission of a critical area report, except where such activities result in a loss to the functions and values of a wetland or wetland buffer. These activities include:

- (a) Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife that does not entail changing the structure or functions of the existing wetland.
- (b) 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 of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.
- (c) Drilling for utilities/utility corridors under a wetland with the entrance/exit portals located completely outside of the wetland buffer; 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 a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column will be disturbed.
- (d) Enhancement of a wetland through the removal of nonnative invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. All removed plant material shall be taken away from the site and disposed of appropriately. 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 the species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.
- (e) Educational and scientific research activities.
- (f) Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way; provided, that the maintenance or repair does not increase the footprint or use of the facility or right-of-way. (Ord. 1574 § 3, 2016; Ord. 1375 § 2, 2005).

22.93.040 Wetland ratings.

- (a) Wetlands shall be rated according to the Washington State Department of Ecology Wetland Rating System for Western Washington – 2014 Update (Ecology Publication No. [23-06-02914-06-030](#)) or as revised by Ecology. Wetland rating categories shall be applied as the wetland exists at the time of the adoption of this chapter or as it exists at the time of an associated permit application. Wetland rating categories shall not change due to illegal modifications.

(b) Wetland Rating Categories.

(1) Category I. Category I 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 very high level of functions, scoring a minimum of 23 points on the wetland rating form. Category I wetlands can include, but are not limited to: large undisturbed estuarine wetlands, wetlands of high conservation value, bogs, wetlands with mature old-growth forests, wetlands in coastal lagoons, or interdunal wetlands larger than 1 acre and scoring 8-9 points for habitat scores on the wetland rating form. ~~Category I wetlands are: (A) wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as high quality wetland; (B) bogs; (C) mature and old-growth forested wetlands larger than one acre; and (D) wetlands that perform many functions well (scoring between 23 and 27 points).~~

~~These wetlands are those that: (A) represent unique or rare wetland types; or (B) are more sensitive to disturbance than most wetlands; or (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.~~

(2) Category II. Category II wetlands 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. Category II wetlands in western Washington can include, but are not limited to ~~Category II wetlands are wetlands with a moderately high level of functions (score between 20 and 22 points); smaller estuarine wetlands, wetlands that score between 20-22 points on wetland rating form questions related to the functions present at the wetland, interdunal wetlands larger than 1 acre, or those in a wetland mosaic.~~

(3) Category III. Category III wetlands are 1) wetlands with a moderate level of functions (scores between 16-19 points on the wetland rating form), 2) can often be adequately replaced with a well-planned mitigation project, and 3) interdunal wetlands between 0.1 and 1 ac in size. Wetlands scoring between 16-19 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 III wetlands are those wetlands with a moderate level of functions (scoring between 16 and 19). 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.~~

(4) Category IV. Category IV wetlands have the lowest levels of functions (scores fewer than 16 points on the wetland rating form) 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 ~~Category IV wetlands are those wetlands with the lowest levels of functions (between nine and 15 points) and are often heavily disturbed. These are wetlands that are possible to replace, and in some cases improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.~~ (Ord. 1574 § 4, 2016; Ord. 1375 § 2, 2005).

22.93.050 Standards – General requirements.

(a) Activities and uses shall be prohibited in wetlands and wetland buffers, except as provided for in Chapter 22.92 FMC and this chapter.

(b) Category I Wetlands. Activities and uses shall be prohibited from Category I wetlands, except as provided for in the public agency and utility exception, reasonable use exception, and variance sections of Chapter 22.92 FMC.

(c) Category II and III Wetlands. For activities proposed in Category II and III wetlands, the following standards shall apply:

(1) Activities and uses shall be prohibited unless the applicant can demonstrate that:

(A) The basic project purpose cannot reasonably be accomplished on another site or sites in the general region while still successfully avoiding or resulting in less adverse impact on a wetland; and

(B) All on-site alternative designs that would avoid or result in less adverse impact on a wetland or its buffer, such as a reduction in the size, scope, configuration, or density of the project, are not feasible.

Full compensation for the loss of acreage and functions of wetland and buffers shall be provided under the terms established under FMC 22.93.070.

(d) Category IV Wetlands. Activities and uses that result in unavoidable impacts may be permitted in Category IV wetlands and associated buffers in accordance with an approved critical area report and compensatory mitigation plan, and only if the proposed activity is the only reasonable alternative that will accomplish the applicant's objectives. Full compensation for the loss of acreage and functions of wetlands and buffers shall be provided under the terms established under FMC 22.93.070. (Ord. 1375 § 2, 2005).

22.93.060 Critical area report – Additional requirements for wetlands.

In addition to the general critical area report requirements of FMC 22.92.160, critical area reports for wetlands must meet the requirements of this section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

(a) Preparation by a Qualified Professional. A critical area report for wetlands shall be prepared by a qualified professional who is a certified professional wetland scientist or a noncertified professional wetland scientist with a minimum of five years' experience in the field of wetland science and with experience preparing wetland reports.

(b) Areas Addressed in Critical Area Report. The following areas shall be addressed in a critical area report for wetlands:

- (1) The project area of the proposed activity;
- (2) All wetlands and recommended buffers within 300 feet of the project area; and
- (3) All shoreline areas, water features, floodplains, and other critical areas, and related buffers within 300 feet of the project area.

(c) Minimum Standards for Wetland Reports. In addition to the minimum required contents in FMC 22.92.160, a critical area report for wetlands shall contain an analysis of the wetlands including the following site- and proposal-related information at a minimum:

- (1) A written assessment and accompanying maps of the wetlands and buffers within 300 feet of the project area, including the following information at a minimum:
 - (A) Wetland delineation and required buffers;
 - (B) Existing wetland acreage based on a professional survey from the field delineation (acreages for on-site portion and entire wetland area including off-site portions);
 - (C) Wetland rating and category based on entire wetland complex;
 - (D) Cowardin classification of vegetation communities including vegetation characterization;
 - (E) Habitat elements;
 - (F) Soil and substrate conditions based on site assessment and/or soil survey information;
 - (G) Topographic elevations, at two-foot contours;
 - (H) A discussion of the water sources supplying the wetland and documentation of hydrologic regime (locations of inlet and outlet features, water depths throughout the wetland, evidence of recharge or discharge, evidence of water depths throughout the year – algal mats, flood debris, and sediment deposits); and

(I) Hydrogeomorphic (HGM) classification.

(2) A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land use activity.

(3) A habitat and native vegetation conservation strategy that addresses methods to protect and enhance on-site habitat and wetland functions.

(4) Functional evaluation for the wetland and adjacent buffer using a local or state agency staff-recognized method and including the reference of the method and all data sheets.

(5) A scale map of the development proposal site and adjacent area.

(6) A discussion of ongoing management practices that will protect wetlands after the project site has been developed; including proposed monitoring and maintenance programs.

(7) A bond estimate for the installation (including site preparation, plant materials and installation, fertilizers, mulch, stakes) and the proposed monitoring and maintenance work for the required number of years.

(8) Title Notification. All activity in critical area protection areas shall be accompanied by a notice on title.

(d) Compensatory Mitigation Reports. When a project involves wetland and/or buffer impacts, a compensatory mitigation report shall be required (in addition to the wetland critical area report), meeting the following minimum standards:

(1) Preparation by a Qualified Professional(s). A compensatory mitigation report for wetland or buffer impacts shall be prepared by one or more qualified professional(s) including someone who is a certified professional wetland scientist or a noncertified professional wetland scientist; either of them must have a minimum of five years' experience designing compensatory mitigation designs that have been installed and monitored for a minimum of two years to verify success. In addition, the design team may include civil engineers, landscape architects or landscape designers depending upon the complexity of the project.

(2) Minimum Standards for Compensatory Mitigation Report. This report shall include a written report and plan sheets that contain, at a minimum, the following elements. Full guidance can be found in Wetland Mitigation in Washington State, Part 2: Developing Mitigation Plans (Version 1, Ecology Publication No. 06-06-011b, March 2006).

(A) The written report must contain, at a minimum:

(i) The name and contact information of the applicant, the name, qualifications, and contact information for the primary author(s) of the report, a description of the proposal, a summary of the impacts and proposed compensation concept, and identification of all the local, state, and/or federal wetland related permit(s) required for the project, plus a vicinity map for the project;

(ii) Description of the existing wetland and buffer areas proposed to be impacted including: acreages (or square footage) based on professional surveys of the delineations; Cowardin classifications including dominant vegetation community types (for upland and wetland habitats); the results of a functional assessment for the entire wetland and the portions proposed to be impacted; wetland rating based on the provisions of this chapter;

(iii) An assessment of the potential changes in wetland hydroperiod from the proposed project and how the design has been modified to avoid, minimize or reduce adverse impacts to the wetland hydroperiod;

(iv) A description of the proposed conceptual compensation actions for wetland and upland areas. A description of future vegetation community types for years one, three, five, 10 and 25 post-installation including the succession of vegetation community types and dominants expected. A description of the successional sequence of expected changes in hydroperiod for the compensation site(s) for the same

time periods as vegetation success. A description of the change in habitat characteristics expected over the same 25-year time period;

(v) An assessment of existing conditions in the zone of the proposed compensation, including: vegetation community structure and composition, existing hydroperiod, existing soil conditions, and existing habitat functions. An estimate of future conditions in this location if the compensation actions are not undertaken (i.e., how would this site progress through natural succession);

(vi) The field data collected to document existing conditions and on which future condition assumptions are based for hydroperiod (e.g., soil pit data – hand dug or mechanically trenched; soil boring data). Soil survey data is not sufficient to rely upon for establishing existing conditions;

(vii) A discussion of ongoing management practices that will protect wetlands after the project site has been developed, including proposed monitoring and maintenance programs;

(viii) A bond estimate for the entire compensatory mitigation including the following elements: site preparation, plant materials, construction materials, installation oversight, maintenance twice per year for up to five years, annual monitoring field work and reporting, and contingency actions for a maximum of the total required number of years for monitoring; and

(ix) Proof of establishment of a notice on title for the wetlands and buffers on the project site, including the compensatory mitigation areas.

(B) The scaled plan sheets for the compensatory mitigation must contain, at a minimum:

(i) Existing wetland and buffer surveyed edges, proposed areas of wetland and/or buffer impacts, location of proposed wetland and/or buffer compensation actions;

(ii) Existing topography, ground-proofed, at two-foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed to create the compensation area(s). Existing cross-sections of on-site wetland areas that are proposed to be impacted. Cross-section(s) (estimated one-foot intervals) for the proposed areas of wetland or buffer compensation;

(iii) Surface and subsurface hydrologic conditions including an analysis of existing and proposed hydrologic regimes for enhanced, created, or restored compensatory mitigation areas. Illustration of how data for existing hydrologic conditions were utilized to inform the estimates of future hydrologic regimes;

(iv) Proposed conditions expected from the proposed actions on site including future HGM types, vegetation community types by dominant species (wetland and upland), and future hydrologic regimes;

(v) Required wetland buffers for existing wetlands and proposed compensation areas. Zones where buffers are proposed to be reduced or enlarged outside of the standards identified in this chapter;

(vi) A plant schedule including all species by proposed community type and hydrologic regime, size and type of plant material to be installed, spacing of plants, “typical” clustering patterns, total number of each species by community type, and timing of installation;

(vii) Performance standards (measurable standards reflective of years post-installation) for upland and wetland communities, monitoring schedule, and maintenance schedule and actions by each bi-annum.

(e) Additional Information. When appropriate, the director may also require the critical area report to include an evaluation by the state Department of Ecology or an independent qualified expert regarding the applicant’s analysis and the effectiveness of any proposed mitigating measures or programs, and to include any recommendations as appropriate.

(1) If the development proposal site contains or is within a wetland area, the applicant shall submit an affidavit, which declares whether the applicant has knowledge of any illegal alteration to any or all wetlands on the

proposed site and whether the applicant previously had been found in violation of this title. If the applicant has been found previously in violation, the applicant shall declare whether such violation has been corrected to the satisfaction of the jurisdiction.

(2) The director shall determine if the mitigation and monitoring plans and bonding measures proposed by the applicant are sufficient to protect the public health, safety, and welfare, consistent with the goals, purposes, objectives and requirements of Chapter 22.92 FMC and this chapter. (Ord. 1574 § 5, 2016; Ord. 1375 § 2, 2005).

22.93.070 Compensatory mitigation requirements.

(a) 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 No. 06-06-011b, Olympia, WA, March 2006 or as revised), and Selected Wetland Mitigation Sites using a Watershed Approach (Western Washington) (Publication No. 09-06-32, Olympia, WA, December 2009).

(b) Mitigation shall be required in the following order of preference:

- (1) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (2) Minimizing 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) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (4) Reducing or eliminating the impact over time by preservation and maintenance operations.
- (5) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments.
- (6) Monitoring the impact and taking appropriate corrective measures.

(c) Compensation for Lost or Affected Functions. Compensation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except when either:

- (1) The lost wetland provides minimal functions as determined by a site-specific function assessment, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington State watershed assessment plan or protocol; or
- (2) Out-of-kind replacement of wetland type or functions will best meet watershed goals formally identified by the city, such as replacement of historically diminished wetland types.

(d) Preference of Mitigation Actions. Methods to achieve compensation for wetland functions shall be approached in the following order of preference:

- (1) Restoration (reestablishment and rehabilitation) of wetlands.
- (2) Creation (establishment) of wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of nonnative introduced species. This should only be attempted when there is an adequate source of water and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is anticipated in the design.

(3) Preservation (protection and maintenance) of wetlands. The removal of a threat to, or preventing the decline of, wetlands by an action in or near those wetlands. This term includes activities commonly associated with the protection and maintenance of wetlands through the implementation of appropriate legal and physical mechanisms such as recording conservation easements and providing structural protection like fences and

signs. Preservation does not result in a gain of aquatic resource area or functions but may result in a gain in functions over the long term. Preservation of a wetland and associated buffer can be used only if:

- (a) The Administrator determines that the proposed preservation is the best mitigation option;
- (b) The proposed preservation site is under threat of undesirable ecological change due to permitted, planned, or likely actions that will not be adequately mitigated under existing regulations;
- (c) The area proposed for preservation is of high quality or critical for the health and ecological sustainability of the watershed or sub-basin. Some of the following features may be indicative of high-quality sites:
 - (i) Category I or II wetland rating;
 - (ii) Rare or irreplaceable wetland type (e.g. peatlands, mature forested wetland, estuaries, vernal pools, alkali wetlands) or aquatic habitat that is rare or a limited resource in the area;
 - (iii) The presence of habitat for threatened or endangered species (state, federal, or both);
 - (iv) Provides biological and/or hydrological connectivity to other habitats;
 - (v) Priority sites identified in an adopted watershed plan.
- (d) Permanent preservation of the wetland and buffer shall be provided through a legal mechanism or instrument such as a conservation easement or tract held by an appropriate natural land resource manager/land trust. Such permanent preservation done in this manner shall be recorded in property records with the Pierce County Recorder as appropriate.
- (e) The Administrator may approve another legal and administrative mechanism or instrument in lieu of a conservation easement if it is determined to be adequate to protect the site.

(34) Enhancement of significantly degraded wetlands in combination with restoration or creation. Such enhancement should be part of a mitigation package that includes replacing the impacted area and meeting appropriate ratio requirements.

(e) Type and Location of Mitigation. Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach, compensatory mitigation for ecological functions shall be either in-kind and on-site, or in-kind and within the same stream reach or subbasin. Mitigation actions shall be conducted within the same subdrainage basin and on the same site as the alteration except when all of the following apply:

- (1) There are no reasonable on-site or in-subdrainage basin opportunities (e.g., on-site options would require elimination of high functioning upland habitat), or on-site and in-subdrainage basin opportunities do not have a high likelihood of success based on a determination of the natural capacity of the site to compensate for the impacts. Consideration should include: anticipated wetland mitigation replacement ratios, buffer conditions and proposed widths, available water to maintain anticipated hydrogeomorphic classes of wetlands when restored, proposed flood storage capacity, potential to mitigate riparian fish and wildlife impacts (such as connectivity);
- (2) Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and
- (3) Off-site locations shall be in the same subdrainage basin unless:
 - (A) Established watershed goals for water quality, flood or conveyance, habitat, or other wetland functions have been established by the city and strongly justify location of mitigation at another site; or
 - (B) Credits from a state certified wetland mitigation bank are used as mitigation and the use of credits is consistent with the terms of the bank's certification.

(f) Timing of Compensatory Mitigation. It is preferred that compensation projects be completed prior to activities that will disturb the on-site wetlands. At the least, compensatory mitigation shall be completed immediately following disturbance and prior to use or occupancy of the action or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

The director may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a written explanation from a qualified wetland professional as to the rationale for the delay. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties (for example, project delay lapses past a fisheries window; or plan installation should be delayed until the dormant season to ensure greater survivability of installed materials). The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, and general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the mitigation plan. The justification must be verified and approved by the city.

(g) Mitigation Ratios.

(1) Acreage Replacement Ratios. The following ratios in Table 22.93.A shall apply to creation or restoration, rehabilitation, reestablishment or creation and enhancement, or enhancement only, that is in-kind, is on-site, is the same category, is timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply in those cases. These ratios do not apply to the use of credits from a state-certified wetland mitigation bank. When credits from a certified bank are used, replacement ratios should be consistent with the requirements of the bank's certification. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

Table 22.93.A Mitigation Ratios

Category and Type of Wetland	Reestablishment or Creation	Rehabilitation**	1:1 Reestablishment or Creation (R/C) and Enhancement (E)	<u>Wetland Preservation or Enhancement Only</u>
All Category IV	1.5:1	3:1	1:1 R/C and 2:1 E	6:1
All Category III	2:1	4:1	1:1 R/C and 24 :1 E	8:1
All Category II	3:1	6 :1	1:1 R/C and 8 :1 E	12:1
Category I Forested	6:1	12:1	1:1 R/C and 10 20 :1 E	24:1
Category I based on score for functions	4:1	8:1	1:1 R/C and 6 12 :1 E	16:1
Category I Natural Heritage site <u>or Bog</u>	Not considered possible*	6:1-rehabilitation-of-a-Natural-Heritage-site <u>Case-by-case</u>	Not considered possible* <u>Case-by-case</u>	Case-by-case
Category I Bog	Not considered possible*	6:1-rehabilitation-of-a-bog	Case-by-case	Case-by-case

* Natural Heritage sites and bogs are considered irreplaceable wetlands, and therefore no amount of compensation would replace these ecosystems. Avoidance is the best option. In the rare cases when impacts cannot be avoided, replacement ratios will be assigned on a case-by-case basis. However, these ratios will be significantly higher than the other ratios for Category I wetlands.

** Rehabilitation ratios are based on the assumption that actions judged to be most effective for that site are being implemented.

(2) Increased Replacement Ratio. The director may increase the ratios under the following circumstances:

(A) Uncertainty exists as to the probable success of the proposed restoration or creation; or

(B) A significant period of time will elapse between impact and establishment of wetland functions at the mitigation site; or

(C) Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacted; or

(D) The impact was an unauthorized impact.

(3) Reduced Replacement Ratio. The director may reduce the ratios under the following circumstances:

(A) Documentation by a qualified wetland specialist demonstrates that the proposed mitigation actions have a very high likelihood of success based on prior experience; or

(B) Documentation by a qualified wetland specialist demonstrates that the proposed actions for compensation will provide functions and values that are significantly greater than the wetland being impacted; or

(C) The proposed actions for compensation are conducted in advance of the impact and are shown to be successful; or

(D) In wetlands where several HGM classes are found within one delineated boundary, the ratios can be decreased if:

(i) Impacts to the wetland are all within an area that has a different HGM class from the one used to establish the category; and

(ii) The category of this area with a different class is “lower” than that of the entire wetland; and

(iii) The proponents provide adequate hydrologic and geomorphic data to establish that the boundary between the HGM classes lies outside of the footprint of the impacts.

(h) Preservation. Impacts to wetlands may be mitigated by preservation of wetland areas when used in combination with other forms of mitigation such as creation, restoration, or enhancement at the preservation site or at a separate location. Preservation may also be used by itself, but more restrictions apply as outlined below.

(1) Preservation in Combination with Other Forms of Compensation. Using preservation as compensation is acceptable when done in combination with restoration, creation, or enhancement; provided, that a minimum of 1:1 acreage replacement is provided by restoration or creation and the criteria below are met:

(A) The impact area is small, and/or impacts are to a Category III or IV wetland;

(B) Preservation of a high quality system occurs in the same water resource inventory area (WRIA) or watershed basin where the wetland impact occurs;

(C) Preservation sites include buffer areas adequate to protect the habitat and its functions from encroachment and degradation; and

(D) Mitigation ratios for preservation in combination with other forms of mitigation shall range from 10:1 to 20:1, as determined on a case-by-case basis, depending on the quality of the wetlands being mitigated and the quality of the wetlands being preserved.

(2) Preservation as the Sole Means of Compensation for Wetland Impacts. Preservation of at-risk, high quality habitat may be considered as the sole means of compensation for wetland impacts when all of the following criteria are met:

(A) Preservation is used as a form of compensation only after the standard sequencing of mitigation (avoid, minimize, and then compensate) has been applied;

(B) Creation, restoration, and enhancement opportunities have also been considered, and preservation is the best mitigation option;

(C) The impact area is small, and/or impacts are to a Category III or IV wetland;

(D) Preservation of a high quality system occurs in the same water resource inventory area (WRIA) or watershed basin where the wetland impact occurs;

(E) Preservation sites include buffer areas adequate to protect the habitat and its functions from encroachment and degradation;

(F) The preservation site is determined to be under imminent threat, specifically, sites with the potential to experience a high rate of undesirable ecological change due to on-site or off-site activities. "Potential" includes permitted, planned, or likely actions that are not adequately protected under existing regulations (e.g., logging of forested wetlands); and

(G) The area proposed for preservation is of high quality and critical for the health of the watershed or basin. Some of the following features may be indicative of high quality sites:

(i) Category I or II wetland rating;

(ii) Rare wetland type (e.g., bogs and mature forested wetlands);

(iii) Habitat for threatened or endangered species;

(iv) Wetland type that is rare in the area;

(v) Provides biological and/or hydrological connectivity;

(vi) High regional or watershed importance (e.g., listed as priority site in watershed plan); and

(vii) Large size with high species diversity (plants and/or animals) and/or high abundance.

(H) Mitigation ratios for preservation as the sole means of mitigation shall generally start at 20:1. Specific ratios should depend upon the significance of the preservation project and the quality of the wetland resources lost.

(i) 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 director 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 bank's certification. In some cases, bank service areas may include portions of more than one adjacent drainage basin for specific wetland functions.

(j) Credit/Debit Method. To more fully protect functions and values, and as an alternative to the mitigation ratios found in the joint guidance "Wetland Mitigation in Washington State Parts I and II" (Ecology Publication No. 06-

06-011a-b, Olympia, WA, March, 2006), the director may allow mitigation based on the “credit/debit” method developed by the Department of Ecology in “Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report,” (Ecology Publication No. 10-06-011, Olympia, WA, March 2012, or as revised).

(k) In-Lieu Fee. To aid in the implementation of off-site mitigation, the city 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 nonprofit natural resource management entity. Credits from an approved in-lieu fee program may be used when subsections (k)(1) through (6) of this section 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.

(l) Advance Mitigation. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to federal rules, state policy on advance mitigation, and state water quality regulations.

(m) Alternative Mitigation Plans. The director may approve alternative critical areas mitigation plans that are based on best available science. Alternative mitigation proposals must provide an equivalent or better level of protection of critical area functions and values than would be provided by the strict application of this chapter.

The director shall consider the following for approval of an alternative mitigation proposal:

(1) The proposal uses a watershed approach consistent with Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington) (Ecology Publication No. 09-06-32, Olympia, WA, December 2009).

(2) Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas.

(3) Mitigation according to subsection (e) of this section is not feasible due to site constraints such as parcel size, stream type, wetland category, or geologic hazards.

(4) There is clear potential for success of the proposed mitigation at the proposed mitigation site.

(5) The plan shall contain clear and measurable standards for achieving compliance with the specific provisions of the plan. A monitoring plan shall, at a minimum, meet the provisions in FMC 22.93.060(d).

(6) The plan shall be reviewed and approved as part of overall approval of the proposed use.

- (7) A wetland of a different type is justified based on regional needs or functions and values; the replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative.
- (8) Mitigation guarantees shall meet the minimum requirements as outlined in FMC 22.93.060(d)(2)(A)(viii).
- (9) Qualified professionals in each of the critical areas addressed shall prepare the plan.
- (10) The city may consult with agencies with expertise and jurisdiction over the resources during the review to assist with analysis and identification of appropriate performance measures that adequately safeguard critical areas. (Ord. 1574 § 6, 2016; Ord. 1375 § 2, 2005).

22.93.080 Standards – Subdivisions.

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

- (a) Land that is located wholly within a wetland or its buffer may not be subdivided.
- (b) Land that is located partially within a wetland or its buffer may be subdivided; provided, that an accessible and contiguous portion of each new lot is located outside of the wetland and its buffer.
- (c) Access roads and utilities serving the proposed subdivision may be permitted within the wetland and associated buffers only if the city determines that no other feasible alternative exists and when consistent with Chapter 22.92 FMC and this chapter. (Ord. 1375 § 2, 2005).

22.93.090 Signs and fencing of wetlands.

- (a) Temporary Markers. The outer perimeter of the wetland buffer and the clearing limits 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 no unauthorized 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.
- (b) Permanent Signs. As a condition of any permit or authorization issued pursuant to this chapter, the director may require the applicant to install permanent signs along the boundary of a wetland or buffer.

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

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

- (2) The provisions of subsection (b)(1) of this section may be modified as necessary to assure protection of sensitive features or wildlife.
- (c) Fencing.
 - (1) The director shall determine if fencing is necessary to protect the functions and values of the critical area. If found to be necessary, the director shall condition any permit or authorization issued pursuant to this chapter to require the applicant to install a permanent fence at the edge of the wetland buffer, when fencing will prevent future impacts to the wetland.
 - (2) The applicant shall be required to install a permanent fence around the wetland or buffer when domestic grazing animals are present or may be introduced on site.

(3) Fencing installed as part of a proposed activity or as required in this subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat. (Ord. 1375 § 2, 2005).

22.93.100 Wetland buffers.

(a) Buffer Requirements. The standard buffer widths in Table 22.93.B, below, have been established in accordance with the best available science. 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 use of the standard buffer widths requires the implementation of the measures in Table 22.93.C, below, where applicable, to minimize the impacts of the adjacent land uses.

(2) If an applicant chooses not to apply the mitigation measures in Table 22.93.C, then a 33 percent increase in the width of all buffers is required. For example, a 75-foot buffer with the mitigation measures would be a 100-foot buffer without them.

(3) 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.

(4) Additional buffer widths are added to the standard buffer widths. ~~For example, a Category I wetland scoring 32 points for habitat function would require a buffer of 225 feet (75 plus 150).~~

Table 22.93.B Wetland Buffer Requirements for Western Washington

<u>Wetland Buffer Requirements</u>				
<u>Overall Wetland Rating</u>	<u>Wetland Characteristics</u>	<u>Intensity Land Use on the Upland Side of the Buffer</u>		
		<u>High¹</u>	<u>Medium²</u>	<u>Low³</u>
<u>Category I</u>	<u>Habitat score of 8-9 points</u>	<u>300'</u>	<u>225'</u>	<u>150'</u>
<u>Category I</u>	<u>Habitat score of 6-7 points</u>	<u>150'</u>	<u>110'</u>	<u>75'</u>
<u>Category I</u>	<u>Water quality score of 8-9 points and a habitat score of less than 6 points</u>	<u>100'</u>	<u>75'</u>	<u>50'</u>
<u>Category I</u>	<u>Wetlands that do not meet the characteristics described above for category I wetlands</u>	<u>100'</u>	<u>75'</u>	<u>50'</u>
<u>Category II</u>	<u>Habitat score of 8-9 points</u>	<u>300'</u>	<u>225'</u>	<u>150'</u>
<u>Category II</u>	<u>Habitat score of 6-7 points</u>	<u>150'</u>	<u>110'</u>	<u>75'</u>
<u>Category II</u>	<u>Water quality score of 8-9 points and a habitat score of less than 6 points</u>	<u>100'</u>	<u>75'</u>	<u>50'</u>
<u>Category II</u>	<u>Wetlands that do not meet the characteristics described above for category II wetlands</u>	<u>100'</u>	<u>75'</u>	<u>50'</u>
<u>Category III</u>	<u>Habitat score of 8-9 points</u>	<u>300'</u>	<u>225'</u>	<u>150'</u>
<u>Category III</u>	<u>Habitat score of 6-7 points</u>	<u>150'</u>	<u>110'</u>	<u>75'</u>
<u>Category III</u>	<u>Habitat score of 3-5 points</u>	<u>80'</u>	<u>60'</u>	<u>40'</u>
<u>Category IV</u>	<u>Scores for all 3 basic functions are less than 16 points</u>	<u>50'</u>	<u>40'</u>	<u>25'</u>

Table 22.93.C Required Measures to Minimize Impacts to Wetlands

Disturbance	Required Measures to Minimize Impacts
Lights	• Direct lights away from wetland
Noise	• Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining,

¹ High intensity land uses include commercial, industrial, and retail developments; institutional use; residential developments at more than 1 unit per acre; high intensity recreation areas (golf course, ball fields, etc.); and solar farms.

² Moderate intensity land uses include residential developments at less than 1 unit per acre; moderate intensity open space (parks with biking, jogging, etc.); and paved trails and utility corridors with maintenance roads.

³ Low intensity land uses include low intensity open space (hiking, birdwatching, preservation of natural resources, etc.); and unpaved trails and utility corridors without maintenance roads.

Disturbance	Required Measures to Minimize Impacts
	establish an additional 10-foot, heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
Toxic runoff	• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered
	• Establish covenants limiting use of pesticides within 150 feet of wetland
	• Apply integrated pest management
Stormwater runoff	• Retrofit stormwater detention and treatment for roads and existing adjacent development
	• Prevent channelized flow from lawns that directly enters the buffer
	• Use low intensity development techniques (per PSAT publication on LID techniques)
Change in water regime	• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	• Use privacy fencing or plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion
	• Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	• Use best management practices to control dust
Disruption of corridors or connections	• Maintain connections to offsite areas that are undisturbed
	• Restore corridors or connections to offsite habitats by replanting

(b) Conditions for Increasing Buffer Widths or Enhancing Buffers.

(1) Buffer is not vegetated with plants appropriate for the region. The recommended widths for buffers are based on the assumption that the buffer is vegetated with a native plant community appropriate for the ecoregion or with one that performs similar functions. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with nonnative 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 in the buffer are provided. Generally, improving the vegetation will be more effective than widening the buffer.

(2) Buffer has a steep slope. The effectiveness of buffers at removing pollutants before they enter a wetland decreases as the slope increases. If the buffer for a wetland is to be based on the score for its ability to improve water quality rather than habitat or other criteria, then the buffer should be increased by 50 percent if the slope is greater than 30 percent.

(3) Buffer is used by sensitive species. If the wetland provides habitat for a particularly sensitive species (such as a threatened or endangered species), the buffer width should be increased to provide adequate protection for the species based on its particular life history needs. Buffer requirements for certain priority species may be obtained from the Washington State Department of Fish and Wildlife.

(c) Buffer Averaging. The widths of buffers may be averaged if this will improve the protection of wetland functions, or if it is the only way to allow for reasonable use of a parcel.

(1) Averaging to improve wetland protection may be permitted when all of the following 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 to a lower rated area; and

(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; and

(C) The total area of the buffer after averaging is equal to the area required without averaging; and

(D) The buffer at its narrowest point is never less than 75 percent of the standard width or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever is greater.

(2) Averaging to allow reasonable use of a parcel may be permitted when all of the following conditions are met:

(A) There are no feasible alternatives to the site design that could be accomplished without buffer averaging; and

(B) The averaged buffer will not result in degradation of the wetland's functions and values as demonstrated by a report from a qualified wetland expert; and

(C) The total area of the buffer after averaging is equal to the area required without averaging; and

(D) The buffer at its narrowest point is never less than 75 percent of the standard width or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever is greater.

(d) Buffers on Mitigation Sites. All mitigation sites shall have buffers consistent with the buffer requirements of this chapter and based on expected or target category of the proposed wetland mitigation site.

(e) Buffer Maintenance. Except as otherwise specified or allowed in accordance with Chapter 22.92 FMC and this chapter, wetland buffers shall be retained in an undisturbed or enhanced condition. Removal of invasive nonnative weeds is required for the duration of the mitigation bond.

(f) Buffer Uses. The following uses may be permitted within a wetland buffer in accordance with the review procedures of Chapter 22.92 FMC and this chapter, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland:

(1) Conservation and restoration activities. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.

(2) Passive recreation. Passive recreation facilities designed and in accordance with an approved critical area report, including:

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

(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 repair does 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 of soil, 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 the 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 a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column will be disturbed.

(7) Enhancement of a wetland buffer through the removal of nonnative invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. 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 the species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

(8) Stormwater management facilities. Stormwater management facilities are limited to stormwater dispersion outfalls and bioswales. They may be allowed within the outer 25 percent of the buffer of Category III or IV wetlands only; provided, that:

- (A) No other location is feasible;
- (B) The location of such facilities will not degrade the functions or values of the wetland; and
- (C) Stormwater management facilities are not allowed in buffers of Category I or II wetlands.

(9) Nonconforming uses. Repair and maintenance of nonconforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity. (Ord. 1574 § 7, 2016; Ord. 1375 § 2, 2005).

22.93.110 Residential density and on-site density transfer.

The purpose of on-site density transfer is to cluster development in a manner that provides protection for wetlands and allows transfer of residential density from a wetland and/or wetland buffer to an area on the same site that is neither wetland nor buffer. A request for on-site density transfer shall be considered pursuant to the planned development review process in Chapter 22.76 FMC.

Those portions of the wetland and/or wetland buffer in which regulated activities are proposed to occur shall not be considered in calculating density transfer. Density transfer shall be determined as follows:

- (a) For sites containing regulated wetland buffer areas, full density credit may be transferred from the buffer area to the nonbuffer area.
- (b) For sites containing regulated wetland areas, density transfer shall be calculated from the following table.

On-Site Density Transfer

Percentage of site in wetland	Amount of credit
0 – 25%	75%
26 – 50%	50%
51 – 100%	25%

(Ord. 1375 § 2, 2005).

22.93.120 Stormwater management impacts to wetlands.

Repealed by Ord. 1574. (Ord. 1375 § 2, 2005).

22.93.130 Alternate review process – Army Corps of Engineers Section 404 individual permits.

When an Army Corps of Engineers Section 404 permit is required for a project involving wetlands, the Army Corps permitting process may be substituted for the city permitting process. If a proposal reviewed and conditioned by the Corps satisfies the intent of this chapter, no further wetland review shall be required by the city. If a proposal reviewed and conditioned by the Corps does not satisfy the intent of this chapter, then a critical areas report shall be prepared in accordance with FMC 22.93.030, and modifications made to the project if warranted, in order to

demonstrate compliance with this chapter. All permits and approvals required by other city development regulations shall be required. (Ord. 1375 § 2, 2005).

EXHIBIT C

AMENDMENTS TO SECTIONS IN CHAPTER 22.94 FMC

Chapter 22.94 CRITICAL AQUIFER RECHARGE AREAS

Sections:

- 22.94.010 Critical aquifer recharge areas designation.
- 22.94.020 Aquifer recharge area susceptibility ratings.
- 22.94.030 Location and designation of critical aquifer recharge areas.
- 22.94.040 Activities allowed in critical aquifer recharge areas.
- 22.94.050 Critical area report – Additional requirements for critical aquifer recharge areas.
- 22.94.060 Performance standards – General requirements.
- 22.94.070 Performance standards – Specific uses.
- 22.94.080 Uses prohibited from critical aquifer recharge areas.

22.94.010 Critical aquifer recharge areas designation.

Critical aquifer recharge areas (CARAs) are those areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(23). CARAs 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 10-year time of ground water travel or boundaries established using alternate criteria approved by the Washington State 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~~ are as defined in FMC 22.98.753.
- (b) Sole Source Aquifers. Sole source aquifers are areas that have been designated by the U.S. Environmental Protection Agency pursuant to the Federal Safe Drinking Water Act and are separately regulated as special protection districts subject to WAC 173-200-090.
- (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 Chapter 173-100 WAC.
- (d) Special Protection Areas. Special protection areas are those areas ~~defined~~ described by WAC 173-200-090.
- (e) Moderately or Highly Vulnerable Aquifer Recharge Areas. Aquifer recharge areas that are moderately or highly vulnerable to degradation or depletion because of hydrogeologic characteristics are those areas delineated by a hydrogeologic study prepared in accordance with the state Department of Ecology guidelines.
- (f) Moderately or Highly Susceptible Aquifer Recharge Areas. Aquifer recharge areas moderately or highly susceptible to degradation or depletion because of hydrogeologic characteristics are those areas meeting the criteria established by the state Department of Ecology. (Ord. 1375 § 3, 2005).

22.94.020 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. (Ord. 1375 § 3, 2005).

22.94.030 Location and designation of critical aquifer recharge areas.

The entire city is located within the Clover-Chambers Creek Groundwater Management Area, which has a critical recharging effect on the Tacoma and ~~Clover Chambers Creek Aquifers~~ Central Pierce County Aquifer Area SSA (previously referred to as the Clover Chambers Creek Aquifer). The EPA Region X has designated the ~~Clover Chambers Creek Aquifer~~ Central Pierce County Aquifer Area a sole source aquifer. (Ord. 1375 § 3, 2005).

22.94.040 Activities allowed in critical aquifer recharge areas.

The following activities are allowed in critical aquifer recharge areas pursuant to FMC 22.94.010 and do not require submission of a critical area report:

- (a) Construction of structures and improvements, including additions, resulting in less than five percent or 2,500 square feet (whichever is greater) total site impervious surface area that does not result in a change of use or increase the use of a hazardous substance.
- (b) Development and improvement of parks, recreation facilities, open space, or conservation areas resulting in less than five percent total site impervious surface area that do not increase the use of a hazardous substance.
- (c) On-site domestic septic systems releasing less than 14,500 gallons of effluent per day and that are limited to a maximum density of one system per one acre, except as prohibited under FMC Title 20. (Ord. 1375 § 3, 2005).

22.94.050 Critical area report – Additional requirements for critical aquifer recharge areas.

In addition to the general critical area report requirements of FMC 22.92.160, critical area reports for critical aquifer recharge areas must meet the requirements of this section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

- (a) Preparation by a Qualified Professional. An aquifer recharge area critical area report shall be prepared by a qualified professional who is a hydrogeologist, geologist, or engineer, who is licensed in the state of Washington and has experience in preparing hydrogeologic assessments.
- (b) Hydrogeologic Assessment. For all proposed activities to be located in a critical aquifer recharge area [\(other than those activities set forth in FMC 22.94.040\)](#), a critical area report shall contain a level one hydrogeological assessment. A level two hydrogeologic assessment shall be required for any of the following proposed activities:

- (1) Activities that result in five percent or more impervious site area;
- (2) Activities that divert, alter, or reduce the flow of surface or ground waters, of otherwise reduce the recharging of the aquifer;
- (3) The use of hazardous substances, other than household chemicals used according to the directions specified on the packaging for domestic applications;
- (4) The use of injection wells, including on-site septic systems, except those domestic septic systems releasing less than 14,500 gallons of effluent per day and that are limited to a maximum density of one system per one acre, except as prohibited by FMC Title 20; or
- (5) Any other activity determined by the director likely to have an adverse impact on ground water quality or quantity or on the recharge of the aquifer.

- (c) Level One Hydrogeologic Assessment. A level one hydrogeologic assessment shall include the following site- and proposal-related information at a minimum:

- (1) Available information regarding geologic and hydrogeologic characteristics of the site including the surface location of all critical aquifer recharge areas located on site or immediately adjacent to the site, and permeability of the unsaturated zone;
- (2) Ground water depth, flow direction, and gradient based on available information;
- (3) Currently available data on wells and springs within 1,300 feet of the project area;
- (4) Location of other critical areas, including surface waters, within 1,300 feet of the project area;
- (5) Available historic water quality data for the area to be affected by the proposed activity; and
- (6) Best management practices proposed to be utilized.

(d) Level Two Hydrogeologic Assessment. A level two hydrogeologic assessment shall include the following site- and proposal-related information at a minimum, in addition to the requirements for a level one hydrogeological assessment:

- (1) Historic water quality data for the area to be affected by the proposed activity compiled for at least the previous five-year period;
- (2) Ground water monitoring plan provisions;
- (3) Discussion of the effects of the proposed project on the ground water quality and quantity, including:
 - (A) Predictive evaluation of ground water withdrawal effects on nearby wells and surface water features; and
 - (B) Predictive evaluation of contaminant transport based on potential releases to ground water; and
- (4) A spill plan that identifies equipment and/or structures that could fail, resulting in an impact. Spill plans shall include provisions for regular inspection, repair, and replacement of structures and equipment that could fail. (Ord. 1375 § 3, 2005).

22.94.060 Performance standards – General requirements.

- (a) Activities may only be permitted in a critical aquifer recharge area if the applicant can show that the proposed activity will not cause contaminants to enter the aquifer and that the proposed activity will not adversely effect the recharging of the aquifer.
- (b) The proposed activity must comply with the water source protection requirements and recommendations of the U.S. Environmental Protection Agency, Washington State Department of Health, and Tacoma-Pierce County Health Department.
- (c) The proposed activity must be designed and constructed in accordance with the Department of Ecology Stormwater Management Manual for Western Washington. (Ord. 1375 § 3, 2005).

22.94.070 Performance standards – Specific uses.

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

- (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.

- (b) Vehicle Repair and Servicing.

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

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

(c) Residential Use of Pesticides and Nutrients. Application of household pesticides, herbicides, and fertilizers shall not exceed times and rates specified on the packaging.

(d) Use of Reclaimed Water for Surface Percolation or Direct Recharge. Water reuse projects for reclaimed water must be in accordance with the adopted water or sewer comprehensive plans that have been approved by the state Departments of Ecology and Health.

(1) Use of reclaimed water for surface percolation must meet the ground water recharge criteria given in RCW 90.46.010(10) and 90.46.080(1). The state Department of Ecology may establish additional discharge limits in accordance with RCW 90.46.080(2).

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

(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.

**Statutes, Regulations, and Guidance Pertaining to
Ground-Water-Impacting Activities**

Activity	Statute – Regulation – Guidance
Aboveground Storage Tanks	WAC 173-303-640
Automobile Washers	Chapter 173-216 WAC, Best Management Practices for Vehicle and Equipment Discharges (Washington Department of Ecology WQ-R-95-56)
Belowground Storage Tanks	Chapter 173-360 WAC
Chemical Treatment Storage and Disposal Facilities	WAC 173-303-182
Hazardous Waste Generator (Boat Repair Shops, Biological Research Facility, Dry Cleaners, Furniture Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, etc.)	Chapter 173-303 WAC
Injection Wells	40 CFR Parts 144 and 146, 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
Solid Waste Handling and Recycling Facilities	Chapter 173-304 WAC

(Ord. 1375 § 3, 2005).

22.94.080 Uses prohibited from critical aquifer recharge areas.

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

- (a) Landfills. Landfills, including hazardous or dangerous waste, municipal solid waste, special waste, wood waste, and inert and demolition waste landfills;
- (b) Underground Injection Wells. Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells, unless the well is an otherwise allowed stormwater device permitted by the City's adopted stormwater regulations or its governing Ecology municipal stormwater general permit;
- (c) Mining.
 - (1) Metals and hard rock mining; and
 - (2) Sand and gravel mining, prohibited from critical aquifer recharge areas determined to be highly susceptible or vulnerable;
- (d) Wood Treatment Facilities. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);
- (e) Storage, Processing, or Disposal of Radioactive Substances. Facilities that store, process, or dispose of radioactive substances, except for medical equipment or materials that are used within a medical facility, and medical waste as defined in RCW 70A.390.020 that is generated within a medical facility and held for proper disposal; and
- (f) Other Prohibited Uses or Activities.
 - (1) Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source;
 - (2) Activities that would significantly reduce the recharge to aquifers that are a source of significant baseflow to a regulated stream; and
 - (3) Activities that are not connected to an available sanitary sewer system, prohibited from critical aquifer recharge areas associated with sole source aquifers. (Ord. 1375 § 3, 2005).

EXHIBIT D

AMENDMENTS TO SECTIONS IN CHAPTER 22.97 FMC

Chapter 22.97

FISH AND WILDLIFE HABITAT CONSERVATION AREAS

Sections:

- 22.97.010 Designation of fish and wildlife habitat conservation areas.
- 22.97.020 Critical area report – Additional requirements for habitat conservation areas.
- 22.97.030 Performance standards – General requirements.
- 22.97.040 Performance standards – Specific habitats.

22.97.010 Designation of fish and wildlife habitat conservation areas.

(a) Fish and wildlife habitat conservation areas include:

(1) Areas with which State or Federally Designated Endangered, Threatened, and Sensitive Species Have a Primary Association.

(A) Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted for current listing status.

(B) State-designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington, identified by the Washington State Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State-designated endangered, threatened, and sensitive species are periodically recorded in WAC 232-12-014 (state endangered species) and WAC 232-12-011 (state threatened and sensitive species). The state Department of Fish and Wildlife maintains the most current listing and should be consulted for current listing status.

(2) State Priority Habitats and Areas Associated with State Priority Species. Priority habitats and species are considered to be priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the state Department of Fish and Wildlife's [Priority Habitats and Species program and maps](#).

(3) Habitats and Species of Local Importance. Habitats and species of local importance are those identified by the city, including but not limited to those habitats and species that, due to their population status or sensitivity to habitat manipulation, warrant protection. Habitats may include a seasonal range or habitat element with which a species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

(4) Naturally Occurring Ponds Under 20 Acres. Naturally occurring ponds are those ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds, and landscape amenities, unless such artificial ponds were intentionally created for mitigation.

(5) Waters of the State. Waters of the state include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, as ~~classified in WAC 222-16-031 (or WAC 222-16-030 depending on classification used)~~ defined in RCW 90.48.020, as amended (or as revised).

(6) Lakes, ponds, streams, and rivers planted with game fish by a governmental entity.

(7) State Natural Area Preserves and Natural Resource Conservation Areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the Washington State Department of Natural Resources.

(8) Areas of Rare Plant Species and High Quality Ecosystems. Areas of rare plant species and high quality ecosystems are identified by the Washington State Department of Natural Resources through the Natural Heritage Program.

(9) Land useful or essential for preserving connections between habitat blocks and open spaces.

(b) All areas within the city meeting one or more of these criteria, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of Chapter 22.92 FMC and this chapter and shall be managed consistent with the best available science, such as the Washington State Department of Fish and Wildlife's Management Recommendations for Priority Habitat and Species.

(c) Mapping. The approximate location and extent of fish and wildlife habitat conservation areas are shown on the adopted critical area map contained within the comprehensive plan. In addition, the following maps are hereby adopted by reference and declared part of this chapter:

- (1) Washington State Department of Fish and Wildlife Priority Habitat and Species maps;
- (2) Washington State Department of Natural Resources, Official Water Type Reference maps, as amended;
- (3) Washington State Department of Natural Resources Natural Heritage Program mapping data;
- (4) Anadromous and resident salmonid distribution maps contained in the Habitat Limiting Factors reports published by the Washington Conservation Commission; and
- (5) Washington State Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area maps.

These maps are to be used as a guide for the city, project applicants, and/or property owners and should be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation. (Ord. 1375 § 6, 2005).

22.97.020 Critical area report – Additional requirements for fish and wildlife habitat conservation areas.

In addition to the general critical area report requirements of FMC 22.92.160, critical area reports for fish and wildlife habitat conservation areas must meet the requirements of this section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

(a) Preparation by a Qualified Professional. A critical areas report for a habitat conservation area shall be prepared by a qualified professional who is a biologist with experience preparing reports for the relevant type of habitat.

(b) Areas Addressed in Critical Area Report. The following areas shall be addressed in a critical area report for habitat conservation areas:

- (1) The project area of the proposed activity;
- (2) All habitat conservation areas and recommended buffers within 300 feet of the project area; and
- (3) All shoreline areas, floodplains, other critical areas, and related buffers within 300 feet of the project area.

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

- (1) Detailed description of vegetation on and adjacent to the project area and its associated buffer;
- (2) Identification of any species of local importance, priority species, or endangered, threatened, sensitive, or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;
- (3) A discussion of any federal, state, or local special management recommendations, including Washington State Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;
- (4) A detailed discussion of the direct and indirect potential impacts on habitat by the project, including potential impacts to water quality;
- (5) A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity and to be conducted in accordance with the mitigation sequencing order specified in FMC 22.92.190; and
- (6) A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.

(d) **Additional Information May Be Required.** When appropriate due to the type of habitat or species present or the project area conditions, the director may also require the habitat management plan to include:

- (1) An evaluation by an independent qualified professional regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate;
- (2) A request for consultation with the Washington State Department of Fish and Wildlife or other appropriate agency; and
- (3) Detailed surface and subsurface hydrologic features both on and adjacent to the site. (Ord. 1375 § 6, 2005).

22.97.030 Performance standards – General requirements.

(a) **Alterations.** A habitat conservation area may be altered only if the proposed alteration of the habitat or the mitigation proposed does not degrade the quantitative and qualitative functions and values of the habitat. All new structures and land alterations shall be prohibited from habitat conservation areas, except in accordance with Chapter 22.92 FMC and this chapter.

(b) **Nonindigenous Species.** No plant, wildlife, or fish species not indigenous to the region shall be introduced into a habitat conservation area unless authorized by a state or federal permit or approval.

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

(d) **Approvals of Activities.** The director shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions shall be based on the best available science and may include, but are not limited to, the following:

- (1) Establishment of buffer zones;
- (2) Preservation of critically important vegetation and/or habitat features such as snags and downed wood;

- (3) Limitation of access to the habitat area, including fencing to deter unauthorized access;
- (4) Seasonal restriction of construction activities;
- (5) Establishment of a duration and timetable for periodic review of mitigation activities; and
- (6) Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation.

(e) Mitigation and Equivalent or Greater Biological Functions. Mitigation of alterations to habitat conservation areas shall achieve equivalent or greater biologic and hydrologic functions and shall include mitigation for adverse impacts upstream or downstream of the development proposal site. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per function basis.

(f) Approvals and the Best Available Science. Any approval of alterations or impacts to a habitat conservation area shall be supported by the best available science.

(g) Buffers.

(1) Establishment of Buffers. The director shall require the establishment of buffer areas for activities adjacent to habitat conservation areas when needed to protect habitat conservation areas. Buffers shall consist of an undisturbed area of native vegetation or areas identified for restoration established to protect the integrity, functions, and values of the affected habitat. Required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby and shall be consistent with the management recommendations issued by the Washington State Department of Fish and Wildlife. Habitat conservation areas and their buffers shall be preserved in perpetuity through the use of native growth protection areas and critical area tracts in accordance with FMC 22.92.320 and 22.92.330.

(2) Seasonal Restrictions. When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger buffers may be required and activities may be further restricted during the specified season.

~~(3) Habitat Buffer Averaging. The director may allow the recommended habitat area buffer width to be reduced in accordance with a critical area report, the best available science, and the management recommendations issued by the Washington State Department of Fish and Wildlife, only if:~~

~~(A) It will not reduce stream or habitat functions;~~

~~(B) It will not adversely affect salmonid habitat;~~

~~(C) It will provide additional natural resource protection, such as buffer enhancement;~~

~~(D) The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and~~

~~(E) The buffer area width is not reduced by more than 25 percent in any location.~~

(h) Signs and Fencing of Habitat Conservation Areas.

(1) Temporary Markers. The outer perimeter of the habitat conservation area or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that no unauthorized intrusion will occur and verified by the 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 to this chapter, the director may require that applicant to install permanent signs along the boundary of a habitat conservation area or buffer.

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

Habitat Conservation Area
Do Not Disturb
Contact City of Fircrest
Regarding Uses, Restrictions and Opportunities for Stewardship

(B) The provisions of subsection (h)(2)(A) of this section may be modified by the director as necessary to assure protection of sensitive features or wildlife.

(3) Fencing.

(A) The director shall determine if fencing is necessary to protect the functions and values of the critical area. If found to be necessary, the director shall condition any permit or authorization issued pursuant to this chapter to require the applicant to install a permanent fence at the edge of the habitat conservation area or buffer, when fencing will prevent future impacts to the habitat conservation area.

(B) The applicant shall be required to install a permanent fence around the habitat conservation area or buffer when domestic grazing animals are present or may be introduced on site.

(C) 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 habitat impacts.

(i) Subdivisions. The subdivision and short subdivision of land in fish and wildlife habitat conservation areas and associated buffers is subject to the following:

(1) Land that is located wholly within a habitat conservation area or its buffer may not be subdivided.

(2) Land that is located partially within a habitat conservation area or its buffer may be divided; provided, that the developable portion of each new lot and its access is located outside of the habitat conservation area or its buffer and meets the minimum lot size requirements of this title.

(3) Access roads and utilities serving the proposed subdivision may be permitted within the habitat conservation area and associated buffers only if the city determines that no other feasible alternative exists and when consistent with this chapter. (Ord. 1375 § 6, 2005).

22.97.040 Performance standards – Specific habitats.

(a) Endangered, Threatened, and Sensitive Species.

(1) No development shall be allowed within a habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a management plan established by the Washington State Department of Fish and Wildlife or applicable state or federal agency.

(2) Whenever activities are proposed adjacent to a habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with a critical area report prepared by a qualified professional and approved by the city. Approval for alteration of land adjacent to the habitat conservation area or its buffer shall not occur prior to consultation with the Washington State Department of Fish and Wildlife for animal species, the Washington State Department of Natural Resources for plant species, and other appropriate federal or state agencies.

(3) Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC ~~232-12-292~~[220-610-100](#)). Whenever activities are proposed adjacent to a verified nest territory or communal

roost, a habitat management plan shall be developed by a qualified professional. Activities are adjacent to bald eagle sites when they are within 800 feet. The city shall verify the location of eagle management areas for each proposed activity. ~~Approval of the activity shall not occur prior to approval of the habitat management plan by the Washington State Department of Fish and Wildlife.~~

(b) Anadromous Fish.

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

(A) Activities shall be timed to occur only during the allowable work window as designated by the Washington State Department of Fish and Wildlife for the applicable species;

(B) An alternative alignment or location for the activity is not feasible;

(C) The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas;

(D) Shoreline erosion control measures shall be designed to use bioengineering methods or soft armoring techniques, according to an approved critical area report; and

(E) Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved critical area report.

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

(3) Fills shall not adversely impact anadromous fish or their habitat or shall mitigate any unavoidable impacts and shall only be allowed for a water dependent use.

(c) Wetland Habitats. All proposed activities within or adjacent to habitat conservation areas containing wetlands shall conform to the wetland development performance standards set forth in Chapter 22.93 FMC. If nonwetlands habitat and wetlands are present at the same location, the provisions of Chapter 22.93 FMC or this chapter, whichever provides greater protection to the habitat, shall apply.

(d) Riparian Habitat Areas. Unless otherwise allowed in Chapter 22.92 FMC and this chapter, all structures and activities shall be located outside of the riparian habitat area.

(1) Establishment of Riparian Habitat Areas. Riparian habitat areas shall be established for habitats that include aquatic and terrestrial ecosystems that mutually benefit each other and that are located adjacent to rivers, perennial or intermittent streams, seeps, and springs.

(2) Riparian Habitat Area Widths. Recommended riparian habitat area widths are shown in the table below. A riparian habitat area shall have the width recommended, unless a greater width is required pursuant to subsection (d)(3) of this section, or a lesser width is allowed pursuant to subsection (d)(4) of this section. Widths shall be measured outward in each direction, on the horizontal plane, from the ordinary high water mark, or from the top of bank, if the ordinary high water mark cannot be identified. Riparian areas should be sufficiently wide to achieve the full range of riparian and aquatic ecosystem functions, which include but are not limited to protection of instream fish habitat through control of temperature and sedimentation in streams; preservation of fish and wildlife habitat; and connection of riparian wildlife habitat to other habitats.

Riparian Habitat Areas

Stream type	Recommended RHA widths
Type 1 and 2; or shorelines of the state, or shorelines of statewide significance	250 feet
Type 3; or other perennial or fish-bearing streams, 5 – 20 feet wide	200 feet
Type 3; or other perennial or fish-bearing streams, < 5 feet wide	150 feet
Type 4 and 5; or intermittent streams and washes with low mass wasting potential	150 feet

(3) Increased Riparian Habitat Area Widths. The recommended riparian habitat area widths shall be increased, as follows:

- (A) When the director determines that the recommended width is insufficient to prevent habitat degradation and to protect the structure and functions of the habitat area;
- (B) When the frequently flooded area exceeds the recommended riparian habitat area width, the riparian habitat area shall extend to the outer edge of the frequently flooded area;
- (C) When a channel migration zone is present, the riparian habitat area width shall be measured from the outer edge of the channel migration zone;
- (D) When the habitat area is in an area of high blowdown potential, the riparian habitat area width shall be expanded an additional 50 feet on the windward side; or
- (E) When the habitat area is within an erosion or landslide hazard area or buffer, the riparian habitat area width shall be the recommended distance, or the erosion or landslide hazard area or buffer, whichever is greater.

(4) Riparian Habitat Area Width Averaging. The director may allow the recommended riparian habitat area width to be reduced in accordance with a critical area report only if:

- (A) The width reduction will not reduce stream or habitat functions, including those of nonfish habitat;
- (B) The width reduction will not degrade the habitat, including habitat for anadromous fish;
- (C) The proposal will provide additional habitat protection;
- (D) The total area contained in the riparian habitat area of each stream on the development proposal site is not decreased;
- (E) The recommended riparian habitat area width is not reduced by more than 25 percent in any one location;
- (F) The width reduction will not be located within another critical area or associated buffer; and
- (G) The reduced riparian habitat area width is supported by the best available science.

(5) Riparian Habitat Mitigation. Mitigation of adverse impacts to riparian habitat areas shall result in equivalent functions and values on a per function basis, be located as near the alteration as feasible, and be located in the same subdrainage basin as the habitat impacted.

(6) Alternative Mitigation for Riparian Habitat Areas. The performance standards set forth in this subsection may be modified at the city's discretion if the applicant demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected subdrainage basin as a result of alternative mitigation measures.

(e) Aquatic Habitat. The following specific activities may be permitted within a riparian habitat area, pond, lake, and water of the state or associated buffer subject to the standards of this subsection.

(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 Department of Ecology Stormwater Management Manual for Western Washington shall be provided.

(2) Shoreline Erosion Control Measures. New, replacement, or substantially improved shoreline erosion control measures may be permitted 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 alterations to, or loss of, shoreline substrate within one-quarter mile of the project area.

(B) The shoreline erosion control measures will not degrade fish or wildlife habitat conservation 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 proposed shoreline erosion control measures.

(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) Roads, Trails, Bridges, and Rights-of-Way. Construction of trails, roadways, and minor road bridging, less than or equal to 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 habitat areas 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 Washington State Department of Fish and Wildlife ~~Fish-Passage Design at Road Culverts, 1999~~[2013 Water Crossing Design Guidelines \(as amended\)](#), 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.
- (5) 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 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.
- (6) 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.
- (7) 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.
- (8) 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, [prioritizing avoidance or minimization of impacts to fish life, including appropriate control, energy dissipation, and fish passage considerations where applicable](#);
- (C) Stormwater conveyance facilities shall incorporate fish habitat features [\(as consistent with guidance from Washington Department of Fish and Wildlife and Hydraulic Project Approval provisions to protect aquatic habitat functions\)](#); ~~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; [and](#)
- [\(E\) Any required Hydraulic Project Approval as determined by the Washington Department of Fish and Wildlife be obtained prior to the project's construction.](#)
- (9) On-Site Sewage Systems and Wells.

(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 residential structure, for which it is not feasible to connect to a public sanitary sewer 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 Tacoma-Pierce County Health Department; or
- (iii) Repair to the existing on-site septic system. (Ord. 1375 § 6, 2005).

EXHIBIT E

AMENDMENTS TO SECTIONS IN CHAPTER 22.98 FMC

~~22.98.080—Aquifer, confined.~~

~~“Aquifer, confined” means an aquifer bounded above and below by beds of distinctly lower permeability than that of the aquifer itself and that contains ground water under sufficient pressure for the water to rise above the top of the aquifer.~~

22.98.179 Critical aquifer recharge area.

“Critical aquifer recharge area” means areas ~~designated by WAC 365-190-080(2)~~ described by WAC 365-190-100 that are determined to have a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(23). (Ord. 1375 § 9, 2005).

~~22.98.180—Critical area inventory maps.~~

~~“Critical area inventory maps” means those maps and documents housed by the department which contain information on the general location of critical areas.~~

22.98.285 Fish and wildlife habitat conservation areas.

“Fish and wildlife habitat conservation areas” means areas necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created as designated by WAC 365-190-080(5). These areas include:

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

Fish and wildlife habitat conservation areas do not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company. (Ord. 1375 § 18, 2005; Ord. 1246 § 27, 2000).

22.98.298 Frequently flooded areas.

“Frequently flooded areas” means lands in the floodplain subject to a one percent or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance, and attenuation functions, as determined by the director in accordance with WAC 365-190-080(3). Frequently flooded areas can also include areas subject to flooding due to high groundwater. Frequently flooded areas perform important hydrologic functions and may present a risk to persons and property. Classifications of frequently flooded areas include, at a minimum, the 100-year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program. (Ord. 1375 § 9, 2005).

~~22.98.350 Hydrologic soil groups.~~

~~“Hydrologic soil groups” means soils grouped according to their runoff-producing characteristics under similar storm and cover conditions. Properties that influence runoff potential are depth to seasonally high water table, intake rate and permeability after prolonged wetting, and depth to a low permeable layer. Hydrologic soil groups are normally used in equations that estimate runoff from rainfall, but can be used to estimate a rate of water transmission in soil. There are four hydrologic soil groups:~~

~~Low runoff potential and a high rate of infiltration potential;~~

~~Moderate infiltration potential and a moderate rate of runoff potential;~~

~~Slow infiltration potential and a moderate to high rate of runoff potential; and~~

~~High runoff potential and very slow infiltration and water transmission rates.~~

22.98.447 Mitigation.

“Mitigation” means avoiding, minimizing, or compensating for adverse critical areas impacts. Mitigation, in the following sequential order of preference, is:

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

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

~~22.98.544 Porous soil types.~~

~~“Porous soil types” means 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.~~

22.98.579 Qualified professional.

“Qualified professional” means a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant critical area subject in accordance with WAC [365-195-905](#)(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and two years of related work experience.

- (a) A qualified professional for habitats ~~or wetlands~~ must have a degree in biology and professional experience related to the subject species.
- (b) A qualified professional for a geological hazard must be a ~~professional engineer or~~ geologist [holding a current specialty license in hydrogeology](#), licensed in the state of Washington.

(c) A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

(d) A qualified wetland specialist is a person with professional ~~wetland~~ experience and training in wetland science that meets the following criteria:

(i) A minimum of 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

(ii) 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

(iii) 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, programs with similar curricula, or a series of individual workshops on topics ~~such as~~ including wetland delineation, function assessment, mitigation design, hydrophytic plant or hydric soil identification.

(iv) A person certified as a Professional Wetland Scientist through the Society of Wetland Scientists professional certification program meets the ~~above~~ criteria for “qualified wetland specialist”.

As used in this section, a “wetland professional” serves a technical role in the review, judgment, identification, documentation, and findings associated with wetland features akin to that of a certified Professional Wetland Scientist.

22.98.623 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, debris flows, lahars, or tsunamis, or other areas as defined by WAC 360-119-030(18) (or as amended).

~~22.98.752 Well.~~

~~“Well” means 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.~~

22.98.753 Wellhead protection area (WHPA).

“Wellhead protection area (WHPA)” means protective areas associated with public drinking water sources established by water systems and approved or assigned by the state department of health~~the portion of a zone of contribution for a well, wellfield, or spring, as defined using criteria established by the Washington State Department of Ecology.~~

~~22.98.785 Zone of contribution.~~

~~“Zone of contribution” means the area surrounding a well or spring that encompasses all areas or features that supply ground water recharge to the well or spring.~~

EXHIBIT F

AMENDMENTS TO SECTIONS IN CHAPTER 22.100 FMC

Chapter 22.100

GEOLOGICALLY HAZARDOUS AREAS

Sections:

- 22.100.010 Designation of geologically hazardous areas.
- 22.100.020 Designation of specific hazard areas.
- 22.100.030 Classification of geologically hazardous areas.
- 22.100.040 Mapping of geologically hazardous areas.
- 22.100.050 Activities allowed in geologically hazardous areas.
- 22.100.060 Critical area report – Additional requirements for geologically hazardous areas.
- 22.100.070 Critical area report – Additional technical information requirements for specific hazards.
- 22.100.080 Performance standards – General requirements.
- 22.100.090 Performance standards – Erosion and landslide hazard areas.

22.100.010 Designation of geologically hazardous areas.

Geologically hazardous areas 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 geologically hazardous areas:

- (a) Erosion hazard; and
- (b) Landslide hazard.

(c) Seismic hazard. (Ord. 1375 § 5, 2005).

22.100.020 Designation of specific hazard areas.

(a) Erosion Hazard Areas. Erosion hazard areas are at least those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "moderate to severe," "severe," or "very severe" rill and inter-rill erosion hazard. Erosion hazard areas are also those areas impacted by shoreland and/or stream bank erosion and those areas within a river's channel migration zone.

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

- (1) Areas of historic failures, such as:

- (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 Washington State 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~~ Washington State Department of Natural Resources, or the Washington Geological Survey's Washington Geologic Information Portal;

- (2) Areas with all three of the following characteristics:

(A) Slopes steeper than 15 percent;

(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 10,000 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) Areas potentially unstable because of rapid stream incision, stream bank erosion, and undercutting by wave action;

(6) Any area with a slope of 40 percent or steeper and with a vertical relief of 10 or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least 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, debris flows, lahars, or tsunamis. (Ord. 1375 § 5, 2005).

22.100.030 Classification of geologically hazardous areas.

All geologic hazard areas should be classified according to the following categories for each geologic hazard type:

Classification	Documentation and Data Sources
Known or Suspected Risk	Documentation or projection of the hazard by a qualified professional exists.
Risk Unknown	Documentation or projection of the lack of hazard by a qualified professional exists, or data are not available to determine the presence or absence of a geologic hazard.

(Ord. 1375 § 5, 2005).

22.100.040 Mapping of geologically hazardous areas.

(a) The approximate location and extent of geologically hazardous areas are shown on the adopted critical area map contained within the comprehensive plan. In addition, the following maps are hereby adopted by reference and declared part of this chapter:

(1) U.S. Geological Survey landslide hazard and seismic hazard maps;

(2) Washington State Department of Natural Resources seismic hazard maps for Western Washington, [including its Geologic Information Portal](#);

(3) Washington State Department of Natural Resources slope stability maps; and

(4) Federal Emergency Management Administration flood insurance maps.

(b) These maps are to be used as a guide for the city, project applicants and/or property owners and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation. (Ord. 1375 § 5, 2005).

22.100.050 Activities allowed in geologically hazardous areas.

The following activities are allowed in geologically hazardous areas pursuant to FMC 22.92.110: ~~and do not require submission of a critical area report~~

(a) Erosion, ~~and~~ Landslide, or Seismic Hazard Areas. Except as otherwise provided for in the applicable critical area chapters, only those activities approved and permitted consistent with an approved critical area report in accordance with these chapters shall be allowed in erosion, ~~or~~ landslide, or seismic hazard areas. (Ord. 1375 § 5, 2005).

22.100.060 Critical area report – Additional requirements for geologically hazardous areas.

(a) Preparation by a Qualified Professional. A critical areas report for a geologically hazardous area shall be prepared by an engineer or geologist, licensed in the state of Washington, with experience analyzing geologic, hydrologic, and ground water flow systems, and who has experience preparing reports for the relevant type of hazard.

(b) Area Addressed in Critical Area Report. The following areas shall be addressed in a critical area report for geologically hazardous areas:

(1) The project area of the proposed activity; and

(2) All geologically hazardous areas within 200 feet of the project area or that have potential to be affected by the proposal;

(c) Geological Hazards Assessment. A critical area report for a geologically hazardous area shall contain an assessment of geological hazards including the following site- and proposal-related information at a minimum:

(1) Site and Construction Plans. The report shall include a copy of the site plans for the proposal showing:

(A) The type and extent of geologic hazard areas, any other critical areas, and buffers on, adjacent to, within 200 feet of, or that are likely to impact the proposal;

(B) Proposed development, including the location of existing and proposed structures, fill, storage of materials, and drainage facilities, with dimensions indicating distances to the floodplain, if available;

(C) The topography, in two-foot contours, of the project area and all hazard areas addressed in the report; and

(D) Clearing limits; and

(2) Assessment of Geological Characteristics. The report shall include an assessment of the geologic characteristics of the soils, sediments, and/or rock of the project area and potentially affected adjacent properties, and a review of the site history regarding landslides, erosion, and prior grading. Soils analysis shall be accomplished in accordance with accepted classification systems in use in the region. The assessment shall include, but not be limited to:

(A) A description of the surface and subsurface geology, hydrology, soils, and vegetation found in the project area and in all hazard areas addressed in the report;

(B) A detailed overview of the field investigations, published data, and references; data and conclusions from past assessments of the site; and site-specific measurements, tests, investigations, or studies that support the identification of geologically hazardous areas; and

(C) A description of the vulnerability of the site to seismic and other geologic events;

(3) Analysis of Proposal. The report shall contain a hazards analysis including a detailed description of the project, its relationship to the geologic hazard(s), and its potential impact upon the hazard area, the subject property, and affected adjacent properties; and

(4) Minimum Buffer and Building Setback. The report shall make a recommendation for the minimum no-disturbance buffer and minimum building setback from any geologic hazard based upon the geotechnical analysis.

(d) Incorporation of Previous Study. Where a valid critical areas report has been prepared within the last five years for a specific site, and where the proposed land use activity and surrounding site conditions are unchanged, said report may be incorporated into the required critical area report. The applicant shall submit a hazards assessment detailing any changed environmental conditions associated with the site.

(e) Mitigation of Long-Term Impacts. When hazard mitigation is required, the mitigation plan shall specifically address how the activity maintains or reduces the preexisting level of risk to the site and adjacent properties on a long-term basis (equal to or exceeding the projected lifespan of the activity or occupation). Proposed mitigation techniques shall be considered to provide long-term hazard reduction only if they do not require regular maintenance or other actions to maintain their function. Mitigation may also be required to avoid any increase in risk above the preexisting conditions following abandonment of the activity. (Ord. 1375 § 5, 2005).

22.100.070 Critical area report – Additional technical information requirements for specific hazards.

In addition to the general critical area report requirements of FMC 22.92.160 and 22.100.060, critical area reports for geologically hazardous areas must meet the requirements of this section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

(a) Erosion and Landslide Hazard Areas. In addition to the basic critical area report requirements, the technical information for an erosion hazard or landslide hazard area shall include the following information at a minimum:

(1) Site Plan. The critical area report shall include a copy of the site plan for the proposal showing:

- (A) The height of slope, slope gradient, and cross-section of the project area;
- (B) The location of springs, seeps, or other surface expressions of ground water on or within 200 feet of the project area or that have potential to be affected by the proposal; and
- (C) The location and description of surface water runoff features;

(2) Hazards Analysis. The hazards analysis component of the critical areas report shall specifically include:

- (A) A description of the extent and type of vegetative cover;
- (B) A description of subsurface conditions based on data from site-specific explorations;
- (C) Descriptions of surface and ground water conditions, public and private sewage disposal systems, fills and excavations, and all structural improvements;
- (D) An estimate of slope stability and the effect construction and placement of structures will have on the slope over the estimated life of the structure;
- (E) An estimate of the bluff retreat rate that recognizes and reflects potential catastrophic events such as seismic activity or a 100-year storm event;
- (F) Consideration of the run-out hazard of landslide debris and/or the impacts of landslide run-out on downslope properties;
- (G) A study of slope stability including an analysis of proposed cuts, fills, and other site grading;
- (H) Recommendations for building siting limitations; and
- (I) An analysis of proposed surface and subsurface drainage, and the vulnerability of the site to erosion;

(3) Geotechnical Engineering Report. The technical information for a project within a landslide hazard area shall include a geotechnical engineering report prepared by a licensed engineer that presents engineering recommendations for the following:

(A) Parameters for design of site improvements including appropriate foundations and retaining structures. These should include allowable load and resistance capacities for bearing and lateral loads, installation considerations, and estimates of settlement performance;

(B) Recommendations for drainage and subdrainage improvements;

(C) Earthwork recommendations including clearing and site preparation criteria, fill placement and compaction criteria, temporary and permanent slope inclinations and protection, and temporary excavation support, if necessary; and

(D) Mitigation of adverse site conditions including slope stabilization measures and seismically unstable soils, if appropriate;

(4) Erosion and Sediment Control Plan. For any development proposal on a site containing an erosion hazard area, an erosion and sediment control plan shall be required. The erosion and sediment control plan shall be prepared in compliance with requirements set forth in the Department of Ecology Stormwater Management Manual for Western Washington;

(5) Drainage Plan. The technical information shall include a drainage plan for the collection, transport, treatment, discharge, and/or recycle of water prepared in accordance with the Department of Ecology Stormwater Management Manual for Western Washington, as modified by the city. The drainage plan should consider on-site septic system disposal volumes where the additional volume will affect the erosion or landslide hazard area;

(6) Mitigation Plans. Hazard and environmental mitigation plans for erosion and landslide hazard areas shall include the location and methods of drainage, surface water management, locations and methods of erosion control, a vegetation management and/or replanting plan, and/or other means for maintaining long-term soil stability; and

(7) Monitoring Surface Waters. If the director determines that there is a significant risk of damage to downstream receiving waters due to potential erosion from the site, based on the size of the project, the proximity to the receiving waters, or the sensitivity of the receiving waters, the technical information shall include a plan to monitor the surface water discharge from the site. The monitoring plan shall include a recommended schedule for submitting monitoring reports to the city. (Ord. 1375 § 5, 2005).

22.100.080 Performance standards – General requirements.

(a) Alterations of geologically hazardous areas or associated buffers may only occur for activities that:

(1) Will not increase the threat of the geological hazard to adjacent properties beyond 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 predevelopment conditions; and

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

(b) Critical Facilities Prohibited. Critical facilities shall not be sited within geologically hazardous areas unless there is no other practical alternative. (Ord. 1375 § 5, 2005).

22.100.090 Performance standards – Erosion and landslide hazard areas.

Activities on sites containing erosion or landslide hazards shall meet the standards of FMC 22.100.080 and the specific following requirements:

(a) Buffer Requirement. A buffer shall be established from all edges of landslide hazard areas. The size of the buffer shall be determined by the director to eliminate or minimize the risk of property damage, death, or injury resulting from landslides caused in whole or part by the development, based upon review of and concurrence with a critical area report prepared by a qualified professional.

(1) Minimum Buffer. The minimum buffer shall be equal to the height of the slope or 50 feet, whichever is greater.

(2) Buffer Reduction. The buffer may be reduced to a minimum of 10 feet when a qualified professional demonstrates to the director's satisfaction that the reduction will adequately protect the proposed development, adjacent developments, and uses and the subject critical area.

(3) Increased Buffer. The buffer may be increased where the director determines a larger buffer is necessary to prevent risk of damage to proposed and existing development;

(b) Alterations. Alterations of an erosion or landslide hazard area and/or buffer may only occur for activities for which a hazards analysis is submitted and certifies that:

(1) The development will not increase surface water discharge or sedimentation to adjacent properties beyond predevelopment conditions;

(2) The development will not decrease slope stability on adjacent properties; and

(3) Such alterations will not adversely impact other critical areas;

(c) Design Standards. Development within an erosion or landslide hazard area and/or buffer shall be designed to meet the following basic requirements unless it can be demonstrated that an alternative design that deviates from one or more of these standards provides greater long-term slope stability while meeting all other provisions of the applicable critical areas chapters. The requirement for long-term slope stability shall exclude designs that require regular and periodic maintenance to maintain their level of function. The basic development design standards are:

(1) The proposed development shall not decrease the factor of safety for landslide occurrences below the limits of 1.5 for static conditions and 1.2 for dynamic conditions. Analysis of dynamic conditions shall be based on a minimum horizontal acceleration as established by the current version of the International Building Code;

(2) Structures and improvements shall be clustered to avoid geologically hazardous areas and other critical areas;

(3) Structures and improvements shall minimize alterations to the natural contour of the slope, and foundations shall be tiered where possible to conform to existing topography;

(4) Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation;

(5) The proposed development shall not result in greater risk or a need for increased buffers on neighboring properties;

(6) The use of retaining walls that allow the maintenance of existing natural slope area is preferred over graded artificial slopes; and

(7) Development shall be designed to minimize impervious lot coverage;

(d) Vegetation Retention. Unless otherwise provided or as part of an approved alteration, removal of vegetation from an erosion or landslide hazard area or related buffer shall be prohibited;

(e) Seasonal Restriction. Clearing shall be allowed only from May 1st to October 1st of each year; provided, that the city may extend or shorten the dry season on a case-by-case basis depending on actual weather conditions, except that timber harvest, not including brush clearing or stump removal, may be allowed pursuant to an approved forest practice permit issued by the Washington State Department of Natural Resources;

(f) Utility Lines and Pipes. Utility lines and pipes shall be permitted in erosion and landslide hazard areas only when the applicant demonstrates that no other practical alternative is available. The line or pipe shall be located aboveground and properly anchored and/or designed so that it will continue to function in the event of an underlying slide. Stormwater conveyance shall be allowed only through a high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior;

(g) Point Discharges. Point discharges from surface water facilities and roof drains onto or upstream from an erosion or landslide hazard area shall be prohibited except as follows:

(1) Conveyed via continuous storm pipe downslope to a point where there are no erosion hazard areas downstream from the discharge;

(2) Discharged at flow durations matching predeveloped conditions, with adequate energy dissipation, into existing channels that previously conveyed stormwater runoff in the predeveloped state; or

(3) Dispersed discharge upslope of the steep slope onto a low-gradient undisturbed buffer demonstrated to be adequate to infiltrate all surface and stormwater runoff, and where it can be demonstrated that such discharge will not increase the saturation of the slope;

(h) Subdivisions. The division of land in landslide hazard areas and associated buffers is subject to the following:

(1) Land that is located wholly within a landslide hazard area or its buffer may not be subdivided. Land that is located partially within a landslide hazard area or its buffer may be divided; provided, that each resulting lot has sufficient buildable area outside of, and will not affect, the landslide hazard area or its buffer.

(2) Access roads and utilities may be permitted within the landslide hazard area and associated buffers if the city determines that no other feasible alternative exists; and

(i) Prohibited Development. On-site sewage disposal systems, including drain fields, shall be prohibited within erosion and landslide hazard areas and related buffers. (Ord. 1375 § 5, 2005).

**CITY OF FIRCREST PLANNING COMMISSION
RESOLUTION NO. 26-01**

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF FIRCREST RECOMMENDING
THE PERIODIC UPDATE TO THE CRITICAL
AREAS REGULATIONS CONTAINING
AMENDMENTS TO FMC CHAPTERS 22.92, 22.93,
22.94, 22.97, 22.98, AND 22.100 TO THE CITY
COUNCIL FOR FINAL CONSIDERATION AND
APPROVAL.**

WHEREAS, the Critical Areas Ordinance (“CAO”) is a collection of locally determined development regulations intended to conserve the functions of environmentally sensitive areas and protect the public from hazards that may be associated with developing in areas with certain environmental characteristics such as areas prone to flooding and posing geological hazards; and

WHEREAS, Chapter 365-190 of the Washington Administrative Code (“WAC”) requires the protection of critical areas through buffer standards, mitigation requirements, and habitat conservation provisions

WHEREAS, Section 36.70A.130(5) of the Revised Code of Washington (“RCW”) requires cities to incorporate development regulations involving wetlands, fish and wildlife habitat conservation areas, critical aquifer recharge areas, geologically hazardous areas, and flood hazard areas, and to evaluate and revise their Critical Areas Ordinance and associated development regulations every ten years; and

WHEREAS, the City of Fircrest (“City”) is updating its critical areas regulations under Chapter 36.70A RCW and Chapter 365-190 WAC of the Washington Administrative Code (“WAC”); and

WHEREAS, the City last updated its CAO in 2019; and

WHEREAS, the Planning Commission reviewed the amendments contained in Exhibit A to this resolution, including holding briefings on December 2, 2025, January 6, 2026, March 3, 2026, April 7, 2026, and July 7, 2026; and

WHEREAS, the Planning Commission held a public hearing regarding the same on August 18, 2026; and

WHEREAS, the Planning Commission considered the factors in FMC 22.92.040 in reviewing the proposed development regulation amendments in Exhibit A to this resolution; and

WHEREAS, the Planning Commission finds that the amendments accompanying this resolution in Exhibit A are consistent with and supportive of goals, policies, and implementation strategies in the Fircrest Comprehensive Plan, bear a substantial relation

1 to public health, safety, and welfare, and promote the best long-term interests of the
2 City; Now, Therefore,

3 **BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF**
4 **FIRCREST:**

5 **Section 1.** The Planning Commission of the City of Fircrest hereby recommends and
6 approves transmitting the proposed code amendments to the Critical Areas Ordinance
7 in chapters 22.92, 22.93, 22.94, 22.97, 22.98, and 22.100 FMC attached hereto as
8 Exhibit A to the City Council for final review and adoption.

9 **APPROVED AND ADOPTED BY THE PLANNING COMMISSION OF THE**
10 **CITY OF FIRCREST, WASHINGTON,** at a regular meeting thereof this 18th day of
11 August, 2026.

12 **APPROVED:**

13 
14 Kathy McVay, Chair

15 **ATTEST:**

16 
17
18 Danielle O'Galleher, Permit Coordinator
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Notice of Intent to Adopt Amendment / Notice of Adoption (Cover Sheet)

Pursuant to RCW 36.70A.106, the following jurisdiction provides the following required state agency notice.

Jurisdiction Name:	City of Fircrest
Amendment Type: Select Type of Amendment listed. (Select One Only)	☐ Comprehensive Plan Amendment ☐ Development Regulation Amendment ☐ Combined Comprehensive and Development Regulation Amendments ☐ Countywide Planning Policy ☒ Critical Areas Ordinance Amendment ☐ Shoreline Master Program
Select Submittal Type: Select the Type of Submittal listed. (Select One Only)	☒ 60-Day Notice of Intent to Adopt Amendment ☐ Request of Expedited Review / Notice of Intent to Adopt Amendment (Only for use with Development Regulation Amendments) ☐ Supplemental Submittal for existing Notice of Intent to Adopt Amendment ☐ Notice of Final Adoption of Amendment

Add Association <i>If this amendment is related to additional submittals, please let us know here. IDs are included in your acknowledgment letter.</i> <i>Example 2022-S-....</i>	N/A
Description Enter a brief description of the amendment. Begin your description with Proposed or Adopted, based on the type of Amendment you are submitting. Examples: <i>“Proposed comprehensive plan amendment for the GMA periodic update.”</i> or <i>“Adopted Ordinance 123, adoption amendment to the sign code.”</i> (Maximum 400 characters)	The City of Fircrest (City) intends to adopt an ordinance updating its Critical Areas Ordinance (CAO) implemented via Fircrest Municipal Code (FMC) Chapters 22.92, 22.93, 22.94, 22.97, 22.99, and 22.100 with related amendments to definitions in FMC Chapter 22.98 to support the implementation of its CAO. The City’s CAO Update intends to satisfy the required schedule for development regulation updates that protect critical areas established by the Growth Management Act, RCW 36.70A.130(7)(a)(ii). The City’s CAO Update also intends to adopt best available science in a manner which is protective of the City’s important natural features while minding the goals and priorities of the Fircrest community and its elected Council. The City’s draft CAO Update has been preliminarily reviewed by the Department of Ecology and Department of Natural Resources, whose helpful feedback is reflected in the draft CAO.
Is this action part of your 10-year periodic update required under RCW 36.70A.130 of the Growth Management Act (GMA)?	☒ Yes ☐ No
For Shoreline Master Programs (SMP): Is this action part of your 10-year periodic review required under RCW 90.58.080, a Comprehensive SMP, or a Locally Initiated amendment?	☐ Periodic Review ☐ Comprehensive SMP ☐ Locally Initiated Amendment ☒ N/A (Not an SMP)
Does your submittal include changes to Urban Growth Areas	☐ Yes ☒ No

Proposed Dates: Enter the anticipated public hearing date(s) for your Planning Commission/Planning Board or for your Council/Commission.	Planning Commission: July 7, 2026 City Council: September 14, 2026 Proposed / Date of Adoption: October 2026 (anticipated)
Categorize your Submittal	See Last Page for Category List
Contact Information:	
Prefix/Salutation: (Examples: "Mr.", "Ms.", or "The Honorable" (elected official))	Ms.
Name:	Kimberly Gunderson
Title:	Planning Consultant, City of Fircrest
Email:	Kmahoney.planning@gmail.com
Work Phone:	253-389-1864
Cell/Mobile Phone: (optional)	253-389-1864
Consultant Information:	
Is this person a consultant?	☒ Yes
Consulting Firm name?	Mahoney Planning, LLC
Would you like Commerce to contact you for Technical Assistance regarding this submitted amendment?	☐ Yes

REQUIRED: Attach a copy of the proposed amendment text or document(s). We do not accept a website hyperlink requiring us to retrieve external documents. Commerce no longer accepts paper copies by mail. If you experience difficulty, please email the reviewteam@commerce.wa.gov

~~~~ **ONLINE TRACKING SYSTEM AVAILABLE** ~~~~

Log in to our PlanView system where you can keep up with this submittal status, reprint communications and update your contact information.

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Please send completed [PlanView System Access Request Form](#) to [reviewteam@commerce.wa.gov](mailto:reviewteam@commerce.wa.gov)

Questions? Call the review team at (360) 725-3066.

- ☐ Airport Safety Zone
- ☐ Capital Facilities
- ☐ Climate
- ☐ Comprehensive Plan
- ☐ Conservation Element
- ☒ Critical Areas Ordinance
- ☐ Design Standards/Design Review
- ☐ Development Regulations
- ☐ Economic Development
- ☐ Emergency
- ☐ Environment
- ☐ Essential Public Facilities
- ☐ Historic Preservation
- ☐ Housing
- ☐ Impact Fee
- ☐ Land Use
- ☐ Military
- ☐ Open Space
- ☐ Parks and Recreation Element
- ☐ Periodic Review (SMP)
- ☐ Periodic Update
- ☐ Port Element
- ☐ Public Participation
- ☐ Recreation

- ☐ Resource Lands
- ☐ Rural Lands
- ☐ Schools
- ☐ Shoreline Master Program
- ☐ Solar Energy Element
- ☐ Subarea Plans
- ☐ Transfer of Development Rights
- ☐ Transportation
- ☐ Urban Growth Areas
- ☐ Utilities

Kimberly Mahoney

**From:** Kim Gunderson <kmahoney.planning@gmail.com>  
**Sent:** Thursday, July 2, 2026 10:52 AM  
**To:** Kimberly Mahoney  
**Subject:** Fw: Fircrest's critical areas ordinance (2026-S-12684): WGS comments

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged



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**From:** Sears, Tricia (DNR) <Tricia.Sears@dnr.wa.gov>  
**Sent:** Tuesday, April 14, 2026 1:01 PM  
**To:** kmahoney.planning@gmail.com <kmahoney.planning@gmail.com>  
**Cc:** Sears, Tricia (DNR) <Tricia.Sears@dnr.wa.gov>; Guida, Eric (COM) <eric.guida@commerce.wa.gov>  
**Subject:** Fircrest's critical areas ordinance (2026-S-12684): WGS comments

Hello Kim,

In keeping with the interagency correspondence principles, I am providing you with comments on Fircrest's critical areas ordinance (2026-S-12684).

For this proposal submitted via Planview, I looked at the proposal and focused on areas related to WGS work. Of note, but not limited to, I look for language around the geologically hazardous areas, mineral resource lands, mining, climate change, and natural hazards mitigation plan.

Specifically in this proposal, for critical areas I reviewed the FMC Critical Areas Chapters DRAFT CAO Update 2026-0408.pdf. Note that in February 2026, I reviewed an earlier draft of the CAO. Kimberly and I had dialogue. It appears that many of the comments I made previously have been addressed, but some remain. Below are my comments for this current draft.

Kudos to you for making changes to the CAO.

22.92.190. Is this for all critical areas or specifically for geologically hazardous areas or, "d) Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;"?

22.92.200. "These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome." This refers to 22.92.200, so all of these provisions, a through f, are addressed by the applicant as part of the application., right?

22.100.020. For the seismic hazards, consider referring to map resources and or the building code, to be in keeping with the erosion and landslide hazards that are designated. There are map references included for both of those hazards. It would be useful to include map resources (like the Washington Geological Information Portal, USGS, etc) and building code as a source for seismic hazards.

22.100.040. The map resources the code includes look appropriate. They should be in keeping with the info in 22.100.020.

22.100.050. The code mentions landslide and erosion hazard areas. Suggest mention seismic hazards too since they are also identified and designated.

22.100.060. Thinking about language and terms here. The Critical Areas Report will include a Geological Hazards Assessment which includes the Assessment of Geological Characteristics, the Site and Construction Plan, and an Analysis of Proposal. Ok. Now in (4) Minimum Buffer and Building Setback, it mentions the geotechnical analysis. So is the geotechnical analysis the Geological Hazards Assessment or the geotechnical analysis is a through c. Suggest clarifying. Perhaps in part a, it could say the Critical Areas Report contains the geotechnical analysis provided in the responses to a through c or a through e or whatever. Clarity would help.

22.100.070. So there are general critical areas provisions to address, then the geologically hazardous areas provisions, then also the hazard specific provisions. Good, ok. Here we have a geotechnical report. So this is in addition to the previously required items such as the Geologic Hazards Assessment. Suggest creating a table that lists the different hazard terms, code # reference, and the requirements to help clarify the requirements.

22.100.080 must be addressed by the licensed in WA geologist or engineer, yes?

Below, I include our usual language for this and future endeavors.

Recognizing the limitations of the current proposals, I want to mention that it would be great for you to consider these in current or future work, be it in your comprehensive plan, development code, and SMP updates, and in your work in general:

- Consider adding a reference to the definition of geologically hazardous areas, WAC 365-190-120, in other areas besides the CAO. In addition, consider adding a reference to WAC 365-196-480 for natural resource lands.
- Consider adding in other areas besides the CAO. If you have not checked our interactive database, the Washington Geologic Information Portal, lately, you may wish to do so. [Geologic Information Portal | WA - DNR](#)
- If you have not checked out our Geologic Planning page, you may wish to do so. [Geologic Planning | WA - DNR](#)

Thank you for considering our comments. If you have any questions or need additional information, please contact me. For your convenience, if there are no concerns or follow-up discussion, you may consider these comments to be final as of the 60-day comment deadline of 6/7/26.

Have a great day!

Tricia

Tricia R. Sears (she/her/hers)

**Geologic Planning Liaison**

Washington Geological Survey (WGS)

Washington Department of Natural Resources (DNR)

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(3) Activities within the Improved Right-of-Way. Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a city-authorized private roadway except those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater, subject to the following:

(A) Critical area and/or buffer widths shall be increased, where possible, equal to the width of the right-of-way improvement, including disturbed areas; and

(B) Retention and replanting of native vegetation shall occur wherever possible along the right-of-way improvement and resulting disturbance;

(4) Minor Utility Projects. Utility projects that have minor or short-duration impacts to critical areas, as determined by the director in accordance with the criteria below, and that do not significantly impact the function or values of a critical area(s); provided, that such projects are constructed with best management practices and additional restoration measures are provided. Minor activities shall not result in the transport of sediment or increased stormwater. Such allowed minor utility projects shall meet the following criteria:

(A) There is no practical alternative to the proposed activity with less impact on critical areas;

(B) The activity involves the placement of a utility pole, street signs, anchor, or vault or other small component of a utility facility; and

(C) The activity involves disturbance of an area less than 75 square feet;

(5) Public and Private Pedestrian Trails. Public and private pedestrian trails, subject to the following:

(A) The trail surface shall meet all other requirements including water quality standards set forth in the Department of Ecology Stormwater Management Manual for Western Washington;

(B) Critical area and/or buffer widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas;

(C) Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report; and

(D) Trails proposed to be located in wetlands, fish and wildlife habitat conservation areas, or their buffers, should be limited to permeable surfaces no more than five feet wide, located only in the outer 25 percent of a buffer, and located to avoid removal of significant trees;

(6) Select Vegetation Removal Activities. The following vegetation removal activities; provided, that no vegetation shall be removed from a critical area or its buffer without approval from the director:

(A) The removal of the following vegetation with hand labor and light equipment:

(i) Invasive and noxious weeds classified by the Washington State Noxious Weed Board;

(ii) English ivy (*Hedera helix*);

(iii) Himalayan blackberry (*Rubus armeniacus*, *R. procerus*); and

(iv) Evergreen blackberry (*Rubus laciniatus*);

(B) The removal of trees from critical areas and buffers that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property; provided, that:

**Commented [EA1]:** We generally don't recommend that trails be allowed through wetlands and instead kept to the outer edge of buffer to reduce risk of impacts to the functions and values of the wetlands. 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 [as defined in ordinance], old growth, or mature trees. They should be limited to pervious surfaces no more than five (5) feet in width and designed for pedestrian use only.

(4) Determine if the proposed project adequately addresses the impacts and avoids impacts to the critical area associated with the project.

(b) If the proposed project is within, adjacent to, or is likely to impact a critical area, the city shall:

- (1) Require a critical area report from the applicant that has been prepared by a qualified professional;
- (2) Review and evaluate the critical area report;
- (3) Determine whether the development proposal conforms to the purposes and performance standards of the applicable critical areas chapters, including the review criteria in FMC 22.92.230;
- (4) Assess the potential impacts to the critical area and determine if they can be avoided or minimized; and
- (5) Determine if any mitigation proposed by the applicant is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of the applicable critical areas chapters. (Ord. 1375 § 1, 2005).

#### **22.92.130 Critical area preapplication consultation.**

Any person preparing to submit an application for development or use of land that may be regulated by the provisions of a critical areas chapter shall conduct a consultation meeting with the director prior to submitting an application for development or other approval. At this meeting, the director shall discuss the requirements of these chapters; provide critical area maps, scientific information, and other source materials; outline the review process; and work with the activity proponent to identify any potential concerns that might arise during the review process, in addition to discussing other permit procedures and requirements. (Ord. 1375 § 1, 2005).

#### **22.92.140 Critical area identification form.**

(a) Submittal. Prior to the city's consideration of any proposed activity not found to be exempt under FMC 22.92.080 or allowed pursuant to FMC 22.92.110, the applicant shall submit to the department a complete critical area identification form on forms provided by the city.

(b) Site Inspection. Upon receipt of a project application and a critical area identification form, the director shall conduct a site inspection to review critical area conditions on site. The director shall notify the property owner of the inspection prior to the site visit. Reasonable access to the site shall be provided by the property owner for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period.

(c) Critical Area Identification Form Review Process. The director or his/her designee shall review the critical area identification form, conduct a site inspection, and review other information available pertaining to the site and the proposal and make a determination as to whether any critical areas may be affected by the proposal and if a more detailed critical area report shall be submitted.

(1) Decision Indicators. The director may use the following indicators to assist in determining the need for a critical area report:

- (A) Indication of a critical area on the city critical areas maps that may be impacted by the proposed activity;
- (B) Information and scientific opinions from appropriate agencies, including but not limited to the Departments of Fish and Wildlife, Natural Resources, and Ecology;
- (C) Documentation, from a scientific or other reasonable source, of the possible presence of a critical area; or
- (D) A finding by a qualified professional or a reasonable belief by the director that a critical area may exist on or adjacent to the site of the proposed activity.

(d) Decision on Identification Form.

**Commented [KM2]:** Recommend revising or creating these forms. To my knowledge, these are not forms that we currently have.

**Commented [EA3]:** How is qualified professional defined in Fircrest's code? We would recommend using our definition from our guidance as follows to help ensure good work is done on these reports:

**"Qualified wetland professional:** 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. "

## **Chapter 22.93 WETLANDS**

### Sections:

- 22.93.010 Designating, defining, identifying, and mapping wetlands.
- 22.93.020 Regulated activities.
- 22.93.030 Activities allowed in wetlands.
- 22.93.040 Wetland ratings.
- 22.93.050 Standards – General requirements.
- 22.93.060 Critical area report – Additional requirements for wetlands.
- 22.93.070 Compensatory mitigation requirements.
- 22.93.080 Standards – Subdivisions.
- 22.93.090 Signs and fencing of wetlands.
- 22.93.100 Wetland buffers.
- 22.93.110 Residential density and on-site density transfer.
- 22.93.120 *Repealed.*
- 22.93.130 Alternate review process – Army Corps of Engineers Section 404 individual permits.

### **22.93.010 Designating, defining, identifying, and mapping wetlands.**

(a) Designating, Defining and Identifying Wetlands. Wetlands are those areas designated in accordance with the procedures outlined in WAC 173-22-035.

All areas within the city meeting the wetland definition criteria, regardless of whether these areas have previously been identified or mapped, are hereby designated critical areas and are subject to the provisions of Chapter 22.92 FMC and this chapter.

(b) Mapping. The approximate location and extent of wetlands are shown on the adopted critical area map contained within the comprehensive plan. In addition, the maps contained within the National Wetlands Inventory are hereby adopted. Additionally, soil maps produced by the U.S. Department of Agriculture National Resources Conservation Service may be useful in helping to identify potential wetland areas. These maps are to be used as a guide for the city, project applicants, and/or property owners, and may be continuously updated as new critical areas are identified.

It is the actual presence of a wetland on a parcel, as delineated by WAC 173-22-035, which triggers the requirements of Chapter 22.92 FMC and this chapter, whether or not the wetland is identified on the adopted maps. The exact location of a wetland's boundary shall be determined through the performance of a field delineation by a qualified wetlands professional in accordance with the approved federal wetland delineation manual and applicable regional supplements pursuant to WAC 173-22-035. (Ord. 1512 § 6, 2011; Ord. 1375 § 2, 2005).

### **22.93.020 Regulated activities.**

The following activities are regulated if they occur in a regulated wetland or its buffer:

- (a) The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
- (b) The dumping, discharging, or filling with any material;
- (c) The draining, flooding, or disturbing of the water level or water table;
- (d) The driving of pilings;
- (e) The placing of obstructions;
- (f) The construction, reconstruction, demolition, or expansion of any structure;

**Commented [EA4]:** You might consider including some language the regulated activities "include but are not limited to" the following.

(2) The director shall determine if the mitigation and monitoring plans and bonding measures proposed by the applicant are sufficient to protect the public health, safety, and welfare, consistent with the goals, purposes, objectives and requirements of Chapter 22.92 FMC and this chapter. (Ord. 1574 § 5, 2016; Ord. 1375 § 2, 2005).

**22.93.070 Compensatory mitigation requirements.**

(a) 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 No. 06-06-011b, Olympia, WA, March 2006 or as revised), and Selected Wetland Mitigation Sites using a Watershed Approach (Western Washington) (Publication No. 09-06-32, Olympia, WA, December 2009).

(b) Mitigation shall be required in the following order of preference:

- (1) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (2) Minimizing 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) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (4) Reducing or eliminating the impact over time by preservation and maintenance operations.
- (5) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments.
- (6) Monitoring the impact and taking appropriate corrective measures.

(c) Compensation for Lost or Affected Functions. Compensation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except when either:

- (1) The lost wetland provides minimal functions as determined by a site-specific function assessment, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington State watershed assessment plan or protocol; or
- (2) Out-of-kind replacement of wetland type or functions will best meet watershed goals formally identified by the city, such as replacement of historically diminished wetland types.

(d) Preference of Mitigation Actions. Methods to achieve compensation for wetland functions shall be approached in the following order of preference:

- (1) Restoration (reestablishment and rehabilitation) of wetlands.
- (2) Creation (establishment) of wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of nonnative introduced species. This should only be attempted when there is an adequate source of water and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is anticipated in the design.
- (3) Enhancement of significantly degraded wetlands in combination with restoration or creation. Such enhancement should be part of a mitigation package that includes replacing the impacted area and meeting appropriate ratio requirements.

(e) Type and Location of Mitigation. Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach, compensatory mitigation for ecological functions shall be either in-kind and on-site, or in-kind and within the same stream reach or subbasin. Mitigation actions shall be conducted within the same subdrainage basin and on the same site as the alteration except when all of the following apply:

**Commented [EA5]:** We would strongly recommend that you include preservation in the preference of mitigation actions list. Per the interagency mitigation guidance preservation would be 3<sup>rd</sup> in order of preference. Please see the sample language in our CAO Guidance for an example of what we recommend (page A-17).

(1) There are no reasonable on-site or in-subdrainage basin opportunities (e.g., on-site options would require elimination of high functioning upland habitat), or on-site and in-subdrainage basin opportunities do not have a high likelihood of success based on a determination of the natural capacity of the site to compensate for the impacts. Consideration should include: anticipated wetland mitigation replacement ratios, buffer conditions and proposed widths, available water to maintain anticipated hydrogeomorphic classes of wetlands when restored, proposed flood storage capacity, potential to mitigate riparian fish and wildlife impacts (such as connectivity);

(2) Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and

(3) Off-site locations shall be in the same subdrainage basin unless:

(A) Established watershed goals for water quality, flood or conveyance, habitat, or other wetland functions have been established by the city and strongly justify location of mitigation at another site; or

(B) Credits from a state certified wetland mitigation bank are used as mitigation and the use of credits is consistent with the terms of the bank's certification.

(f) Timing of Compensatory Mitigation. It is preferred that compensation projects be completed prior to activities that will disturb the on-site wetlands. At the least, compensatory mitigation shall be completed immediately following disturbance and prior to use or occupancy of the action or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

The director may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a written explanation from a qualified wetland professional as to the rationale for the delay. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties (for example, project delay lapses past a fisheries window; or plan installation should be delayed until the dormant season to ensure greater survivability of installed materials). The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, and general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the mitigation plan. The justification must be verified and approved by the city.

(g) Mitigation Ratios.

(1) Acreage Replacement Ratios. The following ratios in Table 22.93.A shall apply to creation or restoration, rehabilitation, reestablishment or creation and enhancement, or enhancement only, that is in-kind, is on-site, is the same category, is timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply in those cases. These ratios do not apply to the use of credits from a state-certified wetland mitigation bank. When credits from a certified bank are used, replacement ratios should be consistent with the requirements of the bank's certification. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

Table 22.93.A Mitigation Ratios

| Category and Type of Wetland | Reestablishment or Creation | Rehabilitation** | 1:1 Reestablishment or Creation (R/C) and Enhancement (E) | <u>Wetland Preservation or Enhancement Only</u> |
|------------------------------|-----------------------------|------------------|-----------------------------------------------------------|-------------------------------------------------|
| All Category IV              | 1.5:1                       | 3:1              | 1:1 R/C and 2:1 E                                         | 6:1                                             |
| All Category III             | 2:1                         | 4:1              | 1:1 R/C and 2:1 E                                         | 8:1                                             |
| All Category II              | 3:1                         | 6:1              | 1:1 R/C and 2:1 E                                         | 12:1                                            |

**Commented [EA6]:** Please refer to Wetlands in Washington State Volume 2 – Protecting and Managing Wetlands Appendix 8-C for the ratios for (R/C) and (E). In that guidance we show our recommended ratios for wetlands using that combination of mitigation methods that differ from the ones provided here.  
CAT III: 1:1 R/C and 4:1 E  
CAT II: 1/1 R/C and 8:1 E  
Forested: 1/1 R/C and 20:1 E  
CAT I based on score for functions: 1/1 R/C and 12:1

(b) Critical areas regulated by this title include:

- (1) Wetlands as designated in Chapter 22.93 FMC;
- (2) Critical aquifer recharge areas as designated in Chapter 22.94 FMC;
- (3) Frequently flooded areas as designated in Chapter 22.99 FMC;
- (4) Fish and wildlife habitat conservation areas as designated in Chapter 22.97 FMC; and
- (5) Geologically hazardous areas as designated in Chapter 22.100 FMC.

(c) All areas within the city meeting the definition of one or more critical areas, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of the applicable critical areas chapters.

(d) **Areas Adjacent to Critical Areas Subject to Regulation.** Areas adjacent to critical areas shall be considered ~~to be~~ within the jurisdiction of these requirements and regulations to support the intent of the applicable critical areas chapters and ensure protection of the functions and values of critical areas. “Adjacent” shall mean any activity located:

- (1) On a site immediately adjoining a critical area;
- (2) A distance equal to or less than the required critical area buffer width and building setback;
- (3) A distance equal to or less than 800 feet from a bald eagle nest;
- (4) A distance equal to or less than 300 feet upland from a stream, wetland, or water body; or
- (5) Within the floodway, floodplain, or channel migration zone. (Ord. 1375 § 1, 2005).

**Commented [TS1]:** So critical area buffers are described/defined later in the chapter. Building setbacks are listed elsewhere. Usually building setbacks are different than critical area buffers, so how does one know which distance is applicable to the activity?

#### **22.92.050 Protection of critical areas.**

Any action taken pursuant to the applicable critical areas chapters shall result in equivalent or greater functions and values of the critical areas associated with the proposed action, as determined by the best available science. All actions and developments shall be designed and constructed in accordance with the mitigation sequencing order specified in FMC 22.92.190 to avoid, minimize, and restore all adverse impacts. Applicants must first demonstrate an inability to avoid or reduce impacts before restoration and compensation of impacts will be allowed. No activity or use shall be allowed that results in a net loss of the functions or values of critical areas. (Ord. 1375 § 1, 2005).

#### **22.92.060 Best available science.**

(a) Protect Functions and Values of Critical Areas with Special Consideration to Anadromous Fish. Critical area reports and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish, such as salmon and bull trout, and their habitat, consistent with RCW 36.70A.172.1.

(b) Best Available Science to Be Consistent with Criteria. The best available science is that scientific information applicable to the critical area prepared by local, state, or federal natural resource agencies, a qualified scientific professional, or team of qualified scientific professionals that is consistent with criteria established in WAC 365-195-900 through 365-195-925.

(c) Characteristics of a Valid Scientific Process. In the context of critical areas protection, a valid scientific process is one that produces reliable information useful in understanding the consequences of a local government’s regulatory decisions, and in developing critical areas policies and development regulations that will be effective in protecting the functions and values of critical areas. To determine whether information received during the permit review process is reliable scientific information, the director shall determine whether the source of the information displays the characteristics of a valid scientific process. Such characteristics are as follows:

(5) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site; and

(6) The proposal will result in no net loss of critical area functions and values consistent with the best available science.

(7) All proposed activities will be conducted using best available management practices adopted by the city, as described in FMC 22.92.110(b).

(e) Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application. (Ord. 1638 § 61, 2019; Ord. 1375 § 1, 2005).

**22.92.110 Allowed activities.**

(a) Critical Area Report. Activities allowed under the applicable critical areas chapter(s) shall have been reviewed and permitted or approved by the city or other agency with jurisdiction, but do not require submittal of a separate critical area identification form or critical area report, unless such submittal was required previously for the underlying permit. The director may apply conditions to the underlying permit or approval to ensure that the allowed activity is consistent with the provisions of these chapters to protect critical areas.

(b) Required Use of Best Management Practices. All allowed activities shall be conducted using the best management practices adopted by the city, including but not limited to those contained within the Department of Ecology Stormwater Management Manual for Western Washington, that result in the least amount of impact to the critical areas. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The city shall observe the use of best management practices to ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense.

(c) Allowed Activities. The following activities are allowed:

(1) Permit Requests Subsequent to Previous Critical Area Review. Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits), and construction approvals (such as building permits) if all of the following conditions have been met:

(A) The provisions of the applicable critical areas chapter(s) have been previously addressed as part of another approval;

(B) There have been no material changes in the potential impact to the critical area or buffer since the prior review;

(C) There is no new information available that is applicable to any critical area review of the site or particular critical area;

(D) The permit or approval has not expired or, if no expiration date, no more than five years has elapsed since the issuance of that permit or approval; and

(E) Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured;

(2) Modification to Existing Structures. Structural modification of, addition to, or replacement of an existing legally constructed structure that does not further alter or increase the impact to the critical area or buffer and there is no increased risk to life or property as a result of the proposed modification or replacement; provided, that restoration of structures substantially damaged by fire, flood, or act of nature must be initiated within one year of the date of such damage, as evidenced by the issuance of a valid building permit, and diligently pursued to completion;

(4) Determine if the proposed project adequately addresses the impacts and avoids impacts to the critical area associated with the project.

**(b) If the proposed project is within, adjacent to, or is likely to impact a critical area, the city shall:**

**(1) Require a critical area report from the applicant that has been prepared by a** qualified professional;

**(2) Review and evaluate the critical area report;**

(3) Determine whether the development proposal conforms to the purposes and performance standards of the applicable critical areas chapters, including the review criteria in FMC 22.92.230;

(4) Assess the potential impacts to the critical area and determine if they can be avoided or minimized; and

(5) Determine if any mitigation proposed by the applicant is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of the applicable critical areas chapters. (Ord. 1375 § 1, 2005).

**22.92.130 Critical area preapplication consultation.**

Any person preparing to submit an application for development or use of land that may be regulated by the provisions of a critical areas chapter shall conduct a consultation meeting with the director prior to submitting an application for development or other approval. At this meeting, the director shall discuss the requirements of these chapters; provide critical area maps, scientific information, and other source materials; outline the review process; and work with the activity proponent to identify any potential concerns that might arise during the review process, in addition to discussing other permit procedures and requirements. (Ord. 1375 § 1, 2005).

**22.92.140 Critical area identification form.**

(a) Submittal. Prior to the city's consideration of any proposed activity not found to be exempt under FMC 22.92.080 or allowed pursuant to FMC 22.92.110, the applicant shall submit to the department a complete critical area identification form on forms provided by the city.

(b) Site Inspection. Upon receipt of a project application and a critical area identification form, the director shall conduct a site inspection to review critical area conditions on site. The director shall notify the property owner of the inspection prior to the site visit. Reasonable access to the site shall be provided by the property owner for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period.

(c) Critical Area Identification Form Review Process. The director or his/her designee shall review the critical area identification form, conduct a site inspection, and review other information available pertaining to the site and the proposal and make a determination as to whether any critical areas may be affected by the proposal and if a more detailed critical area report shall be submitted.

(1) Decision Indicators. The director may use the following indicators to assist in determining the need for a critical area report:

(A) Indication of a critical area on the city critical areas maps that may be impacted by the proposed activity;

(B) Information and scientific opinions from appropriate agencies, including but not limited to the Departments of Fish and Wildlife, Natural Resources, and Ecology;

(C) Documentation, from a scientific or other reasonable source, of the possible presence of a critical area; or

(D) A finding by a qualified professional or a reasonable belief by the director that a critical area may exist on or adjacent to the site of the proposed activity.

(d) Decision on Identification Form.

**Commented [TS2]:** Definition of qualified professional? Look for it.

**Commented [KM3]:** Recommend revising or creating these forms. To my knowledge, these are not forms that we currently have.

(1) No Critical Areas Present. If after a site visit the director's analysis indicates that the project area is not within or adjacent to a critical area or buffer and that the proposed activity is unlikely to degrade the functions or values of a critical area, then the director shall rule that the critical area review is complete and note on the identification form the reasons that no further review is required. A summary of this information shall be included in any staff report or decision on the underlying permit.

(2) Critical Areas Present, But No Impact – Waiver. If the director determines that there are critical areas within or adjacent to the project area, but that the best available science shows that the proposed activity is unlikely to degrade the functions or values of the critical area, the director may waive the requirement for a critical area report. A waiver may be granted if there is substantial evidence that all of the following requirements will be met:

(A) There will be no alteration of the critical area or buffer;

(B) The development proposal will not impact the critical area in a manner contrary to the purpose, intent, and requirements of the applicable critical areas chapter(s); and

(C) The proposal is consistent with other applicable regulations and standards.

A summary of this analysis and the findings shall be included in any staff report or decision on the underlying permit.

(3) Critical Areas May Be Affected by Proposal. If the director determines that a critical area or areas may be affected by the proposal, then the director shall notify the applicant that a critical area report must be submitted prior to further review of the project, and indicate each of the critical area types that should be addressed in the report.

(e) Director's Determination Subject to Reconsideration. A determination regarding the apparent absence of one or more critical areas by the director is not an expert certification regarding the presence of critical areas and the determination is subject to possible reconsideration and reopening if new information is received.

If the applicant wants greater assurance of the accuracy of the critical area review determination, the applicant may choose to hire a qualified professional to provide such assurances. (Ord. 1375 § 1, 2005).

#### **22.92.150 Public notice of initial determination.**

The city shall notify the public of proposals in accordance with Chapter 22.07 FMC.

(a) If the director determines that no critical area report is necessary, the city shall state the reasons for this determination in the notice of application issued by the city for the proposal.

(b) If the director determines that there are critical areas on the site that the proposed project is unlikely to impact and the project meets the requirements for and has been granted a waiver from the requirement to complete a critical area report, a summary of the analysis and findings for this decision shall be stated in the notice of application for the proposal.

(c) If the director determines that critical areas may be affected by the proposal and a critical area report is required, public notice of the application shall include a description of the critical area that might be affected and state that a critical area report is required. (Ord. 1375 § 1, 2005).

#### **22.92.160 Critical area report – Requirements.**

(a) Preparation by Qualified Professional. If required by the director in accordance with FMC 22.92.140(d)(3), the applicant shall submit a critical area report prepared by a qualified professional as defined herein.

Commented [TS4]: Defined herein...where?

(b) Incorporating of Best Available Science. The critical area report shall use scientifically valid methods and studies in the analysis of critical area data and field reconnaissance and reference the source of science used. The critical area report shall evaluate the proposal and all probable impacts to critical areas in accordance with the provisions of the applicable critical areas chapters.

(c) Minimum Report Contents. At a minimum, the report shall contain the following:

- (1) The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;
- (2) A copy of the site plan for the development proposal including:
  - (A) A map to scale depicting critical areas, buffers, the development proposal, and any areas to be cleared; and
  - (B) A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations;
- (3) The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
- (4) Identification and characterization of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area;
- (5) A statement specifying the accuracy of the report, and all assumptions made and relied upon;
- (6) An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;
- (7) An analysis of site development alternatives including a no development alternative;
- (8) A description of reasonable efforts made to apply mitigation sequencing pursuant to FMC 22.92.190 to avoid, minimize, and mitigate impacts to critical areas;
- (9) Plans for adequate mitigation, as needed, to offset any impacts, in accordance with FMC 22.92.200, including, but not limited to:
  - (A) The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and
  - (B) The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment;
- (10) A discussion of the performance standards applicable to the critical area and proposed activity;
- (11) Financial guarantees to ensure compliance; and
- (12) Any additional information required for the critical area as specified in the corresponding chapter.

(d) Unless otherwise provided, a critical area report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the director. (Ord. 1375 § 1, 2005).

**22.92.170 Critical area report – Modifications to requirements.**

(a) Limitations to Study Area. The director may limit the required geographic area of the critical area report as appropriate if:

- (1) The applicant, with assistance from the city, cannot obtain permission to access properties adjacent to the project area; or
- (2) The proposed activity will affect only a limited part of the subject site.

(b) Modifications to Required Contents. The applicant may consult with the director prior to or during preparation of the critical area report to obtain city approval of modifications to the required contents of the report where, in the

**Commented [TS5]:** Good to see the stormwater management info being required. There is not a provision about grading and erosion specifically mentioned. There is mention of the critical area buffer impacts need to be described in addition to the impacts to the critical area. Great. Suggest asking the applicant to state which buffer type from the earlier described buffers, is being used. The earlier described buffers relate to the term adjacent in 22.92.040(d).

judgment of a qualified professional, more or less information is required to adequately address the potential critical area impacts and required mitigation.

(c) **Additional Information Requirements.** The director may require additional information to be included in the critical area report when determined to be necessary to the review of the proposed activity in accordance with the applicable critical areas chapters. Additional information that may be required includes, but is not limited to:

- (1) Historical data, including original and subsequent mapping, aerial photographs, data compilations and summaries, and available reports and records relating to the site or past operations at the site;
- (2) Grading and drainage plans; and
- (3) Information specific to the type, location, and nature of the critical area. (Ord. 1375 § 1, 2005).

#### **22.92.180 Mitigation requirements.**

(a) The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas. Unless otherwise provided in the applicable critical areas chapter, if alteration to the critical area is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a development proposal or alteration shall be mitigated using the best available science in accordance with an approved critical area report and SEPA documents, so as to result in no net loss of critical area functions and values.

(b) Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach such as the use of off-site mitigation, mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.

(c) Mitigation shall not be implemented until after city approval of a critical area report that includes a mitigation plan, and mitigation shall be in accordance with the provisions of the approved critical area report. (Ord. 1574 § 2, 2016; Ord. 1375 § 1, 2005).

#### **22.92.190 Mitigation sequencing.**

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

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

Mitigation for individual actions may include a combination of the above measures. (Ord. 1375 § 1, 2005).

**Commented [TS6]:** Suggest mentioning that additional info (maybe it fits already in (3), about geologically hazardous areas information can be required to be submitted for additional consideration of the impacts.

**Commented [TS7]:** Why isn't geologically hazardous areas included in this list?

**Commented [TS8]:** Is this any hazard? Like wildfire is a hazard. Or is this specific to geologically hazardous areas?

**Commented [TS9]:** What does this monitoring look like ? A report submitted to the city each year for the next five years? Who's monitoring this hazard and taking action when necessary? Does the applicant address the provisions of 22.92.190 when they make an application/ do the critical areas report? So you get written responses from the applicant to these provisions?

**22.92.200 Mitigation plan requirements.**

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

(a) Environmental Goals and Objectives. The mitigation plan shall include a written report identifying environmental goals and objectives of the compensation proposed and including:

- (1) A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area;
- (2) A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed; and
- (3) An analysis of the likelihood of success of the compensation project.

(b) Performance Standards. The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of the applicable critical areas chapters have been met.

(c) Detailed Construction Plans. The mitigation plan shall include written specifications and descriptions of the mitigation proposed, such as:

- (1) The proposed construction sequence, timing, and duration;
- (2) Grading and excavation details;
- (3) Erosion and sediment control features;
- (4) A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
- (5) Measures to protect and maintain plants until established.

[These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.

**Commented [TS10]:** This refers to 22.92.200, so all of these provisions, a through f, are addressed by the applicant as part of the application., right?

(d) Monitoring Program. The mitigation plan shall include a program for monitoring construction of the compensation project and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring (for example, monitoring shall occur in years one, two, three, five, seven and 10 after site construction), and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five years, or 10 years for forested and scrub-shrub wetland communities.

(e) Contingency Plan. The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.

(f) Financial Guarantees. The mitigation plan shall include financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures shall be posted in accordance with FMC 22.92.350. (Ord. 1375 § 1, 2005).

Any conditions of approval included in a notice of determination shall be attached to the underlying permit or approval. Any subsequent changes to the conditions of approval shall void the previous determination pending re-review of the proposal and conditions of approval by the director.

A favorable determination should not be construed as endorsement or approval of any underlying permit or approval. (Ord. 1375 § 1, 2005).

**22.92.250 Unfavorable determination.**

If the director determines that a proposed activity does not adequately mitigate its impacts on the critical areas and/or does not comply with the criteria in FMC 22.92.230 and the provisions of the applicable critical areas chapters, the director shall prepare written notice of the determination that includes findings of noncompliance.

No proposed activity or permit shall be approved or issued if it is determined that the proposed activity does not adequately mitigate its impacts on the critical areas and/or does not comply with the provisions of the applicable critical areas chapters.

Following notice of determination that the proposed activity does not meet the review criteria and/or does not comply with the applicable critical areas chapters, the applicant may request consideration of a revised critical area report. If the revision is found to be substantial and relevant to the critical area review, the director may reopen the critical area review and make a new determination based on the revised report. (Ord. 1375 § 1, 2005).

**22.92.260 Completion of the critical area review.**

The city's determination regarding critical areas pursuant to the applicable critical areas chapters shall be final concurrent with the final decision to approve, condition, or deny the development proposal or other activity involved. (Ord. 1375 § 1, 2005).

**22.92.270 Appeals.**

Any decision to approve, condition, or deny a development proposal or other activity based on the requirements of a critical areas chapter may be appealed according to, and as part of, the appeal procedure for the permit or approval involved. (Ord. 1375 § 1, 2005).

**22.92.280 Variances.**

(a) Variances from the standards of a critical areas chapter may be authorized by the city in accordance with the procedures set forth in Chapter 22.74 FMC. The director or hearing examiner, as authorized, shall review the request and make a written finding that the request meets or fails to meet the variance criteria.

(b) Variance Criteria. A variance may be granted only if the applicant demonstrates that the requested action conforms to all of the criteria set forth in FMC 22.74.003 and as follows:

- (1) A literal interpretation of the provisions of this chapter would deprive the applicant of all reasonable economic uses and privileges permitted to other properties in the vicinity and zone of the subject property under the terms of this chapter, and the variance requested is the minimum necessary to provide the applicant with such rights;
- (2) The granting of the variance is consistent with the general purpose and intent of this chapter, and will not further degrade the functions or values of the associated critical areas; and
- (3) The decision to grant the variance includes the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat.

(c) Conditions May Be Required. In granting any variance, the city may prescribe such conditions and safeguards as are necessary to secure adequate protection of critical areas from adverse impacts, and to ensure conformity with this chapter.

(d) **Burden of Proof.** The burden of proof shall be on the applicant to bring forth evidence in support of the application and upon which any decision has to be made on the application. (Ord. 1638 § 62, 2019; Ord. 1375 § 1, 2005).

Commented [TS11]: Good!

**22.92.290 Unauthorized critical area alterations and enforcement.**

(a) When a critical area or its buffer has been altered in violation of a critical areas chapter, all ongoing development work shall stop and the critical area shall be restored. The city shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation, or replacement measures at the owner's or other responsible party's expense to compensate for violation of provisions of the applicable critical areas chapter.

(b) Requirement for Restoration Plan. 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 using the best available science and shall describe how the actions proposed meet the minimum requirements described in subsection (c) of this section. The director shall, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

(c) Minimum Performance Standards for Restoration.

(1) For alterations to critical aquifer recharge areas, frequently flooded areas, wetlands, and habitat conservation areas, the following minimum performance standards shall be met for the restoration of a critical area; provided, that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:

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

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

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

(D) Information demonstrating compliance with the requirements in FMC 22.92.250 shall be submitted to the director.

(2) For alterations to flood and geological hazards, the following minimum performance standards shall be met for the restoration of a critical area; provided, that if the violator can demonstrate that greater safety can be obtained, these standards may be modified:

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

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

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

(d) Site Investigations. The director is authorized to make site inspections and take such actions as are necessary to enforce the city's critical areas regulations pursuant to Chapters 22.92, 22.93, 22.94, 22.95, 22.96, 22.97, 22.99, and 22.100 FMC. The director shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property. (Ord. 1375 § 1, 2005).

**22.92.300 Critical area markers and signs.**

(a) The boundary at the outer edge of critical area tracts and easements shall be delineated with permanent survey stakes, using iron or concrete markers as established by local survey standards.

(b) The boundary at the outer edge of the critical area or buffer shall be identified with temporary signs prior to any site alteration. Such temporary signs shall be replaced with permanent signs prior to occupancy or use of the site.

(c) These provisions may be modified by the director as necessary to ensure protection of sensitive features or wildlife needs. (Ord. 1375 § 1, 2005).

**Commented [TS12]:** Awkwardly written. I see what you mean. Consider rewriting for clarity.

**Commented [TS13]:** Great!

**22.92.310 Title notice.**

(a) In order to inform subsequent purchasers of real property of the existence of critical areas, the owner of any property containing a critical area or buffer on which a development proposal is submitted shall file a notice with the county auditor according to the direction of the city. The notice shall state the presence of the critical area or buffer on the property, the application of the critical areas regulations to the property, and the fact that limitations on actions in or affecting the critical area or buffer may exist. The notice shall “run with the land.”

**Commented [TS14]:** Good to see this detailed section.

(b) This title notice shall not be required for a development proposal by a public agency or public or private utility:

- (1) Within a recorded easement or right-of-way;
- (2) Where the agency or utility has been adjudicated the right to an easement or right-of-way; or
- (3) On the site of a permanent public facility.

(c) The applicant shall submit proof that the notice has been filed for public record before the city approves any site development or construction for the property or, in the case of subdivisions, short subdivisions, and planned unit developments, at or before recording. (Ord. 1375 § 1, 2005).

**22.92.320 Native growth protection areas.**

(a) Unless otherwise required in the applicable critical areas chapters, native growth protection areas shall be used in development proposals for subdivisions, short subdivisions, and planned unit developments to delineate and protect those contiguous critical areas and buffers listed below:

- (1) All landslide hazard areas and buffers;
- (2) All wetlands and buffers;
- (3) All habitat conservation areas; and
- (4) All other lands to be protected from alterations as conditioned by project approval.

(b) Native growth protection areas shall be recorded on all documents of title of record for all affected lots.

(c) Native growth protection areas shall be designated on the face of the plat of recorded drawing in a format approved by the city. The designation shall include the following restrictions:

- (1) An assurance that native vegetation will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and
- (2) The right of the city to enforce the terms of the restriction. (Ord. 1375 § 1, 2005).

**22.92.330 Critical area tracts.**

(a) Critical area tracts shall be used in development proposals for subdivisions, short subdivisions, and planned unit developments to delineate and protect those contiguous critical areas and buffers listed below that total 5,000 or more square feet:

**Commented [TS15]:** Good!

- (1) All landslide hazard areas and buffers;

**Commented [TS16]:** Good!

- (2) All wetlands and buffers;
- (3) All habitat conservation areas; and
- (4) All other lands to be protected from alterations as conditioned by project approval.

(b) Critical area tracts shall be recorded on all documents of title of record for all affected lots.

(c) Critical area tracts shall be designated on the face of the plat or recorded drawing in a format approved by the city. The designation shall include the following restriction:

(1) An assurance that native vegetation will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and

(2) The right of the city to enforce the terms of the restriction.

(d) The city may require that any required critical area tract be dedicated to the city, held in an undivided interest by each owner of a building lot within the development with the ownership interest passing with the ownership of the lot, or held by an incorporated homeowner's association or other legal entity (such as a land trust, which ensures the ownership, maintenance, and protection of the tract). (Ord. 1375 § 1, 2005).

**22.92.340 Building setbacks.**

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

(a) Landscaping;

(b) Uncovered decks;

(c) Building overhangs, if such overhangs do not extend more than 18 inches into the setback area; and

(d) Impervious and pervious ground surfaces, such as driveways and patios; provided, that such improvements may be subject to water quality regulations as adopted in the Department of Ecology Stormwater Management Manual for Western Washington. (Ord. 1375 § 1, 2005).

**22.92.350 Bonds to ensure mitigation, maintenance, and monitoring.**

(a) When mitigation required pursuant to a development proposal is not completed prior to the city final permit approval, such as final plat approval or final building inspection, the city shall require the applicant to post a performance bond or other security in a form and amount deemed acceptable by the city. If the development proposal is subject to mitigation, the applicant shall post a mitigation bond or other security in a form and amount deemed acceptable by the city to ensure mitigation is fully functional.

(b) The bond shall be in the amount of 125 percent of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater.

(c) The bond shall be in the form of a surety bond, performance bond, assignment of a savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the city attorney.

(d) Bonds or other security authorized by this section shall remain in effect until the city determines, in writing, that the standards bonded for have been met. Bonds or other security shall be held by the city for a minimum of five years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.

(e) Depletion, failure, or collection of bond funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.

(f) Public development proposals shall be relieved from having to comply with the bonding requirements of this section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.

(g) Any failure to satisfy critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within 30 days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default, and the city may demand payment of any financial guarantees or require other action authorized by the city code or any other law.

**Commented [TS17]:** See earlier comment about 22.92.040 with the word adjacent and the buffers.

**Commented [TS18]:** Good.

**Chapter 22.100**  
**GEOLOGICALLY HAZARDOUS AREAS**

Sections:

- 22.100.010 Designation of geologically hazardous areas.
- 22.100.020 Designation of specific hazard areas.
- 22.100.030 Classification of geologically hazardous areas.
- 22.100.040 Mapping of geologically hazardous areas.
- 22.100.050 Activities allowed in geologically hazardous areas.
- 22.100.060 Critical area report – Additional requirements for geologically hazardous areas.
- 22.100.070 Critical area report – Additional technical information requirements for specific hazards.
- 22.100.080 Performance standards – General requirements.
- 22.100.090 Performance standards – Erosion and landslide hazard areas.

**22.100.010 Designation of geologically hazardous areas.**

Geologically hazardous areas 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 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 geologically hazardous areas:

- (a) Erosion hazard; and
- (b) Landslide hazard. (Ord. 1375 § 5, 2005).

~~(c) Seismic hazard~~

**22.100.020 Designation of specific hazard areas.**

(a) Erosion Hazard Areas. Erosion hazard areas are at least those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "moderate to severe," "severe," or "very severe" rill and inter-rill erosion hazard. Erosion hazard areas are also those areas impacted by shoreland and/or stream bank erosion and those areas within a river's channel migration zone.

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

(1) Areas of historic failures, such as:

- (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 Washington State 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 Washington State Department of Natural Resources;

(2) Areas with all three of the following characteristics:

- (A) Slopes steeper than 15 percent;
- (B) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and

**Commented [TS20]:** In the email from Kim Gunderson 1/6/26 and 1/12/26, there is mention of having seismic hazard information in the geologically hazardous areas code provisions. It would be appropriate to list seismic hazards here so it's clear that Fircrest is designating seismic hazards as one of their geologically hazardous areas hazards.

**Commented [TS21]:** WGS has the Washington Geologic Information Portal which has our best available science for landslides and earthquakes/seismic. Suggest checking it out and referring to it in the code provisions. If you would like a review of the landslide or seismic info with our hazard experts, let me know and we can set up a time.

(C) Springs or ground water seepage.

(3) Areas that have shown movement during the Holocene epoch (from 10,000 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) Areas potentially unstable because of rapid stream incision, stream bank erosion, and undercutting by wave action;

(6) Any area with a slope of 40 percent or steeper and with a vertical relief of 10 or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least 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, debris flows, lahars, or tsunamis. (Ord. 1375 § 5, 2005).

#### 22.100.030 Classification of geologically hazardous areas.

All geologic hazard areas should be classified according to the following categories for each geologic hazard type:

| Classification          | Documentation and Data Sources                                                                                                                                             |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Known or Suspected Risk | Documentation or projection of the hazard by a qualified professional exists.                                                                                              |
| Risk Unknown            | Documentation or projection of the lack of hazard by a qualified professional exists, or data are not available to determine the presence or absence of a geologic hazard. |

(Ord. 1375 § 5, 2005).

#### 22.100.040 Mapping of geologically hazardous areas.

(a) The approximate location and extent of geologically hazardous areas are shown on the adopted critical area map contained within the comprehensive plan. In addition, the following maps are hereby adopted by reference and declared part of this chapter:

- (1) U.S. Geological Survey landslide hazard and seismic hazard maps;
- (2) Washington State Department of Natural Resources seismic hazard maps for Western Washington;
- (3) Washington State Department of Natural Resources slope stability maps; and
- (4) Federal Emergency Management Administration flood insurance maps.

(b) These maps are to be used as a guide for the city, project applicants and/or property owners and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation. (Ord. 1375 § 5, 2005).

#### 22.100.050 Activities allowed in geologically hazardous areas.

The following activities are allowed in geologically hazardous areas pursuant to FMC 22.92.110: and do not require submission of a critical area report.

**Commented [TS22]:** Since Fircrest is in Pierce Co, here are jurisdictions in Pierce Co that have seismic hazard development standards: Pierce Co, Bonney Lake, Carbonado, DuPoint, Lakewood, Orting, Puyallup, Ruston, and Tacoma, according to my notes.

**Commented [TS23]:** "WAC 360-190-030 (18) "Seismic hazard areas" are 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." Good to use the WAC, suggest you refer to it here so that it is clear that the definition you have matches the WAC.

**Commented [KM24]:** All of Fircrest is in a "very strong shaking" (just under "severe") category of seismic hazard risk. Building codes are applied here accordingly. Maybe it's sufficient just to say that application of the building code is sufficient?

**Commented [TS25R24]:** Many jurisdictions have provisions about seismic in the land use code provisions. I think it is a good idea to have them. I'll add a list of jurisdictions with seismic hazards code provisions into comments.

**Commented [TS26]:** Suggest adding a reference to the Washington Geologic Information Portal. [Geologic Information Portal | Department of Natural Resources](#)

**Commented [KM27]:** This section essentially reverses its position. Deserves edit for clarity.

(a) Erosion and Landslide Hazard Areas. Except as otherwise provided for in the applicable critical area chapters, only those activities approved and permitted consistent with an approved critical area report in accordance with these chapters shall be allowed in erosion or landslide hazard areas. (Ord. 1375 § 5, 2005).

**22.100.060 Critical area report – Additional requirements for geologically hazardous areas.**

(a) Preparation by a Qualified Professional. A critical areas report for a geologically hazardous area shall be prepared by an engineer or geologist, licensed in the state of Washington, with experience analyzing geologic, hydrologic, and ground water flow systems, and who has experience preparing reports for the relevant type of hazard.

(b) Area Addressed in Critical Area Report. The following areas shall be addressed in a critical area report for geologically hazardous areas:

- (1) The project area of the proposed activity; and
- (2) All geologically hazardous areas within 200 feet of the project area or that have potential to be affected by the proposal;

(c) Geological Hazards Assessment. A critical area report for a geologically hazardous area shall contain an assessment of geological hazards including the following site- and proposal-related information at a minimum:

**(1) Site and Construction Plans.** The report shall include a copy of the site plans for the proposal showing:

- (A) The type and extent of geologic hazard areas, any other critical areas, and buffers on, adjacent to, within 200 feet of, or that are likely to impact the proposal;
- (B) Proposed development, including the location of existing and proposed structures, fill, storage of materials, and drainage facilities, with dimensions indicating distances to the floodplain, if available;
- (C) The topography, in two-foot contours, of the project area and all hazard areas addressed in the report; and

**(D) Clearing limits; and**

**(2) Assessment of Geological Characteristics.** The report shall include an assessment of the geologic characteristics of the soils, sediments, and/or rock of the project area and potentially affected adjacent properties, and a review of the site history regarding landslides, erosion, and prior grading. Soils analysis shall be accomplished in accordance with accepted classification systems in use in the region. The assessment shall include, but not be limited to:

- (A) A description of the surface and subsurface geology, hydrology, soils, and vegetation found in the project area and in all hazard areas addressed in the report;
- (B) A detailed overview of the field investigations, published data, and references; data and conclusions from past assessments of the site; and site-specific measurements, tests, investigations, or studies that support the identification of geologically hazardous areas; and

**(C) A description of the vulnerability of the site to seismic and other geologic events;**

**(3) Analysis of Proposal.** The report shall contain a hazards analysis including a detailed description of the project, its relationship to the geologic hazard(s), and its potential impact upon the hazard area, the subject property, and affected adjacent properties; and

**(4) Minimum Buffer and Building Setback.** The report shall make a recommendation for the minimum no-disturbance buffer and minimum building setback from any geologic hazard based upon the geotechnical analysis.

**Commented [KM28]:** This language contradicts the above highlighted language. Recommending deletion of above statement accordingly.

**Commented [TS29]:** Great to see the qualified professional term defined! And that it is with a licensed in WA geologist or engineer. Suggest adding clarifying language in the earlier provisions that were general and applicable to all critical areas. Suggest stating more specifically, rather than “as defined herein” that the term is defined in each critical area specific code provision and or list the applicable code provisions. That way the reader knows that if it isn’t defined in that spot, it will be defined later and they have a place to look for it. “As defined herein” is not very specific.

**Commented [TS30]:** Thinking about language and terms here. The Critical Areas Report will include a Geological Hazards Assessment which includes the Assessment of Geological Characteristics, the Site and Construction Plan, and an Analysis of Proposal. Ok. Now in (4) Minimum Buffer and Building Setback, it mentions the geotechnical analysis. So is the geotechnical analysis the Geological Hazards Assessment or the geotechnical analysis is a through c. Suggest clarifying. Perhaps in part a, it could say the Critical Areas Report contains the geotechnical analysis provided in the responses to a through c or a through e or whatever.

(d) Incorporation of Previous Study. Where a valid critical areas report has been prepared within the last five years for a specific site, and where the proposed land use activity and surrounding site conditions are unchanged, said report may be incorporated into the required critical area report. The applicant shall submit a hazards assessment detailing any changed environmental conditions associated with the site.

(e) Mitigation of Long-Term Impacts. When hazard mitigation is required, the mitigation plan shall specifically address how the activity maintains or reduces the preexisting level of risk to the site and adjacent properties on a long-term basis (equal to or exceeding the projected lifespan of the activity or occupation). Proposed mitigation techniques shall be considered to provide long-term hazard reduction only if they do not require regular maintenance or other actions to maintain their function. Mitigation may also be required to avoid any increase in risk above the preexisting conditions following abandonment of the activity. (Ord. 1375 § 5, 2005).

**22.100.070 Critical area report – Additional technical information requirements for specific hazards.**

In addition to the general critical area report requirements of FMC 22.92.160 and 22.100.060, critical area reports for geologically hazardous areas must meet the requirements of this section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

(a) Erosion and Landslide Hazard Areas. In addition to the basic critical area report requirements, the technical information for an erosion hazard or landslide hazard area shall include the following information at a minimum:

(1) Site Plan. The critical area report shall include a copy of the site plan for the proposal showing:

- (A) The height of slope, slope gradient, and cross-section of the project area;
- (B) The location of springs, seeps, or other surface expressions of ground water on or within 200 feet of the project area or that have potential to be affected by the proposal; and
- (C) The location and description of surface water runoff features;

(2) Hazards Analysis. The hazards analysis component of the critical areas report shall specifically include:

- (A) A description of the extent and type of vegetative cover;
- (B) A description of subsurface conditions based on data from site-specific explorations;
- (C) Descriptions of surface and ground water conditions, public and private sewage disposal systems, fills and excavations, and all structural improvements;
- (D) An estimate of slope stability and the effect construction and placement of structures will have on the slope over the estimated life of the structure;
- (E) An estimate of the bluff retreat rate that recognizes and reflects potential catastrophic events such as seismic activity or a 100-year storm event;
- (F) Consideration of the run-out hazard of landslide debris and/or the impacts of landslide run-out on downslope properties;
- (G) A study of slope stability including an analysis of proposed cuts, fills, and other site grading;
- (H) Recommendations for building siting limitations; and
- (I) An analysis of proposed surface and subsurface drainage, and the vulnerability of the site to erosion;

(3) Geotechnical Engineering Report. The technical information for a project within a landslide hazard area shall include a geotechnical engineering report prepared by a licensed engineer that presents engineering recommendations for the following:

**Commented [TS31]:** Good to see this.

**Commented [TS32]:** So there are general critical areas provisions to address, then the geologically hazardous areas provisions, then also the hazard specific provisions. Good, ok. Here we have a geotechnical report. So this is in addition to the previously required items such as the Geologic Hazards Assessment. Suggest creating a table that lists the different hazard terms, code # reference, and the requirements to help clarify the requirements.

(A) Parameters for design of site improvements including appropriate foundations and retaining structures. These should include allowable load and resistance capacities for bearing and lateral loads, installation considerations, and estimates of settlement performance;

(B) Recommendations for drainage and subdrainage improvements;

(C) Earthwork recommendations including clearing and site preparation criteria, fill placement and compaction criteria, temporary and permanent slope inclinations and protection, and temporary excavation support, if necessary; and

(D) Mitigation of adverse site conditions including slope stabilization measures and seismically unstable soils, if appropriate;

(4) Erosion and Sediment Control Plan. For any development proposal on a site containing an erosion hazard area, an erosion and sediment control plan shall be required. The erosion and sediment control plan shall be prepared in compliance with requirements set forth in the Department of Ecology Stormwater Management Manual for Western Washington;

(5) Drainage Plan. The technical information shall include a drainage plan for the collection, transport, treatment, discharge, and/or recycle of water prepared in accordance with the Department of Ecology Stormwater Management Manual for Western Washington, as modified by the city. The drainage plan should consider on-site septic system disposal volumes where the additional volume will affect the erosion or landslide hazard area;

(6) Mitigation Plans. Hazard and environmental mitigation plans for erosion and landslide hazard areas shall include the location and methods of drainage, surface water management, locations and methods of erosion control, a vegetation management and/or replanting plan, and/or other means for maintaining long-term soil stability; and

(7) Monitoring Surface Waters. If the director determines that there is a significant risk of damage to downstream receiving waters due to potential erosion from the site, based on the size of the project, the proximity to the receiving waters, or the sensitivity of the receiving waters, the technical information shall include a plan to monitor the surface water discharge from the site. The monitoring plan shall include a recommended schedule for submitting monitoring reports to the city. (Ord. 1375 § 5, 2005).

**22.100.080 Performance standards – General requirements.**

(a) Alterations of geologically hazardous areas or associated buffers may only occur for activities that:

(1) Will not increase the threat of the geological hazard to adjacent properties beyond 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 predevelopment conditions; and

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

(b) Critical Facilities Prohibited. Critical facilities shall not be sited within geologically hazardous areas unless there is no other practical alternative. (Ord. 1375 § 5, 2005).

**22.100.090 Performance standards – Erosion and landslide hazard areas.**

Activities on sites containing erosion or landslide hazards shall meet the standards of FMC 22.100.080 and the specific following requirements:

(a) Buffer Requirement. A buffer shall be established from all edges of landslide hazard areas. The size of the buffer shall be determined by the director to eliminate or minimize the risk of property damage, death, or injury resulting

**Commented [TS33]:** Some codes include a factor of safety requirement. Oh I see that is in the code later.

**Commented [TS34]:** Does the geologist or engineer have to address this specifically, in the application?

**Commented [TS35]:** Good.

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

- (1) Minimum Buffer. The minimum buffer shall be equal to the height of the slope or 50 feet, whichever is greater.
- (2) Buffer Reduction. The buffer may be reduced to a minimum of 10 feet when a qualified professional demonstrates to the director's satisfaction that the reduction will adequately protect the proposed development, adjacent developments, and uses and the subject critical area.
- (3) Increased Buffer. The buffer may be increased where the director determines a larger buffer is necessary to prevent risk of damage to proposed and existing development;

(b) Alterations. Alterations of an erosion or landslide hazard area and/or buffer may only occur for activities for which a hazards analysis is submitted and certifies that:

- (1) The development will not increase surface water discharge or sedimentation to adjacent properties beyond predevelopment conditions;
- (2) The development will not decrease slope stability on adjacent properties; and
- (3) Such alterations will not adversely impact other critical areas;

(c) Design Standards. Development within an erosion or landslide hazard area and/or buffer shall be designed to meet the following basic requirements unless it can be demonstrated that an alternative design that deviates from one or more of these standards provides greater long-term slope stability while meeting all other provisions of the applicable critical areas chapters. The requirement for long-term slope stability shall exclude designs that require regular and periodic maintenance to maintain their level of function. The basic development design standards are:

- (1) The proposed development shall not decrease the factor of safety for landslide occurrences below the limits of 1.5 for static conditions and 1.2 for dynamic conditions. Analysis of dynamic conditions shall be based on a minimum horizontal acceleration as established by the current version of the International Building Code;
- (2) Structures and improvements shall be clustered to avoid geologically hazardous areas and other critical areas;
- (3) Structures and improvements shall minimize alterations to the natural contour of the slope, and foundations shall be tiered where possible to conform to existing topography;
- (4) Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation;
- (5) The proposed development shall not result in greater risk or a need for increased buffers on neighboring properties;
- (6) The use of retaining walls that allow the maintenance of existing natural slope area is preferred over graded artificial slopes; and
- (7) Development shall be designed to minimize impervious lot coverage;

(d) Vegetation Retention. Unless otherwise provided or as part of an approved alteration, removal of vegetation from an erosion or landslide hazard area or related buffer shall be prohibited;

(e) Seasonal Restriction. Clearing shall be allowed only from May 1st to October 1st of each year; provided, that the city may extend or shorten the dry season on a case-by-case basis depending on actual weather conditions, except that timber harvest, not including brush clearing or stump removal, may be allowed pursuant to an approved forest practice permit issued by the Washington State Department of Natural Resources;

Commented [TS36]: Aha there is the factor of safety!

Note: DOH reviews only general clauses & critical aquifer recharge areas portions. For commenting purposes, other types of critical areas have been removed from this draft.

Please ignore any formatting vagaries that may have resulted from document conversion from .pdf to .doc.

**Chapter 22.92**  
**CRITICAL AREAS**

|           |                                    |
|-----------|------------------------------------|
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- 22.92.090 Exception – Public agency and utility.
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- 22.92.110 Allowed activities.
- 22.92.120 General requirements.
- 22.92.130 Critical area preapplication consultation.
- 22.92.140 ~~Critical area identification form~~ ~~Repealed~~.
- 22.92.150 Public notice of initial determination.
- 22.92.160 Critical area report – Requirements.
- 22.92.170 Critical area report – Modifications to requirements.
- 22.92.180 Mitigation requirements.
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- 22.92.220 Determination.
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- 22.92.260 Completion of the critical area review.
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- 22.92.300 Critical area markers and signs.
- 22.92.310 Title notice.
- 22.92.320 Native growth protection areas.
- 22.92.330 Critical area tracts.
- 22.92.340 Building setbacks.
- 22.92.350 Bonds to ensure mitigation, maintenance, and monitoring.
- 22.92.360 Critical area inspections.

**22.92.010 Purpose.**

(a) The purpose of the city's critical areas regulations contained in Chapters 22.92, 22.93, 22.94, 22.95, 22.96, 22.97, 22.99 and 22.100 FMC is to designate and classify ecologically sensitive and hazardous areas and to protect these areas and their functions and values, while also allowing for reasonable use of private property.

(b) These regulations are to implement the goals, policies, guidelines, and requirements of the city's comprehensive plan and the Growth Management Act.

(c) The city finds that critical areas provide a variety of valuable and beneficial biological and physical functions that benefit the city and its residents, and/or may pose a threat to human safety or to public and private property. The beneficial functions and values provided by critical areas include, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation of floodwaters, ground water recharge and discharge, erosion control, protection from hazards, historical, archaeological, and aesthetic value protection, and recreation. These beneficial functions are not listed in order of priority.

(d) Goals. By limiting development and alteration of critical areas, these regulations seek to:

- (1) Protect members of the public and public resources and facilities from injury, loss of life, or property damage due to landslides and steep slope failures, erosion, seismic events, or flooding;
- (2) Maintain healthy, functioning ecosystems through the protection of unique, fragile, and valuable elements of the environment, including ground and surface waters, wetlands, and fish and wildlife and their habitats, and to conserve the biodiversity of plant and animal species;
- (3) Direct activities not dependent on critical areas resources to less ecologically sensitive sites and mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to critical areas; and
- (4) Prevent cumulative adverse environmental impacts to water quality, wetlands, and fish and wildlife habitat, and the overall net loss of wetlands, frequently flooded areas, and habitat conservation areas.

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(e) These regulations are intended to protect critical areas in accordance with the Growth Management Act and through the application of the best available science, as determined according to WAC 365-195-900 through 365-195-925, and in consultation with state and federal agencies and other qualified professionals.

(f) These regulations are to be administered with flexibility and attention to site-specific characteristics. Consistent with RCW 36.70A.020(12), it is not the intent of these regulations to make a parcel of property unusable by denying its owner reasonable economic use of the property or to prevent the provision of public facilities and services necessary to support existing development and planned for by the community without decreasing current service levels below minimum standards.

(g) The city's enactment or enforcement of these regulations shall not be construed for the benefit of any individual person or group of persons other than the general public. (Ord. 1375 § 1, 2005).

**22.92.020 Authority.**

(a) As provided herein, the director is given the authority to interpret and apply, and the responsibility to enforce these regulations, to accomplish the stated purpose.

(b) The city may withhold, condition, or deny development permits or activity approvals to ensure that the proposed action is consistent with these regulations. (Ord. 1375 § 1, 2005).

**22.92.030 Relationship to other regulations.**

(a) These critical areas regulations shall apply as an overlay and in addition to zoning and other regulations adopted by the city.

(b) Any individual critical area adjoined by another type of critical area shall have the buffer and meet the requirements that provide the most protection to the critical areas involved. When any existing regulation, easement, covenant, or deed restriction conflicts with these critical areas regulations, that regulation which provides more protection to the critical areas shall apply.

(c) These critical areas regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as adopted by the city. Any conditions required pursuant to these regulations shall be included in the SEPA review and threshold determination.

(d) Compliance with these critical areas regulations does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Hydraulic Permit Act (HPA) permits, Section 106 of the National Historic Preservation Act, U.S. Army Corps of Engineers Section 404 permits, and National Pollution Discharge Elimination System (NPDES) permits). The applicant is responsible for complying with these requirements, apart from the process established in the city's critical areas regulations. (Ord. 1375 § 1, 2005).

**22.92.040 Jurisdiction – Critical areas.**

(a) The city shall regulate all uses, activities, and developments within, adjacent to, or likely to affect, one or more critical areas, consistent with the best available science and the provisions herein.

(b) Critical areas regulated by this title include:

- (1) Wetlands as designated in Chapter 22.93 FMC;
- (2) Critical aquifer recharge areas as designated in Chapter 22.94 FMC;
- (3) Frequently flooded areas as designated in Chapter 22.99 FMC;
- (4) Fish and wildlife habitat conservation areas as designated in Chapter 22.97 FMC; and
- (5) Geologically hazardous areas as designated in Chapter 22.100 FMC.

(c) All areas within the city meeting the definition of one or more critical areas, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of the applicable critical areas chapters.

(d) Areas Adjacent to Critical Areas Subject to Regulation. Areas adjacent to critical areas shall be considered to be

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within the jurisdiction of these requirements and regulations to support the intent of the applicable critical areas chapters and ensure protection of the functions and values of critical areas. "Adjacent" shall mean any activity located:

- (1) On a site immediately adjoining a critical area;
- (2) A distance equal to or less than the required critical area buffer width- and ~~the~~ building setback established in FMC 22.92.340;
- (3) A distance equal to or less than 800 feet from a bald eagle nest;
- (4) A distance equal to or less than 300 feet upland from a stream, wetland, or water body; or
- (5) Within the floodway, floodplain, or channel migration zone. (Ord. 1375 § 1, 2005).

**22.92.050 Protection of critical areas.**

Any action taken pursuant to the applicable critical areas chapters shall result in equivalent or greater functions and values of the critical areas associated with the proposed action, as determined by the best available science. All actions and developments shall be designed and constructed in accordance with the mitigation sequencing order specified in FMC 22.92.190 to avoid, minimize, and restore all adverse impacts. Applicants must first demonstrate an inability to avoid or reduce impacts before restoration and compensation of impacts will be allowed. No activity or use shall be allowed that results in a net loss of the functions or values of critical areas. (Ord. 1375 § 1, 2005).

**22.92.060 Best available science.**

(a) Protect Functions and Values of Critical Areas with Special Consideration to Anadromous Fish. Critical area reports and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish, such as salmon and bull trout, and their habitat, consistent with RCW 36.70A.172.1.

(b) Best Available Science to Be Consistent with Criteria. The best available science is that scientific information applicable to the critical area prepared by local, state, or federal natural resource agencies, a qualified scientific professional, or team of qualified scientific professionals that is consistent with criteria established in WAC 365-195-900 through 365-195-925.

(c) Characteristics of a Valid Scientific Process. In the context of critical areas protection, a valid scientific process is one that produces reliable information useful in understanding the consequences of a local government's regulatory decisions, and in developing critical areas policies and development regulations that will be effective in protecting the functions and values of critical areas. To determine whether information received during the permit review process is reliable scientific information, the director shall determine whether the source of the information displays the characteristics of a valid scientific process. Such characteristics are as follows:

- (1) Peer Review. The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The proponents of the information have addressed the criticism of the peer reviewers. Publication in a refereed scientific journal usually indicates that the information has been appropriately peer-reviewed;
- (2) Methods. The methods used to obtain the information are clearly stated and reproducible. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to ensure their reliability and validity;
- (3) Logical Conclusions and Reasonable Inferences. The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained;
- (4) Quantitative Analysis. The data have been analyzed using appropriate statistical or quantitative methods;
- (5) Context. The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge; and

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- (6) References. The assumptions, analytical techniques, and conclusions are well-referenced with citations to relevant, credible literature and other pertinent existing information.

(d) Nonscientific Information. Nonscientific information may supplement scientific information, but it is not an adequate substitute for valid and available scientific information. Common sources of nonscientific information include the following:

- (1) Anecdotal Information. One or more observations that are not part of an organized scientific effort (for example, "I saw a bald eagle in that area while I was hiking");
- (2) Non-Expert Opinion. Opinion of a person who is not a qualified scientific expert in a pertinent scientific discipline (for example, "I do not believe there are bald eagles in that area"); and
- (3) Hearsay. Information repeated from communication with others (for example, "At a lecture last week, Dr. Jones said there were no bald eagles in that area").

(e) Absence of Valid Scientific Information. Where there is an absence of valid scientific information or incomplete scientific information relating to a critical area leading to uncertainty about the risk to critical area function of permitting an alteration of or impact to the critical area, the director shall:

- (1) Take a "precautionary" or a "no-risk approach," that strictly limits development and land use activities until the uncertainty is sufficiently resolved; and
- (2) Require application of an effective adaptive management program that relies on scientific methods to evaluate how well regulatory and nonregulatory actions protect the critical area. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. An adaptive management program shall:
  - (A) Address funding for the research component of the adaptive management program;
  - (B) Change course based on the results and interpretation of new information that resolves uncertainties; and
  - (C) Commit to the appropriate timeframe and scale necessary to reliably evaluate regulatory and nonregulatory actions affecting protection of critical areas and anadromous fisheries. (Ord. 1375 § 1, 2005).

**22.92.070 Applicability.**

(a) The provisions of the critical areas chapters shall apply to all lands, all land uses and development activity, and all structures and facilities in the city, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the city. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purposes and requirements of these chapters.

(b) The city shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated buffer, without first ensuring compliance with the requirements of these chapters.

(c) Approval of a permit or development proposal pursuant to the provisions of these chapters does not discharge the obligation of the applicant to comply with the provisions of these chapters. (Ord. 1375 § 1, 2005).

**22.92.080 Exemptions.**

(a) Exemption Request and Review Process. The proponent of the activity may submit a written request for exemption to the director that describes the activity and states the exemption listed in this section that applies.

The director shall review the exemption request to verify that it complies with the applicable critical areas chapters and approve or deny the exemption. If the exemption is approved, it shall be placed on file with the department. If the exemption is denied, the proponent may continue in the review process and shall be subject to the requirements of these chapters.

(b) Exempt Activities and Impacts to Critical Areas. All exempted activities shall use reasonable methods to avoid

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potential impacts to critical areas. To be exempt from the applicable critical areas chapters does not give permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense.

(c) Exempt Activities. The following developments, activities, and associated uses shall be exempt from the provisions of the applicable critical areas chapters; provided, that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements:

(1) Emergencies. Those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of these chapters.

Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. The person or agency undertaking such action shall notify the city within one working day following commencement of the emergency activity. Within 30 days, 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 an allowed emergency action, then enforcement provisions of FMC 22.92.290 shall apply.

After the emergency, the person or agency undertaking the action shall fully fund and conduct necessary restoration and/or mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved critical area report and mitigation plan. The person or agency undertaking the action shall apply for review, and the alteration, critical area report, and mitigation plan shall be reviewed by the city in accordance with the review procedures contained herein. Restoration and/or mitigation activities must be initiated within one year of the date of the emergency, and completed in a timely manner;

(2) Operation, Maintenance, or Repair. Operation, maintenance, or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems, that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair. Operation and maintenance includes vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities; provided, that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species;

(3) Passive Outdoor Activities. Recreation, education, and scientific research activities that do not degrade the critical area, including fishing, hiking, and bird watching. Trails must be constructed pursuant to the public and private pedestrian trails standards specified in FMC 22.92.110(c)(5);

(4) Forest Practices. Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practices regulations, WAC Title 222;

(5) Construction within Previously Approved Planned Developments. Construction or reconstruction of a single-family, duplex or condominium unit on a lot that was platted or approved within a planned development subsequent to the city's adoption of interim critical areas regulations in 1993 and prior to the effective date of the ordinance codified in this chapter, provided such unit is constructed in accordance with all applicable critical areas regulations in effect at the time of platting or approval; and

(6) Structural Modification of, Additions to, or Replacement of, Existing Residential Structures. Structural modification of, additions to, or replacement of, existing principal residential structures lawfully established prior to the effective date of the ordinance codified in this chapter that do not meet the critical area buffer or building setback requirements; provided, that:

(A) The structure is located within a wetland buffer, fish and wildlife habitat conservation area buffer, or associated buffer building setback;

(B) The structure is not located within a frequently flooded area, geologically hazardous area buffer, or

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associated buffer building setback;

(C) The modification, addition, replacement or related activity will not increase impervious surface by more than 500 square feet, in total, on the site;

(D) There is no other practicable location within the site that will accommodate the activity, meet the buffer and building setback requirements, and satisfy all other requirements of this title; and

(E) For lots adjoining Leach Creek or Ross Creek, the proposed activity will not encroach into the required buffer beyond that of the existing principal residential structure, and any increase in impervious surface will be compensated for by the planting of native plants within the buffer at a 1:1 ratio of native planting area to increased impervious surface area (i.e., 100 square feet of native planting area would need to be installed in the buffer for 100 square feet of new impervious surface). (Ord. 1375 § 1, 2005).

**22.92.090 Exception – Public agency and utility.**

(a) If the application of a critical areas chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.

(b) Exception Request and Review Process. An application for a public agency and utility exception shall be made to the city and shall include a ~~critical area identification form~~; critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW). The director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with public agency and utility exception review criteria in subsection (d) of this section.

(c) Hearing Examiner Review. The hearing examiner shall review the application and director's recommendation, and conduct a public hearing pursuant to the provisions of Chapter 22.09 FMC. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the public agency and utility exception criteria in subsection (d) of this section.

(d) Public Agency and Utility Review Criteria. The criteria for review and approval of public agency and utility exceptions follow:

- (1) There is no other practical alternative to the proposed development with less impact on the critical areas;
  - (2) The application of the critical areas chapter would unreasonably restrict the ability to provide utility services to the public;
  - (3) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
  - (4) The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science; and
  - (5) The proposal is consistent with other applicable regulations and standards.
- (6) All proposed activities will be conducted using the best management practices adopted by the city, as described in FMC 22.92.110(b).

(e) Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application. (Ord. 1638 § 60, 2019; Ord. 1375 § 1, 2005).

**22.92.100 Exception – Reasonable use.**

(a) If the application of a critical areas chapter would deny all reasonable economic use of the subject property, the city shall determine if compensation is an appropriate action, or the property owner may apply for an exception pursuant to this section.

(b) Exception Request and Review Process. An application for a reasonable use exception shall be made to the city and shall include a ~~critical area identification form~~; critical area report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and

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environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW) (SEPA documents). The director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in subsection (d) of this section.

(c) Hearing Examiner Review. The hearing examiner shall review the application and conduct a public hearing pursuant to the provisions of Chapter 22.09 FMC. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use exception review criteria in subsection (d) of this section.

(d) Reasonable Use Review Criteria. Criteria for review and approval of reasonable use exceptions follow; one or more may apply:

- (1) The application of the critical areas chapters would deny all reasonable economic use of the property;
- (2) No other reasonable economic use of the property has less impact on the critical area;
- (3) The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;
- (4) The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant, or its predecessor, after the effective date of the critical area chapters;
- (5) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site; and
- (6) The proposal will result in no net loss of critical area functions and values consistent with the best available science.
- (7) All proposed activities will be conducted using best available management practices adopted by the city, as described in FMC 22.92.110(b).

(e) Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application. (Ord. 1638 § 61, 2019; Ord. 1375 § 1, 2005).

**22.92.110 Allowed activities.**

(a) Critical Area Report. Activities allowed under the applicable critical areas chapter(s) shall have been reviewed and permitted or approved by the city or other agency with jurisdiction, but do not require submittal of a separate ~~critical area identification form or~~ critical area report, unless such submittal was required previously for the underlying permit. The director may apply conditions to the underlying permit or approval to ensure that the allowed activity is consistent with the provisions of these chapters to protect critical areas.

(b) Required Use of Best Management Practices. All allowed activities shall be conducted using the best management practices adopted by the city, including but not limited to those contained within the Department of Ecology Stormwater Management Manual for Western Washington, that result in the least amount of impact to the critical areas. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The city shall observe the use of best management practices to ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense.

(c) Allowed Activities. The following activities are allowed:

- (1) Permit Requests Subsequent to Previous Critical Area Review. Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits), and construction approvals (such as building permits) if all of the following conditions have been met:
  - (A) The provisions of the applicable critical areas chapter(s) have been previously addressed as part of another approval;

- (B) There have been no material changes in the potential impact to the critical area or buffer since the prior review;
- (C) There is no new information available that is applicable to any critical area review of the site or particular critical area;
- (D) The permit or approval has not expired or, if no expiration date, no more than five years has elapsed since the issuance of that permit or approval; and
- (E) Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured;
- (2) Modification to Existing Structures. Structural modification of, addition to, or replacement of an existing legally constructed structure that does not further alter or increase the impact to the critical area or buffer and there is no increased risk to life or property as a result of the proposed modification or replacement; provided, that restoration of structures substantially damaged by fire, flood, or act of nature must be initiated within one year of the date of such damage, as evidenced by the issuance of a valid building permit, and diligently pursued to completion;
- (3) Activities within the Improved Right-of-Way. Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a city-authorized private roadway except those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater, subject to the following:
- (A) Critical area and/or buffer widths shall be increased, where possible, equal to the width of the right-of-way improvement, including disturbed areas; and
- (B) Retention and replanting of native vegetation shall occur wherever possible along the right-of-way improvement and resulting disturbance;
- (4) Minor Utility Projects. Utility projects that have minor or short-duration impacts to critical areas, as determined by the director in accordance with the criteria below, and that do not significantly impact the function or values of a critical area(s); provided, that such projects are constructed with best management practices and additional restoration measures are provided. Minor activities shall not result in the transport of sediment or increased stormwater. Such allowed minor utility projects shall meet the following criteria:
- (A) There is no practical alternative to the proposed activity with less impact on critical areas;
- (B) The activity involves the placement of a utility pole, street signs, anchor, or vault or other small component of a utility facility; and
- (C) The activity involves disturbance of an area less than 75 square feet;
- (5) Public and Private Pedestrian Trails. Public and private pedestrian trails, subject to the following:
- (A) The trail surface shall meet all other requirements including water quality standards set forth in the Department of Ecology Stormwater Management Manual for Western Washington;
- (B) Critical area and/or buffer widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas;
- (C) Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report; and
- (D) Trails proposed to be located in ~~wetlands~~, fish and wildlife habitat conservation areas, or ~~the outer 25 percent of wetland~~ buffers ~~which are~~ ~~should be~~ limited to permeable surfaces no more than five feet wide ~~and designed for pedestrian use only~~ ~~located only in the outer 25 percent of a buffer~~, and located to avoid removal of significant trees, ~~old growth trees, or mature trees~~;

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(6) Select Vegetation Removal Activities. The following vegetation removal activities; provided, that no vegetation shall be removed from a critical area or its buffer without approval from the director:

(A) The removal of the following vegetation with hand labor and light equipment:

- (i) Invasive and noxious weeds classified by the Washington State Noxious Weed Board;
- (ii) English ivy (*Hedera helix*);
- (iii) Himalayan blackberry (*Rubus armeniacus*, *R. procerus*); and
- (iv) Evergreen blackberry (*Rubus laciniatus*);

(B) The removal of trees from critical areas and buffers that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property; provided, that:

- (i) The applicant submits a report from a certified arborist, registered landscape architect, or professional forester that documents the hazard and provides a replanting schedule for the replacement trees;
- (ii) Tree cutting shall be limited to pruning and crown thinning, unless otherwise justified by a qualified professional. Where pruning or crown thinning is not sufficient to address the hazard, trees should be removed or converted to wildlife snags;
- (iii) All vegetation cut (tree stems, branches, etc.) shall be left within the critical area or buffer unless removal is warranted due to the potential for disease or pest transmittal to other healthy vegetation;
- (iv) The landowner shall replace any trees that are removed with new trees at a ratio of two replacement trees for each tree removed (2:1) within one year in accordance with an approved restoration plan. Replacement trees may be planted at a different nearby location if it can be determined that planting in the same location would create a new hazard or potentially damage the critical area. Replacement trees shall be species that are native and indigenous to the site and a minimum of one inch in diameter at breast height (dbh) for deciduous trees and a minimum of six feet in height for evergreen trees as measured from the top of the root ball;
- (v) If a tree to be removed provides critical habitat, such as an eagle perch, a qualified wildlife biologist shall be consulted to determine timing and methods of removal that will minimize impacts; and
- (vi) Hazard trees determined to pose an imminent threat or danger to public health or safety, to public or private property, or of serious environmental degradation may be removed or pruned by the landowner prior to receiving written approval from the city; provided, that within 14 days following such action, the landowner shall submit a restoration plan that demonstrates compliance with the provisions of this chapter;

(C) Measures to control a fire or halt the spread of disease or damaging insects consistent with the State Forest Practices Act, Chapter 76.09 RCW; provided, that the removed vegetation shall be replaced in-kind or with similar native species within one year in accordance with an approved restoration plan; and

(D) Unless otherwise provided, or as a necessary part of an approved alteration, removal of any vegetation or woody debris from a habitat conservation area or wetland shall be prohibited;

(7) Chemical Applications. The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary, as approved by the city; provided, that their use shall be restricted in accordance with State Department of Fish and Wildlife management recommendations and the regulations of the State Department of Agriculture, the State Department of Ecology, and the U.S. Environmental Protection Agency;

(8) Minor Site Investigative Work. Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area shall be minimized and disturbed

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(9) Boundary Markers. Construction or modification of boundary markers. (Ord. 1574 § 1, 2016; Ord. 1375 § 1, 2005).

**22.92.120 General requirements.**

(a) As part of this review, the city shall:

- (1) Verify the information submitted by the applicant;
- (2) Evaluate the project area and vicinity for critical areas;
- (3) Determine whether the proposed project is likely to impact the functions or values of critical areas; and
- (4) Determine if the proposed project adequately addresses the impacts and avoids impacts to the critical area associated with the project.

(b) If the proposed project is within, adjacent to, or is likely to impact a critical area, the city shall:

- (1) Require a critical area report from the applicant that has been prepared by a qualified professional;
- (2) Review and evaluate the critical area report;
- (3) Determine whether the development proposal conforms to the purposes and performance standards of the applicable critical areas chapters, including the review criteria in FMC 22.92.230;
- (4) Assess the potential impacts to the critical area and determine if they can be avoided or minimized; and
- (5) Determine if any mitigation proposed by the applicant is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of the applicable critical areas chapters. (Ord. 1375 § 1, 2005).

**22.92.130 Critical area preapplication consultation.**

Any person preparing to submit an application for development or use of land that may be regulated by the provisions of a critical areas chapter ~~shall~~ may conduct a consultation meeting with the director prior to submitting an application for development or other approval. At this meeting, the director shall discuss the requirements of these chapters; provide critical area maps, scientific information, and other source materials, if available; outline the review process; and work with the activity proponent to identify any potential concerns that might arise during the review process, in addition to discussing other permit procedures and requirements. (Ord. 1375 § 1, 2005).

**22.92.140 ~~Repealed. Critical area identification form.~~**

- ~~(A) Submittal. Prior to the city's consideration of any proposed activity not found to be exempt under FMC 22.92.080 or allowed pursuant to FMC 22.92.110, the applicant shall submit to the department a complete critical area identification form on forms provided by the city;~~
- ~~(B) Site Inspection. Upon receipt of a project application and a critical area identification form, the director shall conduct a site inspection to review critical area conditions on site. The director shall notify the property owner of the inspection prior to the site visit. Reasonable access to the site shall be provided by the property owner for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period;~~
- ~~(C) Critical Area Identification Form Review Process. The director or his/her designee shall review the critical area identification form, conduct a site inspection, and review other information available pertaining to the site and the proposal and make a determination as to whether any critical areas may be affected by the proposal and if a more detailed critical area report shall be submitted;~~
- ~~(D) Decision Indicators. The director may use the following indicators to assist in determining the need for a critical area report:~~
- ~~(A) Indication of a critical area on the city critical areas maps that may be impacted by the proposed activity;~~
- ~~(B) Information and scientific opinions from appropriate agencies, including but not limited to the Departments of Fish and Wildlife, Natural Resources, and Ecology;~~
- ~~(C) Documentation, from a scientific or other reasonable source, of the possible presence of a critical area; or~~
- ~~(D) A finding by a qualified professional or a reasonable belief by the director that a critical area may exist on or adjacent to the site of the proposed activity;~~

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~~(d) Decision on Identification Form.~~

~~(1) No Critical Areas Present. If after a site visit the director's analysis indicates that the project area is not within or adjacent to a critical area or buffer and that the proposed activity is unlikely to degrade the functions or values of a critical area, then the director shall rule that the critical area review is complete and note on the identification form the reasons that no further review is required. A summary of this information shall be included in any staff report or decision on the underlying permit.~~

~~(2) Critical Areas Present, But No Impact - Waiver. If the director determines that there are critical areas within or adjacent to the project area, but that the best available science shows that the proposed activity is unlikely to degrade the functions or values of the critical area, the director may waive the requirement for a critical area report. A waiver may be granted if there is substantial evidence that all of the following requirements will be met:~~

~~(A) There will be no alteration of the critical area or buffer;~~

~~(B) The development proposal will not impact the critical area in a manner contrary to the purpose, intent, and requirements of the applicable critical areas chapter(s); and~~

~~(C) The proposal is consistent with other applicable regulations and standards;~~

~~A summary of this analysis and the findings shall be included in any staff report or decision on the underlying permit.~~

~~(3) Critical Areas May Be Affected by Proposal. If the director determines that a critical area or areas may be affected by the proposal, then the director shall notify the applicant that a critical area report must be submitted prior to further review of the project, and indicate each of the critical area types that should be addressed in the report.~~

~~(e) Director's Determination Subject to Reconsideration. A determination regarding the apparent absence of one or more critical areas by the director is not an expert certification regarding the presence of critical areas and the determination is subject to possible reconsideration and reopening if new information is received.~~

~~If the applicant wants greater assurance of the accuracy of the critical area review determination, the applicant may choose to hire a qualified professional to provide such assurances. (Ord. 1375 § 1, 2005).~~

**22.92.150 Public notice of initial determination.**

The city shall notify the public of proposals in accordance with Chapter 22.07 FMC.

(a) If the director determines that no critical area report is necessary, the city shall state the reasons for this determination in the notice of application issued by the city for the proposal.

~~(b) If the director determines that there are critical areas on the site that the proposed project is unlikely to impact - and the project meets the requirements for and has been granted a waiver from the requirement to complete a critical area report, a summary of the analysis and findings for this decision shall be stated in the notice of application for the proposal.~~

**Commented [KM1]:** In collaboration with the City Manager, we are recommending this section be repealed. The City has no such form, and the process of identifying critical areas is accomplished via the Critical Area Report, which is already codified in this chapter and required to be submitted by applicants.

**Commented [KM2]:** This change is being made because, with the repeal of FMC 22.92.140, waivers from critical area reporting are not a component of the CAO. Waivers from critical area reports are atypical critical area planning practice - current Best Available Science and Mitigation Sequencing standards would require an applicant to demonstrate that their avoidance of a critical area is mitigation, akin to a "waiver" from critical area standards.

(eb) If the director determines that critical areas may be affected by the proposal and a critical area report is required, public notice of the application shall include a description of the critical area that might be affected and state that a critical area report is required. (Ord. 1375 § 1, 2005).

**22.92.160 Critical area report – Requirements.**

(a) ~~Preparation by Qualified Professional.~~ If required by ~~the director in accordance with FMC 22.92.140(d)(3) this chapter,~~ the applicant shall submit a critical area report prepared by a qualified professional as defined herein ~~and as defined in FMC Chapter 22.98, Definitions.~~

(b) Incorporating ~~of~~ Best Available Science. The critical area report shall use scientifically valid methods and studies in the analysis of critical area data and field reconnaissance and reference the source of science used. The critical area report shall evaluate the proposal and all probable impacts to critical areas in accordance with the provisions of the applicable critical areas chapters.

(c) Minimum Report Contents. At a minimum, the report shall contain the following:

- (1) The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;
- (2) A copy of the site plan for the development proposal including:
  - (A) A map to scale depicting critical areas, buffers, the development proposal, and any areas to be cleared; and
  - (B) A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations;
- (3) The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
- (4) Identification and characterization of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area;
- (5) A statement specifying the accuracy of the report, and all assumptions made and relied upon;
- (6) An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;
- (7) An analysis of site development alternatives including a no development alternative;
- (8) A description of reasonable efforts made to apply mitigation sequencing pursuant to FMC 22.92.190 to avoid, minimize, and mitigate impacts to critical areas;
- (9) Plans for adequate mitigation, as needed, to offset any impacts, in accordance with FMC 22.92.200, including, but not limited to:
  - (A) The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and
  - (B) The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment;
- (10) A discussion of the performance standards applicable to the critical area and proposed activity;
- (11) Financial guarantees to ensure compliance; and
- (12) Any additional information required for the critical area as specified in the corresponding chapter.

**Commented [DJ1]:** Many jurisdictions include a separate clause allowing them to retain 3<sup>rd</sup> party review at the applicant's expense if they do not have qualified professional(s) of their own. Otherwise, merely turning in the report (no matter its content, quality or adequacy of work, etc.) will meet the requirement.

**Commented [DJ2]:** We did not notice any accompanying amendments to the definitions chapter. Was it also reviewed as part of this update? We are offering some suggested changes (appended at the end of this document) including "qualified professional."

(d) Unless otherwise provided, a critical area report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the director. (Ord. 1375 § 1, 2005).

**22.92.170 Critical area report – Modifications to requirements.**

(a) Limitations to Study Area. The director may limit the required geographic area of the critical area report as appropriate if:

- (1) The applicant, with assistance from the city, cannot obtain permission to access properties adjacent to the project area; or
- (2) The proposed activity will affect only a limited part of the subject site.

(b) Modifications to Required Contents. The applicant may consult with the director prior to or during preparation of the critical area report to obtain city approval of modifications to the required contents of the report where, in the judgment of a qualified professional, more or less information is required to adequately address the potential critical area impacts and required mitigation.

(c) Additional Information Requirements. The director may require additional information to be included in the critical area report when determined to be necessary to the review of the proposed activity in accordance with the applicable critical areas chapters. Additional information that may be required includes, but is not limited to:

- (1) Historical data, including original and subsequent mapping, aerial photographs, data compilations and summaries, and available reports and records relating to the site or past operations at the site;
- (2) Grading and drainage plans; and
- (3) Information specific to the type, location, and nature of the critical area. (Ord. 1375 § 1, 2005).

**22.92.180 Mitigation requirements.**

(a) The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas. Unless otherwise provided in the applicable critical areas chapter, if alteration to the critical area is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a development proposal or alteration shall be mitigated using the best available science in accordance with an approved critical area report and SEPA documents, so as to result in no net loss of critical area functions and values.

(b) Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach such as the use of off-site mitigation, mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.

(c) Mitigation shall not be implemented until after city approval of a critical area report that includes a mitigation plan, and mitigation shall be in accordance with the provisions of the approved critical area report. (Ord. 1574 § 2, 2016; Ord. 1375 § 1, 2005).

**22.92.190 Mitigation sequencing.**

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

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
- (c) Rectifying the impact to wetlands, critical aquifer recharge areas, geologically hazardous areas, frequently flooded areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;

- (d) Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;
- (e) Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
- (f) Compensating for the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
- (g) Monitoring the hazard or other required mitigation and taking remedial action when necessary. Monitoring shall occur at least annually for five (5) years, unless best available science would inform otherwise. A monitoring report shall be provided to the City following each monitoring event and shall document the success of the mitigation, against performance standards established in the mitigation plan accepted by the City.

Mitigation for individual actions may include a combination of the above measures. (Ord. 1375 § 1, 2005).

**22.92.200 Mitigation plan requirements.**

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

- (a) Environmental Goals and Objectives. The mitigation plan shall include a written report identifying environmental goals and objectives of the compensation proposed and including:
  - (1) A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area;
  - (2) A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed; and
  - (3) An analysis of the likelihood of success of the compensation project.
- (b) Performance Standards. The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of the applicable critical areas chapters have been met.
- (c) Detailed Construction Plans. The mitigation plan shall include written specifications and descriptions of the mitigation proposed, such as:
  - (1) The proposed construction sequence, timing, and duration;
  - (2) Grading and excavation details;
  - (3) Erosion and sediment control features;
  - (4) A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
  - (5) Measures to protect and maintain plants until established.

These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.

- (d) Monitoring Program. The mitigation plan shall include a program for monitoring construction of the compensation project and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring (for example, monitoring shall occur in years one, two, three, five, seven and 10 after site

construction), and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five years, or 10 years for forested and scrub-shrub wetland communities.

(c) Contingency Plan. The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.

(f) Financial Guarantees. The mitigation plan shall include financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures shall be posted in accordance with FMC 22.92.350. (Ord. 1375 § 1, 2005).

**22.92.210 Innovative mitigation.**

(a) The city may encourage, facilitate, and approve innovative mitigation projects that are based on the best available science. Advance mitigation or mitigation banking are examples of alternative mitigation projects allowed under the provisions of this section wherein one or more applicants, or an organization with demonstrated capability, may undertake a mitigation project together if it is demonstrated that all of the following circumstances exist:

- (1) Creation or enhancement of a larger system of critical areas and open space is preferable to the preservation of many individual habitat areas;
- (2) The group demonstrates the organizational and fiscal capability to act cooperatively;
- (3) The group demonstrates that long-term management of the habitat area will be provided; and
- (4) There is a clear potential for success of the proposed mitigation at the identified mitigation site.

(b) Conducting mitigation as part of a cooperative process does not reduce or eliminate the required replacement ratios. (Ord. 1375 § 1, 2005).

**22.92.220 Determination.**

The director shall make a determination as to whether the proposed activity and mitigation, if any, is consistent with the provisions of the applicable critical areas chapters. The director's determination shall be based on the criteria of FMC 22.92.230. (Ord. 1375 § 1, 2005).

**22.92.230 Review criteria.**

(a) Any alteration to a critical area, unless otherwise provided for in the applicable critical areas chapters, shall be reviewed and approved, approved with conditions, or denied based on the proposal's ability to comply with all of the following criteria:

- (1) The proposal minimizes the impact on critical areas in accordance with the mitigation sequencing order specified in FMC 22.92.190;
- (2) The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
- (3) The proposal is consistent with the general purposes of the applicable critical areas chapters and the public interest;
- (4) Any alterations permitted to the critical area are mitigated in accordance with FMC 22.92.180;
- (5) The proposal protects the critical area functions and values consistent with the best available science and results in no net loss of critical area functions and values; and
- (6) The proposal is consistent with other applicable regulations and standards.

The Firecrest Municipal Code is current through Ordinance 1738, passed March 25, 2025.

**Commented [DJ3]:** The compensatory mitigation provisions of [WAC 365-196-830](#) do *not* extend to CARAs (not included in [WAC 365-190-100](#)). When placed in general standards, these provisions imply that some degree of degradation to an aquifer is acceptable, while allowing even a limited degree of harm to an aquifer could result in lost potability.

(b) The city may condition the proposed activity as necessary to mitigate impacts to critical areas and to conform to the standards required by the applicable critical areas chapters.

(c) Except as provided for by the applicable critical areas chapters, any project that cannot adequately mitigate its impacts to critical areas in the sequencing order of preferences in FMC 22.92.190 shall be denied. (Ord. 1375 § 1, 2005).

**22.92.240 Favorable determination.**

If the director determines that the proposed activity meets the criteria in FMC 22.92.230 and complies with the applicable provisions of the applicable critical areas chapters, the director shall prepare a written notice of determination and identify any required conditions of approval. The notice of determination and conditions of approval shall be included in the project file and be considered in the next phase of the city's review of the proposed activity in accordance with any other applicable codes or regulations.

Any conditions of approval included in a notice of determination shall be attached to the underlying permit or approval. Any subsequent changes to the conditions of approval shall void the previous determination pending re-review of the proposal and conditions of approval by the director.

A favorable determination should not be construed as endorsement or approval of any underlying permit or approval. (Ord. 1375 § 1, 2005).

**22.92.250 Unfavorable determination.**

If the director determines that a proposed activity does not adequately mitigate its impacts on the critical areas and/or does not comply with the criteria in FMC 22.92.230 and the provisions of the applicable critical areas chapters, the director shall prepare written notice of the determination that includes findings of noncompliance.

No proposed activity or permit shall be approved or issued if it is determined that the proposed activity does not adequately mitigate its impacts on the critical areas and/or does not comply with the provisions of the applicable critical areas chapters.

Following notice of determination that the proposed activity does not meet the review criteria and/or does not comply with the applicable critical areas chapters, the applicant may request consideration of a revised critical area report. If the revision is found to be substantial and relevant to the critical area review, the director may reopen the critical area review and make a new determination based on the revised report. (Ord. 1375 § 1, 2005).

**22.92.260 Completion of the critical area review.**

The city's determination regarding critical areas pursuant to the applicable critical areas chapters shall be final concurrent with the final decision to approve, condition, or deny the development proposal or other activity involved. (Ord. 1375 § 1, 2005).

**22.92.270 Appeals.**

Any decision to approve, condition, or deny a development proposal or other activity based on the requirements of a critical areas chapter may be appealed according to, and as part of, the appeal procedure for the permit or approval involved. (Ord. 1375 § 1, 2005).

**22.92.280 Variances.**

(a) Variances from the standards of a critical areas chapter may be authorized by the city in accordance with the procedures set forth in Chapter 22.74 FMC. The director or hearing examiner, as authorized, shall review the request and make a written finding that the request meets or fails to meet the variance criteria.

(b) Variance Criteria. A variance may be granted only if the applicant demonstrates that the requested action conforms to all of the criteria set forth in FMC 22.74.003 and as follows:

- (1) A literal interpretation of the provisions of this chapter would deprive the applicant of all reasonable economic uses and privileges permitted to other properties in the vicinity and zone of the subject property under the terms of this chapter, and the variance requested is the minimum necessary to provide the applicant with such rights;

(2) The granting of the variance is consistent with the general purpose and intent of this chapter, and will not further degrade the functions or values of the associated critical areas; and

(3) The decision to grant the variance includes the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat.

(c) Conditions May Be Required. In granting any variance, the city may prescribe such conditions and safeguards as are necessary to secure adequate protection of critical areas from adverse impacts, and to ensure conformity with this chapter.

(d) Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and upon which any decision has to be made on the application. (Ord. 1638 § 62, 2019; Ord. 1375 § 1, 2005).

**22.92.290 Unauthorized critical area alterations and enforcement.**

(a) When a critical area or its buffer has been altered in violation of a critical areas chapter, all ongoing development work shall stop and the critical area shall be restored. The city shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation, or replacement measures at the owner's or other responsible party's expense to compensate for violation of provisions of the applicable critical areas chapter.

(b) Requirement for Restoration Plan. 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 using the best available science and shall describe how the actions proposed meet the minimum requirements described in subsection (c) of this section. The director shall, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

(c) Minimum Performance Standards for Restoration.

(1) For alterations to critical aquifer recharge areas, frequently flooded areas, wetlands, and habitat conservation areas, the following minimum performance standards shall be met for the restoration of a critical area; provided, that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:

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

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

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

(D) Information demonstrating compliance with the requirements in FMC 22.92.250 shall be submitted to the director.

(2) For alterations to flood and geological hazards, the following minimum performance standards shall be met for the restoration of a critical area; provided, that if the violator can demonstrate that greater safety can be obtained, these standards may be modified:

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

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

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

(d) Site Investigations. The director is authorized to make site inspections and take such actions as are necessary to enforce the city's critical areas regulations pursuant to Chapters 22.92, 22.93, 22.94, 22.95, 22.96, 22.97, 22.99, and

**Commented [DJ4]:** Similar to compensatory mitigation, this proviso, although common in CAOs, could potentially allow a level of contamination that affects a drinking water source's potability.

**Commented [DJ5]:** Depending on the manner & extent of "alteration," restoration of a CARA might not be possible; instead, it may turn into a cleanup action.

**Commented [DJ6]:** Local jurisdictions sometimes include a standard permission to enter clause in the signature portion of development applications. If this might be useful, please consult with your legal counsel.

22.100 FMC. The director shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property. (Ord. 1375 § 1, 2005).

**22.92.300 Critical area markers and signs.**

- (a) The boundary at the outer edge of critical area tracts and easements shall be delineated with permanent survey stakes, using iron or concrete markers as established by local survey standards.
- (b) The boundary at the outer edge of the critical area or buffer shall be identified with temporary signs prior to any site alteration. Such temporary signs shall be replaced with permanent signs prior to occupancy or use of the site.
- (c) These provisions may be modified by the director as necessary to ensure protection of sensitive features or wildlife needs. (Ord. 1375 § 1, 2005).

**22.92.310 Title notice.**

- (a) In order to inform subsequent purchasers of real property of the existence of critical areas, the owner of any property containing a critical area or buffer on which a development proposal is submitted shall file a notice with the county auditor according to the direction of the city. The notice shall state the presence of the critical area or buffer on the property, the application of the critical areas regulations to the property, and the fact that limitations on actions in or affecting the critical area or buffer may exist. The notice shall "run with the land."
- (b) This title notice shall not be required for a development proposal by a public agency or public or private utility:
- (1) Within a recorded easement or right-of-way;
  - (2) Where the agency or utility has been adjudicated the right to an easement or right-of-way; or
  - (3) On the site of a permanent public facility.
- (c) The applicant shall submit proof that the notice has been filed for public record before the city approves any site development or construction for the property or, in the case of subdivisions, short subdivisions, and planned unit developments, at or before recording. (Ord. 1375 § 1, 2005).

**22.92.320 Native growth protection areas.**

- (a) Unless otherwise required in the applicable critical areas chapters, native growth protection areas shall be used in development proposals for subdivisions, short subdivisions, and planned unit developments to delineate and protect those contiguous critical areas and buffers listed below:
- (1) All landslide hazard areas and buffers;
  - (2) All wetlands and buffers;
  - (3) All habitat conservation areas; and
  - (4) All other lands to be protected from alterations as conditioned by project approval.
- (b) Native growth protection areas shall be recorded on all documents of title of record for all affected lots.
- (c) Native growth protection areas shall be designated on the face of the plat of recorded drawing in a format approved by the city. The designation shall include the following restrictions:
- (1) An assurance that native vegetation will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and
  - (2) The right of the city to enforce the terms of the restriction. (Ord. 1375 § 1, 2005).

**Commented [DJ7]:** This is not viable for most critical aquifer recharge areas, especially given that nearly the entire city is overlain by wellhead protection areas.

**22.92.330 Critical area tracts.**

(a) Critical area tracts shall be used in development proposals for subdivisions, short subdivisions, and planned unit developments to delineate and protect those contiguous critical areas and buffers listed below that total 5,000 or more square feet:

- (1) All landslide hazard areas and buffers;
- (2) All wetlands and buffers;
- (3) All habitat conservation areas; and
- (4) All other lands to be protected from alterations as conditioned by project approval.

(b) Critical area tracts shall be recorded on all documents of title of record for all affected lots.

(c) Critical area tracts shall be designated on the face of the plat or recorded drawing in a format approved by the city. The designation shall include the following restriction:

- (1) An assurance that native vegetation will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and
- (2) The right of the city to enforce the terms of the restriction.

(d) The city may require that any required critical area tract be dedicated to the city, held in an undivided interest by each owner of a building lot within the development with the ownership interest passing with the ownership of the lot, or held by an incorporated homeowner's association or other legal entity (such as a land trust, which ensures the ownership, maintenance, and protection of the tract). (Ord. 1375 § 1, 2005).

**22.92.340 Building setbacks.**

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

- (a) Landscaping;
- (b) Uncovered decks;
- (c) Building overhangs, if such overhangs do not extend more than 18 inches into the setback area; and
- (d) Impervious and pervious ground surfaces, such as driveways and patios; provided, that such improvements may be subject to water quality regulations as adopted in the Department of Ecology Stormwater Management Manual for Western Washington. (Ord. 1375 § 1, 2005).

**22.92.350 Bonds to ensure mitigation, maintenance, and monitoring.**

(a) When mitigation required pursuant to a development proposal is not completed prior to the city final permit approval, such as final plat approval or final building inspection, the city shall require the applicant to post a performance bond or other security in a form and amount deemed acceptable by the city. If the development proposal is subject to mitigation, the applicant shall post a mitigation bond or other security in a form and amount deemed acceptable by the city to ensure mitigation is fully functional.

(b) The bond shall be in the amount of 125 percent of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater.

(c) The bond shall be in the form of a surety bond, performance bond, assignment of a savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the city attorney.

**Commented [DJ8]:** This is not realistic as applied to CARAs.

(d) Bonds or other security authorized by this section shall remain in effect until the city determines, in writing, that the standards bonded for have been met. Bonds or other security shall be held by the city for a minimum of five years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.

(e) Depletion, failure, or collection of bond funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.

(f) Public development proposals shall be relieved from having to comply with the bonding requirements of this section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.

(g) Any failure to satisfy critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within 30 days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default, and the city may demand payment of any financial guarantees or require other action authorized by the city code or any other law.

(h) Any funds recovered pursuant to this section shall be used to complete the required mitigation. (Ord. 1375 § 1, 2005).

**22.92.360 Critical area inspections.**

Reasonable access to the site shall be provided to the city, state, and federal agency review staff for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period. (Ord. 1375 § 1, 2005).

**Commented [DJ9]:** This seems to duplicate (or at least be on same topic) as site inspections under FMC 22.92.290. Combine?

**Chapter 22.94**  
**CRITICAL AQUIFER RECHARGE AREAS**

Sections:

- 22.94.010 Critical aquifer recharge areas designation.  
22.94.020 Aquifer recharge area susceptibility ratings.  
22.94.030 Location and designation of critical aquifer recharge areas.  
22.94.040 Activities allowed in critical aquifer recharge areas.  
22.94.050 Critical area report – Additional requirements for critical aquifer recharge areas.  
22.94.060 Performance standards – General requirements.  
22.94.070 Performance standards – Specific uses.  
22.94.080 Uses prohibited from critical aquifer recharge areas.

**22.94.010 Critical aquifer recharge areas designation.**

Critical aquifer recharge areas (CARAs) are those areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2). CARAs 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 10-year time of ground water travel or boundaries established using alternate criteria approved by the Washington State 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 that have been designated by the U.S. Environmental Protection Agency pursuant to the Federal Safe Drinking Water 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 Chapter 173-100 WAC.

(d) Special Protection Areas. Special protection areas are those areas defined by WAC 173-200-090.

(e) Moderately or Highly Vulnerable Aquifer Recharge Areas. Aquifer recharge areas that are moderately or highly vulnerable to degradation or depletion because of hydrogeologic characteristics are those areas delineated by a hydrogeologic study prepared in accordance with the state Department of Ecology guidelines.

(f) Moderately or Highly Susceptible Aquifer Recharge Areas. Aquifer recharge areas moderately or highly susceptible to degradation or depletion because of hydrogeologic characteristics are those areas meeting the criteria established by the state Department of Ecology. (Ord. 1375 § 3, 2005).

**22.94.020 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. (Ord. 1375 § 3, 2005).

**22.94.030 Location and designation of critical aquifer recharge areas.**

The entire city is located within the Clover-Chambers Creek Groundwater Management Area, which has a critical recharging effect on the Tacoma and Clover-Chambers Creek Aquifers. The EPA Region X has designated the Clover-Chambers Creek Aquifer a sole source aquifer. (Ord. 1375 § 3, 2005).

**22.94.040 Activities allowed in critical aquifer recharge areas.**

The following activities are allowed in critical aquifer recharge areas pursuant to FMC 22.94.010 and do not require submission of a critical area report:

The Fircrest Municipal Code is current through Ordinance 1738, passed March 25, 2025.

**Commented [DJ10]:** This is a frequently encountered "artifact." Ss. (2) is now the definition of "city."

**Commented [DJ11]:** Please see suggested amendments to definitions appended at the end- a definition of WHPA is now included in the WAC.

**Commented [DJ12]:** SSAs are listed individually as one of the examples of CARAs in WAC 365-190-100(4)(b)(iii). But they are also a type of special protection district under WAC 173-200-090, & within the special protection definition. To avoid confusion we suggest listing SSA as an individual feature rather than a subset of special protection districts, even though it appears within that WAC.

**Commented [DJ13]:** This WAC describes features (including SSAs) as "characteristics to guide designation of a special protection district" & states they "shall include, but not be limited to" the listed features. So this isn't a definition but more a description.

**Commented [DJ14]:** While this section states that EPA has designated the SSA, it does not state that the City has designated it, in turn, as a CARA. In *Walla Walla*, seminal case law for CARAs, the GMHB pointed out a 3-prong test for CARAs responsibilities: classify, designate, & protect (per descriptions in WAC 365-190-100). The City should actually say the SSA is its designated CARA (or, because one tiny corner of the city appears to be outside of the SSA, instead say the entire city is designated).

**Commented [DJ15]:** The official name is not Clover-Chambers Creek Aquifer but Central Pierce County Aquifer Area SSA. See [https://experience.arcgis.com/experience/1bfab371d71e4b868fc9ae7df62a16fe#data\\_s=id%3AdataSource\\_5-Sole\\_Source\\_Aquifers\\_August\\_2019\\_7337%3A75](https://experience.arcgis.com/experience/1bfab371d71e4b868fc9ae7df62a16fe#data_s=id%3AdataSource_5-Sole_Source_Aquifers_August_2019_7337%3A75)

(a) Construction of structures and improvements, including additions, resulting in less than five percent or 2,500 square feet (whichever is greater) total site impervious surface area that does not result in a change of use or increase the use of a hazardous substance.

(b) Development and improvement of parks, recreation facilities, open space, or conservation areas resulting in less than five percent total site impervious surface area that do not increase the use of a hazardous substance.

(c) On-site domestic septic systems releasing less than 14,500 gallons of effluent per day and that are limited to a maximum density of one system per one acre, except as prohibited under FMC Title 20, (Ord. 1375 § 3, 2005).

**22.94.050 Critical area report – Additional requirements for critical aquifer recharge areas.**

In addition to the general critical area report requirements of FMC 22.92.160, critical area reports for critical aquifer recharge areas must meet the requirements of this section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

(a) Preparation by a Qualified Professional. An aquifer recharge area critical area report shall be prepared by a qualified professional who is a hydrogeologist, geologist, or engineer, who is licensed in the state of Washington and has experience in preparing hydrogeologic assessments.

(b) Hydrogeologic Assessment. For all proposed activities to be located in a critical aquifer recharge area, a critical area report shall contain a level one hydrogeological assessment. A level two hydrogeologic assessment shall be required for any of the following proposed activities:

- (1) Activities that result in five percent or more impervious site area;
- (2) Activities that divert, alter, or reduce the flow of surface or ground waters, of otherwise reduce the recharging of the aquifer;
- (3) The use of hazardous substances, other than household chemicals used according to the directions specified on the packaging for domestic applications;
- (4) The use of injection wells, including on-site septic systems, except those domestic septic systems releasing less than 14,500 gallons of effluent per day and that are limited to a maximum density of one system per one acre, except as prohibited by FMC Title 20, or
- (5) Any other activity determined by the director likely to have an adverse impact on ground water quality or quantity or on the recharge of the aquifer.

(c) Level One Hydrogeologic Assessment. A level one hydrogeologic assessment shall include the following site- and proposal-related information at a minimum:

- (1) Available information regarding geologic and hydrogeologic characteristics of the site including the surface location of all critical aquifer recharge areas located on site or immediately adjacent to the site, and permeability of the unsaturated zone;
- (2) Ground water depth, flow direction, and gradient based on available information;
- (3) Currently available data on wells and springs within 1,300 feet of the project area;
- (4) Location of other critical areas, including surface waters, within 1,300 feet of the project area;
- (5) Available historic water quality data for the area to be affected by the proposed activity; and
- (6) Best management practices proposed to be utilized.

(d) Level Two Hydrogeologic Assessment. A level two hydrogeologic assessment shall include the following site- and proposal-related information at a minimum, in addition to the requirements for a level one hydrogeological assessment:

**Commented [DJ16]:** Would the City allow new OSS (septic) systems? Are there still "legacy" septic systems? From FMC 20.04.010 it looks like sewer has been required since perhaps 1988?

**Commented [DJ17]:** See suggested amendment in definitions.

**Commented [DJ18]:** This appears to conflict with .040 above, which calls out exceptions.

**Commented [DJ19]:** Same comment as septic above.

**Commented [DJ20]:** What is the significance of the 1,300' measure?

- (1) Historic water quality data for the area to be affected by the proposed activity compiled for at least the previous five-year period;
- (2) Ground water monitoring plan provisions;
- (3) Discussion of the effects of the proposed project on the ground water quality and quantity, including:
  - (A) Predictive evaluation of ground water withdrawal effects on nearby wells and surface water features; and
  - (B) Predictive evaluation of contaminant transport based on potential releases to ground water; and
- (4) A spill plan that identifies equipment and/or structures that could fail, resulting in an impact. Spill plans shall include provisions for regular inspection, repair, and replacement of structures and equipment that could fail. (Ord. 1375 § 3, 2005).

**22.94.060 Performance standards – General requirements.**

(a) Activities may only be permitted in a critical aquifer recharge area if the applicant can show that the proposed activity will not cause contaminants to enter the aquifer and that the proposed activity will not adversely effect the recharging of the aquifer.

(b) The proposed activity must comply with the water source protection requirements and recommendations of the U.S. Environmental Protection Agency, Washington State Department of Health, and Tacoma-Pierce County Health Department.

(c) The proposed activity must be designed and constructed in accordance with the Department of Ecology Stormwater Management Manual for Western Washington. (Ord. 1375 § 3, 2005).

**22.94.070 Performance standards – Specific uses.**

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

- (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.

(b) Vehicle Repair and Servicing.

- (1) Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair

**Commented [DJ21]:** Suggest removing. Source water protection is not a performance measure for land uses, it is a planning requirement applicable to public water purveyors. The SWP provisions of the federal Safe Drinking Water Act are embodied in [WAC 246-290-135](#); but this would apply only to the City in its role as a water purveyor, for managing its wells' sanitary control areas & developing/implementing a wellhead protection program. It does not, however, apply directly to land-use actions within the WHPA.

and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.

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

(c) Residential Use of Pesticides and Nutrients. Application of household pesticides, herbicides, and fertilizers shall not exceed times and rates specified on the packaging.

(d) Use of Reclaimed Water for Surface Percolation or Direct Recharge. Water reuse projects for reclaimed water must be in accordance with the adopted water or sewer comprehensive plans that have been approved by the state Departments of Ecology and Health.

(1) Use of reclaimed water for surface percolation must meet the ground water recharge criteria given in RCW 90.46.010(10) and 90.46.080(1). The state Department of Ecology may establish additional discharge limits in accordance with RCW 90.46.080(2).

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

(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.

**Statutes, Regulations, and Guidance Pertaining to  
 Ground-Water-Impacting Activities**

| Activity                                                                                                                                                                                                    | Statute – Regulation – Guidance                                                                                                   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| Aboveground Storage Tanks                                                                                                                                                                                   | WAC 173-303-640                                                                                                                   |
| Automobile Washers                                                                                                                                                                                          | Chapter 173-216 WAC, Best Management Practices for Vehicle and Equipment Discharges (Washington Department of Ecology WQ-R-95-56) |
| Belowground Storage Tanks                                                                                                                                                                                   | Chapter 173-360 WAC                                                                                                               |
| Chemical Treatment Storage and Disposal Facilities                                                                                                                                                          | WAC 173-303-182                                                                                                                   |
| Hazardous Waste Generator (Boat Repair Shops, Biological Research Facility, Dry Cleaners, Furniture Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, etc.) | Chapter 173-303 WAC                                                                                                               |
| Injection Wells                                                                                                                                                                                             | 40 CFR Parts 144 and 146, 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                                                                                              |
| Solid Waste Handling and Recycling Facilities                                                                                                                                                               | Chapter 173-304 WAC                                                                                                               |

(Ord. 1375 § 3, 2005).

The Fircrest Municipal Code is current through Ordinance 1738, passed March 25, 2025.

**Commented [DJ22]:** This table is generally from the old Ecology guidance doc. It is included in many local codes to indicate best practices. Even though the guidance has been replaced, it's fine to leave it in here; but the City might want to look at whether many of these things would be activities that would ever occur in there given its small size & limited zoning.

**22.94.080 Uses prohibited from critical aquifer recharge areas.**

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

(a) Landfills. Landfills, including hazardous or dangerous waste, municipal solid waste, special waste, wood waste, and inert and demolition waste landfills;

(b) Underground Injection Wells. Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells;

(c) Mining.

(1) Metals and hard rock mining; and

(2) Sand and gravel mining, prohibited from critical aquifer recharge areas determined to be highly susceptible or vulnerable;

(d) Wood Treatment Facilities. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);

(e) Storage, Processing, or Disposal of Radioactive Substances. Facilities that store, process, or dispose of radioactive substances; and

(f) Other Prohibited Uses or Activities.

(1) Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source;

(2) Activities that would significantly reduce the recharge to aquifers that are a source of significant baseflow to a regulated stream; and

(3) Activities that are not connected to an available sanitary sewer system, prohibited from critical aquifer recharge areas associated with sole source aquifers, (Ord. 1375 § 3, 2005).

**Commented [DJ23]:** Some of the EPA UIC classifications have changed over time. Please review these, particularly the Type 5 subclasses, against WAC 173-218-040 & [EPA information](#) to be certain it's still accurate & that it doesn't conflict with stormwater handling devices allowed under the Ecology manual.

**Commented [DJ24]:** Does the City have existing medical/dental offices, or would any of its commercial zones allow them? They do involve low-level radioactive waste from x-rays. Leavenworth has worked up this exception language (updated to correct citation): "Storage, processing, or disposal of radioactive substances, except for medical equipment or materials that are used within a medical facility, and medical waste as defined in [RCW 70A.390.020](#) that is generated within a medical facility and held for proper disposal."

**Commented [DJ25]:** This rounds back to the septic question, since this would basically render nonconforming any existing "legacy" systems in the city.

As noted in comment above, we are also including suggested modifications to selected definitions in Chapter 22.98. The following definitions were reviewed, even where no changes are suggested.

**22.98.079 Aquifer.**

“Aquifer” means a geologic formation that contains sufficient saturated permeable material to conduct ground water and to yield sufficient quantity of water to serve as a private or public water supply. (Ord. 1375 § 9, 2005).

**22.98.080 Aquifer, confined.**

“Aquifer, confined” means an aquifer bounded above and below by beds of distinctly lower permeability than that of the aquifer itself and that contains ground water under sufficient pressure for the water to rise above the top of the aquifer. (Ord. 1375 § 9, 2005).

**22.98.081 Aquifer recharge areas.**

“Aquifer recharge areas” means areas that, due to the presence of certain soils, geology, and surface water, act to recharge ground water by percolation. (Ord. 1375 § 11, 2005; Ord. 1246 § 27, 2000).

**22.98.082 Aquifer, sole source.**

“Aquifer, sole source” means 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 50 percent or more of the drinking water for an area without a sufficient replacement available. (Ord. 1375 § 9, 2005).

**22.98.083 Aquifer susceptibility.**

“Aquifer susceptibility” means the ease with which contaminants can move from the land surface to the aquifer based solely on the types of surface and subsurface materials in the area. Susceptibility usually defines the rate at which a contaminant will reach an aquifer unimpeded by chemical interactions with the vadose zone media. (Ord. 1375 § 9, 2005).

**22.98.084 Aquifer, unconfined.**

“Aquifer, unconfined” means an aquifer not bounded above by a bed of distinctly lower permeability than that of the aquifer itself and containing ground water under pressure approximately equal to that of the atmosphere. This term is synonymous with the term “water table aquifer.” (Ord. 1375 § 12, 2005; Ord. 1246 § 27, 2000).

**22.98.095 Best available science.**

“Best available science” means current scientific information used in the process to designate, protect, or restore critical areas, which is derived from a valid scientific process as defined by WAC 365-195-900 through 365-195-925. Sources of the best available science are included in Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas published by the Washington State Department of Community, Trade and Economic Development. (Ord. 1375 § 9, 2005).

**22.98.096 Best management practices (BMPs).**

“Best management practices (BMPs)” means conservation practices or systems of practices and management measures that:

- (a) Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, and sediment;

The Firecrest Municipal Code is current through Ordinance 1738, passed March 25, 2025.

**Commented [DJ26]:** This term doesn’t appear to be used within the code.

**Commented [DJ27]:** This document dates to 2002. Please ask your Commerce planner whether it has been updated or is still in effect as is.

(b) Minimize adverse impacts to surface water and ground water flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;

(c) Protect trees and vegetation designated to be retained during and following site construction and use native plant species appropriate to the site for revegetation of disturbed areas; and

(d) Provide standards for proper use of chemical herbicides within critical areas. (Ord. 1375 § 14, 2005; Ord. 1246 § 27, 2000).

#### **22.98.102 Buffer.**

"Buffer" means an area contiguous or adjacent to a critical area that provides a naturally vegetated zone surrounding a critical area. A buffer provides for the continued maintenance, function, and structural stability of a critical area. (Ord. 1246 § 27, 2000).

#### **22.98.154 Compensation project.**

"Compensation project" means actions necessary to replace project-induced critical area and buffer losses, including land acquisition, planning, construction plans, monitoring, and contingency actions. (Ord. 1375 § 9, 2005).

#### **22.98.155 Compensatory mitigation.**

"Compensatory mitigation" means replacing project-induced losses or impacts to a critical area, and includes, but is not limited to, the following:

Restoration – Actions performed to reestablish wetland functional characteristics and processes that have been lost by alterations, activities, or catastrophic events within an area that no longer meets the definition of a wetland.

Creation – Actions performed to intentionally establish a wetland at a site where it did not formerly exist.

Enhancement – Actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality.

Preservation – Actions taken to ensure the permanent protection of existing, high-quality wetlands. (Ord. 1375 § 9, 2005).

#### **22.98.166 Conservation easement.**

"Conservation easement" means 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. (Ord. 1375 § 9, 2005).

#### **22.98.179 Critical aquifer recharge area.**

"Critical aquifer recharge area" means 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)~~. (Ord. 1375 § 9, 2005).

#### **22.98.180 Critical area inventory maps.**

"Critical area inventory maps" means those maps and documents housed by the department which contain information on the general location of critical areas. (Ord. 1246 § 27, 2000).

#### **22.98.183 Critical areas.**

"Critical areas" includes the following areas and ecosystems:

The Fircrest Municipal Code is current through Ordinance 1738, passed March 25, 2025.

**Commented [DJ28]:** The WAC does not designate critical areas; the City does.

**Commented [DJ29]:** This refers to the BAS rule. Consider changing this to read "...areas designated by the City under the guidelines in WAC 365-190-100" or "...areas described in WAC 365-190-100(b)."

**Commented [DJ30]:** As noted above, this citation is now the "city" definition. The CARAs definition is in ss. (3). The wording here doesn't quite align with the CARAs definition as it sounds like it defines potable water.

**Commented [DJ31]:** We don't see this term used elsewhere in the code. Typically, a local jurisdiction would include a list of resource maps in the general standards (delimited by a statement they are an indication/resource & not a formal determination of location of individual critical areas). We often request that our SWAP map be included. We didn't see that this is included in Fircrest's code.

(a) Wetlands;

(b) Aquifer recharge areas;

(c) Fish and wildlife habitats;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas. (Ord. 1246 § 27, 2000).

**22.98.184 Critical area tract.**

“Critical area tract” means land held in private ownership and retained in an open condition in perpetuity for the protection of critical areas. Lands within this type of dedication may include, but are not limited to, portions and combinations of forest habitats, grasslands, shrub steppe, on-site watersheds, 100-year floodplains, shorelines or shorelines of statewide significance, riparian areas, and wetlands. (Ord. 1375 § 9, 2005).

**22.98.312 Geologist.**

“Geologist” means a person who has earned a bachelor’s degree in geology and has at least one year of professional experience as a practicing geologist. (Ord. 1246 § 27, 2000).

**22.98.315 Geotechnical engineer.**

“Geotechnical engineer” means a practicing, geotechnical civil engineer licensed as a professional civil engineer with the state of Washington with at least four years’ experience in landslide evaluation, soils and soils hydrology. (Ord. 1246 § 27, 2000).

**2.98.326 Ground water.**

“Ground water” means water in a saturated zone or stratum beneath the surface of land or a surface water body. (Ord. 1375 § 9, 2005).

**22.98.327 Ground water management area.**

“Ground water management area” means a specific geographic area or subarea designated pursuant to Chapter [173-100](#) WAC for which a ground water management program is required. (Ord. 1375 § 24, 2005; Ord. 1246 § 27, 2000).

**22.98.328 Ground water management program.**

“Ground water management program” means a comprehensive program designed to protect ground water quality, to ensure ground water quantity, and to provide for efficient management of water resources while recognizing existing ground water rights and meeting future needs consistent with local and state objectives, policies, and authorities within a designated ground water management area or subarea and developed pursuant to Chapter [173-100](#) WAC. (Ord. 1375 § 9, 2005).

**22.98.329 Ground water, perched.**

“Ground water, perched” means ground water in a saturated zone is separated from the underlying main body of ground water by an unsaturated rock zone. (Ord. 1375 § 9, 2005).

**22.98.350 Hydrologic soil groups.**

“Hydrologic soil groups” means soils grouped according to their runoff-producing characteristics under similar storm and cover conditions. Properties that influence runoff potential are depth to seasonally high water table, intake rate and permeability after prolonged wetting, and depth to a low permeable layer. Hydrologic soil groups are normally used in equations that estimate runoff from rainfall, but can be used to estimate a rate of water transmission in soil. There are four hydrologic soil groups:

**Commented [DJ32]:** This is an aspect of NRCS mapping that we sometimes point local jurisdictions to for CARAs information & as a potential basis for designation where BAS is lacking. That doesn’t apply to Fircrest, & it doesn’t appear this term is used elsewhere in the code.

Low runoff potential and a high rate of infiltration potential;

Moderate infiltration potential and a moderate rate of runoff potential;

Slow infiltration potential and a moderate to high rate of runoff potential; and

High runoff potential and very slow infiltration and water transmission rates. (Ord. 1375 § 9, 2005).

**22.98.447 Mitigation.**

"Mitigation" means avoiding, minimizing, or compensating for adverse critical areas impacts. Mitigation, in the following sequential order of preference, is:

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

Mitigation for individual actions may include a combination of the above measures. (Ord. 1375 § 30, 2005; Ord. 1246 § 27, 2000).

**22.98.544 Porous soil types.**

"Porous soil types" means 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. (Ord. 1375 § 9, 2005).

**22.98.545 Potable water.**

"Potable water" means water that is safe and palatable for human use. (Ord. 1375 § 9, 2005).

**22.98.579 Qualified professional.**

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

- (a) A qualified professional for habitats or wetlands must have a degree in biology and professional experience related to the subject species.
- (b) A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.
- (c) A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer,

The Fircrest Municipal Code is current through Ordinance 1738, passed March 25, 2025.

**Commented [DJ33]:** See comment above relating to mitigation applicability to CARAs.

**Commented [DJ34]:** This term doesn't appear to be used within the code.

or other scientist with experience in preparing hydrogeologic assessments. (Ord. 1375 § 35, 2005; Ord. 1246 § 27, 2000).

**22.98.582 Reasonable use alternatives.**

“Reasonable use alternatives” means alternatives to the proposed project which will result in minimum feasible alteration or impairment of functional characteristics including contours, vegetation, fish and wildlife resources, ground water and hydrological conditions. (Ord. 1246 § 27, 2000).

**22.98.583 Recharge.**

“Recharge” means the process involved in the absorption and addition of water to ground water. (Ord. 1375 § 9, 2005).

**22.98.612 Scientific process.**

“Scientific process” means a valid scientific process that produces reliable information useful in understanding the consequences of a decision. The characteristics of a valid scientific process are as follows:

- (a) Peer Review. The information has been critically reviewed by other qualified scientific experts in that scientific discipline.
- (b) Methods. The methods that were used are standardized in the pertinent scientific discipline or the methods have been appropriately peer-reviewed to ensure their reliability and validity.
- (c) Logical Conclusions and Reasonable Inferences. The conclusions presented are based on reasonable assumptions supported by other studies and are logically and reasonably derived from the assumptions and supported by the data presented.
- (d) Quantitative Analysis. The data have been analyzed using appropriate statistical or quantitative methods.
- (e) Context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.
- (f) References. The assumptions, techniques, and conclusions are well referenced with citations to pertinent existing information. (Ord. 1375 § 40, 2005; Ord. 1322 § 18, 2003; Ord. 1246 § 27, 2000).

**22.98.660 Special protection areas.**

“Special protection areas” means 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. (Ord. 1375 § 42, 2005; Ord. 1246 § 27, 2000).

**22.98.749 Water table.**

“Water table” means 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. (Ord. 1375 § 9, 2005).

**22.98.752 Well.**

“Well” means a bored, drilled, or driven shaft, or a dug hole whose depth is greater than the largest surface

**Commented [DJ35]:** We suggest that, as applied to CARAs, a qualified professional be someone who is a currently licensed Washington State geologist holding a current specialty license in hydrogeology. A general practice geologist or PE, or one whose specialty lies in another area, may or may not have appropriate background to perform this work. (See Ch. 18.220 RCW & Ch. 308-15 WAC, generally, & specifically WAC 308-15-053 & -055.)

**Commented [DJ36]:** See comment above re standalone SSA status.

dimension for the purpose of withdrawing or injecting water or other liquids. (Ord. 1375 § 9, 2005).

**22.98.753 Wellhead protection area (WHPA).**

"Wellhead protection area (WHPA)" means the portion of a zone of contribution for a well, wellfield, or spring, as defined using criteria established by the Washington State Department of Ecology. (Ord. 1375 § 48, 2005; Ord. 1246 § 27, 2000).

**22.98.785 Zone of contribution.**

"Zone of contribution" means the area surrounding a well or spring that encompasses all areas or features that supply ground water recharge to the well or spring. (Ord. 1375 § 9, 2005).

**Commented [DJ37]:** This definition is problematic. For purposes of drinking water regulation, neither "well" or "wellhead" is defined in state law or the federal Safe Drinking Water Act. We've encountered this language in local codes before, which looks like it was probably drawn from the definition of "water well" in RCW 18.104.020 & WAC 173-162-030 (perhaps also the definition of "constructing/ construct a well" in those same sections). That particular definition relates to licensure of well drillers & construction regulations for numerous well types & purposes that exceed drinking water extraction. By including "injecting," the definition's scope is considerably changed from a drinking water well to include such things as underground injection wells. These are quite different from drinking water wells & are not regulated equally. Rather than using this definition, we typically suggest relying on plain meaning for this term (as DOH does) & remove this definition entirely. In your case, this is already covered in the "common dictionary" clause in FMC 22.98.003(e).

**Commented [DJ38]:** This is inaccurate; Ecology does not determine WHPA criteria. Please substitute the definition that was added to WAC 365-100-030 in 2023:  
"Protective areas associated with public drinking water sources established by water systems and approved or assigned by the state department of health."

**Commented [DJ39]:** This is a legitimate term in relation to wellhead protection areas, but we don't see it used elsewhere in the code.



**22.98.179 Critical aquifer recharge area.**

“Critical aquifer recharge area” means 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(23). (Ord. 1375 § 9, 2005).

**22.98.285 Fish and wildlife habitat conservation areas.**

“Fish and wildlife habitat conservation areas” means areas necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created as designated by WAC 365-190-080(5). These areas include:

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

Fish and wildlife habitat conservation areas do not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company. (Ord. 1375 § 18, 2005; Ord. 1246 § 27, 2000).

**22.98.298 Frequently flooded areas.**

“Frequently flooded areas” means lands in the floodplain subject to a one percent or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance, and attenuation functions, as determined by the director in accordance with WAC 365-190-080(3). Frequently flooded areas can also include areas subject to flooding due to high groundwater. Frequently flooded areas perform important hydrologic functions and may present a risk to persons and property. Classifications of frequently flooded areas include, at a minimum, the 100-year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program. (Ord. 1375 § 9, 2005).

**22.98.623 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, debris flows, lahars, or tsunamis.

**Commented [TS1]:** WAC 360-19-030 (18) “Seismic hazard areas” are 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.

**Commented [TS2]:** The seismic hazard definition does not have a WAC reference like the frequently flooded areas, fish and wildlife conservation areas, and the critical aquifer recharge areas. Is that because there is a WAC reference in the geologically hazardous areas definition (not shown here) so the WAC reference is not repeated in the individual hazard types? There is not another hazard type listed in this section to do a comparison to.



State of Washington  
**DEPARTMENT OF FISH AND WILDLIFE**

Coastal Region • Region 6 • 48 Devonshire Road, Montesano, WA 98563-9618  
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June 5th, 2026

City of Fircrest  
ATTN: Kim Gunderson, Planning Consultant  
115 Ramsdell Street  
Fircrest, WA 98466

**Subject: WDFW Comments on the City of Fircrest's 2026 Draft Critical Areas Ordinance Update,  
Planview Submittal 2026-S-12684**

Dear Kim Gunderson,

The Washington Department of Fish and Wildlife (WDFW) is dedicated to preserving, protecting, and perpetuating the state's fish, wildlife, and ecosystems while providing sustainable fish and wildlife recreational and commercial opportunities. In recognition of our responsibilities, we submit the following comments on the 2026 draft critical areas ordinance update for the City of Fircrest as part of the current periodic update under the Growth Management Act (GMA), acknowledging that other comments may be offered in the future. We strive to maintain contact throughout this update process and look forward to future engagement opportunities.

**City of Fircrest – Title 22 Land Development**

**Table 1.** WDFW recommended changes to the proposed CAO language. Policy language suggestions and their legal implications should be vetted by the jurisdiction receiving them. The policy language included in the second column is pulled from the draft amendments for the critical area code provided by the county, including new code language suggestions that are struck through and underlined in black.

| Policy Number                                         | Policy Language<br>(with WDFW suggestions in red)                                                                                                                                                                                                                                                                                                                                                                                                | WDFW comment                                                                                                                                                                                                                                                                                                                                                                 |
|-------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Chapter 22.92 – Critical Areas</b>                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                              |
| 22.92.110 (c) (5)<br>(D)<br><br>Allowed<br>Activities | Trails proposed to be located in <del>wetlands,</del><br><del>fish and wildlife habitat conservation</del><br><del>areas, or</del> <u>the outer 25 percent of</u><br><u>wetland or fish and wildlife habitat</u><br><u>conservation areas</u> <del>buffers which are,</del><br><del>should be limited to permeable surfaces</del><br><del>no more than five feet wide, located only</del><br><del>in the outer 25 percent of a buffer, and</del> | As currently written, this provision could be interpreted to allow trail placement within fish and wildlife habitat conservation areas. WDFW recommends clarifying that trail development be limited to the outer 25 percent of the associated critical area buffer.<br><br>WDFW encourages careful siting and design of trails to avoid impacts to highly sensitive habitat |

|                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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|                                         | located to avoid removal of significant trees, <u>old growth trees, or mature trees.</u> ;                                                                                                                                                                                                                                                                                                                                                                             | <p>features. This includes, but is not limited to, minimizing removal of mature or old-growth vegetation and avoiding stream crossings wherever practicable unless appropriately sized using the <a href="#">Water Crossing Design Guidelines</a>, as amended.</p> <p>In addition, WDFW recommends the City include a definition of "significant tree" that recognizes ecological function and tree size. WDFW defines <b>significant trees</b> within its <a href="#">Priority Habitats and Species (PHS)</a> framework as vital structural features (both living and dead standing "snags") that provide necessary food, cover, and nesting/roosting cavities for priority wildlife species.</p> <p>Trees provide critical habitat elements including nesting, foraging, cover, thermal regulation, water quality protection, and habitat connectivity. A definition based solely on diameter or species may overlook trees that provide substantial fish and wildlife benefits. WDFW encourages adoption of a definition that incorporates trees size as well as habitat value, structural complexity, and ecosystem function when evaluating tree retention and protection measures.</p> |
| 22.92.110 (c) (7)<br>Allowed Activities | Chemical Applications. The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary, as approved by the city; provided, that their use shall be restricted in accordance with <del>State Department of Fish and Wildlife management recommendations and</del> the regulations of the State Department of Agriculture, the State Department of Ecology, and the U.S. Environmental Protection Agency; | WDFW does not maintain a comprehensive guidance document specific to chemical application in critical areas. For chemical applications in Fish and Wildlife Habitat Conservation Areas (FWHCAs) specifically, please refer to WDFW's <a href="#">Riparian Ecosystems, Volume 2: Management Recommendations</a> and <a href="#">PHS management recommendations</a> . WDFW generally recommends that chemical use be limited, appropriately managed, and consistent with applicable local, state, and federal regulations and permitting requirements.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 22.92.190<br>Mitigation Sequencing      | Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an                                                                                                                                                                                                                                                                                                                   | WDFW requests that the full title of "fish and wildlife habitat conservation areas" be specified within this code to align with <a href="#">WAC 365-190-130</a> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

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| <p>alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following sequential order of preference:</p> <p>(a) Avoiding the impact altogether by not taking a certain action or parts of an action;</p> <p>(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;</p> <p>(c) Rectifying the impact to wetlands, critical aquifer recharge areas, <u>geologically hazardous areas</u>, frequently flooded areas, and <b>fish and wildlife</b> habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;</p> <p>(d) Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;</p> <p>(e) Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;</p> <p>(f) Compensating for the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and <b>fish and wildlife</b> habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and</p> <p>(g) Monitoring the hazard or other required mitigation and taking remedial action when necessary. <u>Monitoring shall occur at least annually for five (5) years, unless best available science would inform otherwise. A monitoring report shall be provided to the City following each monitoring event and shall document the success of the mitigation against</u></p> | <p>WDFW recommends applying this clarification wherever the term “habitat conservation areas” appears in Chapter 22.92 – Critical Areas Fircrest municipal code (FMC). This recommendation would also apply to proposed code updates in sections <b>FMC 22.92.290 (c)(1)</b>, <b>FMC 22.92.320 (a)(3)</b> and <b>FMC 22.92.330 (a)(3)</b>.</p> |
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|--|--------------------------------------------------------------------------------|--|
|  | performance standards established in the mitigation plan accepted by the City. |  |
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| Policy Number                                                                        | Policy Language<br>(with WDFW suggestions in red)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | WDFW comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| <b>Chapter 22.97 – Fish and Wildlife Habitat Conservation Areas</b>                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 22.97.010 (a)(2)<br><br>Designation of fish and wildlife habitat conservation areas. | State Priority Habitats and Areas Associated with State Priority Species. Priority habitats and species are considered to be priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the state Department of Fish and Wildlife's <b>Priority Habitats and Species program and maps.</b> | WDFW requests a direct reference to our agency's <a href="#">Priority Habitats and Species (PHS) program</a> . The PHS program is the Agency's primary means of transferring fish and wildlife information from our resource experts to local governments, landowners and others to protect habitat. Including a direct reference helps align the City with <a href="#">WAC 365-190-130 (4)(a)</a> as a source of current information.                                                                                                                                                                                                                                                             |
| 22.97.010 (a)(5)<br><br>Designation of fish and wildlife habitat conservation areas. | Waters of the State. Waters of the state include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in WAC 222-16-031 (or WAC 222-16-030 depending on classification used).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | WDFW recommends the City have a clearly documented and transparent water typing process. Having an established process available helps WDFW align and participate in a way that is most meaningful to the City of Fircrest and our shared natural resources goals.<br><br>WDFW further notes that, because areas within the City's jurisdiction are designated as non-forested lands, any change to a water body's classification would require a formal water type modification through DNR pursuant to <a href="#">WAC 222-16-030</a> . The City should be aware that DNR provides water type modification forms applicable to both forested and non-forested lands found <a href="#">here</a> . |

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|  |  | <p>The City's CAO utilizes the State Interim Forest Practice Water Typing in WAC 222-16-031 and <a href="#">WAC 222-16-030</a> to define stream types. <a href="#">WAC 222</a> is for forest practices intended to be used for water typing in forested areas of the state. The maps developed for these water types may be unreliable within urban areas due to different land uses and how other applicable local or state code requirements are defined or applied. <a href="#">WAC 365-190-130</a> (4)(f)(i) states that jurisdictions should not rely solely on WAC 222-16-030 or -031 for the mapping of stream types for the purpose of regulating land uses. Please note that WAC 222-16's recent updates became effective March 1, 2026.</p> <p>Although there is currently not a single best statewide hydrography data set that WDFW can recommend at this time, we do highly encourage local jurisdictions to begin discussing a more reliable alternative. WDFW encourages the City to follow the updates from Ecology's Washington State Hydrography Dataset Program (WASHD). More information about this effort to create and sustain a consistent and complete statewide hydrography data set can be found <a href="#">here</a>. This WASHD effort aims to update the National Hydrography Dataset (NHD) for watercourse mapping to help ensure all state streams and associated riparian management zone (RMZ) natural resources are accurately identified.</p> <p>One effective approach is to adopt WDFW's Site Potential Tree Height (SPTH200) <a href="#">GIS mapping tool</a>, which is based on NHD data. The SPTH200 tool reflects the best available science and aligns with WDFW's <a href="#">Volume 2: Management Recommendations</a>, supporting the protection of the full range of functions and values for all streams provided by RMZs. Additional SPTH200 resources can be found on WDFW's <a href="#">PHS publications</a> page.</p> |
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|                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | WDFW recommends that, if the City elects to continue using the Washington Department of Natural Resources (DNR) Forest Practices water typing system, it review recent updates to <a href="#">WAC 222-16-030</a> , the adoption of <a href="#">WAC 222-16-0301</a> , and the repeal of WAC 222-16-031. These changes revise the definitions of Type S and Type F waters and their associated RMZs, resulting in more precise classifications and strengthened ecological protections within the context of forest practices.                                  |
| 22.97.010 (c)<br><br>Designation of fish and wildlife habitat conservation areas. | Mapping. The approximate location and extent of <b>fish and wildlife</b> habitat conservation areas are shown on the adopted critical area map contained within the comprehensive plan. In addition, the following maps are hereby adopted by reference and declared part of this chapter:<br><br>(1) Washington State Department of Fish and Wildlife Priority Habitat and Species maps;<br>(2) Washington State Department of Natural Resources, Official Water Type Reference maps, as amended;<br>(3) Washington State Department of Natural Resources Natural Heritage Program mapping data;<br>(4) Anadromous and resident salmonid distribution maps contained in the Habitat Limiting Factors reports published by the Washington Conservation Commission; and<br>(5) Washington State Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area maps. | As mentioned in <b>FMC 22.97.010 (b)</b> , WDFW is supportive of the inclusion of the PHS program within this code.<br><br>Similar to WDFW's above, WDFW cautions when using the State Forest Practice Water Typing in WAC 222-16 for determining water typing, since <a href="#">WAC 222</a> is for forest practices intended to be used for water typing in forested areas of the state. Please see the comments in section <b>FMC 22.97.010 (a) (5)</b> in reference to Water type modification processes and suggested resources for the City to utilize. |
| 22.97.020<br><br>Critical area report – Additional                                | Critical area report – Additional requirements for <b>fish and wildlife</b> habitat conservation areas.<br>In addition to the general critical area report requirements of <b>FMC 22.92.160</b> ,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | As discussed in FMC 22.92.190 comments above, WDFW requests that the full title of “fish and wildlife habitat conservation areas” be specified within this code to align with <a href="#">WAC 365-190-130</a> .                                                                                                                                                                                                                                                                                                                                               |

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| requirements for <b>fish and wildlife</b> habitat conservation areas.                                                           | critical area reports for <b>fish and wildlife</b> habitat conservation areas must meet the requirements of this section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.                                                                                                                                               | WDFW recommends applying this clarification wherever the term “habitat conservation areas” appears in Chapter 22.97 – Fish and wildlife habitat conservation areas code.                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 22.97.020 (c)(3)<br><br>Critical area report – Additional requirements for <b>fish and wildlife</b> habitat conservation areas. | A discussion of any federal, state, or local special management recommendations, including Washington State Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;                                                                                                                                     | WDFW appreciates the inclusion of our agency’s management recommendations in the habitat assessment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 22.97.030 (c)<br><br>Performance standards – General requirements.                                                              | Mitigation and Contiguous Corridors. Mitigation sites shall be located to reserve or achieve contiguous wildlife habitat corridors in accordance with a mitigation plan that is part of an approved critical area report to minimize the isolating effects of development on habitat areas, so long as mitigation of aquatic habitat is located within the same aquatic ecosystem as the area disturbed.         | WDFW supports this code. This aligns with our agency's mission and <a href="#">land use priorities</a> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 22.97.030 (g)(3)<br><br>Performance standards – General requirements.                                                           | Habitat Buffer Averaging. The director may allow the recommended habitat area buffer width to be reduced in accordance with a critical area report, the best available science, and the management recommendations issued by the Washington State Department of Fish and Wildlife, only if:<br><br>(A) It will not reduce stream or habitat functions;<br><br>(B) It will not adversely affect salmonid habitat; | WDFW does not generally recommend buffer width averaging for riparian management zones (RMZ) or riparian habitat areas. Buffer averaging does not align with WDFW’s scientific recommendations ( <a href="#">Vol. 2</a> ), because the specified RMZ represents the minimum width required to ensure no net loss of all ecological values and functions of that area, including water quality, wildlife habitat, and flood mitigation. Reducing the buffer in any area below the RMZ may result in a loss of these critical functions. RMZ widths are provided in WDFW’s <a href="#">mapping resource</a> . |

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|                                                                                    | <p>(C) It will provide additional natural resource protection, such as buffer enhancement;</p> <p>(D) The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and</p> <p>(E) The buffer area width is not reduced by more than 25 percent in any location.</p>                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                            |
| <p>22.97.030 (h) (3)<br/>(C)<br/>Performance standards – General requirements.</p> | <p>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 habitat impacts.</p>                                                                                                                                                                                                                                                                                                                                                                                                                | <p>WDFW supports this code. This aligns with our agency's mission and <a href="#">land use priorities</a>. To support this, please see resources provided on WDFW's <a href="#">habitat connectivity website</a>.</p>                                                                                                                      |
| <p>22.97.030 (i) (1)<br/>Performance standards – General requirements.</p>         | <p>Land that is located wholly within a habitat conservation area or its buffer may not be subdivided.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p>WDFW supports this code. This aligns with our agency's mission and <a href="#">land use priorities</a>.</p>                                                                                                                                                                                                                             |
| <p>22.97.040 (a) (3)<br/>Performance standards – Specific habitats.</p>            | <p>Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (<del>WAC 232-12-292</del> <b>WAC 220-610-100</b>). Whenever activities are proposed adjacent to a verified nest territory or communal roost, a habitat management plan shall be developed by a qualified professional. Activities are adjacent to bald eagle sites when they are within 800 feet. The city shall verify the location of eagle management areas for each proposed activity. <del>Approval of the activity shall not occur prior to approval of the habitat management plan by the Washington State Department of Fish and Wildlife.</del></p> | <p>Bald eagles are no longer a State listed threatened species by WDFW. Our Agency recommends that the City work with the U.S. Fish and Wildlife Service to develop a management plan based on the federal <a href="#">Bald Eagle and Golden Eagle Protection Act</a> and associated <a href="#">eagle management</a> recommendations.</p> |

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| 22.97.040 (d) (1)<br><br>Performance standards – Specific habitats.                                       | Establishment of Riparian Habitat Areas.<br>Riparian habitat areas shall be established for habitats that include aquatic and terrestrial ecosystems that mutually benefit each other and that are located adjacent to rivers, perennial or intermittent streams, seeps, and springs.                                                                                                                                                                                                                                                                                                                                                                                                                                        | WDFW supports this code. This aligns with our agency's mission and <a href="#">land use priorities</a> .                                                                                                                                                                                                                                                          |  |                        |  |             |                        |                                                                                   |          |                                                                      |          |                                                                   |          |                                                                                  |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 22.97.040 (d) (2)<br><br>Performance standards – Specific habitats.                                       | <table><tr><td colspan="2">Riparian Habitat Area Widths.<br/>Recommended riparian habitat area widths are shown in the table below...</td></tr><tr><td colspan="2">Riparian Habitat Areas</td></tr><tr><td>Stream type</td><td>Recommended RHA widths</td></tr><tr><td>Type 1 and 2; or shorelines of the state, or shorelines of statewide significance</td><td>250 feet</td></tr><tr><td>Type 3; or other perennial or fish-bearing streams, 5 – 20 feet wide</td><td>200 feet</td></tr><tr><td>Type 3; or other perennial or fish-bearing streams, &lt; 5 feet wide</td><td>150 feet</td></tr><tr><td>Type 4 and 5; or intermittent streams and washes with low mass wasting potential</td><td>150 feet</td></tr></table> | Riparian Habitat Area Widths.<br>Recommended riparian habitat area widths are shown in the table below...                                                                                                                                                                                                                                                         |  | Riparian Habitat Areas |  | Stream type | Recommended RHA widths | Type 1 and 2; or shorelines of the state, or shorelines of statewide significance | 250 feet | Type 3; or other perennial or fish-bearing streams, 5 – 20 feet wide | 200 feet | Type 3; or other perennial or fish-bearing streams, < 5 feet wide | 150 feet | Type 4 and 5; or intermittent streams and washes with low mass wasting potential | 150 feet | Based on local, site-specific conditions for the City of Fircrest, WDFW commends and supports the riparian habitat area widths presented in the <b>Riparian Habitat Areas</b> table. These widths exceed all site potential tree height measurements and WDFW's minimum recommendation of 100 feet for effective pollution removal. WDFW fully supports this table as it aligns with and surpasses WDFW's preferred Riparian Management Zone (RMZ) widths using the Site Potential Tree Height (SPTH <sub>200</sub> ) mapping. For further updates, please see the <a href="#">SPTH<sub>200</sub> GIS mapping tool</a> that can be used for delineating where RMZs are located. |
| Riparian Habitat Area Widths.<br>Recommended riparian habitat area widths are shown in the table below... |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                   |  |                        |  |             |                        |                                                                                   |          |                                                                      |          |                                                                   |          |                                                                                  |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Riparian Habitat Areas                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                   |  |                        |  |             |                        |                                                                                   |          |                                                                      |          |                                                                   |          |                                                                                  |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Stream type                                                                                               | Recommended RHA widths                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                   |  |                        |  |             |                        |                                                                                   |          |                                                                      |          |                                                                   |          |                                                                                  |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Type 1 and 2; or shorelines of the state, or shorelines of statewide significance                         | 250 feet                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                   |  |                        |  |             |                        |                                                                                   |          |                                                                      |          |                                                                   |          |                                                                                  |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Type 3; or other perennial or fish-bearing streams, 5 – 20 feet wide                                      | 200 feet                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                   |  |                        |  |             |                        |                                                                                   |          |                                                                      |          |                                                                   |          |                                                                                  |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Type 3; or other perennial or fish-bearing streams, < 5 feet wide                                         | 150 feet                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                   |  |                        |  |             |                        |                                                                                   |          |                                                                      |          |                                                                   |          |                                                                                  |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Type 4 and 5; or intermittent streams and washes with low mass wasting potential                          | 150 feet                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                   |  |                        |  |             |                        |                                                                                   |          |                                                                      |          |                                                                   |          |                                                                                  |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 22.97.040 (d) (3)<br><br>Performance standards – Specific habitats.                                       | Increased Riparian Habitat Area Widths.<br>The recommended riparian habitat area widths shall be increased, as follows:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | When increasing stream buffers is an option, WDFW recommends reviewing the <a href="#">SPTH<sub>200</sub> GIS mapping tool</a> to delineate the width of the RMZs within a stream reach. This tool outlines the width needed to protect the full riparian functions and values of a stream and should be used as guidance when a buffer width could be increased. |  |                        |  |             |                        |                                                                                   |          |                                                                      |          |                                                                   |          |                                                                                  |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 22.97.040 (e) (4)<br>(G)                                                                                  | Road bridges are designed according to the Washington State Department of Fish and Wildlife <a href="#">Fish Passage Design at Road</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | The agency’s water crossing designs have been updated, and we request that the City cite WDFW <a href="#">2013 Water Crossing Design Guidelines</a> .                                                                                                                                                                                                             |  |                        |  |             |                        |                                                                                   |          |                                                                      |          |                                                                   |          |                                                                                  |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

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| Performance standards – Specific habitats.                          | <del>Culverts, 1999-2013 Water Crossing Design Guidelines, as amended</del> , and the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings, 2000; and                                                                                                                                                                                                                                                                                                                                                                              | WDFW also recommends that jurisdictions review the <a href="#">WDFW's climate-change-resilient culvert</a> webpage and <a href="#">Incorporating Climate Change into the Design of Water Crossing Structures: Final Project Report</a> for resources on how to incorporate climate-resiliency into water crossing designs. These resources should be used during the development of future water crossing designs.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 22.97.040 (e) (8)<br><br>Performance standards – Specific habitats. | <p>Stormwater Conveyance Facilities. Conveyance structures may be permitted in accordance with an approved critical area report subject to the following standards:</p> <p>(A) No other feasible alternatives with less impact exist;</p> <p>(B) Mitigation for impacts is provided;</p> <p>(C) Stormwater conveyance facilities shall incorporate fish habitat features; and</p> <p>(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.</p> | <p>WDFW recommends clarifying that stormwater conveyance facilities that connect to or discharge into surface waters or waters of the state may be subject to a Hydraulic Project Approval (HPA) pursuant to <a href="#">WAC 220-660-260</a>. Any construction, installation, or modification of a structure (e.g., outfalls, culverts, energy dissipators, or grade control features) that uses, diverts, obstructs, or changes the natural flow or bed of state waters requires review and approval by WDFW prior to work occurring.</p> <p>WDFW further recommends adding language to ensure early coordination with WDFW during project planning where stormwater facilities may interface with regulated waters. This coordination can help identify permit triggers, incorporate appropriate fish protection measures if needed, and align project design with HPA standard provisions.</p> <p>To strengthen the existing standards, WDFW suggests:</p> <ul style="list-style-type: none"> <li>• Explicitly noting that compliance with an HPA, when required, in addition to local critical area review.</li> <li>• Requiring that outfalls and conveyance features be designed to avoid or minimize impacts to fish life, including appropriate control, energy dissipation, and fish passage considerations where applicable.</li> <li>• Clarifying that “fish habitat features” (Subsection (8) (C)) should be consistent with WDFW guidance and HPA</li> </ul> |

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|  |  | <p>provisions to protect aquatic habitat functions.</p> <p>These additions will help ensure that stormwater infrastructure that may impact waters of the state are designed and permitted in a manner that protects fish life and complies with state regulatory requirements.</p> <p>In addition, WDFW recommends utilizing the Department of Ecology's <a href="#">2024 Stormwater Management Manual for Western Washington</a> guidance document to assist in stormwater planning and pollution prevention.</p> |
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Thank you for taking the time to consider our recommendations for your critical areas ordinance update to better reflect the best available science for fish and wildlife habitat and ecosystem functions and values.

We value the relationship we have with your jurisdiction and the opportunity to work collaboratively with you throughout this periodic update cycle. For additional resources in support of WDFW's land use planning conservation priorities, [please see this website](#). If you have any questions, need our technical assistance or resources at any time during this process, please don't hesitate to contact me at 360-819-6451 or at [Megan.Tuttle@dfw.wa.gov](mailto:Megan.Tuttle@dfw.wa.gov), or Region 6's Regional Land Use Lead, Jessica Bryant, [Jessica.Bryant@dfw.wa.gov](mailto:Jessica.Bryant@dfw.wa.gov).

Sincerely,



Megan Tuttle  
Assistant Regional Habitat Program Manager  
1111 Washington St. SE  
Olympia, WA 98501

Cc: Jessica Bryant, Regional Land Use Lead ([Jessica.Bryant@dfw.wa.gov](mailto:Jessica.Bryant@dfw.wa.gov))  
Miles Penk, Area Habitat Biologist ([Miles.Penk@dfw.wa.gov](mailto:Miles.Penk@dfw.wa.gov))  
Jennifer Eberly, Habitat Biologist ([Jennifer.Eberly@dfw.wa.gov](mailto:Jennifer.Eberly@dfw.wa.gov))  
Gwen Lentes, Regional Habitat Program Manager ([Gwendolen.Lentes@dfw.wa.gov](mailto:Gwendolen.Lentes@dfw.wa.gov))  
Kara Whittaker, LUCP Section Manager ([Kara.Whittaker@dfw.wa.gov](mailto:Kara.Whittaker@dfw.wa.gov))

Marian Berejikian, Environmental Planner ([Marian.Berejikian@dfw.wa.gov](mailto:Marian.Berejikian@dfw.wa.gov))



DETERMINATION OF NONSIGNIFICANCE AND PUBLIC COMMENT PERIOD

**Date of Issuance:** May 1, 2026

**Description of Proposal:** Fircrest Critical Areas Ordinance (CAO) Update

**Agency Contact:** Kimberly Gunderson, City of Fircrest Planning Consultant  
Mahoney Planning, LLC  
(253) 238-4125  
[kmahoney.planning@gmail.com](mailto:kmahoney.planning@gmail.com)

**Project Location:** City of Fircrest, Nonproject Action

**Lead Agency:** City of Fircrest

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under [RCW 43.21C.030\(2\)\(c\)](#). This decision was made after review of a completed SEPA environmental checklist and other information on file with the lead agency and linked below. Hardcopy files to view at City Hall are available to the public upon request.

**View Files:** <https://www.cityoffircrest.net/blog/>

**Comment Period:** This DNS is issued under [WAC 197-11-340\(2\)](#); the lead agency will not act on this proposal for 14 days from the date of issuance. Comments must be submitted by 5:00 PM on May 15, 2026.

**Appeal Period:** Any person wishing to appeal this determination may file such an appeal within fourteen (14) days from the issued date of this threshold determination to the City of Fircrest City Clerk, pursuant to [FMC 22.86.030](#). All appeals of the above determination must be filed by 5:00 PM on May 15, 2026. There is a \$100 fee to appeal this determination.

**SEPA Responsible Official:**

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Kimberly Gunderson, Fircrest SEPA Responsible Official  
115 Ramsdell Street  
Fircrest, WA 98466

# SEPA<sup>1</sup> Environmental Checklist

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## Purpose of checklist

Governmental agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization, or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

## Instructions for applicants

This environmental checklist asks you to describe some basic information about your proposal. Please answer each question accurately and carefully, to the best of your knowledge. You may need to consult with an agency specialist or private consultant for some questions. **You may use “not applicable” or “does not apply” only when you can explain why it does not apply and not when the answer is unknown.** You may also attach or incorporate by reference additional studies reports. Complete and accurate answers to these questions often avoid delays with the SEPA process as well as later in the decision-making process.

The checklist questions apply to **all parts of your proposal**, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

## Instructions for lead agencies

Please adjust the format of this template as needed. Additional information may be necessary to evaluate the existing environment, all interrelated aspects of the proposal and an analysis of adverse impacts. The checklist is considered the first but not necessarily the only source of information needed to make an adequate threshold determination. Once a threshold determination is made, the lead agency is responsible for the completeness and accuracy of the checklist and other supporting documents.

## Use of checklist for nonproject proposals

For nonproject proposals (such as ordinances, regulations, plans and programs), complete the applicable parts of sections A and B, plus the Supplemental Sheet for Nonproject Actions (Part D). Please completely answer all questions that apply and note that the words "project," "applicant," and "property or site" should be read as "proposal," "proponent," and "affected geographic area," respectively. The lead agency may exclude (for non-projects) questions in “Part B: Environmental Elements” that do not contribute meaningfully to the analysis of the proposal.

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<sup>1</sup> <https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/Checklist-guidance>

## A. Background

[Find help answering background questions](#)<sup>2</sup>

**1. Name of proposed project, if applicable:**

City of Fircrest (City) Critical Areas Ordinance (CAO) Update

**2. Name of applicant:**

City of Fircrest

**3. Address and phone number of applicant and contact person:**

Applicant

Dawn Masko, Fircrest City Manager  
115 Ramsdell Street, Fircrest, WA 98466  
dmasko@cityoffircrest.net

Contact Person

Kimberly A. Gunderson, Fircrest Planning Consultant  
Mahoney Planning, LLC  
kmahoney.planning@gmail.com  
(253) 389-1864

**4. Date checklist prepared:**

April 16, 2026

**5. Agency requesting checklist:**

City of Fircrest (Lead Agency)

**6. Proposed timing of schedule (including phasing, if applicable):**

Adoption of the proposed CAO Update is expected to occur by November 2026.

**7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.**

No.

**8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.**

N/A; this is a non-project action to revise provisions of the Fircrest Municipal Code (FMC) that implements the required schedule for development regulation updates protecting critical areas established by the Growth Management Act, Revised Code of Washington (RCW) 36.70A.130(7)(a)(ii). Environmental best available science (BAS) has been sourced from Washington state agencies and has influenced this CAO Update, but no environmental information has been, or is required to be, prepared particularly for this non-project action.

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<sup>2</sup> <https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-A-Background>

**9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.**

This non-project action is an amendment to the FMC, affecting any property in the City. The City is currently processing many applications for local government approval on properties covered by the proposed non-project action. The proposed non-project action creates compliance with revised or new RCWs governing critical areas, adopts industry-standard best practice, and adds clarity and specificity to the City's CAO. These changes are expected to result in improved protection of environmental features in Fircrest without creating unreasonable burdens on pending applications for government approvals in the City.

**10. List any government approvals or permits that will be needed for your proposal, if known.**

The proposed non-project action is a Text Code Amendment subject to FMC Chapter 22.78. Accordingly, the project will require a recommendation by the Fircrest Planning Commission and a final decision by the Fircrest City Council. The process involves public noticing and two public hearings before the City's appointed and elected officials. The City will issue a Notice of SEPA Threshold Determination following the Lead Agency SEPA Responsible Official's review of this SEPA Checklist, soliciting additional feedback from interested parties, other agencies, and the public at large. The City has also submitted a Notice of Intent to Adopt its proposed CAO Update to the Department of Commerce for dissemination to all state agencies.

**11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)**

The City intends to adopt an ordinance updating its CAO implemented via FMC Chapters 22.92, 22.93, 22.94, 22.97, 22.99, and 22.100. The City is also proposing amendments to FMC Chapter 22.98, Definitions, which support the implementation of its CAO. The City's CAO Update intends to satisfy the required schedule for development regulation updates that protect critical areas established by the Growth Management Act, RCW 36.70A.130(7)(a)(ii). The City's CAO Update also intends to adopt BAS in a manner which is protective of the City's important natural features while minding the goals and priorities of the Fircrest community and its elected Council.

**12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.**

This is a non-project action proposing edits to the FMC. The FMC is widely applicable throughout the entirety of the City of Fircrest. The City Boundary to which this CAO Update

applies is depicted in the City's Zoning Map, included as Attachment 1 to this SEPA Checklist.

## B.Environmental Elements

As per WAC 197-11-315(1)(e) and WAC 197-11-960, the Lead Agency has determined that the questions in Part B of this Checklist do not contribute meaningfully to the analysis of the proposed non-project action and, therefore, are not completed. Parts A, C, and D are otherwise completed, as required. For brevity, the questions in Part B of the SEPA Checklist have been deleted.

## C.Signature

[Find help about who should sign](#)<sup>3</sup>

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

X   
\_\_\_\_\_

**Type name of signee:** Kimberly A. Gunderson

**Position and agency/organization:** Fircrest SEPA Responsible Official | Mahoney Planning, LLC

**Date submitted:** April 27, 2026

## D.Supplemental sheet for nonproject actions

[Find help for the nonproject actions worksheet](#)<sup>4</sup>

**Do not** use this section for project actions.

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

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<sup>3</sup> <https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-C-Signature>

<sup>4</sup> <https://ecology.wa.gov/regulations-permits/sepa/environmental-review/sepa-guidance/sepa-checklist-guidance/sepa-checklist-section-d-non-project-actions>

**1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?**

The proposed non-project action revises locally adopted CAO regulations and, therefore, is not expected to increase discharge to water, emissions to air, production, storage, or release of toxic or hazardous substances, or production of noise.

- **Proposed measures to avoid or reduce such increases are:** None; as no increases to water discharge, air emissions, hazardous substance production, storage, or release, or noise production are expected from this non-project action, no measures to avoid or reduce such impacts are needed or proposed. In fact, the interaction between the built and natural environments is expected to improve with the application of revisions to Fircrest's CAO. Project actions that are carried out under these revised CAO regulations are distinct from this proposed non-project action and will be separately assessed for potential environmental impacts at the time of application.

**2. How would the proposal be likely to affect plants, animals, fish, or marine life?**

The proposed non-project action is not expected to affect plants, animals, fish, or marine life. Through project actions subject to the amended CAO, it is expected that plants, animals, fish, and marine life connected to Fircrest's regulated critical areas will be better protected or contribute more to the ecologic health of Fircrest's natural environment with the adoption of the proposed non-project action.

- **Proposed measures to protect or conserve plants, animals, fish, or marine life are:** None; as no detrimental effect to plants, animals, fish, or marine life is expected from this non-project action, no measures to avoid or reduce such impacts are needed or proposed. In fact, the interaction between the built and natural environments is expected to improve with the application of revisions to Fircrest's CAO. Project actions that are carried out under these revised CAO regulations are distinct from this proposed non-project action and will be separately assessed for potential environmental impacts at the time of application.

**3. How would the proposal be likely to deplete energy or natural resources?**

The proposed non-project action is not expected to deplete energy or natural resources.

- **Proposed measures to protect or conserve energy and natural resources are:** None; as no depletion of energy or natural resources is expected from this non-project action, no measures to avoid or reduce such impacts are needed or proposed. In fact, the interaction between the built and natural environments is expected to improve with the application of revisions to Fircrest's CAO. Project actions that are carried out under these revised CAO regulations are distinct from this proposed non-project action and will be separately assessed for potential environmental impacts at the time of application.

**4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection, such as**

**parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?**

The proposed non-project action is not expected to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection, including parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmland.

- **Proposed measures to protect such resources or to avoid or reduce impacts are:** None; as no environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection are expected to be used or affected by this non-project action, no measures to avoid or reduce such impacts are needed or proposed. In fact, the interaction between the built and natural environments is expected to improve with the application of revisions to Fircrest's CAO. Project actions that are carried out under these revised CAO regulations are distinct project actions proposed non-project action and will be separately assessed for potential environmental impacts at the time of application.

**5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?**

The proposed non-project action is not expected to detrimentally affect land and shoreline use, and would not allow or encourage land or shoreline use incompatible with existing plans. Proposed revisions to Fircrest's CAO enhance the protection of Fircrest's regulated critical areas and would not be a mechanism for allowing or encouraging incompatible land uses. Where Fircrest proposes changes to wetland buffer sizes which could affect the developable area of land within the City, the changes are made to implement amended BAS as informed by state partnering agencies and importantly marries the City's priorities for both urban land uses and protected critical area spaces. Clarity is added throughout Fircrest's CAO to ease the public's understanding of its opportunities for reasonable critical area exceptions and expanded opportunities for critical area mitigation, where needed. In totality, these changes are not expected to yield adverse impacts to land use in Fircrest and remain in keeping with the adopted Comprehensive Plan and zoning codes in Fircrest. There are no regulated shorelines in the City's boundary.

- **Proposed measures to avoid or reduce shoreline and land use impacts are:** None; as no use of land or shoreline is expected to be detrimentally affected by this non-project action, no measures to avoid or reduce such impacts are needed or proposed. In fact, the interaction between the built and natural environments is expected to improve with the application of revisions to Fircrest's CAO. Project actions that are carried out under these revised CAO regulations are distinct from this proposed non-project action and will be separately assessed for potential environmental impacts at the time of application.

**6. How would the proposal be likely to increase demands on transportation or public services and utilities?**

The proposed non-project action is not expected to increase demands on transportation or public services and utilities.

- **Proposed measures to reduce or respond to such demand(s) are:** None; as no increased demand on transportation, public services, or utilities is expected from this non-project action, no measures to avoid or reduce such impacts are needed or proposed.

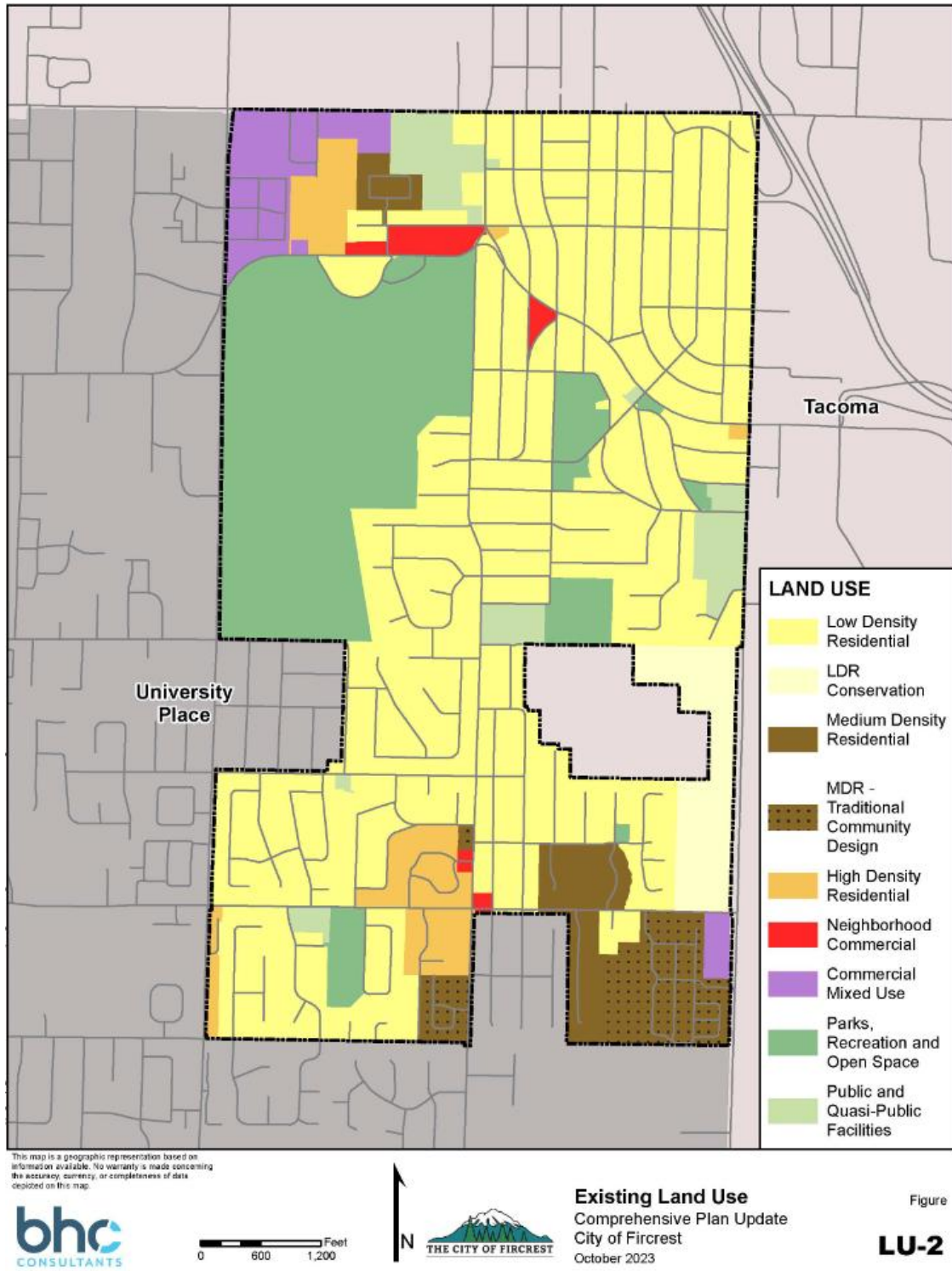
**7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.**

The proposed non-project action will not conflict with local, state, or federal laws or requirements for the protection of the environment and, in fact, will bring the FMC into compliance with RCW 36.70A.130, RCW 36.70A.060, and RCW 36.70A.172, and their related statutes and Washington Administrative Code guidelines. Project actions that are carried out under this CAO Update are distinct project actions that would be separately assessed for any potential conflict with local, state, or federal laws or requirements for the protection of the environment at the time of application. In addition to its proposed CAO Update, Fircrest maintains active stormwater permitting with the Department of Ecology to effectively manage and regulate protection of environmental features in manners compliant with relevant statute and federal law, and actively engages with other agencies with jurisdiction via SEPA, when applicable; these ordinances, permits, and processes would work in tandem with the proposed CAO Update to ensure protection of the environment within the confines of the law.

Attachments

Attachment 1 – Map of Fircrest Boundary

## Attachment 1 – Map of Fircrest Boundary



Source: Fircrest Comprehensive Plan Land Use Element

April 27, 2026

Tacoma Daily Index

Attention: Legal Classified

Please publish the following on **Friday, May 1, 2026** and provide an affidavit of publication with your invoice.

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CITY OF FIRCREST  
NOTICE OF SEPA THRESHOLD DETERMINATION

NOTICE IS HEREBY GIVEN that the City of Fircrest has issued a SEPA Determination of Nonsignificance for proposed Critical Areas Ordinance (CAO) Update required by the Growth Management Act, RCW 36.70A.130(7)(a)(ii). The City has determined that the proposal does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required for the proposal under RCW 43.21C.030(2)(c). These decisions were made based on other information on file with the lead agency. This information is available to the public on the City website at <https://www.cityoffircrest.net/blog>. The deadline for submitting written comments on, or an appeal of, the SEPA determination is Friday, May 15, 2026, at 5:00 PM. Written comments may be sent to: City of Fircrest SEPA Official, 115 Ramsdell Street, Fircrest, WA 98466, or emailed to [kmahoney@cityoffircrest.net](mailto:kmahoney@cityoffircrest.net).



**THE CITY OF FIRCREST**

**Exhibit E**  
September 8, 2026  
Fircrest City Council  
CAO Update **Public Hearing**

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115 RAMSDELL STREET • FIRCREST, WA 98466-6999 • (253) 564-8901 • [www.cityoffircrest.net](http://www.cityoffircrest.net)

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## **CITY OF FIRCREST CITY COUNCIL**

### **PUBLIC HEARING TO RECEIVE COMMENTS ON CRITICAL AREAS ORDINANCE UPDATE**

*NOTICE IS HEREBY GIVEN* that the Fircrest City Council will conduct a public hearing on September 8, 2026, commencing at 7:00 P.M. or soon thereafter, to accept public comments on the Critical Areas Ordinance (CAO) Update required by the Washington Growth Management Act.

Individuals who desire special accommodations should contact the Fircrest City Clerk at least 48 business hours prior to this meeting. Citizens attending the public hearing have the right to provide written and oral comments. Written comment may be sent in advance of the hearing to: City Clerk, 115 Ramsdell Street, Fircrest, WA 98466; phone: 253.564.8901; fax: 253.566.0762. Please visit [www.cityoffircrest.net](http://www.cityoffircrest.net) or contact Fircrest City Hall at 253.564.8901 for more information.

**CITY OF FIRCREST  
CITY COUNCIL  
PUBLIC HEARING TO RECEIVE  
COMMENTS ON CRITICAL ARE-  
AS ORDINANCE UPDATE**

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IDX-1035698  
August 27, 2026

# Critical Areas Checklist

A Technical Assistance Tool from Growth Management Services – updated May 2024

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| <b>Name of city or county:</b><br>City of Fircrest                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Staff contact, phone, and e-mail address:</b><br>Kimberly Gunderson, 253-389-1864, kmahoney.planning@gmail.com                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p><b>INSTRUCTIONS</b></p> <p>This checklist is intended to help local governments update their development regulations, pursuant to the schedule in <b>RCW 36.70A.130(5)</b>. We strongly encourage but do not require jurisdictions to complete the checklist and return it to Growth Management Services (GMS), along with their updates. <b>However, If the jurisdiction is using a portion of their Periodic Update Grant (PUG) to update the Critical Areas Ordinance, this checklist is required.</b></p> <p>This checklist may be used by all jurisdictions, including those local governments planning for resource lands and critical areas only. For general information on update requirements, refer to <a href="#">A Guide to the Periodic Update Process Under the Growth Management Act – Fully Planning Counties &amp; Cities, 2022</a> and <a href="#">WAC 365-196-610</a>.</p> <p>For additional information, resources, and general checklists pertaining to comprehensive plan and development regulation periodic updates please visit Commerce’s <a href="#">Growth Management Act Periodic Update webpage</a>.</p> <p><b>Bold items are a GMA requirement or may be related requirements of other state or federal laws.</b> <u>Underlined</u> items are links to Internet sites and may include best practices or other ideas to consider.</p> <p><b>Commerce WAC provisions are advisory</b> under Commerce’s statutory mandate to provide technical assistance, <b>RCW 43.330.120</b> which states that the Department of Commerce “...<i>shall help local officials interpret and implement the different requirements of the act through workshops, model ordinances, and information materials.</i>” If you have questions, call GMS at (360) 725-3066.</p> <p><b>How to fill out the checklist</b></p> <p>Using the current version of your critical areas regulations, fill out each item in the checklist. Select the check box or type in text fields, answering the following question:</p> <p><b>Is this item addressed in your current Critical Areas Ordinance (CAO)?</b> If YES, fill in the form with citation(s) to where in the plan or code the item is addressed. We recommend using citations rather than page numbers because they stay the same regardless of how the document is printed. If you have questions about the requirement, follow the hyperlinks to the relevant statutory provision or rules. If you still have questions, visit the <a href="#">Commerce Growth Management Services Web page</a> or contact one of the <a href="#">Commerce planners</a> assigned to your region.</p> | <p><b>CONTENTS</b></p> <p><b>Instructions.....1</b></p> <p><b>Overall Requirements.....2</b></p> <p><b>Wetlands.....3</b></p> <p><b>Critical Aquifer Recharge Areas.....5</b></p> <p><b>Frequently Flooded Areas....6</b></p> <p><b>Geologically Hazardous Areas.....7</b></p> <p><b>Fish and Wildlife Habitat Conservation Areas.....8</b></p> <p><b>Designating and Protecting Waters of the State.....9</b></p> <p><b>Anadromous Fisheries.....10</b></p> <p><b>Reasonable Use Exceptions.....10</b></p> <p><b>Agricultural Activities.....11</b></p> <p><b>Forest Practices Regulations.....11</b></p> <p><b>Good Ideas.....12</b></p> |

## CRITICAL AREAS

Regulations protecting critical areas are required by **RCW 36.70A.060(2)** and **RCW 36.70A.172(1)**. [WAC 365-195-900 through 925](#) provide guidelines. Guidance can also be found in [Commerce’s Critical Areas Handbook](#) (2022); the Minimum Guidelines [WAC 365-190-080 through 130](#); Best Available Science [WAC 365-195](#); and Procedural Criteria, [WAC 365-196-485](#) and [WAC 365-196-830](#), and on Growth Management’s [Critical Areas](#) webpage.

| Regulations required to protect critical areas                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Addressed in current plan or regulations? If yes, note where                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| <p><b>OVERALL REQUIREMENTS</b></p> <p><b>The CAO includes best available science to clearly designate and protect all critical areas that might be found within the jurisdiction.</b></p> <p><b>1. Designation of Critical Areas</b></p> <p><b>RCW 36.70A.170(1)(d)</b> requires all counties and cities to designate critical areas. <b>RCW 36.70A.170(2)</b> requires that counties and cities consider the Commerce Minimum Guidelines pursuant to <b>RCW 36.70A.050</b>.</p> <p><b>RCW 36.70A.050</b> directs Commerce to adopt the Minimum Guidelines to classify critical areas. <a href="#">WAC 365-190-080 through 130</a> provide guidance on defining or “designating” each of the five critical areas.</p> <p><a href="#">WAC 365-190-040</a> outlines the process to classify and designate natural resource lands and critical areas.</p> <p><b>2. Definition of Critical Areas</b></p> <p><b>RCW 36.70A.030(11)</b> provides definitions for critical areas. Sections (20) regarding geologically hazardous areas; and (48) regarding wetlands were updated in 2010.</p> <p><a href="#">WAC 365-190-030</a> provides definitions in the Minimum Guidelines.</p> <p><b>3. Protection of Critical Areas</b></p> <p><b>RCW 36.70A.060(2)</b> requires counties and cities to adopt development regulations that protect the critical areas required to be designated under <b>RCW 36.70A.170</b>.</p> <p><b>RCW 36.70A.172(1)</b> requires the inclusion of best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities must give special consideration to</p> | <p>Was BAS documented in the record for the review and updates to the critical areas regulations?</p> <p><input checked="" type="checkbox"/> Yes<br/><input type="checkbox"/> No</p> <p>Location in Text:</p> <p><a href="#">All 5 critical area types set forth in WAC 365-190-090 through 365-190-130 (wetlands, CARAs, FWHCAs, frequently flooded areas, and geologically hazardous areas) are designated in FMC 22.92.040(b).</a><sup>1</sup></p> <p><a href="#">Critical area definitions are found in the following FMC sections. While most are compliant with the definitions set forth in WAC 365-190-030 (indicated in blue text), a few of the terms’ definitions should be revised as an element of the Critical Areas Ordinance Update and are indicated in red text:</a></p> |

<sup>1</sup> The current definition for critical areas in FMC Chapter 22.98, Definitions, should be updated to match what is set forth in the City’s Critical Areas Ordinance and in WAC 365-190. The term should include critical aquifer recharge areas (rather than “aquifer recharge areas”) and fish and wildlife conservation areas (rather than “fish and wildlife habitats”).

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| <p>conservation or protection measures necessary to preserve or enhance anadromous fisheries.</p> <p><a href="#">WAC 365-196-830</a> provides guidance on protection of critical areas.</p> <p><b>4. Inclusion of Best Available Science</b></p> <p><b>RCW 36.70A.172(1)</b> requires inclusion of the best available science (BAS).</p> <p><a href="#">WAC 365-195-900 through 925</a> outlines recommended criteria for determining which information is the BAS, for obtaining the BAS, for including BAS in policies and regulations, for addressing inadequate scientific information, and for demonstrating “special consideration” to conservation or protection measures necessary to preserve or enhance anadromous fisheries.</p> <p><a href="#">WAC 365-195-915</a> provides criteria for including BAS in the record.</p> <p><b>5. No net loss</b> of critical area functions and values is a requirement for development regulations in <a href="#">WAC 365-196-830(4)</a>. If development regulations allow harm to critical areas, they must require compensatory mitigation of the harm.</p> | <p>-FMC 22.98.756 (wetlands)<br/> -FMC 22.98.309 (geologically hazardous areas)<br/> -FMC 22.98.179 (critical aquifer recharge area<sup>2</sup>)<br/> -FMC 22.98.298 (frequently flooded areas)<br/> -FMC 22.98.285 (fish and wildlife habitat conservation areas)</p> <p>Best available science (BAS) is documented to guide the review of critical area reports and the application of critical area regulations in FMC 22.92.060. This section of the FMC codifies WAC 365-195-900 through 365-195-925 to remain consistent with state guidance.</p> <p>FMC 22.92.280(b)(3) codifies an approval criterion for critical area variances that requires the decisionmaker to base the decision in BAS, as required by WAC 365-195-915. Approval of reasonable use exceptions from critical area regulations are set forth in FMC 22.92.100(d) and also require an evaluation of the application of BAS in decision making, as required by WAC 365-195-915.</p> <p>Do your regulations address no net loss and require compensatory mitigation?</p> |
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<sup>2</sup> The current definition for a critical aquifer recharge area in FMC 22.98.179 refers to the term’s definition in WAC 365-190-030(2). The term has since been defined in WAC 365-190-030(3). This definition in the FMC should be edited for clarity.

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Location in Text:</p> <p>Requirements that development achieve no net loss of ecological function is captured in the FMC – see FMC 22.92.100, 22.92.180, and 22.92.230.</p> <p>In FMC Chapter 22.92 broadly governing all Fircrest critical areas, and also more specifically in FMC Chapter 22.93 governing wetlands in particular, compensatory mitigation requirements are codified. It is clearly expressed that impacts must first be avoided or minimized. Compensatory mitigation requirements also include monitoring, contingency, and financial guarantees to ensure long-term critical area mitigation success.</p> <p>Intended edits to make as a part of Fircrest's CAO Update that will bring the CAO into greater compliance with RCW and WAC provisions governing critical areas include:</p> <ol style="list-style-type: none"> <li>1. Update FMC 22.98.179 (critical aquifer recharge area) to refer to WAC 365-090-030(3) rather than (2).</li> <li>2. Update FMC 22.98.298 (frequently flooded areas definition) and FMC 22.98.285 (fish and wildlife habitat conservation areas definition) to align more closely with the terms'</li> </ol> |
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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | definitions in WAC 365-190-030.                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p><b>WETLANDS DEFINITION</b></p> <p>The definition of wetlands is consistent with <b><u>RCW 36.70A.030(48)</u></b>.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <p>Is the wetland definition consistent with RCW 36.70A.030(48)?</p> <p><input checked="" type="checkbox"/> Yes<br/> <input type="checkbox"/> No<br/> <input type="checkbox"/> N/A</p> <p>Location in Text:<br/> <a href="#">FMC 22.98.756</a></p>                                                                                                                                                                                                                                                         |
| <p><b>WETLANDS DELINEATION</b></p> <p><b>Wetlands are delineated using the approved federal wetland delineation manual and applicable regional supplements</b> in accordance with <a href="#">WAC 173-22-035</a>.</p> <p>See Ecology's <a href="#">Wetland Delineation</a> page and <a href="#">WAC 365-190-090</a> for additional assistance.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <p>Are wetlands delineated using the approved Federal Wetland Delineation Manual and Regional Supplements?</p> <p><input checked="" type="checkbox"/> Yes<br/> <input type="checkbox"/> No<br/> <input type="checkbox"/> N/A</p> <p>Location in Text:<br/> <a href="#">FMC 22.93.010</a></p>                                                                                                                                                                                                               |
| <p><b>WETLANDS PROTECTION</b></p> <p><b>Policies and regulations protect the functions and values of wetlands. <u>RCW 36.70A.172(1)</u></b>.</p> <p>Counties and cities are encouraged to make their actions consistent with the intent and goals of "protection of wetlands", <a href="#">Executive Order 89-10</a> as it existed on September 1, 1990.</p> <p><a href="#">WAC 365-190-090(3)</a> recommends using a wetlands rating system that evaluates the existing wetland functions and values to determine what functions must be protected. Ecology updated its recommended wetlands rating systems effective January 2015. For information on the rating system, including the July 2018 adjustments to ranges for habitat scores, see:</p> <ul style="list-style-type: none"> <li>• <a href="#">2014 Updates to the Washington State Wetland Rating Systems</a></li> <li>• <a href="#">Washington State Wetland Rating System for Western Washington</a></li> <li>• <a href="#">Washington State Wetland Rating System for Eastern Washington</a></li> </ul> <p>For other resources and guidance on protecting wetlands, go to Ecology's <a href="#">Local Wetland Regulations: Growth Management Act technical assistance</a> and see:</p> <ul style="list-style-type: none"> <li>• <a href="#">Wetland Guidance for Critical Areas Ordinance (CAO) Updates: Western and Eastern Washington (2022)</a></li> </ul> | <p>Do the regulations use a rating system to determine wetlands protection?</p> <p><input type="checkbox"/> Yes<br/> <input checked="" type="checkbox"/> No<br/> <input type="checkbox"/> N/A</p> <p>Location in Text:<br/> <a href="#">FMC 22.93.040</a>. Fircrest has not adopted the 2018 habitat score adjustments.</p> <p>Intended edits to make as a part of Fircrest's CAO Update that will bring the CAO into greater compliance with RCW and WAC provisions governing critical areas include:</p> |

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| <p><b>CRITICAL AQUIFER RECHARGE AREAS</b></p> <p><b>Policies and regulations protect the functions and values of critical aquifer recharge areas. <u>RCW 36.70A.172(1)</u>.</b></p> <p><b>Policies and regulations protect the quality and quantity of groundwater used for public water supplies. <u>RCW 36.70A.070(1)</u> and <u>WAC 365-196-485(1)(d)</u>.</b></p> <p>The following references also relate to protection of groundwater resources:</p> <ul style="list-style-type: none"> <li>• <b><u>RCW 90.44</u></b> – Regulation of Public Groundwaters</li> <li>• <b><u>RCW 90.48</u></b> – Water Pollution Control</li> <li>• <b><u>RCW 90.54</u></b> – Water Resources Act of 1971</li> <li>• <b><u>RCW 36.36.020</u></b> - Creation of aquifer protection area (1985)</li> <li>• <b><u>WAC 365-190-100</u></b> Critical Aquifer Recharge Areas 2023</li> <li>• <b><u>WAC 173-100</u></b> Groundwater Management Areas and Programs (1988)</li> <li>• <b><u>WAC 173-200</u></b> Water Quality Standards for Groundwaters of the State of Washington (1990)</li> <li>• <b><u>WAC 365-196-735</u></b> Consideration of state and regional planning provisions (list) (2010)</li> </ul> <p>The <b><u>Critical Aquifer Recharge Areas Guidance Document</u></b> (2021) provides information on protecting functions and values of critical aquifer recharge areas, best available science, how to work with state and local regulations and adaptive management.</p> <p>Also, consider the following:</p> <ul style="list-style-type: none"> <li>• Prohibiting or strictly regulating hazardous uses in critical aquifer recharge areas (CARAs) and designating and protecting wellhead areas. See Ecology's guidance on <b><u>Critical Aquifer Recharge Areas</u></b>.</li> <li>• Limiting impervious surfaces to reduce stormwater runoff, as required under Phase I and II municipal stormwater permits. Ecology's Stormwater Manual for Western Washington (2012) includes low impact development (LID) related definitions, requirements, and an LID performance standard. See <b><u>Stormwater Management and Design Manuals</u></b> on Ecology's web page.</li> <li>• For additional guidance on LID resources, see Commerce's <b><u>Incentivizing low-impact development guidebook</u></b>.</li> </ul> | <p>If groundwater is used for potable water, do regulations protect the quality and quantity of ground water?</p> <p><input checked="" type="checkbox"/> Yes<br/> <input type="checkbox"/> No<br/> <input type="checkbox"/> N/A</p> <p>Location in text:<br/> <b><u>Fircrest prohibits all uses or activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source, and prohibits wells from being located in floodways to protect their structural and human health integrity – see FMC 22.94.080 and FMC 22.99.070.</u></b></p> <p><b><u>Fircrest maintains active municipal stormwater permitting with the Department of Ecology and annually updates its Stormwater Management Plan as needed to ensure discharged water is of a quality and quantity aligned with state health standards – this contributes to Fircrest's obligation under RCW 36.70A.070(1) to provide guidance toward the mitigation or cleansing of discharge to waters of the state.</u></b></p> <p>Are the critical aquifer recharge regulations consistent with</p> |

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| <p><b>CRITICAL AQUIFER RECHARGE AREAS</b></p> | <p>current mapping of these critical areas?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> N/A</p> <p>Location in text:</p> <p><a href="#">FMC 22.94.030</a> correctly designates all of Fircrest as a CARA, consistent with Pierce County mapping.</p> |
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| <p><b>FREQUENTLY FLOODED AREAS</b></p> <p><b>Regulations protect the functions and values of frequently flooded areas and safeguard the public from hazards to health and safety. <a href="#">RCW 36.70A.172(1)</a>.</b></p> <p><a href="#">WAC 365-196-830</a> provides: "Protection' in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety."</p> <p><a href="#">WAC 365-190-110</a> directs counties and cities to consider the following when designating and classifying frequently flooded areas:</p> <ul style="list-style-type: none"> <li>(a) Effects of flooding on human health and safety, and to public facilities and services;</li> <li>(b) Available documentation including federal, state, and local laws, regulations, and programs, local studies and maps, and federal flood insurance programs, including the provisions for urban growth areas in <a href="#">RCW 36.70A.110</a>;</li> <li>(c) The future flow flood plain, defined as the channel of the stream and that portion of the adjoining flood plain that is necessary to contain and discharge the base flood flow at build out;</li> <li>(d) The potential effects of tsunamis, high tides with strong winds, sea level rise, and extreme weather events, including those potentially resulting from global climate change;</li> <li>(e) Greater surface runoff caused by increasing impervious surfaces.</li> </ul> <p>Classification of and regulations for frequently flooded areas should not conflict with the FEMA requirements for the <a href="#">National Flood Insurance Program (NFIP)</a>. See <a href="#">Ecology's Frequently Flooded areas: Critical Areas Ordinance</a> webpage and <a href="#">44 CFR 60</a>.</p> <p>Communities that are located on Puget Sound or the Strait of Juan de Fuca, or have lakes, rivers or streams that directly or indirectly drain to those water bodies, are subject to the NFIP Biological Opinion (BiOp) for Puget Sound. The biological opinion required changes to the implementation of the NFIP in order to meet the requirements of the Endangered Species Act (ESA) in the Puget Sound watershed. FEMA Region X has developed an implementation plan that allows communities to apply the performance standards contained in the Biological Opinion by implementing:</p> | <p>Are frequently flooded areas designated and regulated using FEMA and Ecology guidance?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> N/A</p> <p>Location in Text:</p> <p><a href="#">FMC 22.99.010</a> designates frequently flooded areas, in part, as those areas determined by FEMA as informed by their Flood Insurance Study for Pierce County. This FMC section also calls on the City's director to require other additional information that can inform risk to safety and infrastructure, future built conditions, and likely impacts of floods to administratively determine frequently flooded areas subject to related CAO provisions.</p> <p>Are you utilizing your CAO as part of a programmatic response to the BiOp?</p> |
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| <p><b>FREQUENTLY FLOODED AREAS</b></p> <p>1) <a href="#">a model ordinance</a>;<br/> 2) <a href="#">a programmatic Checklist</a>; or<br/> 3) on a permit by permit basis as long as it can be demonstrated that there is no adverse effect to listed species. Communities have the <u>option</u> of utilizing their CAOs as part of a programmatic response to address the requirements of the biological opinion. FEMA must approve a community's biological opinion compliance strategy.</p> <p>Additional resources:<br/> <b>RCW 86.12</b> Flood Control by Counties<br/> <b>RCW 86.16</b> Floodplain Management<br/> <b>RCW 86.26</b> State Participation in Flood Control Maintenance<br/> <b>RCW 86.16.041</b> Floodplain Management Ordinance and Amendments<br/> <a href="#">WAC 173-158-070</a> Requirements for construction in Special Flood Hazard Areas</p>                                                                                                                                                                                                                                                      | <p><input checked="" type="checkbox"/> Yes<br/> <input type="checkbox"/> No<br/> <input type="checkbox"/> N/A</p> <p>Location in Text:<br/> <a href="#">FMC 22.99.040</a> sets forth the permit-by-permit basis for flood-related activity in Fircrest and represents the City's response to the NFIP BiOp.</p>                                                                                                                                                                                        |
| <p><b>DEFINITION OF GEOLOGICALLY HAZARDOUS AREAS</b></p> <p><b>The definition of geologically hazardous areas is consistent with <u>RCW 36.70A.030(20)</u> and <a href="#">WAC 365-190-120(1)</a>.</b></p> <p>"Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <p>Is the geologically hazardous areas definition consistent with<br/> RCW 36.70A.030(20)?</p> <p><input checked="" type="checkbox"/> Yes<br/> <input type="checkbox"/> No<br/> <input type="checkbox"/> N/A</p> <p>Location in Text:<br/> <a href="#">FMC 22.98.309</a></p>                                                                                                                                                                                                                           |
| <p><b>PROTECTION OF GEOLOGICALLY HAZARDOUS AREAS</b></p> <p><b>Regulations protect the functions and values of geologically hazardous areas and safeguard the public from hazards to health and safety. <u>RCW 36.70A.172(1)</u>.</b></p> <p><a href="#">WAC 365-196-830</a> provides: "'Protection'" in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety."</p> <p><b>Geologically hazardous areas are designated, and their use is regulated or limited consistent with public health and safety concerns. <u>RCW 36.70A.030(20)</u></b></p> <p><a href="#">WAC 365-190-120</a> describes the different types of hazardous areas:</p> <ul style="list-style-type: none"> <li>Geologically hazardous areas include: <ul style="list-style-type: none"> <li>Erosion hazards</li> <li><a href="#">Landslide hazards</a></li> <li><a href="#">seismic hazards</a></li> <li><a href="#">tsunami hazards</a></li> <li><a href="#">volcanic hazards</a></li> <li><a href="#">channel migration zones</a></li> </ul> </li> </ul> | <p>Are uses in geologically hazardous areas designated and regulated or limited consistent with public health and safety?</p> <p><input type="checkbox"/> Yes<br/> <input checked="" type="checkbox"/> No<br/> <input type="checkbox"/> N/A</p> <p>Location in Text:<br/> <a href="#">Fircrest's CAO</a> does a good job of protecting erosion hazards, landslide hazards, and channel migration zones. In reviewing DNR's seismic risk mapping, Fircrest should consider adopting definitions and</p> |

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| <ul style="list-style-type: none"> <li>• areas subject to other geological events such as coal mine hazards including: mass wasting, debris flows, rock falls, and differential settlement.</li> </ul> <p>The Department of Natural Resource’s Washington Geological Survey <a href="#">Geologic Hazards and the Environment</a> website includes information on earthquakes and faults, landslides, volcanoes and lahars, tsunamis, hazardous minerals, emergency preparedness, historic mines and includes geologic hazard maps that can be accessed from the <a href="#">Geologic Information Portal</a>.</p> | <p>provisions which afford protection against seismic hazards, too. Fircrest already adopts USGS and DNR seismic hazard maps as reference material in its CAO, and should consider additional content to particularly define these hazard areas and regulate their use.</p> <p>Intended edits to make as a part of Fircrest’s CAO Update that will bring the CAO into greater compliance with RCW and WAC provisions governing critical areas include:</p> <ol style="list-style-type: none"> <li>1. Define and add provisions protecting seismic hazards.</li> </ol> |
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| <p><b>DEFINITION OF FISH AND WILDLIFE HABITAT AND CONSERVATION AREAS</b></p> <p>The definition of fish and wildlife habitat conservation areas is consistent with <a href="#">WAC 365-190-030(6)</a>. The definition of fish and wildlife habitat conservation areas was amended to state that they do not include: <b><i>“such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company”</i></b>.</p> | <p>Is the FWHCA definition consistent with WAC 365-190-030(6)?</p> <p><input type="checkbox"/> Yes<br/> <input checked="" type="checkbox"/> No<br/> <input type="checkbox"/> N/A</p> <p>Location in Text:<br/> FMC 22.98.285</p> <p>Intended edits to make as a part of Fircrest’s CAO Update that will bring the CAO into greater compliance with RCW and WAC provisions governing critical areas include:</p> <ol style="list-style-type: none"> <li>1. Update FMC 22.98.285 (fish and wildlife habitat conservation areas definition) to align more closely with the terms’ definitions in WAC 365-190-030.</li> </ol> |
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## PROTECTION OF FISH AND WILDLIFE HABITAT AND CONSERVATION AREAS

Policies and regulations protect the functions and values of fish and wildlife habitat conservation areas. [RCW 36.70A.172\(1\)](#) and [WAC 365-190-030\(6\)](#).

[WAC 365-190-130\(4\)](#) says local jurisdictions must consult current information on priority habitats and species identified by [WDFW](#). Additional information that must be consulted is available from DNR's [natural heritage program](#) and [aquatic resources program](#). BAS regarding biodiversity areas and corridors has advanced significantly. Recent updates and resources include:

- [Aquatic Habitat Guidelines](#)
- [Priority Habitat and Species maps](#)
- [Priority Habitats and Species List](#) (updated June 2023)
- [Priority Habitats and Species: Management recommendations:](#)
  - [Landscape Planning for Washington's Wildlife](#) (2009)
  - [Land Use Planning for Salmon, Steelhead and Trout](#) (2009)
  - [Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications](#) (2020)
  - [Riparian Ecosystems, Volume 2: Management Recommendations](#) (2020)
  - [Riparian Management Zone Checklist for CAOs](#) (2023)
  - [Shrub-Steppe Management Recommendations](#) (2020)
  - [Oregon White Oak Woodlands Ecosystems Management Recommendations](#) (1998)
  - [Management recommendations for Washington's Priority Species](#) (by taxa)
- [Puget Sound Kelp Conservation and Recovery Plan](#) (2020)
- [Stream Habitat Restoration Guidelines](#) (2012)
- [Water Crossing Design Guidelines](#) (2013)

"Areas where endangered, threatened, and sensitive species have a primary association" must be considered per [WAC 365-190-130\(2\)\(a\)](#). Consult WDFW's [Threatened and Endangered Species list](#) and U.S. Fish and Wildlife Service's [Information for Planning and Consultation](#) resources for up to date information on all state and federal listed species.

Also see the [Puget Sound Partnership's Salmon Recovery website](#) for Water Resource Inventory Area (WRIA) Plans in Puget Sound.

Have you reviewed your regulations regarding any applicable changes in management recommendations for priority habitats and species?

- ☒ Yes  
☐ No  
☐ N/A

### Location in Text

In FMC 22.97.010, the City has codified that it will consult many of the current information resources listed in the adjacent cell, including: PHS mapping, WDFW management recommendations, DNR's natural heritage program mapping, and DNR's water type reference maps.

Importantly, while Fircrest's CAO does not include an exhaustive list of state agency resources, it does contain a helpful list of reference material and sets a principled basis in interagency reviews of matters affecting critical areas. In doing so, Fircrest could accept agency recommendations sourced from other reference material that is not necessarily included in its CAO – this is Fircrest's preferred approach, given the potential for new or revised reference material to apply to development and activities with the potential to affect critical areas.

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|  | <p>Notably, Fircrest is disconnected from any saltwater system.</p> <p>Have you reviewed your regulations regarding any changes in species listings?</p> <p><input checked="" type="checkbox"/> Yes<br/> <input type="checkbox"/> No<br/> <input type="checkbox"/> N/A</p> <p>Location in Text<br/> <a href="#">FMC 22.97.010(a)(1)-(3)</a></p> |
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| <p><b>DESIGNATING AND PROTECTING WATERS OF THE STATE</b></p> <p><b>RCW 90.48.020</b> defines waters of the state, which include all surface waters, salt waters, groundwater and all other water courses in Washington. <a href="#">WAC 365-190-130(2)(f)</a> recommends designating all waters of the state as fish and wildlife habitat conservation areas (FWHCAs).</p> <p>Stream types are classified in <a href="#">WAC 222-16-030</a> with field verification, or an alternate system that considers factors listed in <a href="#">WAC 365-190-130(4)(f)(iii)</a>. See <a href="http://www.dnr.wa.gov/forest-practices-water-typing">http://www.dnr.wa.gov/forest-practices-water-typing</a> to use Washington State Department of Natural Resources (DNR)'s stream typing system.</p> <p>Establish riparian management zones to maintain no net loss of riparian ecosystem functions and values.</p> <p>Designate areas that risk contaminating or harming shoreline resources including tidelands and bedland suitable for shellfish harvest, kelp and eelgrass beds and forage fish spawning areas.</p> | <p>Do you designate waters of the state as FWHCAs?</p> <p><input checked="" type="checkbox"/> Yes<br/> <input type="checkbox"/> No<br/> <input type="checkbox"/> N/A</p> <p>Location in Text:<br/> <a href="#">FMC 22.97.010(a)(5)</a></p> <p>Do your regulations protect waters of the state?</p> <p><input checked="" type="checkbox"/> Yes<br/> <input type="checkbox"/> No<br/> <input type="checkbox"/> N/A</p> <p>Location in Text:<br/> <a href="#">FMC 22.97.010(b)</a></p> |
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| <p><b>ANADROMOUS FISHERIES</b></p> <p><b>Policies and regulations for protecting critical areas give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.</b> <b>RCW 36.70A.172(1)</b> is the requirement and <a href="#">WAC 365-195-925</a> lists criteria involved. This requirement applies to all five types of critical areas.</p> <p><a href="#">WAC 365-190-130(4)(i)</a> recommends sources and methods for protecting fish and wildlife habitat conservation areas, including salmonid habitat. Counties and cities may use information prepared by the United States Department of the Interior Fish and Wildlife Service, National Marine Fisheries Service, the Washington State Department of Fish and Wildlife, the State Recreation and Conservation Office, and the Puget Sound Partnership to designate, protect and restore salmonid habitat.</p> | <p>Do your regulations give special consideration to anadromous fisheries?</p> <p><input checked="" type="checkbox"/> Yes<br/> <input type="checkbox"/> No<br/> <input type="checkbox"/> N/A</p> <p>Location in Text:<br/> <a href="#">FMC 22.92.060 expressly requires</a></p> |
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| <p>Counties and cities should consider recommendations found in the regional and watershed specific salmon recovery plans (see the <a href="#">Governor's Salmon Recovery Office webpage</a> and the Puget Sound Partnership's <a href="#">Salmon Recovery webpage</a>).</p> <p><a href="#">Land Use Planning for Salmon, Steelhead and Trout</a>: A land use planner's guide to salmonid habitat protection and recovery (October 2009) is an excellent resource.</p> | <p>"special consideration to anadromous fish" to be employed when analyzing BAS.</p> <p>"Special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat" is also a criterion for variance applications from critical area standards – see FMC 22.92.280(b)(3).</p> <p>Anadromous fish are protected by specific performance standards in FMC 22.97.040(b) that require special consideration for their preservation and enhancement to be demonstrated.</p> <p>Finally, applications that propose buffer width averaging of habitat for anadromous fish can only be approved if the width reduction is shown not to degrade anadromous fish habitat, further protecting these species through the application of Fircrest's CAO. See FMC 22.97.040(d)(4).</p> |
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| <p><b>REASONABLE USE EXCEPTIONS</b></p> <p><b>The Critical Areas Ordinance (CAO) allows for "reasonable use" if the CAO would otherwise deny all reasonable use of property.</b> Reasonable use provisions should limit intrusions into critical areas to the greatest extent possible and apply the mitigation sequence as needed for no net loss of ecosystem functions and values <b>RCW 36.70A.370</b>. Common exemptions include emergencies, remodels that do not further extend into critical areas, surveying, walking, and development that has already been completed with critical areas review under a previous permit. See <a href="#">Critical Areas Handbook, Chapter 3: Structuring Critical Areas Regulations, p.10 (Updated 2022)</a>.</p> | <p>Do you have reasonable use provisions?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Location in Text:</p> <p><a href="#">FMC 22.92.100</a></p> |
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| <p><b>AGRICULTURAL ACTIVITIES (COUNTIES ONLY)</b></p> <p><b>Non-VSP Counties</b></p> <p>Critical areas regulations as they specifically apply to agricultural activities in counties or watersheds not participating in the <a href="#">Voluntary Stewardship Program (VSP)</a> have been reviewed, and if needed, revised pursuant to <b>RCW 36.70A.130</b>. <b>RCW 36.70A.710(6)</b></p> <p>"Agricultural activities" means all agricultural uses and practices as defined in <b>RCW 90.58.065</b>.</p> <p><b>VSP Counties</b></p> <p>After watershed work plan approval, <a href="#">VSP counties</a> are encouraged to reference and describe their participation in the program within their critical areas development regulations (<a href="#">WAC 365-196-832</a>). See <a href="#">Critical Areas Handbook</a>, Chapter 5: Protecting Critical Areas in Natural Resource Lands (2022).</p> | <p>Did you review your regulations as they apply to agricultural activities?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> N/A</p> <p>Location in Text:</p> <p>This Checklist is not being prepared for a County.</p>                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p><b>FOREST PRACTICES APPLICATION REGULATIONS</b></p> <p><b><i>If applicable, regulations for forest practices have been adopted: <u>RCW 36.70A.570</u>.</i></b></p> <p><b><u>RCW 76.09.240</u></b>, requires many counties over 100,000 in population, and the cities and towns within those counties to adopt regulations for forest practices. These are often included in clearing and grading ordinances.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p>Have you adopted forest practices regulations?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> N/A</p> <p>Location in Text:</p> <p><a href="#">The City has adopted critical area regulations that require development to acquire forest practice permits as required by state agencies (FMC 22.100.090) or otherwise engage in forest practices in manners compliant with RCW Chapter 76.09 (FMC 22.92.080).</a></p> <p><a href="#">The City has also adopted a Clear and Grade chapter (FMC 12.28) that requires the City review and issue a grading permit for activities in excess of codified exemptions.</a></p> |

## GOOD IDEAS

**Non-regulatory measures** to protect or enhance functions and values of critical areas may be used to complement regulatory methods. These may include:

- public education
- stewardship programs
- pursuing grant opportunities
- water conservation
- joint planning with other jurisdictions and non-profit organizations
- stream and wetland restoration activities
- [transfer of development rights](#)

**Monitoring and adaptive management** is encouraged in [WAC 365-195-905\(6\)](#) to improve implementation of your regulations. See Commerce's Monitoring and Adaptive Management chapter in the [Critical Areas Handbook](#), Chapter 7: Monitoring and Adaptive Management of Critical Areas (2022).

Are you using non-regulatory measures to protect critical areas?

☒ Yes

☐ No

Location in Text:

The City's CAO views agency partnership toward environmental stewardship as an instrumental component of safe critical area development and activity allowances. See FMC 22.92.030(d) and FMC 22.92.140(c)(1)(B) as examples of this multi-jurisdiction partnership relied on for critical area protection.

The City is also interested in pursuing available grant dollars to explore passing a voluntary ordinance protecting urban forests. It is the City's aim to first comply with all state mandated zoning ordinances, and then pursue available grants to fund legislative and research efforts for urban forest protection.

Do you have a monitoring and adaptive management program for your CAO?

☒ Yes

☐ No

Location in Text:

FMC 22.92.060(e) outlines the City's adaptive management program, which applies in the absence of valid scientific information in an analysis of no net

|  |                            |
|--|----------------------------|
|  | loss of ecological impact. |
|--|----------------------------|



# Fircrest Critical Areas Ordinance (CAO) Update

Complying with RCW 36.70A.070

Mahoney Planning, LLC  
Kimberly Gunderson, Principal



# Project Description

Fircrest is updating its CAO to satisfy a requirement of the GMA, and to align the CAO with a renewed understanding of best available science (BAS) and its governing provisions in the RCW and WAC.

Updates will affect FMC Chapters:

- 22.92 Critical Areas
- 22.93 Wetlands
- 22.94 Critical Aquifer Recharge Areas
- 22.97 Fish and Wildlife Conservation Areas
- 22.98 Definitions
- 22.100 Geologically Hazardous Areas

# Fircrest's Critical Areas

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## Protected Natural Features in Fircrest

Wetlands

Critical Aquifer Recharge Areas (CARAs)

Fish and Wildlife Habitat Conservation  
Areas (FWHCAs)

Frequently Flooded Areas

Geologically Hazardous Areas

# Wetlands

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## FMC Chapter 22.93

- Inundated or saturated surfaces that typically support vegetation in saturated soils
- Artificially created features **are not** wetlands (unless created as wetland mitigation)
- Presence of wetlands are confirmed in field and categorized by a qualified professional

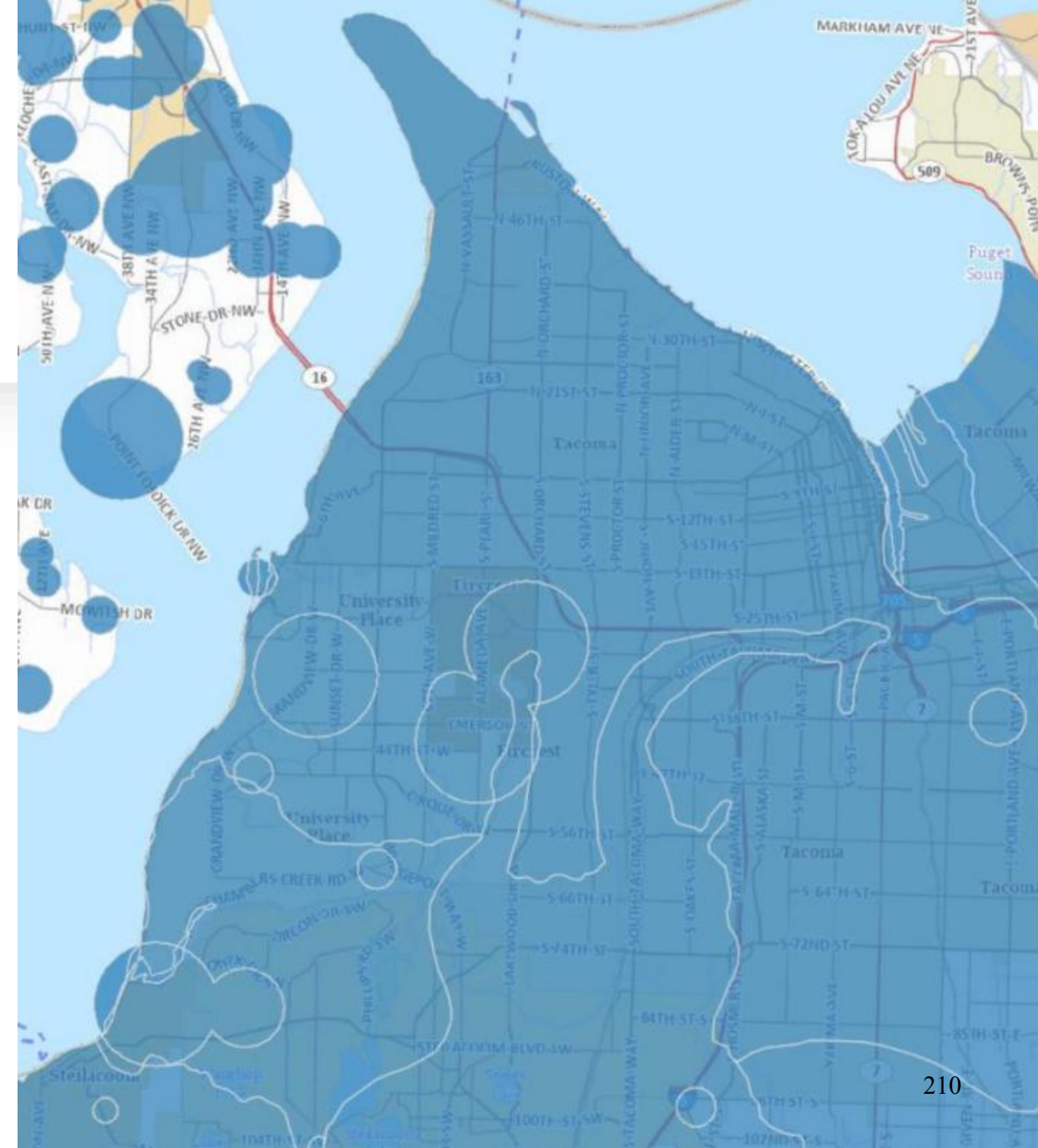


# CARAs

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## FMC Chapter 22.94

- Critical aquifer recharge areas (CARAs) are those with a critical recharging effect on aquifers used for potable water
- All of Fircrest is a CARA
- CARA definition to refer to correct WAC in amendment
- Fewer restrictions in CARAs compared to other critical areas.
  - Example: without a Critical Area Report, allowed to install large septic systems, develop parks/rec areas, and construct structures when imp. surface < 25%.

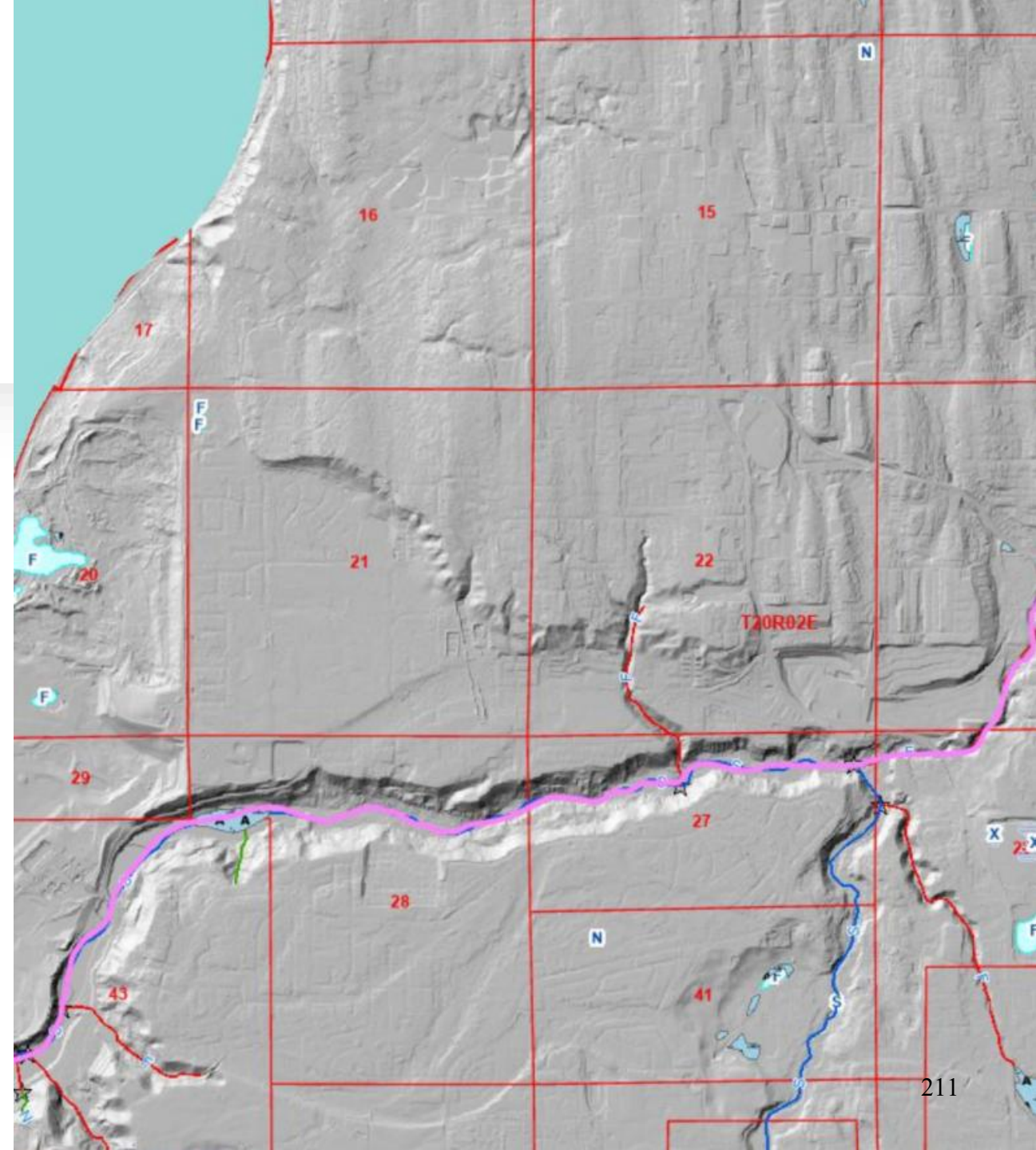


# FWHCAs

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## FMC Chapter 22.97

- Fish and wildlife habitat conservation areas (FWHCAs) include a large span of natural spaces, including protected species habitats, waters of the state, and connections between open spaces and habitat blocks.
- A common example is Leach Creek
- Activities in FWHCAs are limited and only allowed if impacts are mitigated
- Fircrest should align its definition of FWHCAs more closely with WAC 365-190-030, to include exclusions.



# Frequently Flooded Areas

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## FMC Chapter 22.99

- FEMA typically informs frequently flooded areas
- “Special flood hazard areas” on flood insurance maps (A and AE zones)
- Special development standards apply to property in frequently flooded areas. Typically, construction is required to be 1’ higher than BFE and be distant from flood hazard area.
- Amend “frequently flooded areas” definition to include “areas subject to flooding due to high groundwater.”



# Geologically Hazardous Areas

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## FMC Chapter 22.100

- Regulated geo hazards in Fircrest: erosion hazards and landslide hazards
- Fircrest adopts USGS and DNR hazard maps as material able to be referenced to inform geo hazards
- DNR seismic risk mapping indicates that Fircrest should consider protections against seismic hazards...





## Geologically Hazardous Areas (Cont.)

### FMC Chapter 22.100

- The WA DNR Seismic Scenario mapping gives reason to contemplate protecting against seismic hazards in Fircrest
- Shaking intensity of a seismic event is indicated to be “Very Strong”
- Having collaborate with DNR, recommend **seismic hazards not be separately regulated in CAO. Rely on building codes.**

# Fircrest's Critical Areas

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How are Critical  
Area protections  
applied?

In general, in collaboration with City's critical areas consultant:

1. Identify presence (and category, as relevant) of critical area feature.
2. Assess proposed activities within regulated area (feature + buffer).
3. Discern whether potential impacts may occur.
4. If activity is allowed, require mitigation following mitigation sequencing to offset impacts.

## Recommended Revisions

### Per Agency Coordination & Commerce's Critical Areas Checklist:

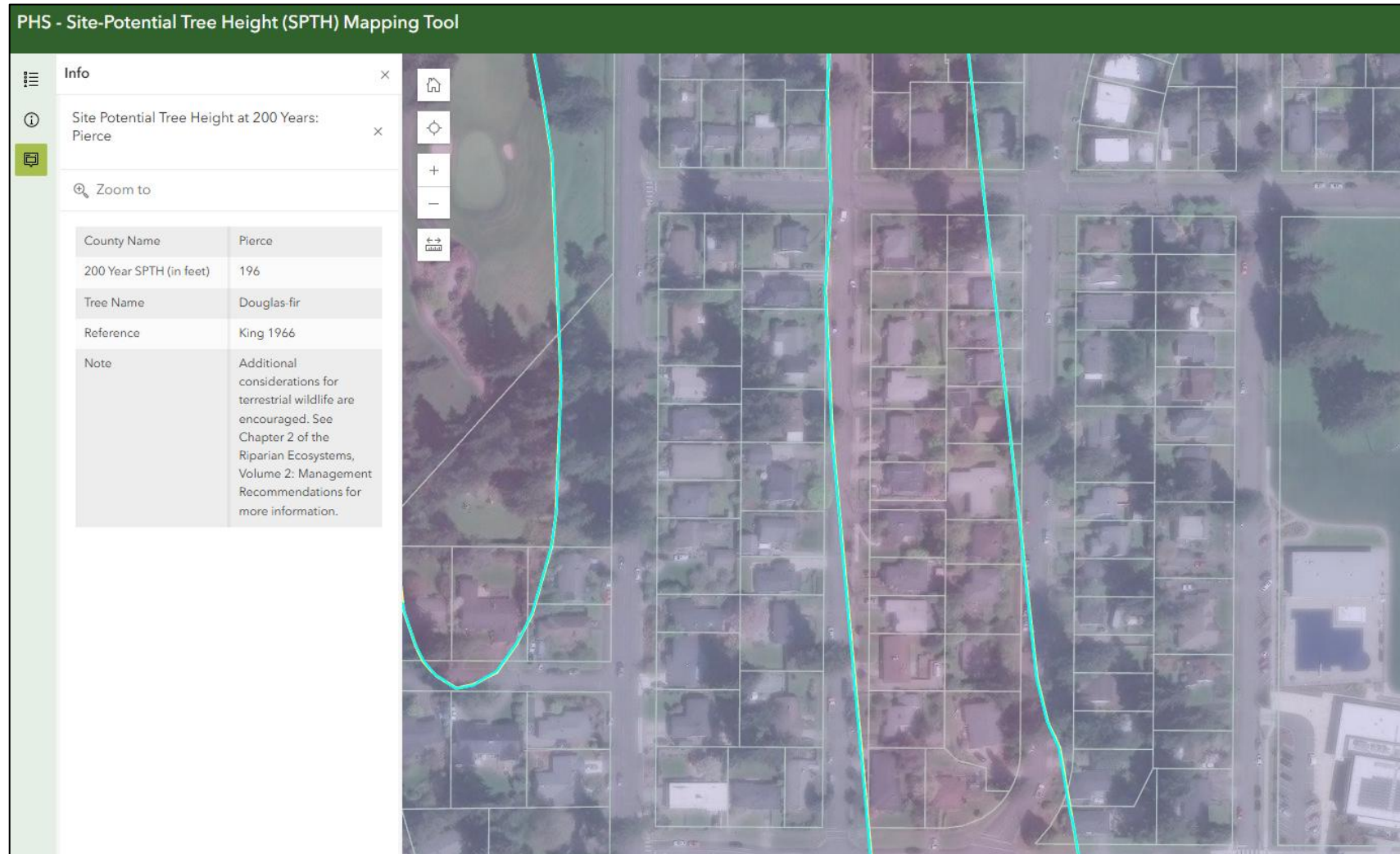
- **Definitions (FMC 22.98)**
  - Update/add term definitions to reflect agency feedback and updated WACs/guidance
- **Wetlands (FMC 22.93)**
  - Update definitions of wetland categories, buffers, mitigation ratios, allowed activities and addition of preservation as a mitigation solution
- **Critical Areas (FMC 22.92)**
  - Clarify allowed activities in critical areas, term of monitoring plans, and general clean-up
  - Remove references to dated practices (critical area ID form)

## Recommended Revisions

### Per Agency Coordination & Commerce's Critical Areas Checklist:

- **CARAs (FMC 22.94)**
  - Update WAC references, terminology, and distinguish CARAs from other critical areas per DOH feedback
- **FWHCAs (FMC 22.97)**
  - Update WAC references and aquatic habitat allowed uses, make clerical edits, and remove codified allowances for FWHCA buffer averaging per WDFW feedback
- **Geologically Hazardous Areas (FMC 22.100)**
  - Add seismic hazards to type of geological hazards per DNR feedback

# Site Potential Tree Height at 200 years old tool



# Public Noticing & Engagement

- Commerce NOI
  - State agencies received Notice of Intent to Adopt CAO Update on April 8
  - 60-day comment period closed with comments from WDFW, DOH, ECY, DNR
- SEPA
  - DNS Noticed May 1
  - 14-day comment period closed with no comments
- NOPH
  - Council public hearing noticed August 27
  - No comments received as of the preparation of these materials

# Requested Action: Motion to Adopt

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Recommended Motion to be made at September 22 or October 13 Council meeting:

**I move to adopt Ordinance No. 1761, amending Fircrest Municipal Code Title 22 to ensure consistency with Critical Area Ordinance update regulations in RCW 36.70A.070.**

## CITY OF FIRCREST ORDINANCE NO. 1761

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIRCREST, WASHINGTON, RELATING TO UPDATES TO CRITICAL AREAS REGULATIONS; AMENDING FIRCREST MUNICIPAL CODE (FMC) SECTIONS 22.92.040, .090, .100, .110, .130, .150, .160, .180, .190, .290, .300, AND .340; AMENDING FMC SECTIONS 22.93.020, .040, .070, AND .100; AMENDING FMC SECTIONS 22.94.010, .030, .050, AND .080; AMENDING FMC SECTIONS 22.97.010, .020, .030, AND .040; AMENDING FMC SECTIONS 22.98.179, .285, .298, .447, .579, .623, AND .753; AMENDING FMC SECTIONS 22.100.010, .020, .040, AND .050; REPEALING FMC SECTIONS 22.98.080, 22.98.180, 22.98.350, 22.98.544, 22.98.752, AND 22.98.785; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

**WHEREAS**, the City of Fircrest's ("City") Critical Areas Ordinance ("CAO") is a collection of locally determined development regulations intended to conserve the functions of environmentally sensitive areas and protect the public from hazards that may be associated with developing in areas with certain environmental characteristics such as areas prone to flooding and posing geological hazards; and

**WHEREAS**, Chapter 365-190 of the Washington Administrative Code ("WAC") requires the protection of critical areas through buffer standards, mitigation requirements, and habitat conservation provisions; and

**WHEREAS**, Section 36.70A.130(5) of the Revised Code of Washington ("RCW") requires cities to incorporate development regulations involving wetlands, fish and wildlife habitat conservation areas, critical aquifer recharge areas, geologically hazardous areas, and flood hazard areas, and to evaluate and revise their Critical Areas Ordinance and associated development regulations every ten years; and

**WHEREAS**, the purpose of the City's critical areas regulations is to designate and classify ecologically sensitive and hazardous areas and to protect these areas and their functions and values, while also allowing for reasonable use of private property, and to implement the goals, policies, guidelines, and requirements of the City's Comprehensive Plan and the Growth Management Act (Chapter 36.70A RCW); and

**WHEREAS**, the Planning Commission reviewed the amendments contained in Exhibit A, including holding briefings on December 2, 2025, January 6, 2026, March 3, 2026, April 7, 2026, and July 7, 2026, and a public hearing regarding the same on August 18, 2026; and

**WHEREAS**, the Planning Commission adopted Resolution No. 26-01 on August 18, 2026, recommending the City Council approve the proposed amendments as they appear in Exhibit A; and

# Questions?