

Title 15

ENVIRONMENTAL PROTECTION

Chapters:

15.04 Environmental Review (SEPA)

15.08 Shoreline Management Plan

15.12 Air Pollution Control

15.16 Critical Areas Code

15.20 *Repealed*

15.24 *Repealed*

Chapter 15.04

ENVIRONMENTAL REVIEW (SEPA)

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15.04.010 Authority.

The town of Eatonville adopts this chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120 and the SEPA rules, Chapter 197-11 WAC. This chapter contains the town's SEPA procedures and policies. The SEPA rules contained in Chapter 197-11 WAC must be used in conjunction with this chapter. (Ord. 2010-03 § 7, 2010).

15.04.020 Adoption by reference.

The town adopts the following sections of Chapter 197-11 WAC by reference:

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|------------|--|
| 197-11-040 | Definitions. |
| 197-11-050 | Lead agency. |
| 197-11-055 | Timing of SEPA process. |
| 197-11-060 | Content of environmental review. |
| 197-11-070 | Limitations on actions during SEPA process. |
| 197-11-080 | Incomplete or unavailable information. |
| 197-11-090 | Supporting documents. |
| 197-11-100 | Information required of applicants. |
| 197-11-158 | GMA project review – Reliance on existing plans, laws, and regulations. |
| 197-11-164 | Planned actions – Definitions and criteria. |
| 197-11-168 | Ordinances or resolutions designating planned actions – Procedures for adoption. |
| 197-11-172 | Planned actions – Project review. |
| 197-11-210 | SEPA/GMA integration. |
| 197-11-220 | SEPA/GMA definitions. |
| 197-11-228 | Overall SEPA/GMA integration procedures. |
| 197-11-230 | Timing of an integrated GMA/SEPA process. |
| 197-11-232 | SEPA/GMA integration procedures for preliminary planning, environmental analysis and expanded scoping. |
| 197-11-235 | Integrating documents. |
| 197-11-238 | Monitoring. |
| 197-11-250 | SEPA/Model Toxics Control Act integration. |
| 197-11-253 | SEPA lead agency for MTCA actions. |
| 197-11-256 | Preliminary evaluation. |
| 197-11-259 | Determination of nonsignificance and EIS for MTCA remedial actions. |
| 197-11-265 | Early scoping for MTCA remedial actions. |

197-11-268 MTCA interim actions.
(Ord. 2010-03 § 7, 2010).

15.04.030 Additional definitions.

In addition to those definitions contained within WAC 197-11-700 through 197-11-799 and 197-11-220, when used in this chapter the following terms shall have the following meanings, unless the content indicates otherwise:

A. "Department" means any division, unit or department of the town.

B. "Ordinance" or "chapter" means the ordinance, resolution or other procedure used by the town to adopt regulatory requirements.

C. "Early notice" means the town's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated determination of nonsignificance (MDNS) procedures).

D. "SEPA rules" means Chapter 197-11 WAC adopted by the Department of Ecology. (Ord. 2010-03 § 7, 2010).

15.04.040 Designation of responsible official.

A. For those proposals for which the town is a lead agency, the responsible official shall be the planning director or such other person as the mayor may designate in writing.

B. For all proposals for which the town is a lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS) and perform any other functions assigned to the lead agency or responsible official by those sections of the SEPA rules that have been adopted by reference in this chapter. (Ord. 2010-03 § 7, 2010).

15.04.050 Lead agency determination and responsibilities.

A. The SEPA responsible official shall determine the lead agency for any application for or initiation of a proposal that involves a nonexempt action, as provided in WAC 197-11-050.

B. When the town is the lead agency for a proposal, the SEPA responsible official shall supervise compliance with the necessary threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.

C. When the town is not the lead agency for a proposal, all departments of the town shall use and consider as appropriate either the determination of nonsignificance (DNS) or the final EIS of the lead agency in making decisions on the proposal. No

town department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency unless required under WAC 197-11-600. In some cases, the town may conduct supplemental environmental review under WAC 197-11-600.

D. If the town, or any of its departments, receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within 15 days of receipt of the determination or the town must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the 15-day time period. Any such petition on behalf of the town may be initiated by the SEPA responsible official.

E. Departments of the town are authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944; provided, that the responsible official and any department that will incur responsibilities as the result of such agreement approve the agreement.

F. Any department making a lead agency determination for a private project shall require sufficient information from the applicant to identify other agencies with jurisdiction over the proposal. (Ord. 2010-03 § 7, 2010).

15.04.053 Transfer of lead agency status to a state agency.

For any proposal for a private project where the town would be the lead agency and for which one or more state agencies have jurisdiction, the town's responsible official may elect to transfer the lead agency duties to a state agency. The state agency with jurisdiction appearing first on the priority listing in WAC 197-11-936 shall be the lead agency and the town shall be an agency with jurisdiction. To transfer lead agency duties, the town's responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The responsible official of the town shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal. (Ord. 2010-03 § 7, 2010).

15.04.058 Additional timing considerations.

A. For nonexempt proposals, the DNS, MDNS or the draft EIS for the proposal shall accompany

the town's staff recommendation to the appropriate advisory body, such as the planning commission or the board of adjustment.

B. This subsection applies to those permits that are not subject to the notice of application requirements in Chapter 18.09A EMC and RCW 36.70B.110. If the town's only action on a proposal is a decision on a building permit or other license/permit that requires detailed project plans and specifications, the applicant may request in writing that the town conduct environmental review prior to the submission of the detailed plans and specifications. (Ord. 2010-03 § 7, 2010).

15.04.060 Categorical exemptions and threshold determinations – Adoption by reference.

The town adopts the following sections of Chapter 197-11 WAC, as now existing or hereinafter amended, by reference as supplemented in this chapter:

WAC

- 197-11-300 Purpose of this part.
 - 197-11-305 Categorical exemptions.
 - 197-11-310 Threshold determination required.
 - 197-11-315 Environmental checklist.
 - 197-11-330 Threshold determination process.
 - 197-11-335 Additional information.
 - 197-11-340 Determination of nonsignificance (DNS).
 - 197-11-350 Mitigated DNS.
 - 197-11-355 Optional DNS process.
 - 197-11-360 Determination of significance (DS)/ initiation of scoping.
 - 197-11-390 Effect of threshold determination.
- (Ord. 2010-03 § 7, 2010).

15.04.080 Categorical exemptions – Adoption by reference.

The town adopts by reference the following rules for categorical exemptions, as supplemented by this chapter, including EMC 15.04.090 (use of exemptions):

WAC

- 197-11-800 Categorical exemptions.
- 197-11-880 Emergencies.
- 197-11-890 Petitioning DOE to change exemptions.

(Ord. 2010-03 § 7, 2010).

15.04.090 Categorical exemptions – Use of exemptions.

A. Each department within the town that receives an application for a license, permit, or, in

the case of governmental proposals, the department initiating the proposal, shall determine whether the license and/or the proposal is exempt. The department's determination that a proposal is exempt shall be final and not subject to administrative appeal. If a proposal is exempt, none of the procedural requirements of this chapter shall apply to the proposal. The town shall not require completion of an environmental checklist for an exempt proposal.

B. In determining whether or not a proposal is exempt, the department shall make certain the proposal is properly defined and shall identify the governmental license or permit required (WAC 197-11-070). If a proposal includes exempt and nonexempt actions, the department shall determine the lead agency even if the license application that triggers the consideration is exempt.

C. If a proposal includes both exempt and nonexempt actions, the town may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

1. The town shall not give authorization for:
 - a. Any nonexempt action;
 - b. Any action that would have an adverse environmental impact; or
 - c. Any action that would limit the choice of alternatives;
2. The town may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if the nonexempt actions were not approved; and
3. The town may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if the nonexempt actions were not approved. (Ord. 2010-03 § 7, 2010).

15.04.100 Determination – Review at conceptual stage.

A. Preapplication conferences, as provided in EMC 18.09A.040, shall also address environmental issues to familiarize the applicant with the town's SEPA regulations, process, policies and objectives.

B. If the town's only action on a proposal is a decision on a building permit or other license that requires detailed project plans and specifications, the applicant may request in writing that the town conduct environmental review prior to submission of the detailed plans and specifications.

C. In addition to the environmental documents an applicant shall submit the following information for environmental review:

1. A copy of any permit or license application; and
2. Other information as the responsible official may determine. (Ord. 2010-03 § 7, 2010).

15.04.110 Threshold determinations – Environmental checklist.

A. Except as provided in subsection D of this section, a completed environmental checklist (or a copy), in a form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate or other approval not specifically exempted by this chapter, except that a checklist is not needed if the town and applicant agree that an EIS is required, SEPA has been completed, or compliance has been initiated by another agency. The town shall use the environmental checklist to determine the lead agency, and if the town is the lead agency, for determining the responsible official and for making the threshold determinations.

B. For private proposals, the applicant is required to complete the environmental checklist. The town may provide assistance as necessary. For town proposals the department initiating the proposal shall complete the environmental checklist for that proposal.

C. The town may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs:

1. The town has technical information on a question or questions that is unavailable to the private applicant; or
2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

The applicant shall pay to the town the actual costs of providing the information for the environmental checklist.

D. For projects submitted as planned actions under WAC 197-11-164, the town shall use its existing environmental checklist form or may modify the environmental checklist form as provided in WAC 197-11-315. The modified environmental checklist form may be prepared and adopted along with or as part of a planned action ordinance; or developed after the ordinance is adopted. In either case, a proposed modified environmental checklist form must be sent to the

Department of Ecology to allow at least a 30-day review prior to use. (Ord. 2010-03 § 7, 2010).

15.04.115 Completed environmental checklist defined.

A. An environmental checklist is deemed completed when the following information is provided:

1. All information as requested in the checklist is provided, including complete responses to all questions in the checklist.
2. All plans and illustrations as required per the applicable town code are submitted with the environmental checklist.
3. The required number of copies of the checklist and associated plans and illustrations are submitted, as per the applicable town code.
4. The checklist is properly signed and dated.
5. All applicable fees as established in the town's fee schedule are paid.

B. Incomplete or inaccurate responses to the questions within the checklist shall be grounds for reserving a threshold determination on a proposal, including the scheduling of any public hearings as may be required, until such time as the information is provided by the applicant. Any period during which an applicant has been requested by the town to correct plans, perform required studies or provide additional required information shall not be included in the project permit processing time provided in this code. (Ord. 2010-03 § 7, 2010).

15.04.120 Mitigated DNS.

A. As provided in this section and in WAC 197-11-350, the responsible official may issue a determination of nonsignificance (DNS) based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

B. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:

1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and
2. Precede the town's actual threshold determination for the proposal.

C. The responsible official should respond to the request for early notice as soon as possible. The response shall:

1. Be in writing;
2. State whether the town currently considers issuance of a DS likely and, if so, indicate the

general or specific areas of concern that are leading the town to consider a DS; and

3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, and may revise the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

D. As much as possible, the town should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

E. When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, the town shall base its threshold determination on the changed or clarified proposal and should make the determination within 15 days of receiving the changed or clarified proposal.

1. If the town indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the town shall issue and circulate a determination of nonsignificance (DNS), under WAC 197-11-340(2).

2. If the town indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the town shall make the threshold determination, and issue a DNS or DS as appropriate.

3. The applicant's proposed mitigation measures, clarifications, changes or conditions must be in writing and must be specific.

4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.

F. The town shall not act upon a proposal for which a mitigated DNS has been issued until the 14-day comment and public notice period has expired; provided, that the requirements of this section shall not apply to a DNS issued pursuant to the optional DNS process described in EMC 15.04.123.

G. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit or enforced in any matter specifically prescribed by the town.

H. If the town's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the town should evaluate the threshold determination to assure consistency with WAC

197-11-340(3)(a) relating to the withdrawal of a DNS.

I. The town's written response under subsection B of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarification or changes to a proposal, as opposed to a written request for early notice, shall not bind the town to consider the clarifications or changes in its threshold determination. (Ord. 2010-03 § 7, 2010).

15.04.123 Optional DNS process.

A. If the responsible official has a reasonable basis for determining that significant adverse environmental impacts are unlikely, the responsible official may elect to use the single integrated comment period set forth in this section. If this process is used, a second comment period will typically not be required when the DNS is issued.

B. If the optional process set forth in this section is used, the responsible official shall:

1. State on the first page of the notice of application that it expects to issue a DNS for the proposal, and that:

a. The optional DNS process is being used;

b. This may be the only opportunity to comment on the environmental impacts of the proposal;

c. The proposal may include mitigation measures under applicable codes, and the project review process may incorporate or require mitigation measures regardless of whether an EIS is prepared; and

d. A copy of the subsequent threshold determination for the specific proposal may be obtained upon request (in addition, the town may maintain a general mailing list for threshold determination distribution);

2. List in the notice of application the conditions being considered to mitigate environmental impacts, if a mitigated DNS is expected;

3. Comply with the requirements for a notice of application and public notice in EMC 18.09A.070; and

4. Send the notice of application and environmental checklist to:

a. Agencies with jurisdiction, the Department of Ecology, affected tribes, and each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal; and

b. Anyone requesting a copy of the environmental checklist for the specific proposal (in

addition, the town may maintain a general mailing list for checklist distribution).

C. If the responsible official indicates on the notice of application that a DNS is likely, an agency with jurisdiction may assume lead agency status during the comment period on the notice of application in accordance with EMC 15.04.050, WAC 197-11-940 and 197-11-948.

D. The responsible official shall consider timely comments on the notice of application and either:

1. Issue a DNS or mitigated DNS with no comment period using the procedures in subsection E of this section;

2. Issue a DNS or mitigated DNS with a comment period using the procedures in subsection E of this section, if the responsible official determines a comment period is necessary;

3. Issue a DS; or

4. Require additional information or studies prior to making a threshold determination.

E. If a DNS or mitigated DNS is issued under subsection (D)(1) or (D)(2) of this section, the responsible official shall send a copy of the DNS or mitigated DNS to the Department of Ecology, agencies with jurisdiction, those who commented, and anyone requesting a copy. A copy of the environmental checklist need not be recirculated. (Ord. 2010-03 § 7, 2010).

15.04.130 Environmental impact statement (EIS) – Adoption by reference.

The town adopts the following sections of Chapter 197-11 WAC, as now existing or hereinafter amended, by reference as supplemented by this chapter:

WAC

197-11-400	Purpose of EIS.
197-11-402	General requirements.
197-11-405	EIS types.
197-11-406	EIS timing.
197-11-408	Scoping.
197-11-410	Expanded scoping.
197-11-420	EIS preparation.
197-11-425	Style and size.
197-11-430	Format.
197-11-435	Cover letter or memo.
197-11-440	EIS contents.
197-11-442	Contents of EIS on nonproject proposals.
197-11-443	EIS contents when prior nonproject EIS.
197-11-444	Elements of the environment.

197-11-448 Relationship of EIS to other considerations.

197-11-450 Cost-benefit analysis.

197-11-455 Issuance of DEIS.

197-11-460 Issuance of FEIS.

(Ord. 2010-03 § 7, 2010).

15.04.140 EIS – Preparation.

A. Responsible Official's Responsibilities. Preparation of draft and final EISs and SEISs shall be under the direction of the responsible official. Before the town issues an EIS or SEIS, the responsible official shall be satisfied that it complies with this chapter and Chapter 197-11 WAC.

B. The DEIS and FEIS or draft and final SEIS shall be prepared by the town staff, the applicant, or by a consultant selected by the town, as determined by the responsible official. If the responsible official requires an EIS for a proposal and determines that someone other than the town will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the town's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

C. Time Limit. Subject to delays caused by the applicant's failure to provide needed information and other delays beyond the town's control, draft and final EISs will be completed within one year of the date of the declaration of significance, unless the town and the applicant agree in writing to a different estimated time period for completion.

D. Requirement for Additional Information. The town may require an applicant to provide additional information which the town does not possess, including information which must be obtained by specific investigations. The applicant shall not be required to supply information that is not required under this chapter or that is being requested from another agency. (This does not apply to information the town may request under another ordinance or statute.)

E. Fees.

1. For the purpose of reimbursing the town for necessary costs and expenses relating to its compliance with the SEPA rules and this chapter in connection with private projects, the following schedule of fees is established (in addition to the fees in the town's fee resolution):

a. For a threshold determination which requires information in addition to that contained in or accompanying the environmental checklist, a fee in an amount equal to the actual costs and

expenses incurred by the town in conducting any studies or investigations necessary to provide such information;

b. For all private projects requiring an EIS for which the town is the lead agency and for which the responsible official determines that the EIS shall be prepared by the employees of the town, or that the town will contract directly with a consultant or consultants for the preparation of an EIS, a fee in an amount equal to the actual costs and expenses incurred by the town in preparing the EIS. Such fee shall also apply when the town determines that the applicant may prepare the EIS, and the responsible official determines that substantial revisions or reassessing of impacts must be performed by employees of the town to ensure compliance with the provisions of the SEPA guidelines and this chapter.

2. If the responsible official determines that an EIS is required, and that the EIS shall be prepared by employees of the town or by a consultant or consultants retained by the town, or that the applicant-prepared EIS shall be substantially rewritten by employees of the town, the private applicant shall be advised by the responsible official of the estimated costs and expenses of preparing or rewriting the EIS prior to actual preparation or rewriting, and the private applicant shall post a bond or otherwise insure payment of such costs and expenses. A consultant or consultants may be recommended by the applicant. The final decision to hire a consultant or consultants shall be made by the town council.

3. All fees owed the town under this section shall be paid in full by the private applicant prior to final action by the town on the private project. Any fee owed the town under this subsection E shall be paid by the private applicant prior to the initiation of actual preparation of an EIS (if required) or actual rewriting of an applicant-prepared EIS by the town or its consultant(s). For all EISs involving multiple applicants, the cost of preparation shall be divided among the applicants according to the nature, amount and type of work to be performed. The town shall ask the EIS consultant to estimate the costs related to the portion of the EIS associated with each application. The town shall make the final decision on the costs to be billed each applicant, regardless of whether the EIS is prepared by a consultant or the town. If a private applicant disputes the amount of the fee, the fee may be paid under protest and without prejudice to the applicant's right to file a claim and bring an action to recover the fee. (Ord. 2010-03 § 7, 2010).

15.04.145 Additional elements to be covered by EIS.

The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determinations or perform any other function or purpose under this chapter: economy, social policy analysis and cost-benefit analysis. (Ord. 2010-03 § 7, 2010).

15.04.150 Commenting – Adoption by reference.

The town adopts the following sections by reference as supplemented in this chapter:

WAC

197-11-500	Purpose of this part.
197-11-502	Inviting comment.
197-11-504	Availability and cost of environmental documents.
197-11-508	SEPA register.
197-11-510	Public notice.
197-11-535	Public hearings and meetings.
197-11-545	Effect of no comment.
197-11-550	Specificity of comments.
197-11-560	FEIS response to comments.
197-11-570	Consulted agency costs to assist lead agency.

(Ord. 2010-03 § 7, 2010).

15.04.160 Public notice.

A. Whenever possible, the town shall integrate public notice required under this section with existing notice procedures for the town's nonexempt permit(s) or approval(s) required for the proposal.

B. Whenever the town issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3), the town shall give public notice as follows:

1. If public notice is required for a nonexempt permit, the notice shall state whether a DS or DNS has been issued and when comments are due;

2. If an environmental document is issued concurrently with the notice of application, the public notice requirements for the notice of application in RCW 36.70B.110(4) will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1);

3. If no public notice is otherwise required for the permit or approval, the town shall give notice of the DNS or DS by:

a. Posting on the property or publication in the official newspaper of the town of Eatonville for site-specific proposals;

b. Mailing to property owners within 300 feet for site-specific proposals;

4. Whenever the town issues a DS under WAC 197-11-360(3), the town shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

C. Whenever a public hearing is held on a non-exempt permit, notice of the threshold determination shall be given. Such notice shall precede the hearing by at least 15 days. Notice will be given as follows:

1. Posting on the property or publication in the official newspaper of the town of Eatonville for site-specific proposals;

2. Mailing to property owners within 300 feet for site-specific proposals.

D. If a DNS is issued using the optional DNS process, the public notice requirements for a notice of application in RCW 36.70B.110(4) as supplemented by the requirements in EMC 15.04.123 and WAC 197-11-355 will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1).

E. Whenever the town issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

1. Indicating the availability of the DEIS in any public notice required for a nonexempt license; and the following:

a. Posting on the property or publication in the official newspaper of the town of Eatonville for site-specific proposals;

b. Mailing to property owners within 300 feet for site-specific proposals.

F. Public notice for projects that qualify as planned actions shall be tied to the underlying permit as specified in WAC 197-11-172(3).

G. The town may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense. (Ord. 2010-03 § 7, 2010).

15.04.170 Designation of official to perform consulted agency responsibilities for the town.

A. The responsible official shall be responsible for preparation of written documents for the town in response to a consultation request prior to a threshold determination, participation in scoping and reviewing of a draft EIS.

B. The responsible official shall be responsible for the town's compliance with WAC 197-11-550

whenever the town is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the town. (Ord. 2010-03 § 7, 2010).

15.04.180 Using existing environmental documents – Adoption by reference.

The town adopts the following sections for using and supplementing existing environmental documents prepared under SEPA or the National Environmental Policy Act (NEPA) for the town's own environmental compliance by reference:

- WAC 197-11-164 Planned actions – Definitions and criteria.
 - 197-11-168 Ordinances or resolutions designating planned actions – Procedures for adoption.
 - 197-11-172 Planned actions – Project review.
 - 197-11-600 When to use existing environmental documents.
 - 197-11-610 Use of NEPA documents.
 - 197-11-620 Supplemental environmental impact statements.
 - 197-11-625 Addenda – Procedures.
 - 197-11-630 Adoption – Procedures.
 - 197-11-635 Incorporation by reference – Procedures.
 - 197-11-640 Combining documents.
- (Ord. 2010-03 § 7, 2010).

15.04.190 SEPA decisions – Adoption by reference.

The town adopts the following sections by reference:

- WAC 197-11-650 Purpose of this part.
 - 197-11-655 Implementation.
 - 197-11-660 Substantive authority and mitigation.
 - 197-11-680 Appeals.
- (Ord. 2010-03 § 7, 2010).

15.04.200 SEPA decisions.

For nonexempt proposals, the DNS or EIS for the proposal shall accompany the town staff's recommendation. If a final EIS is or becomes available, it shall be substituted for the draft. (Ord. 2010-03 § 7, 2010).

15.04.210 Substantive authority.

A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the town.

B. The town may attach conditions to a permit or approval for a proposal, so long as:

1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and

2. Such conditions are in writing; and

3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and

4. The town has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

5. Such conditions are based on one or more policies in subsection D of this section and cited in the license or other decision document.

C. The town may deny a permit or approval for a proposal on the basis of SEPA so long as:

1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; and

2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and

3. The denial is based on one or more policies identified in writing in the decision document.

D. The town designates and adopts by reference the following policies as the basis for the town's exercise of authority pursuant to this section:

1. The town shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

b. Assure for all people of Washington safe, healthful, productive and aesthetically and culturally pleasing surroundings;

c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

d. Preserve important historic, cultural and natural aspects of our national heritage;

e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. The town recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

3. The town adopts by reference the policies in the following town codes, ordinances, resolutions and plans, as they now exist or may be hereafter amended, as a possible basis for the exercise of substantive SEPA authority in the conditioning or denying of proposals:

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

b. EMC Title 5 – Business Taxes, Licenses and Regulations;

c. EMC Title 6 – Animals;

d. EMC Title 8 – Health and Safety;

e. EMC Title 10 – Vehicles and Traffic;

f. EMC Title 12 – Streets, Sidewalks and Public Places;

g. EMC Title 13 – Public Services;

h. EMC Title 15 – Environmental Protection;

i. EMC Title 16 – Buildings and Construction;

j. EMC Title 18 – Zoning;

k. The town of Eatonville comprehensive plan;

l. The town of Eatonville shoreline master program;

m. The town's six-year road program;

n. The town's comprehensive water plan;

o. The town's comprehensive sewer plan;

p. Town of Eatonville public works standards;

q. Town of Eatonville storm water management ordinance;

r. Eatonville trails plan;

s. Eatonville airport layout plan.

4. The town establishes the following additional policies:

a. Schools. In order to ensure that adequate school facilities are available to serve new

growth and development and to ensure that new growth and development provides mitigation for direct impacts on school facilities identified by the school district as a consequence of proposed development, the town may impose school mitigation fees, all as provided in RCW 82.02.020.

b. Police. In order to ensure that the town's acceptable level of service for police response is not diminished as a result of new growth and development and to ensure that new growth and development provides mitigation for the direct impacts on the town's police department that are identified by the town as a consequence of proposed development, the town may impose police and emergency response mitigation fees, all as provided in RCW 82.02.020. (Ord. 2010-03 § 7, 2010).

15.04.230 Appeals.

The town establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-110-680:

A. Appealable Decisions.

1. Only the following decisions may be administratively appealed under this chapter:

- a. Final threshold determination;
- b. Mitigation or failure to mitigate in the SEPA decision;
- c. Final EIS; and
- d. Project denials under SEPA.

2. If the town does not provide for a hearing or appeal on the underlying action/permit, then the SEPA administrative appeal on the decisions listed in subsection (A)(1) of this section shall be the only hearing and appeal allowed on the underlying action/permit.

B. Notice of Decision.

1. In the notice of decision issued by the town and for every decision for which an appeal is available in this section, the SEPA responsible official shall give official notice of the date and place for commencing an appeal. The notice shall include:

- a. Notice that the SEPA issues must be appealed within the time limit set by statute or ordinance for appealing the underlying governmental action;
- b. The time limit for commencing the appeal of the underlying governmental action and SEPA issues, and the statute or ordinance establishing the time limit;
- c. Where the appeal may be filed.

2. Written notice shall be provided to the applicant, all parties to any administrative appeal

and all persons who have requested notice of decisions concerning the project. Such notice may be appended to the permit, the decision documents, the SEPA compliance documents or may be printed separately.

C. Timing of Appeal. The appeal shall take place prior to the town's final decision on a proposed action. However, the SEPA appeal hearing may be consolidated with any other hearing on the underlying permit or action.

D. Number of Appeals. Only one administrative appeal to the town is allowed of the decisions listed in subsection A of this section.

E. Consolidated Appeals. If the underlying action/permit requires a hearing, any SEPA appeal shall be consolidated with the hearing or appeal of the underlying action/permit into one simultaneous hearing, with the exception of the following:

1. An appeal of a determination of significance (DS);
2. An appeal of a procedural determination made by the town when the town is a project proponent, or is funding a project, and chooses to conduct its review under SEPA, including any appeals of its procedural determinations, prior to submitting an application for a project permit. Subsequent appeals of substantive determinations by an agency with jurisdiction over the proposed project shall be allowed under the SEPA appeal procedures of the agency with jurisdiction;
3. An appeal of a procedural determination made by the town on a nonproject action; and
4. An appeal to the town council under RCW 43.21C.060 for a legislative action.

F. Timing of Appeal.

1. SEPA Decision Issues at the Same Time as Underlying Action. An appeal of a SEPA decision issued at the same time as the decision on a project action shall be filed within 14 days after issuance of a notice of decision, or after notice that a decision has been made and is appealable.

2. SEPA Decision Allows Public Comment. For a DNS or MDNS for which public comment is required (under this chapter), the appeal period shall be extended for an additional seven days.

3. SEPA Threshold Decision Issues Prior to Decision on Underlying Action. An appeal of a threshold decision issued prior to a decision on a project action shall be filed within 14 days after notice that the decision has been made and is appealable.

G. Consideration of SEPA Responsible Official's Decision. Procedural determinations made

by the SEPA responsible official shall be entitled to substantial weight by town council in an appeal.

H. Administrative Record. An administrative record of the appeal must be provided, and the record shall consist of the following:

1. Findings and conclusions;
2. Testimony under oath; and
3. A taped or written transcript. (The town may require that the appellant provide an electronic transcript.)

I. Exhaustion of Administrative Remedies. The town's administrative appeal procedure must be used before anyone may initiate judicial review of any SEPA issue for which the town allows an appeal in this section.

J. Content of Appeal. Every appeal must be in writing, and must include the following:

1. The applicable appeal fee, as established by resolution of the town council;
2. Appellant's name, address and phone number;
3. A statement describing the appellant's standing, or why the appellant believes that he or she is aggrieved by the decision appealed from;
4. Identification of the application and decision which is the subject of the appeal;
5. Appellant's statement of grounds for appeal and the facts upon which the appeal is based with specific references to the facts in the record;
6. The specific relief sought;
7. A statement that the appellant has read the appeal and believes the content to be true, followed by the appellant's signature.

K. Timeliness of Appeals. On receipt of a written notice of appeal, the SEPA responsible official shall forward the appeal to town council who shall determine whether the appeal is timely prior to the scheduling of any appeal hearing or consolidated open record hearing on an underlying project permit. A written decision will issue if the appeal is untimely and the appeal will not proceed.

L. Town Council Appeals.

1. Jurisdiction. The town council shall hear all administrative appeals relating to ministerial, quasi-judicial and legislative actions and applications. In addition, the town council shall hear appeals relating to any other applications that are appealable to the town council (pursuant to Chapter 18.09A EMC).

2. Hearing. For all legislative actions and applications, the town council shall hold an open record hearing (Chapter 18.09A EMC). For any appeals relating to applications appealable to the town council (pursuant to Chapter 18.09A EMC),

the town council shall hold a closed record hearing (Chapter 18.09A EMC) unless there has been no open record hearing on the application.

3. Record on Appeal. There are no restrictions on the evidence and testimony received by the council for an appeal relating to legislative actions and applications. For any other type of appeal, the town council shall follow the requirements of Chapter 18.09A EMC for closed record appeals.

4. Appeals of Town Council's Decision. The town council's decision on the timeliness of an appeal within its jurisdiction and any other appeals allowed under this subsection within its jurisdiction shall be the final decision of the town. The town council's decision shall include information on the further administrative appeals.

M. Judicial Appeals.

1. When SEPA applies to a decision, any judicial appeal of that decision potentially involves both those issues pertaining to SEPA and those which do not. This section and RCW 43.21C.075 establish the time limits for raising SEPA issues, but existing statutes of limitation control the appeal of non-SEPA issues.

2. Appeals of the town's final decision shall be filed in superior court, but appellants must follow RCW 43.21C.075(6)(c), which provides that "judicial review under Chapter 43.21C RCW shall without exception be of the governmental action together with its accompanying environmental determinations," which contemplates a single lawsuit. (Ord. 2010-03 § 7, 2010).

15.04.240 Notice/statute of limitations.

A. The town, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

B. The form of the notice shall be substantially in the form provided by WAC 197-11-990. The notice shall be published by the town clerk or county auditor, applicant or proponent, pursuant to RCW 43.21C.080. (Ord. 2010-03 § 7, 2010).

15.04.250 Definitions – Adoption by reference.

The town adopts the following sections of Chapter 197-11 WAC, as now existing or hereafter amended, by reference, as supplemented in this chapter:

WAC	
197-11-700	Definitions.
197-11-702	Act.
197-11-704	Action.
197-11-706	Addendum.

197-11-708 Adoption.
 197-11-710 Affected tribe.
 197-11-712 Affecting.
 197-11-714 Agency.
 197-11-716 Applicant.
 197-11-718 Built environment.
 197-11-720 Categorical exemption.
 197-11-721 Closed record appeal.
 197-11-722 Consolidated appeal.
 197-11-724 Consulted agency.
 197-11-726 Cost-benefit analysis.
 197-11-728 County/town.
 197-11-730 Decision maker.
 197-11-732 Department.
 197-11-734 Determination of nonsignificance (DNS).
 197-11-736 Determination of significance (DS).
 197-11-738 EIS.
 197-11-740 Environment.
 197-11-742 Environmental checklist.
 197-11-744 Environmental document.
 197-11-746 Environmental review.
 197-11-750 Expanded scoping.
 197-11-752 Impacts.
 197-11-754 Incorporation by reference.
 197-11-756 Lands covered by water.
 197-11-758 Lead agency.
 197-11-760 License.
 197-11-762 Local agency.
 197-11-764 Major action.
 197-11-766 Mitigated DNS.
 197-11-768 Mitigation.
 197-11-770 Natural environment.
 197-11-772 NEPA.
 197-11-774 Nonproject.
 197-11-775 Open record hearing.
 197-11-776 Phased review.
 197-11-778 Preparation.
 197-11-780 Private project.
 197-11-782 Probable.
 197-11-784 Proposal.
 197-11-786 Reasonable alternative.
 197-11-788 Responsible official.
 197-11-790 SEPA.
 197-11-792 Scope.
 197-11-793 Scoping.
 197-11-794 Significant.
 197-11-796 State agency.
 197-11-797 Threshold determination.
 197-11-799 Underlying governmental action.
 (Ord. 2010-03 § 7, 2010).

15.04.260 Agency compliance – Adoption by reference.

The town adopts the following sections by reference, as supplemented in this chapter:

WAC
 197-11-900 Purpose of this part.
 197-11-902 Agency SEPA policies.
 197-11-904 Agency SEPA procedures.
 197-11-906 Content and consistency of agency procedures.
 197-11-908 Critical areas.
 197-11-910 Designation of responsible official.
 197-11-912 Procedures of consulted agencies.
 197-11-914 SEPA fees and costs.
 197-11-916 Application to ongoing actions.
 197-11-917 Relationship to Chapter 197-10 WAC.
 197-11-918 Lack of agency procedures.
 197-11-920 Agencies with environmental expertise.
 197-11-922 Lead agency rules.
 197-11-924 Determining the lead agency.
 197-11-926 Lead agency for governmental proposals.
 197-11-928 Lead agency for public and private proposals.
 197-11-930 Lead agency for private projects with one agency with jurisdiction.
 197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/town.
 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/town, and one or more state agencies.
 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
 197-11-938 Lead agencies for specific proposals.
 197-11-940 Transfer of lead agency status to a state agency.
 197-11-942 Agreements on lead agency status.
 197-11-944 Agreements on division of lead agency duties.
 197-11-946 DOE resolution of lead agency disputes.
 197-11-948 Assumption of lead agency status.
 (Ord. 2010-03 § 7, 2010).

15.04.280 Fees.

The town shall adopt a resolution establishing fees as required in accordance with the provisions of this chapter. (Ord. 2010-03 § 7, 2010).

15.04.290 Forms – Adoption by reference.

The town adopts the following forms and sections by reference:

WAC

197-11-960 Environmental checklist.

197-11-965 Adoption notice.

197-11-970 Determination of nonsignificance (DNS).

197-11-980 Determination of significance and scoping notice (DS).

197-11-985 Notice of assumption of lead agency status.

197-11-990 Notice of action.

(Ord. 2010-03 § 7, 2010).

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Chapter 15.08

SHORELINE MANAGEMENT PLAN*

Sections:

- 15.08.010 Plan adopted by reference.
- 15.08.020 Map adopted by reference.
- 15.08.030 General provisions and administration.
- 15.08.040 Permits and variances.
- 15.08.050 Penalties – Enforcement.

*For statutory provisions on shoreline management, see Chapter 90.58 RCW.

15.08.010 Plan adopted by reference.

That certain document, three copies of which are on file in the office of the town clerk, being marked and designated as the “Shoreline Management and Use Regulations,” for Pierce County, adopted April 4, 1975, and revised April, 1981, is adopted as the shoreline management master plan of the town. All of the use regulations and standards, provisions, conditions and terms of such shoreline management master plan are adopted and made a part hereof as though fully set forth in this chapter, except as modified by EMC 15.08.030. These regulations and standards apply to any development and/or activity within 200 feet of any shoreline outlined in the master plan. (Ord. 95-02 § 1, 1995; Ord. 75-7 § 1, 1975).

15.08.020 Map adopted by reference.

That certain map shown in the Pierce County shoreline management master plan, and all notations and references and information shown thereon, as are pertinent to the town, is adopted by reference and is on file with the town clerk. (Ord. 95-02 § 2, 1995; Ord. 75-7 § 2, 1975).

15.08.030 General provisions and administration.

A. Hearing Examiner/Administrator. The public works director, or designee, shall perform all the duties ascribed to the hearing examiner in Pierce County shoreline management master plan and shall be known as the town shoreline administrator. The administrator shall administer the shoreline permit and notification systems, and shall be responsible for coordinating the administration of shoreline regulations with zoning enforcement, building permits, and all other regulations regulating land use and development in the town.

The administrator shall be familiar with regulatory measures pertaining to shorelines and their use, and, within the limits of his or her authority, shall cooperate in the administration of these measures. Permits issued under the provisions of this shoreline regulation shall be coordinated with other land use and development regulatory measures of the town. The administrator shall establish procedures that advise all parties seeking building permits or other development authorization of the need to consider possible shoreline applications. It is the intent of the town, consistent with its regulatory obligations, to simplify and facilitate the processing of shoreline substantial development permits.

B. Shoreline Board. The members of the town planning commission shall serve as a shoreline board to perform the duties ascribed to such a board in this shoreline regulation. Required public hearings shall be scheduled within the last 10 days of the 30-day local review period provided in the permit procedure. Decisions shall be rendered as soon as possible after the 30-day period lapses and not more than 15 days thereafter.

Meetings shall comply with the provisions of RCW 90.58.140 and may be called by the chairman of the shoreline board, the administrator, or by motion of the shoreline board during an earlier meeting.

C. Appeal. Shoreline substantial development permits, variances and conditional use permits may be appealed. Appeals from the final decisions of the town with regard to shoreline permits shall be governed by Chapter 90.58 RCW. The effective date of the town’s decisions with regard to a shoreline substantial development permit and the Department of Ecology’s decision with regard to conditional use permits and variances shall be the date of filing with the Department of Ecology pursuant to RCW 90.58.140.

D. Interpretation. It is the policy of the town to apply shoreline regulations in such manner as to carry out the objectives of the Shoreline Management Act and the master program. When various town ordinances or laws are in conflict, the most restrictive law or ordinance shall apply.

E. Public Hearing Rules. Any public hearing conducted pursuant to this regulation shall be held according to these rules. The date, time, place and matter of the hearing shall be advertised in the official town newspaper at least 10 days but not more than 20 days in advance of the date of the hearing. Public hearings may be continued to a specific time and place and no further notice, except for posting

notice at Town Hall, is required. Where specific property is involved, a hearing notice containing the same information as the newspaper notice shall be sent at least 10 days but not more than 20 days prior to the hearing date to record owners of the property involved and the record owners of all properties, as shown on the Pierce County assessor's roll, within 200 feet of all property lines of the specific property or properties involved in the hearing. In addition, notice of all hearings involving specific property shall contain a common and a brief legal description of the property involved. Public records shall be kept for all hearings.

F. Existing Requirements for Permits and Certificates. Nothing in these regulations shall obviate any other requirement to obtain any permit, certificate, license or approval from any state agency, the town or other agency. (Ord. 95-02 § 3, 1995).

15.08.040 Permits and variances.

A. Required Permits. Certain forms of development or activity occurring within the area of shoreline jurisdiction require a shoreline substantial development permit, conditional use permit and/or variance prior to commencement of construction or beginning the activity. The permit procedure shall be as explained in Chapter 90.58 RCW and amendments to that chapter shall automatically cause a similar amendment to this regulation.

B. Substantial Development Permits. Those forms of development for which substantial development permits are required are defined by the Act as follows:

“Substantial development” means any development of which the total cost or fair market value exceeds \$2,500, or any development which materially interferes with the normal public use of the water or shorelines of the state; except the following shall not be considered substantial developments for the purpose of these regulations:

1. Any development of which the total cost or fair market value, whichever is higher, does not exceed \$2,500, if such development does not materially interfere with the normal public use of the shoreline;

2. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements;

3. Construction of the normal protective bulkhead common to single-family residences;

4. Emergency construction necessary to protect property from damage by the elements;

5. Construction and practices normal or necessary for farming, irrigating and ranching activi-

ties, including agricultural service roads and utilities on wetlands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures, including but not limited to head gates, pumping facilities, and irrigation channels;

6. Construction or modification of navigational aids such as channel markers and anchor buoys;

7. Construction on wetlands by an owner, lessee or contract purchaser of a single-family residence for his own use or for the use of his family, which residence does not exceed a height of 35 feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to WAC Title 173;

8. The marking of property lines or corners on state-owned land;

9. Operation and maintenance of any system of dikes, ditches, drains or other facilities existing on the effective date of the 1975 amendatory act that were created, developed or utilized as a part of an agricultural drainage or diking system;

10. Any project with a certification from the governor pursuant to Chapter 80.50 RCW.

C. Conditional Use Permits.

1. The objective of a conditional use provision is to provide more control and flexibility for implementing the regulations of the master program. With provisions to control undesirable effects, the scope of uses within each of the three environments can remain flexible. Uses not listed within the three environments may be classified as conditional uses and may be permitted after consideration by the shoreline board that such uses will meet standards that make the use compatible with other permitted uses with the area.

2. Conditional use permits will be granted only after the applicant can demonstrate all of the following:

a. The use will cause no unreasonably adverse effects on the environment or other adjacent uses.

b. The use will not unduly interfere with public use of public shorelines.

c. Design of the site will be compatible with the surroundings, the master program and the town's zoning requirements.

d. The proposed use will not be contrary to the general intent of the master program and the town's comprehensive land use plan.

e. The public interest will not suffer any substantial detrimental effect from the proposed use.

f. Other uses not classified in the master program may be authorized as conditional uses provided the applicant demonstrates the criteria set forth in subsections (C)(2)(a) through (e) of this section and that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the master program.

3. Should the shoreline board approve the request, the specific conditions of approval, i.e., any specific required structures, designs or actions of the applicant, will be written on the permit issued to the applicant. Conditional use permits must be approved by the Department of Ecology and do not take effect until such approval is obtained and appeal periods have expired.

D. Variances.

1. Variance deals with specific requirements of the master program and its objective is to grant relief when there are practical difficulties or unnecessary hardship in carrying out the strict letter of the master program. The property owner must show that if he complied with the provisions he cannot make any reasonable use of his property. The fact that he might make a greater profit by using his property in a manner contrary to the intent of the program is not sufficient reason for a variance.

2. A variance may be granted by the shoreline board only after the applicant demonstrates all of the following:

a. The hardship which serves as the basis for granting a variance is specifically related to the property of the applicant.

b. The hardship results from the application of the requirements of the Shoreline Management Act and master program and not from, for example, deed restrictions or the applicant's own actions.

c. The variance granted will be in harmony with the general purpose and intent of the master program.

d. Public welfare and interest will be preserved; if more harm will be done to the area by granting the variance than would be done to the applicant by denying it, the variance will be denied.

3. Variances must be approved by the Department of Ecology and do not take effect until such approval is obtained and appeal periods have expired.

4. Applicants for either a variance or conditional use permit will adhere to the procedures set forth in ordinances of the town.

E. Permit Application. Once an applicant has determined a permit is required for a contemplated project, he shall apply on forms provided by the administrator. The permit form shall include as a minimum the following information:

1. Name, address and telephone number of applicant and the relationship of the applicant to the property owner;

2. Name, address and telephone number of property owners;

3. Names and addresses of property owners, as shown on the records of the Pierce County assessor, owning property within 200 feet of the boundaries of the property lines in mailing label format;

4. Legal description of property;

5. Common description of property;

6. Name of associated shoreline or wetland;

7. Drawings or text sufficient to fully explain the intended project, which information must include:

a. Indication of size and placement of all structures, including bulkheads,

b. Indication of size, grade and profile of all roads or other vehicular passageways,

c. Indication of all water supplies and sewage disposal facilities,

d. Relation of all physical development to the associated shoreline or wetlands,

e. Scale drawings of all bridges or other structures to be built in, on or over streams, marshes, swamps or lakes;

8. A vicinity map showing:

a. The site location,

b. If development within the shoreline involves excavation or soil removal, the disposal site,

c. A general description of land use and development within 1,000 feet of the property lines;

9. The intended starting and completion dates;

10. The reason, if any, why this project requires a shoreline location as opposed to a non-shoreline location;

11. If a variance is being requested, the application shall contain the applicant's reasons why the variance should be granted;

12. If a conditional use is being requested, the application shall contain the applicant's reasons why the conditional use should be granted;

13. A wetland analysis which identifies the site bogs, marshes, other sensitive areas and related information to assist the administrator in identifying development impacts;

14. Other materials as may be required by WAC 173-14-110 as now or as it may hereafter be amended. The administrator may require such additional information as may assist in coordinating the shorelines program with other land use and development programs of the town.

On the day the applicant submits the completed form along with application fee, the official permit procedure begins. The administrator shall not accept incomplete permit applications.

F. Permit Fees. All applications for a substantial development permit, conditional use permit, or variance shall be accompanied by such fee or fees as shall be established by the town council from time to time by resolution.

G. Shoreline Substantial Development Permits.

1. Step One. After the administrator has determined that a complete application, as defined by subsection (E) of this section, has been submitted and the administrator accepts it, the town shall cause public notices of the application to appear in the town's official newspaper. At least two notices shall appear one week apart and contain the information required by WAC 173-14-070 and such other notice as the administrator deems appropriate. The administrator shall also mail notice of the application to all property owners, at the addresses shown on the records of the Pierce County Assessor, within 300 feet of the property lines of the entire property involved in the application and post notices in three conspicuous places on the property and at Town Hall.

2. Step Two. Starting from the day of the publication of the second public notice, a 30-day comment period will commence during which the administrator shall evaluate the application, collect all relevant data, and solicit communications from persons and agencies wishing to express views on the application. At the beginning of the 30-day comment period, a complete copy of the application shall be sent to the planning commission for their review and recommendation. The administrator shall examine each application for consistency with the shoreline master program.

3. Step Three. Ten days prior to the end of the 30-day comment period the planning commission shall forward its recommendation to the administrator. The administrator shall consider the recommendation of the planning commission and other comments and make a decision to approve,

approve with conditions or deny the application within 15 days of the close of the comment period.

4. Step Four. The administrator shall then transmit the decision(s) and findings and other determinations by letter to the planning commission, applicant, Department of Ecology and Attorney General.

5. Step Five. Upon the date of filing of a substantial development permit with the Department of Ecology, a 30-day appeal period will commence, during which appeals to the town's decision may be made.

6. Step Six. Should there be no appeal to the decision at the end of the 30-day period, if the town's decision was to approve or approve with conditions, and if no other permits are needed, the project may proceed.

7. Step Seven. Should there be an appeal, the project applied for may not begin until appeals are settled and required waiting periods have passed as provided in Chapter 90.58 RCW.

H. Conditional Use Permits and Variances.

1. Step One. After the administrator has determined that a complete application, as defined by subsection (E) of this section, has been submitted and the administrator accepts it, the town shall cause public notices of the application to appear in the town's official newspaper. At least two notices shall appear one week apart and contain the information required by WAC 173-14-070 and such other notice as the administrator deems appropriate. The administrator shall also mail notice of the application to all property owners, at the addresses shown on the records of the Pierce County Assessor, within 300 feet of the property lines of the entire property involved in the application and post notices in three conspicuous places on the property and at Town Hall.

2. Step Two. Starting from the day of the publication of the second public notice, a 30-day comment period will commence during which the administrator shall evaluate the application, collect relevant data, and solicit communications from persons and agencies wishing to express views on the application. At the beginning of the 30-day comment period, a complete copy of the application shall be sent to the planning commission for their review and recommendation and to the shoreline board. The shoreline board shall schedule a public hearing during the last 10 days of the 30-day comment period.

3. Step Three. The administrator shall examine the application for consistency with the shoreline master program. Ten days prior to the

end of the 30-day comment period the administrator shall forward staff and planning commission recommendations to the shoreline board. The shoreline board shall make any decisions to approve or deny the application within 15 days of the close of the comment period.

4. Step Four. The administrator shall then transmit the decision(s) and findings of the shoreline board and other determinations by letter to the planning commission, applicant, Department of Ecology and Attorney General.

5. Step Five. Upon the date of filing with the Department of Ecology, a 30-day review period will commence, during which the Department shall approve with conditions or deny the application. The Department shall transmit its final decision to the town and the applicant within 30 days of submittal of the application by the town to the Department.

6. Step Six. Upon receipt of the Department of Ecology's decision by the town, a 30-day appeal period will begin, during which time appeals to Ecology's decision may be appealed to the State shoreline board.

7. Step Seven. Should there be no appeal to the decision at the end of the 30-day period, if the Department of Ecology's decision was to approve or approve with conditions, and if no other permits are needed, the project, may proceed.

8. Step Eight. Should there be an appeal, the project applied for may not begin until appeals are settled and required waiting periods have passed as provided in Chapter 90.58 RCW.

I. Revocation of Permit. The administrator, pursuant to RCW 90.58.140(8), may revoke the permit and halt the project if conditions written on the permit are not fulfilled, are violated or if any other of these regulations are violated. The decision of the administrator may be appealed to the shoreline board.

J. Notification Required for Nonpermit Required Forms of Development.

1. There are certain forms of development and activity that may occur within the area of jurisdiction, but which do not need substantial development permits. Notification of intent to perform some of these nonpermit required forms of development and activity must be given to the administrator. Such notification shall be by letter, transmittal with other permit or license requirements. Such notification must include: the name of the person or persons intending to perform the subject development or activity, the name of the property owner, the nature of the proposed

development or activity, the location of the property, and the anticipated starting and ending dates of the project. This notice must arrive in the office of the administrator at least one week prior to the anticipated starting date. Those forms of development or activity subject to this notification provision and acceptable notification are as follows:

a. Construction of single-family residences as provided under subsection (B) of this section, Substantial Development Permits (building permit application shall be compliance);

b. Herbicide, insecticide, or other dangerous chemical application (copies of licenses required by the Department of Agriculture or written notice shall be compliance);

c. The destruction of any building (city demolition permit application shall be compliance);

d. The removal of natural vegetation from 1/10 acre or more (grading permit application or other written notice shall be compliance).

2. Failure to give such notice shall be a violation of this regulation. The burden of providing this notice rests jointly on the operator or contractor and the property owner. (Ord. 95-02 § 4, 1995).

15.08.050 Penalties – Enforcement.

A. Penalties. In addition to incurring civil liability under RCW 90.58.210, any person found to have wilfully engaged in violation of the provisions of these regulations shall be guilty of a misdemeanor. Each day of violation shall be considered a separate, and separately punishable, offense.

B. Enforcement. The town attorney shall bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the shorelines of the state in conflict with state law and the provisions of the town regulations, as adopted, and the master program, and to otherwise enforce the provisions of these regulations and the intent of the master program. (Ord. 95-02 § 5, 1995).

Chapter 15.12**AIR POLLUTION CONTROL**

Sections:

- 15.12.010 Regulations – Adopted by reference.
- 15.12.020 Regulations – To be on file.
- 15.12.030 Outdoor fires – Permit – Issuance – Violation – Penalty.

15.12.010 Regulations – Adopted by reference.

Article 9 of Regulation I and Resolution No. 141 of the Puget Sound Air Pollution Control Agency are adopted by reference as the regulations of the town regulating and controlling all outdoor burning, and it is unlawful for any person to cause or allow any outdoor fires within the town except in compliance therewith. (Ord. 72-6 § 1, 1972).

15.12.020 Regulations – To be on file.

Triplicate copies of Regulation I of the Puget Sound Air Pollution Control Agency and of Resolution No. 141 of the Air Pollution Control Agency shall at all times be on file with the town clerk, and citations of those portions of the said regulations adopted by this reference may be cited as therein contained. (Ord. 72-6 § 2, 1972).

15.12.030 Outdoor fires – Permit – Issuance – Violation – Penalty.

Permits for outdoor fires and burning, which are required by the air pollution regulations cited and adopted by reference in EMC 15.12.010, shall be issued by the town clerk or the chief of the fire department to applicants who have complied with the regulations. Any outdoor burning for the disposal of waste materials and natural vegetation materials without a valid burning permit shall be deemed a violation of this chapter and punished as provided in Chapter 1.12 EMC. (Ord. 72-6 § 6, 1972).

Chapter 15.16**CRITICAL AREAS CODE**

Sections:

- 15.16.101 Finding.
- 15.16.102 Purpose.
- 15.16.103 Definitions.
- 15.16.104 Critical areas code – Title.
- 15.16.105 Fees.
- 15.16.106 Applicability.
- 15.16.107 Exemptions.
- 15.16.108 Review process.
- 15.16.109 Critical areas reports.
- 15.16.110 Previous studies.
- 15.16.111 Mitigation plan requirements.
- 15.16.112 Independent review of critical areas report.
- 15.16.113 Substantive requirements.
- 15.16.114 Variances.
- 15.16.115 Enforcement and inspections.
- 15.16.116 Record per WAC 365-195-915 and 365-195-920.
- 15.16.117 Nonconforming uses.
- 15.16.121 Wetlands – Designation.
- 15.16.122 Wetlands – Rating.
- 15.16.123 Wetlands – Contents of critical areas reports.
- 15.16.124 Wetlands – Substantive requirements.
- 15.16.125 Wetlands – Mitigation.
- 15.16.141 Critical aquifer recharge areas – Designation and susceptibility rating.
- 15.16.142 Critical aquifer recharge areas – Exemptions.
- 15.16.144 Critical aquifer recharge areas – Hydrogeologic assessments – Level 1.
- 15.16.145 Critical aquifer recharge areas – Hydrogeologic assessments – Level 2.
- 15.16.146 Critical aquifer recharge areas – Substantive requirements.
- 15.16.147 Critical aquifer recharge areas – Uses prohibited from critical aquifer recharge areas.
- 15.16.151 Floodplains – Designation.
- 15.16.152 Floodplains – Critical areas report.
- 15.16.153 Floodplains – Substantive requirements.
- 15.16.154 Floodplains – Substantive requirements in floodway.
- 15.16.155 Floodplains – Records.
- 15.16.156 Floodplains – Warning and disclaimer of liability.
- 15.16.161 Geologically hazardous areas – Designation.

- 15.16.162 Geologically hazardous areas – Mapping.
- 15.16.163 Geologically hazardous areas – Exemptions.
- 15.16.164 Geologically hazardous areas – Contents of critical areas reports.
- 15.16.165 Geologically hazardous areas – Substantive requirements.
- 15.16.171 Habitat conservation areas – Designation.
- 15.16.172 Habitat conservation areas – Designation of habitats and species of local importance.
- 15.16.173 Habitat conservation areas – Mapping.
- 15.16.174 Habitat conservation areas – Content of critical areas reports.
- 15.16.175 Habitat conservation areas – Substantive requirements.
- 15.16.180 References.

15.16.101 Finding.

The town finds that critical areas' biological and physical functions benefit the town by protecting water quality, providing fish and wildlife habitat, supporting the food chain, storing and conveying flood waters, recharging ground water, controlling erosion, and providing aesthetic values and recreation. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.102 Purpose.

The purpose of this critical areas code is to:

- A. Protect the functions and values of ecologically sensitive areas while allowing for reasonable use of private property, through the application of the best available science;
- B. Implement the Growth Management Act and the goals of the comprehensive plan; and
- C. Protect the public from injury and loss due to slope failures, erosion, seismic events, volcanic eruptions, or flooding. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.103 Definitions.

“Alter” means to change a critical area or its buffer, including grading, filling, dredging, clearing, construction, compaction, excavation, and pollution.

“Anadromous” refers to fish that spawn and rear in freshwater and mature in saltwater.

“Applicant” means a person who applies for a development permit from the town.

“Aquifer” means a geological formation capable of yielding water to a well or spring.

“Best available science” means 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.

“Best management practices” means actions known to protect soil, water quality, vegetation, and critical areas.

“Buffer” means an area contiguous to and required for protection of a critical area.

“Channel migration zone” means the lateral extent of likely movement of a stream or river during the next 100 years as evidenced by movement over the past 100 years.

“Conservation easement” means a legal agreement that the property owner enters into to restrict uses of the land in a manner that conserves natural functions.

“Critical aquifer recharge area” means an area with a critical recharging effect on aquifers used for potable water, as discussed in WAC 365-190-080(2). Within such areas, pollutants seeping into the ground are likely to contaminate the water supply.

“Critical area” means those areas listed in EMC 16.20.060.

“Development” means any land use or action that alters a critical area or its buffer, including town approvals that establish patterns of use such as subdivisions, short subdivisions, rezones, and conditional use permits.

“Director” means the town planner or any other person designated by the mayor for the purposes of administering and interpreting the critical areas code, EMC 15.16.101 through 15.16.180.

“Fish habitat” means habitat used by fish at any life stage at any time of the year.

“Floodplain” means the land area subject to inundation by a 100-year flood.

“Floodway” means the watercourse channel and adjacent land area that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water elevation more than one foot.

“Functions and values” means the benefits conferred by critical areas, including water quality protection, fish and wildlife habitat, flood storage and conveyance, ground water recharge, erosion control, and protection from hazards.

“Hazardous substance” means a liquid, solid, or gas that exhibits any of the properties described in WAC 173-303-090 or 173-303-100.

“Historic” means existing before the area was altered by human activity.

“Impact” means to adversely affect a natural system or increase the hazard which a natural system poses to human life and property.

“Impervious” refers to a hard surface area that retards the entry of water into the soil.

“Lowest floor” excludes unfinished enclosures usable only for parking, building access, or storage.

“Monitoring” means assessing the performance of mitigation measures by collection and analysis of data on changes in natural systems.

“One-hundred-year flood” means a flood having a one percent chance of being equaled or exceeded in any given year.

“Ordinary high water mark” means that mark on the bed or bank below which inundation is so common in ordinary years that the soil and/or vegetation are distinct from that of the abutting upland.

“Person” means any person, organization, or other group.

“Primary association” means a relationship between a species and a habitat area whereby the species regularly uses or otherwise needs the habitat area to thrive.

“Rill” means a small, steep-sided channel caused by erosion.

“Riparian habitat” means stream-side areas that influence the aquatic ecosystem by providing shade, debris, or insects and provide habitat for riparian wildlife.

“Species” means a group of animals commonly classified by the scientific community as a species or subspecies.

“Substantial improvement” means any repair, reconstruction, or improvement of a structure, the cost of which exceeds 50 percent of the structure’s market value before the improvement, or, if the structure was damaged, before the damage occurred.

“Watercourse” means flowing waters of the state, perennial or intermittent, excluding artificial waterways such as ditches or canals not created by human alteration of a natural watercourse.

“Wetland mitigation bank” means a site where wetlands are restored, created, or enhanced to mitigate in advance authorized impacts to similar resources. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.104 Critical areas code – Title.

This chapter shall collectively be known as the critical areas code. EMC 15.16.101 through 15.16.117 shall establish the general framework

for EMC 15.16.121 through 15.16.180. The director as defined in EMC 15.16.103 shall administer and interpret this critical areas code. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.105 Fees.

The town shall by resolution establish fees by which the town shall recover its cost of reviewing development proposals, including the cost of engineering review, planning review, inspections, and administration. The applicant shall be responsible for all required reports, assessments, studies, and plans. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.106 Applicability.

Unless exempted in EMC 15.16.107, this critical areas code shall apply to all developments (see definition in EMC 15.16.103) within one or more of the following critical areas or their associated buffers or building setback areas, regardless of whether the site has been previously identified as a critical area:

- A. Wetlands as designated in EMC 15.16.121 through 15.16.125;
- B. Critical aquifer recharge areas as designated in EMC 15.16.141 through 15.16.147;
- C. Floodplains as designated in EMC 15.16.151 through 15.16.156;
- D. Geologically hazardous areas as designated in EMC 15.16.161 through 15.16.165; and
- E. Fish and wildlife habitat conservation areas as designated in EMC 15.16.171 through 15.16.175. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.107 Exemptions.

The following shall be exempt from this critical areas code:

A. Emergency actions immediately necessary to prevent injury or property damage, provided the action minimizes impact to critical areas and buffers. The person undertaking the action shall notify the director within one day following commencement of the emergency action. The director shall determine if the action was allowable under this subsection and commence enforcement if not. Within one year of the date of the emergency, the person undertaking the action shall fully mitigate any resulting impacts to the critical area and buffers in accordance with an approved critical areas report and mitigation plan.

B. Normal operation, maintenance, or repair of existing structures, utilities, roads, levees, drainage systems, or similar improvements, including vegetation management, if the action does not alter or

increase the impact to or encroach upon the critical area or buffer, and if the action accords with best management practices and maintenance, and does not impact an endangered or threatened species.

C. Passive outdoor activities such as recreation, education, and scientific research that do not degrade the critical area.

D. Forest practices in accordance with Chapter 76.09 RCW and WAC Title 222, other than forest practice conversions.

E. Structural modifications of, additions to, or replacements of existing legal structures without altering or increasing the impact to the critical area; provided, that the town's regulations regarding legal nonconforming uses are complied with. Includes most tenant improvements.

F. The following work within improved public rights-of-way or private street easements: construction, replacement, or modification of streets, utilities, lines, mains, equipment, or appurtenances, excluding electrical substations; provided, that actions that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater shall be subject to the following requirements wherever possible:

1. Critical area and/or buffer widths shall be increased equal to the width of the right-of-way improvement, including disturbed areas; and

2. Native vegetation shall be retained and replanted along the right-of-way improvement.

G. Minor utility projects such as placement of a utility pole, street sign, anchor, or vault, which do not significantly impact critical areas function or values, if constructed using best management practices.

H. Removal with hand labor and light equipment of invasive or noxious plants as designated by the director, including:

1. English ivy (*Hedera helix*);

2. Himalayan blackberry (*Rubus discolor*, *R. procerus*); and

3. Evergreen blackberry (*Rubus laciniatus*).

I. Thinning or removal of trees which a qualified arborist, landscape architect, or forester has documented as posing a threat to public safety and which do not provide critical habitat such as eagle perches; provided, that removed trees and thinnings are left on-site, and for each tree removed, two replacement trees shall be planted in the same or nearly the same location within one year in accordance with a plan approved by the director. The replacement trees shall be of species native and indigenous to the site. Deciduous trees shall be

at least one inch in diameter at breast height. Evergreen trees shall be at least six feet in height measured from the top of the root ball.

J. Measures to control 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 with the same or similar native species within one year in accordance with an approved plan.

K. Application of herbicides, pesticides, or fertilizers, if necessary; provided, that their use shall conform to Department of Fish and Wildlife management recommendations and the regulations of the Department of Agriculture and the U.S. Environmental Protection Agency.

L. Minor clearing or digging necessary for surveys, soil logs, percolation tests, and similar activities, provided critical area impacts are minimized and disturbed areas are immediately restored.

M. Navigational aids and boundary markers.

N. Proposed developments that have undergone critical area review at a previous stage of permit review, provided the earlier permit has not expired.

O. Harvesting of wild crops without injuring their natural reproduction, tilling the soil, planting crops, applying chemicals, or altering the critical area.

P. Conservation measures of soil, water, vegetation, fish, and other wildlife that do not adversely impact ecosystems.

Q. Required environmental impact remediation.

R. Existing and ongoing agricultural activities where the land has not lain idle so long that modifications to the hydrological regime are necessary to resume operations; and

S. Development of Category IV wetlands less than 1,000 square feet in size if a critical areas report demonstrates that:

1. The wetland does not provide suitable habitat for amphibians; and

2. The wetland does not possess unique characteristics that would be difficult to replicate. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.108 Review process.

The director's general sequence for administering this critical areas code shall be per the following table, which shows questions the director shall answer, and actions he or she shall take depending on the answer.

Review Process

Step 1	Is the development proposal in a critical area or its buffer?	
	The director shall check maps, review the environmental checklist, visit the site, and require scientific determinations as necessary to make this determination.	
	Yes	No
	Go to step 2.	Go to step 4.
Step 2	Is the development proposal exempt per EMC 15.16.107?	
	Yes	No
	Go to step 4.	Require a critical areas report. Don't issue determination of completeness until critical areas report is received. Reference critical areas report in any public notice.
Step 3	Does the proposal, with conditions of approval as necessary, conform to EMC 15.16.113, Substantive requirements?	
	Yes	No
	Go to step 4.	Go to step 4.
Step 4	Document the review process in a manner appropriate to, and filed with, the permit(s) required for the proposed development, and act on the permit application in accordance with the findings.	

(Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.109 Critical areas reports.

Unless waived by the director, critical areas reports shall be prepared for nonexempt proposed developments located within critical areas or their buffers. Said critical areas reports shall:

A. Be prepared by qualified professionals as defined in WAC 365-195-905(4). The following list shows the type of critical areas report and the related professional discipline:

1. Wetlands: wetland biologist.
2. Critical aquifer recharge areas: hydrogeologist, geologist, or engineer.
3. Floodplains: hydrologist or engineer.
4. Geologically hazardous areas: engineer or geologist.
5. Fish and wildlife habitats: biologist.

B. Incorporate best available science.

C. Cover a study area large enough to understand relationships with important off-site factors and identify any nearby critical area whose buffer extends onto the project site.

D. Contain the following unless waived by the director:

1. Name and contact information of the applicant, description of the proposed development, and identification of required permits;
2. Site plan drawn to scale showing critical areas, buffers, existing structures, and proposed structures, clearing, grading, and stormwater management;
3. Characterization of critical areas and buffers;
4. Assessment of the probable impact to critical areas;
5. Analysis of site development alternatives;
6. Description of efforts to avoid, minimize, and mitigate impacts to critical areas pursuant to EMC 15.16.113 (“sequencing”);
7. Mitigation plans as needed, in accordance with EMC 15.16.111;
8. Evaluation of compliance with this critical areas code’s substantive requirements applicable to the proposed development;
9. Financial guarantees to ensure compliance, such as a performance bond or deposit, if necessary;
10. Additional information as required in the chapter corresponding to the type of critical area;
11. Documentation of who prepared the report and when, with fieldwork and data sheets;
12. Statement specifying the accuracy of the report and assumptions relied upon; and
13. Additional information as required by the director. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.110 Previous studies.

Critical areas reports may rely upon, without duplication of effort, valid previous studies prepared for the site, taking into account any change in the site, the proposed development, or the surrounding area. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.111 Mitigation plan requirements.

If the town allows conformance with this critical areas code’s substantive requirements to be achieved by mitigation, the critical areas report shall include a mitigation plan consisting of:

A. An analysis of the anticipated impacts on functions and values;

B. A strategy for mitigating the impacts, including site selection factors;

C. An analysis of the existing and anticipated functions and values at the mitigation site, including an assessment of risks;

D. A review of the best available science relative to the proposed mitigation;

E. Specific standards for evaluating whether the mitigation is successful;

F. Detailed construction plans, including:

1. Construction timing;
2. Grading and excavation details;
3. Erosion and sediment control features;
4. Planting plan including species and spacing; and

5. Measures to protect plants until established and control invasive species.

G. A program for monitoring the mitigation over at least five years; and

H. Potential corrective measures should the monitoring indicate the standards set per subsection E of this section are not being met. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.112 Independent review of critical areas report.

The director may have the critical areas report evaluated by an independent qualified professional and/or request consultation from an agency with expertise. If the report and evaluations disagree, the director shall determine which to utilize. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.113 Substantive requirements.

A. All treatment of critical areas shall be in accordance with best available science as defined in WAC 365-195-900 through 365-195-925, which is hereby adopted by reference, along with the Washington State Department of Community Development's Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas.

B. Critical areas and their buffers shall be left undisturbed, except the following may be permitted if best management practices are used:

1. Authorized functional restoration;
2. In buffers: utility poles and utility lines which do not require excavation;
3. In the outer 50 percent of buffers: permeable-surfaced walkways, trails, and minimal wildlife viewing structures;
4. Developments for which mitigation is allowed per subsection E of this section; and

5. Other uses specifically authorized by this critical areas code.

C. No development shall occur which results in a net loss of the functions or values of any critical area except reasonable use variances per EMC 15.16.114. The pre- and postdevelopment functional comparison shall be on a per-function basis unless otherwise authorized by this critical areas code.

D. No development shall occur in critical areas and their buffers which results in an unreasonable hazard to the public health and safety.

E. These substantive requirements shall be met via one or more of the following methods, listed in preferential sequence (commonly known as "sequencing"). The methods used shall be those which are highest on the list yet consistent with the objectives of the proposed development.

1. Avoid the impact altogether by not taking the proposed action;

2. Minimize the impact by limiting the action's magnitude or changing the project design, location, or timing;

3. Mitigate (compensate for) the impact on natural system functions and values by enhancing or replacing other natural systems and ensuring that the mitigation serves its purpose over time. Mitigation should provide equivalent or greater functions and values than those of the critical area it replaces. The mitigation shall be near the impact site unless it is more cost-effective to mitigate lost functions at a larger scale, such as at a wetland mitigation bank within the impacted wetland's drainage basin. The town reserves the right to disallow mitigation that would be located outside the UGA.

F. As a condition of any permit approval, the town may require that:

1. The outer edge of the critical area or buffer be marked, signed, or fenced to protect the resource. Such protection may be temporary, during construction, or permanent, such as to protect the resource from livestock or people. The director shall specify the design and sign message, if applicable, of such markers, signs, and fencing.

2. The applicant file a notice with the county records and elections division stating the presence of the critical area or buffer and the application of this critical areas code to the property, to inform subsequent purchasers of the property.

3. The critical area and/or buffer be placed in a critical area tract or conservation easement, the purpose of which is to set aside and protect the critical area. The critical area tract or conservation easement shall be:

a. Held by the town, a homeowner's association, a land trust or similar conservation organization, or by each lot owner within the development in an undivided interest;

b. Recorded on all documents of title of record for the affected parcels;

c. Noted on the face of any plat or recorded drawing; and

d. Delineated on the ground with permanent markers and/or signs in accordance with local survey standards.

G. The town may allow averaging of standard wetland and stream buffer widths if a qualified professional demonstrates that:

1. Functions and values are not adversely affected;

2. The total buffer area is not reduced; and

3. At no location is the buffer width reduced more than 40 percent.

H. Unless otherwise provided, buildings and other structures shall be set back a distance of 10 feet from the edges of all critical areas and critical area buffers. The same protrusions into this setback area shall be allowed as the zoning code allows into property line setback areas.

I. Lots created through subdivisions or short plats may contain critical areas and buffers, provided they contain adequate buildable area to build upon. Subdivision and short plats shall show, on their face, any applicable critical area limitations.

J. When any existing regulation, easement, covenant, or deed restriction conflicts with this critical areas code, that which provides more protection to the critical areas shall apply.

K. When critical areas of two or more types coincide, the more restrictive buffer and requirements shall apply.

L. The substantive requirements peculiar to the type of critical area shall also be complied with. See following sections. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.114 Variances.

The town may grant variances from this critical areas code's substantive regulations in accordance with EMC 18.09.040 if the criteria in subsection A or B of this section are met.

A. The variance conforms with the variance criteria stated in EMC 18.09.040 plus the variance:

1. Conforms with the purpose of this critical areas code;

2. Does not impact anadromous fish habitat; and

3. Is justifiable in light of the best available science.

B. Reasonable use (conformance with EMC 18.09.040 criteria not required).

1. The application of this critical areas code would otherwise deny all reasonable economic use of the property;

2. The town does not offer to compensate the owner for the denial of reasonable economic use;

3. No other reasonable economic use of the property or development design has less impact on the critical area;

4. The proposal does not pose an unreasonable threat to the public health, safety, or welfare;

5. The proposal conforms with other applicable regulations;

6. Impacts to critical areas are mitigated; and

7. The application is sufficiently documented (for example, critical areas report, mitigation plan, permit applications, and environmental documents) to make a determination regarding these criteria. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.115 Enforcement and inspections.

A. In enforcing this critical areas code per Chapter 18.10 EMC, the director may require a restoration plan prepared by a qualified professional. Historic functions and values, soil configurations, and native vegetation shall be used as a guide for restoration. Flood and geological hazards shall be reduced to the predevelopment level.

B. Reasonable access to the development shall be provided to agents of the town for critical area inspections, monitoring, restoration, or emergency action. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.116 Record per WAC 365-195-915 and 365-195-920.

A. This critical areas code is designed to implement the town's comprehensive plan's policies regarding protection functions and values of critical areas.

B. This critical areas code is based on best available science. See definition in EMC 15.16.103. This critical areas code largely derives from the Example Code Provisions for Designating and Protecting Critical Areas prepared in November 2003 by the Washington State Department of Community, Trade, and Economic Development, which in turn is based on documented best available science. This critical areas code is also based on Guidance Document for the Establishment of

Critical Aquifer Recharge Areas Ordinances, published in July 2000 by the Washington State Department of Ecology.

C. In addition to scientific information, economic, political, and legal factors were also considered in determining certain substantive requirements. Where this critical areas code's buffer widths differ from those in the Example Code Provisions for Designating and Protecting Critical Areas, the purpose is to develop the economy and protect property rights. The town identifies no substantial risk to critical areas in enacting these alternative substantive requirements. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.117 Nonconforming uses.

Developments or uses that upon initiation were legally permitted but which do not conform with this critical areas code may continue; provided, that they:

A. Shall not be expanded or changed so as to increase the nonconformity;

B. Shall not be resumed if discontinued for 12 consecutive months; and

C. May be replaced or restored in the event of destruction by fire, explosion, or other casualty only if reconstruction is commenced within one year and completed within 18 months. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.121 Wetlands – Designation.

Wetlands are those areas, designated in accordance with the Washington State Wetland Identification and Delineation Manual (1997), that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. The town of Eatonville has a map showing the approximate location and extent of wetlands. However, the map is only a guide, and will be updated as wetlands become better known. The exact location of a wetland's boundary shall be determined in accordance with the above-stated manual as required by RCW 36.70A.175 (Ecology Publication No. 96-94, 1997). (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.122 Wetlands – Rating.

Wetlands shall be rated Category I, II, III, or IV according to the Department of Ecology's 2004 Washington State Wetland Rating System for Western Washington (Publication No. 04-06-014). (See WAC 365-190-080(1)(a).) Wetland catego-

ries shall apply to the wetland as it exists on the date the town adopts the rating system, as the wetland naturally changes thereafter, or as the wetland changes in accordance with permitted activities. Wetland rating categories shall not change due to illegal modifications. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.123 Wetlands – Contents of critical areas reports.

In addition to the requirements of EMC 15.16.109, critical areas reports for wetlands shall include:

A. Wetland delineation map as surveyed in the field. Buffer boundaries shall be marked in the field by a licensed surveyor using wood or steel posts, four to five feet tall above the ground surface, permanently affixed, carrying identification signs approved by the town, to be obtained from the public works department. The charge for these signs shall be \$1.00 per sign.

B. Assessment of wetlands, including acreage, category, required buffers, evidence of past illegal alterations, soil, topography, hydrology, ecology, and functional evaluation using a recognized method such as the Western Washington Wetland Rating System.

C. Discussion of measures to preserve wetland functions and values, including the "sequencing" set forth in EMC 15.16.113.

D. If mitigation is proposed, a mitigation plan including the existing and proposed status of:

1. Wetland acreage;
2. Vegetation and fauna;
3. Surface and subsurface hydrology;
4. Soils, substrate, and topography;
5. Required wetland buffers; and
6. Property ownership.

E. Proposed wetland management and monitoring. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.124 Wetlands – Substantive requirements.

In addition to the substantive requirements of EMC 15.16.113, the following requirements shall apply to developments (see definition in EMC 15.16.103) in wetlands except as exempted above.

A. The higher the wetland category (Category I is highest), the greater shall be the emphasis on higher-priority "sequencing" methods per EMC 15.16.113.

B. The following table establishes the standard buffer width that shall apply to each wetland category, depending on the intensity of the potential

land use on the upland side of the buffer as determined by the director. Buffers shall be measured from the wetland boundary as surveyed in the field. These buffer widths presume that healthy native

plant communities dominate the buffer. If wetland enhancement is proposed, the category of the wetland after enhancement shall pertain.

Wetlands Buffer Widths

	Intensity of the potential land use on the upland side of the buffer		
	High (including commercial areas, industrial areas, residential areas at more than four units per net acre, and areas of high-intensity agriculture or recreation)	Moderate (including residential areas at less than four units per net acre, parks, and trails)	Low (including passive recreation and open space)
Category I	300 feet	250 feet	200 feet
Category II	200 feet	150 feet	100 feet
Category III*	100 feet	75 feet	50 feet
Category IV*	50 feet	35 feet	35 feet

*For exemption of wetlands under 1,000 square feet see EMC 15.16.107(S).

C. Buffers shall be measured from the wetland boundary as surveyed in the field. If wetland enhancement is proposed, the category of the wetland after enhancement shall pertain.

D. The director may increase the required buffer width and/or require buffer enhancement if a wetland professional determines that the wetland provides habitat for wildlife species that require greater protection than the standard buffer, or the buffer lacks healthy native vegetation or is otherwise handicapped in its ability to protect the wetland. Said determination shall take into account the score derived from the Wetland Rating System and such factors as topography, land use, and past disturbance.

E. The director may reduce the standard buffer width if the function(s) served by the particular wetland need less buffer width, as indicated by a wetland functional analysis.

F. Except as provided elsewhere in this critical areas code, all existing native vegetation in wetland buffers shall be retained without disturbance, mowing, or hard surfacing, nor shall any action be taken to inhibit volunteer regrowth of native vegetation. Invasive weeds shall be removed for the duration of any mitigation bond. Stormwater management facilities and bioswales are permitted in the outer 50 percent of the buffer of Category III or IV wetlands, provided wetland functions and values are not significantly lost through fluctuations in wetland hydrology and construction integrates best

management practices. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.125 Wetlands – Mitigation.

A. Mitigation for alterations to wetlands may be by restoring former wetlands, creating wetlands, or enhancing degraded wetlands, consistent with the Department of Ecology Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals, 2004, as revised.

B. Mitigation shall generally replace wetland functions lost from the altered wetland except that the town may permit out-of-kind replacement when the lost functions are minimal or less important to the drainage basin than the functions that the mitigation action seeks to augment.

C. Mitigation shall be in the same drainage basin as the altered wetland. Wetland mitigation shall be in the same sub-basin unless a higher level of ecological functioning would result from an alternate approach.

D. Mitigation projects shall be completed as quickly as possible consistent with such factors as rainfall and seasonal sensitivity of fish, wildlife, and flora.

E. Mitigation projects shall be designed with reference to Wetland Replacement Ratios: Defining Equivalency, Washington State Department of Ecology, 1992, Publication No. 92-08; Freshwater Wetlands in Washington State, Volume 2, Appendix 8-C; and similar science. Mitigation projects shall score the impact site and the mitigation site

using the Wetland Rating Data Form of the Revised Washington State Wetlands Rating System for Western Washington. The aggregate total of wetland functions and values after mitigation, altered and mitigation sites combined, shall be at least 50 percent greater than the aggregate total before mitigation; provided, that this replacement ratio (1.5 to 1, nonacreage-based) shall be increased as necessary to compensate for mitigation that:

1. Has a greater than usual risk of failure;
2. Is out-of-kind;
3. Is outside the sub-basin;
4. Is unlikely to produce the intended functions and values within 10 years after the alteration; or

5. Remedies unauthorized alterations.

F. Because the above replacement ratio is based on a before-and-after count of functions and values, not acreage, it accounts, without need for further adjustment, for mitigation that would result in a lower category wetland than the wetland being impacted, and mitigation that would enhance as opposed to create or restore a wetland. In the case of enhancement, wetland acreage may decline though wetland functions and values would increase. Enhancement proposals shall be based on a sound understanding of the mitigation site's pre- and postmitigation functions and values.

G. Credits granted from a certified wetland mitigation bank shall be consistent with the bank's certification and service area.

H. The applicant shall provide an as-built plan of the mitigation site and monitor the site in accordance with EMC 15.16.111. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.141 Critical aquifer recharge areas – Designation and susceptibility rating.

The town is aware of two critical aquifer recharge areas in its jurisdiction. Upon discovery of scientific data attesting to the existence of additional critical aquifer recharge areas, the town will enforce this code upon said areas. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.142 Critical aquifer recharge areas – Exemptions.

In addition to the developments listed in EMC 15.16.107, the following developments shall be exempt from the critical aquifer recharge areas provisions:

A. Construction of structures, improvements, and additions of less than 2,500 square feet total

site impervious surface area that do not increase risk from hazardous substances.

B. Development of parks, recreation facilities, or conservation areas that do not increase risk from hazardous substances. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.144 Critical aquifer recharge areas – Hydrogeologic assessments – Level 1.

In addition to the requirements of EMC 15.16.113, critical areas reports for critical aquifer recharge areas shall include a hydrogeologic assessment. Level 1 (simpler) hydrogeologic assessment shall contain at a minimum:

A. Available information regarding geology and hydrogeology of the site, including permeability of the unsaturated zone;

B. Ground water depth, flow direction, and gradient based on available information;

C. Available data on wells and springs within 1,300 feet;

D. Location of other critical areas, including surface waters, within 1,300 feet; and

E. Best management practices proposed to be utilized. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.145 Critical aquifer recharge areas – Hydrogeologic assessments – Level 2.

A. In addition to Level 1, a Level 2 hydrogeologic assessment shall be prepared for:

1. Activities that divert, alter, or reduce the flow of surface or ground waters, or otherwise reduce the recharging of the aquifer;

2. The use of hazardous substances other than household chemicals used according to the directions specified on the packaging;

3. Injection wells; and

4. Any other activity determined by the director likely to have an adverse impact on ground water quality or quantity.

B. Level 2 hydrogeologic assessments shall contain at a minimum:

1. Historic water quality data for the area to be affected by the proposed development;

2. Ground water monitoring plan;

3. Potential effects on water quality and quantity of nearby wells and water bodies; and

4. Analysis of equipment or structures that could fail and regular inspection, repair, and replacement necessary to prevent failure. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.146 Critical aquifer recharge areas – Substantive requirements.

In addition to the substantive requirements of EMC 15.16.113, the following requirements shall apply to critical aquifer recharge areas:

A. Proposed developments shall not cause contaminants to enter the aquifer or significantly reduce the recharging of the aquifer, and shall comply with the water source protection requirements and recommendations of the U.S. Environmental Protection Agency, Washington State Department of Health, and county health department.

B. Underground facilities for storing hazardous substances shall be designed to prevent releases due to corrosion or structural failure for the operational life of the tank.

C. Above-ground facilities for storing hazardous substances shall be designed to prevent accidental release, shall have a primary containment enclosing or underlying the tank, and shall have a

secondary containment built into the tank structure or consisting of an external dike.

D. Vehicle repair and servicing shall be conducted over impermeable pads, within a covered structure capable of normal weather conditions. Chemicals shall be stored in a manner that protects them from weather and provides containment should leaks occur. Dry wells are prohibited.

E. Application of household pesticides, herbicides, and fertilizers shall not exceed times and rates specified on the packaging.

F. Surface percolation or injection of reclaimed water shall conform to adopted water or sewer comprehensive plans, RCW 90.46.010(10), 90.46.042 and 90.46.080(1).

G. 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 Regarding Groundwater-Impacting Activities

Activity	Statute – Regulation – Guidance
Above-ground storage tanks	WAC 173-303-640
Animal feedlots	Chapters 173-216 and 173-220 WAC
Automobile washers	Chapter 173-216 WAC, Best Management Practices for Vehicle and Equipment Discharges (Washington State Department of Ecology WQ-R-95-56)
Below-ground storage tanks	Chapter 173-360 WAC
Chemical treatment storage and disposal facilities	WAC 173-303-182
Hazardous waste generator	Chapter 173-303 WAC (boat repair shops, biological research facility, dry cleaners, furniture stripping, motor vehicle service garages, photographic processing, printing and publishing shops, etc.)
Injection wells	Federal 40 CFR Parts 144 and 146, Chapter 173-218 WAC
Junk yards and salvage yards	Chapter 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Vehicle Recycler Facilities (Washington State Department of Ecology 94-146)
Oil and gas drilling	WAC 332-12-450, 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	Chapters 15.54 and 17.21 RCW
Sawmills	Chapters 173-303 and 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Log Yards (Washington State Department of Ecology, 95-53)

Statutes, Regulations, and Guidance Regarding Groundwater-Impacting Activities (Continued)

Activity	Statute – Regulation – Guidance
Solid waste handling and recycling facilities	Chapter 173-304 WAC
Surface mining	WAC 332-18-015
Waste water application to land surface	Chapters 173-216 and 173-200 WAC, Washington State Department of Ecology Land Application Guidelines, Best Management Practices for Irrigated Agriculture

(Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.147 Critical aquifer recharge areas – Uses prohibited from critical aquifer recharge areas.

The following activities and uses are prohibited in critical aquifer recharge areas (based on Guidance Document for the Establishment of Critical Aquifer Recharge Area Ordinances, by WSDOE, Publication No. 97-30):

- A. Landfills and solid waste transfer stations, including landfills for hazardous waste, municipal solid waste, special waste, wood waste, and inert and demolition waste;
- 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 of metals, hard rock, sand, and gravel;
- D. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces;
- E. Creosote or asphalt manufacturing;
- F. Storage, processing, or disposal of hazardous, chemical, or radioactive substances;
- G. Electroplating;
- H. Class 1A or 1B flammable liquids manufacturing as defined by the International Fire Code;
- I. Conversion of heating systems to fuel oil;
- J. New petroleum product pipelines;
- K. Activities that would significantly reduce the recharge to aquifers currently or potentially used for potable water; and
- L. Activities that would significantly reduce base flow to a regulated stream. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.151 Floodplains – Designation.

Floodplains are those areas with a one percent or greater chance of flooding in any given year. The director shall use the “areas of special flood haz-

ard” as identified on the Federal Emergency Management Administration’s most current Flood Insurance Rate Map for the town as the indicator of where floodplains exist, unless more detailed, current, and convincing evidence indicates a different geographic distribution of areas with a one percent or greater chance of flooding in any given year. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.152 Floodplains – Critical areas report.

The director may waive the critical areas report required in EMC 15.16.109 for developments proposed in the floodplain, but not in the floodway, if the applicable permit application contains sufficient data to verify compliance with the substantive requirements. The critical areas report shall not be waived for watercourse alterations. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.153 Floodplains – Substantive requirements.

In addition to the substantive requirements of EMC 15.16.113, the following requirements shall apply to floodplains:

- A. To the extent possible consistent with the development objective, all improvements shall be located on the nonfloodplain portion of the site, if any, or on the highest ground on the site, as far as possible from the flood source.
- B. New and substantially improved residential structures shall have the lowest floor, including basement, elevated one foot or more above the 100-year flood elevation. In addition, new and substantially improved manufactured homes (see EMC 18.02.262) shall be securely anchored to resist flotation, collapse, and lateral movement.
- C. New and substantially improved nonresidential structures shall either:

1. Have the lowest floor, including basement, elevated one foot or more above the 100-year flood elevation; or

2. Together with utilities and sanitary facilities, be certified by a registered professional engineer or architect as being floodproofed, so that below one foot or more above the 100-year flood level the structure is watertight and capable of resisting hydrostatic and hydrodynamic loads and buoyancy.

D. Fully enclosed areas below the lowest habitable floor that are not floodproofed shall be certified by a registered professional engineer or architect as designed to resist hydrostatic flood forces.

E. New and replacement water supply systems shall be designed to minimize infiltration of flood waters into the systems.

F. New and replacement sanitary sewage systems and on-site septic systems shall be designed to minimize infiltration of flood waters into and discharges from the system.

G. All new construction and substantial improvements, including electrical, heating, ventilation, plumbing, and air-conditioning equipment, shall be constructed using flood-resistant materials and methods.

H. Alteration of natural watercourses shall be avoided if feasible. If unavoidable, the director shall notify adjacent communities, the Department of Ecology, and FEMA prior to alteration. Any stream-bank stabilization shall use soft armoring (bioengineering). Removal of vegetation and woody debris shall be minimized. The alteration shall not block side channels or diminish flood-carrying capacity.

I. Development in floodplains shall be designed to minimize impacts to such ecological functions as wildlife movement and aquifer recharge. Fill and grading may be placed in areas which in the event of a 100-year flood would be covered with relatively static floodwaters but not in a manner which would block side channels or inhibit channel migration.

J. Recreational vehicles shall either be on the site for fewer than 180 consecutive days or be fully licensed and ready for highway use. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.154 Floodplains – Substantive requirements in floodway.

All developments capable of blocking floodwaters, including new construction, substantial improvements, and fill, but excluding underground

improvements and conservation or habitat enhancement projects, are prohibited in the floodway unless a registered professional engineer certifies that the proposed encroachment will not result in any increase in flood levels during a 100-year flood. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.155 Floodplains – Records.

The director shall record:

A. The as-built elevation above mean sea level of the lowest habitable floor, including basement, of all new or substantially improved structures, and whether the structure contains a basement;

B. Certificates of floodproofing and flood elevation; and

C. Permits and variances issued in accordance with this chapter. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.156 Floodplains – Warning and disclaimer of liability.

Because larger floods than the 100-year flood occur occasionally, and flood heights may be increased by manmade or natural causes, compliance with this chapter does not entirely guarantee against flood damages, and the town shall not be liable for flood damages that result from reliance on this chapter. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.161 Geologically hazardous areas – Designation.

Areas susceptible to one or more of the following types of hazards are hereby designated geologically hazardous areas, in accordance with WAC 365-190-080(4)(a):

A. Erosion hazard areas are 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 (sheet wash) erosion hazard.

B. Landslide hazard areas are areas subject to landslides based on geology, soils, topography, and hydrology, including:

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

2. Areas mapped by the Washington State Department of Ecology (Coastal Zone Atlas) or 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);

3. 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;

4. Areas where the following coincide: slopes steeper than 15 percent, a relatively permeable sediment overlying a relatively impermeable sediment or bedrock, and ground water seepage;

5. Areas that have shown movement in the past 10,000 years or that are underlain or covered by mass wastage debris of that time frame;

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

7. Slopes steeper than 80 percent subject to rock fall during seismic shaking;

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

9. Areas at risk from snow avalanches;

10. Canyons or active alluvial fans subject to debris flows or catastrophic flooding; and

11. Slopes of 30 percent or steeper with a vertical relief of 10 or more feet except areas composed of consolidated rock.

C. Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, or surface faulting. One indicator of potential earthquake damage is a record of past earthquake damage. Settlement and soil liquefaction occur in areas underlain by cohesionless, loose, or soft-saturated soils of low density, typically in association with a shallow ground water table.

D. Mine hazard, volcanic, and tsunami hazard areas (none known to be present: see WAC 365-190-080).

E. Other hazard areas include areas susceptible to mass wasting, debris flows, rock falls, and differential settlement. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.162 Geologically hazardous areas – Mapping.

The following maps, which may be continuously updated, may be used as a guide for locating geologically hazardous areas:

A. U.S. Geological Survey landslide hazard, seismic hazard, and volcano hazard maps;

B. Washington State Department of Natural Resources seismic hazard maps for Western Washington;

C. Washington State Department of Natural Resources slope stability maps;

D. Locally adopted maps. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.163 Geologically hazardous areas – Exemptions.

In addition to those listed in EMC 15.16.107, the following developments shall be exempt from the geologically hazardous areas provisions:

A. Buildings with less than 2,500 square feet of floor area which are not used as places of residence, employment, or public assembly;

B. Additions of under 250 square feet to single-story residences;

C. Fences; and

D. Other minor developments as determined by the director. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.164 Geologically hazardous areas – Contents of critical areas reports.

In addition to the requirements of EMC 15.16.109, critical areas reports for geologically hazardous areas shall include, where applicable:

A. Site history regarding landslides, erosion, and prior grading;

B. Topography in suitable contour intervals;

C. Height of slope, slope gradient, slope stability, and slope retreat rate recognizing potential catastrophic events;

D. Description of the geology (including faults), hydrology (including springs, seeps, and surface runoff features), soils (including, in seismic hazard areas, thickness of unconsolidated deposits and liquefaction potential), and vegetation;

E. Type, extent, and severity of geologic hazard(s);

F. Analysis of the proposal's risk from geologic hazard and the proposal's potential for exacerbating off-site hazards;

G. Recommended buffers and other conditions of approval. In areas of erosion or landslide hazard, the recommended conditions may include:

1. Clearing, fill, and hard-surfacing limits, slope stabilization measures, and vegetation management plan;

2. Limitation on clearing during the rainy season, generally from October 1st to May 1st;

3. Design parameters of foundations and retaining structures; and

4. Drainage plan and erosion and sediment control plan in compliance with town stormwater management regulations;

H. Overview of field investigations, measurements, references, and past assessments of the site. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.165 Geologically hazardous areas – Substantive requirements.

In addition to the substantive requirements of EMC 15.16.113, the following requirements shall apply to geologically hazardous areas:

A. Proposed developments shall not increase the long-term risk of or exposure to geological hazard on-site or off-site.

B. Hazard mitigation shall not rely on actions that require extensive maintenance.

C. Development near an erosion or landslide hazard area shall:

1. Observe a buffer from the edges thereof, of adequate width to comply with the substantive requirements;

2. Not decrease the factor of safety for landslides below the limits of 1.5 for static conditions and 1.2 for dynamic conditions. Analysis of dynamic conditions may be based on a minimum horizontal acceleration as established by the International Building Code;

3. Cluster structures and improvements as necessary to avoid hazard areas;

4. Use retaining walls that allow the retention of existing natural slopes when possible rather than graded artificial slopes;

5. Place utility lines and pipes in erosion and landslide hazard areas only when no other alternative is available and when the line or pipe can be installed above ground in such a manner as to remain intact without leaks in the event of a slide;

6. Discharge water from surface water facilities and roof drains onto or upstream from an erosion or landslide hazard area only if:

a. Discharged at flow durations matching predeveloped conditions, with adequate energy dissipation, into existing channels; or

b. Dispersed upslope of the steep slope onto a low-gradient undisturbed buffer of adequate infiltrate capacity without increasing saturation of the slope; and

7. Locate any on-site sewage drain fields outside the hazard area and related buffers. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.171 Habitat conservation areas – Designation.

Habitat conservation areas include:

A. Areas having a primary association with fish and wildlife species identified by the U.S. Fish and

Wildlife Service and the National Marine Fisheries Service as being in danger of extinction or threatened to become endangered;

B. Areas having a primary association with fish and wildlife species identified by the Washington State Department of Fish and Wildlife as being 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. See WAC 232-12-011 (state threatened and sensitive species) and WAC 232-12-014 (state endangered species);

C. State priority habitats as identified by the Washington State Department of Fish and Wildlife;

D. Habitats and species of local importance as identified by the town in accordance with EMC 15.16.172;

E. 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, as classified in WAC 222-16-031;

F. Ponds under 20 acres that provide fish or wildlife habitat except artificial ponds created for a nonwildlife purpose such as stormwater detention facilities, wastewater treatment facilities, farm ponds, and temporary construction ponds;

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

H. Natural area preserves and natural resource conservation areas as defined by the Washington State Department of Natural Resources;

I. Areas of rare plant species and high quality ecosystems as identified by the Washington State Department of Natural Resources through the Natural Heritage Program (see Chapter 79.70 RCW); and

J. Land useful or essential for preserving connections between habitat blocks and open spaces. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.172 Habitat conservation areas – Designation of habitats and species of local importance.

A. Nominations for habitats and species of local importance shall include:

1. Precise identification of the nominated habitat;

2. A scientifically sound management plan; and

3. A study, paid for by the nominator, containing sufficient information to verify compliance with the following criteria.

B. The designation criteria shall be as follows:

1. The species shall be local, native populations that are vulnerable, declining, or have special recreation, commercial, game, or other value.

2. The habitat shall be important for the long-term persistence of the local population.

3. The habitat shall be of high quality, or be capable of restoration to high quality, or connect otherwise isolated habitats.

4. Protection by other agencies, laws, or nonregulatory tools shall be inadequate to protect the species.

C. Designations of habitats and species of local importance shall form a part of these development regulations. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.173 Habitat conservation areas – Mapping.

The following maps, which may be continuously updated, may be used as a guide for locating habitat conservation areas:

A. Washington State Department of Fish and Wildlife priority habitat and species maps;

B. Washington State Department of Natural Resources official water type reference maps;

C. Washington State Department of Natural Resources shorezone inventory;

D. Washington State Department of Natural Resources Natural Heritage Program mapping data;

E. Anadromous and resident salmonid distribution maps contained in the habitat limiting factors reports published by the Washington State Conservation Commission; and

F. Washington State Department of Natural Resources state natural area preserves and natural resource conservation area maps. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.174 Habitat conservation areas – Content of critical areas reports.

In addition to the general critical areas report requirements of EMC 15.16.109, critical areas reports for habitat conservation areas shall include, where applicable:

A. Vegetation assessment; and

B. Discussion of any federal, state, or local special management recommendations for species or habitats on or near the site. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.175 Habitat conservation areas – Substantive requirements.

In addition to the substantive requirements of EMC 15.16.113, the following shall apply to habitat conservation areas:

A. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a habitat conservation area except with approval of a state or federal agency with expertise.

B. Preference in mitigation shall be given to contiguous wildlife habitat corridors.

C. In reviewing development proposals, the town shall seek opportunities to restore degraded riparian fish and wildlife functions such as breeding, rearing, migration, and feeding.

D. The town shall require buffers of undisturbed native vegetation adjacent to habitat conservation areas as necessary. Buffer widths shall reflect the sensitivity of the habitat and may reflect the intensity of nearby human activity.

E. When a species is more sensitive to human activity during a specific season of the year, the town may establish an extra outer buffer from which human activity is excluded during said season.

F. No development shall be allowed within a habitat conservation area or buffer with which state or federal endangered, threatened, or sensitive species have a primary association, except in exchange for restoration as approved by the director or as provided in a management plan approved by a state or federal agency with appropriate expertise.

G. When a development permit is applied for on land containing or adjacent to a bald eagle nest or communal roost, the town shall notify the Washington State Department of Fish and Wildlife and otherwise comply with WAC 232-12-292.

H. No development shall be permitted which degrades the functions or values of anadromous fish habitat, including structures or fills which impact migration or spawning.

I. Construction and other activities shall be seasonally restricted as necessary to protect the resource. Activities shall be timed to occur during work windows designated by the Washington State Department of Fish and Wildlife for applicable fish species.

J. Shoreline erosion control shall use bioengineering methods or soft armoring in accordance with an approved critical areas report.

K. The following table establishes the standard width of stream buffers (also known as riparian habitat areas) that shall apply to each stream type.

The town of Eatonville has maps showing streams of each type. 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, or from the outer edge of the channel migration zone when present.

Stream Buffers in Riparian Habitat Areas

Stream Type	Standard Buffer Width
Type S (subject to Shorelines Management Act)	200 feet for Mashell and Little Mashell Rivers
Type F (fish-bearing other than S)	150 feet for Ohop and Lynch Creeks
Type Np (nonfish, perennial)	75 feet
Type Ns (nonfish, seasonal)	35 feet

L. The director may increase the standard buffer width as necessary to fully protect riparian functions. For example, the buffer may be extended to the outer edge of the floodplain or windward into an area of high tree blow-down potential.

M. The director may reduce the standard buffer width in exchange for restoration of degraded areas in accordance with an approved plan, or for buffer averaging in accordance with EMC 15.16.113. The director may also reduce the standard buffer width wherever the proposed adjoining upland land use is of low intensity and low impact, such as passive-use parks.

N. If the stream enters an underground culvert or pipe, and is unlikely to ever be restored above-ground, the director may waive the buffer along the undergrounded stream; provided, that where the stream enters and emerges from the pipe the opposite outer edges of the buffer shall be joined by a radius equal to the buffer width, with said radius projecting over the piped stream.

O. The shoreline master program, not this critical areas code, shall determine allowable uses along and setbacks from lakes; provided, that this critical areas code shall govern wetlands, streams, and other critical areas lying within areas of shoreline management jurisdiction.

P. To the extent facilities are allowed in habitat conservation areas, the following regulations shall apply:

1. Trails shall be on the outer edge of the stream buffer except for limited viewing platforms and crossings. Trails and platforms shall be of pervious materials as far as possible.

2. Road bridges and culverts shall be designed according to the Washington State Department of Fish and Wildlife Fish Passage Design at Road Culverts, 1999, and the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings, 2000.

3. Utility lines shall be accomplished by boring beneath the scour depth and hyporheic zone (the saturated zone beneath and adjacent to streams that filters nutrients and maintains water quality). Utilities shall avoid paralleling streams or changing the natural rate of shore or channel migration.

4. New and expanded public flood protection measures shall require a biological assessment approved by the agency responsible for protecting federally listed species.

5. In-stream structures such as 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 restoration project.

6. Stormwater conveyance structures shall incorporate fish habitat features and the sides of open channels and ponds shall be vegetated to retard erosion, filter sediments, and shade the water.

7. Watercourse alterations: see EMC 15.16.153. (Ord. 2005-10 § 3 (Exh. A), 2005).

15.16.180 References.

1. Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas, Washington State Department of Community Trade and Economic Development.

2. Example Code Provisions for Designating and Protecting Critical Areas, November 2003, Community Trade and Economic Development.

3. Guidance Document for the Establishment of Critical Aquifer Recharge Areas Ordinances, July 2000, Department of Ecology.

4. Washington State Wetland Identification and Delineation Manual (1997).

5. 2004 Washington State Wetland Rating System for Western Washington (Publication No. 04-06-014).

6. DOE Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals, 2004.

7. Wetland Replacement Ratios: Defining Equivalency, WSDOE 1992, Publication No. 92-08.

8. Freshwater Wetlands in Washington State, Volume 2, Appendix 8-C.

9. Revised Washington State Wetlands Rating System for Western Washington.

10. Guidance Document for the Establishment of Critical Aquifer Recharge Area Ordinances, WSDOE Publication No. 97-30.

11. Federal Emergency Management Administration Flood Maps.

12. Washington State Department of Natural Resources (slope stability mapping).

13. U.S. Geological Survey maps showing slide areas.

14. Pierce County critical areas code, Title 18E.

15. WAC 365-195-900 through 365-195-925.

16. WAC 365 (195 through 905). (Ord. 2005-10 § 3 (Exh. A), 2005).

Chapter 15.20

SENSITIVE AREAS

(Repealed by Ord. 2005-10)

Chapter 15.24

FLOOD DAMAGE PREVENTION

(Repealed by Ord. 2005-10)

