

**CITY OF AIRWAY HEIGHTS
SPOKANE COUNTY, WASHINGTON**

ORDINANCE C-664

**AN ORDINANCE OF THE CITY OF AIRWAY HEIGHTS, WASHINGTON
ADOPTING TITLE 19 OF THE AIRWAY HEIGHTS MUNICIPAL CODE
ENTITLED CRITICAL AREAS AND PROVIDING FOR OTHER MATTERS
PROPERLY RELATING THERETO.**

WHEREAS, pursuant to the provisions of RCW Chapter 58.17, the Council has adopted Airway Heights Municipal Code and the City of Airway Heights has reviewed its existing Municipal Code and determined new chapters are warranted; and

WHEREAS, it is the intent of the City Council to ensure development of fair and reasonable regulations; and

WHEREAS, the City values working with residents and businesses to make Airway Heights a better place to live, work, and play;

NOW THEREFORE, the City of Airway Heights City Council ordains as follows:

Section 1. New Title. A new Title, 19, entitled “Critical Areas”, consisting of 4 Chapters and 53 Sections is hereby added to the Airway Heights Municipal Code as follows:

Section 2. New Chapter. A new chapter, 19.10, entitled “Purpose and General Provisions,” is hereby added to the AHMC to read as follows:

Section 3. New Section. A new section 19.10.010, is hereby added to the AHMC to read as follows:

19.10.010 Purpose

A. The purpose of this Title is to designate and classify ecologically sensitive and hazardous areas and to protect these areas and their functions and values, while also allowing for reasonable use of private property.

B. This Title is to implement the goals, policies, guidelines, and requirements of the Airway Heights Comprehensive Plan and the Growth Management Act (GMA).

C. The city finds that critical areas provide a variety of valuable and beneficial biological and physical functions that benefit the city and its residents, and/or may pose a threat to human safety or to public and private property. The beneficial functions and values provided by critical areas include, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, , ground water recharge and discharge, erosion control, wave attenuation, protection from hazards, historical,

archaeological, and aesthetic value protection, and recreation. These beneficial functions are not listed in order of priority.

D. **Goals.** By limiting development and alteration of critical areas, this Title seeks to:

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

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

F. This Title is to be administered with flexibility and attention to site-specific characteristics. It is not the intent of this Title to make a parcel of property unusable by denying its owner reasonable economic use of the property or to prevent the provision of public facilities and services necessary to support existing development and planned for by the community without decreasing current service levels below minimum standards.

G. The city's enactment or enforcement of this Title shall not be construed for the benefit of any individual person or group of persons other than the general public.

Section 4. New Section. A new section 19.10.020, is hereby added to the AHMC to read as follows:

19.10.020 Authority

A. As provided herein, the Community Development Director or his/her designee is given the authority to interpret and apply, and the responsibility to enforce this Title to accomplish the stated purpose.

B. The city may withhold, condition, or deny development permits or activity approvals to ensure that the proposed action is consistent with this Title.

Section 5. New Section. A new section 19.10.030, is hereby added to the AHMC to read as follows:

19.10.030 Relationship to Other Regulations

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

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

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

D. Compliance with the provisions of this Title does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required. The applicant is responsible for complying with these requirements, apart from the process established in this Title.

Section 6. New Section. A new section 19.10.040, is hereby added to the AHMC to read as follows:

19.10.040 Administrative Procedures. The administrative procedures followed during the critical area review process shall conform to the standards and requirements of Airway Heights Municipal Code Title 14 (Development Code). This shall include, but not be limited to, timing, appeals, and fees associated with applications covered by this Title.

Section 7. New Section. A new section 19.10.050, is hereby added to the AHMC to read as follows:

19.10.050 Fees

A. The city by resolution shall establish fees for filing of a critical area identification form, critical area review processing, and other services provided by the city as required by this Title. These fees shall be based on the anticipated sum of direct costs incurred by the city for any individual development or action and may be established as a sliding scale that will recover all of the city costs including the enforcement of these code provisions. Basis for these fees shall include, but not be limited to, the cost of

engineering and planning review time, cost of inspection time, costs for administration, and any other special costs attributable to the critical area review process.

B. Unless otherwise indicated in this Title, the applicant shall be responsible for the initiation, preparation, submission, and expense of all required reports, assessment(s), studies, plans, reconnaissance(s), peer review(s) by qualified consultants, and other work prepared in support of or necessary to review the application.

Section 8. New Section. A new section 19.10.060, is hereby added to the AHMC to read as follows:

19.10.060 Severability. If any clause, sentence, paragraph, section, or part of this Title or the application thereof to any person or circumstances shall be judged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered. The decision shall not affect or invalidate the remainder of any part thereof and to this end the provisions of each clause, sentence, paragraph, section, or part of this law are hereby declared to be severable.

Section 9. New Section. A new section 19.10.070, is hereby added to the AHMC to read as follows:

19.10.070 Administrative Rules. Applicable departments within the city are authorized to adopt such administrative rules and regulations as necessary and appropriate to implement this Title and to prepare and require the use of such forms as necessary for its administration.

Section 10. New Section. A new section 19.10.080, is hereby added to the AHMC to read as follows:

19.10.080 Interpretation. In the interpretation and application of this ordinance, the provisions of this Title shall be considered to be the minimum requirements necessary, shall be liberally construed to serve the purpose of this ordinance, and shall be deemed to neither limit nor repeal any other provisions under state statute.

Section 11. New Section. A new section 19.10.090, is hereby added to the AHMC to read as follows:

19.10.090 Jurisdiction – Critical Areas

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

B. Critical areas regulated by this Title include:

1. Wetlands as designated in *Wetlands* [Chapter 19.20];

2. Critical aquifer recharge areas as designated in *Critical Aquifer Recharge Areas* [Chapter 19.30];
3. Fish and wildlife habitat conservation areas as designated in *Fish and Wildlife Habitat Conservation Areas* [Chapter 19.60].

C. All areas within the city meeting the definition of one or more critical areas, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this Title.

Section 12. New Section. A new section 19.10.100, is hereby added to the AHMC to read as follows:

19.10.100 Protection of Critical Areas

Any action taken pursuant to this Title shall result in equivalent or greater functions and values of the critical areas associated with the proposed action, as determined by the best available science. All actions and developments shall be designed and constructed in accordance with *Mitigation Sequencing* [Section 19.10.240] to avoid, minimize, and restore all adverse impacts. Applicants must first demonstrate an inability to avoid or reduce impacts, before restoration and compensation of impacts will be allowed. No activity or use shall be allowed that results in a net loss of the functions or values of critical areas.

Section 13. New Section. A new section 19.10.110, is hereby added to the AHMC to read as follows:

19.10.110 BEST AVAILABLE SCIENCE

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

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

1. **Peer Review.** The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The proponents of the information have addressed the criticism of the peer

reviewers. Publication in a refereed scientific journal usually indicates that the information has been appropriately peer-reviewed;

2. **Methods.** The methods used to obtain the information are clearly stated and reproducible. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to ensure their reliability and validity;
3. **Logical Conclusions and Reasonable Inferences.** The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained;
4. **Quantitative Analysis.** The data have been analyzed using appropriate statistical or quantitative methods;
5. **Context.** The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge; and
6. **References.** The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other pertinent existing information.

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

1. **Anecdotal Information.** One or more observations that are not part of an organized scientific effort (for example, “I saw a grizzly bear in that area while I was hiking”);
2. **Non-Expert Opinion.** Opinion of a person who is not a qualified scientific expert in a pertinent scientific discipline (for example, “I do not believe there are grizzly bears in that area”); and
3. **Hearsay.** Information repeated from communication with others (for example, “At a lecture last week, Dr. Smith said there were no grizzly bears in that area”).

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

1. Take a “precautionary or a no-risk approach,” that strictly limits development and land use activities until the uncertainty is sufficiently resolved; and
2. Require application of an effective adaptive management program that relies on scientific methods to evaluate how well regulatory and non-regulatory actions protect the critical area. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. An adaptive management program shall:
 - a. Address funding for the research component of the adaptive management program;
 - b. Change course based on the results and interpretation of new information that resolves uncertainties; and
 - c. Commit to the appropriate timeframe and scale necessary to reliably evaluate regulatory and non-regulatory actions affecting protection of critical areas.

Section 14. New Section. A new section 19.10.120, is hereby added to the AHMC to read as follows:

APPLICABILITY, EXEMPTIONS, AND EXCEPTIONS

19.10.120 Applicability

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

B. The city shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated buffer, without first ensuring compliance with the requirements of this Title, including, but not limited to, the following:

1. Building permit;
2. Clearing and grading;
3. Conditional use permit;
4. Subdivision;
5. Planned unit development;
6. Binding site plan;
7. Zoning variance;

8. Zoning code amendment; or
9. Any other adopted permit or required approval not expressly exempted by this Title.

C. Approval of a permit or development proposal pursuant to the provisions of this Title does not discharge the obligation of the applicant to comply with the provisions of this Title.

Section 15. New Section. A new section 19.10.130, is hereby added to the AHMC to read as follows:

19.10.130 Exemptions

A. **Exemption Request and Review Process.** The proponent of the activity may submit a written request for exemption to the City Planner that describes the activity and states the exemption listed in this Section that applies.

The City Planner shall review the exemption request to verify that it complies with this Title and approve or deny the exemption. If the exemption is approved, it shall be placed on file with the Community Development Department. If the exemption is denied, the proponent may continue in the review process and shall be subject to the requirements of this Title.

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

C. **Exempt Activities.** The following developments, activities, and associated uses shall be exempt from the provisions of this Title, provided that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements:

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

Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. The person or agency undertaking such action shall notify the city within one (1) working day following commencement of the emergency activity. Within thirty (30) days, the City Planner shall determine if the action taken was within the scope of the emergency actions allowed in this Subsection. If the City Planner

determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions of *Unauthorized Alterations and Enforcement* [Section 19.10.340] shall apply.

After the emergency, the person or agency undertaking the action shall fully fund and conduct necessary restoration and/or mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved critical area report and mitigation plan. The person or agency undertaking the action shall apply for review, and the alteration, critical area report, and mitigation plan shall be reviewed by the city in accordance with the review procedures contained herein. Restoration and/or mitigation activities must be initiated within one (1) year of the date of the emergency, and completed in a timely manner;

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

Section 16. New Section. A new section 19.10.140, is hereby added to the AHMC to read as follows:

19.10.140 Exception – Public Agency and Utility

A. If the application of this Title would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this Section.

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

examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with public agency and utility exception review criteria in Subsection (D).

C. Hearing Examiner Review. The hearing examiner shall review the application and City Planner's recommendation, and conduct a public hearing pursuant to the provisions of Airway Heights Municipal Code Title 14. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the public agency and utility exception criteria in Subsection (D).

D. Public Agency and Utility Review Criteria. The criterion for review and approval of public agency and utility exceptions follows:

1. There is no other practical alternative to the proposed development with less impact on the critical areas;
2. The application of this Title would unreasonably restrict the ability to provide utility services to the public;
3. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
4. The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science; and
5. The proposal is consistent with other applicable regulations and standards.

E. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

Section 17. New Section. A new section 19.10.150, is hereby added to the AHMC to read as follows:

19.10.150 Exception – Reasonable Use

A. If the application of this Title would deny all reasonable economic use of the subject property, the city shall determine if compensation is an appropriate action, or the property owner may apply for an exception pursuant to this Section.

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

C. Hearing Examiner Review. The hearing examiner shall review the application and conduct a public hearing pursuant to the provisions of AHMC Title 14. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use exception review criteria in Subsection (D).

D. Reasonable Use Review Criteria. Criteria for review and approval of reasonable use exceptions follow, one or more may apply:

1. The application of this Title would deny all reasonable economic use of the property;
2. No other reasonable economic use of the property has less impact on the critical area;
3. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;
4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this Title;
5. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
6. The proposal will result in no net loss of critical area functions and values consistent with the best available science; or
7. The proposal is consistent with other applicable regulations and standards.

E. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

Section 18. New Section. A new section 19.10.160, is hereby added to the AHMC to read as follows:

ALLOWED ACTIVITIES

19.10.160 Allowed Activities

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

B. Required Use of Best Management Practices. All allowed activities shall be conducted using the best management practices, resulting in the least amount of impact to the critical areas. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The city shall observe the use of best management practices to ensure that the activity does not result in degradation to the

critical area. Any incidental damage to, or alteration of, a critical area shall be restored, rehabilitated, or replaced at the responsible party's expense.

C. **Allowed Activities.** The following activities are allowed:

1. **Permit Requests Subsequent to Previous Critical Area Review.**

Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits), and construction approvals (such as building permits) if all of the following conditions have been met:

- a. The provisions of this Title have been previously addressed as part of another approval;
- b. There have been no material changes in the potential impact to the critical area or buffer since the prior review;
- c. There is no new information available that is applicable to any critical area review of the site or particular critical area;
- d. The permit or approval has not expired or, if no expiration date, no more than five years has elapsed since the issuance of that permit or approval; and
- e. Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured;

2. **Modification to Existing Structures.** Structural modification of, addition to, or replacement of an existing legally constructed structure that does not further alter or increase the impact to the critical area or buffer and there is no increased risk to life or property as a result of the proposed modification or replacement, provided that restoration of structures substantially damaged by fire, or act of nature must be initiated within one (1) year of the date of such damage, as evidenced by the issuance of a valid building permit, and diligently pursued to completion;

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

- a. Critical area and/or buffer widths shall be increased, where possible, equal to the width of the right-of-way improvement, including disturbed areas; and
 - b. Retention and replanting of native vegetation shall occur wherever possible along the right-of-way improvement and resulting disturbance;
4. **Minor Utility Projects.** Utility projects which have minor or short-duration impacts to critical areas, as determined by the City Planner in accordance with the criteria below, and which do not significantly impact the function or values of a critical area(s), provided that such projects are constructed with best management practices and additional restoration measures are provided. Minor activities shall not result in the transport of sediment or increased storm water. Such allowed minor utility projects shall meet the following criteria:
1. There is no practical alternative to the proposed activity with less impact on critical areas;
 2. The activity involves the placement of a utility pole, street signs, anchor, or vault or other small component of a utility facility; and
 3. The activity involves disturbance of an area less than 75 square feet;
5. **Public and Private Pedestrian Trails.** Public and private pedestrian trails, except in wetlands, fish and wildlife habitat conservation areas, or their buffers, subject to the following:
- a. The trail surface shall meet all other requirements including water quality standards set forth in Chapter 3 of the Airway Heights *Public Works Standards Manual*.
 - b. Critical area and/or buffer widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas; and
 - c. Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report;
6. **Select Vegetation Removal Activities.** The following vegetation removal activities provided that no vegetation shall be removed from a critical area or its buffer without approval from the director:
- a. The removal of the following vegetation with hand labor and light equipment:

- b. The removal of trees from critical areas and buffers that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property, provided that:
 - i. The applicant submits a report from a certified arborist, registered landscape architect, or professional forester that documents the hazard and provides a replanting schedule for the replacement trees;
 - ii. Tree cutting shall be limited to pruning and crown thinning, unless otherwise justified by a qualified professional. Where pruning or crown thinning is not sufficient to address the hazard, trees should be removed or converted to wildlife snags;
 - iii. All vegetation cut (tree stems, branches, etc.) shall be left within the critical area or buffer unless removal is warranted due to the potential for disease or pest transmittal to other healthy vegetation;
 - iv. The landowner shall replace any trees that are removed with new trees at a ratio of two replacement trees for each tree removed (2:1) within one (1) year in accordance with an approved restoration plan. Replacement trees may be planted at a different; nearby location if it can be determined that planting in the same location would create a new hazard or potentially damage the critical area. Replacement trees shall be species that are native and indigenous to the site and a minimum of one (1) inch in diameter-at-breast height (dbh) for deciduous trees and a minimum of six (6) feet in height for evergreen trees as measured from the top of the root ball;
 - v. If a tree to be removed provides critical habitat, such as an eagle perch, a qualified wildlife biologist shall be consulted to determine timing and methods of removal that will minimize impacts; and
 - vi. Hazard trees determined to pose an imminent threat or danger to public health or safety, to public or private property, or of serious environmental degradation may be removed or pruned by the landowner prior to receiving written approval from city provided that within fourteen (14) days following such action, the landowner shall submit a restoration plan that demonstrates compliance with the provisions of this Title.
- c. Measures to control a fire or halt the spread of disease or damaging insects consistent with the state Forest Practices Act; Chapter 76.09 RCW, Spokane County Code Chapter 3.19, provided that the removed vegetation shall be replaced in-kind or with similar native species within one (1) year in accordance with an approved restoration plan; and

- d. Unless otherwise provided, or as a necessary part of an approved alteration, removal of any vegetation or woody debris from a habitat conservation area or wetland shall be prohibited;
7. **Chemical Applications.** The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary, as approved by the city, provided that their use shall be restricted in accordance with state Department of Fish and Wildlife Management Recommendations and the regulations of the state Department of Agriculture and the U.S. Environmental Protection Agency;
8. **Minor Site Investigative Work.** Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored; and
9. **Navigational Aids and Boundary Markers.** Construction or modification of navigational aids and boundary markers.

Section 19. New Section. A new section 19.10.170, is hereby added to the AHMC to read as follows:

CRITICAL AREA PROJECT REVIEW PROCESS

19.10.170 General Requirements

- A. As part of this review, the city shall:
 1. Verify the information submitted by the applicant;
 2. Evaluate the project area and vicinity for critical areas;
 3. Determine whether the proposed project is likely to impact the functions or values of critical areas; and
 4. Determine if the proposed project adequately addresses the impacts and avoids impacts to the critical area associated with the project.
- B. If the proposed project is within, adjacent to, or is likely to impact a critical area, the city shall:
 1. Require a critical area report from the applicant that has been prepared by a qualified professional;
 2. Review and evaluate the critical area report;

3. Determine whether the development proposal conforms to the purposes and performance standards of this Title, including the criteria in *Review Criteria* [Section 19.10.280];
4. Assess the potential impacts to the critical area and determine if they can be avoided or minimized; and
5. Determine if any mitigation proposed by the applicant is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of this Title.

Section 20. New Section. A new section 19.10.180, is hereby added to the AHMC to read as follows:

19.10.180 Critical Area Pre-application Consultation. Any person preparing to submit an application for development or use of land that may be regulated by the provisions of this Title shall conduct a consultation meeting with the City Planner prior to submitting an application for development or other approval. At this meeting, the City Planner shall discuss the requirements of this Title; provide critical area maps, scientific information, and other source materials; outline the review process; and work with the activity proponent to identify any potential concerns that might arise during the review process, in addition to discussing other permit procedures and requirements.

Section 21. New Section. A new section 19.10.190, is hereby added to the AHMC to read as follows:

19.10.190 Critical Area Identification Form

A. **Submittal.** Prior to the city's consideration of any proposed activity not found to be exempt under *Exemptions* [Section 19.10.130] or allowed pursuant to *Allowed Activities* [Section 19.10.160], the applicant shall submit to the department a complete critical area identification form on forms provided by the city.

B. **Site Inspection.** Upon receipt of a project application and a critical area identification form, the City Planner shall conduct a site inspection to review critical area conditions on site. The City Planner shall notify the property owner of the inspection prior to the site visit. Reasonable access to the site shall be provided by the property owner for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period.

C. **Critical Area Identification Form Review Process.** The Community Development Director or his/her designee shall review the critical area identification form, conduct a site inspection, and review other information available pertaining to the site and the proposal and make a determination as to whether any critical areas may be affected by the proposal and if a more detailed critical area report shall be submitted.

1. **Decision Indicators.** The City Planner may use the following indicators to assist in determining the need for a critical area report:
 - a. Indication of a critical area on the city critical area maps that may be impacted by the proposed activity;
 - b. Information and scientific opinions from appropriate agencies, including but not limited to the departments of Fish and Wildlife, Natural Resources, and Ecology;
 - c. Documentation, from a scientific or other reasonable source, of the possible presence of a critical area; or
 - d. A finding by a qualified professional or a reasonable belief by the City Planner that a critical area may exist on or adjacent to the site of the proposed activity.

D. Decision on Identification Form

1. **No Critical Areas Present.** If after a site visit the City Planner's analysis indicates that the project area is not within or adjacent to a critical area or buffer and that the proposed activity is unlikely to degrade the functions or values of a critical area, then the City Planner shall rule that the critical area review is complete and note on the identification form the reasons that no further review is required. A summary of this information shall be included in any staff report or decision on the underlying permit.
2. **Critical Areas Present, But No Impact – Waiver.** If the City Planner determines that there are critical areas within or adjacent to the project area, but that the best available science shows that the proposed activity is unlikely to degrade the functions or values of the critical area, the City Planner may waive the requirement for a critical area report. A waiver may be granted if there is substantial evidence that all of the following requirements will be met:
 - a. There will be no alteration of the critical area or buffer;
 - b. The development proposal will not impact the critical area in a manner contrary to the purpose, intent, and requirements of this Title; and
 - c. The proposal is consistent with other applicable regulations and standards.

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

3. **Critical Areas May Be Affected by Proposal.** If the City Planner determines that a critical area or areas may be affected by the proposal, then the City Planner shall notify the applicant that a critical area report must be

submitted prior to further review of the project, and indicate each of the critical area types that should be addressed in the report.

E. City Planner's Determination Subject to Reconsideration. A determination regarding the apparent absence of one or more critical areas by the City Planner is not an expert certification regarding the presence of critical areas. The determination is subject to possible reconsideration and reopening if new information is received.

If the applicant wants greater assurance of the accuracy of the critical area review determination, the applicant may choose to hire a qualified professional to provide such assurances.

Section 22. New Section. A new section 19.10.200, is hereby added to the AHMC to read as follows:

19.10.200 Public Notice of Initial Determination. The city shall notify the public of proposals in accordance with AHMC Title 14.

A. If the City Planner determines that no critical area report is necessary, he or she shall state the reasons for this determination in the notice of application issued by the city for the proposal.

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

C. If the City Planner determines that critical areas may be affected by the proposal and a critical area report is required, public notice of the application shall include a description of the critical area that might be affected and state that a critical area report(s) is required.

Section 23. New Section. A new section 19.10.210, is hereby added to the AHMC to read as follows:

CRITICAL AREA REPORT

19.10.210 Critical Area Report – Requirements

A. **Preparation by Qualified Professional.** If required by the City Planner in accordance with [Section 19.10.190 (D) (3)], the applicant shall submit a critical area report prepared by a qualified professional as defined herein.

B. **Incorporating of Best Available Science.** The critical area report shall use scientifically valid methods and studies in the analysis of critical area data and field reconnaissance and reference the source of science used. The critical area report shall

evaluate the proposal and all probable impacts to critical areas in accordance with the provisions of this Title.

C. Minimum Report Contents. At a minimum, the report shall contain the following:

1. The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;
2. A copy of the site plan for the development proposal including:
 - a. A map to scale depicting critical areas, buffers, the development proposal, and any areas to be cleared; and
 - b. A description of the proposed storm water management plan for the development and consideration of impacts to drainage alterations.
3. The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
4. Identification and characterization of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area;
5. A statement specifying the accuracy of the report, and all assumptions made and relied upon;
6. An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;
7. An analysis of site development alternatives including a no development alternative;
8. A description of reasonable efforts made to apply mitigation sequencing pursuant to *Mitigation Sequencing* [Section 19.10.240] to avoid, minimize, and mitigate impacts to critical areas;
9. Plans for adequate mitigation, as needed, to offset any impacts, in accordance with *Mitigation Plan Requirements* [Section 19.10.250], including, but not limited to:
 - a. The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and
 - b. The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment;

10. A discussion of the performance standards applicable to the critical area and proposed activity;
11. Financial guarantees to ensure compliance; and
12. Any additional information required for the critical area as specified in the corresponding chapter.

D. Unless otherwise provided, a critical area report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the City Planner.

Section 24. New Section. A new section 19.10.220, is hereby added to the AHMC to read as follows:

19.10.220 Critical Area Report – Modifications to Requirements

A. **Limitations to Study Area.** The City Planner may limit the required geographic area of the critical area report as appropriate if:

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

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

C. **Additional Information Requirements.** The City Planner may require additional information to be included in the critical area report when determined to be necessary to the review of the proposed activity in accordance with this Title. Additional information that may be required, includes, but is not limited to:

1. Historical data, including original and subsequent mapping, aerial photographs, data compilations and summaries, and available reports and records relating to the site or past operations at the site;
2. Grading and drainage plans; and
3. Information specific to the type, location, and nature of the critical area.

Section 25. New Section. A new section 19.10.230, is hereby added to the AHMC to read as follows:

19.10.230 Mitigation Requirements

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

B. Mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.

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

Section 26. New Section. A new section 19.10.240, is hereby added to the AHMC to read as follows:

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

A. Avoiding the impact altogether by not taking a certain action or parts of an action;

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

C. Rectifying the impact to wetlands, critical aquifer recharge areas and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;

D. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;

E. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;

F. Compensating for the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and

G. Monitoring the hazard or other required mitigation and taking remedial action when necessary.

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

Section 27. New Section. A new section 19.10.250, is hereby added to the AHMC to read as follows:

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

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

1. A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area;
2. A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed; and
3. An analysis of the likelihood of success of the compensation project.

B. **Performance Standards.** The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of this Title have been met.

C. **Detailed Construction Plans.** The mitigation plan shall include written specifications and descriptions of the mitigation proposed, such as:

1. The proposed construction sequence, timing, and duration;
2. Grading and excavation details;
3. Erosion and sediment control features;

4. A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
5. Measures to protect and maintain plants until established.

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

D. Monitoring Program. The mitigation plan shall include a program for monitoring construction of the compensation project and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring (for example, monitoring shall occur in years 1, 3, 5, and 7 after site construction), and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five (5) years.

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

F. Financial Guarantees. The mitigation plan shall include financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures shall be posted in accordance with *Bonds to Ensure Mitigation, Maintenance, and Monitoring* [Section 19.10.400].

Section 28. New Section. A new section 19.10.260, is hereby added to the AHMC to read as follows:

19.10.260 Innovative Mitigation

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

1. Creation or enhancement of a larger system of critical areas and open space is preferable to the preservation of many individual habitat areas;
2. The group demonstrates the organizational and fiscal capability to act cooperatively;

3. The group demonstrates that long-term management of the habitat area will be provided; and
4. There is a clear potential for success of the proposed mitigation at the identified mitigation site.

B. Conducting mitigation as part of a cooperative process does not reduce or eliminate the required replacement ratios.

Section 29. New Section. A new section 19.10.270, is hereby added to the AHMC to read as follows:

DETERMINATION PROCESS

19.10.270 Determination

The City Planner shall make a determination as to whether the proposed activity and mitigation, if any, is consistent with the provisions of this Title. The City Planner's determination shall be based on the criteria of *Review Criteria* [Section 19.10.280].

Section 30. New Section. A new section 19.10.280, is hereby added to the AHMC to read as follows:

19.10.280 Review Criteria

A. Any alteration to a critical area, unless otherwise provided for in this Title, shall be reviewed and approved, approved with conditions, or denied based on the proposal's ability to comply with all of the following criteria:

1. The proposal minimizes the impact on critical areas in accordance with *Mitigation Sequencing* [Section 19.10.240];
2. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
3. The proposal is consistent with the general purposes of this Title and the public interest;
4. Any alterations permitted to the critical area are mitigated in accordance with *Mitigation Requirements* [Section 19.10.230];
5. The proposal protects the critical area functions and values consistent with the best available science and results in no net loss of critical area functions and values; and
6. The proposal is consistent with other applicable regulations and standards.

B. The city may condition the proposed activity as necessary to mitigate impacts to critical areas and to conform to the standards required by this Title.

C. Except as provided for by this Title, any project that cannot adequately mitigate its impacts to critical areas in the sequencing order of preferences in Section 19.10.240 shall be denied.

Section 31. New Section. A new section 19.10.290, is hereby added to the AHMC to read as follows:

19.10.290 Favorable Determination

If the City Planner determines that the proposed activity meets the criteria in *Review Criteria* [Section 19.10.280] and complies with the applicable provisions of this Title, the City Planner shall prepare a written notice of determination and identify any required conditions of approval. The notice of determination and conditions of approval shall be included in the project file and be considered in the next phase of the city's review of the proposed activity in accordance with any other applicable codes or regulations.

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

A favorable determination should not be construed as endorsement or approval of any underlying permit or approval.

Section 32. New Section. A new section 19.10.300, is hereby added to the AHMC to read as follows:

19.10.300 Unfavorable Determination

If the City Planner determines that a proposed activity does not adequately mitigate its impacts on the critical areas and/or does not comply with the criteria in *Review Criteria* [Section 19.10.280] and the provisions of this Title, the City Planner shall prepare written notice of the determination that includes findings of noncompliance.

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

Following notice of determination that the proposed activity does not meet the review criteria and/or does not comply with the applicable provisions of this Title, the applicant may request consideration of a revised critical area report. If the revision is found to be substantial and relevant to the critical area review, the City Planner may reopen the critical area review and make a new determination based on the revised report.

Section 33. New Section. A new section 19.10.310, is hereby added to the AHMC to read as follows:

19.10.310 Completion of the Critical Area Review

The city's determination regarding critical areas pursuant to this Title shall be final concurrent with the final decision to approve, condition, or deny the development proposal or other activity involved.

Section 34. New Section. A new section 19.10.320, is hereby added to the AHMC to read as follows:

19.10.320 Appeals

Any decision to approve, condition, or deny a development proposal or other activity based on the requirements of this Title may be appealed according to, and as part of, the appeal procedure for the permit or approval involved.

Section 35. New Section. A new section 19.10.330, is hereby added to the AHMC to read as follows:

VARIANCES

19.10.330 Variances

A. Variances from the standards of this Title may be authorized by the city in accordance with the procedures set forth in the AHMC 17.03.090. The hearing examiner shall review the request and make a written finding that the request meets or fails to meet the variance criteria.

B. **Variance Criteria.** A variance may be granted only if the applicant demonstrates that the requested action conforms to all of the criteria set forth as follows:

1. Special conditions and circumstances exist that are peculiar to the land, the lot, or something inherent in the land and that are not applicable to other lands in the same district;
2. The special conditions and circumstances do not result from the actions of the applicant;
3. A literal interpretation of the provisions of this Title would deprive the applicant of all reasonable economic uses and privileges permitted to other properties in the vicinity and zone of the subject property under the terms of this Title, and the variance requested is the minimum necessary to provide the applicant with such rights;
4. Granting the variance requested will not confer on the applicant any special privilege that is denied by this Title to other lands, structures, or buildings under similar circumstances;

5. The granting of the variance is consistent with the general purpose and intent of this Title, and will not further degrade the functions or values of the associated critical areas or otherwise be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the subject property;
6. The granting of the variance is consistent with the general purpose and intent of the City of Airway Heights Comprehensive Plan and adopted development regulations.

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

D. Time Limit. The city shall prescribe a time limit within which the action for which the variance is required shall be begun, completed, or both. Failure to begin or complete such action within the established time limit shall void the variance.

E. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and upon which any decision has to be made on the application.

Section 36. New Section. A new section 19.10.340, is hereby added to the AHMC to read as follows:

UNAUTHORIZED ALTERATIONS AND ENFORCEMENT

19.10.340 Unauthorized Critical Area Alterations and Enforcement

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

B. Requirement for Restoration Plan. All development work shall remain stopped until a restoration plan is prepared and approved by city. Such a plan shall be prepared by a qualified professional using the best available science and shall describe how the actions proposed meet the minimum requirements described in Subsection (C). The City Planner shall, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

C. Minimum Performance Standards for Restoration

1. For alterations to critical aquifer recharge areas, wetlands, and habitat conservation areas, the following minimum performance standards shall be

met for the restoration of a critical area, provided that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:

- a. The historic structural and functional values shall be restored, including water quality and habitat functions;
 - b. The historic soil types and configuration shall be replicated;
 - c. The critical area and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities. The historic functions and values should be replicated at the location of the alteration; and
 - d. Information demonstrating compliance with the requirements in Section 19.10.250 (*Mitigation Plan Requirements*) shall be submitted to the City Planner.
2. For alterations to geological hazards, the following minimum performance standards shall be met for the restoration of a critical area, provided that, if the violator can demonstrate that greater safety can be obtained, these standards may be modified:
- a. The hazard shall be reduced to a level equal to, or less than, the pre-development hazard;
 - b. Any risk of personal injury resulting from the alteration shall be eliminated or minimized; and
 - c. The hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.

D. Site Investigations. The City Planner is authorized to make site inspections and take such actions as are necessary to enforce this Title. The City Planner shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.

E. Penalties. Any person, party, firm, corporation, or other legal entity convicted of violating any of the provisions of this Title shall be guilty of a misdemeanor. Each day or portion of a day during which a violation of this Title is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of this Title shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington. The city may levy civil penalties against any person, party, firm, corporation, or other legal entity for violation of any of the provisions of this Title. The civil penalty shall be assessed at a maximum rate of \$25 dollars per day per violation.

Section 37. New Section. A new section 19.10.350, is hereby added to the AHMC to read as follows:

GENERAL CRITICAL AREA PROTECTIVE MEASURES

19.10.350 Critical Area Markers and Signs

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

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

C. These provisions may be modified by the City Planner as necessary to ensure protection of sensitive features or wildlife needs.

Section 38. New Section. A new section 19.10.360, is hereby added to the AHMC to read as follows:

19.10.360 Notice on Title

A. In order to inform subsequent purchasers of real property of the existence of critical areas, the owner of any property containing a critical area or buffer on which a development proposal is submitted shall file a notice with the County Auditor according to the direction of the city. The notice shall state the presence of the critical area or buffer on the property, the application of this Title to the property, and the fact that limitations on actions in or affecting the critical area or buffer may exist. The notice shall “run with the land.”

B. This notice on title shall not be required for a development proposal by a public agency or public or private utility:

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

C. The applicant shall submit proof that the notice has been filed for public record before the city approves any site development or construction for the property or, in the case of subdivisions, short subdivisions, planned unit developments, and binding site plans, at or before recording.

Section 39. New Section. A new section 19.10.380, is hereby added to the AHMC to read as follows:

19.10.380 Critical Area Tracts

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

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

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

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

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

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

Section 40. New Section. A new section 19.10.390, is hereby added to the AHMC to read as follows:

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

- A. Landscaping;

B. Uncovered decks;

C. Building overhangs, if such overhangs do not extend more than eighteen (18) inches into the setback area; and

D. Impervious ground surfaces, such as driveways and patios, provided that such improvements may be subject to water quality regulations as adopted in the Chapter 3 of the Airway Heights *Public Works Standards Manual*.

Section 41. New Section. A new section 19.10.400, is hereby added to the AHMC to read as follows:

19.10.400 Bonds to Ensure Mitigation, Maintenance, and Monitoring

A. When mitigation required pursuant to a development proposal is not completed prior to the city final permit approval, such as final plat approval or final building inspection, the city shall require the applicant to post a performance bond or other security in a form and amount deemed acceptable by the city. If the development proposal is subject to mitigation, the applicant shall post a mitigation bond or other security in a form and amount deemed acceptable by the city to ensure mitigation is fully functional.

B. The bond shall be in the amount of one hundred and twenty-five percent (125%) of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater.

C. The bond shall be in the form of a surety bond, performance bond, assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the city attorney.

D. Bonds or other security authorized by this Section shall remain in effect until the city determines, in writing, that the standards bonded for have been met. Bonds or other security shall be held by the city for a minimum of five (5) years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.

E. Depletion, failure, or collection of bond funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.

F. Public development proposals shall be relieved from having to comply with the bonding requirements of this Section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.

G. Any failure to satisfy critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within thirty (30) days after it is due or comply with other provisions of an approved mitigation plan shall

constitute a default, and the city may demand payment of any financial guarantees or require other action authorized by the city code or any other law.

H. Any funds recovered pursuant to this Section shall be used to complete the required mitigation.

Section 42. New Section. A new section 19.10.410, is hereby added to the AHMC to read as follows:

19.10.410 Critical Area Inspections. Reasonable access to the site shall be provided to the city, state, and federal agency review staff for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period.

Wetlands

Section 43. New Chapter. A new chapter, 19.20, entitled “Wetlands”, is hereby added to the AHMC to read as follows:

Section 44. New Section. A new section 19.20.010, is hereby added to the AHMC to read as follows:

DESIGNATION, RATING and MAPPING

19.20.010 Designation, Rating, and Mapping Wetlands

A. **Designating Wetlands.** Wetlands are those areas, designated in accordance with the *Washington State Wetland Identification and Delineation Manual* (1997) or as revised, that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. All areas within the city meeting the wetland designation criteria in the Identification and Delineation Manual, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this Title.

B. **Wetland Ratings.** Wetlands shall be rated according to the Washington State Department of Ecology wetland rating system found in the Washington State Wetland Rating System documents 2004 revision or as further revised by Ecology. These documents contain the definitions and methods for determining if the criteria below are met. Airway Heights only has man made Category III wetlands excluding wetlands on tribal ground. See the 2007 Critical Areas Inventory for more information. The Spokane Tribe currently has no known wetlands in the city or urban growth area and may have more information after their Environmental Impact Statement is complete. Per the National Wetlands Inventory, the Kalispel Tribe has three small wetlands, but no wetland plants or hydric soils were found and the site was determined not to contain wetlands.

1. Wetland Rating Categories

a. Category I. Category I wetlands are: 1) alkali wetlands; 2) wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as high quality wetlands; 3) bogs; 4) mature and old-growth forested wetlands over ¼ acre with slow-growing trees; 5) forests with stands of aspen; and 6) wetlands that perform many functions very well (scores of 70 points or more).

These wetlands are those that 1) represent a unique or rare wetland type; or 2) are more sensitive to disturbance than most wetlands; or 3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or 4) provide a high level of function.

In using the rating system the city will not consider wetlands that have ¼ acre or more of forests with aspen as Category 1 unless they also meet some of the other criteria for a Category 1 wetland (see list above). Wetlands with stands of aspen are not considered to be rare in Spokane County or that they provide a unique habitat in short supply in the county.

b. Category II. Category II wetlands are: 1) forested wetlands in the floodplains of rivers; 2) mature and old-growth forested wetlands over ¼ acre with fast-growing trees; 3) vernal pools; and 4) wetlands that perform functions well (scores between 51-69 points).

These wetlands are difficult, though not impossible, to replace, and provide high levels of some functions.

c. Category III. Category III wetlands are 1) vernal pools that are isolated, and 2) wetlands with a moderate level of functions (scores between 30-50 points).

d. Category IV. Category IV wetlands have the lowest level of functions (scores less than 30 points) and are often heavily disturbed. These are wetlands that we should be able to replace, and in some cases be able to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions and also need to be protected.

C. Mapping. The approximate location and extent of wetlands are shown on the adopted critical area maps. Additionally, soil maps produced by U.S. Department of Agriculture National Resources Conservation Service may be useful in helping to identify potential wetland areas.

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

The exact location of a wetland's boundary shall be determined through the performance of a field investigation by a qualified professional wetland scientist applying the *Washington State Wetlands Identification and Delineation Manual* as required by RCW 36.70A.175 (Ecology Publication #96-94, 1997).

Section 45. New Section. A new section 19.20.020, is hereby added to the AHMC to read as follows:

ALLOWED ACTIVITIES – WETLANDS

19.20.020 Activities Allowed in Wetlands. The activities listed below are allowed in wetlands in addition to those activities listed in, and consistent with, the provisions established in *Allowed Activities* [Section 19.10.150], and do not require submission of a critical area report, except where such activities result in a loss to the functions and values of a wetland or wetland buffer. These activities include:

A. Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife that does not entail changing the structure or functions of the existing wetland.

B. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.

C. Drilling for utilities under a wetland provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column is disturbed.

D. Enhancement of a wetland through the removal of non-native invasive species. Weeding shall be restricted to hand removal and weed material shall be removed from the site. Bare areas that remain after weed removal shall be re-vegetated with native shrubs and trees at natural densities. Some hand seeding may also be done over the bare areas with native herbs.

Section 46. New Section. A new section 19.20.030, is hereby added to the AHMC to read as follows:

ADDITIONAL REPORT REQUIREMENTS – WETLANDS

19.20.030 Critical Area Report – Additional Requirements for Wetlands. In addition to the general critical area report requirements of Section 19.10.210, critical area reports for wetlands must meet the requirements of this Section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

A. Preparation by a Qualified Professional. A critical area report for wetlands shall be prepared by a qualified professional who is a certified professional wetland scientist or a non-certified professional wetland scientist with a minimum of five (5) years experience in the field of wetland science and with experience preparing wetland reports.

B. Area Addressed in Critical Area Report. The following areas shall be addressed in a critical area report for wetlands:

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

C. Wetland analysis. In addition to the minimum required contents of *Critical Area Reports – Requirements* [Section 19.10.210], a critical area report for wetlands shall contain an analysis of the wetlands including the following site- and proposal-related information at a minimum:

1. A written assessment and accompanying maps of the wetlands and buffers within three hundred (300) feet of the project area, including the following information at a minimum:
 - a. Wetland delineation and required buffers;
 - b. Existing wetland acreage;
 - c. Wetland category;
 - d. Vegetative, faunal, and hydrologic characteristics;
 - e. Soil and substrate conditions;
 - f. Topographic elevations, at two-foot contours, and
 - g. A discussion of the water sources supplying the wetland and documentation of hydrologic regime (locations of inlet and outlet features, water depths throughout the wetland, evidence of recharge or discharge, evidence of water depths throughout the year – drift lines, algal layers, moss lines, and sediment deposits).

2. A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land use activity.
3. A habitat and native vegetation conservation strategy that addresses methods to protect and enhance on-site habitat and wetland functions.
4. Functional evaluation for the wetland and adjacent buffer using a local or state agency staff-recognized method and including the reference of the method and all data sheets.
5. Proposed mitigation, if needed, including a written assessment and accompanying maps of the mitigation area, including the following information at a minimum:
 - i. Existing and proposed wetland acreage;
 - ii. Vegetative and faunal conditions;
 - iii. Surface and subsurface hydrologic conditions including an analysis of existing and future hydrologic regime and proposed hydrologic regime for enhanced, created, or restored mitigation areas;
 - iv. Relationship within watershed and to existing water bodies;
 - v. Soil and substrate conditions, topographic elevations;
 - vi. Existing and proposed adjacent site conditions;
 - vii. Required wetland buffers (including any buffer reduction and mitigation proposed to increase the plant densities, remove weedy vegetation, and replant the buffers);
 - viii. Property ownership; and
 - ix. Associated wetlands and related wetlands that may be greater than three hundred (300) feet from the subject project.
6. A scale map of the development proposal site and adjacent area. A discussion of ongoing management practices that will protect wetlands after the project site has been developed; including proposed monitoring and maintenance programs.
7. A bond estimate for the installation (including site preparation, plant materials and installation, fertilizers, mulch, stakes) and the proposed monitoring and maintenance work for the required number of years.

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

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

1. If the development proposal site contains or is within a wetland area, the applicant shall submit an affidavit, which declares whether the applicant has knowledge of any illegal alteration to any or all wetlands on the proposed site and whether the applicant previously had been found in violation of this ordinance. If the applicant has been found previously in violation, the applicant shall declare whether such violation has been corrected to the satisfaction of the jurisdiction.
2. The City Planner shall determine if the mitigation and monitoring plans and bonding measures proposed by the applicant are sufficient to protect the public health, safety, and welfare, consistent with the goals, purposes, objectives and requirements of this ordinance.

Section 47. New Section. A new section 19.20.040, is hereby added to the AHMC to read as follows:

PERFORMANCE STANDARDS

19.20.040 Performance Standards – General Requirements

A. Activities may only be permitted in a wetland or wetland buffer if the applicant can show that the proposed activity will not degrade the functions and functional performance of the wetland and other critical areas.

B. Activities and uses shall be prohibited in wetlands and wetland buffers, except as provided for in this Title.

C. **Category II and III Wetlands.** With respect to activities proposed in Category II and III wetlands, the following standards shall apply:

1. Water-dependent activities may be allowed where there are no practicable alternatives that would have a less adverse impact on the wetland, its buffers and other critical areas.
2. Where non-water-dependent activities are proposed, it shall be presumed that alternative locations are available, and activities and uses shall be prohibited, unless the applicant demonstrates that:

- a. The basic project purpose cannot reasonably be accomplished and successfully avoid, or result in less adverse impact on, a wetland on another site or sites in the general region; and
- b. All alternative designs of the project as proposed, that would avoid or result in less of an adverse impact on a wetland or its buffer, such as a reduction in the size, scope, configuration, or density of the project, are not feasible.

D. Wetland Buffers

1. **Standard Buffer Widths.** The standard buffer widths presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. If the vegetation is inadequate, then the buffer width shall be increased or the buffer should be planted to maintain the standard width. Airway Heights only has man made Category III wetlands. See the 2007 Critical Areas Inventory for more information.
 - a. Category III
75 feet
2. **Measurement of Wetland Buffers.** All buffers shall be measured from the wetland boundary as surveyed in the field. The width of the wetland buffer shall be determined according to the wetland category and the proposed land use. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers will be considered. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers.
3. **Increased Wetland Buffer Widths.** The City Planner shall require increased buffer widths in accordance with the recommendations of an experienced, qualified professional wetland scientist, and the best available science on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values based on site-specific characteristics. This determination shall be based on one or more of the following criteria:
 - a. A larger buffer is needed to protect other critical areas;
 - b. The buffer or adjacent uplands has a slope greater than fifteen percent (15%) or is susceptible to erosion and standard erosion-control measures will not prevent adverse impacts to the wetland; or
 - c. The buffer area has minimal vegetative cover. In lieu of increasing the buffer width where existing buffer vegetation is inadequate to project the

wetland functions and values, implementation of a buffer planting plan may substitute. Where a buffer planting plan is proposed, it shall include densities that are not less than three (3) feet on center for shrubs and eight (8) feet on center for trees and require monitoring and maintenance to ensure success. Existing buffer vegetation is considered “inadequate” and will need to be enhanced through additional native plantings and (if appropriate) removal of non-native plants when: (1) non-native or invasive plant species provide the dominant cover, (2) vegetation is lacking due to disturbance and wetland resources could be adversely affected, or (3) enhancement plantings in the buffer could significantly improve buffer functions.

4. **Wetland Buffer Width Averaging.** The City Planner may allow modification of the standard wetland buffer width in accordance with an approved critical area report and the best available science on a case-by-case basis by averaging buffer widths. Averaging of buffer widths may only be allowed where a qualified professional wetland scientist demonstrates that:
 - a. It will not reduce wetland functions or functional performance;
 - b. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;
 - c. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and
 - d. The buffer width is not reduced to less than 75 percent (75%) of the standard width or thirty-five (35) feet.
5. **Buffer Consistency.** All mitigation sites shall have buffers consistent with the buffer requirements of this Chapter.
6. **Buffer Maintenance.** Except as otherwise specified or allowed in accordance with this Title, wetland buffers shall be retained in an undisturbed or enhanced condition. Removal of invasive non-native weeds is required for the duration of the mitigation bond.
7. **Buffer Uses.** The following uses may be permitted within a wetland buffer in accordance with the review procedures of this Title; provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland:
 - a. **Conservation and Restoration Activities.** Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.

- b. **Passive Recreation.** Passive recreation facilities designed and in accordance with an approved critical area report, including:
 - i. Walkways and trails, provided that those pathways that are generally parallel to the perimeter of the wetland shall be located in the outer twenty-five percent (25%) of the buffer area, and constructed with a surface that does not interfere with the permeability. Raised boardwalks utilizing non-treated pilings area may be acceptable.
 - ii. Wildlife viewing structures; and
 - iii. Fishing access areas down to the water's edge that shall be no larger than six (6) feet.
- c. **Stormwater Management Facilities.** Storm water management facilities, limited to storm water dispersion outfalls and bioswales, may be allowed within the outer twenty-five percent (25%) of the buffer of Category III or IV wetlands only, provided that:
 - i. No other location is feasible; and
 - ii. The location of such facilities will not degrade the functions or values of the wetland.
 - iii. Storm water management facilities are not allowed in buffers of Category I or II wetlands.

E. Signs and Fencing of Wetlands

- 1. **Temporary Markers.** The outer perimeter of the wetland or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that no unauthorized intrusion will occur and is subject to inspection by the director prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.
- 2. **Permanent Signs.** As a condition of any permit or authorization issued pursuant to this Chapter, the City Planner may require the applicant to install permanent signs along the boundary of a wetland or buffer.
 - a. Permanent signs shall be made of an enamel-coated metal face and attached to a metal post, or another non-treated material of equal durability. Signs must be posted at an interval of one (1) per lot or every fifty (50) feet, whichever is less, and must be maintained by the property owner in perpetuity. The sign shall be worded as follows or with alternative language approved by the City Planner:

Protected Wetland Area
Do Not Disturb
Contact the City of Airway Heights
Regarding Uses and Restriction

- b. The provisions of subsection (a) may be modified as necessary to assure protection of sensitive features or wildlife.

3. **Fencing**

- a. The City Planner shall determine if fencing is necessary to protect the functions and values of the critical area. If found to be necessary, the City Planner shall condition any permit or authorization issued pursuant to this Chapter to require the applicant to install a permanent fence at the edge of the wetland buffer, when fencing will prevent future impacts to the wetland.
- b. The applicant shall be required to install a permanent fence around the wetland or buffer when domestic grazing animals are present or may be introduced on site.
- c. Fencing installed as part of a proposed activity or as required in this Subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.
- d. Applicant must submit a sign permit application.

Section 48. New Section. A new section 19.20.050, is hereby added to the AHMC to read as follows:

**19.20.050 Performance Standards – Compensatory Mitigation Requirements
Compensatory mitigation for alterations to wetlands shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with the state Department of Ecology**

Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance
(Version 1, Publication #06-06-011a, March 2006)

Wetland Mitigation in Washington State, Part 2: Developing Mitigation Plans (Version 1, Publication #06-06-011b, March 2006)

A. Mitigation Shall Be Required in the Following Order of Preference:

- i. Avoiding the impact altogether by not taking a certain action or parts of an action.
- ii. 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.
- iii. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- iv. Reducing or eliminating the impact over time by preservation and maintenance operations.
- v. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments.

B. Mitigation for Lost or Affected Functions. Compensatory mitigation actions shall address functions affected by the alteration to achieve functional equivalency or improvement and shall provide similar wetland functions as those lost, except when:

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

C. Preference of Mitigation Actions. Mitigation actions that require compensation by replacing, enhancing, or substitution shall occur in the following order of preference:

1. Restoring wetlands on upland sites that were formerly wetlands.
2. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of non-native introduced species. This should only be attempted when there is a consistent source of hydrology and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is being designed.
3. Enhancing significantly degraded wetlands in combination with restoration or creation. Such enhancement should be part of a mitigation

package that includes replacing the impacted area meeting appropriate ratio requirements.

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

1. There are no reasonable on-site or in-sub drainage basin opportunities or on-site and in-sub drainage basin opportunities do not have a high likelihood of success, after a determination of the natural capacity of the site to mitigate for the impacts. Consideration should include: anticipated wetland mitigation replacement ratios, buffer conditions and proposed widths, hydro geomorphic classes of on-site wetlands when restored, potential to mitigate riparian fish and wildlife impacts (such as connectivity);
2. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and
3. Off-site locations shall be in the same sub-drainage basin unless:
 - a. Established watershed goals for water quality, habitat, or other wetland functions have been established and strongly justify location of mitigation at another site; or
 - b. Credits from a state certified wetland mitigation bank are used as mitigation and the use of credits is consistent with the terms of the bank's certification.

E. Mitigation Timing. Mitigation projects shall be completed with an approved monitoring plan prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

The City Planner may authorize a one-time temporary delay, up to one-hundred-twenty (120) days, in completing minor construction and landscaping when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, and general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the mitigation plan. The justification must be verified and approved by the city and include a financial guarantee.

F. Mitigation Ratios

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

Category III 2-to-1

2. **Increased Replacement Ratio.** The City Planner may increase the ratios under the following circumstances:
 - a. Uncertainty exists as to the probable success of the proposed restoration or creation;
 - b. A significant period of time will elapse between impact and replication of wetland functions;
 - c. Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacted; or
 - d. The impact was an unauthorized impact.

G. Wetlands Enhancement as Mitigation

1. Impacts to wetland functions may be mitigated by enhancement of existing significantly degraded wetlands, but must be used in conjunction with restoration and/or creation. Applicants proposing to enhance wetlands must produce a critical area report that identifies how enhancement will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site. An enhancement proposal must also show whether existing wetland functions will be reduced by the enhancement actions.
2. At a minimum, enhancement acreage shall be double the acreage required for creation or restoration under Subsection G. The ratios shall be greater than double the required acreage where the enhancement proposal would result in minimal gain in the performance of wetland functions and/or result in the reduction of other wetland functions currently being provided in the wetland.
3. Mitigation ratios for enhancement in combination with other forms of mitigation shall range from 6:1 to 3:1 and be limited to Class III and Class IV wetlands.

H. Wetland Mitigation Banks

1. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:
 - a. The bank is certified under Chapter 173-700 WAC;
 - b. The City Planner determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
 - c. The proposed use of credits is consistent with the terms and conditions of the bank's certification.
2. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification.
3. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, bank service areas may include portions of more than one adjacent drainage basin for specific wetland functions.

Section 49. New Section. A new section 19.20.060, is hereby added to the AHMC to read as follows:

19.20.060 Performance Standards – Subdivisions. The subdivision and short subdivision of land in wetlands and associated buffers is subject to the following:

- A. Land that is located wholly within a wetland or its buffer may not be subdivided.
- B. Land that is located partially within a wetland or its buffer may be subdivided provided that an accessible and contiguous portion of each new lot is:
 1. Located outside of the wetland and its buffer; and
 2. Meets the minimum lot size requirements of Airway Heights Municipal Code Title 17 (Zoning).
- C. Access roads and utilities serving the proposed subdivision may be permitted within the wetland and associated buffers only if the city determines that no other feasible alternative exists and when consistent with this Title.

Section 50. New Chapter. A new chapter, 19.30, entitled “Critical Aquifer Recharge Areas Designation”, is hereby added to the AHMC to read as follows:

Section 51. New Section. A new section 19.30.010, is hereby added to the AHMC to read as follows:

DESIGNATION, RATING, and MAPPING

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

A. **Wellhead Protection Areas.** Wellhead protection areas may be defined by the boundaries of the ten (10) year time of ground water travel or boundaries established using alternate criteria approved by the Washington State Department of Health in those settings where ground water time of travel is not a reasonable delineation criterion, in accordance with WAC 246-290-135.

B. **Sole Source Aquifers.** Sole source aquifers are areas that have been designated by the U.S. Environmental Protection Agency pursuant to the Federal Safe Drinking Water Act.

C. **Susceptible Ground Water Management Areas.** Susceptible ground water management areas are areas that have been designated as moderately or highly vulnerable or susceptible in an adopted ground water management program developed pursuant to WAC 173-100.

D. **Special Protection Areas.** Special protection areas are those areas defined by WAC 173-200-090.

E. **Moderately or Highly Vulnerable Aquifer Recharge Areas.** Aquifer recharge areas that are moderately or highly vulnerable to degradation or depletion because of hydro geologic characteristics are those areas delineated by a hydro geologic study prepared in accordance with the state Department of Ecology guidelines.

F. **Moderately or Highly Susceptible Aquifer Recharge Areas.** Aquifer recharge areas moderately or highly susceptible to degradation or depletion because of hydro geologic characteristics are those areas meeting the criteria established by the state Department of Ecology.

Section 52. New Section. A new section 19.30.020, is hereby added to the AHMC to read as follows:

19.30.020 Aquifer Recharge Area Susceptibility Ratings. Aquifer recharge areas shall be rated as having high, moderate, or low susceptibility based on soil permeability, geologic matrix, infiltration, and depth to water as determined by the criteria established by the state Department of Ecology.

Section 53. New Section. A new section 19.30.030, is hereby added to the AHMC to read as follows:

19.30.030 Mapping of Critical Aquifer Recharge Areas

A. The approximate location and extent of critical aquifer recharge areas are shown on the adopted critical areas maps.

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

Section 54. New Section. A new section 19.30.040, is hereby added to the AHMC to read as follows:

ALLOWED ACTIVITIES – CRITICAL AQUIFER RECHARGE AREAS

19.30.040 Activities Allowed in Critical Aquifer Recharge Areas. The following activities are allowed in critical aquifer recharge areas pursuant to *Allowed Activities* [Section 19.10.150] and do not require submission of a critical area report:

A. Construction of structures and improvements, including additions, resulting in less than five percent (5%) or 2,500 square feet (whichever is greater) total site impervious surface area that does not result in a change of use or increase the use of a hazardous substance.

B. Development and improvement of parks, recreation facilities, open space, or conservation areas resulting in less than five percent (5%) total site impervious surface area that do not increase the use of a hazardous substance.

C. On-site domestic septic systems releasing less than 14,500 gallons of effluent per day and that are limited to a maximum density of one (1) system per one (1) acre.

Section 55. New Section. A new section 19.30.050, is hereby added to the AHMC to read as follows:

ADDITIONAL REPORT REQUIREMENTS – CRITICAL AQUIFER RECHARGE AREAS

19.30.050 Critical Area Report – Additional Requirements for Critical Aquifer Recharge Areas. In addition to the general critical area report requirements of Section 19.10.210, critical area reports for critical aquifer recharge areas must meet the

requirements of this Section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

A. Preparation by a Qualified Professional. An aquifer recharge area critical area report shall be prepared by a qualified professional who is a hydro geologist, geologist, or engineer, who is licensed in the state of Washington and has experience in preparing hydro geologic assessments.

B. Hydro geologic Assessment. For all proposed activities to be located in a critical aquifer recharge area, a critical area report shall contain a level one (1) hydro geological assessment. A level two (2) hydro geologic assessment shall be required for any of the following proposed activities:

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

C. Level One Hydro geologic Assessment. A level one hydro geologic assessment shall include the following site- and proposal-related information at a minimum:

1. Available information regarding geologic and hydro geologic characteristics of the site including the surface location of all critical aquifer recharge areas located on site or immediately adjacent to the site, and permeability of the unsaturated zone;
2. Ground water depth, flow direction, and gradient based on available information;
3. Currently available data on wells and springs within 1,300 feet of the project area;
4. Location of other critical areas, including surface waters, within 1,300 feet of the project area;

5. Available historic water quality data for the area to be affected by the proposed activity; and
6. Best management practices proposed to be utilized.

D. Level Two Hydro geologic Assessments. A level two hydro geologic assessment shall include the following site- and proposal-related information at a minimum, in addition to the requirements for a level one hydro geological assessment:

1. Historic water quality data for the area to be affected by the proposed activity compiled for at least the previous five (5) year period;
2. Ground water monitoring plan provisions;
3. Discussion of the effects of the proposed project on the ground water quality and quantity, including:
 - a. Predictive evaluation of ground water withdrawal effects on nearby wells and surface water features; and
 - b. Predictive evaluation of contaminant transport based on potential releases to ground water; and
4. A spill plan that identifies equipment and/or structures that could fail, resulting in an impact. Spill plans shall include provisions for regular inspection, repair, and replacement of structures and equipment that could fail.

Section 56. New Section. A new section 19.30.060, is hereby added to the AHMC to read as follows:

PERFORMANCE STANDARDS – CRITICAL AQUIFER RECHARGE AREAS

19.30.060 Performance Standards – General Requirements

A. Activities may only be permitted in a critical aquifer recharge area if the applicant can show that the proposed activity will not cause contaminants to enter the aquifer and that the proposed activity will not adversely effect the recharging of the aquifer.

B. The proposed activity must comply with the water source protection requirements and recommendations of the U.S. Environmental Protection Agency, Washington State Department of Health, and the Spokane Regional Health District.

C. The proposed activity must be designed and constructed in accordance with the Chapter 3 of the Airway Heights *Public Works Standards Manual*.

Section 57. New Section. A new section 19.30.070, is hereby added to the AHMC to read as follows:

19.30.070 Performance Standards – Specific Uses

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

1. **Underground Tanks.** All new underground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:
 - a. Prevent releases due to corrosion or structural failure for the operational life of the tank;
 - b. Be protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substances; and
 - c. Use material in the construction or lining of the tank that is compatible with the substance to be stored.
2. **Aboveground Tanks.** All new aboveground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:
 - a. Not allow the release of a hazardous substance to the ground, ground waters, or surface waters;
 - b. Have a primary containment area enclosing or underlying the tank or part thereof; and
 - c. A secondary containment system either built into the tank structure or a dike system built outside the tank for all tanks.

B. Vehicle Repair and Servicing

1. Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.
2. No dry wells shall be allowed in critical aquifer recharge areas on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility

establishment must be abandoned using techniques approved by the state Department of Ecology prior to commencement of the proposed activity.

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

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

1. Use of reclaimed water for surface percolation must meet the ground water recharge criteria given in Chapter 90.46.080(1) and Chapter 90.46.010(10) RCW. The state Department of Ecology may establish additional discharge limits in accordance with Chapter 90.46.080(2) RCW.
2. Direct injection must be in accordance with the standards developed by authority of Chapter 90.46.042 RCW.

E. State and Federal Regulations. The uses listed below shall be conditioned as necessary to protect critical aquifer recharge areas in accordance with the applicable state and federal regulations.

Section 58. New Section. A new section 19.30.080, is hereby added to the AHMC to read as follows:

PROHIBITED USES

19.30.080 Uses Prohibited From Critical Aquifer Recharge Areas. The following activities and uses are prohibited in critical aquifer recharge areas:

A. Landfills. Landfills, including hazardous or dangerous waste, municipal solid waste, special waste, wood waste and inert and demolition waste landfills;

B. Underground Injection Wells. Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells;

C. Mining

1. Metals and hard rock mining; and
2. Sand and gravel mining, prohibited from critical aquifer recharge areas determined to be highly susceptible or vulnerable;

D. Wood Treatment Facilities. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);

E. Storage, Processing, or Disposal of Radioactive Substances. Facilities that store, process, or dispose of radioactive substances; and

F. Other Prohibited Uses or Activities

1. Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source;
2. Activities that would significantly reduce the recharge to aquifers that are a source of significant base flow to a regulated stream; and
3. Activities that are not connected to an available sanitary sewer system prohibited from critical aquifer recharge areas associated with sole source aquifers.

Section 59. New Section. A new section 19.30.090, is hereby added to the AHMC to read as follows:

19.30.090 Fish and Wildlife Habitat Conservation Areas

The types of fish, wildlife, and plant species that need protection vary from community to community throughout the state, and the standards necessary for protection vary with each species. Information about priority habitats and species, including their status and geographic range, is contained in the Washington Department of Fish and Wildlife (WDFW) Priority Habitats and Species List. Additionally, the department has published management recommendations that include recommended protection standards for many priority species and habitats. Information on rare plant species and high quality ecosystems, including their status, location, and distribution, is maintained by the Washington State Department of Natural Resources Natural Heritage Program. This Example Code Chapter is organized to be applicable in a generalized manner. Additional protection standards may need to be included depending on the species that might be found in each community. Per the 2007 Airway Heights Critical Areas Inventory, all city and UGA lands lack priority habitat or sensitive areas in need of protection.

Section 60. New Chapter. A new chapter, 19.40, entitled “Definitions” is hereby added to the AHMC to read as follows:

Section 61. New Section. A new section 19.40.010, is hereby added to the AHMC to read as follows:

19.40.010 Definitions

Words not defined in this Title shall be as defined in the city code, the Washington Administrative Code, or the Revised Code of Washington. Words not found in either

code shall be as defined in the Webster's Third New International Dictionary, latest edition.

Adaptive Management – Adaptive management relies on scientific methods to evaluate how well regulatory and non-regulatory actions protect the critical area. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty.

Adjacent – Immediately adjoining (in contact with the boundary of the influence area) or within a distance that is less than that needed to separate activities from critical areas to ensure protection of the functions and values of the critical areas. Adjacent shall mean any activity or development located:

- A. On a site immediately adjoining a critical area;
- B. A distance equal to or less than the required critical area buffer width and building setback;
- C. A distance equal to or less than one-half mile (2,640 feet) from a bald eagle nest;
- D. A distance equal to or less than three hundred (300) feet upland from a stream, wetland, or water body;
- E. A distance equal to or less than two hundred (200) feet from a critical aquifer recharge area.

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

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

Aquifer – A geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

Aquifer Recharge Areas – Areas that, due to the presence of certain soils, geology, and surface water, act to recharge ground water by percolation.

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

Best Management Practices (BMPs) – Conservation practices or systems of practices and management measures that:

- A. Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, and sediment;

B. Minimize adverse impacts to surface water and ground water flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;

C. Protect trees and vegetation designated to be retained during and following site construction and use native plant species appropriate to the site for re-vegetation of disturbed areas; and

D. Provide standards for proper use of chemical herbicides within critical areas.

The city shall monitor the application of best management practices to ensure that the standards and policies of this Title are adhered to.

Biodiversity – The variety of animal and plant life and its ecological processes and interconnections – represented by the richness of ecological systems and the life that depends on them, including human life and economies.

Buffer or Buffer Zone – An area that is contiguous to and protects a critical area which is required for the continued maintenance, functioning, and/or structural stability of a critical area.

City – The city of Airway Heights, Washington.

City Planner – The City Planner of the City of Airway Heights.

Compensation Project – Actions necessary to replace project-induced critical area and buffer losses, including land acquisition, planning, construction plans, monitoring, and contingency actions.

Compensatory Mitigation – Replacing project-induced losses or impacts to a critical area, and includes, but is not limited to, the following:

Restoration – Actions performed to reestablish wetland functional characteristics and processes that have been lost by alterations, activities, or catastrophic events within an area that no longer meets the definition of a wetland.

Creation – Actions performed to intentionally establish a wetland at a site where it did not formerly exist.

Enhancement – Actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality.

Preservation – Actions taken to ensure the permanent protection of existing, high-quality wetlands.

Critical Aquifer Recharge Area – Areas designated by WAC 365-190-080(2) that are determined to have a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2).

Critical Areas – Critical areas include any of the following areas or ecosystems: aquifer recharge areas, fish and wildlife habitat conservation areas, geologically hazardous areas, and wetlands, as defined in RCW 36.70A and this Title.

Critical Area Tract – Land held in private ownership and retained in an open condition in perpetuity for the protection of critical areas. Lands within this type of dedication may include but are not limited to, portions and combinations of forest habitats, grasslands, shrub steppe, on-site watersheds, shorelines or shorelines of statewide significance, riparian areas, and wetlands.

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

Cumulative Impacts– The combined, incremental effects of human activity on ecological or critical areas functions and values. Cumulative impacts result when the effects of an action are added to or interact with other effects in a particular place and within a particular time. It is the combination of these effects, and any resulting environmental degradation, that should be the focus of cumulative impact analysis and changes to policies and permitting decisions.

Development Permit – Any permit issued by the city, or other authorized agency, for construction, land use, or the alteration of land.

Enhancement – A process undertaken to rehabilitate or improve an existing degraded wetland by increasing or decreasing plant diversity and increasing water quality, wildlife habitat, or erosion controls.

Erosion – The process whereby wind, rain, water, and other natural agents mobilize and transport particles.

Erosion Hazard Areas – At least those areas identified by the U.S. Department of Agriculture National Resources Conservation Service as having a “severe” rill and inter-rill erosion hazard.

Fish and Wildlife Habitat Conservation Areas – Areas necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created as designated by WAC 365-190-080(5). These areas include:

A. Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association;

B. Habitats of local importance, including but not limited to areas designated as priority habitat by the Washington Department of Fish and Wildlife;

C. Commercial and recreational shellfish areas;

D. Kelp and eelgrass beds;

E. Herring and smelt spawning areas;

F. Naturally occurring ponds under twenty (20) acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds;

G. Waters of the state, including lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington;

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

I. State natural area preserves and natural resource conservation areas; and

J. Land essential for preserving connections between habitat blocks and open spaces.

Formation – An assemblage of earth materials grouped together into a unit that is convenient for description or mapping.

Formation, Confining – The relatively impermeable formation immediately overlying a confined aquifer.

Functions and Values – The beneficial roles served by critical areas including, but are not limited to, water quality protection and enhancement; fish and wildlife habitat; food chain support; conveyance and attenuation; ground water recharge and discharge; erosion control; wave attenuation; protection from hazards; historical, archaeological, and aesthetic value protection; educational opportunities; and recreation. These beneficial roles are not listed in order of priority. Critical area functions can be used to help set targets (species composition, structure, etc.) for managed areas, including mitigation sites.

Geologically Hazardous Areas – Areas that may not be suited to development consistent with public health, safety, or environmental standards, because of their susceptibility to erosion, sliding, earthquake, or other geological events as designated by WAC 365-190-080(4). Types of geologically hazardous areas include: erosion, landslide, seismic, mine, and volcanic hazards.

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

Growth Management Act – RCW 36.70A and 36.70B, as amended.

Habitat – The specific area or environment in which a particular type of plant or animal lives.

Habitat Conservation Areas – Areas designated as fish and wildlife habitat conservation areas.

Habitats of Local Importance – These areas include a seasonal range or habitat element with which a given species has a primary association, and which, if altered may reduce the likelihood that the species will maintain and reproduce over the long-term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited

availability or high vulnerability to alterations such as cliffs, talus, and wetlands. (WAC 365-190-030)

Hazardous Substances – Any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical, or biological properties described in WAC 173-303-090 or 173-303-100.

Impervious Surface – A hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development or that causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of storm water.

Infiltration – The downward entry of water into the immediate surface of soil.

Injection Well(s)

A. **Class I** – A well used to inject industrial, commercial, or municipal waste fluids beneath the lowermost formation containing, within one quarter (1/4) mile of the well bore, an underground source of drinking water.

B. **Class II** – A well used to inject fluids:

1. Brought to the surface in connection with conventional oil or natural gas exploration or production and may be commingled with wastewaters from gas plants that are an integral part of production operations, unless those waters are classified as dangerous wastes at the time of injection;
2. For enhanced recovery of oil or natural gas; or
3. For storage of hydrocarbons that are liquid at standard temperature and pressure.

C. **Class III** – A well used for extraction of minerals, including but not limited to the injection of fluids for:

1. In-situ production of uranium or other metals that have not been conventionally mined;
2. Mining of sulfur by Frasch process; or
3. Solution mining of salts or potash.

D. **Class IV** – A well used to inject dangerous or radioactive waste fluids.

E. **Class V** – All injection wells not included in Classes I, II, III, or IV.

Inter-Rill – Areas subject to sheet wash.

Mitigation – Avoiding, minimizing, or compensating for adverse critical areas impacts. Mitigation, in the following sequential order of preference, is:

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

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

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

Native Vegetation – Plant species that are indigenous to the area in question.

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

Potable Water – Water that is safe and palatable for human use.

Practical Alternative – An alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and has fewer impacts to critical areas.

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

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

When the action binds the land, such as a subdivision, short subdivision, binding site plan, planned unit development, or rezone, the project area shall include the entire parcel, at a minimum.

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

A. A qualified professional for habitats or wetlands must have a degree in biology and professional experience related to the subject species.

B. A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.

C. A qualified professional for critical aquifer recharge areas means a hydro geologist, geologist, engineer, or other scientist with experience in preparing hydro geologic assessments.

Recharge – The process involved in the absorption and addition of water to ground water.

Reclaimed Water – Municipal wastewater effluent that has been adequately and reliability treated so that it is suitable for beneficial use. Following treatment it is no longer considered wastewater (treatment levels and water quality requirements are given in the water reclamation and reuse standards adopted by the state departments of Ecology and Health).

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

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

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

Scientific Process – A valid scientific process is one that produces reliable information useful in understanding the consequences of a decision. The characteristics of a valid scientific process are as follows:

A. **Peer Review.** The information has been critically reviewed by other qualified scientific experts in that scientific discipline.

B. **Methods.** The methods that were used are standardized in the pertinent scientific discipline or the methods have been appropriately peer-reviewed to ensure their reliability and validity.

C. **Logical Conclusions and Reasonable Inferences.** The conclusions presented are based on reasonable assumptions supported by other studies and are logically and reasonably derived from the assumptions and supported by the data presented.

D. **Quantitative Analysis.** The data have been analyzed using appropriate statistical or quantitative methods.

E. **Context.** The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.

F. **References.** The assumptions, techniques, and conclusions are well referenced with citations to pertinent existing information.

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

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

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

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

C. Sole source aquifer status.

Sole Source Aquifer – See “Aquifer, Sole Source.”

Species – Any group of animals classified as a species or subspecies as commonly accepted by the scientific community.

Unavoidable – Adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved.

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

Wellhead Protection Area (WHPA) – The portion of a zone of contribution for a well, well field, or spring, as defined using criteria established by the Washington State Department of Ecology.

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

inventories and for delineation, the *Washington State Wetland Identification and Delineation Manual*.

Zone of Contribution – The area surrounding a well or spring that encompasses all areas or features that supply ground water recharge to the well or spring.

Section 62 Appeals. Any interpretation or decision made by the Director in the administration of this chapter is final and conclusive unless appealed to the Airway Heights Hearing Examiner.

- A. Any person aggrieved by a decision of the Director may, within 30 days following the date of the Department's written decision, submit an appeal of the Director's decision. The burden of proof in any appeal is the responsibility of the appellant. Any appeal shall be in written form and filed with the department together with a fee as established by resolution of the board. Any appeal shall as a minimum contain the following information:
 1. An explanation and description of how the appellant is aggrieved;
 2. A statement describing why the appellant believes the decision of the Director is in error and the specific relief sought;
 3. A statement showing why upholding an appeal will not be detrimental to public health, safety or welfare, or significantly negate the functions of a critical area, the goals, objectives and policies of the Growth Management Act, and the purposes of this chapter.
 4. A statement describing any mitigating measures the appellant proposes to assure that the function of the critical area will not be irrevocably jeopardized in the event the appeal is successful.
- B. Upon the filing of an appeal with appropriate fee, the Director shall set forth the time and place for a public hearing before the Hearing Examiner on the matter. If the appeal is filed 20 days or more before the Hearing Examiner's regularly scheduled monthly meeting, he or she shall hear the appeal at that meeting. For appeals filed within 19 days of the regularly scheduled monthly meeting, the Hearing Examiner shall hear the appeal the subsequent month.
- C. Notice of the time, date and place of the hearing shall be sent to the appellant and the permittee by first class mail prior to the public hearing. Legal notice of the hearing shall be published in a newspaper of general circulation and the subject property shall be posted with the notice not less than 10 days prior to the public hearing.
- D. Within 10 days after the public hearing, the hearing examiner shall issue a written decision, including the findings of fact on which his or her decision is based. Such written decision shall be available to the appellant and the public upon request.

- E. The Director shall transmit the application and appeal information to the Hearing Examiner at least five days prior to the public hearing. The Director may provide additional information if the appeal contains material or facts not available prior to the Director's decision.
- F. The Hearing Examiner shall determine if the appeal should be upheld, upheld with conditions, or denied. Any person aggrieved by the decision of the Hearing Examiner regarding a permit pursuant to this ordinance may request relief from Spokane County Superior Court.

Section 63 Severability. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, section, clause or phrase of this ordinance.

Section 64 Effective Date. This ordinance shall be in full force and effect five (5) days after publication of the Ordinance Summary.

INTRODUCED the 15th day of October, 2007.

PASSED by the City Council of the City of Airway Heights this _____ day of _____, 2007.

Matthew S. Pederson, Mayor

ATTEST:

APPROVED AS TO FORM:

Richard G. Cook, Clerk-Treasurer
Attorney

Stanley M. Schwartz, City

Date of Publication: _____
Ordinance C-664

Appendix E – Critical Areas Report Checklist

This checklist is an example that can be adapted for use by local jurisdictions. It should be edited to include local information such as city name and phone number. The checklist also should be edited to reflect the local critical areas development regulations.

The following is a brief description of the checklist:

- The first page is owner and site information required for all sections of the Critical Areas Report.
- The second page is a submittal checklist that would be required by all reports. The boxes titled Critical Areas Reports and Maps and Specific Reports are supported by one or more additional checklists described below.
- The next page is General Requirements and includes requests for information that would be required in all critical areas reports.
- The Wetlands, Fish and Wildlife Habitat, Critical Aquifer Recharge Area, Geologically Hazardous Area, and Frequently Flooded Area Specific Requirements would be used only when those specific critical areas are impacted.
- The Mitigation Plan Requirements page is used whenever mitigation will be required.

Appendix I

Critical Areas Report and Identification
Form

City of Airway Heights

Department of Community Development

Phone: 509-244-2552

FAX: 509-244-4746

Date Received: _____

Critical Areas File No.: _____

Checklist Fee: _____

CRITICAL AREAS REPORT CHECKLIST

Owner/Applicant

Name

Street Address

City State Zip

Telephone

E-mail (optional)

Owner/Applicant

Name

Street Address

City State Zip

Telephone

E-mail (optional)

By my signature, I certify that the information and exhibits herewith submitted are true and correct to the best of my knowledge and that I am authorized to file this application on the behalf of the owner as listed below.

SIGNATURE OF APPLICANT/AGENT _____ DATE _____

SITE INFORMATION

1. Site Address/Location _____

2. Property Tax Account Number _____

3. Legal Description of Property (*attach if necessary*) _____

3. Approximate Site Size (acres or square feet) _____

4. Type of Critical Areas (*check all that apply*): Wetlands _____ Fish and Wildlife Habitats (*including streams*) _____ Aquifer Recharge Areas _____ Geologically Hazardous Areas _____
Frequently Flooded Areas _____

5. Description of Proposed Project _____

CRITICAL AREAS REPORT CHECKLIST

SUBMITTAL CHECKLIST – All items must be submitted with the application:

<input type="checkbox"/> Application form	All requested information must be provided.
<input type="checkbox"/> Filing fee	Applicable fee as calculated by city staff. (See separate Fee Schedule.)
<input type="checkbox"/> List of surrounding property owners	Attach a complete list of the names and mailing addresses of surrounding property owners for property within 500 feet of the project site.
<input type="checkbox"/> SEPA Environmental Checklist	Submit if required (Including any wetland impacts – consult city staff)
<input type="checkbox"/> Critical Areas Report and Maps (Two 11" x 17" or larger-scaled copies and one 8 ½" x 11" reduction)	See the attached Critical Areas Report and Map Checklist for requirements.
<input type="checkbox"/> Specific Report	<p>The following reports are required depending on the type of critical area(s) impacted:</p> <ul style="list-style-type: none"> - Wetlands and their buffers - Fish and wildlife habitat conservation areas (including streams) - Critical aquifer recharge areas - Geologically hazardous areas - Frequently flooded areas <p>Reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area. See the specific checklist for report requirements.</p>
<input type="checkbox"/> Associated Land Use Applications	Consult with city staff to determine if other land use permits are required.

Where a valid Critical Areas Report has been prepared, and where the proposed land use activity and surrounding site conditions are unchanged, said report may be incorporated into the required Critical Areas Report, if deemed still valid and appropriate by a professional engineer or geologist. The applicant shall submit a Hazards Assessment detailing any changed environmental conditions associated with the site based on the best professional judgment of the engineer/geologist.

CRITICAL AREAS REPORT CHECKLIST

Critical Areas Report Checklist – General Requirements

The Critical Areas Report must be prepared by a qualified professional. All reports may require additional information as determined by the Director. The Director may approve a Critical Areas Report supplemented by or composed of any previous studies required by other laws and regulations.

At a minimum, the report shall contain the following:

- € The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;
- € Maps and site plans (*specify size and scale*);
 - Vicinity map clearly showing the location of the property.
 - Critical areas map showing all critical areas, required buffers, and existing topography based on city or surveyed data.
 - Site plan detailing the development proposal (including stormwater facilities) and the limits of construction. This map should be overlaid on the critical area/topographical map.
 - Topography map showing the location and extent of all grading, cut and fill, and post construction contours.
- € The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
- € Identification and characterization of all critical areas, water bodies, and buffers adjacent to the proposed project area;
- € A statement specifying the accuracy of the report, and all assumptions made and relied upon;
- € An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;
- € An analysis of site development alternatives including a no development alternative;
- € A description of reasonable efforts made to apply mitigation sequencing to avoid, minimize, and mitigate impacts to critical areas;
- € Plans for adequate mitigation to offset any impacts, in accordance with Mitigation Plan requirements and additional requirements specified for each critical area.
- € A discussion of the performance standards applicable to the critical area and proposed activity;
- € Financial guarantees to ensure compliance; and
- € Any additional information required for the critical area as specified in the corresponding chapter.

CRITICAL AREAS REPORT CHECKLIST

Critical Areas Report Checklist – Wetlands

In addition to the Critical Areas Report general requirements and associated maps, submit a specific Wetlands Report, if needed. This supplemental report must also be prepared by a qualified professional. All reports may require additional information as determined by the Director.

A wetland report shall provide an analysis of all wetlands and buffers on site and within three hundred (300) feet of the lot or parcel boundaries including, at a minimum, the following information:

- € Wetland category as rated according to the *Washington State Wetland Rating System for Western Washington* (Department of Ecology 2004, or as revised).
- € Show the standard buffer requirements for each wetland.
- € The wetland boundaries shall be surveyed by a licensed surveyor or using an equivalent method with an accuracy of +/- one (1) foot of a survey.
- € Determination of each wetland size.
- € Description of overall water sources and drainage patterns on site.
- € Description of vegetation, hydrologic conditions, and soil and substrate conditions.
- € Description of wildlife and habitat.
- € Functional assessment of the wetland and adjacent buffer using a local or state agency-recognized method and including the reference of the method and all data sheets.
- € Wetland Mitigation Requirements.

The Department of Ecology, U.S. Army Corps of Engineers Seattle District, and Environmental Protection Agency Region 10 recently published joint guidance on wetland mitigation. This two-part publication is available at www.ecy.wa.gov/programs/sea/wetlands/mitigation/guidance/. The agencies developed this guidance to help the regulated community comply with environmental laws and policies and to improve the quality and effectiveness of mitigation in Washington. A checklist for wetland mitigation plans is included in Appendix D of *Wetland Mitigation in Washington State, Part 2: Developing Mitigation Plans* (Version 1, Publication #06-06-011b, March 2006). Applicants who also need state and federal permits will benefit by using this checklist, as it will help streamline the approval process.

CRITICAL AREAS REPORT CHECKLIST

Critical Areas Report Checklist – Fish and Wildlife Habitat Specific Requirements

In addition to the Critical Areas Report, which is required for all applications, a specific Fish and Wildlife Delineation Report may be required. This supplemental report must also be prepared by a qualified professional. All reports may require additional information as determined by the administrative official.

Fish and Wildlife Delineation Report including:

- € This report shall include all habitat conservation areas and recommended buffers within three hundred (300) feet of the project area.
- € The report shall include all shoreline areas, floodplains, other critical areas, and related buffers within three hundred (300) feet of the project area.
- € Detailed description of vegetation on and adjacent to the project area and its associated buffer.
- € Identification of any species of local importance, priority species, or endangered, threatened, sensitive, or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species.
- € A discussion of any federal, state, or local special management recommendations, including Washington Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area.
- € A detailed discussion of the direct and indirect potential impacts on habitat by the project, including potential impacts to water quality.
- € A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing habitats in accordance with Mitigation Sequencing.
- € A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.

CRITICAL AREAS REPORT CHECKLIST

Critical Areas Report Checklist – Critical Aquifer Recharge Areas Specific Requirements

In addition to the Critical Areas Report, which is required for all applications, a specific Critical Aquifer Areas Report may be required. This supplemental report must also be prepared by a qualified professional. All reports may require additional information as determined by the Director.

- € Are any watercourses, including intermittent streams, drainage channels, ditches, or springs, located on site?
- € Is the site within the 100-year flood plain on flood insurance maps published by FEMA, or on other local flood data maps?
- € What types of soils are found on the site (for example, clay, sand, gravel, peat, muck)?
- € What is the U.S. Department of Agriculture soil classification of the soil found on site?
- € Is there any evidence of ground water contamination on or in the vicinity of the site?
- € Is there a Wellhead Protection Area on the site?
- € Is there any ground water information available from wells that have been dug in the vicinity? If so, describe, including depth of ground water and ground water quality.
- € What percent of the site will be covered with impervious surfaces when the project is complete?
- € Does the proposed activity or construction involve any discharge of waste materials or the use of hazardous substances?

CRITICAL AREAS REPORT CHECKLIST

Critical Areas Report Checklist – Geologically Hazardous Areas Specific Requirements

In addition to the Critical Areas Report, a specific Geo-Hazards Report may be required. This supplemental report must also be prepared by a qualified professional. All reports may require additional information as determined by the Director.

- € Assessment of Geological Characteristics. The report shall include an assessment of the geologic characteristics of the soils, sediments, and/or rock of the project area and potentially affected adjacent properties, and a review of the site history regarding landslides, erosion, and prior grading. Soils analysis shall be accomplished in accordance with accepted classification systems in use in the region. The assessment shall include, but not be limited to:
 - A description of the surface and subsurface geology, hydrology, soils, and vegetation found in the project area and in all hazard areas addressed in the report;
 - A detailed overview of the field investigations, published data, and references; data and conclusions from past assessments of the site; and site specific measurements, test, investigations, or studies that support the identification of geologically hazardous areas; and
 - A description of the vulnerability of the site to seismic and other geologic events.
- € Site and Construction Plans including:
 - All geologically hazardous areas within the zone or distance of potential significant influence, as determined by a professional engineer/geologist;
 - The type and extent of geologic hazard areas, any other critical areas, and buffers on, adjacent to, or within a zone or distance of potential significant influence as determined by a professional engineer/ geologist;
 - Proposed development, including the location of existing and proposed structures, fill, storage of materials, and drainage facilities, with dimensions indicating distances to the floodplain, if available;
 - The topography, as determined by a professional engineer or geologist, of the project area and all hazard areas addressed in the report; and
 - Clearing limits.
- € Analysis of Proposal. The report shall contain a hazards analysis including a detailed description of the project, its relationship to the geologic hazard(s), and its potential impact upon the hazard area, the subject property, and affected adjacent properties.
- € Minimum Buffer and Building Setback. The report shall make a recommendation for the minimum no-disturbance buffer and minimum building setback from any geologic hazard based upon the geotechnical analysis.

CRITICAL AREAS REPORT CHECKLIST

In addition to the above information, additional technical information must be provided for the following specific hazards:

- € Erosion and landslide hazard areas
- € Seismic hazard areas
- € Mine hazard areas
- € Other geologically hazardous areas

CRITICAL AREAS REPORT CHECKLIST

Critical Areas Report Checklist – Frequently Flooded Areas Specific Requirements

In addition to the Critical Areas Report, a specific Flood Hazard Report may be required. This supplemental report must also be prepared by a qualified professional. All reports may require additional information as determined by the Director.

Frequently Flooded Areas Report including:

- € All shoreline areas, floodplains, other critical areas, and related buffers within three hundred (300) feet of the project area.
- € The report shall describe the effects of the proposed development on floodplain functions including, but not limited to:
 - Storing and conveying floodwater.
 - Reducing peak flows and flow velocities.
 - Reducing redd scour and displacing rearing juvenile fish at the project site and downstream.
 - Maintaining sediment quality in streams.
 - Improving water quality.
- ‡ Development within frequently flooded areas shall be allowed maintaining and improving fish access.
- ‡ The reports shall also include mitigation for adverse effects on floodplain functions.

Mitigation Plan Requirements

See each critical areas section for specific mitigation requirements. When mitigation is required, the applicant shall submit a Mitigation Plan with the Critical Areas Report, prepared by a qualified professional. The Mitigation Plan shall include:

- € Detailed summary of the project, including the impacts to the critical area, and the proposed mitigation to compensate for lost functions and values to appear in the beginning of the report.
- € Rationale for selecting the mitigation site.
- € Complete site characterization of the impact site and proposed mitigation site to include parcel size, ownership, soils, vegetation, hydrology, topography, and wildlife.
- € Goals, objectives, performance standards, and implementation schedule for the mitigation proposal.

- € Report and maps of the critical areas to be impacted and the proposed mitigation site, including grading and planting plan.
- € Monitoring, maintenance, and contingency plan. The monitoring schedule (dates, frequencies, and protocols) must be included and a monitoring report submitted accordingly. Monitoring and maintenance shall be required for at least five years unless otherwise stipulated by another government agency.
- € Map of development, with scale, shown in relation to critical area.
- € Financial guarantees (“surety”) for 150% of the total costs to ensure the mitigation plan is fully implemented, including, but not limited to, the required monitoring and maintenance periods.