

## Chapter 16.12

### PROTECTION OF NATURAL RESOURCES

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**16.12.010 Authority.**

This chapter contains the natural resource lands and critical areas procedures and policies of the City of Everson as adopted pursuant to and under the authority of Chapter 36.70A RCW. [Ord. 634 § 1, 2005; Ord. 424 § 1, 1992.]

**16.12.020 Purpose.**

The Growth Management Act mandates local governments to assure the conservation of natural resource lands and requires local governments to adopt development regulations precluding land uses or development incompatible with critical areas.

A. The primary purpose of this chapter is to provide a framework of development regulations to accomplish the foregoing directive. In order to do so, the City adopts the following goals:

1. To maintain and enhance renewable natural resource-based industries, to encourage the conservation of productive forest lands and agricultural lands, and to discourage land uses incompatible with those goals;
2. To recognize the beneficial uses, functions and values of wetlands by finding that a use resulting in a net loss of wetland function and values is incompatible with the wetland critical area;
3. To recognize the value of critical recharge areas for aquifers and protect the quantity and quality of the ground water resource;
4. To recognize and respond to the need for flood control and flood-sensitive building practices within frequently flooded areas;
5. To protect the public health and safety through the use of land use regulations in areas which due to geological hazards are either not suited or have probable significant limitations to building siting, road construction or disturbance;

6. To protect the habitat value of those areas providing critical habitat for endangered, threatened or protected fish and wildlife species; and

7. To establish regulations protecting and conserving critical areas based on the best available science.

B. It is not the purpose of this chapter and nothing contained in or adopted by this chapter is intended, nor shall it be construed, to create or form the basis for any civil duty or liability on the part of the City or its officers, employees, or agents, to any person or persons for any injury or damages resulting from the existence of or the failure or inability of any development or use to conform to the provisions of this chapter. [Ord. 769 § 1, 2016; Ord. 634 § 1, 2005; Ord. 571 § 1, 2000; Ord. 424 § 1, 1992.]

**16.12.030 Definitions.**

The following definitions and concepts apply to all provisions of this chapter, unless the context clearly requires otherwise:

A. "Administrator" means the Mayor, or the Mayor's designee, whether by contract or City employee, engaged for or directed to perform the administration of all or any part of this chapter or any particular application or proposal.

B. "Buffer" means a vegetated area bordering a wetland, lake, stream or other critical area that provides separation from the adjacent or surrounding area to help minimize disturbances resultant from human activity.

C. "Compensation" means replacement by creation, enhancement or restoration of a wetland equivalent in size, function and value to the one being altered or lost from development.

D. "Contiguous" means immediately adjacent to, included within or directly linked hydrologically with a stream.

E. "Creation" means bringing a wetland into existence at a site in which a wetland did not formerly exist.

F. "Critical areas" means the following areas and ecosystems identified and classified pursuant to State law and regulation, including RCW 36.70A.050 and Chapter 365-190 WAC:

1. Wetlands;
2. Areas with critical recharging effect on aquifers used for potable water;
3. Fish and wildlife habitat conservation areas;
4. Frequently flooded areas; and
5. Geologically hazardous areas.

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

H. "Development site" means the entire lot, series of lots or parcels on which a development is located or is proposed to be located, including all contiguous undeveloped lots or parcels which are under common ownership with the developed lots.

I. "Existing and ongoing agricultural activities" means those existing and ongoing activities involved in the production of crops and livestock, including agricultural activities and the operation, maintenance and repair of existing structures and facilities related to those agricultural activities. Those activities that bring an area into agricultural use are not considered existing and ongoing agricultural activities.

J. "Functions" means the beneficial roles wetlands may serve, including storage, conveyance, and attenuation of floodwaters and storm waters; ground water recharge and discharge; protection of water quality and reduction of sediment and erosion; production of waterfowl, game and nongame birds, mammals, and other living resources; protection of habitat for endangered, threatened and protected species; food chain support for a broad range of wildlife and fisheries; educational, historical, and archaeological value protection; and scenic, aesthetic, and recreational amenities.

K. "Lake" means a naturally created body of standing open water that persists throughout the entire year.

L. "Low impact" means activities that might occur within wetlands and streams and their associated buffers that would have minimal adverse impact on their functions and values, physical setting and overall benefits. Such uses include but are not limited to pedestrian trails, interpretive signs and scientific research that create little disturbance.

M. "Mitigation" means the use of any combination or all of the following actions (listed in order of priority):

1. Avoiding impacts to critical areas by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected critical area;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the development proposal;
5. Compensation for the impact by replacing or enhancing critical areas, or providing substitute resource; and
6. Monitoring the impact and taking appropriate corrective measures.

N. "Ordinary high water mark" means the mark on streams which will be found by examining the beds and bank 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 in respect to vegetation.

O. "Priority habitats" means areas defined from time to time by the Washington Department of Fish and Wildlife with one or more of the following attributes: comparatively high wildlife density, high or significant wildlife species richness, significant wildlife breeding habitat, significant wildlife seasonal ranges, significant movement corridors for wildlife, and wildlife habitat of limited availability and/or high vulnerability.

P. "Priority species" means plant and animal species of concern due to their population status and sensitivity to habitat alteration. Priority species include those endangered, threatened, or protected species identified from time to time by the Washington Department of Fish and Wildlife Priority Habitats and Species Program and game species.

Q. "Restoration" means improving, enhancing and re-establishing a once viable and now degraded wetland to a state in which its stability, functions and values approach its unaltered state.

R. "Seismic hazard areas" means areas subject to severe risk of earthquake damage as a result of seismic induced settlement or soil liquefaction.

S. "Shorelines," which include critical areas, are separately defined and regulated in Chapter 16.04 EMC.

T. "Stream" means a physically defined channel, with seasonal or perennial water flow, that will at least periodically support a predominance of wetland and aquatic plants specifically adapted for growth in a saturated environment.

U. "Threatened or endangered species" means plant or animal species that are regionally relatively uncommon, are nearing endangered status, or whose existence is in immediate jeopardy, as identified pursuant to RCW 77.12.020 in WAC 232-12-011 and 232-12-014, or identified as threatened or endangered pursuant to the Federal Endangered Species Act.

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

W. "Wetlands biologist" means a professional or technical wetlands consultant or scientist who is either a certified professional wetland scientist or who has, at a minimum: (1) a bachelor's degree in hydrology, soil science, botany, ecology, or related field; and (2) at least two years of full-time work experience as a wetlands professional, including delineating wetlands using the State or Federal manuals, preparing wetland reports, conducting function assessments, and developing and implementing mitigation plans. [Ord. 769 § 2, 2016; Ord. 634 § 1, 2005; Ord. 571 § 2, 2000; Ord. 520 § 1, 1997; Ord. 501 § 24, 1996; Ord. 424 § 1, 1992.]

#### **16.12.040 General requirements.**

A. Applicability. This chapter shall be applicable to any activity that includes clearing of vegetation, alteration of drainage or other land disturbing activity and all development proposals, whether public or private, unless otherwise provided herein, and all such activities shall comply with the requirements and purposes of this chapter; provided that following adoption by the Everson City Council and approval by the Washington Department of Ecology of an updated Shoreline Master Program developed and approved pursuant to Chapter 90.58 RCW and Chapter 173-26 WAC, the provisions of this chapter shall only be applicable to those land and water areas lying outside of shoreline jurisdiction, except to the extent that the provisions contained herein have been adopted by reference as part of the updated Shoreline Master Program. For the purposes of this chapter, development proposals include proposals that require any of the following:

1. Building permit;
2. Land clearing, grading, or filling permit;
3. Shoreline substantial development permit;
4. Shoreline variance or conditional use permit;
5. Zoning conditional use permit or variance;
6. Zoning amendment;
7. Preliminary development plan for a development contract district;
8. Subdivision or short subdivision; and
9. Any other land use approvals required by the Everson Municipal Code.

Development proposals may be subject to and shall comply with all provisions of overlapping critical areas.

B. **Special Studies Required.** When an applicant submits an application for any development proposal, or where approval is required pursuant to this chapter, the applicant shall identify any critical area or any critical area buffer(s) on, adjacent to, or potentially affected by the proposed activity on the development site. The application shall describe the proposed manner of compliance with this chapter. In the event that the affected critical area(s) is/are wetlands, fish and wildlife habitat areas and/or geologically hazardous areas, a map shall be provided depicting the location of the affected critical area(s) and any required buffer. The Administrator may request that information submitted regarding critical areas be prepared by a qualified wetlands biologist, ecologist, geotechnical engineer or similarly qualified person with expertise in the affected critical area(s). [Ord. 769 § 3, 2016; Ord. 634 § 1, 2005; Ord. 501 § 25, 1996; Ord. 424 § 1, 1992.]

**16.12.050 Maps and inventories.**

A. The location of natural resource areas and critical areas in the City of Everson and its urban growth area is depicted on a series of maps for use in assisting the public and City officials in identifying and locating natural resource lands and critical areas, and enforcing this chapter. The initial and any amended maps shall be on file and available for public inspection or copying at the City Clerk's office.

B. The critical areas maps shall be used as a source of generalized information and shall not be used to determine the absolute presence, absence or boundaries of a critical area. The exact location, type and extent of critical areas shall be determined by a qualified consultant on a site-specific basis, subject to confirmation by the Administrator. Any lands depicted by the maps as clearly occupying one or more critical areas shall not be declared outside such critical area(s) except upon competent evidence adduced by the applicant. The Administrator may require the applicant to have a detailed study prepared by a qualified consultant to determine whether a proposed development or activity has the potential to affect any critical area(s). [Ord. 634 § 1, 2005; Ord. 424 § 1, 1992.]

**16.12.060 Development restrictions.**

A. **Undevelopable Critical Areas.** The following critical areas shall remain undeveloped except as otherwise provided in EMC 16.12.080:

1. **Category I and II Wetlands.** Category I and II wetlands shall remain undeveloped. The edge of the wetland and the outside edge of its buffer shall be determined and field marked by a wetland biologist or similarly qualified professional;
2. **Floodways in Frequently Flooded Areas.** Development is prohibited within floodways consistent with prohibitions established in Chapter 15.10 EMC.

B. **Potentially Developable Critical Areas.** Shorelines shall be governed by Chapter 16.04 EMC; all other critical areas may be developed pursuant to this chapter. The applicant shall clearly and convincingly demonstrate to the satisfaction of the Administrator that the proposal incorporates measures protecting the public health, safety, and welfare and the functions and value of potentially affected critical areas. [Ord. 634 § 1, 2005; Ord. 571 § 3, 2000; Ord. 501 § 26, 1996; Ord. 424 § 1, 1992.]

**16.12.070 Standards.**

Development and other regulated activities proposed within or in proximity to critical areas shall comply and be consistent with the standards for each of the following critical areas as set forth in EMC 16.12.071 through 16.12.075. [Ord. 769 § 4, 2016.]

**16.12.071 Wetlands.**

If a wetland is located on or contiguous to the site of a development proposal or other activity subject to the requirements of this chapter, all activities on the site shall be in compliance with the following regulations:

A. **Designation.** Wetlands shall be identified and delineated according to the Corps of Engineers Wetlands Delineation Manual (Environmental Laboratory 1987) and the Regional Supplement to the Corps of

Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0, 2010 or as revised).

B. Classification. Wetlands shall be classified (rated) as Category I, Category II, Category III, or Category IV based upon Washington State Department of Ecology’s “Wetlands Rating System for Western Washington” (2014) or most recent update.

C. Buffers. Buffers are upland areas adjacent to wetlands that are intended to provide sufficient separation between the aquatic feature and the surrounding areas to protect them from disturbance from human activities. Buffers also provide vital upland habitat for wildlife species that require wetlands as part of their life cycle. All buffers shall be measured horizontally from the wetland edge or ordinary high water mark where appropriate; provided that wetland buffers shall not extend into or beyond substantially improved surfaces, such as lawfully established structures or impervious surfaces.

1. Standard Buffers.

a. Standard Buffers Where No Minimizing Measures Are Required. The following standard buffers are required where no minimizing measures are required and buffers are assumed to be comprised of an intact native vegetation community:

Wetland Category	Buffer width (in feet) based on habitat score			
	3 – 4	5	6 – 7	8 – 9
Category I (based on total score)	100	140	220	300
Category II (based on total score)	100	140	220	300
Category III (based on total score)	80	140	220	300
Category IV (based on total score)	50	50	50	50

b. Standard Buffers Where Minimizing Measures Are Required. The following standard buffers are required where minimizing measures as set forth in subsection (C)(1)(c) of this section are required and buffers are assumed to be comprised of an intact native vegetation community:

Wetland Category	Buffer width (in feet) based on habitat score			
	3 – 4	5	6 – 7	8 – 9
Category I (based on total score)	75	105	165	225
Category II (based on total score)	75	105	165	225
Category III (based on total score)	60	105	165	225
Category IV (based on total score)	40	40	40	40

c. Minimizing Measures. The smaller standard buffers set forth under subsection (C)(1)(b) of this section shall be applicable where the minimizing measures established in the following table are required and in those cases where the wetland has a habitat score of five or more an undisturbed vegetated corridor at least 100 feet wide is provided between the wetland and another priority habitat:

Disturbance	Required Measure to Minimize Impacts
Lights	•Direct lights away from wetland
Change in water regime	•Infiltrate or treat, detain and disperse into buffer new runoff from impervious surfaces and new lawns

Disturbance	Required Measure to Minimize Impacts
Dust	•Use best management practices to control dust

2. Increased Buffer. If the standard buffer is not comprised of an intact native vegetation community or if the wetland has a high level of function for wildlife habitat (habitat function score of 8 or 9 points on the wetland rating form), the required buffer shall be increased by the Administrator to the extent necessary to protect the functions and value of the potentially affected wetland or the applicant may choose to enhance the standard buffer area through the planting of native vegetation sufficient to meet the above standard. Any such buffer enhancement shall be undertaken at the expense of the applicant and shall be based on a mitigation plan prepared by a qualified biologist consistent with subsection E of this section.

3. Reduced Buffer.

a. Buffer Reduction Based on Mitigation. Where mitigation is provided at a 1:1 ratio, standard buffers may be reduced; provided, that the standard buffer for a Category II, III or IV wetland is not reduced by more than 40 percent for Category II wetlands, and 60 percent for Category III and Category IV wetlands. Reduction of the standard buffer of a Category I wetland is prohibited. Buffer reductions shall only be permitted when all impacts to wetlands and their required buffers are compensated at the expense of the developer through implementation of a mitigation plan prepared by a qualified wetland biologist consistent with subsection E of this section. Filling of any wetland, except a Category IV wetland, or reduction of a wetland buffer below the percentages stated above, shall require approval of a variance or a reasonable use exception.

b. Buffer Reduction Based on Buffer Averaging. Standard buffers may be reduced through the use of buffer averaging; provided, that the total buffer area is not reduced below the area that would result from use of the standard buffer; and provided further, that the standard buffer, at its narrowest point, is not reduced by more than 25 percent for Category II, III and IV wetlands, and the use of buffer averaging will improve the overall protection of the wetland, and increase the buffer adjacent to the higher-functioning area of habitat or the more sensitive portion of the wetland and decrease the buffer adjacent to the lower-functioning and less sensitive portion of the wetland. Reduction of the standard buffer of a Category I wetland is prohibited.

D. Requirements.

1. Category I. Regulated activity shall only be permitted outside a Category I wetland and its standard buffer; all other activity, except that necessary for the public access, utilities, education or research purposes, is declared incompatible with the wetland.

2. Category II. Regulated activity shall only be permitted outside a Category II wetland and its standard buffer; all other activity, except that necessary for the public access, utilities, education or research purposes, is declared incompatible with the wetland. Reduction of the standard buffer adjacent to a Category II wetland shall be permitted only where consistent with subsection (C)(3) of this section, and only when all impacts are compensated at the expense of the developer through implementation of a mitigation plan prepared by a qualified wetland biologist consistent with the requirements set forth in subsection E of this section.

3. Category III. Regulated activities shall only be permitted outside a Category III wetland and its standard buffer. Buffer reductions consistent with subsection (C)(3) of this section are only permitted if all impacts are compensated at the expense of the developer through implementation of a mitigation plan prepared by a qualified wetland biologist consistent with the requirements set forth in subsection E of this section.

4. Category IV. Development activities may be permitted within a Category IV wetland or standard buffer consistent with subsection (C)(3) of this section so long as the function of the wetland is

replaced at the expense of the developer pursuant to an approved mitigation plan prepared by a qualified wetlands biologist consistent with subsection E of this section. Replacement of function shall include measures such as storm water retention and water quality treatment. No mitigation for habitat is required where the habitat value of the wetland is found to be minimal.

E. Mitigation Requirements.

1. Mitigation Plan. Where preparation of a mitigation plan is required, the plan shall be prepared by a qualified wetland biologist consistent with the Department of Ecology guidance document, "Guidance on Wetland Mitigation in Washington State," and shall be approved by the Administrator. The mitigation plan shall be prepared based on the best available science and shall, at a minimum, address the following:

- a. The characteristics of the wetland;
- b. The characteristics of the watershed contributing to the wetland;
- c. The functions and values of the wetland to be protected by the buffer;
- d. The characteristics of the buffer;
- e. The intensity of the proposed adjacent land use;
- f. The functions that the standard buffer is supposed to provide at the specific location;
- g. Proposed measures to reduce the adverse effects of adjacent land uses, such as lighting and noise restrictions, buffer fencing and sign-age, conservation easements, use of integrated pest management and limitations on application of pesticides, and use of low impact development techniques;
- h. The anticipated effectiveness of the proposed mitigation measures to protect the functions and values of the affected wetland and wetland buffer; and
- i. Proposed monitoring requirements to ensure the effectiveness of the proposed mitigation.

2. Mitigation Sequence. When a regulated activity is proposed within a wetland or its required buffer, the applicant shall demonstrate that all reasonable efforts have been taken to avoid, minimize and/or compensate for potential impacts in the following priority order:

- a. Avoiding the adverse impact altogether by not taking certain actions;
- b. Minimizing adverse impacts by limiting the degree or magnitude of the action or taking affirmative steps to avoid or reduce adverse effects;
- c. Rectifying the adverse impact by repairing, rehabilitating or restoring the affected environment;
- d. Reducing or eliminating the adverse impact over time through preservation and maintenance operations during the life of the action;
- e. Mitigating for the adverse impact by replacing, enhancing, or providing substitute resources or environments; and
- f. Monitoring both the impacted area and the mitigation project over time and taking appropriate corrective action.

3. Compensatory Mitigation Ratios. Compensatory mitigation through creation/re-establishment, rehabilitation and/or enhancement shall be provided based on the following ratios of impacted area to



mitigation area, which shall serve as guidelines for use by qualified wetland biologists and the Administrator in preparing and reviewing proposed mitigation:

**Mitigation Ratio**

Wetland Category	Creation or Re-establishment	Rehabilitation	Enhancement
Category I	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

[Ord. 769 § 5, 2016; Ord. 691 § 7, 2009; Ord. 634 § 1, 2005; Ord. 424 § 1, 1992.]

**16.12.072 Aquifer recharge areas.**

A. Classification. Classification of recharge areas shall be based upon the susceptibility of the aquifer. High susceptibility is based on the presence of highly permeable soils and land uses which produce contaminants that may degrade ground water and low susceptibility is indicative of less permeable soils and land use which will not degrade ground water. Regardless of the land uses in existence or proposed, those areas within the City limits of Everson and its urban growth area located within the five-year time of travel adjacent to the Everson wellfield shall be considered to have high aquifer susceptibility.

B. Standards.

1. All development shall be required to connect to and utilize the sanitary system of the City. Disposal sites for hazardous waste, as the same is identified in WAC 173-303-040, are prohibited. The following standards shall apply to developments and uses within the five-year time of travel zone. Developments shall limit the amount of impervious surface where possible, and shall utilize grass-lined swales, vegetative retention basins, and/or oil separators for storm water runoff purposes. No surface mining of gravel or other minerals shall encroach below the high ground water level as measured by the mottled soil (high waterline) markings or well logs.

2. Proposed residential development within the one-year time of travel located adjacent to the City wellfield, as identified in the City of Everson wellhead protection plan, shall be required to minimize or reduce the amount of development within the one-year time of travel area as follows:

On properties proposed for subdivision where greater than 50 percent of the property, excluding otherwise undevelopable areas, is located outside of the one-year time of travel zone, all proposed residential lots shall be located outside of the one-year zone and use of the cluster subdivision procedure, as specified under EMC 18.16.030, shall be encouraged. In such cases, the portion of the property located within the one-year time of travel zone shall be retained for open space or low-impact recreational uses.

On properties proposed for subdivision where 50 percent or less of the property, excluding otherwise undevelopable areas, is located outside of the one-year time of travel zone, the minimum lot size, as specified in the applicable chapter of EMC Title 19, shall be increased by 50 percent and the minimum lot width shall not be greater than 70 feet.

3. Storm water management facilities shall be encouraged to discharge outside of the five-year time of travel zone located adjacent to the City wellfield. Storm water management facilities discharging within the five-year time of travel zone shall be required to incorporate enhanced storm water treatment through the use of multiple treatment systems (i.e., particulate removal and chemical absorption) and amended infiltration beds providing additional treatment time (i.e., soils amended with sand); provided, that the City Engineer may waive any of these additional requirements based on a finding that a storm water management facility designed by a professional engineer licensed in the State of Washington can achieve an equivalent level of storm water treatment. All systems discharging

within the five-year zone shall provide mandatory monitoring and maintenance of storm water facilities with monitoring reports submitted to the City every two years.

4. The placement or storage of containers of chemicals, petroleum products or byproducts, fertilizers, insecticides, pesticides, lime, cement or other material that, if not properly contained, could constitute a hazard to life, health and safety, or adversely affect the quality of ground waters, is prohibited within the five-year time of travel area unless adequate provision has been made for proper storage, spill prevention and spill response. Such measures shall be approved by the Administrator in advance and shall be subject to inspection by the City.

5. All development shall comply with the regulations established under Chapter 16.16 EMC.

6. Violations of this section shall be a gross misdemeanor and shall subject a violator to fines and/or jail time not to exceed that amount as allowed by law. Each day that a violation exists shall be a separate offense. [Ord. 769 § 6, 2016; Ord. 668 § 2, 2007; Ord. 634 § 1, 2005; Ord. 520 § 2, 1997; Ord. 424 § 1, 1992.]

**16.12.073 Fish and wildlife habitat conservation areas.**

A. Classification. Fish and wildlife habitat conservation areas may contain or be contained within other critical areas such as wetlands and their associated buffers. Fish and wildlife habitats include:

1. Lands containing priority habitats and species as identified pursuant to the Washington Department of Fish and Wildlife Priority Habitats and Species Program.

2. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat. Naturally occurring ponds do not include ponds deliberately designed and created from a dry site, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds (of less than three years' duration) and landscape amenities. Upon approval, naturally occurring ponds may include designated artificial ponds created from dry areas in order to mitigate conversion of other areas.

3. Waters of the State, as defined in WAC Title 222 and classified in WAC 222-16-030, relating to forest practice rules and regulations.

4. Lakes, ponds, streams, and rivers planted with game fish species as identified by the program, or which supports priority fish species as identified by the Washington State Department of Fish and Wildlife.

5. State natural area preserves dedicated pursuant to Chapter 79.70 RCW and natural resource conservation areas obtained pursuant to Chapter 79.70 RCW.

The foregoing notwithstanding, fish and wildlife habitat conservation areas shall not include drainage ditches, irrigation canals and other similar artificial features that are within the boundaries of and maintained by a drainage improvement district, irrigation district or other similar agency.

B. Standards. Alteration of fish and wildlife habitat conservation areas may reduce the likelihood that the species will survive or reproduce. Activities allowed in fish and wildlife habitat conservation areas shall be consistent with the lifecycle and preferred habitat of the affected species of concern found there, and with all applicable State and Federal regulations regarding that species.

Development proposals having the potential to adversely impact a fish and wildlife habitat conservation area shall be required to submit a detailed study identifying the functions and values of the potentially impacted habitat(s), the potential impacts resulting from the proposed development, and any mitigation necessary to maintain the functions and values of the habitat. Any such detailed study shall be prepared by a qualified specialist, such as a fish or wildlife biologist, and shall be based on the best available science.

The following standards shall apply:

1. Nooksack River: 200-foot standard buffer;
2. Johnson Creek: 100-foot standard buffer;
3. Scott Ditch: 75-foot standard buffer;
4. Bald eagle habitat: consistent with the Washington State Bald Eagle Protection Rules (WAC 232-12-292).

Riparian buffers shall be measured from the ordinary high water mark; provided, that buffers shall not extend into or beyond substantially improved surfaces, such as lawfully established structures or impervious surfaces.

C. Buffer Reductions. Development activities may be permitted within the standard buffer provided the detailed study demonstrates to the satisfaction of the Administrator that the proposal, including any proposed mitigation, will maintain the functions and values of the potentially impacted habitat; and provided further, that the standard buffer is not reduced by more than 25 percent. The standard buffer may also be reduced up to 25 percent through buffer averaging; provided, that the total buffer area is not reduced below the area that would result from use of the standard buffer.

D. Mitigation Requirements. Where mitigation is proposed or required, the applicant shall submit a mitigation plan prepared by a qualified specialist. The plan shall be based on the best available science and shall address the following:

1. The characteristics of the habitat;
2. The characteristics of the watershed in which the habitat is located;
3. The functions and values of the habitat to be protected by the buffer;
4. The characteristics of the buffer;
5. The intensity of the proposed adjacent land use;
6. The functions that the standard buffer is supposed to provide at the specific location;
7. Proposed measures to reduce the adverse effects of adjacent land uses, such as lighting and noise restrictions, buffer fencing and signage, conservation easements, use of integrated pest management and limitations on application of pesticides, and use of low impact development techniques;
8. The anticipated effectiveness of the proposed mitigation measures to protect the functions and values of the affected habitat and habitat buffer; and
9. Proposed monitoring requirements to ensure the effectiveness of the proposed mitigation. [Ord. 769 § 7, 2016; Ord. 634 § 1, 2005; Ord. 520 § 3, 1997; Ord. 424 § 1, 1992.]

**16.12.074 Frequently flooded areas.**

A. Classification. Lands classified as frequently flooded areas shall be those designated within the floodway and the 100-year floodplain on the Federal Emergency Management Agency (FEMA) Flood Boundary and Floodway Map (Flood Insurance Rate Map Zones A, A2, A13), as amended and adopted in Chapter 15.10 EMC.

B. Standards. Activities allowed in frequently flooded areas shall be consistent with the following regulations:

1. All development shall meet the provisions of Chapter 15.10 EMC, National Flood Insurance Program.

2. No fill shall be permitted, except where a detailed drainage report and/or flood modeling report prepared by a qualified engineer demonstrates that the proposed fill and all proposed mitigation, including proposed drainage improvements, will not adversely impact adjacent, neighboring and/or potentially impacted properties, will not create a hazard or pose a threat to public health or safety, and will not result in a net increase in the 100-year flood elevation at any location potentially affected by the proposed fill of more than one-tenth of one foot; provided, that the determination as to the net effect of the proposed fill on the 100-year flood elevation shall be based on results generated from use of the comprehensive flood model developed by Whatcom County or similar model determined to be acceptable and appropriate by the Administrator. The foregoing notwithstanding, the Administrator may approve the placement of fill within the Johnson Creek watershed in those cases where flood modeling results or other engineering analyses indicate the net effect would be a net increase in the 100-year flood elevation of more than one-tenth of one foot where such fill is proposed to be placed in the flood fringe adjacent to or near the edge of the floodplain and where all other requirements established in this subsection will be met.

3. The analyses as to the potential adverse impacts of any proposed fill required by subsection (B)(2) of this section shall include and consider the potential impacts from, but not limited to, the following activities: excavation, filling and grading associated with construction of roads, utilities, building foundations, storm water ponds and drainage facilities; landscaping; and final site grading. The required analyses shall also include and consider the potential adverse impacts from any proposed fill on the flow of storm water to or from the proposed development site and on adjacent or neighboring properties.

4. The placement or storage of containers of chemicals, petroleum products or byproducts, fertilizers, insecticides, pesticides, lime, cement or other material that, when inundated, will constitute a hazard to life, health and safety, or adversely affect the quality of surface waters, is prohibited within any floodway or below the lowest habitable floor level identified pursuant to Chapter 15.10 EMC.

5. New development may be permitted in the 100-year floodplain, provided the applicant records with the Whatcom County Auditor's office the following notice on all documents:

This property is located in an area that may be subject to inundation by floodwaters. For further information regarding this hazard, please contact the Federal Emergency Management Agency, the Whatcom County Emergency Services office or the City of Everson.

[Ord. 769 § 8, 2016; Ord. 691 § 8, 2009; Ord. 634 § 1, 2005; Ord. 424 § 1, 1992.]

**16.12.075 Geologically hazardous areas.**

A. Classification. Geologically hazardous areas include areas susceptible to erosion, earthquake or other geological events. The geologically hazardous areas within Everson or the Everson urban growth area include:

1. Steep slopes having a slope gradient from top to toe of 35 percent or greater with a vertical relief of 10 feet or more;
2. Areas with known risk for seismic events due to the presence of peat or muck soils; and
3. Areas with a potential risk for volcanic event induced flooding.

B. Standards.

1. No development shall be permitted within a steep slope or within a distance of 50 feet from the top or toe of a steep slope unless a special study prepared by a qualified geologist or geotechnical engineer demonstrates that the risks associated with the proposed development are or have been mitigated to within acceptable levels of risk.

2. Standards for development in seismic hazard areas, as identified in “Engineering Characteristics of Geological Materials,” Western Whatcom County, Easterbrook (USGS 1-845-D), are found in Chapter 15.04 EMC relating to building construction. Development proposals in areas ranked “very high” for seismic hazard shall contain such geological and technical information and planning as the Administrator requires, including, but not limited to, on-site soils investigations and development recommendations prepared by a qualified geologist, architect or engineer.

3. Standards for areas at risk due to volcanic event induced flooding are found in EMC 16.12.074, Frequently flooded areas. [Ord. 769 § 9, 2016; Ord. 634 § 1, 2005; Ord. 424 § 1, 1992.]

**16.12.076 Natural resource lands.**

A. Classification. Natural resource lands include agricultural resource lands, forest resource lands and mineral resource lands. No natural resource lands within Everson and the Everson urban growth area have been designated for protection as resource lands of long-term commercial significance.

B. Standards. There are no prohibitions or regulations specifically protecting natural resource lands within Everson or the Everson urban growth area. The following notification requirements shall apply:

1. The City shall notify Whatcom County of any Class II or Class III development proposal on lands within 300 feet of any County-designated natural resource lands lying outside the City. Such

notification shall be provided to the County Planning and Development Services Department as part of the notice of application process required by EMC 16.01.100.

2. The City shall also require all residential subdivisions, including both long and short subdivisions, within 500 feet of County-designated natural resource lands to record with the Whatcom County Auditor’s office a notification on all recorded documents that portions of the development area may be located in proximity to natural resource lands where activities associated with agriculture, forestry or mineral extraction may occur and may reasonably be expected to occur that, at certain times, may be incompatible with residential development due to noise, odor, dust or other impact. All such notifications addressing mineral resource lands shall also indicate that mining-related activities may include mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

3. The City shall also include the notice described in subsection (B)(2) of this section on all building permits and development permits issued for properties within 500 feet of County-designated natural resource lands. [Ord. 726 § 1, 2012; Ord. 634 § 1, 2005; Ord. 424 § 1, 1992.]

**16.12.080 Development exceptions.**

The following exceptions to the development restrictions and standards of EMC 16.12.071, 16.12.072, 16.12.073, 16.12.074, and 16.12.075 shall be permitted:

A. Existing and Ongoing Agriculture. Existing and ongoing agricultural activities and operations may continue provided they meet one of the following two conditions:

1. Such activities and operations are conducted in conformance with a farm plan prepared by the Whatcom Conservation District or the USDA Natural Resource Conservation Service; or

2. The activity or operation utilizes and incorporates the best management practices recommended by the Whatcom Conservation District and/or the USDA Natural Resource Conservation Service, including, where appropriate: (a) system siting, design and operation to limit runoff directly into critical areas; (b) establishment and maintenance of vegetated filter strips; (c) exclusion of livestock from filter strips; (d) maintenance of a minimum 35-foot riparian buffer, where such buffer already exists; (e) manure management so that runoff does not carry pollutants into critical areas; (f) pasture management to avoid over-grazing and limit potential erosion; (g) stabilization of bare ground in exercise yards or paddocks to limit erosion; and (h) maintenance of existing native vegetation within critical areas and critical area buffers.

3. All existing and ongoing agricultural activities and operations shall be conducted in a manner that is consistent with the purpose and intent of this chapter.

B. Modification of Existing Structures. Existing structures or improvements that do not meet the requirements of this chapter may be remodeled, reconstructed or replaced; provided, that the new construction does not further intrude into or degrade a critical area.

C. Emergencies. The Administrator may approve improvements that are necessary to respond to emergencies that threaten the public health and safety or public development proposals upon a determination that no reasonable alternative exists and the benefits outweighs the potential loss. Best management practices should be utilized to minimize the impact on critical areas. Once the emergency has passed, adverse impacts to critical areas shall be minimized or mitigated.

D. Trails and Trail-Related Facilities. Public and private trail-related facilities, such as picnic tables, benches, interpretive centers and signs, viewing platforms, and campsites, shall be allowed, but use of impervious surface shall be minimized. Such facilities shall be located in the outer half of the required critical area buffer unless such a location is unavailable or impractical.

E. Utilities. Utilities shall be avoided within wetlands and streams. The Mayor may approve utilities in wetlands or streams only upon a determination that there are no practicable or reasonable alternatives. Utility corridor alignment, construction, restoration, and maintenance shall adhere to the following additional criteria:

1. Corridor alignment shall follow a path of least impact to the functions of critical areas; and
2. Corridor construction and maintenance shall maintain and protect the hydrologic and hydraulic functions of wetlands and streams; and
3. Corridors shall be fully vegetated with native vegetation upon completion of construction; and
4. Any required maintenance roads shall be the minimum width necessary to gain access. Roads shall be maintained without use of herbicides and shall be available for use as a trail. Road placement shall closely approximate the location of the utility to minimize disturbance; and
5. Maintenance activities shall utilize best management practices and shall not expand farther into critical areas or buffers; and
6. Impacts to critical areas and buffers shall be mitigated to the maximum extent practicable.

F. Stream and Wetland Crossings. Access and utility stream and wetland crossings shall be avoided to the extent possible, but when necessary, crossing of a stream or wetland shall follow all applicable local, State, and Federal laws, rules, and regulations, as well as the following criteria:

1. Bridges are required for streams and wetlands which support salmonids; and
2. All crossings using culverts shall use superspan or oversize culverts; and
3. Crossings shall not occur in salmonid spawning areas unless no other feasible crossing site exists; and
4. Bridge piers or abutments shall not be placed in either the floodway or between the ordinary high water marks unless no other feasible alternative placement exists; and
5. Crossings shall not diminish flood carrying capacity; and
6. Crossings shall provide for maintenance of culverts, bridges, and utilities; and
7. Crossings shall serve multiple properties whenever possible; and

8. Crossings shall mitigate impacts to stream and wetland buffers consistent with the requirements of this chapter to the maximum extent practicable.

G. Stream Relocation and Dredging. Stream relocation and dredging is strongly discouraged and shall only occur to improve hydrologic, hydraulic, and/or fish and wildlife habitat functions, and shall only be effected in compliance with all applicable local, State and Federal laws and with approvals from agencies with jurisdiction.

H. Low-impact uses and activities which are compatible with the purpose and function of the critical area buffer and do not detract from its integrity may be permitted depending on the sensitivity of the area. Mitigation may be required where deemed appropriate by the Administrator. Examples of uses which may be permitted include pedestrian trails, viewing platforms, interpretive signs and fishing access. [Ord. 691 § 9, 2009; Ord. 634 § 1, 2005; Ord. 501 § 27, 1996; Ord. 424 § 1, 1992.]

**16.12.085 Variances.**

Requests for critical areas variances shall be reviewed pursuant to the following procedures and standards:

A. If the strict application of the dimensional standards and other provisions of this chapter would pose a hardship and severely limit reasonable economic use of the property, a landowner may seek the granting of a critical areas variance.

B. Critical Areas Variance Procedures. An applicant may propose to develop a site in a manner other than those allowed by this chapter through application for a critical areas variance pursuant to the following:

1. Procedure. The City shall process a critical areas variance application as a Class III action pursuant to the provisions of Chapter 16.01 EMC, and the application shall be accompanied by the fee established in EMC 3.20.010.

2. Decision Criteria. An application for a reasonable use development exception may be approved or approved with modification if the following criteria are met:

- a. The proposal is limited to the minimum encroachment and the minimum variance necessary to afford relief and allow reasonable use of the property, and in the case of a single-family dwelling such encroachment shall be limited to the extent necessary to create an aggregate developable area no larger than 5,000 square feet; and
- b. The issuing of a zoning variance by itself would not provide sufficient relief to avoid the need for a critical areas variance; and
- c. The proposal includes or can be conditioned to provide mitigation measures sufficient to fully mitigate all impacts to critical areas functions and values; and
- d. Mitigation measures required as a condition of approval shall be incorporated into a final mitigation plan prepared by a qualified consultant; and
- e. The proposed project allows for development of the parcel with the least impact to critical areas while providing reasonable use of the property and all required mitigation; and
- f. The proposal is consistent with the purpose and intent of this chapter; and
- g. The proposed development does not pose a threat to public health and safety. [Ord. 634 § 1, 2005.]

**16.12.087 Reasonable use exceptions.**

Requests for reasonable use exceptions shall be reviewed pursuant to the following standards and procedures:

A. If the application of this chapter would result in denial of reasonable and economically viable

use of a property, then a landowner may seek the granting of a reasonable use exception to the standards of this chapter. The City Council is authorized to grant a reasonable use exception in those instances where reasonable and economically viable use of a property is not available through granting of a variance pursuant to EMC 16.12.085.

**B. Reasonable Use Development Procedures.** An applicant may propose to develop a site in a manner other than those allowed by this chapter or allowed through approval of a critical areas variance through application for a reasonable use exception pursuant to the following:

1. **Procedure.** The City shall process a reasonable use development application as a Class III action pursuant to the provisions of Chapter 16.01 EMC, and the application shall be accompanied by the fee established in EMC 3.20.010.

2. **Decision Criteria.** An application for a reasonable use development exception may be approved or approved with modification if the following criteria are met:

- a. The proposal is limited to the minimum encroachment necessary to effect reasonable and economically viable use of the property, and in the case of a single-family dwelling such encroachment shall be limited to the extent necessary to create an aggregate developable area no larger than 5,000 square feet; and
- b. The proposal is compatible in design, scale and use with other development or potential development in the immediate vicinity of the subject property within the same zone classification and subject to similar site constraints; and
- c. The proposal utilizes, to the maximum extent possible, the best available construction techniques designed to inflict the least practical adverse impact on the affected critical area(s); and
- d. The proposal includes, to the maximum extent possible, mitigation measures necessary to protect the functions and values of the affected critical area(s); and
- e. The proposal is consistent with the purpose and intent of this chapter; and
- f. The application of this chapter would deny all reasonable and economically viable use of the property, and there is no reasonable and economically viable use with a lesser impact on the critical area(s) than the proposed use; and
- g. The proposed development does not pose a threat to public health and safety; and
- h. The applicant has requested and been denied a variance under the provisions of EMC 16.12.085; and
- i. Conditions of approval have been established, including modification of the size and location of the proposed use and required mitigation, that ensure that all impacts to critical areas have been mitigated to the maximum extent feasible.

3. **Time Limitation.** A reasonable use development exception expires one year after the date of issuance unless either:

- a. The applicant has received an extension for the development; or
- b. The reasonable use development exception approval provides for a greater time period.

4. **Time Extension.** The City Council may extend a development extension, not to exceed one year, if upon showing that:



- a. Unforeseen circumstances or conditions necessitate the extension of the development exception; and
- b. Termination of the development exception would result in unreasonable hardship to the applicant; and
- c. The applicant is not responsible for the delay; and
- d. The extension of the development exception will not cause adverse impacts to the affected critical area(s). [Ord. 691 § 10, 2009; Ord. 634 § 1, 2005.]

**16.12.090 Liberal construction.**

This chapter shall be liberally construed to give full effect to its objectives. [Ord. 634 § 1, 2005; Ord. 424 § 1, 1992.]

**16.12.100 Nonconforming uses/structures.**

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

- A. Nonconforming uses shall not be expanded or changed in any way that increases their nonconformity. However, an existing use may be changed to a less intensive use provided all other land use and zoning regulations are met;
- B. Existing structures shall not be expanded or altered in any way or manner that will increase the nonconformity;
- C. Activities or uses which are discontinued for 12 consecutive months shall be allowed to resume only if they are in compliance with this chapter; and
- D. Nonconforming structures destroyed by an act of God may be replaced or restored; provided, that the reconstruction is started within one year following the damage. Nonconforming structures reconstructed after such time shall be in full compliance with this chapter. [Ord. 769 § 10, 2016; Ord. 634 § 1, 2005; Ord. 571 § 4, 2000; Ord. 424 § 1, 1992.]

**16.12.110 Enforcement.**

- A. The violation of any provision of this title authorizes the City of Everson, by and through the Mayor, the Public Works Supervisor, the City Building Official, any City police officer, the City Planner or their designee, to issue a stop work order requiring that all work on the project be stopped or that the use be discontinued.
- B. The violation of any provision of this chapter subsequent to the issuance of a stop work order is a simple misdemeanor.
- C. No criminal enforcement of a violation of this section shall prevent or prejudice any civil or other enforcement of this chapter by the City. [Ord. 678 § 6, 2008; Ord. 634 § 1, 2005; Ord. 424 § 1, 1992.]

**16.12.120 Appeals.**

Any person directly aggrieved and affected by the Administrator's decision as to whether a proposal meets the requirements of this chapter may appeal the decision pursuant to the provisions of EMC 16.01.160. [Ord. 634 § 1, 2005.]