

CHAPTER 18.63

CRITICAL AREAS – FISH AND WILDLIFE HABITAT CONSERVATION AREAS

SECTION:

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18.63.010: Designation of Fish and Wildlife Habitat Conservation Areas:

- (1) Fish and wildlife habitat conservation areas include:
 - (a) Areas where state or federal designated endangered, threatened, and sensitive species have a primary association.
 - (i) Federal designated endangered and threatened species are those fish, wildlife, and plant species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted as necessary for current listing status.
 - (ii) State designated endangered, threatened, and sensitive species are those fish, wildlife and plant species native to the state of Washington identified by the state Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC 232-12-014 (state endangered species), and WAC 232-12-011 (state threatened and sensitive species). The state Department of Fish and Wildlife maintains the most current listing and should be consulted as necessary for current listing status.
 - (iii) A combined list of federal and state identified species having the potential to be within the City of Kennewick area is included in Appendix A.
 - (b) State priority habitats and areas associated with state priority species. Priority habitats and species are considered to be priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the state Department of Fish and Wildlife. A state list of priority habitats is included in

Appendix A.

- (c) Habitats and species of local importance. Habitats and species of local importance are those identified by the City, including those that possess unusual or unique habitat warranting protection because of qualitative species diversity or habitat system health indicators (see map, Exhibit 1, or the latest revision of this map and Appendix A, both on file in the Kennewick Planning Department).
 - (d) Naturally occurring ponds under twenty (20) acres. Naturally occurring ponds are those 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. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds, and landscape amenities, unless such artificial ponds were intentionally created for mitigation.
 - (e) Waters of the state. Waters of the state includes 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, as classified in WAC 222-16-031.
 - (f) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity.
 - (g) State natural area preserves and natural resource conservation areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the state Department of Natural Resources.
 - (h) Land essential for preserving eco-connectivity between habitat blocks and open spaces.
- (2) All areas within the City meeting one or more of these criteria, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this Title.
- (3) Mapping. The approximate location and extent of conservation areas are shown on the critical area map adopted by the City (Exhibit 1: or latest version of this map), and as most recently updated and the following critical area maps hereby adopted:
- (a) Department of Fish and Wildlife Priority Habitat and Species Maps;
 - (b) Resident salmonid distribution maps contained in the Habitat Limiting Factors Reports published by the Washington Conservation Commission;
 - (c) Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area Maps; and
 - (d) Additional data as determined necessary by the City.

The City of Kennewick Critical Areas Map is 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. In some instances, it is a reference and does not provide a final critical area designation. (Ord. 5206 Sec. 6, 2007)

18.63.020: Critical Area Report – Additional Requirements for Habitat Conservation Areas:

- (1) Prepared by a qualified professional. A critical areas report for a habitat conservation area shall be prepared by a qualified professional who is a biologist with experience preparing reports for the relevant type of habitat.
- (2) Area addressed in critical area report. The following topics shall be addressed in a critical area report for habitat conservation areas (The distance of 200 feet is suggested to account for buffers/zones that may not be accurately mapped at the time of application):
 - (a) The project area of the proposed activity;
 - (b) All habitat conservation areas and recommended buffers within two hundred (200) feet of the project area; and
 - (c) All shoreline areas, flood plains, and other critical areas, and related buffers within two hundred (200) feet of the project area.
- (3) Habitat assessment. A habitat assessment is an investigation of the project area to evaluate the presence or absence of a potential critical fish, wildlife, or plant species or habitat. A critical area report for a habitat conservation area shall contain an assessment of habitats including the following site- and proposal-related information at a minimum:
 - (a) Detailed description of vegetation on and adjacent to the project area;
 - (b) Identification of any species of local importance, priority species and habitats (PHS), 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;
 - (c) A discussion of any federal, state, or local special management recommendations, including Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;
 - (d) A discussion of measures, including avoidance, minimization and mitigation, proposed to preserve existing habitats or restore any habitat that was degraded prior to the current proposed land use activity and to be conducted in accordance with Section 18.58.170; and
 - (e) A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.
- (4) Additional information may be required. When appropriate due to the type of habitat or species present or the project area conditions, the City may also require the habitat management plan to include:
 - (a) An evaluation by the Department of Fish and Wildlife or qualified expert regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate;
 - (b) An evaluation by the local Native American Indian Tribe; and
 - (c) Detailed surface and subsurface hydrologic features both on and adjacent to the site. (Ord. 5206 Sec. 6, 2007)

18.63.030: Performance Standards – General Requirements:

- (1) Alterations shall not degrade the functions and values of habitat. A habitat conservation area may be altered only if the proposed alteration of the habitat or the mitigation proposed does not degrade the quantitative and qualitative functions and values of the habitat. All new structures and land alterations shall be prohibited from habitat

conservation areas, except in accordance with this Title.

(2) Non-indigenous species shall not be introduced. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a habitat conservation area unless authorized by a state or federal permit or approval.

(3) Mitigation shall result in contiguous corridors. Mitigation sites shall try to achieve contiguous functioning habitat corridors in accordance with a mitigation plan that is part of the critical area report to minimize the isolating effects of development on habitat areas, so long as mitigation of aquatic habitat is located within the same aquatic ecosystem as the area disturbed.

(4) Approvals of activities may be conditioned. The City shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions may include, but are not limited to, the following:

- (a) Establishment of buffer zones;
- (b) Preservation of critically important vegetation;
- (c) Limitation of access to the habitat area, including fencing to deter unauthorized access;
- (d) Seasonal restriction of construction activities;
- (e) Establishment of a duration and timetable for periodic review of mitigation activities; and
- (f) Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation.

(5) Subdivisions. The subdivision and short subdivision of land in fish and wildlife habitat conservation areas and associated buffers is subject to a “take” under the following provisions:

- (a) Land that is located wholly within a habitat conservation area or its buffer may not be subdivided.
- (b) Land that is located partially within a habitat conservation area or its buffer may be divided provided that an accessible and contiguous portion of each new lot is located outside of the habitat conservation area or its buffer and meets the minimum lot size requirements of City’s Zoning Code – Title 18 and Subdivision Code – Title 17.
- (c) Access roads and utilities serving the proposed may be permitted within the habitat conservation area and associated buffers only if the City determines that no other feasible alternative exists and when consistent with this Title. (Ord. 5206 Sec. 6, 2007)

18.63.040: Performance Standards – Specific Habitats:

- (1) Endangered, threatened, and sensitive species.
 - (a) No development shall be allowed within a habitat conservation area or buffer with which state or federal endangered, threatened, or sensitive species have a primary association.
 - (b) Whenever activities are proposed adjacent to a habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with a critical area report prepared by a qualified professional and submitted to the City. Approval for alteration of

land adjacent to the habitat conservation area or its buffer shall not occur prior to consultation with the Department of Fish and Wildlife and the appropriate federal agency.

- (c) Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292). Whenever activities are proposed adjacent to a verified nest territory or communal roost, a habitat management plan shall be developed by a qualified professional. Activities are adjacent to bald eagle sites when they are within eight hundred (800) feet, or within a quarter mile (2,640 feet) and in a shoreline foraging area. The City shall verify the location of eagle management areas for each proposed activity. Approval of the activity shall not occur prior to approval of the habitat management plan by the Department of Fish and Wildlife.
- (2) Wetland habitats. All proposed activities within or adjacent to habitat conservation areas containing wetlands shall, at a minimum, conform to the wetland development performance standards set forth in Chapter 18.59, in addition to meeting the habitat conservation area standards in this Chapter.
- (3) Riparian habitat areas. Unless otherwise allowed in this Title, all structures and activities shall be located outside of the riparian habitat areas (RHAs).
 - (a) Establishment of riparian habitat areas. RHAs shall be established for habitats that include aquatic systems.
 - (b) Riparian habitat area widths. Recommended RHA widths are shown in the table below. A riparian habitat area shall have the width recommended, unless a greater width is required pursuant to Section 18.59.030(3), or a lesser width is allowed pursuant to Section 18.59.030(4). Widths shall be measured outward, on the horizontal plane, from the ordinary high water mark or from the top of bank if the ordinary high water mark cannot be identified. Riparian areas should be sufficiently wide to achieve the full range of riparian and aquatic ecosystem functions, which include but are not limited to protection of instream fish habitat through control of temperature and sedimentation in streams; preservation of fish and wildlife habitat; and connection of riparian wildlife habitat to other habitats. (Recommended riparian habitat widths are adapted from Department of Fish and Wildlife “Management Recommendations for Washington’s Priority Habitats: Riparian, ” 1997). (Ord. 5206 Sec. 6, 2007)

Riparian Habitat Areas	
Stream/Type	Recommended RHA Widths
Columbia River/McNary Pool Shoreline (Shoreline of Statewide Significance) - Levee (limited to no riparian habitat function) (Riparian function based upon HDR analysis (2007) and review of existing shoreline function for Columbia River/McNary Pool levee, armored and unarmored shoreline) - Armored Shoreline (limited to no riparian habitat function) - Unarmored Shoreline (limited to moderate potential for habitat function)	25 feet* 25 feet* 75 feet*
Type 3 or other perennial or fish bearing streams (Family Fishing Pond inlet and CID return near Kiwanis Building in Columbia Park)**	75 feet*
Types 4 and 5 (Upper Amon)	50 feet*

*Note 1: Stormwater handling in areas adjacent to riparian areas will be controlled consistent with requirements in the Stormwater Management Manual for Eastern Washington (Ecology 2004), and will be protective of shoreline riparian function.

****Note 2: Columbia Park campground drainage and duck ponds would likely become Type 3 waters if reconnected to the Columbia River as identified in the City's Shoreline Program Restoration Plan (HDR 2006)**