

Chapter 18.02
City of Oroville
CRITICAL AREAS
REVIEW DRAFT
December 27, 2007

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18.02.010 Title for citation. This Ordinance shall be known and may be cited as the "Oroville Critical Areas Ordinance."

18.02.020 Purpose. The intent of this section is to designate and classify ecologically sensitive and hazardous areas and to protect these areas and their functions and values in a manner that also allows reasonable use of private property. This chapter is intended to:

- A. Implement the Oroville Comprehensive Plan and the requirements of the Growth Management Act;
- B. Protect critical areas, in accordance with the Growth Management Act and through the application of 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;
- C. Protect the general public, resources and facilities from injury, loss of life, property damage or financial loss due to flooding, erosion, landslides, or steep slopes failure;

48 D. Protect unique, fragile and valuable elements of the environment, including
49 ground and surface waters, wetlands, and fish and wildlife and their habitats;

50 E. Prevent cumulative adverse environmental impacts to water quality and
51 availability, wetlands, and fish and wildlife habitat; and

52 F. Provide flexibility and attention to site specific characteristics, so as to ensure
53 reasonable use of property.

54
55 18.02.030 Definitions. For the purposes of this chapter, the following definitions
56 shall apply:

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58 A. Activity or Activities: See "Regulated Activity".

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60 B. Administrator: The person duly appointed, as set forth in Chapter 2.04 of the
61 Oroville Municipal Code, with the responsibility to administer the provisions of this
62 Chapter.

63
64 C. Agricultural Activities: Those activities conducted on lands defined in RCW
65 84.34.020(2) which are either (a) lands in any contiguous ownership of twenty or more
66 acres (i) devoted primarily to the production of livestock or agricultural commodities for
67 commercial purposes, or (ii) enrolled in the federal conservation reserve program or its
68 successor administered by the United States Department of Agriculture; (b) any parcel
69 of land five acres or more but less than twenty acres devoted primarily to agricultural
70 uses, which has produced a gross income from agricultural uses equivalent to one
71 hundred dollars or more per acre per year for three of the five calendar years preceding
72 the date of application for classification under this chapter; or (c) any parcel of land of
73 less than five acres devoted primarily to agricultural uses, which has produced a gross
74 income from agricultural uses equivalent to one thousand dollars or more per acre per
75 year for three of the five calendar years preceding the date of application for
76 classification under this chapter. Agricultural lands shall also include farm wood lots of
77 less than twenty and more than five acres and the land on which appurtenances
78 necessary to the production, preparation or sale of the agricultural products exist in
79 conjunction with the lands producing such products. Agricultural lands shall also include
80 any parcel of land of one to five acres, which is not contiguous, but which otherwise
81 constitutes an integral part of farming operations being conducted on land qualifying
82 under this section as "farm and agricultural lands." Agricultural activities shall also
83 include those existing and ongoing activities involved in the production of crops or
84 livestock; for example, the operation and maintenance of farm and stock ponds or
85 drainage ditches, operation and maintenance of ditches, irrigation drainage ditches,
86 changes between agricultural activities and normal maintenance, repair, or operation of
87 existing serviceable structures, facilities, or improved areas. Activities which bring an
88 area into agricultural use are not part of an ongoing operation. An operation ceases to
89 be ongoing when the area on which it is conducted is converted to a non-agricultural
90 use or has lain idle for more than five years, unless the idle land is registered in a
91 federal or state soils conservation program, or unless the activity is maintenance of
92 irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing
93 agricultural activity. Forest practices are not included in this definition.

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D. Applicant: A person who files an application for permit under this chapter and who is either the owner of the land on which that proposed Regulated Activity would be located or is the authorized agent of the owner.

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

F. 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 365-195-925. Sources of the best available science are included in *Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas*, or as amended, published by the Washington State Department of Community, Trade and Economic Development.

G. Buffer Area: A designated area along the perimeter of a wetland, fish and wildlife habitat or other critical area which is regulated to minimize impacts of adjacent activities and uses from intruding into the aquatic resource critical area.

H. Critical Areas: Areas as defined in the City of Oroville Comprehensive Plan.

I. Critical Aquifer Recharge Areas: Areas where there is an aquifer that is a source of drinking water that is vulnerable to contamination that would affect the potability of the water (WAC 365-190-030).

J. Development: Any construction or expansion of a building, structure, or use; any change in use of a building or structure or changes in the use of land that require a development permit from the City.

K. Geologically Hazardous Area: Areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

L. Mitigation: The use of any or all of the following actions listed in descending 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 to avoid or reduce impacts;

c. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;

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

140 e. Compensating for the impact by replacing, enhancing, or providing substitute
141 resources or environments; or

142 f. Monitoring the impact and the compensation project and taking appropriate
143 corrective measures. Mitigation may include a combination of the above measures.
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145 M. Regulated Activity: Any of the activities which are directly undertaken or
146 originate in a wetland critical area or its buffer that has the potential to alter its current
147 state except those exempted in Section 18.02.050.
148

149 N. Qualified Professional: An individual or team that has both the academic
150 qualifications and field experience to implement the provisions of this ordinance. The
151 following qualifications shall be considered as may be relevant to the particular Critical
152 Area(s):
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154 1. Qualified Biologist: The holder of a four-year degree in biology with an
155 emphasis in fish and wildlife biology from an accredited university and at least
156 two years field experience evaluating land use impacts on fish and wildlife
157 species and their habitats.
158

159 2. Qualified Engineer: An engineer holding a license recognized by the State of
160 Washington for the particular field of expertise applicable to the development .
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163 3. Qualified Geologist: A Washington State licensed geologist or hydro-
164 geologist, or a geologist from another state or country with a license recognized
165 by the State of Washington.
166

167 4. Qualified Wetland Specialist: means the a holder of a SWS (Society of
168 Wetland Scientists) Society of Wetland Scientists (SWS) certification or has the
169 equivalent in academic qualifications and field experience for making competent
170 wetland delineation's, reports, and recommendations necessary to implement the
171 provisions of this ordinance.
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174 O. Riparian Habitat Area: That area adjacent to aquatic systems with flowing
175 water (e.g., rivers, perennial or intermittent streams, seeps, springs) that contains
176 elements of both aquatic and terrestrial ecosystems which mutually influence each
177 other. Since Lake Osoyoos is part of a chain of lakes through which the Okanogan
178 River flows, for the purposes of this Chapter, the shoreline of Lake Osoyoos is included
179 in this definition.
180

181 P. Urban Growth Area (UGA): That area depicted by map in the latest adopted
182 Comprehensive Plan of the City within which urban growth shall be encouraged as
183 urban services may be made available.
184

185 Q. Wetland: Wetland" or "wetlands" means areas that are inundated or saturated
186 by surface water or groundwater at a frequency and duration sufficient to support, and

187 that under normal circumstances do support, a prevalence of vegetation typically
188 adapted for life in saturated soil conditions. Wetlands generally include swamps,
189 marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands
190 intentionally created from nonwetland sites, including, but not limited to, irrigation and
191 drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment
192 facilities, farm ponds, and landscape amenities, or those wetlands created after July 1,
193 1990, that were unintentionally created as a result of the construction of a road, street,
194 or highway. Wetlands may include those artificial wetlands intentionally created from
195 nonwetland areas created to mitigate conversion of wetlands.

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197 18.02.040 Applicability. These critical area regulations shall apply as an overlay
198 to zoning and other land use regulations established by the City as follows:
199

200 A. All land use activities, included but not limited to, excavations, fills,
201 subdivisions, boundary line adjustments, and/or land developments and/or proposals
202 (including building permits) on all lands within the City that lie within critical areas as
203 defined herein shall be in compliance with the provisions of this chapter. Furthermore,
204 no action shall be taken by any person that results in any alteration of any critical area
205 except as consistent with the purposes, objectives and intent of this chapter.
206

207 B. Where two or more types of critical areas overlap, requirements for
208 development shall be consistent with the standards for each critical area. Where it is
209 determined that a designated critical area is located within the shoreline jurisdiction, the
210 provisions of the Shoreline Master Program (SMP) will be used to provide protection to
211 the particular critical area(s). However, when it is found that the SMP is lacking in the
212 level of protection offered by this ordinance, any standards found in this chapter may
213 also be applied to a proposal as optional and/or supplemental items to the provisions of
214 the SMP. For designated critical areas outside of the shoreline jurisdiction the
215 provisions of this chapter shall apply.
216

217 C. These Critical Areas regulations shall apply concurrently with review
218 conducted under the State Environmental Policy Act (SEPA), as locally adopted. Any
219 conditions required pursuant to this Chapter shall be included in the SEPA review and
220 threshold determination.
221

222 18.02.050 Exemptions. The activities listed below are exempt from the
223 provisions of this chapter. Exempt activities shall be conducted using all reasonable
224 methods to avoid impacts to critical areas. Exemption from the chapter shall not be
225 considered permission to degrade a critical area or ignore risks from natural hazards.
226 Incidental damage to, or alteration of, a critical area that is not a necessary outcome of
227 the exempted activity shall be restored, rehabilitated at the responsible party's expense.
228

229 A. Emergency construction necessary to protect life or property from
230 immediate damage by the elements. An emergency is an unanticipated event or
231 occurrence which poses an imminent threat to public health, safety, or the environment,
232 and which requires immediate action within a time too short to allow full compliance.

233 Once the threat to the public health, safety, or the environment has dissipated, the
234 construction undertaken as a result of the previous emergency shall then be subject to
235 and brought into full compliance with this title;

236
237 B. Normal maintenance or repair of existing buildings, structures, roads,
238 utilities, levees, or drainage systems, that do not require construction permits, provided
239 the activity does not further alter, encroach upon, or increase impacts to critical areas or
240 associated buffers;

241 C. Existing agricultural activities, as defined in section 18.02.020, normal or
242 necessary to general farming conducted according to industry-recognized best
243 management practices including the raising of crops or the grazing of livestock;

244 D. Site investigative work necessary for land use application submittals such
245 as surveys, soil logs, percolation tests and other related activities. In every case, critical
246 area impacts should be minimized and disturbed areas shall be immediately restored;
247 and

248 E. Passive recreational activities, including, but not limited to: fishing, bird
249 watching, hiking, hunting, boating, horseback riding, skiing, swimming, canoeing, and
250 bicycling provided the activity does not alter the critical area or its buffer by changing
251 existing topography, water conditions or water sources.

252

253 17.02.060 Reasonable Use Alternatives.

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255 A. The city may modify the requirements of this title in specific cases when
256 necessary to allow reasonable use of an applicant's property. To qualify for such relief
257 the applicant must demonstrate all of the following:

258

259 1. That no other reasonable use can be made of the property that will have a
260 lesser adverse impact on the critical area and adjoining and neighboring lands;

261 2. That the proposed use does not pose a threat to the public health, safety or
262 welfare;

263 3. Any alteration is the minimum necessary to allow reasonable use of the
264 property; and,

265 4. The inability of the proponent to derive reasonable use of the property is not
266 the result of actions by the applicant after the effective date of this chapter.

267

268 B. A request for a reasonable use exception shall be submitted to the city with
269 the application materials for the particular development proposal. The application shall
270 be supplemented with an explanation as to how the reasonable use exception criteria
271 are satisfied. The city may require additional information or studies to supplement the
272 reasonable use exception request.

273 C. A reasonable use exception shall be processed according to the procedures
274 of Title 17, OMC, Variance Procedures.

275

276 18.02.070 Reference Maps and Materials. The City shall maintain reference
277 maps and materials that provide information on the general locations of critical areas.
278 Since boundaries are generalized, the application of this chapter and the actual type,

279 extent and boundaries of critical areas shall be determined and governed by the
280 classification section established for each critical area. In the event of any conflict
281 between the critical area location or designation shown on the City's maps and the
282 criteria and standards established in this chapter, or the site-specific conditions, the
283 criteria, standards and/or site-specific conditions shall prevail. Reference maps and
284 inventories shall include, but are not limited to the following:

- 285
286 A. Wetlands Map, based upon US Fish and Wildlife Service National Wetlands
287 Inventory;
288 B. Fish and Wildlife Habitat Area Maps, based upon Washington Department of
289 Fish and Wildlife Priority Habitats and Species data;
290 C. Soils Maps, based upon Okanogan County Soils Survey
291 D. Steep Slopes Map
292 E. Flood Insurance Rate Map Community;
293 F. Shoreline master program maps
294 G. U.S.G.S. 7.5 Minute Series Topographic Quadrangle Maps;
295 H. Aerial photos;
296 I. City of Oroville Comprehensive Plan;
297 J. City of Oroville Shoreline Master Program;
298 K. Washington State Wetlands Identification and Delineation Manual (DOE,
299 1997);
300 L. Washington State Wetlands Rating System for Eastern Washington, revised
301 (DOE, revised, August, 2004); and
302 M. Approved special reports previously completed for a subject property.
303

304 18.02.080 Review Process. Anyone proposing a land use activity, subdivision,
305 boundary line adjustment or other development within those areas mapped as Critical
306 Areas within the City, or within two hundred (200) feet of a known or suspected critical
307 area, shall notify the City. Additionally, applications for all development permits will ask
308 whether such areas are within 200 feet of a known or suspected critical area. The
309 provisions of this chapter shall be applied to any such proposals. The review process
310 shall proceed as follows:

311 A. Pre-application meeting/site visit. Upon receiving a land use or development
312 proposal, the administrator shall schedule a pre-application meeting and/or site visit with
313 the proponent for purposes of a preliminary determination whether the proposal is likely
314 to result in impact the functions and values of critical areas or pose health and safety
315 hazards. At this meeting, the administrator shall discuss the requirements of this
316 chapter and other applicable regulations; provide critical areas maps and other available
317 reference materials; outline the review and permitting processes; and, work with the
318 proponent to identify any potential concerns with regards to critical areas.

319 B. Application and SEPA Checklist. For all nonexempt proposals, the proponent
320 shall submit all relevant land use/development applications, together with a SEPA
321 Checklist.

322 C. Determination of need for critical areas report. Based upon the pre-
323 application meeting, application materials, and the SEPA Checklist, the administrator
324 shall determine if there is cause to require a critical areas report. In addition, the

325 administrator may use critical areas maps and reference materials, information and
326 scientific opinions from appropriate agencies, or any reasonable evidence regarding the
327 existence of critical area(s) on or adjacent to the site of the proposed activity.

328 D. Documentation and notification. The administrator shall document the pre-
329 application meeting and/or site visit, application and SEPA threshold determination, and
330 any other steps or findings that inform the determination whether a critical areas report
331 shall be required. The applicant shall receive notice of the determination and any
332 findings which support it.

333
334 18.02.090 Critical Areas Report. If the administrator determines that the site of a
335 proposed development or activity potentially includes, or is adjacent to, critical area(s), a
336 critical areas report may be required. When required, the expense of preparing the
337 critical areas report shall be borne by the applicant. The applicant's choice of
338 consultant or technical expert and the content, format and extent of the critical areas
339 report shall be approved by the administrator.

340
341 A. The requirement for critical areas reports may be waived by City staff if there
342 is substantial evidence that:

- 343
344 1. There will be little or no alteration of the critical area(s) and/or the required
345 buffer(s);
346 2. The proposal will not impact the critical area(s) in a manner contrary to the
347 purpose, intent and requirements of this ordinance and the comprehensive plan; and,
348 3. The minimum standards of this chapter will be met.

349
350 B. No critical area report is required for proposals that are exempt from the
351 provisions of this chapter as set forth in section 18.02.040.

352
353 C. Critical area reports shall be completed by a qualified professional who is
354 knowledgeable about the specific critical area(s) in question, and approved by the
355 administrator.

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357
358 D. At a minimum, a required critical areas report shall contain the following
359 information:

- 360
361 1. Applicant's name and contact information; permits being sought, and
362 description of the proposal;
363 2. A copy of the site plan for the development proposal, drawn to scale and
364 showing:
365 a. Identified critical areas, buffers, and the development proposal with
366 dimensions;
367 b. Limits of any areas to be cleared; and
368 c. A description of the proposed stormwater management plan for the
369 development and consideration of impacts to drainage alterations;

- 370 3. The names and qualifications of the persons preparing the report and
371 documentation of any fieldwork performed on the site;
- 372 4. Identification and characterization of all critical areas, wetlands, water
373 bodies, and buffers adjacent to the proposed project area;
- 374 5. An assessment of the probable cumulative impacts to critical areas resulting
375 from the proposed development of the site;
- 376 6. An analysis of site development alternatives;
- 377 7. A description of reasonable efforts made to apply mitigation sequencing to
378 avoid, minimize, and mitigate impacts to critical areas;
- 379 8. A mitigation plan, as needed, in accordance with the mitigation requirements
380 of this chapter, including, but not limited to:
- 381 a. The impacts of any proposed development within or adjacent to a critical
382 area or buffer on the critical area; and
- 383 b. The impacts of any proposed alteration of a critical area or buffer on the
384 development proposal, other properties and the environment;
- 385 9. A discussion of the performance standards applicable to the critical area and
386 proposed activity, and the best available science used to make any determination;
- 387 10. Financial guarantees to ensure compliance; and
- 388 11. Any additional information required for specific critical areas as listed in
389 subsequent sections of this chapter.

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391 E. The administrator may request any other information reasonably deemed
392 necessary to understand impacts to critical areas.

393

394 18.02.100 Mitigation Requirements. The applicant shall avoid all impacts that
395 degrade the functions and values of critical areas. If alteration is unavoidable, all
396 adverse impacts to critical areas and buffers resulting from the proposal shall be
397 mitigated in accordance with an approved critical areas report and SEPA documents.
398 Mitigation shall be on-site, when possible, and sufficient to maintain the functions and
399 values of the critical area, and to prevent risk from a hazard posed by a critical area.

400

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

405

- 406 1. Avoiding the impact altogether by not taking a certain action or parts of an
407 action;
- 408 2. Minimizing impacts by limiting the degree or magnitude of the action and its
409 implementation, by using appropriate technology, or by taking affirmative steps, such as
410 project redesign, relocation, or timing, to avoid or reduce impacts;
- 411 3. Rectifying the impact to wetlands, critical aquifer recharge areas, frequently
412 flooded areas, and habitat conservation areas by repairing, rehabilitating, or restoring
413 the affected environment to the historical conditions or the conditions existing at the
414 time of the initiation of the project;

- 415 4. Minimizing or eliminating the hazard by restoring or stabilizing the hazard
416 area through engineered or other methods;
417 5. Reducing or eliminating the impact or hazard over time by preservation and
418 maintenance operations during the life of the action;
419 6. Compensating for the impact to wetlands, critical aquifer recharge areas,
420 frequently flooded areas, and habitat conservation areas by replacing, enhancing, or
421 providing substitute resources or environments; and
422 7. Monitoring the hazard or other required mitigation and taking remedial action
423 when necessary.

424
425 B. Mitigation plan. When mitigation is required, the applicant shall submit for
426 approval a mitigation plan as part of the critical area report. The mitigation plan shall
427 include:

- 428
429 1. A written report identifying mitigation objectives, including:
430 a. A description of the anticipated impacts to the critical areas and the
431 mitigating actions proposed and the purposes of the compensation measures, including
432 the site selection criteria; identification of compensation objectives; identification of
433 critical area functions and values; and dates for beginning and completion of site
434 compensation construction activities;
435 b. A review of the best available science supporting the proposed
436 mitigation and a description of the report authors experience to date in critical areas
437 mitigation; and
438 c. An analysis of the likelihood of success of the compensation
439 project.
440 2. Measurable criteria for evaluating whether or not the objectives of the
441 mitigation plan have been successfully attained and whether or not the requirements of
442 this chapter have been met.
443 3. Written specifications and descriptions of the mitigation proposed, including,
444 but not limited to:
445 a. The proposed construction sequence, timing, and duration;
446 b. Grading and excavation details;
447 c. Erosion and sediment control features;
448 d. A planting plan specifying plant species, quantities, locations, size,
449 spacing, and density; and
450 e. Measures to protect and maintain plants until established.
451 4. A program for monitoring construction of the compensation project, and for
452 assessing the completed project and its effectiveness over time. The
453 program shall include a schedule for site monitoring and methods to be
454 used in evaluating whether performance standards are being met. A
455 monitoring report shall be submitted as needed to document milestones,
456 successes, problems, and contingency actions of the compensation
457 project. The compensation project shall be monitored for a period
458 necessary to establish that performance standards have been met, but not
459 for a period less than five (5) years.

460 5. Identify potential courses of action, and any corrective measures to be
461 taken if monitoring or evaluation indicates project performance standards
462 are not being met.
463

464 18.02.110 Surety/Bonding. If a development proposal is subject to
465 mitigation, maintenance or monitoring plans, the City of Oroville, in a form acceptable to
466 the City Attorney may require an assurance device or surety.
467

468 18.02.120 Permit Conditions. Through the review process, the City of
469 Oroville shall have the authority to attach such conditions to the granting of any
470 approval under this chapter as deemed necessary to alleviate adverse impacts to
471 critical area(s) and to carry out the provisions of this chapter. Such conditions of
472 approval may include, but are not limited to the following:
473

474 A. Specification of allowable lot sizes;

475 B. Provisions for additional buffers relative to the intensity of a use or activity;

476 C. Requirements and/or restrictions on the construction, size, location, bulk
477 and/or height, etc. of structure(s);

478 D. Dedication of necessary easements for utilities, conservation, open space,
479 etc.;

480 E. Imposition of easement agreements, sureties, deed restrictions, covenants,
481 etc. on the future use and/or division of land;

482 F. Limitations on the removal of existing vegetation;

483 G. Additional measures to address issues such as erosion control, storm water
484 management, filling, grading, etc.;

485 H. Development of a mitigation plan to create, enhance, or restore damaged or
486 degraded critical area(s) on and/or off site; and

487 I. Any monitoring and/or maintenance plans necessary to implement the
488 provisions of this chapter.
489

490 18.02.130 Enforcement. A. Violation of the provisions of this Chapter, or failure
491 to comply with any of its requirements, shall be a civil infraction and shall be subject to
492 enforcement actions by the City of Oroville that are authorized herein, and/or as may be
493 applicable in the Zoning Ordinance, Subdivision Ordinance, Shoreline Master Program
494 or any other land use regulation of the City.

495 B. The Administrator has authority to enforce this chapter against any violation
496 or threatened violation thereof through issue of administrative orders, penalty notices,
497 levying fines and/or the institution of actions at law or in equity including injunctive relief,
498 in order to ensure that no uses are made of a regulated critical area or their buffers
499 which are inconsistent with the chapter or an applicable critical areas protection
500 program. In addition, the city attorney is authorized to commence criminal prosecution
501 for violations under this chapter. Recourse to any single remedy will not preclude
502 recourse to other legal remedies available.

503 C. If the Administrator determines that any development action is not in
504 compliance with approved development plans, or is in violation of this chapter, then

505 he/she shall take the following actions in the following order:

506 1. Issue a cease and desist order to halt such activity. The order shall become
507 effective immediately upon receipt by the person to whom it is issued, and/or to his/her
508 agent on site. The order shall set forth the following terms and conditions:

509 a. A description of the specific nature, extent and time of violation and the
510 damage or potential damage; and

511 b. The specific corrective action to be taken within a given time, and the
512 penalties for failure to comply.

513 2. Issue a restoration order for complete or partial restoration, and/or control
514 against further damage, of the critical area by the owner and/or the person responsible
515 for the violation within a given time, and shall set forth the penalties for failure to comply.

516 3. Issue a civil penalty notice as set forth in subsection D, below.

517 4. If necessary, request that the city attorney commence prosecution, and seek
518 any civil or equitable relief to enjoin any act or practices and to abate any conditions
519 which constitute or will constitute a violation of this chapter.

520 D. Civil penalties.

521 1. Content. The notice of civil penalty shall include the following information:

522 a. The name and address of the person responsible for the violation; and

523 b. The street address or a description sufficient for identification of the
524 building, structure, premises, or land upon or within which the violation has occurred or
525 is occurring; and

526 c. A description of the violation and a reference to the provision(s) of the
527 City of Tonasket code section that has been violated; and

528 d. The required corrective action and a date and time by which the
529 correction must be completed; and

530 e. Notice of an opportunity for an appeal hearing before the City Council;
531 and

532 f. A statement indicating that no monetary penalty will be assessed if the
533 Administrator approves the completed, required corrective action at least 48 hours prior
534 to the end date for compliance in the restoration order; and

535 g. A statement that a monetary penalty in an amount per day for each
536 violation as specified herein will be assessed against the person whom the notice of civil
537 penalty is directed.

538 2. Service of Notice. The Administrator shall serve the notice of civil penalty
539 upon the person to whom it is directed, either personally or by mailing by both regular
540 mail and certified mail, a copy of the notice of civil penalty to such person at their last
541 known address. If the person to whom it is directed cannot after due diligence be
542 personally served within Okanogan County and if an address for mailed service cannot
543 after due diligence be ascertained, notice shall be served by posting a copy of the
544 notice conspicuously on the affected property or structure. Proof of service shall be
545 made by a written declaration under penalty of perjury executed by the person effecting
546 the service, declaring the time and date of service, the manner by which the service was
547 made, and if by posting the facts showing that due diligence was used in attempting to
548 serve the person personally or by mail.

549 E. Monetary Penalties. The maximum monetary penalty for each separate
550 violation per day or portion thereof shall be as follows:

- 551 1. First day of each violation - \$100.00;
552 2. Second day of each violation - \$200.00;
553 3. Third day of each violation - \$300.00;
554 4. Fourth day of each violation - \$400.00;
555 5. Each additional day of each violation beyond four days - \$500.00 per day.

556 E. Collection of monetary penalty. The monetary penalty constitutes a personal
557 obligation of the person to whom the notice of civil penalty is directed. The City is
558 authorized to take appropriate action to collect the monetary penalty.

559 F. Criminal penalties. Any person, firm, or corporation who knowingly violates
560 or knowingly fails to comply with any term or provision of this chapter shall be charged
561 with a misdemeanor. Each day a violation occurs shall be a separate offense. In the
562 event of a continuing violation or failure to comply, the second and subsequent days
563 shall constitute a gross misdemeanor. Continuing violation shall mean a violation which
564 is committed within one year of the initial violation, and which arises out of the same
565 facts as the initial violation.

566 G. Appeal of administrative orders and penalties. Any person issued a cease
567 and desist order, restoration order and/or incurring a civil penalty may appeal the same
568 by filing, in writing within ten (10) days of receipt of the order/penalty notice using the
569 procedures set forth in Section 17.112 of the Oroville Municipal Code.

570
571 18.02.140 Aquifer Recharge Areas All lands surrounding the Oroville area have
572 the potential to be contaminated by various land use practices and it is known that
573 water is drawn relatively close to the surface of the land. Therefore, all development
574 activity within the City of Oroville and within the UGA once under the jurisdiction of the
575 City, shall be conducted under existing laws regulating or prohibiting the activity, and
576 utilizing the guidance of the Eastern Washington Stormwater Manual, as currently exists
577 or may be amended.

578
579 18.02.150 Fish & Wildlife Habitat Conservation Areas. Riparian Habitat
580 Areas are the only Fish and Wildlife Conservation Areas identified and found to warrant
581 protection under the under the Critical Areas Regulations within the City of Oroville and
582 its Urban Growth Area.

583
584 A. *Classification.*

585
586 1. Urban Riparian Habitat includes:
587 Those riparian areas characterized by historic urban growth, more specifically,
588 that area of the City located between the Okanogan and Similkameen Rivers that have
589 been within the Oroville Incorporated Boundary prior to June 30, 2000.

590
591 2. Suburban Riparian Habitat includes:
592 Those riparian areas within the Urban Growth Area along the shorelines of the
593 Okanogan and Similkameen Rivers, Tonasket and Nine Mile Creeks, and Lake Osoyoos
594 that have been incorporated on and since June 30, 2000.
595

596 B. Standards.

597

598 1. Urban Riparian Habitat - The vegetation removal controls set forth in the
599 Oroville Shoreline Master Program, as they currently exist or may be amended in the
600 future, shall apply to all activity and development.

601

602 2. Suburban Riparian Habitat - The following standards for development shall be
603 required in addition to the general provisions of this chapter, other applicable land use
604 regulations, and shall supplement the applicable Shoreline Master Program where such
605 program fails to meet the standards of protection contained herein:

606 a. The Washington State Department of Fish and Wildlife priority habitat and
607 species management recommendations shall be consulted in developing specific
608 measures to protect a specific project site;

609 b. Special consideration shall be given to conservation or protection
610 measures necessary to preserve or enhance the anadromous fishery;

611 c. All projects shall comply with the applicable federal, state and local
612 regulations regarding the species;

613 d. As determined through the site-specific study, appropriate riparian widths
614 shall be established and maintained;

615 e. As determined through the site-specific study, mitigation measures shall
616 be implemented that maintain the base line populations and reproduction rates for the
617 particular species; and

618 f. As determined through the site-specific study, appropriate habitat
619 conservation, management and monitoring plan(s) shall be developed and
620 implemented, with any necessary surety to ensure compliance with such plan(s) being
621 provided as described in Section 9 of this chapter; and

622 g. Site-specific studies may be waived if at least one hundred (100) feet of
623 riparian area is provided, as measured from the ordinary high water mark, or fifty (50)
624 feet if the riparian area is restored with plantings as recommended by the Administrator.

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627 18.02.160 Wetlands.

628

629 A. Classification. The City will utilize the Wetlands Rating System for
630 Eastern Washington (revised, August, 2004) in evaluating wetlands, proposed buffers
631 and the appropriate management of its wetland areas, and will be the classification
632 system for the City.

633

634 B. Standards. For wetlands found outside the shoreline jurisdiction
635 of the Oroville Shoreline Master Program, or in the case where the Shoreline Master
636 Program does not provide for buffers, the following standards for development shall be
637 required in addition to the general provisions of this chapter and the requirements of
638 the underlying zone:

639 1. Buffers. The following buffer zones are required adjacent to and outside of
640 all regulated wetlands according to the following schedule, with the exception of
641 Category III and IV wetlands 10,000 square feet or less which are excluded from all
642 provisions of this chapter:

- 643
644 (a) Category I - 200 feet
645 (b) Category II - 100 feet
646 (c) Category III - 50 feet
647 (d) Category IV - 25 feet
648

649 The above buffers may be reduced by a maximum of 50% if the site analysis
650 demonstrates that the adjacent land is, and will remain, extensively vegetated, is
651 topographically remote from the wetland and that no direct adverse impacts on the
652 regulated wetlands is a reasonable probability as a result of the buffer reduction.
653

654 2. Wetlands in Washington, Volume 2: Guidance for Protecting and Managing
655 Wetlands shall be used as guidance in determining the appropriate management
656 approach for any wetland activity.

657 3. Wetland buffer zones shall be retained in their natural condition. Where
658 buffer disturbances are unavoidable during adjacent construction, re-vegetation with
659 native plant materials will be required.

660 4. Wetland alteration proposals shall be approved only if no alternative is
661 available. When no alternative exists, wetlands replacement or enhancement shall be
662 used to mitigate impacts and shall be based on the functions and values of the
663 particular wetland being impacted.

664 5. Those activities outlined in Section 18.02.050 EXEMPTIONS are allowed to
665 occur in wetlands and wetland buffer zones.

666 6. All projects shall comply with the applicable federal, state and local
667 regulations regarding the species;

668 7. As determined through the site-specific study, mitigation measures shall be
669 implemented that maintain the functions and values found in the particular wetland;

670 8. As determined through the site-specific study, appropriate mitigation,
671 management and monitoring plan(s) shall be developed and implemented, with any
672 necessary surety to ensure compliance with such plan(s) being provided as described in
673 Section 9 of this chapter.

674 9. A use or structure established prior to the effective date of this chapter which
675 does not conform to standards set forth herein, is allowed to continue and be
676 reasonable maintained provided that such activity or structure shall not be expanded or
677 enlarged in any manner that increases the extent of its nonconformity.
678

679
680 18.02.170 Frequently Flooded Areas.
681

682 A. Classification. The following classification system will be used to determine
683 the level of protection necessary for frequently flooded areas:
684

- 685 1. Class I – The floodway of any river or stream as designated by FEMA.
686 2. Class II – All areas mapped by FEMA as 100-year flood plain; and those
687 areas of local concern that experience recurrences of flooding that are characterized by
688 damage due primarily to inundation.

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B. Standards. For all Class I and Class II frequently flooded areas, the City of Oroville Flood Damage Prevention Ordinance shall be utilized for protection.

18.02.180 Geologically Hazardous Areas.

A. Classification. Known geologically hazardous areas within the City of Oroville's Urban Growth Areas consist of erosion hazard areas, including steep slopes. As more information is obtained that demonstrates the existence of other types and/or areas of geologically hazardous areas, these types and/or areas shall be classified and protected in accordance with the provisions of this chapter.

1. The following general classification system will be used to determine the level of protection necessary for geologically hazardous areas, based upon the risk to development:

- a. Known or Suspected Risk
- b. No Risk
- c. Risk Unknown

2. The following criteria shall be used in determining the status of an area as a particular type of geologically hazardous area:

- a. Erosion Hazard Area are those that contain all three of the following characteristics:
 - i. A slope of 30% or greater;
 - ii. Soils identified by the NRCS as unstable and having a high potential for erosion; and
 - iii. Areas that are exposed to the erosion effects of wind or water.
- b. Landslide Hazard Areas are those that may contain any of the following circumstances:
 - i. All areas that have historically been prone to land sliding;
 - ii. All areas containing soil types identified by the NRCS as unstable and prone to landslide hazard;
 - iii. All areas that show evidence of or are at risk from snow avalanches; or
 - iv. All areas that are potential unstable as a result of rapid stream incision or stream bank erosion.

B. Standards. The following standards for development shall be required in addition to the general provisions of this chapter and the requirements of the underlying zone:

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1. All projects shall be evaluated through a geotechnical report to determine whether the project is proposed to be located in a geologically hazardous areas, and if so, what is the project's potential impact on the geologically hazardous area and the potential impact of the geologic hazard on the proposed project;
2. All projects shall comply with the applicable federal, state and local regulations, including the International Building Code;
3. As determined through the site-specific study, appropriate buffers shall be maintained between all permitted uses and activities and the designated geologically hazardous area(s);
4. The existing native vegetation within the buffer area(s) shall be maintained, except that normal, nondestructive pruning and trimming of vegetation for maintenance purposes is allowed;
5. As determined through the site-specific study, appropriate drainage, grading, excavation and erosion control measures shall be implemented in the geologically hazardous area(s);
6. As determined through the site-specific study, mitigation measures shall be implemented that maintain the integrity of the geologically hazardous area(s);
7. As determined through the site-specific study, appropriate management and monitoring plan(s) shall be developed and implemented to preserve and protect both the geologically hazardous area(s) and the project, with any necessary surety to ensure compliance with such plan(s) being provided as described in Section 9 of this chapter; and
8. A use or structure established prior to the effective date of this chapter which does not conform to standards set forth herein, is allowed to continue and be reasonably maintained provided that such activity or structure shall not be expanded or enlarged in any manner that increases the extent of its nonconformity.