TOWN OF BEAUX ARTS VILLAGE
ORDINANCE NO. 487

AN ORDINANCE OF THE TOWN OF BEAUX ARTS VILLAGE, WASHINGTON, ADOPTING A NEW CHAPTER 16.30 RELATING TO CRITICAL AREAS REGULATIONS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, RCW 36.70A.170(1)(d) requires each county and each city to designate critical areas utilizing the guidelines established in RCW 36.70A.050; and

WHEREAS, under the Growth Management Act, city and county critical areas ordinances must be evaluated and, if needed, revised every ten years per the schedule provided in RCW 36.70A.130; and

WHEREAS, RCW 36.70A.172 requires counties and cities to include best available science in developing policies and development regulations to protect the functions and values of critical areas; and

WHEREAS, Town staff has reviewed and identified potential revisions to the Beaux Arts Village Municipal Code (BAVMC) to conform to best available science, as part of the required critical areas regulations update process; and

WHEREAS, the Beaux Arts Village Planning Commission considered the proposed critical areas code amendments on June 19, 2025 and September 18, 2025; and

WHEREAS, on September 25, 2025, the Town's SEPA responsible official issued a SEPA Determination of Non-Significance; and

WHEREAS, on September 30, 2025, the Town submitted the proposed critical areas code update to the Department of Commerce for 60-day review, and that 60-day review period concluded on November 29, 2025; and

WHEREAS, the Town Planning Commission held a public hearing on September 18, 2025, and recommended that the Town Council adopt the proposed critical areas code amendments as new BAVMC Chapter 16.30, Critical Areas, substantially in the form attached hereto as Exhibit A; and

WHEREAS, the Town Council considered the Planning Commission's recommendations and the proposed new BAVMC Chapter 16.30, Critical Areas, at its regular meeting on December 9, 2025, and approved the proposed critical areas regulations for adoption, pending preparation of a formal ordinance by the Town Attorney;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF BEAUX ARTS VILLAGE, WASHINGTON, AS FOLLOWS:

Section 1. Chapter 16.30 Adopted. A new Chapter 16.30 of the Beaux Arts Village Municipal Code Chapter, to be entitled "Critical Areas," is hereby adopted to read as shown on Exhibit A, attached hereto.

Section 2. Severability. If any section, paragraph, clause, or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, paragraphs, clauses, or phrases subsequently may be found by competent authority to be unconstitutional or invalid.

Section 3. Effective Date. This ordinance shall take effect immediately after its passage and publication as required by law.

PASSED BY THE COUNCIL OF THE TOWN OF BEAUX ARTS VILLAGE on this 30th day of December, 2025 and signed in authentication of its passage.

_____
Aletha Howes, Mayor

ATTEST:

_____
Sue Ann Spens, Clerk-Treasurer

APPROVED AS TO FORM:

_____
David Linehan, Town Attorney

Chapter 16.30 – Critical Areas

16.30.010 Authority.

A. This chapter is adopted under the authority of Chapter 36.70A RCW, other federal and state environmental regulations, including but not limited to the State Environmental Policy Act and the State and Federal Endangered Species Acts.

B. The Town Planner shall have the authority to administer, interpret, and enforce this chapter and is authorized to adopt procedures, policies, rules or guidelines, issue interpretations, conduct inspections, and prepare the forms necessary to carry out the purposes of this chapter. The Town Planner may seek assistance from other Town staff, or public agencies or private consultants and/or contractors to administer and enforce this chapter.

16.30.020 Title, Purpose, and Interpretation.

A. Title. This chapter shall be known as the critical area code ordinance of the town of Beaux Arts Village, Washington

B. Purpose and Intent. The purpose of this chapter is to:

1. Protect public health, safety and welfare by minimizing negative development impacts;
2. Preserve and protect critical areas as identified in the Washington State Growth Management Act by regulating development within and adjacent to them;
3. Mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to them;
4. Prevent adverse cumulative impacts and net loss of ecological functions and values to wetlands, aquifers, streams, shoreline environments, fish and wildlife habitat;
5. Protect the general public, public resources and facilities from injury, loss of life, property damage or financial loss due to flooding, erosion, landslides, soils subsidence or steep slope failure; and
6. Implement the goals, policies, guidelines and requirements of the Town's comprehensive plan and the Washington State Growth Management Act.
7. Establish review procedures for development proposals in and adjacent to critical areas.

C. Interpretation. In the interpretation and application of this chapter, its provisions shall be construed to be the minimum requirements, which are adopted for promotion of public health, safety, and general welfare. Uses permitted are specifically set forth, and this chapter shall be construed to prohibit uses not expressly permitted. Any use listed in this chapter shall not be construed to include other uses.

D. Applicability of other regulations. Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permits that may be required (for example, shoreline substantial permits, HPA permits, Army Corp of Engineers Section 404 permits, and NPDES permits.) The applicant is responsible for complying with these requirements, apart from the process established in this chapter.

16.30.030 Definitions.

Except as otherwise provided in this section, all terms shall have the meaning as defined by those code provisions referenced in BAVMC 16.30.030, or in the absence of a specific definition herein, as defined by BAVMC Title 18. If no specific definition is available in either of the above-mentioned references, its

definition shall be that provided by the latest edition of Merriam-Webster's Collegiate Dictionary of the English Language and where more than one definition is given, the most common or appropriate nonprofessional usage shall govern.

A. "Active fault" means a fault that is considered likely to undergo renewed movement within a period of concern to humans. Faults are commonly considered to be active if the fault has moved one or more times in the last ten thousand years.

B. "Aquifer recharge area" means an area that, due to the presence of certain soils, geology, and surface water, acts to recharge groundwater by percolation.

C. "Area of special flood hazard" means land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V.

D. "Best available science" means current scientific information derived from a valid scientific process as defined by WAC 365-195-900 through 365-195-925 which is then used to designate, protect, or restore critical areas.

E. "Best management practices" means conservation practices or systems of practice and management measures that:

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

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

3. Protect trees and vegetation designated to be retained during and following site construction; and

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

F. "Buffer" means the zone contiguous with a critical area that is required for the continued maintenance, function, and structural stability of the critical area.

G. "Compensation project" means actions specifically designed to replace project-induced critical areas and buffer losses. Compensation project design elements may include, but are not limited to, land acquisition, planning, construction plans, monitoring, and contingency actions.

H. "Compensatory mitigation" means types of mitigation used to replace project-induced critical areas and buffer losses or impacts. "Compensatory mitigation" includes, but is not limited to, the following:

1. Restoration. Actions performed to reestablish functional characteristics that are lost or degraded due to unauthorized alteration, past management activities, or catastrophic events within an area that no longer meets the definition of a critical area.

2. Creation. Actions performed to intentionally establish a critical area at a site where it did not formerly exist.

3. Enhancement. Actions performed to improve the condition of an existing critical area so that the functions it provides are of a higher quality."

I. "Critical aquifer recharge area" means areas designated by WAC 365-190-080(2) that are determined to have a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-

030(3).

J. "Critical areas" means any of the following areas or ecosystems as defined by the Growth Management Act (RCW 36.70A.030(11)):

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

K. "Ecosystem functions" are the products, physical and biological conditions, and environmental qualities of an ecosystem that result from interactions among ecosystem processes and ecosystem structures. Ecosystem functions include, but are not limited to, sequestered carbon, attenuated peak streamflow, aquifer water level, reduced pollutant concentrations in surface and ground waters, cool summer in-stream water temperatures, and fish and wildlife habitat functions.

L. "Ecosystem values" are the cultural, social, economic, and ecological benefits attributed to ecosystem functions.

M. "Erosion hazard area" means areas containing soils which, according to the United States Department of Agriculture Natural Resources Conservation Service, may experience severe to very severe erosion hazard.

N. "Fish and wildlife habitat conservation areas" means areas necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created as designated by WAC 365-190-080(5). These areas include:

1. Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association;
2. Habitats of local importance, including, but not limited to, areas designated as priority habitat by the Department of Fish and Wildlife;
3. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish and wildlife habitat;
4. Waters of the state, including lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface water and watercourses within the jurisdiction of the state of Washington;
5. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;
6. State natural area preserves and natural resources conservation areas; and
7. Land essential for preserving connections between habitat blocks and open spaces.

O. "Fish habitat" means habitat which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish life which could reasonable be recovered by restoration or management including off-channel habitat.

P. "Flood" means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation of runoff or

surface waters from any source.

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

R. "Geologist" means a practicing professional engineering geologist licensed with the state of Washington.

S. "Geotechnical engineer" means a practicing professional geotechnical/ civil engineer licensed with the state of Washington.

T. "Hazard areas" means areas designated as frequently flooded or geologically hazardous areas due to potential for erosion, landslide, seismic activity, mine collapse, or other geologically hazardous conditions.

U. "Hazard tree" is a tree considered to be a threat to life, property, or public safety as assessed by a qualified professional and found at a minimum to have "probable" to "imminent" likelihood of failure based on the Level 3 TRAQ method. Hazard tree removal(s) shall not adversely affect ecosystem functions. When possible, this activity shall include the creation of snags (Priority Habitat features) rather than complete tree removal and minimize damage to remaining trees and vegetation. This definition is intended to protect trees from removal in critical areas beyond what is codified in the BAVMC Chapter 16.25 – Tree Code.

V. "Landslide" means episodic down-slope movement of a mass of soil or rock that includes, but is not limited to, rock falls, slumps, mudflows, and earthflows.

W. "Landslide hazard areas" means areas that are potentially subject to risk of mass movement due to a combination of geologic landslides resulting from a combination of geologic, topographic, and hydrologic factors.

X. "Low impact development" means a stormwater and land use strategy that strives to mimic natural hydrologic conditions by emphasizing the pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration.

Y. "Mitigation" means avoiding, minimizing, or compensating for adverse impacts on critical areas.

Z. "Mitigation sequence" refers to the process for mitigation which shall use one or more of the actions listed below in descending order of preference:

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

AA. "Monitoring" means the collection of data by various methods for the purpose of understanding natural systems and features, evaluating the impact of development proposals on such systems, and assessing the performance of mitigation measures imposed as conditions of development.

BB. "Monitoring and adaptive management" means the process of monitoring and improving permits, regulations, and programs to ensure the protection of critical areas.

CC. "Native growth protection easement (NGPE)" means an easement granted to the Town for the protection of native vegetation within a critical area or its associated buffer. The NGPE shall be recorded on the appropriate documents of title and filed with the King County recordings division.

DD. "No net loss of critical areas" refers to the actions taken to achieve and ensure no overall reduction in existing ecosystem functions and values or the natural systems constituting the protected critical areas. This may involve fully offsetting any unavoidable impacts to critical area functions and values pursuant to the Growth Management Act, WAC 365-196-830 'Protection of critical areas', or as amended.

EE. "Non-federally regulated wetland" means a wetland that is not jurisdictional under the federal Clean Water Act. Referred to in this chapter as "isolated wetlands," these wetlands remain regulated under state and local laws and rules, whether or not they are protected by federal law.

FF. "Ordinary high water mark" means the mark that will be found by examining the bed and banks of a stream and ascertaining where the presence and action of waters are so common and usual, and so long maintained in all ordinary years, that the soil has a character distinct from that of the abutting upland, in respect to vegetation. In any area where the ordinary high watermark cannot be found, the line of mean high water shall substitute. In braided channels and alluvial fans, the ordinary high-water mark or substitute shall be measured so as to include the entire stream feature.

GG. "Practical alternative" means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall projectpurposes, and having less impacts to critical areas.

HH. "Priority habitat" means a habitat type with unique or significant value to many species. An area identified and mapped as priority habitat has one or more of the following attributes:

1. Comparatively high fish and wildlife density;
2. Comparatively high fish and wildlife species diversity;
3. Important fish and wildlife breeding habitat;
4. Important fish and wildlife seasonal ranges;
5. Important fish and wildlife movement corridors;
6. Limited availability;
7. High vulnerability to habitat alteration; and
8. Unique or dependent species.

II. "Priority species" are fish and wildlife species requiring protective measures and/or management actions to ensure their survival. A species identified and mapped as priority species fit one or more of the following criteria:

1. State-listed candidate species;

2. Vulnerable aggregations; and

3. Species of recreational, commercial, and/or Tribal importance.

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

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

2. A qualified professional identifying a geological hazard must be a professional engineer or geologist licensed in the state of Washington.

3. A qualified professional for critical aquifer recharge areas must be a hydrologist, geologist, engineer, or other scientist with experience in preparing hydrological assessments.

KK. "Riparian habitat" means areas adjacent to aquatic systems with flowing water that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other.

LL. 'Seismic hazard area" means areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.

MM. "Steep slopes" means those slopes forty percent or steeper within a vertical elevation change of at least ten feet. A slope is defined by establishing its toe and top and is measured by averaging the inclination over at least ten feet of vertical relief. For the purpose of this definition:

1. The toe of slope is a distinct topographical break in slope that separates slopes inclined at less than forty percent from slopes forty percent or steeper. When no distinct break exists, the toe of a steep slope is the lowermost limit of the area where the ground surface drops ten feet or more vertically within a horizontal distance of twenty-five feet; and

2. The top of slope is a distinct, topographical break in slope that separates slopes inclined at less than forty percent from slopes forty percent or steeper. When no distinct break exists, the top of slope is the uppermost limit of the area where the ground surface drops ten feet or more vertically within a horizontal distance of twenty-five feet.

NN. "Town" means the Town of Beaux Arts Village, Washington, a municipal corporation in King County, existing under and by virtue of the laws of the State of Washington. Actions designated as taken by the Town are the acts of the Council acting through the Mayor, his/ her staff, or an approved designee.

OO. "Town planner" means the individual, person, or firm hired by the town to serve as the Town Planner and/or advise on planning, zoning, and land use matters. Town Planner also includes any designated agent thereof.

PP. "Wellhead Protection Area (WHPA)" means the protected surface and subsurface area surrounding a water well or wellfield supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield. The WHPA is approved or assigned by the Washington State Department of Health.

QQ. "Wellhead Protection Plan" is a proactive program developed by public water systems to prevent

contamination of groundwater used for drinking water. It is required by the Safe Drinking Water Act and is administered by the Washington State Department of Health. The plan includes:

1. A completed susceptibility assessment of each water source.
2. Delineation of wellhead protection areas with time-of-travel boundaries.
3. An inventory of potential contaminant sources within these areas.
4. Documentation of notifications to regulatory agencies and local governments.
5. Contingency plans for providing alternate drinking water sources if contamination occurs.

RR. "Wetland" means those areas that are inundated or saturated by ground or surface water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands do not include artificial wetlands intentionally created from non-wetland sites. Examples include swamps, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. Wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway, are also excluded. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate conversion of wetlands.

16.30.040 Maps and Inventories.

The following critical areas do not currently exist in the Town and are not regulated in this critical area code:

A. Wetlands;

B. Streams;

C. Flood Hazard Areas; and

D. Fish and wildlife conservation areas;

The following critical area maps are available on the town's website or upon request from the Town Clerk:

A. Geologically Hazardous Areas; and

B. WHPA and CARA Classification Map.

These maps provide only approximate boundaries of known features and are not adequate substitutes for more detailed maps and/or studies that could identify alternative locations of known features or additional critical area features not illustrated on the map.

16.30.050 Applicability, Exemptions, Exceptions, and Allowed Uses

A Applicability.

1. The provisions of this chapter shall apply to all lands, all land uses and development activity, and all structures and facilities in the Town that are outside the shoreline jurisdiction (>200 feet from the shoreline), 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 or leases land within the town. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purpose and requirements of this chapter.

a. The Town's *Shoreline Master Program, Appendix E – Critical Area Regulations for Shoreline Jurisdiction* shall regulate all lands, all land uses and development activity, and all structures and facilities within 200 feet of Lake Washington, 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 or leases land within this area. No person, company, agency, or applicant shall alter a critical area or buffer inside the shoreline jurisdiction except as consistent with the purpose and requirements of this document.

2. The Town shall not approve any development proposal 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 assuring compliance with the requirements of this chapter.

   a. Development proposals include those that require any of the following:

      i. Building Permit;
      ii. Grading Permit;
      iii. Shoreline Substantial Development Permit;
      iv. Shoreline Conditional Use Permit;
      v. Shoreline Variance;
      vi. Right-of-Way Use Permit;
      vii. Commercial Right-of-Way Use Permit
      viii. Conditional Use Permit;
      ix. Variance;
      x. Subdivision;
      xi. Short Subdivision;
      xii. Lot Line Adjustment;
      xiii. Lot Consolidation;
      xiv. Tree Removal Permit; or
      xv. Any subsequently adopted permits or required approvals not expressly exempted from these regulations.

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

B **Exemptions.** The following developments, activities, and associated uses shall be exempt from the provisions of this chapter, provided they are consistent with the provisions of other local, state, and federal laws and requirements:

1. **Emergency activities that threaten public health, safety, welfare, or risk of damage to private property** and that require remedial or preventative action in a time frame too short to allow for compliance with the requirements of this chapter.

   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 and/or its buffer. After the emergency, the person or agency undertaking the action shall fully restore and/or mitigate any impacts to the critical area and buffers resulting from the emergency action in accordance with the approved critical area report and mitigation plan.

The restoration and/or mitigation must be initiated within one year of the date of the emergency and completed in a timely manner.

2. **Residential building permits** are exempt from the requirements of this chapter when the development proposal involves:

    a. Structural modification of, addition to, or replacement of an existing residential structure or construction of a new residential structure where construction and associated disturbance are clearly equal to or greater than two hundred twenty-five feet from the nearest critical area as verified by the town planner; or

    b. **Structural modification of, addition to, or replacement of an existing residential structure lawfully established prior to the effective date** of the ordinance codified in this title **that does not meet the building setback or critical area buffer requirements may be approved** only **if the** modification, replacement or related **activity is located away from the critical area and does not increase the existing footprint within the critical area buffer or building setback by more than 1,000 square feet**.

3. **Utility related projects and activities within the right-of-way**.

    a. Normal operation, maintenance and/or repair of existing utilities, public or private roads, or drainage systems, including routine vegetation management activities when performed in accordance with approved best management practices, if the activity does not increase risk to life or property as a result of the proposed operation, maintenance or repair.

    b. 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 town-authorized private roadway, except those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased storm water, subject to the following:

        i. Critical area and/or buffer widths shall be increased, where possible, equal to the width of the right-of-way improvement, including disturbed areas; and

        ii. Retention and replanting of native vegetation shall occur wherever possible along the right-of-way improvement and resulting disturbance.

    c. Minor utility projects which have minor or short-term impacts to critical areas, as determined by the Town Planner in accordance with the criteria below, and which do not significantly impact the functions and values of a critical area(s); provided, that such projects are constructed with best management practices and additional restoration measures are provided. Such allowed minor utility projects shall meet the following criteria:

i. The project does not result in the transport of sediment nor increase storm water runoff.

ii. There is no practical alternative to the proposed activity with less impacts on critical areas and all attempts have been made to first avoid impacts, minimize impacts, and lastly mitigate unavoidable impacts.

iii. The activity involves the placement of a utility pole, street sign, anchor, vault, or other small components of a utility facility;

iv. The activity involves disturbance of an area less than two-hundred square feet;

v. The activity will not reduce the existing functions and values of the affected critical areas;and

vi. Unavoidable impacts will be mitigated pursuant to an approved mitigation plan.

C **Exceptions.** The proponent of the activity shall submit a written request for an exception to the Town Planner that describes the proposed activity and exception that applies. Depending on the requested exemption, the Town Planner (for administrative decisions) or hearing examiner (for reasonable use exceptions) shall review the exception requested to verify it complies with this chapter and approve or deny the exception.

1. **Public Agency or Utility** Exception. If the application of this chapter would prohibit a development proposal by a public agency or public utility that is essential to its ability to provide service, the agency or utility may apply for an exception pursuant to this section. After holding a public hearing pursuant to Chapter 14.05 BAVMC , Permit Processing, the hearing examiner may approve the exception if the hearing examiner finds that:

    a. There is no other feasible alternative to the proposed development with less impact on the critical areas, based on the demonstration by the applicant of the following factors:

        i. The applicant has considered all possible construction techniques based on available technology that are feasible for the proposed project and eliminated any that would result in unreasonable risk of impact to the critical area; and

        ii. The applicant has considered all available alignments within the range of potential alignments that meet the project purpose and for which operating rights are available.

    b. The proposal minimizes and mitigates unavoidable impacts to critical areas and/or critical area buffers. Any decision by the hearing examiner is final unless appealed.

2. **Reasonable Use Exception.** If the application of this chapter would deny all reasonable use of the property, development may be allowed which is consistent with the general purpose of this chapter and the public interest; provided, after a public hearing, the hearing examiner finds (to the extent consistent with the constitutional rights of the applicant) that:

    a. This chapter would otherwise deny all reasonable use of the property;

    b. There is no other reasonable use consistent with the underlying zoning of the property that has less impact on the critical area and/or associated buffer;

    c. The proposed development does not pose an unreasonable threat to public health,

safety or welfare on or off the property;

d. Any alteration is the minimum necessary to allow for reasonable use of the property such that the maximum amount of lot area that may be disturbed by structure placement and all land alteration associated with the proposed development activity, including but not limited to land surface modification, utility installation, and installation of decks, driveways, paved areas, and landscaping, does not exceed the following limits:

   i. The location of allowable disturbance shall be that which will have the least impact on the critical area and the critical area buffer given the characteristics and context of the site, critical area, and critical area buffer.

   ii. The maximum amount of disturbance shall be limited to building footprints, the minimum walkways and driveways needed to access the property, associated utilities, and a 10-foot buffer around the building footprint.

   iii. If the subject property contains 6,000 square feet of area or less, the maximum amount of disturbance shall not exceed 50% of the site.

   iv. If the subject property contains more than 6,000 square feet or less than 30,000 square feet of area, the maximum amount of disturbance shall not exceed 3,000 square feet.

   v. For a subject property containing 30,000 square feet of area or more, the maximum amount of disturbance shall be between 3,000 square feet and 10 percent of the lot area, to be determined by the town on a case-by-case basis.

e. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant after the effective date of the ordinance codified in this chapter or its predecessor; and

f. The applicant may only apply for a reasonable use exception under this subsection if the applicant has also applied for a variance pursuant to Chapter 18.10.170 BAVMC, Variances.

3. **Innovative Development Design.** An applicant may request approval of an innovative design that addresses buffer treatment in a manner that deviates from the standards for critical area buffers contained in this chapter under the following circumstances:

   a Where the applicant is proposing to redevelop a previously developed site on which existing lawfully established structures or impervious surface(s) encroach into the buffers otherwise required by this chapter, the Town Planner may reduce the required buffer to the boundary or boundaries of the lawfully established existing structures or impervious surface on the project property; provided the Town Planner finds that:

      i. Within the reduced buffer area, the applicant will use innovative design(s) to improve the condition of the buffer consistent with the standards for the applicable critical area(s) set forth in this chapter; and

      ii. The applicant will provide compensatory mitigation (on the same project site) that provides functions and values equivalent to those that would have been provided had the project conformed to the standard buffer set forth in this chapter; and

iii. The innovative design will not be materially detrimental to the public health, safety or welfare or injurious to other properties or improvements located outside of the subject property.

b The applicant shall prepare a critical areas report consistent with BAVMC 16.30.070 demonstrating the innovative development design complies with the standards in the applicable section(s) of the Town's critical area code. All applicants for innovative designs are encouraged to consider measures prescribed in guidance documents, such as watershed conservation plans or other similar conservation plans, and low impact storm water management strategies that address wetlands, fish and wildlife habitat conservation areas or buffer protection consistent with this section.

c Where an applicant proposes to reduce the buffers set forth in this chapter using innovative development design under this section, the other provisions of this chapter, including provisions regarding buffer reductions or modifications, can be altered to meet the intent of this section if it can be shown to achieve no net loss of ecological function.

D. Applicability of other regulations; 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 (for example, shoreline substantial development permits, HPA permits, Army Corps of Engineers Section 404 permits, NPDES permits, etc.).The applicant is responsible for complying with these requirements, apart from the process established in this chapter.

16.30.060 Nonconforming Uses.

A. Purpose. The purpose of this section establishes the terms and conditions for continuing nonconforming uses, structures and lots which were lawfully established prior to the effective date of the ordinance codified in this title.

B. Standards.

1. A legally established nonconforming lot, use or structure shall be deemed a legal nonconforming lot, use or structure and may be continued, transferred or conveyed and/or used as if conforming.

2. The burden of establishing that any nonconforming lot, use or structure lawfully existed as of the effective date of the ordinance codified in this chapter shall, in all cases, rest with the owner and not with the Town.

B. Maintenance and Repair of Nonconforming Structures. Normal maintenance and incidental repair of legal nonconforming structures shall be permitted; provided, that it complies with all the sections of this chapter and other pertinent chapters of the municipal code.

C. Reconstruction. Reconstruction, restoration or repair of a legal nonconforming structure damaged by fire, flood, earthquake or other disasters shall be permitted; provided, that **such reconstruction shall not result in the expansion of the nonconforming structure**.

D. Expansion of Nonconforming Use or Structure. No legal nonconforming use or structure may be expanded, enlarged, or extended in any way (including extension of hours of operation) unless such modification is in full compliance with this chapter or the terms and conditions of approved permits pursuant to this chapter.

16.30.070 Critical Area Report (CAR).

A. Report Required. When sufficient information to evaluate a proposal is not available, the Town Planner or their designee shall notify the applicant that a critical area report (CAR) is required. The Town may retain an independent qualified professional(s), at the applicant's expense, to verify that a CAR is necessary. This professional(s) may also be used to review the report itself, but they may not be affiliated with the report author in any way.

   Critical area reports shall be written by a qualified professional, as defined in the definitions section of this chapter. A CAR shall include a site analysis, a discussion of potential impacts, and specific mitigation measures designed to mitigate unavoidable impacts. A monitoring program may be required to evaluate the effectiveness of mitigation measures. The report(s) may be part of an expanded environmental checklist or included in an environmental impact statement.

B. Timing and Use of Reports. When an applicant submits an application for any development proposal, it shall indicate whether any critical areas or buffers are located on or adjacent to the site. If a critical area report is required, the Town may retain consultants, at the applicant's expense, to assist in review of studies that are outside the range of staff expertise. The presence of critical areas may require additional time for review.

C. General Critical Areas Report Requirements. A critical area report shall include four components: (a) a site analysis, (b) mitigation sequencing analysis, (c) an impact analysis, and (d) proposed mitigation measures. More or less detail may be required for each component depending on the size of the project, and potential impacts. The Town Planner may waive the requirement of any component when adequate information is otherwise available. All reports shall contain the following information:

   1. Map of the project area at a one-to-twenty or larger scale including:

      a. Reference streets and property lines;

      b. Existing and proposed easements, rights-of-way, roads and structures;

      c. Contours, or recent LIDAR/ GIS data, of intervals which best reference the critical area in question, as determined by the Town Planner who may, after initial review, request submission of a topographic survey provided by a professional surveyor;

      d. Hydrology. Show surface water features both on and adjacent to the site; show any water movement into, through, and off the project area; show stream and wetlands classifications; show seeps, springs, and saturated soil zones; and label wetlands not found on the Town inventory maps as uninventoried; and

      e. Location of buffer and building setback lines (if required or proposed).

   2. Written report detailing:

      a. How, when, and by whom the report was performed (including methodology and techniques);

      b. Weather conditions during and prior to any field studies if relevant to conclusions and recommendations;

      c. Description of the project site and its existing condition;

      d. The total acreage of the site in critical area(s) and associated buffers;

e. The proposed action and potential environmental impact of the proposed project to the critical area(s) ecological functions and values;

f. A mitigation sequencing analysis; and

g. A mitigation plan detailing the mitigation measures proposed to avoid or lessen the project impacts (permanently and during construction), including where applicable and as allowed by the current zoning code:

i. Alternative building locations on the property;

ii. Adjustments to the project footprint and orientation;

iii. Modification of setbacks, where feasible, as a first option before encroaching into critical areas or their buffers;

iv. Multi-story design or alternate building design.

D. Additional Geologically Hazardous Area Report Requirements. For geologically hazardous areas, reports shall include the following information:

1. On the map:

a. All geologically hazardous areas within or adjacent to the project area or that have potential to be affected by the proposal;

b. The top and toe of slope

i. Tops and toes of slope shall be located and flagged in the field and are subject to Town review;

c. The location of any existing or proposed trails or utility corridors; and

d. All drainage plans for discharge of storm water runoff from developed areas.

2. In the report:

a. A geological description of the site;

b. A discussion of any evidence of existing instability, significant erosion or seepage on the slope;

c. A discussion of the depth of weathered or loosened soil on the site and the nature of the weathered and underlying basement soils;

d. An estimate of load capacity, including surface water and groundwater conditions, public and private sewage disposal system, fill and excavations, and all structural development;

e. Recommendations for building limitations, structural foundations, and an estimate of foundation settlement;

f. A complete discussion of the potential impacts of seismic activity on the site;

g. Recommendations for management of storm water for any development above the top of slope;

h. A description of the nature and extent of any colluvium or slope debris near the toe of slope inthe vicinity of any proposed development; and

i. Recommendations for appropriate building setbacks, grading restrictions, and vegetation management and erosion control for any proposed development in the vicinity of the geologically hazardous areas.

16.30.080 Protection and Mitigation Measures.

The Town may use the following methods and mechanisms to accomplish the intentions of the critical area code:

A. Native Growth Protection Easements. A native growth protection easement (NGPE) is an easement granted to the Town for the protection of a critical area and/or its associated buffer. NGPEs shall be required as specified in these rules and shall be recorded on all subdivisions, short subdivisions, and final development permits and all documents of title with the county recorder at the applicant's expense. The required language is as follows:

> *"Dedication of a Native Growth Protection Easement (NGPE) conveys to the public a beneficial interest in the land within the easement. This interest includes the preservation of existing vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, visual and aural buffering, and protection of plant and animal habitat. The NGPE imposes upon all present and future owners and occupiers of land subject to the easement the obligation, enforceable on behalf of the public of the Town of Beaux Arts Village, to leave undisturbed all trees and other vegetation within the easement. The vegetation in the easement may not be cut, pruned, covered by fill, removed, or damaged without express permission, obtained in writing, from the Town of Beaux Arts Village.*
>
> *Before beginning and during the course of any grading, building construction or other development activity on a lot or development site subject to the NGPE, the common boundary between the easement and the area of development activity must be fenced or otherwise marked to the satisfaction of the Town of Beaux Arts Village.*

B. Critical Area Tracts. Critical area tracts are legally created nonbuilding lots containing critical areas and their buffers that shall remain undeveloped pursuant to the critical areas regulations. Separate critical area tracts are an integral part of the lot in which they are created. They are not intended for sale, lease or transfer and shall be incorporated in the area of the parent lot for purposes of subdivision and method of allocation and minimum lot size. The following development proposals shall identify such areas as separate tracts:

1. Subdivisions.
2. Short subdivisions.

Responsibility for maintaining tracts shall be held by a homeowners' association, adjacent lot owners, the permit applicant or designee, or other appropriate entity as approved by the Town.

The following note shall appear on the face of all subdivisions and short subdivisions and shall be recorded on the title for all affected lots:

> *"NOTE: All lots adjoining a Critical Area Tract(s) are jointly and severally responsible for the maintenance and protection of the tract(s). Vegetation in the tract(s) may not be cut, pruned, covered by fill, removed, or damaged without express permission, obtained in writing, from the Town of Beaux Arts Village."*

C. Building Setback Line (BSBL). Unless otherwise specified, **a minimum BSBL of ten feet** is required from the edge of any separate tract, buffer or NGPE, whichever is greatest.

D. Marking and/or Fencing.

1. Temporary Marking. The outer perimeter of the critical area or buffer and the limits of those areas to be disturbed pursuant to an approved permit shall be marked in the field so no unauthorized intrusion will occur. This temporary marking is subject to inspection by the Town **prior to** commencement of permitted activities and shall be maintained throughout construction. Temporary markings shall not be removed until directed by the Town, or until permanent signs and/or fencing, if required, are in place.

E. Monitoring. The Town will require monitoring in development proposals where alteration of critical areas or their buffers are approved. Such monitoring shall be an element of the required mitigation plan and shall document and track impacts of development on the functions and values of critical areas, and the success and failure of mitigation requirements. Monitoring may include, but is not limited to:

1. Establishing vegetation transects or plots to track changes in plant species composition over time;
2. Using aerial or other photography to evaluate vegetation community response;
3. Sampling surface waters and groundwaters to determine pollutant loading;
4. Measuring base flow rates and storm water runoff to model and evaluate water quantity predictions;
5. Measuring sedimentation rates; and
6. Sampling fish and wildlife populations to determine habitat utilization, species abundance, and diversity.

The property owner will be required to submit monitoring data and reports to the Town on an annual basis or other schedule as required by the Town Planner. Monitoring shall continue for a period of five years or for a period necessary to ensure the mitigation performance standards have been met.

When monitoring reveals a significant deviation from predicted impacts or a failure of mitigation measures, the applicant shall be responsible for appropriate corrective action. Contingency plans developed as part of the original mitigation plan shall apply but may be modified to address a specific deviation or failure. Contingency plan measures shall be subject to monitoring requirements to the same extent as the original mitigation measures.

As a condition of approval for any project for which monitoring is required pursuant to this section, the applicant shall be required to record the monitoring requirements on a form approved by the Town so that subsequent purchasers of the property subject to the monitoring requirements are bound by and aware of the requirements.

F. Fees. The applicant is responsible for the initiation, preparation, submission, and expense of all required reports, assessment(s), studies, plans, reconnaissance(s), peer review by qualified consultants, and other work prepared in support of, or necessary for, the Town's critical areas review and processing.

G. Performance Standards. Subdivisions and short subdivisions of land in critical areas and associated buffers (except the critical aquifer recharge area), are subject to the following:

1. Land that is wholly within a critical area or associated buffer may not be subdivided.

2. Land that is partially within a critical area or associated buffer area may be subdivided; provided that an accessible and contiguous portion of each new lot is:

    a. Located outside the critical area and buffer; and

    b. Large enough to accommodate the intended use.

3. Accessory roads and utilities serving the proposed subdivision may be permitted within the critical area and associated buffer only if the Town determines that no other feasible alternative exists and when consistent with this chapter.

16.30.090 Wetland Development Standards.

Please refer to BAMVC 16.15 – Wetlands Protection for more information.

16.30.100 Stream Development Standards.

There are no streams in the Town.

16.30.110 Fish and Wildlife Habitat Conservation Areas Standards.

There are no fish and wildlife habitat conservation areas in the Town.

16.30.120 Flood Hazard Area Development Standards.

Please refer to BAMVC 16.20 – Special Flood Hazard Areas for more information.

16.30.130 Geologically Hazardous Areas.

A. Designation. Geologically hazardous areas include areas susceptible to erosion, sliding, earthquakes, or other geological events. They pose a threat to the health and safety of citizens when incompatible development is sited in areas of significant hazard. Such incompatible development may not only place itself at risk but may also increase the hazard to surrounding development and uses. Areas susceptible to one or more of the following types of hazards shall be designated as a geologically hazardous area:

    1. Erosion hazard;

    2. Landslide hazard;

    3. Seismic hazard; and

    4. Other geological events such as tsunamis, mass wasting, debris flows, rock falls, and differential settlement.

B. Designation of Specific Geologic Hazard Areas.

    1. Erosion Hazard Areas. Erosion hazard areas are at least those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having "severe" or "very severe" rill and inter-rill erosion hazard.

    2. Landslide Hazard Areas. Landslide hazard areas are areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient) slope aspect, structure, hydrology, or other factors. Examples of these may include, but are not limited to, the following:

a. Areas of historic failure, such as:

i. Areas delineated by the U.S. Department of Agriculture's Natural Resources Conservation Service as having "severe" limitation for building site development; or

ii. Area designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the U.S Geological Survey or Department of Natural Resources

b. Areas with all three of the following characteristics:

i. Slopes steeper than fifteen percent; and

ii. Hillsides intersecting geologic contacts with a relatively permeable sediment overlaying a relatively impermeable sediment or bedrock; and

iii. Springs or groundwater seepage;

c. Areas that have shown movement during the Holocene epoch (from ten thousand years ago to the present) or that are underlain or covered by mass wastage debris of that epoch;

d. Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint system, and faults) in subsurface materials;

e. Slopes having a gradient steeper than eighty percent subject to rock fall during seismic shaking;

f. Areas potentially unstable because of rapid stream incision, stream bank erosion, and undercutting by wave action;

g. Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and

h. Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of consolidated rock. A slope delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief.

3. Seismic Hazard Areas. Seismic hazard areas are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, or surface failure. The strength of ground shaking is primarily affected by:

a. The magnitude of an earthquake;

b. The distance from the source of an earthquake;

c. The type and thickness of geologic materials at the surface; and

d. The type of subsurface geological structure.

C. Mapping of Geologically Hazardous Areas.

1. The approximate location and extent of geologically hazardous areas are shown on the adopted critical areas maps which include:

a. U.S. Geological Survey landslide hazard, seismic hazard, and volcanic hazard maps;

b. Washington Department of Natural Resources seismic hazard maps of Western Washington (as they become available) including those on the Washington Geological Information Portal;

c. Washington Department of Natural Resources slope stability maps (as they become available);

d. Federal Emergency Management Administration flood insurance rate maps; and

e. Locally adopted maps.

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

D. Best Available Science. Any approval of alterations of impacts to a geologically hazardous area or any associated buffers shall be supported by the best available science.

E. Native Growth Protection Easement/Critical Area Tract. As part of the implementation of approved development applications and alterations, geologically hazardous areas and any associated buffers that remain undeveloped pursuant to the critical areas regulations, in accordance with BAVMC 16.30.080, Protection and Mitigation Measures, shall be designated as native growth protection easements (NGPEs). When the subjectdevelopment is a formal subdivision (plat) or a short subdivision (short plat), the geologically hazardous area(s) and any buffers shall be placed in a critical areas tract instead of an NGPE, as described in BAVMC 16.30.080, Protection and Mitigation Measures.

F. **Allowed Activities.** The following activities are allowed in geologically hazardous areas and do not require submission of a critical areas report:

1. Erosion and Landslide Hazard Areas. Except as otherwise provided for in this chapter, only those activities approved and permitted consistent with an approved critical areas report (CAR) in accordance with thischapter shall be allowed. NOTE: A soils or geotechnical study that meets the same criteria as a CAR may be used.

2. Seismic Hazard Areas. The following activities are allowed within seismic hazard areas:

a. Construction of new buildings and/or additions will be reviewed on a case-by-case basis; and

b. Installation of fences.

3. Other Hazard Areas. The following activities are allowed within other geological hazard areas:

a. Construction of new buildings and/or additions will be reviewed on a case-by-case basis; and

b. Installation of fences.

G. Performance Standards – General Requirements.

1. Alterations of geologically hazardous areas or associated buffers may only occur for activities that:

a. Will not increase the threat of the geological hazard to adjacent properties beyond predevelopment conditions;

b. Will not adversely impact other critical areas;

c. Are designed so that the hazard to the project is eliminated or mitigated to a level equal to or less than predevelopment conditions; and

d. Are certified as safe as designed and under anticipated conditions by a qualified geotechnical engineer or geologist, licensed in the state of Washington.

H. Performance Standards – Specific Hazards.

1. Erosion and Landslide Hazard Areas. Activities on sites containing erosion or landslide hazards shall meet the following requirements:

a. Buffers Required. A buffer shall be established for all edges of erosion or landslide hazard areas.The size of the buffer shall be determined by the Town to eliminate or minimize the risk of propertydamage, death, or injury resulting from erosion and landslides caused in whole or part by thedevelopment, based upon review of and concurrence with a critical areas report prepared by a qualified professional, or a geotechnical engineering report that meets the same criteria.

b. Minimum Buffers. The minimum buffer shall be equal to the height of the slope or fifty feet,whichever is greater.

c. Buffer Reduction. The buffer may be reduced to a minimum of ten feet when a qualified professional demonstrates to the Town Planner's satisfaction that the reduction will adequately protect the proposed development, adjacent developments and uses, and the subject critical area.

d. Increased Buffer. The buffer may be increased when the Town Planner determines a larger buffer is necessary to prevent risk of damage to proposed and existing development.

e. Alterations. Alterations of an erosion or landslide hazard area and/or buffer may only occur for activities for which a geotechnical analysis is submitted and certifies that:

i. The development will not increase surface water discharge or sedimentation to adjacent properties beyond the predevelopment condition;

ii. The development will not decrease slope stability on adjacent properties; and

iii. Such alteration will not adversely impact other critical areas.

I. Design Standards. Development within an erosion or landslide hazard area and/or buffer shall be designed to meet the following basic requirements unless it can be demonstrated that an alternative design that deviates from one or more of these standards provides greater long-term slope stability while meeting all other provisions of this chapter. The requirements for long-term slope stability shall exclude designs that require regular and periodic maintenance to maintain their level of function. The basic development design standards are:

1. The proposed development shall not decrease the factor of safety for landslide occurrences below the limits of one and one-half for static conditions and one and two-tenths for dynamic conditions. Analysis of dynamic conditions shall be based on a minimum horizontal acceleration as established by the current version of the International Building Code;

2. Structures and improvements shall be clustered to avoid geologically hazardous areas and other critical areas;

3. Structures and improvements shall minimize alterations to the natural contours of the slope and foundations shall be tiered where possible to conform to existing topography;

4. Structures and improvements shall be located to preserve the most critical portion of the site

and its natural landforms and vegetation;

5. The proposed development shall not result in greater risk or a need for increased buffers on neighboring properties;

6. **The use of retaining walls that allow the maintenance of existing natural slopes is preferred over graded artificial slopes;** and

7. Development shall be designed to minimize impervious coverage.

J. Vegetation. Vegetation shall be retained unless it can be shown that the removal will not increase the geologic hazards, and a **vegetation management plan** is submitted with the request.

K. Seasonal Restriction. Clearing shall be allowed only from May 1st to October 1st of each year; provided that the Town may extend or shorten the dry season on a case-by-case basis depending on the actual weather conditions, except that timber harvest, not including brush clearing or stump removal, may be allowed pursuant to an approved forest practices permit issued by the Washington State Department of Natural Resources.

L. Utility Lines and Pipes. Utility lines and pipes shall be permitted in the erosion and landslide hazard areas only when the applicant demonstrates that no other practical alternative is available. The line or pipe shall belocated above ground and be properly anchored and/or designed so that it will continue to function in the event of an underlying slide. Storm water conveyance shall be allowed only through a high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior.

M. Point Discharge. Point discharges from surface water facilities and roof drains onto or upstream from an erosion or landslide hazard area are prohibited except as follows:

1. Conveyance via continuous storm pipe downslope to a point where there are no erosion hazard areas downstream from the discharge; and

2. Access roads and utilities may be permitted within the erosion or landslide hazard area and associated buffers if the Town determines that no other feasible alternative exists.

N. Subdivisions. The division of land in erosion or landslide hazard areas and associated buffers is subject to provisions established for all critical areas in BAVMC 16.30.080, Protection and Mitigation Measures.

16.30.140 Critical Aquifer Recharge Areas (CARAs).

A. Purpose.

1. The purpose of this section is to establish a CARA and groundwater protection standards to protect the Town's aquifer from degradation and depletion caused by land use and development activities. The intent is to minimize loss of recharge quantity, to maintain the protection of supply wells for public drinking water, and to maintain the quality of groundwater through the prevention of contamination.

2. Per WAC 365-190-030, critical aquifer recharge areas (CARAs) are areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge. Pollution prevention and mitigation is further regulated by the Washington State Department of Health and the Washington State Department

of Ecology.

3. Per WAC 365-190-030, wellhead protection areas (WHPA) are protective areas associated with public drinking water sources established by water systems and approved or assigned by the Washington State Department of Health.

B. Designation.

1. This section applies to activities identified in BAVMC 16.30.140(D), Regulated Activities, that fall within the critical aquifer recharge area (CARA) or wellhead protection area (WHPA) identified in BAVMC 16.30.140(C).

2. The Town WHPA & CARA Classification Map may be updated as new information becomes available or through a newly initiated and approved hydrogeologic study.

3. A hydrogeologic study based on best available science recommendations must be performed or approved by the Town to add or remove areas to the WHPA & CARA Classification Map.

4. Generally, adoption or amendment of the WHPA & CARA Classification Map, as it relates to the entire Town, shall occur as part of the Critical Areas Code state mandated update.

C. Mapping.

1. The Washington State Department of Health and Chapter 246-290 WAC, requires that public water supply wells have wellhead protection zones delineated based on the time of travel of groundwater to a public drinking water supply well. The relationship between the wellhead protection areas (WHPAs) and the CARA classes are established in Table 16.30.140(C)(1) below:

Table 16.30.140(C)(1) – CARA Classification Table

<table>
<tr><th colspan="2" rowspan="2">Current Classification</th><th colspan="3">Recharge Potential (Pollution Prevention)</th></tr>
<tr><th>High</th><th>Medium</th><th>Low</th></tr>
<tr><td rowspan="3">WHPA Time of Travel (Groundwater Model)</td><td>1-Year
5-Year</td><td colspan="3">Class 1</td></tr>
<tr><td>10-Year</td><td colspan="3">Class 2</td></tr>
<tr><td>WHPA and WHPA Buffer (outside 10-Year radius)</td><td colspan="3">Class 3</td></tr>
</table>

2. Should a private party wish to request a change to the WHPA & CARA Classification Map of one or more parcels, a hydrogeologic critical areas assessment is required along with an application for code amendment. The assessment must include sufficient geologic and/or groundwater flow information to justify a change in CARA classification. If the WHPA

time of travel component of Table 16.30.140(C)(1) is challenged, information must be submitted in a compatible format that can be incorporated into the Town's existing groundwater flow model. If the recharge potential component of Table 16.30.140(C)(1) is challenged, information must include sufficient geologic characterization across the entire site. Requests to change the WHPA & CARA Classification Map will be evaluated by the Town at the expense of the private party. The Town's evaluation may entail further model runs or hydrogeologic analysis. If the challenge is successful, the hydrogeologic critical areas assessment will be incorporated into the Town's WHPA model and/or surface geologic mapping and an updated WHPA & CARA Classification Map shall be adopted by Town Council as part of the code amendment process. It is understood that CARA classification updates have limitations associated with modeling and lithology; therefore, submittal does not guarantee a change in CARA classification or that the desired outcome will be achieved.

3. The WHPA and CARA classifications for the Town are illustrated on the WHPA & CARA Classification Map which is posted on the Town's website and made available upon request from the Town Clerk. The map is derived from information, analyses, and figures included in the following documents:

    a. *Classification and Identification of Critical Areas Within Beaux Arts Village, Washington* (Shannon & Wilson, Inc. November 1992); and

    b. *Wellhead Protection Plan* (Shannon & Wilson, Inc. January 1995).

D. Regulated Activities

Table 16.30.140(D), CARA Prohibited and Restricted Uses, establishes land uses and related activities that are prohibited and restricted within a specific CARA classification and applies to any new use or activity proposed after **January 1, 2026**. New land uses or activities that pose a hazard to the Town's groundwater resources, resulting from storing, handling, treating, using, producing, recycling, or disposing of hazardous materials or other deleterious substances, are prohibited in Critical Aquifer Recharge Areas 1-3, assuming no hydraulic connection to Lake Washington. Uses and activities lawfully established prior to January 1, 2026, shall be deemed legal nonconforming uses subject to Chapter 18.10 BAVMC, and may continue to operate within the scope of the existing use. Deleterious substances are chemicals or microbial substances that have the potential to pose a significant groundwater hazard, or for which monitoring or treatment is required under Chapter 246-290 WAC.

Table 16.30.140(D) – CARA Prohibited and Restricted Uses

Use Activity	CARA Restriction
All mineral resource uses	Mining, processing and reclamation of any type below the water table or the upper surface of the saturated groundwater is prohibited in Class 1 and 2 CARA. In Class 3 CARA, these activities will be subject to Town staff review.
Cemetery and/or nonaccessory columbarium	Cemeteries are prohibited in the Class 1 and 2 CARA. Best management practices (BMPs) and integrated pest management (IPM) are required for cemeteries in Class 3 CARA.
Utility facility, major	Hazardous liquid transmission pipelines as defined in Chapter 81.88 RCW are prohibited in Class 1 and 2 CARA and are allowed in Class 3 CARA.
Golf – driving range	Golf courses and golf driving ranges are prohibited in the Class 1 and 2 CARA. BMPs and IPM are required for these uses in Class 3 CARA.
Hazardous waste storage and/or treatment facilities and/or processing, or disposal of radioactive substances	Hazardous waste storage and/or treatment facilities, as defined by Chapter 173-303 WAC are prohibited in Class 1, 2, and 3 CARA. Storage, processing, or disposal of radioactive substances as defined in RCW 70.99.020 is prohibited in Class 1, 2, and 3CARA, except for medical equipment and/or material and medical waste, defined by RCW 70A.390.020, that is held for proper disposal. Aboveground storage tanks for hazardous substances or hazardous wastes with primary and secondary containment area(s) and spill protection plan are allowed in Class 1, 2, and 3 CARA, subject to compliance with Federal, State, County, and Town standards.
All automotive uses	Fuel dispensing including new gas stations are prohibited in Class 1 and 2 CARA. In all CARA vehicle repair and servicing must be conducted indoors over impermeable pads. For underground storage tanks (UST) with hazardous substances applicants are required to demonstrate to the Town that the facility complies with Federal and State laws. No dry wells are allowed. Wrecking yards are prohibited in Class 1, 2, and3CARA. Vehicle towing yards that store vehicles on permeable surfaces are prohibited.

Commented [SS1]: Leaving this in here because our WHPA/ CARA extends outside the Town's boundary.

Automotive wrecking or dismantling yard	In all CARA classes, vehicle repair and servicing must be conducted indoors over impermeable pads. For UST with hazardous substances applicants are required to demonstrate to the Town that the facility complies with Federal and State laws. No dry wells are allowed. Wrecking yards are prohibited in Class 1, 2, and 3CARA.
Dry cleaning and pressing shop	Dry cleaning using chlorinated solvents or using solvent perchloroethylene is prohibited in Class 1, 2, and 3 CARA.
Large on-site sewage systems, as defined in Chapter 246-272A WAC	Prohibited in Class 1, 2 and 3 CARA.
Solid waste landfills (WAC 173-304-100)	Prohibited in Class 1, 2 and 3 CARA.
Solid waste transfer stations (WAC 173-304-100)	Prohibited in Class 1, 2 and 3 CARA.
Petroleum refinement processes, including any related reprocessing or storage	Prohibited in Class 1, 2 and 3 CARA.
Bulk storage facilities where flammable or combustible liquids, solids, or gels are received by tank vessel, pipeline, railroad tank car or tank vehicle, and are stored or blended in bulk for the purpose of distributing such substances by tank vessel, pipeline, railroad tank car, tank vehicle, portable tank, or container.	Prohibited in Class 1, 2 and 3 CARA.

Chemical manufacturing, including but not limited to organic and inorganic chemicals, plastics and resins, pharmaceuticals, cleaning compounds, paints and lacquers, and agricultural chemicals	Prohibited in Class 1, 2 and 3 CARA.
Primary and secondary metal industries that manufacture, produce, smelt, or refine ferrous and nonferrous metals from molten materials	Prohibited in Class 1, 2 and 3 CARA.
Wood preserving and wood products preserving	Prohibited in Class 1 and 2 CARA.
Mobile fleet fueling operations	Prohibited in Class 1, 2 and 3 CARA. "Mobile fleet fueling" means the practice of filling fuel tanks of vehicles from tank vehicles. Mobile fleet fueling is also known as wet fueling and wet hosing. Mobile fleet fueling does not include fueling at construction sites.
Refer to the Town's adopted Surface Water Management Codes for regulations related to underground injection wells	Refer to the Town's adopted Surface Water Management Codes for regulations related to underground injection wells.
Permanent dewatering of the aquifer when done as part of remediation action that is approved by the Department of Ecology	Prohibited in Class 1, 2, and 3 CARA.
Irrigation and infiltration of greywater	Prohibited in Class 1,2 and 3 CARA.
Reclaimed or recycled water use with the exception of uses that discharge to the sanitary sewer	Prohibited in Class 1, 2, and 3 CARA.

Hydrocarbon extraction	Prohibited in Class 1,2 and 3 CARA.
Metal recycling facilities with outdoor storage and handling activities	Prohibited in Class 1, 2 and 3 CARA.
Other land uses and activities that the Town determines would pose a significant groundwater hazard to the Town's groundwater supply	Prohibited in Class 1, 2, and 3 CARA.

E. Additional Development Standards for CARAs

1. The intent of this section is to establish additional development standards for sites within a CARA area to preserve water quality and supply by preventing contamination and adverse impacts from land use activities and development.
2. The following are standards for development or redevelopment in a CARA:
    a. The proposed activity may not cause contaminants to enter a wellhead protection area and the proposed activity will not adversely affect the recharging of the aquifer.
    b. Remediation of existing subsurface contamination must be completed and the site issued a "No Further Action Order" by Ecology (or equivalent) before a certificate of occupancy is issued.
    c. The activity may not adversely impact the quality, direction, flow, or volume of groundwater or changes in the infiltration/recharge rate.
    d. Implement best management practices (BMPs) according to groundwater quality standards for CARA per Washington State Department of Health Groundwater Quality Protection Standards, and groundwater quantity standards and requirements for infiltration in Chapter 13.15 BAVMC, Stormwater Management.
    e. Temporary construction dewatering impacts on the surrounding environment must be minimized; the following potential impacts must be evaluated and analysis provided to the Town when proposing dewatering:
        i. Geotechnical impacts like ground settlement, which can cause damage or distress to aboveground structures.
        ii. Subsurface contamination spread, which can occur when dewatering alters the flow and/or direction of groundwater, causing areas of contamination to be redirected, thereby potentially increasing the area of contamination.
        iii. Groundwater often feeds surrounding surface water features, such as rivers,

wetlands, and spring. Removing or displacing groundwater would have a direct impact on these areas.

iv. Dewatering may have negative impacts to drinking water volumes sourced from underground aquifers, which are often used as sources for drinking water or for industrial purposes.

v. Downstream impacts to the existing storm and surface water infrastructure.

f. Temporary construction dewatering of the aquifer as part of a construction project will not be allowed in CARA Class 1, 2 or 3, unless a project specific temporary construction dewatering feasibility study has been submitted and approved by the Town prior to issuance of the land use decision or construction permit for the project that requires dewatering.

g. Exemptions from the requirement to submit a temporary construction dewatering feasibility study for developments in CARA Class 1, 2 or 3 will be considered upon submittal of a written request documenting that the development site meets at least one of the following criteria:

i. The amount of groundwater that will be captured, pumped or removed from the site will be at a rate of less than 500 gallons per minute; or

ii. There is less than 100 cubic yards of excavation below ground level; or

iii. Site excavation is limited to a depth of three feet or less, not including installation of water and sewer services to a single-family home.

3. Any proposed project where hazardous materials in quantities equal to or greater than the standards in BAVMC that are stored in a Class 1, 2 or 3 CARA must:

a. Prevent the release of such substances to the ground, groundwaters, or surface waters;

b. Use storage containment area materials that are, through the construction or lining, compatible with the stored substance to protect against corrosion or leakage; or otherwise, use storage containment designed in a manner to prevent the release or threatened release of any substance, including within secondary containment;

c. Provide for release detection, as applicable, for uses such as fuel tanks and similar hazardous material storage;

d. Provide hazardous materials management plans (HMMP) or hazardous materials inventory (HMI) written spill response and spill notification procedures to the Town; submit a hazardous material construction inventory (HMCI) to the Town for new construction within the CARA; and comply with Fire Code requirements that apply to hazardous materials; and

e. Comply with Chapters 173-200, 173-303 and 173-360A WAC and Chapter 70.105 RCW.

4. *State and Federal Regulations.* An applicant must provide documentation of compliance with State and/or Federal standards and regulations to the Town. Nothing in

this section relieves an applicant from the requirements of Federal, State, or local law or regulation.

16.30.150 Bonds.

An applicant for development within a critical area as identified herein may be required to furnish the Town with a performance bond and/or maintenance bond for any required mitigating measures. When required, the bond amount shall be 150% of the total valuation of the mitigation measures. Town shall review and approve the bond form, amount, and time limitation(s).

16.30.160 Appeal.

Appeals of administrative decisions are governed by BAVMC Chapter 14.05, Permit Processing.

16.30.170 Enforcement and Penalties.

A. Adherence to the provisions of this chapter and/or to the project conditions shall be required throughout the construction of the development. Should the Town determine that a development is not in compliance with the approved plans, a stop work order may be issued for the violation.

B. If Town staff determines there is a violation of any of the provisions in this chapter, said official shall issue a stop work order in writing to the person(s) engaged in such work or causing such work to be done. Such notice shall be posted on the premises and provided to the owner(s) stating the violation(s), possible corrective action(s), and establishing a reasonable period of time for the restoration.

C. Violation of any of the provisions of this chapter shall be a civil infraction with a penalty of $500.00 for each and every day that the violation continues.

D. In the event of a violation of this chapter, the Town shall have the power to order complete or partial restoration of the critical area by the person(s) or agent responsible for the violation. If such responsible person(s) or agent does not complete such restoration within a reasonable period of time specified in the stop work order, the Town shall have the authority to restore the affected critical area to the prior condition and the person(s) or agent responsible for the original violation shall be indebted to the Town for all associated costs.

E. When a stop work order has been issued, construction shall not continue until such time as the violation has been corrected, assurance is provided to the satisfaction of the Town that a similar violation is not likely, and the Town issues a written letter to the responsible person(s) which officially removes the stop work order and allows construction to resume.