

**ORDINANCE NO. 614**

**CITY OF ILWACO, WASHINGTON**

**CRITICAL AREAS ORDINANCE**

**AN ORDINANCE OF THE CITY OF ILWACO, WASHINGTON RELATING TO CRITICAL AREAS AS DEFINED BY THE GROWTH MANAGEMENT ACT OF 1990 WHICH DESIGNATES SUCH CRITICAL AREAS, PROMULGATES DEVELOPMENT STANDARDS, AND PRESCRIBES PENALTIES FOR VIOLATIONS.**

WHEREAS, in June 1990, the Washington State Legislature passed Engrossed Substitute House Bill 2929 which required all Cities in the State of Washington to classify and protect critical areas. Subsequently, in June 1991, the Legislature passed Re-Engrossed Substitute House Bill 1025 which modified the requirements pertaining to critical areas; and

WHEREAS, the city of Ilwaco Critical Areas Ordinance has been patterned after the Pacific County's Critical Areas Ordinance and whereas Pacific County in development of their Critical Areas Ordinance made use of the best available science, therefore, the City of Ilwaco's Critical Areas Ordinance is based on the best available science; and

WHEREAS, the City Council of the City of Ilwaco, Washington deems that the classifications, designations, controls, standards, procedures, and penalties set forth in this Ordinance are necessary to comply with the mandates of the Washington State Growth Management Act, Chapter 36.70A RCW; and

BE IT ORDAINED by the City Council of the City of Ilwaco, Washington, as follows:

**ORDINANCE NO. 614  
CITY OF ILWACO , WASHINGTON  
CRITICAL AREAS ORDINANCE**

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## **SECTION 1**

### **PURPOSE**

#### **A. STATEMENT OF AUTHORITY AND TITLE**

This Ordinance is established pursuant to RCW 36.70A.060 and RCW 36.70A.170.

#### **B. STATEMENT OF PURPOSE**

The purpose of this Ordinance is to define, identify, and protect critical areas as required by the Growth Management Act of 1990 (Chapter 17, Laws of 1990).

#### **C. STATEMENT OF POLICY**

1. It is a policy of the City of Ilwaco that the beneficial functions, and structure, and values of critical areas be protected as identified in this Ordinance, and further that potential dangers or public costs associated with inappropriate use of such areas be minimized by reasonable regulation of uses within, adjacent to, or directly affecting such areas. Reasonable regulation shall be achieved by the balancing of individual and collective interests. Best available science shall be used in the administration of this ordinance.

2. Requirements of this Ordinance shall not remove a person's obligation with respect to the applicable provisions or any other Federal, State, or local law or regulation, including, but not limited to, the acquisition of any other required permit or approval.

#### **D. CRITICAL AREA MITIGATION STANDARDS: GENERAL PROVISIONS**

1. All proposed critical areas alterations shall include mitigation sufficient to maintain the functional values of the critical area or to prevent risk from a critical area hazard and shall give adequate consideration to the economically viable use of the property. Mitigation of one critical area impact should not result in unmitigated impacts to another critical area. Mitigation may include, but is not limited to: buffers, setbacks, limits on clearing and grading, best management practices for erosion control and maintenance of water quality, or other conditions appropriate to avoid or mitigate identified adverse impacts. Subject to the viable use exception provisions of subsection 3.K, any proposed critical area alteration that cannot adequately mitigate its impacts to a critical area shall be denied.

2. Mitigation includes avoiding, minimizing, or compensating for adverse impacts to regulated critical areas or their buffers. Mitigation shall be comprised of one or more of the following actions.

- a. Avoid the impact altogether by not taking a certain action or parts of an action.
- b. Minimize the impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
- c. Rectify the impact by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project.
- d. Reduce maintenance operations during the life of the action.
- e. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.

### 3. Buffers

- a. As described in more detail in each relevant section, buffers in some cases have been determined to be necessary and appropriate to protect critical areas and their functions or to prevent risk from a critical area hazard. In those sections of this Ordinance where specific buffers are identified, those buffers are deemed "required" or "standard" buffers. If a project does not propose any alteration of those buffers or of the associated critical area, then no additional mitigation will be required to protect the critical area.
- b. If a person seeks a variance to reduce buffers or to alter the critical area or its required buffer, then the person shall demonstrate why such buffer and/or critical area modification, together with such alternative mitigation proposed in the critical areas assessment, is sufficient to adequately protect the critical area function. If necessary, variances shall provide for long-term buffer protection.
- c. The critical areas assessments and the conditions of approval shall provide for long-term buffer protection. In land division, critical areas and their associated buffers may be placed in separate tracts to be owned by all lot owners in common, by a homeowners association, or some other separate legal entity such as a land trust.
- d. Periodic inspection of the buffers may be required if necessary to ensure long-term buffer protection.

### 4. Mitigation.

All proposed mitigation shall be included in a critical area assessment. Proposed mitigation shall include:



- a. A description of what mitigation, specifically is proposed;
- b. An analysis of how the proposed mitigation will maintain the critical area function;
- c. A delineation of any ongoing monitoring and/or inspection that may be required, depending on the outcome of that ongoing monitoring and/or inspection;
- d. A notation of any required critical area expertise necessary to install, monitor, or inspect the proposed mitigation; and
- e. A listing of other security required to ensure performance and/or maintenance of the proposed mitigation.

#### **E. MITIGATION MONITORING**

The Administrator shall have the discretion of requiring that the mitigation be completed prior to issuance of the final site plan approval. In the alternative, the Administrator may require a refundable cash payment which will ensure compliance with the mitigation plan if there will be activity (e.g., monitoring or maintenance) or construction to take place after the issuance of the City's permit. The amount of the cash payment shall not exceed 150 percent of the estimated cost of the uncompleted actions or construction as determined by the Administrator. When the Administrator determines that the mitigation plan has been successfully completed, the security shall be refunded to the applicant. If the mitigation plan is not successfully completed, the City shall be entitled to keep all or part of the security to the extent necessary to complete the mitigation plan. The applicant shall be allowed to provide a form of security prior to recording of final plat as a means of complying with conditions of the preliminary plat approval. Provided, however, that the applicant shall be allowed to provide a bond, letter of credit or other form of security acceptable to the City. the amount of the security shall be determined by the Administrator, but in no event shall exceed one hundred fifty (150) percent of the estimated cost of completing the work.

In the event that a permit applicant does not provide adequate security for the mitigation required as a condition of its approval, then the Administrator shall have the discretion of requiring that the mitigation be completed prior to the issuance of the final approval. Adequate security shall be in the form of a bond, cash, irrevocable letter of credit, or in the alternative, some other form of security acceptable to the City.

#### **F. LAND DIVISIONS**

In addition to any other statutory and regulatory requirements, any land divisions, subdivision, short subdivision, or other parcel segregation shall not be approved by the City of Ilwaco until

a determination has been made as to whether or not critical areas exist on the property in question. If critical areas exist on the property in question, a critical areas delineation must be completed before the City of Ilwaco shall approve a subdivision, a short subdivision or any other parcel segregation.

#### **G. COORDINATION WITH OTHER CITY ORDINANCES**

The development regulations for critical, as set forth in this Ordinance, shall be reviewed during consideration of the adoption of any land use development regulations.

#### **H. SAVINGS AND SEVERABILITY**

If any provision, or portion thereof, contained in this Ordinance is held to be unconstitutional, invalid, or unenforceable, said provisions, or portion(s) thereof, shall be deemed severed and the remainder of this Ordinance shall not be affected and shall remain in full force and effect.

## SECTION 2

### DEFINITIONS

#### 2.1 Adjacent

"Adjacent" means touching the exterior boundaries of designated critical areas at more than one point.

#### 2.2 Administrator

"Administrator" means the City of Ilwaco City Planner or his or her designee(s).

#### 2.3 Agricultural Activities - - Existing and Ongoing

"Existing and ongoing agricultural activities" means those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops and/or raising or keeping livestock. Agricultural activities include associated activities, including the operation and maintenance of farm and stock ponds, drainage ditches, operation and maintenance of ditches, irrigation systems including irrigation laterals, canals, or irrigation drainage ditches, and normal operation, maintenance, and repair of existing serviceable agricultural structures, facilities, or improved areas, and the practice of aquaculture. Agricultural activities include, but are not limited to aquaculture, growing mint, bulb farming, haying, growing blueberries, cranberries, hybrid poplars, Christmas trees, and other nursery and horticultural activities which may involve up to a ten-year rotation, not otherwise classified as a forest practice. To ensure preservation of agricultural land, the ability to switch from one crop or activity to another to meet market forces is essential and shall be considered "existing and ongoing agricultural" use when such conversions occur. Further, land devoted to agricultural purposes shall be considered existing and ongoing even if in-between crop activities are limited to haying or grazing. Forest practices regulated under Chapter 76.90 RCW and Title 222 WAC are not included in this definition.

#### 2.4 Agricultural Land

"Agricultural land" means any land which contains existing and ongoing agricultural activities; or which is classified as agricultural land of long-term commercial significance or agricultural land of local importance.

#### 2.5 Agricultural Land of Local Importance

"Agricultural land of local importance" includes any diked tideland as listed under soil types



nos. 104 and 147 in the Soil Survey of Grays Harbor County Area, Pacific County, and Wahkiakum County, Washington, 1986, Soil Conservation Service, USDA, that is involved in existing and ongoing agricultural activities on the date this Ordinance become effective.

## 2.6 Agricultural Land of Long-Term Commercial Significance

"Agricultural land of long-term commercial significance" means land that is devoted to the long-term commercial production of aquaculture, cranberries, and/or other bog related crops.

## 2.7 Aquifer

"Aquifer" means a saturated permeable geologic unit that can transfer significant quantities of water under ordinary hydraulic gradients.

## 2.8 Aquifer Recharge Area

"Aquifer Recharge Area" means any land within the City of Ilwaco that contains the following soil types as listed in the Soil Survey of Grays Harbor County Area., Pacific County, and Wahkiakum County, Washington, 1986, Soil Conservation Service, USDA:

### Soil types (Map Unit Descriptions)

8	Beaches
35	Dune Land
92	Netarts fine sand, 3-12 percent slopes
108	Orcas peat
132	Seastrand Mucky peat
133	Seastrand variant muck
147	Udorthents, level
153	Westport fine sand, 3-10 percent slopes
162	Yaquina loamy fine sand

## 2.9 Best Management Practices

"Best Management Practices" means conservation practices or systems of practices and management measures that:

- (1) Control soil loss and reduce water quality degradation; and
- (2) Minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical, and biological characteristics of wetlands.

#### 2.10 Buffer

"Buffer" means an undisturbed area of native vegetation which serves to protect the integrity, functions, and values of a critical area from potential adverse impacts.

#### 2.11 Canopy

"Canopy" means uppermost layers of foliage in a forest.

#### 2.12 Critical Areas

"Critical Areas" means all wetlands, frequently flooded areas, aquifer recharge areas, fish and wildlife habitat conservation areas, geologically hazardous areas, and shellfish, kelp, eelgrass, herring, and smelt spawning areas, as those terms are used and defined herein.

#### 2.13 Critical Area Assessment

"Critical Areas Assessment" means an analysis by the Department of Community Development or other qualified critical area professional which provides a site specific evaluation of how to protect critical area values and critical area functions.

#### 2.14 Critical Area Functions

"Critical area functions" means the physical, chemical, and biological processes or attributes of a critical area.

#### 2.15 Critical Area Values

"Critical area values" means the critical area processes or attributes that are environmentally or ecologically valuable or beneficial to society

#### 2.16 Critical Facilities

"Critical Facilities" means any development that pertains to schools; hospitals; police, fire and emergency response installations; sewage and water treatment facilities; electrical substations and other utility infrastructure; or installations which produce, use, or store hazardous waste.

#### 2.17 Dangerous Wastes

"Dangerous wastes" means those wastes designated in WAC 173-303-070 through 173-303-120 as dangerous or extremely hazardous or mixed waste. As used in Chapter 173-303 WAC, the words "dangerous waste" refer to the full universe of wastes regulated by that chapter.

## 2.18 Debris Flow

"Debris flow" means the rapidly downslope-moving mass of a viscous water-saturated mixture of rock fragments, soil, vegetation, and mud.

## 2.19 Delineation

"Delineation" means a formal demarcation of the boundary of a critical area by the Department of Community Development or other qualified critical area professional.

## 2.20 Determination

"Determination" means an action by the City of Ilwaco or a qualified critical area professional to identify, characterize, and/or locate a critical area.

## 2.21 Educational Areas

"Educational areas" means such things as interpretive displays, informational plaques and boards, a small (200 square feet maximum) overhead shelter with no walls, viewing platforms, other than schools and school buildings.

## 2.22 Geologically Hazardous Areas

"Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, pose a health and safety threat when incompatible commercial, residential, or industrial development occurs.

## 2.23 Groundwater

"Groundwater" means that part of the subsurface water that is in the zone of saturation (below the water table), as distinct from vadose water (above the water table).

## 2.24 Health Officer

"Health Officer" means the legally designated Health Officer, of the Pacific County Board of Health or his or her designee(s).

## 2.25 In-Kind Mitigation

"In-kind mitigation" means mitigation that involves the same category of wetlands that is being impacted by a development proposal. In other words, in-kind mitigation requires Category I wetlands to be mitigated with Category I wetlands, Category II wetlands to be mitigated with Category II wetlands, Category III wetlands to be mitigated with Category III wetlands, and



Category IV wetlands to be mitigated with category IV wetlands. In-kind mitigation may be areal or based upon equivalent total function and value analysis.

#### 2.26 Land Alteration

"Land Alteration" means a human induced action which materially affects the physical condition of land or improvements including, but not limited to, those activities which are commonly referred to as clearing, grubbing, excavation, filling, grading, surfacing, paving, compaction, stockpiling, and stabilizing.

#### 2.27 Mineral Land

"Mineral land" means any area in Pacific County presently covered under a valid Washington State Department of Natural Resources (DNR) surface mining permit and any beach area where sand is removed for commercial purposes.

#### 2.28 Mitigation Project

"Mitigation project" means actions necessary to replace project-induced critical area and associated buffer setback losses, including construction, contingency actions, land acquisition, monitoring, and planning.

#### 2.29 Native Vegetation

"Native vegetation" means plant species which are indigenous to the site in question.

#### 2.30 Ordinary High Water Mark

"Ordinary high-water mark" means the mark on lakes, streams, and tidal waters, found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland with respect to vegetation, as that condition exists on the effective date of this chapter, or as it may naturally change thereafter. The following definitions apply where the ordinary high-water mark cannot be found:

The ordinary high-water mark adjoining marine water is the elevation at mean higher high tide; and

The ordinary high-water mark adjoining freshwater is the line of mean high water.

#### 2.31 Out-of-Kind mitigation

"Out-of-kind mitigation" means mitigation that substitutes (1) Category I, II, or III wetlands

for Category IV wetlands; (2) Category I or II wetlands for Category III wetlands; or (3) Category I wetlands for Category II wetlands. Out-of-kind mitigation may be areal or based upon equivalent total functions and values analysis.

#### 2.32 Person

"Person" means an individual, a partnership (including partners and managers), a corporation (including board members, officers, and managers), or any other entity of any kind. "Person" also includes an applicant, a re-applicant, a permit holder, an authorized agent of any entity, or any third party acting on behalf of any entity.

#### 2.33 Preservation

"Preservation" means the act of preserving, keeping safe or free from harm, keep alive, maintain in its existing state. Preservation of a wetland does not preclude modification and enhancement of a wetland. Preservation of overall functions and values are of prime importance.

#### 2.34 Protection

"Protection" means action to avoid or mitigate impacts to critical areas consistent with the requirements of this Ordinance in order to preserve the structure, values, and functions of the natural environment.

#### 2.35 Qualified Critical Area Professional

"Qualified critical area professional" means a person with experience, education, and professional degrees and training pertaining to the critical area in question, and with experience in performing delineations, analyzing critical area functions and values, analyzing critical area impacts, and recommending critical area mitigation and restoration. The Administrator shall require professionals to demonstrate the basis for qualifications and shall make final determination as to qualifications. Demonstration of qualifications may include but shall not be limited to, professional certification.

#### 2.36 Resource Lands

"Resource lands" means areas designated as agricultural, forest, or mineral lands.

#### 2.37 Sensitive, Threatened, and Endangered Species

"Sensitive, threatened, and endangered species" means the categorization set forth in WAC 232-12-011 and WAC 232-12-014.



### 2.38 Septage Application

"Septage application" means application of the mixture of solid wastes, scum, sludge, and liquids pumped from within septic tanks, pump chambers, holding tanks, and other on-site sewage system components.

### 2.39 Setback

"Setback" means the distance that buildings or uses must be removed from lot lines or the edges of critical areas.

### 2.40 Single-Family Residence

"Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located upland of the perimeter of a marsh, bog, or swamp. Normal appurtenances include a garage, deck, driveway, septic system, utilities, fences, and grading which does not exceed two hundred fifty (250) cubic yards (except to construct a conventional drainfield).

### 2.41 Stormwater Management Facilities

"Stormwater management facilities" means biofiltration swales, filter strips, bubble diffusers, detention ponds, retention ponds, wet ponds, and similar facilities designed and intended to control and treat stormwater, and include ditches designed and intended primarily for conveyance.

### 2.42 Stream

"Stream" means those areas where naturally occurring surface waters flow sufficiently to produce a defined channel or bed which demonstrates clear evidence of the passage of water, including, but not limited to, bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed need not contain water during the entire year. This definition does not include water courses which were created entirely by artificial means, such as irrigation ditches, canals, roadside ditches, or storm or surface water run-off features, unless the artificially created water course contains salmonids or conveys a stream that was naturally occurring prior to the construction of the artificially created water course.

### 2.43 Utility Lines

"Utility lines" means a pipe, conduit, cable, or other similar facility by which services are conveyed to the public or individual recipients. Such services shall include, but are not limited

to, water supply, electrical power, gas, communications, and stormwater or sanitary sewer transport facilities.

#### 2.44 Watershed

"Watershed" means an area draining to the surface water systems of Willapa Bay, the Columbia River, and the Pacific Ocean.

#### 2.45 Wetland or Wetlands

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

## **SECTION 3**

### **GENERAL REQUIREMENTS**

#### **A. APPLICABILITY**

This Ordinance classifies and designates critical areas and in the City of Ilwaco and establishes regulations for the protection of critical areas. The City of Ilwaco shall not grant any permit, license or other development approval to alter the condition of any land, water, or vegetation, or to construct or to alter any structure or improvement, nor shall any person alter the condition of any land, water, or vegetation, or construct or alter any structure or improvement, for any development proposal which requires a governmental permit regulated by this Ordinance, except in compliance with the provisions of this Ordinance. In addition, any cumulative filling, grading, or clearing activity in any critical area or within 100 feet of any critical area, in excess of twenty (20) cubic yards of material per parcel is also subject to the requirements of this Ordinance. Failure to comply with the provisions of this Ordinance shall cause the violator to be subject to enforcement procedures under subsection 3.H.

#### **B. RELATIONSHIP TO OTHER REGULATIONS**

Areas characterized by a particular critical area or resource land may also be subject to other regulations. In the event of any conflict between this Ordinance and any other ordinance of the City, the regulation which provides the greater protection for the particular critical area or resource land shall apply. Satisfying the requirements of this Ordinance does not affect a person's obligation to comply in all respects with other federal, state, and local statutes.

#### **C. DESIGNATION OF THE ADMINISTRATOR**

The City of Ilwaco City Planner or his or her designee(s) shall be the Administrator of this Ordinance and shall be responsible for administering the provisions and requirements of this Ordinance.

#### **D. DELEGATION OF AUTHORITY**

The Administrator, the City Engineer, and any other applicable city officials may develop and implement written policies which are consistent with and effectuate the purpose of this Ordinance.



## GENERAL EXEMPTIONS

The following activities shall be exempt from the provisions of this Ordinance provided that they are otherwise consistent with the applicable provisions of other City of Ilwaco ordinances:

1. Emergency action. Persons who take emergency action that creates an impact to any critical area or its buffer setback shall use reasonable methods that have the least impact to the critical area or its buffer and shall restore the critical area and buffer/setback after the emergency to the maximum extent practicable. Persons undertaking such action shall notify the Administrator within one working day following commencement of the emergency activity. Following such notification, the Administrator shall determine if the action taken "Was within the scope of the emergency actions allowed in this subsection. If the Administrator determines that the action taken or any part of the action taken was beyond the scope of allowed emergency actions, then the enforcement provisions of the subsection 3.H. PENALTIES AND ENFORCEMENT shall apply.
2. Agricultural operations. Existing and on-going agricultural operations including related development and activities which do not result in expansion into a critical area or its buffer or do not result in an increase in impact to a critical area are exempt. New development and/or expansion of existing operations shall comply with the provisions of this Ordinance. Existing and ongoing agricultural activities, however, shall comply with best management practices contained within any conservation plan between the property owner and the Department of Ecology pursuant to Chapter 89.08 RCW.
3. Maintenance, repair, and operation. Maintenance, repair, and operation of existing structures, utilities, sewage disposal systems, water systems, drainage facilities, ponds, flood control facilities, electric and communications facilities, public and private roads and driveways, and improved areas accessory to a single family residential use including, but not limited to, landscaping, yard maintenance, and gardening are exempt. However, any person engaging in maintenance or repair activities shall use reasonable methods with the least amount of potential impact to critical areas. Any impacted critical area or its buffer shall be restored after the completion maintenance/repair activities to the maximum extent practicable.
4. Modification of buildings. Modification of an existing building that does not expand the building footprint area by more than fifteen (15) percent or increase septic effluent according to Chapter 246-272 WAC is exempt except when subsection 10.B or subsection 10.C applies. Replacement of manufactured homes that does not increase the number of bedrooms or exacerbate nonconformity with critical area setbacks or buffer standards within this Ordinance also is exempt. A person who is granted an exemption under this subsection for a particular building cannot receive another exemption under this subsection for the same building unless ten (10) years has elapsed from the date of the previous exemption.

5. Navigation aids and boundary markers. Construction or modification of navigational aids and boundary markers are exempt.
6. Site investigation. Site investigation work which is necessary for land use applications such as surveys, soil logs, percolation tests and other related activities is exempt. However, critical area impacts shall be minimized and disturbed areas shall be restored to the maximum extent practicable.
7. Non-development activities. Passive recreational uses, sport and commercial fishing, hunting, scientific and educational endeavors, or similar minimal impact, non-development activities are exempt.
8. Spartina Alterniflora. Activities aimed at controlling Spartina Alterniflora are exempt.
9. Forest practices. Forest practices covered under Chapter 76.09 RCW and Title 222 WAC are exempt.

#### **F. CRITICAL AREAS REVIEW PROCEDURES**

No alteration of critical areas as defined or designated by the Ordinance shall occur in the absence of express approval by the City of Ilwaco. Any alteration of any critical areas as defined or designated by this Ordinance shall occur only through the issuance of a development permit. For any critical areas alteration not requiring any other land development permit, such alteration shall not proceed in the absence of approval of a critical areas alteration permit issued under this Ordinance.

The following subsections describe the procedure for critical areas review.

1. The Administrator first must determine whether the proposed activity fits within any of the exemptions to this Ordinance found in subsection 3.E. Some of those exemptions only apply if the activity complies with applicable best management practices or includes restoration after the activity is completed. If the proposed activity meets any of the listed exemptions, including best management practices and/or restoration requirements, no critical areas and resource land checklist or other critical areas and resource land review is required.
2. If the proposed activity is not exempt, then a person seeking a development permit, or otherwise engaging in an activity covered under subsection 3.A., shall complete a critical areas checklist on the forms to be provided by the City. The Administrator will then review the checklist together with the maps and other critical areas resources identified in the relevant sections of this Ordinance and make a site visitation to determine whether critical areas or their required buffers are affected by the proposed activity. The person



seeking to develop is responsible for providing the City with sufficient information so that the Administrator can make this determination.

3. If the checklist, maps, other references, site visitation and other information supplied by a person seeking a development permit, or otherwise engaging in an activity covered under subsection 3.A., do not indicate the presence of any critical areas associated with the project, the review required pursuant to this Ordinance is complete.

4. If at any time prior to completion of the applicable public input process on the proposed project, the Administrator receives new evidence that critical areas may be associated with the proposed project, the Administrator shall reopen the critical areas review process pursuant to this Ordinance and shall require the requisite level of critical areas review and mitigation as is required by this Ordinance. Once the public input process on the associated permit or approval is completed and the record is closed, then the City's determination regarding critical areas pursuant to this Ordinance shall be final, unless appealed as described in subsection 3 G. of this Ordinance.

5. If the checklist, maps, site visitation, and other references indicate that critical areas associated with the proposed project area, then a critical areas assessment shall be completed.

6. If, as a result of the critical areas assessment recommendations, a person believes that he or she is entitled to a variance from one or more of the requirements of this Ordinance, then a person may request a variance as described in subsection 3.J.

7. If, as a result of the critical areas assessment recommendations, a person believes that the requirements of this Ordinance, including any request for a variance, leave the applicant with no economically viable use of his property, then a person may apply for a viable use exception pursuant to subsection 3.K. of this Ordinance.

#### **G. APPEALS**

1. Any decision of the Administrator or other City official in the administration of this Ordinance may be appealed to the City of Ilwaco City Council.

#### **H. PENALTIES AND ENFORCEMENT**

1. A person who violates the provisions of this Ordinance or who fails to comply with any of its requirements shall be subject to civil penalties.

2. In addition to the civil penalty provisions, any person who willfully violates any of the provisions of this Ordinance is guilty of a misdemeanor, and each day or portion thereof during which a violation is committed, continued, or not permitted shall constitute a

separate offense. The penalty for each violation is a fine of not more than \$1,000. The principles of liability contained in Chapter 9A.08 RCW, including, but not limited to, liability for conduct of another shall apply to the enforcement of this Ordinance as shall all judicial interpretations thereof.

3. When a court determines that a person has committed a civil infraction under this Ordinance or any amendment thereto, the City of Ilwaco may collect penalties, assessments, costs, and/or fines by any procedure established for the collection of debts that are owed to the City.

4. Any disposition of a violation pursuant to this Ordinance or any amendment thereto, shall not absolve a person from correcting or abating a violation and shall not prevent the prosecuting authority from pursuing criminal prosecution, other civil action including, but not limited to, injunctive relief, license revocation, and abatement, or all of the above. If the City of Ilwaco prevails in a separate civil action, the Court may award the City reasonable costs including, but not limited to, the costs of the responsible officials' time, witness fees, attorney fees, court costs, and the costs to the City of abatement or of enforcement of an injunction, or both.

5. Any or all of the remedies articulated in subsection 3.H. PENALTIES AND ENFORCEMENT may be used by the City to enforce this Ordinance. Nothing contained in this Ordinance shall prevent the City, by and through the prosecuting authority, from taking such other lawful action as is necessary to prevent or remedy any violation.

## **I. NONCONFORMING ACTIVITIES**

An established use or existing structure that was lawfully permitted prior to adoption of this Ordinance, but which is not in compliance with this Ordinance, may continue subject to the following:

1. Nonconforming uses and existing structures shall not be expanded or altered in any manner which will increase the nonconformity without a permit or other approval issued pursuant to the provisions of this Ordinance except as allowed under subsection 3.E. GENERAL EXEMPTIONS;

2. Activities or uses which are discontinued for twelve (12) consecutive months shall be allowed to resume only if they are in compliance with this Ordinance; and

3. Nonconforming structures destroyed by fire, explosion, or other casualty may be replaced or restored if reconstruction of the same facility is commenced within twelve (12) months of such damage. The reconstruction or restoration shall not serve to expand, enlarge, or increase the extent of the nonconformity.



## **J. VARIANCES**

1. The Administrator shall process all requests for variances to the Ilwaco Critical Area Ordinance. The burden of proof shall be on the person requesting the variance to bring forth evidence in support of the variance.
2. The Administrator shall grant a variance if the person requesting the variance demonstrates that the requested variance conforms to all of the criteria set forth below:
  - a. That special conditions and circumstances exist which are peculiar to the land;
  - b. That literal interpretation of the provisions of this Ordinance would deprive the person seeking the variance of rights commonly enjoyed by other properties conforming to the terms of this Ordinance;
  - c. That the granting of the variance requested will not confer on the person seeking the variance any special privilege that is denied by this Ordinance to other lands, structures, or buildings under similar circumstances;
  - d. That the variance requested is the minimum necessary to afford relief, and
  - e. That to afford relief the requested variance will not create significant impacts to critical areas and will not be materially detrimental to the public welfare or contrary to the public interest
3. In granting any variance, the Administrator shall prescribe such conditions and safeguards as are necessary to secure protection of critical areas from adverse impacts.

## **K. REASONABLE USE EXCEPTION**

If the application of this Ordinance would result in denial of all reasonable economical use of a property, so as to create a taking of property under the U.S. and state constitutions, then a person may seek a variance from specific provisions of this code to permit a reasonable economic use. A reasonable use exception request shall follow the variance procedures articulated in subsection 3.J. and shall only be granted if the following criteria are met.

1. The application of this Ordinance would deny all reasonable economical use of the property so that there is no reasonable economically viable use with a lesser impact on the critical area than that proposed;
2. The proposed development does not pose a threat to the public health and safety; and
3. Any proposed modification to critical areas will be the minimum necessary to allow a

reasonable economical use of the property.

4. A reasonable economic use shall be determined, in principal part, by identifying uses to which similar parcels are used in the surrounding neighborhood - typically parcels similarly situated within one-quarter mile in any direction. The fact that a higher and better use is available or that a bigger structure would be more useful or valuable, but for the application of this ordinance, does not constitute denial of reasonable economic use.

## **SECTION 4**

# **WETLANDS REGULATIONS**

### **A. PURPOSE**

The purpose of this section is to protect wetlands which serve a number of important beneficial functions.

### **B. IDENTIFICATION**

1. The City of Ilwaco adopts the Washington State Department of Ecology Manual titled Washington State Wetlands Identification and Delineation Manual, March 1997, as the City of Ilwaco wetland delineation manual for purposes of this Ordinance. Further, the City takes notice of the Department of Ecology publication "Model Wetlands Ordinance (September 1990).

2. If the City of Ilwaco has reason to believe that a wetland may exist within one hundred (100) feet of a proposed development activity, a written determination regarding the existence or nonexistence of wetlands within one hundred (100) feet of a proposed development activity must be submitted to the Department of Community Development of the City of Ilwaco will only accept a written determination by the U.S. Army Corps of Engineers, the Washington State Department of Ecology, the Natural Resources Conservation Service, or a qualified critical areas professional as to whether wetlands exist on or within one hundred (100) feet of a specific parcel.

3. If it is determined under subsection 4.B.2 that wetlands exist, a wetland delineation must be obtained when an activity regulated under this Ordinance is proposed within one hundred (100) feet of the boundary of a wetland. The City of Ilwaco will only accept a delineation performed by U.S. Army Corps of Engineers, Washington State Department of Ecology, Natural Resources Conservation Service, or a qualified critical areas professional who has been approved by the City of Ilwaco. A wetland delineation report shall be prepared by one of the entities listed above and submitted to the City of Ilwaco The report at minimum shall include the following information:

- a. Description of the methods used to identify and delineate the wetland;
- b. Description of the hydrology, soils, and vegetative characteristics of the wetland;
- c. The wetland rating category (see below subsection 4.C. WETLANDS



RATING);

- d. A professional survey of the wetland boundary flagging, including the locations of formal data plots; and
- e. Copies of all field data sheets.

## **C. RATING**

### **1. Wetland Rating Categories**

- a. Category I Wetlands. All wetlands scoring a "Category I" rating under the Washington State Department of Ecology (WDOE) Washington State Wetlands Rating System for Western Washington, Second Edition, August 1993.
- b. Category II Wetlands. All wetlands scoring a "Category II" on the WDOE rating scale.
- c. Category III Wetlands. All wetlands scoring a "Category III" on the WDOE rating scale.
- d. Category IV Wetlands. All wetlands scoring a "Category IV" rating on the WDOE scale.

## **D. WETLAND BUFFERS**

### **1. Standard Buffer Widths**

Buffers are necessary to protect wetlands from impacts generated by nearby land uses. The following standard buffers shall be required for regulated wetlands:

Category I Wetlands	100 feet
Category II Wetlands	75 feet
Category III Wetlands	50 feet
Category IV Wetlands	25 feet

### **2. Buffer Width Averaging**

The width of a buffer for Category I, Category II, or Category III wetlands may be averaged, thereby reducing the width of a portion of the buffer and increasing the width of another portion, if all of the following requirements are met.

- a. Buffer averaging permits retention of an existing natural buffer at least 110 percent as large as the buffer required by this ordinance;
- b. The wetland contains variations in sensitivity due to existing physical characteristics;
- c. Buffer width averaging will not adversely impact wetland functions and values;
- d. No part of the buffer is reduced to ~~by~~ more than fifty (50) percent of the standard buffer width, or 25 feet, whichever is greater.
- e. Buffer averaging may be applied to different wetlands associated with the same project so long as the net beneficial protection of the cumulative functions and values would be greater than if such averaging were limited to individual wetlands.

### 3. Temporary Buffer Alterations

Where temporary buffer disturbance has or will occur in conjunction with approved permitted activities, revegetation of the buffer with native vegetation shall be required.

## E. MITIGATION

### 1. City Permits

Where a project requires the disruption of a wetlands, the wetland system, function, and values shall be maintained through mitigation as, specified in this subsection.

#### a. Land Based Mitigation-Category I Wetlands

For Category I wetlands, any loss of wetlands shall be mitigated by creating or restoring new wetlands at an areal ratio of 4 to 1 (wetlands created or restored to wetlands impacted). "In-kind" and "on-site" mitigation shall be required unless it can be demonstrated that an "off-site" alternative would be of greater value to the environment. As a general matter, Category I wetlands cannot be mitigated and the project proponent will have the burden of demonstrating the need to impact Category I wetlands, and the assurance the proposed mitigation will work as planned.

#### b. Land Based Mitigation-Category II Wetlands

For a Category II wetlands, any loss of wetlands shall be mitigated by creating or restoring new wetlands of like kind at an areal ratio of 2 to 1 (wetlands created or restored to wetlands impacted). "In-kind" and "on-site" mitigation shall be required unless it can be demonstrated that an "out-of-kind" and/or "off-site" alternative would

be of greater value to the environment. "Out-of-kind" mitigation must be at least one for one ratio and shall demonstrate lost functions and values have been adequately mitigated.

c. Land Based Mitigation - Category III and Category IV Wetlands

For a Category III and Category IV wetlands, any loss of wetlands shall be mitigated by creating or restoring new wetlands of a like kind at an areal ratio of 1.5 to 1 (wetlands created or restored to wetlands impacted). "In-kind" and "on-site" mitigation shall be required unless it can be demonstrated that an "out-of-kind" and/or "off-site" alternative would be of greater value to the environment. "Out-of-kind" mitigation must be at least one for one ratio and shall demonstrate lost functions and values have been adequately mitigated.

2. For the purposes of this subsection, an insufficient buffer under subsection 4.0 WETLAND BUFFERS shall be treated as a loss of wetlands to the extent of the deficiency.

3. Any Category II wetland which has an aggregate area of less than or equal to 2,500 square feet shall be exempt from any mitigation requirements.

4. Any Category III or Category IV wetland which has an aggregate area of less than or equal to 10,000 square feet shall be exempt from any mitigation requirements.

5. No additional wetland mitigation is required by this Ordinance for Category III or Category IV wetlands converted to cranberry bogs provided that all existing Federal and State mitigation requirements are met.

6. Activities permitted in wetlands and buffers:

- a. Trails, park and educational areas
- b. Utility corridors and transmission facilities, when alternate routes are not reasonably available.
- c. Road rights-of-way for connecting or local roads, both public and private, where alternate routes are not readily available.
- d. Cart paths, water pumping stations and irrigation ponds.
- e. Stormwater control facilities (buffers only) when alternate locations are not readily available.

**F. PROCESSING**

1. For projects requiring environmental review:



Information demonstrating compliance with the standards of this section shall be submitted in connection with environmental documents for all applications requiring environmental review. Any environmental determination shall include a review of this material to determine whether the requirements of this section have been met

2. For projects exempt from environmental review:

Information demonstrating compliance with the standards of this section shall be submitted in connection with the application documents for any development permit exempt from environmental review.

3. Other Agency Permits and Standards

Activities in and around wetlands often require review and permitting by state and federal agencies. The requirements of this Ordinance are additional to any and all state and federal review and/or permit responsibilities, provided, however, mitigation required by the U.S. Army Corps of Engineers in a permit for activities in a wetland shall satisfy mitigation requirements in this ordinance.

**G. MAPS AND REFERENCES.**

The following references may provide an indication of wetland locations. However, these and other similar resources were not prepared at a level of detail sufficient to accurately portray the exact location and extent of wetlands in the City of Ilwaco, and cannot be used in place of an on-site field determination of wetlands. Many wetlands in the City of Ilwaco will not appear on these resources.

1. National Wetland Inventory.

2. Natural Resources Conservation Service (formerly the Soil Conservation Service), soils map for the City of Ilwaco, hydra soils designations.

## **SECTION 5**

# **FISHERIES HABITAT REGULATIONS**

### **A. PURPOSE**

The purpose of this section is to protect fisheries habitat by land management which maintains fish species in suitable habitats within their natural geographic distribution.

### **B. IDENTIFICATION**

The City of Ilwaco's policy is to protect habitat conservation areas classified pursuant to SECTION 7 WILDLIFE HABITAT for endangered, threatened, or sensitive species listed by the Washington State Department of Fish & Wildlife. The City of Ilwaco adopts the Department of Natural Resources' Official Water Type Maps. Definitions are as identified in the water typing criteria in WAC 222-16-030; provided, however, that artificially created structures, ditches, canals, ponds, irrigation return ditches, and stormwater channels of every type shall not be considered a stream for purposes of this section. Streams are classified Type 1-5 for critical area protection purposes based on the water typing criteria in WAC 222-16-030.

### **C. PROTECTION STANDARDS**

#### **1. Standard Setback Width Requirements**

The following stream setbacks from the ordinary high water mark are required:

##### **a. Widths for Required Stream Setbacks:**

- (1) For a Type 1 stream-100 feet
- (2) For a Type 2 stream-100 feet
- (3) For a Type 3 stream-100 feet
- (4) For a Type 4 stream-50 feet
- (5) For a Type 5 stream-25 feet (natural water course only)

Note: Larger buffers may be required where priority wildlife species occur.

These stream setback requirements do not apply to forest practice activities regulated under Chapter 76.09 RCW and Title 222 WAC.

##### **b. Measurement**

For streams the setback shall be measured horizontally in a landward direction from the ordinary high water mark. Where lands adjacent to a stream display a continuous slope of twenty-five percent (25%) or greater, the setback shall include such sloping areas. For Type 1, 2, and 3 streams, where the horizontal distance of the sloping area is greater than the required standard setback, the setback shall be extended to a point twenty-five (25) feet beyond the top of the bank of the sloping area.

## 2. Prohibited Activities within Stream Setbacks

The following activities are prohibited within a stream setback required by this Ordinance:

- a. Removal of more than thirty (30) percent of stream bank tree canopy within any ten (10) year period. For Class I and II streams, thirty percent removal means selective pruning not to exceed thirty percent or 30 feet in any 100 foot section. For Class III and IV streams, thirty (30) percent removal means selective pruning not to exceed thirty percent or 60 feet in any 200 foot section.
- b. Land filling, and/or grading;
- c. Land clearing and/or vegetation removal that results in exposure of bare earth except as necessary under subsection 5.C.2.a., provided that any exposure is the minimum required to reasonably accommodate the action;
- d. Planting of non-native vegetation;
- e. Mowing of vegetation resulting in conversion to a mowed lawn like state; and
- f. Application of chemicals, fertilizers, or pesticides.

## 3. Activities Permitted in Stream Setbacks

- a. Trails, park and educational areas
- b. Utility corridors and transmission facilities, when alternate routes are not reasonably available)
- c. Road rights-of-way for connecting or local roads, both public and private, where alternate routes are not readily available.
- d. Cart paths, water pumping stations and irrigation ponds.
- e. Stormwater control facilities (buffers only) when alternate locations are not readily available.

## D. MAPS AND REFERENCES

DNR base maps for stream types and topography provide an indication of the location of



fisheries resources. Field conditions shall be used to determine the existence or extent of any classified stream area.

## **SECTION 6**

# **SHELLFISH, KELP, EELGRASS , HERRING, AND SMELT SPAWNING AREAS REGULATIONS**

### **A. PURPOSE**

The purpose of this section is to ensure the protection of shellfish, kelp, eelgrass, herring, and smelt spawning areas by regulating incompatible upland land uses and development, and by controlling associated non-point pollution impacts.

### **B. IDENTIFICATION**

Shellfish, kelp, eelgrass, herring, and smelt spawning critical areas are those public and private saltwater tidelands or beds that are devoted to the process of growing, farming, or cultivating shellfish, including commercial clam and oyster grounds, oyster and mussel raft areas, and recreational shellfish harvesting areas. In addition, all property located three hundred (300) feet landward from the boundary of upland vegetation shall be designated as shellfish, kelp, eelgrass, herring, and smelt spawning critical areas. The Administrator is hereby given authority to modify administratively this last designation so that it refers to fixed elevational data points which reflect highest tide instead of referring to the boundary of upland vegetation. The Administrator shall consult with interested parties in making this change. This definitional change shall occur as soon as practicable; however, this change must be made within one year from the date this Ordinance becomes effective.

### **C. PROTECTION STANDARDS**

The following standards shall apply to sites that are designated as shellfish, kelp, eelgrass, herring, and smelt spawning areas:

1. The design of new and repair of on-site sewage systems shall incorporate all known, available, and reasonable methods of prevention, control, and treatment (AKART) 'Or microbial contaminants. For sites with soil type 2A through 5 as defined In Chapter 246-272 WAC, AKART can be achieved by maintaining at least a three (3) foot vertical separation between the bottom of a subsurface absorption system and the underlying maximum seasonal water table or impervious layer, and by use of pressure effluent distribution consistent with guidelines established by the Washington State Department of Health, and designed by a Professional Engineer, Licensed Designer, or Registered Sanitarian. On sites with soil Types 2A through 5 where a three (3) foot vertical separation cannot be maintained, alternative systems which meet or exceed Treatment Standard 2 prior to subsurface discharge shall be used. For sites with soil type IA or IB

where a three (3) foot vertical separation cannot be maintained, alternative systems which meet or exceed Treatment Standard I shall be used. No reduction from the 100 foot horizontal separation between on-site septic system disposal components and surface water shall be approved for new septic systems within shellfish, kelp, eelgrass, herring, and smelt spawning critical areas.

2. On-site sewage system permit applications shall be held by the Pacific County Health Officer or his/her designee for evaluation during the high winter water table season, if necessary to ensure that native soil depth and vertical separation are consistent with the requirements of Chapter 246-272 WAC, the City of Ilwaco On-Site Sewage System Regulations, and this Ordinance.

3. Applications for Preliminary Plat subdivisions, or for construction of any new office complex, school facility, industrial facility, or commercial building shall require preparation and submittal of a storm water collection, biofiltration, and disposal system designed by a Professional Engineer. Infiltration of storm water shall be encouraged, except where the practice would be injurious or potentially injurious to the quality of ground water in designated Aquifer Recharge Areas.

4. Construction of new agricultural facilities involved with the raising or keeping of livestock shall require preparation of farm plans and compliance with water quality Best Management Practices (BMPs).

5. Construction of new non-commercial agricultural facilities or activities involving the raising or keeping of livestock shall require compliance with water quality BMPs developed by the Pacific County Conservation District

#### **D. MAPS AND REFERENCES**

Shellfish, kelp, eelgrass, herring, and smelt spawning areas shall be field located by a qualified critical areas professional.



## **SECTION 7**

# **WILDLIFE HABITAT REGULATIONS**

### **A. PURPOSE**

The purpose of this section is to protect wildlife habitat by land management which maintains sensitive, threatened, or endangered species in suitable habitats within their natural geographic distribution.

### **B. IDENTIFICATION**

The City of Ilwaco adopts the designations listed at WAC 232-12-014 (Endangered), WAC 232-12-011 (Threatened and Sensitive), WAC 232-12292 (Bald Eagle), and federally-designated threatened or endangered species categories legally applicable to the City of Ilwaco.

Fish and wildlife habitat conservation areas include:

1. Areas with which endangered, threatened, and sensitive species have a primary association;
2. Commercial and recreational shellfish areas;
3. Kelp and eelgrass beds; herring and smelt spawning areas;
4. Naturally occurring ponds under twenty (20) acres And their submerged aquatic beds that provide fish or wildlife habitat;
5. Class I and II Wetlands;
6. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; or
7. State natural area preserves and natural resource conservation areas.

### **C. PROTECTION STANDARDS**

In reviewing non-exempt land use development permits, the local development permit shall condition approval based on a finding by the City of Ilwaco that the species identified in subsection 7.3. are not present on the parcel subject to the development permit.

## **D. MITIGATION**

### **1. City Permits**

Mitigation shall be required for loss of area or functional value of wildlife habitat regulated under this subsection. When mitigation is required by this section, it shall address restoration, rehabilitation, and alternatives in accordance with the following requirements:

- a. Restoration is required when a wildlife habitat regulated under this section has been altered prior to project approval unless the alteration was not prohibited by law; or when wildlife habitats are temporarily affected by construction or any other temporary phase of a project
- b. Mitigation is required when a wildlife habitat regulated under this section is permanently altered as a result of project approval or activity.
- c. On-site mitigation is preferred so as to ensure, to the greatest extent practicable, that the plan results in mitigation for direct impacts resulting from the alteration.
- d. Off-site mitigation will be used only in those situations where on-site mitigation is not possible. When off-site mitigation is allowed, it should occur within the same sub-basin as the project impact
- e. Mitigation shall be completed prior to granting of temporary or final occupancy, or the completion or final approval of any development activity for which mitigation measures have been required.

2. This subsection constitutes general rules which may be modified upon the recommendations of a qualified critical area professional as to the scope and nature of the mitigation which is needed to protect the habitat system, functions, and values at issue for the project.

## **E. MAPS AND REFERENCES**

1. Wildlife critical areas shall be field located based on applicable criteria by a qualified critical areas professional.
2. Department of Fish and Wildlife maps of bald eagle, sensitive, threatened, and endangered species and habitat shall be consulted.

## **SECTION 8**

### **FREQUENTLY FLOODED AREAS REGULATIONS**

#### **A. PURPOSE**

The purpose of the frequently flooded areas section is to minimize public and private losses due to flood conditions in specific areas.

#### **B. IDENTIFICATION**

For the purpose of this Ordinance, frequently flooded areas within the City of Ilwaco shall be classified using the following criteria:

1. Frequently flooded areas shall be those floodways and associated floodplains designated by the Federal Emergency Management Act (FEMA) flood hazard classifications as delineated on the area flood hazard maps for the City of Ilwaco dated September 27, 1985, or as subsequently revised by FEMA, as being within the 100-year floodplain, or those floodways and associated floodplains delineated by a comprehensive flood hazard management plan adopted by the City of Ilwaco City Council, as being within the 100-year floodplain or having experienced historic flooding. For the purpose of this Ordinance, in case of conflict between FEMA flood hazard maps and the comprehensive flood hazard management plan designations, the more restrictive designation shall apply.
2. If an area of interest is not included in a comprehensive flood hazard management plan adopted by the City Council, and the City Engineer believes that the FEMA flood hazard maps do not correctly delineate the 100-year floodplain, the City Engineer may delineate the 100-year floodplain based on documented historic flooding of the area. If such documentation is not adequate to allow the City Engineer to make such delineation, the person seeking development which is covered under this Ordinance shall provide a flood hazard study prepared by a qualified critical area professional assessing the extent of the 100-year floodplain, which shall be subject to approval by the City Engineer.

#### **C. PROTECTION STANDARDS**

All development within classified frequently flooded areas shall comply with the City of Ilwaco Flood Damage Prevention Ordinance No. 116, as now or hereafter amended, and/or the City of Ilwaco Shoreline Master Program, as now or hereafter amended.



## SECTION 9

# AQUIFER RECHARGE REGULATIONS

### A. PURPOSE

The purpose of this section is to establish protection measures for aquifers that are susceptible to contamination due to physical (hydrogeologic) factors.

### B. IDENTIFICATION

Any land within the City of Ilwaco that contains the following soil types as listed in the Soil Survey of Grays Harbor County Area, Pacific-6c County, and Wahkiakum County, Washington, 1986, Soil Conservation Service, USDA, is designated as an Aquifer Recharge Area.

#### Soil types (Map Unit Descriptions)

8	Beaches
35	Duneland
92	Netarts fine sand, 3-12 percent slopes
108	Orcas peat
132	Seastrand Mucky peat
133	Seastrand variant muck
147	Udorthents, level
153	Westport fine sand, 3-10 percent slopes
162	Yaquina loamy fine sand

### C. PROTECTION STANDARDS

#### 1. New Development Prohibitions

The following types of new development shall not be permitted within designated Aquifer Recharge Areas:

- a. Solid waste landfills;
- b. Septage application;
- c. Underground storage of heating oil in excess of 1,100 gallons for consumptive use on the parcel where stored;

- d. Creosote manufacturing or treatment; and
- e. Chemical manufacture or reprocessing of any extremely hazardous waste as defined by RCW 70.105.010(6) and listed in Chapter 173303 WAC.

## 2. Residential Development Standards

a. Lots in new subdivisions and new short subdivisions in Aquifer Recharge Areas outside of Urban Growth Areas shall require a minimum net land area of one acre when gravity on-site septic systems are proposed, thirty thousand (30,000) square feet when pressure distribution or equivalent treatment systems are proposed, and fifteen thousand (15,000) square feet or equivalent when sand filter or equivalent treatment is proposed. For the purposes of this section "net lot area" shall mean the total lot area minus areas covered by surface water lying water-ward of the ordinary high water mark, and those areas contained within rights of way, and road and/or utility easements.

b. New and/or repair of on-site sewage systems in Aquifer Recharge Areas on existing lots of less than one net acre in size shall be designed by a Licensed Designer, Registered Sanitarian, or Professional Engineer, and shall consist of a pressure distribution drainfield system, or meet Treatment Standard One or Two. However, a gravity drainfield system shall be allowed in Aquifer Recharge Areas if the site has at least five (5) feet of vertical separation when the water table is at its peak during the winter.

c. On-site sewage system permit applications in Aquifer Recharge Areas shall be held by the Health Officer for evaluation during the high winter water table season (December - February), if necessary to ensure that native soil depth and vertical separation are consistent with the requirements of Chapter 246-272 WAC and any the City of Ilwaco Ordinance pertaining to on-site sewage disposal.

d. New subdivisions and new short subdivisions in Aquifer Recharge Areas shall require a storm water collection, treatment, and disposal system designed by a Professional Engineer and approved by the City. This requirement does not apply to short subdivisions in which each lot is at least one acre in size.

## 3. Non-Residential Development Standards

a. A person seeking the following types of new construction activities is responsible for preparing an Aquifer Recharge Area Report.

- (1) Industrial and commercial agricultural facilities applying fertilizers or pesticides

in excess of agronomic rates;

(2) Golf courses or other recreational or institutional facilities that involve extensive turf cultivation or maintenance;

(3) Above ground storage tanks, with the exception of water tanks;

(4) Industrial or commercial facilities that, when completed, will use, store, or handle dangerous wastes in quantities in excess of five (5) gallons or twenty-five (25) pounds or more of any one substance, or in aggregate quantities of twenty (20) gallons or 100 pounds or more of all dangerous wastes;

(5) Fossil fuel exploration or development; and,

(6) Commercial underground storage tanks in excess of 1, 1 00 gallons.

b. The Aquifer Recharge Report shall include the following information:

(1) A detailed description of the project including all processes and other activities which have the potential for contaminating groundwater, and

(2) A hydrogeologic evaluation that includes, at a minimum, a description and/or evaluation of the following:

(a) Site location, topography, drainage, and surface . water bodies;

(b) Sails and geologic units, underlying the site;

(c) Ground water characteristics of the area, including flow direction, gradient, and existing groundwater quality;

(d) The location and characteristics of wells and springs within 300 feet of the perimeter of the property;

(e) An evaluation of existing on-site groundwater recharge; and

(f) An evaluation of the potential impact of the proposal on groundwater quality, both short and long term, based on an assessment of the cumulative impacts of the proposal in combination with existing and potential future land use activities.

c. Qualifications of Report Preparers



Aquifer Recharge Area Reports under subsections 9.C.3.a. and 9.C.3.b. of this section shall be prepared by a Professional Engineer registered by the State of Washington, and trained and qualified to analyze geologic, hydrologic, and ground water flow systems, or by a geologist or hydrogeologist who has received a degree from an accredited four-year college or university and who has relevant training and experience in analyzing geologic, hydrologic, and ground water flow systems. Such qualifications shall be demonstrated to the satisfaction of the Administrator.

## **SECTION 10**

# **GEOLOGICALLY HAZARDOUS AREAS REGULATIONS**

### **A. PURPOSE**

The purpose of this section is to minimize hazards to the public from development activities on or adjacent to areas of geological hazard. Geologically hazardous areas include the following: erosion hazard areas; landslide hazard areas; seismic hazard areas; and mine hazard areas.

### **B. EROSION AND LANDSLIDE HAZARD AREAS**

#### **1. Identification of Erosion & Landslide Hazard Areas**

a. Erosion hazard areas are those areas that have an erosion potential as detailed in the soil descriptions contained in the Soil Survey of Grays Harbor County Areas, Pacific County and Wahkiakum County, Washington, 1986, Soil Conservation Service, USDA. The legislative authority of the City of Ilwaco also may designate by resolution erosion hazard areas.

b. Landslide hazard areas are those areas meeting any of the following criteria:

(1) Areas of historic failure, such as areas designated as quaternary slumps, earthflows, mudflows, or landslides on maps published as the United States Geological Survey or Department of Natural Resources Division of Geology and Earth Resources;

(2) Areas which are rated as unstable in the Department of Ecology Coastal Zone Atlas;

(3) Any area with all of the following:

(a) a slope greater than 15%;

(b) hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock, and

(c) springs or groundwater seepage;

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

(5) Slopes having gradients greater than eighty percent (80%) subject to rockfall during seismic shaking;

(6) Areas potentially unstable as a result of rapid stream incision and streambank erosion;

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

(8) Any area with a slope of forty percent (40%) or steeper and with a vertical relief of ten (10) or more feet except areas composed of solid rock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least twenty (20) feet of vertical relief.

## 2. Applicability

a. When any provision of any other ordinance of the City of Ilwaco conflicts with subsection 10.B, that provision which is intended for erosion and landslide hazard areas shall apply unless specifically provided otherwise in this Ordinance.

b. The provisions of this section shall apply only to land use development permits. However, the expansion of pre-existing structures shall be exempt so long as the intrusion into an erosion or landslide hazard area does not increase.

## 3. Development Standards for Erosion and Landslide Hazard Areas

Uses and activities subject to a land use development permit in Erosion and Landslide Hazard Areas shall conform to the following standards:

### a. Grading

(1) Clearing, grading, and other construction activities shall not aggravate or result in slope instability or surface sloughing;

(2) Undergrowth shall be preserved to the extent practicable;

(3) No dead vegetation (slash), fill, or other foreign material shall be placed within a landslide hazard area, other than that approved for bulkheads or other methods of streambank stabilization under the Shoreline Master Program unless a geotechnical report shows that the activity will not exacerbate landslide hazards; and

(4) Ground disturbance shall be minimized to the extent practicable.



b. Ground Surface Erosion Control Management

- (1) There shall be minimum disturbance of vegetation in order to minimize erosion and maintain existing stability of hazard areas;
- (2) Vegetation removal on the slopes of banks between the ordinary high-water mark and the top of the banks shall be minimized because of the potential for erosion;
- (3) Vegetation and organic soil material shall be removed from a fill site prior to the placement of clean earthen material;
- (4) Vegetative cover shall be re-established on any disturbed surface to the extent practicable; and
- (5) To the extent practicable, groundcovers such as filter fabrics, rip-rap, etc. shall be placed on any disturbed surface when future erosion is likely.

c. Drainage

- (1) Surface drainage, including downspouts, shall not be directed across the face of a hazard area; if drainage must be discharged from the top of a hazard area to its toe, it shall be collected above the top and directed to the toe by tight line drain, and provided with an energy dissipative device at the toe for discharge to a swale or other acceptable natural drainage areas; and
- (2) Stormwater retention and detention systems, including percolation systems utilizing buried pipe, may be used if a geotechnical assessment indicates such a system shall not affect slope stability and the system is designed by a licensed civil engineer, the licensed civil engineer shall also certify that the system is installed as designed.

d. Lot Size

For the purpose of determining lot sizes within erosions and hazard areas, the Administrator shall review available information, analyze necessary geotechnical assessments, and make a decision on a case-by-case basis based on the reports.

e. Buffers

- (1) An undisturbed fifty (50) foot buffer, as measured on the surface, is required from the top, toe, and along all sides of any existing landslide or erosion hazard

area;

(2) Based on the results of a geotechnical assessment, the Administrator may increase or decrease the buffer; and

(3) The buffer shall be clearly staked before any construction or clearing takes place.

f. Design Guidelines

(1) Foundations shall conform to the natural contours of the slope and foundations should be stepped/tiered where possible to conform to existing topography of the site;

(2) Roads, walkways, and parking areas shall be designed with low gradients or be parallel to the natural contours of the site; and

(3) To the extent practicable, access shall be in the least sensitive area of the site.

g. No critical facilities shall be constructed or located within an erosion or landslide hazard area.

4. Additional Development Standards for Erosion Hazard Areas

a. No new structures shall be located on a permanent foundation within an erosion hazard area, unless the foundation is located at a distance landward of the ordinary high water mark that is greater than or equal to the amount of land that is expected to erode within the next thirty (30) years as determined by the Administrator.

b. New septic system drainfields in an erosion hazard area shall be located landward of any new structure.

c. Recreational Vehicle usage in an erosion hazard area is permitted if otherwise allowed by law.

5. Maps and References

a. Erosion Hazard Areas

The approximate location and extent of erosion hazard areas is displayed in the Soil Survey of Grays Harbor County Area, Pacific County, and Wahkiakum County, Washington, 1986, Soil Conservation Service, USDA.

b. Landslide Hazard Area

The Soil Survey may be relied upon by the Administrator as a basis for requiring field investigation and special reports. In the event of a conflict between information contained in the Soil Survey and information shown as a result of a field investigation, the latter shall prevail.

6. Geotechnical Analysis.

A geotechnical analysis of all Erosion and Landslide Areas, performed by a qualified professional engineer or geologist, may be substituted for the development standards for Erosion and Landslide Hazard Areas as stated in sections 3 and 4 above.

The analysis shall:

- a. identify, describe, and locate all Erosion and Landslide Hazard Areas on any parcel proposed for development;
- b. describe whether the proposed development will avoid Erosion and Landslide Hazard Areas and if so, what setbacks, if any, are proposed;
- c. explain why such setbacks, or lack thereof, will not cause any increased risk to life or property and will not create any significant adverse environmental impacts;
- d. describe what mitigation measures are proposed to address any adverse landslide or erosion hazards that may occur as a result of the development.
- e. demonstrate that all Erosion and Landslide Hazards will be either sufficiently avoided or adequately mitigated.

**C. MINE HAZARD AREAS**

1. Identification of Mine Hazard Areas

Mine hazard areas are those areas within 100 horizontal feet of a mine opening at the surface.

2. Applicability

- a. When any provision of any other ordinance of the City of Ilwaco conflicts with subsection 10.C., that provision which is intended for mine hazard areas shall apply, unless specifically provided otherwise in this Ordinance.



b. The provisions of this section shall apply only to land use development permits. However, expansion of pre-existing structures shall be exempt so long as the intrusion into a mine hazard area does not increase.

3. Development Standards for Mine Hazard Areas

Development within a mine hazard area is prohibited.

**D. SEISMIC HAZARD AREAS**

1. Identification of Seismic Hazard Areas

For the purposes of this classification, the entire City constitutes a seismic hazard area because all areas are subject to a Seismic Risk Zone 3 rating or higher.

2. Applicability

a. When any provision of any other ordinance of the City of Ilwaco conflicts with subsection 10.D., that provision which is intended for seismic hazard areas shall apply unless specifically provided otherwise in this Ordinance.

b. The provisions of this section shall apply to land use development permits. However, the expansion of pre-existing structures and facilities shall be exempt so long as the hazard to health or safety, persons or property does not increase.

3. Development Standards for Seismic Hazard Areas

All development within areas that meet the classification criteria for seismic hazard areas shall comply with the Uniform Building Code requirements for Seismic Risk Zone 3 as adopted by the City of Ilwaco. No other permits are required by this Ordinance for seismic hazards.

4. Maps and References

a. All of the City of Ilwaco lies within Seismic Risk Zone 3, as shown on the Uniform Building Code Seismic Risk Zone Map of the United States.

b. The Administrator may require site specific field studies or special reports for the siting of critical facilities within the City of Ilwaco.

**SECTION 11**

**EFFECTIVE DATE**

This Ordinance shall take effect immediately.

Introduced on the 26th day of October, 1998, passed by the City Council on the 23rd day of November, 1998, and approved by the Mayor on the 23rd day of November, 1998.

  
Mike Meno, Mayor

ATTEST:

  
Linda Marsh, Clerk-Treasurer

