

# BINGEN MUNICIPAL CODE

## Chapter 17.65

### CRITICAL AREAS

#### Sections:

- 17.65.010 General Provisions.
- 17.65.020 Definitions.
- 17.65.030 Fish and Wildlife Habitat Conservation Areas.
- 17.65.040 Wetlands.
- 17.65.050 Geologically Hazardous Areas.
- 17.65.060 Frequently Flooded Areas.

#### **17.65.010 General Provisions.**

##### A. Purpose.

1. The purpose of this chapter is to implement the requirements of the Growth Management Act and the goals and policies of the Bingen Comprehensive Plan regarding the protection of areas within the city that are identified as critical areas and require protection from incompatible development.

##### B. Relationship to Other Regulations.

1. These critical areas regulations shall apply as an overlay and in addition to zoning and other regulations adopted by the city.
2. Any individual critical area adjoined by another type of critical area shall have the buffer and meet the requirements that provide the most protection of the critical areas. When any provision of this chapter or any existing regulation, easement, covenant, or deed restriction conflicts with this chapter, that which provides more protection to the critical areas shall apply.
3. Compliance with the provisions of this chapter 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 other requirements apart from the requirements of this chapter.

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

D. Severability. If any clause, sentence, paragraph, section, or part of this chapter 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.

E. Applicability.

1. The provisions of this chapter shall apply to all lands, all land uses and development activities, 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 chapter.
2. 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 chapter.

F. Authority.

1. As provided herein, the administrator is given the authority to interpret and apply, and the responsibility to enforce this chapter to accomplish the stated purpose.
2. The city may withhold, condition, or deny development permits or approvals to ensure that the proposed action is consistent with this chapter.
3. The administrator is authorized to prepare and require the use of such forms as necessary for administration of the chapter.

G. Fees.

1. The city may 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 chapter.
2. Unless otherwise indicated in this chapter, the applicant shall be responsible for the initiation, preparation, submission, and expense of any required reports, assessments, studies, plans, and other work prepared in support of or necessary to review the application.

- H. Critical Area Review Procedures. The following subsection describes the procedures for critical areas review.
1. Optional Preapplication Consultation. Any person proposing development or use of land that may be regulated by the provisions of this chapter may request a consultation meeting with the city prior to submitting an application for development or other approval. At this meeting, the city may discuss the requirements of this chapter; provide critical area maps, scientific information, and other source materials; outline the review process; and work with the proponent to identify any potential concerns that might arise during the review process, in addition to discussing other permit procedures and requirements.
  2. Critical Area Identification Form Submittal. Prior to the city's consideration of any proposed activity not found to be exempt under BMC 17.65.010.I, Exemptions, or allowed pursuant to BMC 17.65.010.J, Partial Exemptions, the applicant shall submit to the city a complete critical area identification form on a form provided by the city.
  3. Critical Area Identification Form Review. The administrator 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.
    - a. The administrator may use indicators to assist with the determination, including, but not limited to, indication of a critical area on the city's critical areas maps; information and scientific opinions from appropriate agencies; documentation from a scientific or other reasonable source; or a finding by a qualified professional or a reasonable belief by the administrator that a critical area may exist on or adjacent to the site of the proposed activity.
    - b. Decision on Critical Area Identification Form.
      - i. No Critical Areas Present. If the administrator'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 administrator 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.
      - ii. Critical Areas Present, But No Impact – Waiver. If the administrator 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 administrator may waive the requirement for a critical area report. A waiver may be granted if there is substantial evidence that all of the below requirements will be met. A summary of this information shall be included in any staff report or decision on the underlying permit.

- (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 chapter; and
  - (c) The proposal is consistent with other applicable regulations and standards.
- iii. Critical Areas May Be Affected by Proposal. If the administrator determines that a critical area or areas may be affected by the proposal, then the administrator 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.
- iv. Administrator's Determination Subject to Reconsideration. A determination regarding the apparent absence of one or more critical areas by the administrator is not an expert certification regarding the presence of critical areas and 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.
4. Critical Area Report Submittal . If the proposed project is within, adjacent to, or is likely to impact a critical area, the applicant shall submit a critical area report that has been prepared by a qualified professional in accordance with BMC 17.65.010.L, Critical Area Report.
5. Determination. The administrator shall make a determination as to whether the proposed activity and mitigation, if any, is consistent with the provisions of this chapter. Any alteration to a critical area, unless otherwise provided for in this chapter, shall be reviewed and approved, approved with

conditions, or denied, based on the proposal's ability to comply with all of the following criteria:

- a. The proposal minimizes the impact on critical areas in accordance with BMC 17.65.010.M.2, Mitigation Sequencing;
  - b. The proposal does not pose an unreasonable threat to the public health, safety, or welfare, on or off the development proposal site;
  - c. The proposal is consistent with the general purposes of this chapter and the public interest;
  - d. Any alterations permitted to the critical area are mitigated in accordance with BMC 17.65.010.M.1, General Requirements for Mitigation;
  - e. The proposal protects critical area functions and values consistent with the best available science and results in no net loss of critical area functions and values; and
  - f. The proposal is consistent with the standards of this chapter and other applicable regulations and standards.
6. Completion of Critical Areas Review. The city's determination regarding critical areas pursuant to this chapter shall be final concurrent with the final decision to approve, condition, or deny the development proposal or other activity involved.
7. Appeals. Any decision to approve, condition, or deny a development proposal or other activity based on the requirements of this chapter may be appealed according to, and as part of, the appeal procedures for the permit or approval involved.

I. Exemptions.

1. All exempted activities shall use reasonable methods to avoid potential impacts to critical areas. To be exempt from this chapter 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.
2. The following developments, activities, and associated uses shall be exempt from the provisions of this chapter, provided they are otherwise consistent with the applicable provisions of other local, state, and federal requirements:



- a. Emergencies. Emergency actions are 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 chapter. Emergency actions include, without limitations, actions to remove sediment and debris from existing culverts and man-made sediment settlement ponds in situations where sediment and debris pose an imminent risk of flooding to surrounding properties.
  - i. 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.
  - ii. The person or agency undertaking such action shall notify the city within one working day following commencement of the emergency activity. Within 30 working days, the administrator shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the administrator determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions of BMC 17.65.010.P, Unauthorized Alterations and Enforcement, shall apply.
  - iii. 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 must be reviewed by the administrator in accordance with the review procedures of this chapter. Restoration and/or mitigation activities must be initiated within one year of the date of the emergency, and completed in a timely manner.
- b. Operation, Maintenance, or Repair.
  - i. Operation, maintenance, or repair of existing structures, culverts, infrastructure improvements, utilities, public or private roads, dikes, levees, irrigation systems or drainage systems if the activity does not permanently and significantly 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.

- ii. Operation and maintenance includes vegetation management, sediment removal, road resurfacing and other activities performed in accordance with best management practices that ~~is~~ are part of ongoing maintenance of existing structures, culverts, infrastructure improvements, utilities, public or private roads, dikes, levees, irrigation systems or drainage systems.
  - iii. Operations and maintenance includes ongoing, routine activities at existing residential, commercial, industrial, and agricultural properties and locations, including the manufacture, processing, sorting, storage and transport of materials and products.
- c. **Passive Outdoor Activities.** Recreation, education, and scientific research activities that do not degrade the critical area, such as fishing and hiking. Trails must be constructed pursuant to BMC 17.65.010.J.3.d, Public and Private Pedestrian Trails.
  - d. **Forest Practices.** Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practices regulations, Title 222 WAC, provided that forest practice conversions are not exempt.
  - e. **Modifications to Existing Structures.** Structural modification of or replacement of an existing legally constructed structure that does not increase the footprint of the existing structure.

#### J. Partial Exemptions.

- 1. Activities allowed under this subsection are subject to review and approval by the city, but do not require the submittal of a critical area identification form or critical area report. The administrator may apply conditions to the underlying permit or approval to ensure the activity is consistent with the provisions of this chapter.
- 2. Activities allowed under this subsection must be conducted using best management practices that result in the least amount of impact to the critical area or buffer. Any incidental damage to, or alteration of, a critical area or buffer shall be restored, rehabilitated, or replaced at the responsible party's expense.

3. The following developments, activities, and associated uses shall be partially exempt from the provisions of this chapter, provided they are otherwise consistent with the applicable provisions of other local, state, and federal requirements:
  - a. Modifications to Existing Structures. Structural modification of, addition to, or replacement of an existing legally constructed structure that increases the size of the footprint of the existing structure but 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.
  - b. 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 new culverts or bridges, or result in the transport of sediment or increased stormwater.
  - c. Improvements Over or Adjacent to Streams Wholly Contained within Man-made Structures. New construction of improvements located over or adjacent to any segment of a stream that is wholly contained within a pipe, culvert, or other covered and enclosed man-made structure, provided that:
    - i. Improvements do not extend beyond a line drawn perpendicular to the beginning or end of the pipe, culvert, or other covered and enclosed man-made structure.
    - ii. Any new permanent structures other than surfacing materials (e.g. paving) are set back a distance of at least five feet from the pipe, culvert, or other covered and enclosed man-made structure.
  - d. Minor Utility Projects. Utility projects that have minor or short-duration impacts to critical areas, as determined by the administrator 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 using best management practices and additional restoration measures are provided. Minor activities must not result in the transport of sediment or increased stormwater. Such allowed minor utility projects must meet the following criteria:

- i. The activity involves the placement of a utility pole, street signs, anchor, vault or other small component of a utility facility; and
  - ii. There is no practical alternative to the proposed activity with less impact on critical areas.
- e. Public and Private Pedestrian Trails. Public and private pedestrian trails, except in wetlands, fish and wildlife habitat conservation areas, or their buffers, provided they are subject to the following:
  - i. Critical area and/or buffer widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas.
  - ii. 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.
- f. 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 city:
  - i. The removal of invasive and noxious weeds with hand labor and light equipment.
  - ii. The removal of trees or portions 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:
    - (a) The applicant submits a report to the city from a certified arborist, registered landscape architect, or professional forester that documents the hazard and provides a replanting schedule for replacement trees.
      - (i) 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 pursuant to BMC 17.65.010.I.2.a, Emergencies, provided that within 14 days following such action, the

landowner shall submit a restoration plan that demonstrates compliance with the provisions of this chapter.

- (b) Tree cutting shall be limited to pruning and crown thinning, unless otherwise justified by a qualified professional.
  - (c) Any trees that are removed must be replaced with new trees at a ratio of two replacement trees for each tree removed within one 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 inch in diameter at breast height for deciduous trees, and a minimum of six feet in height for evergreen trees as measured from the top of the root ball.
  - (d) 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 for removal that will minimize impacts.
- iii. 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, provided that the removed vegetation shall be replaced in-kind or with similar native species within one year in accordance with an approved restoration plan.
- g. 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 and federal regulations.
- h. 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.
- i. Navigation Aids and Boundary Markers. Construction or

modification of navigational aids and boundary markers.

- j. 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 the following conditions have been met:
  - i. The provisions of this chapter have been previously addressed as part of another approval;
  - ii. There have been no material changes in the potential impact to the critical area or buffer since the prior review;
  - iii. There is no new information available that is applicable to any critical area review of the site or particular critical area; and
  - iv. 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.

K. General Critical Area Protective Measures.

- 1. Building Setbacks. Unless otherwise provided, buildings and other structures shall be set back a distance of 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: landscaping; uncovered decks; building overhangs, if such overhangs do not extend more than 18 inches into the setback area; and impervious ground surfaces, such as driveways and patios.
- 2. Critical Area Signs. The city may require the boundary at the outer edge of the critical area or buffer to be identified with temporary signs prior to any site alteration. The city may require temporary signs to be replaced with permanent signs prior to occupancy or use of the site.
- 3. Recording of Critical Areas and Buffers.
  - 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 record a document with the Klickitat County Auditor's Office according to the direction of the city. The document shall state the presence of the critical area or buffer on the property and the fact that limitations on actions in or affecting the critical area or buffer may exist. The document shall "run with the land."

- b. This document shall not be required for a development proposal by a public agency or public or private utility:
    - i. Within a recorded easement or right-of-way;
    - ii. Where the agency or utility has the right to an easement or right-of-way; or
    - iii. On the site of a permanent public facility.
  - c. The applicant shall submit proof that the document 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.
4. Native Growth Protection Areas.
- a. Native growth protection areas 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:
    - i. All landslide hazard areas and buffers;
    - ii. All wetlands and buffers;
    - iii. All habitat conservation areas; and
    - iv. All other lands to be protected from alterations as conditioned by project approval.
  - b. Native growth protection areas shall be recorded on all documents of title of record for all affected lots.
  - c. Native growth protection areas 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 restrictions:
    - i. 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

- ii. The right of the city to enforce the terms of the restriction.
  - 5. 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.
- L. Critical Area Report.
- 1. Minimum Report Contents. At a minimum, a critical area report shall contain the following, as applicable:
    - a. The name and contact information of the applicant, a description of the proposal, and identification of any permits known to be required.
    - b. The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site.
    - c. A site plan (to scale) including, but not limited to, the development proposal, critical areas and buffers, and areas to be cleared.
    - d. Identification and characterization of all critical areas, wetlands, waterbodies, and buffers adjacent to the proposed project area.
    - e. A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations.
    - f. An assessment of the probable cumulative impacts to critical areas resulting from the proposed development.
    - g. A description of reasonable efforts made to apply mitigation sequencing pursuant to BMC 17.65.010.M.2, Mitigation Sequencing.
    - h. Plans for adequate mitigation, as needed to offset any impacts, in accordance with BMC 17.65.010.M.3, Mitigation Plan Requirements.
    - i. Any additional information required for a specific type of critical area.
    - j. A statement specifying the accuracy of the report, and assumptions made and relied upon.

M. Mitigation.

1. General Requirements for Mitigation.
  - a. The applicant shall avoid all impacts that degrade the functions and values of critical areas. Unless otherwise provided in this chapter, if alteration to a 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, 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 or unless mitigation at a regional or watershed-based location provides greater environmental benefit, 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.
2. 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 below sequential order of preference. Mitigation for individual actions may include a combination of the below measures.
  - 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 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 by replacing, enhancing, or providing substitute resources or environments; and
  - g. Monitoring the hazard or other required mitigation and taking remedial action when necessary.
3. Mitigation Plan Requirements. When mitigation is required, the applicant shall submit for approval a mitigation plan as part of the critical area report. The mitigation plan shall include:
- a. Description. A description of the anticipated impacts to critical areas and the mitigating actions proposed, including compensation goals and objectives, mitigation site selection, 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.
  - 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 chapter have been met.
  - c. Detailed Construction Plans.
  - d. Monitoring. 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 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 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.
  - 4. Innovative Mitigation. The city may encourage, facilitate, and approve innovative mitigation projects that are based on the best available science.
- N. Variances.
- 1. Variances from the standards of this chapter may be authorized by the city in accordance with the procedures set forth in BMC 16.36, Variances.
  - 2. 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:
    - a. 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;
    - b. The special conditions and circumstances do not result from the actions of the applicant;
    - c. A literal interpretation of the provisions of this chapter 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 chapter, and the variance requested is the minimum necessary to provide the applicant with such rights;
    - d. Granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings under similar circumstances;
    - e. The granting of the variance is consistent with the general purpose and intent of this chapter, 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;
    - f. The decision to grant the variance includes the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat; and



property.

- iv. 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 chapter, or its predecessor.
  - v. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site.
  - vi. The proposal will result in no net loss of critical area functions and values consistent with the best available science.
  - vii. 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.
2. Public Agency and Utility Exception.
- a. If the application of this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this subsection.
  - 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. The administrator shall prepare a recommendation to the city council based on review of the submitted information, a site inspection, and the proposal's ability to comply with all of the criteria in BMC 17.65.010.O.2.d, Public Agency and Utility Exception Review Criteria.
  - c. City Council Review. The city council shall review the application and the administrator's recommendation, and conduct a public hearing. The city council shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with the criteria in BMC 17.65.010.O.2.d, Public Agency and Utility Exception Review Criteria.

- d. Public Agency and Utility Review Criteria. The criteria for review and approval of public agency and utility exceptions follow:
  - i. There is no other practical alternative to the proposed development with less impact on the critical areas.
  - ii. The application of this chapter would unreasonably restrict the ability to provide utility or other public services to the public.
  - iii. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site.
  - iv. The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science.
  - v. 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.

P. Unauthorized Alterations and Enforcement.

- 1. When a critical area or its buffer has been altered in violation of this chapter, 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 chapter.
- 2. Requirement for Restoration Plan. All development work shall remain stopped until a restoration plan is prepared and approved by the city. Such a plan shall be prepared by a qualified professional using the best available science. The administrator may, 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.
- 3. Provisions of BMC 17.92, Enforcement, shall apply.