

Chapter 18.24

FISH AND WILDLIFE HABITAT CONSERVATION AREAS

Sections:

- 18.24.010 Designation of fish and wildlife habitat conservation areas.
- 18.24.020 Report – Additional requirements for habitat conservation areas.
- 18.24.030 Performance standards – Basic requirements.
- 18.24.040 Performance standards – Specific habitats.

18.24.010 Designation of fish and wildlife habitat conservation areas.

- A. Fish and wildlife habitat conservation areas include:
 - 1. Areas with which state and federally designated endangered, threatened, and sensitive species have a primary association.
 - a. Federally 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.
 - b. 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. A combined list of federally and state identified species having the potential to be within the Benton City area is included in Appendix F.
 - 2. 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 an 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 F.

3. 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 Appendix F).
 4. 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.
 5. 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.
 6. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity.
 7. 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.
 8. Land essential for preserving connections between habitat blocks and open spaces.
- B. 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.
- C. Mapping. The approximation location and extent of habitat conservation areas are shown on the critical area map adopted by the, and as most recently updated and the following critical area maps hereby adopted:
1. Department of Fish and Wildlife Priority Habitat and Species Maps;

2. Department of Natural Resources, Official Water Type Reference Maps, as amended;
3. Resident salmonid distribution maps contained in the Habitat Limiting Factors Reports published by the Washington Conservation Commission;
4. Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area Maps; and
5. Additional data as determined necessary by the City.

The Benton City Critical Areas Map is to be used as a guide for the City, project applicants and/or property owners, and may continuously updated as new critical areas are identified. It is a reference and does not provide a final critical area designation. (Ord 874, December 2010)

18.24.020 Report – Additional requirements for habitat conservation areas.

- A. Prepared by a qualified professional. A 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.
- B. Area addressed in report. The following areas shall be addressed in a report for habitat conservation areas.¹
 1. The project area of the proposed activity;
 2. All habitat conservation areas and recommended buffers within two hundred (200) feet of the project area; and
 3. All shoreline areas, flood plains, and other critical areas, and related buffers within two hundred (200) feet of the projected area.
- C. Habitat assessment. A habitat assessment is an investigation of the project area to evaluate the presence or absence of a potential critical fish or wildlife species or habitat. A report for a habitat conservation area shall contain an assessment of habitats including the following site-and proposal-related information at a minimum:
 1. Detailed description of vegetation on and adjacent to the project area;
 2. Identification of any species of local importance, priority species, or endangered, threatened, sensitive or candidate species that have a primary association with habitat on or adjacent to the project area, and

¹ The distance of 200 feet is suggested to account for buffers/zones that may not be accurately mapped at the time of application.

assessment of potential project impacts to the use of the site by the species;

3. 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;
4. A discussion of measures, including avoidance, minimization and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity and to be conducted in accordance with Sections 18.04.160, 18.04.170, 18.04.180 and 18.04.190; and
5. A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.

D. 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 that habitat management plan to include:

1. An evaluation by the Department of Fish of 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;
2. An evaluation by the local Native American Indian Tribe; and
3. Detailed surface and subsurface hydrologic features both on and adjacent to the site. (Ord 874, December 2010)

18.24.030 Performance standards – General requirements.

- A. 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.
- B. 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.
- C. Mitigation shall result in contiguous corridors. Mitigation sites shall be located to achieve contiguous wildlife habitat corridors in accordance with a mitigation plan that is part of the 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.

- D. 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:
1. Establishment of buffer zones;
 2. Preservation of critically important vegetation;
 3. Limitation of access to the habitat area, including fencing to deter unauthorized access;
 4. Seasonal restriction of construction activities;
 5. Establishment of a duration and timetable for a periodic review of mitigation activities; and
 6. Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation.
- E. Mitigation shall achieve equivalent or greater biological functions. Mitigation of alterations to habitat conservation areas shall achieve equivalent or greater biologic functions and shall include mitigation for adverse impact upstream and downstream of the development proposal site. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per function basis.
- F. Approvals shall be supported by the best available science. Any approval of alterations or impacts to a habitat conservation area shall be support by the best available science.
- G. Buffers.
1. Establishment of buffers. The city shall require the establishment of buffer areas for activities in, or adjacent to, habitat conservation areas when needed to protect habitat conservation areas. Buffers shall consist of an undisturbed area of native vegetation, or areas identified for restoration, established to protect the integrity, functions and values of the affected habitat. Required buffer widths shall reflect the sensitivity of the habitat and reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby, and shall be consistent with the management recommendations issued by the State Department of fish and Wildlife.

2. Seasonal restrictions. When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger buffers may be required and activities may be further restricted during the specified season.
3. Habitat buffer averaging. The designated official may allow the recommended habitat area buffer width to be reduced in accordance with a report, the best available science, and the management recommendations issued by the state Department of Fish and Wildlife, on if:
 - a. It will not reduce stream or habitat functions;
 - b. It will not adversely affect fish habitat;
 - c. It will provide additional natural resource protection, such as buffer enhancement;
 - d. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer;
 - e. The buffer area width is not reduced by more than fifty percent (50%) in any location; and
 - f. The buffer area width is not less than fifty (50) feet.

H. Signs and fencing of habitat conservation areas.

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

“Habitat Conservation Area”
Do Not Disturb
Contact Benton City
Regarding Uses and Restrictions”

3. Fencing.
 - a. The City shall condition any permit or authorization issued pursuant to this Chapter to require the applicant to install a permanent fence at the edge of the habitat conservation area or buffer, when fencing will prevent future impacts to the habitat conservation area.
 - b. The applicant shall be required to install a permanent fence around the habitat conservation area or buffer when domestic grazing animals are present or may be introduced on site.
 - c. Fencing installed as part of a proposed activity or as required in this Subsection shall be design so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes habitat impacts.

I. Subdivisions. The subdivision and short subdivision of land in fish and wildlife habitat conservation areas and associated buffers is subject to the following:

1. Land that is located wholly within a habitat conservation area or its buffer may not be subdivided.
2. 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 20 and Subdivision Code – Title 17.
3. 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 the Title. (Ord 874, December 2010)

18.24.040 Performance standards – Specific habitats.

- A. Endangered, threatened, and sensitive species
 1. No development shall be allowed within a habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association.

2. 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 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.
 3. 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 site 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.
- B. 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 18.08, in addition to meeting the habitat conservation area standards in this Chapter.
- C. Riparian habitat areas. Unless otherwise allowed in this Title, all structures and activities shall be located outside of the riparian habitat area.
1. Establishment of riparian habitat areas. Riparian habitat areas shall be established for habitats that include aquatic systems.
 2. Riparian habitat area widths. Recommended riparian habitat area widths are shown in the table below. A riparian habitat area shall have the width recommended, unless a greater width is required pursuant to Subsection 3, or a lesser width is allowed pursuant to Subsection 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.

Riparian Habitat Areas		
Stream Type	Recommended Widths²	RHA
Types 1 and 2 – Shorelines of statewide significance (Yakima River)	200 feet	
Type 3 or other perennial of fish bearing streams	75 feet	
Types 4 and 5	50 feet	

3. Increased riparian habitat areas widths. The recommended riparian habitat area widths shall be increased in the following cases:
 - a. When the City determines that the recommended width is sufficient to prevent habitat degradation and to protect the structure and functions of the habitat area;
 - b. When the frequently flooded area exceeds the recommended riparian habitat area width, the riparian habitat area shall extend to the outer edge of the frequently flooded area;
 - c. When the channel migration zone exceeds the recommended riparian habitat area width, the riparian habitat area shall extend to the outer edge of the channel migration zone;
 - d. When the habitat area is in an area of high blowdown potential, the riparian habitat area shall be expanded an additional fifty (5) feet on the windward side;³ or
 - e. When the habitat area is within an erosion or landslide hazard area or buffer, the riparian habitat area shall be the recommended distance, or the erosion or landslide hazard area or buffer, whichever is greater.

4. Riparian habitat area width averaging. The City may allow the recommended riparian habitat area width to be reduced in accordance with a report only if:
 - a. The width reduction will not reduce stream or habitat functions, including those of nonfish habitat.

² Recommended riparian habitat widths are adapted from Department of Fish and Wildlife, 1997: “Management Recommendations for Washington’s Priority Habitats: Riparian.”

³ See “Management Recommendations for Washington’s Priority Habitats: Riparian” from the Washington Department of Fish or Wildlife.

- b. The width reduction will not degrade the habitat.
 - c. The proposal will provide additional habitat protection.
 - d. The total area contained in the riparian habitat area of each stream on the development proposal site is not decreased.
 - e. The recommended riparian habitat area width is not reduced by more than fifty percent (50%) in any one location.
 - f. The recommended riparian habitat area width is not reduced to less than fifty (5) feet.
 - g. The width reduction will not be located within another critical area or associated buffer.
 - h. The reduced riparian habitat area width is supported by best available science.
 - i. All undeveloped lands within total area will be left undeveloped in perpetuity by covenant, deed restriction, easement or other legally binding mechanism.
 - j. The buffer averaging plan shall be conducted in consultation with a qualified biologist and the plan shall be submitted to the Washington Department of Fish and Wildlife for comment.
 - k. The director shall use the recommendations of the qualified experts in making his/her decision on a plan that uses buffer averaging.
5. Riparian habitat mitigation. Mitigation of adverse impacts to riparian habitat areas shall result in equivalent functions and values, on a per function basis, and be located in the same sub drainage basin as the habitat impacted.
6. Alternative mitigation for riparian habitat areas. The requirements set forth in this Section may be modified at the City's discretion if the applicant demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected sub drainage basin as a result of alternative mitigation measures.

D. Riparian habitat areas, ponds, lakes, and waters of the state.⁴ The following specific activities may be permitted within a riparian habitat area, pond, lake, water of the state, or associated buffer when the activity complies with the

⁴ The performance standards for "Riparian habitat areas, ponds, lakes, waters of the state, and marine habitat" are partially derived from the Pierce County "Draft Critical Areas Development Regulations" March 2002

provisions set forth in applicable City regulations and subject to the following standards:

1. Clearing and Grading. When clearing and grading is permitted as part of an authorized activity or as otherwise allowed in these standards, the following shall apply:
 - a. Grading is allowed only when soil conditions are dry and the potential for erosion is low.
 - b. Filling or modification of a wetland or wetland buffer is permitted only if it is conducted as part of an approved wetland alteration.
 - c. The soil duff layer shall remain undisturbed to the maximum extent possible. Where feasible, any soil disturbed shall be redistributed to other areas of the project area.
 - d. The moisture-holding capacity of the topsoil layer shall be maintained by minimizing soil compaction or reestablishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces.
 - e. Erosion and sediment control that meets or exceeds the standards set forth in the adopted stormwater management regulations shall be provided.
2. Shoreline erosion control measures. New, replacement, or substantially improved, shoreline erosion control measures may be permitted be in accordance with a report demonstrates the following:
 - a. Natural shoreline processes will be maintained. The project will not result in increased beach erosion or alterations to, or less of shoreline substrate within one-quarter (1/4) miles of the project area.
 - b. The shoreline erosion control measures will not degrade fish or wildlife habitat conservation areas or associated wetlands.
 - c. Adequate mitigation measures ensure that there is no net loss of the functions or values of intertidal habitat or riparian habitat as a result of the proposed shoreline erosion control measures.
3. Streambank stabilization. Streambank stabilization to protect new structures from future channel migration is not permitted except when such stabilization is achieved through bioengineering or soft armoring techniques in accordance with the report.

4. Launching ramps – Public or private. Launching ramps may be permitted in accordance with the report that has demonstrated the following:
 - a. The project will not result in increased beach erosion or alterations to, or loss of, shoreline substrate within one-quarter (1/4) mile of the site;
 - b. The ramp will not adversely impact critical fish and wildlife habitat areas or associated wetlands; and
 - c. Adequate mitigation measures ensure that there is not net loss of the functions or values or riparian habitat as a result of the ramp.
5. Docks. Repair and maintenance of an existing dock or pier may be permitted in accordance with the report subject to the following:
 - a. There is no increase in the use of materials creating shade for predator species;
 - b. There is no expansion in overwater coverage;
 - c. There is no increase in the size and number of pilings; and
 - d. There is no use of toxic materials (such as creosote) that come in contact with the water.
6. Roads, trails, bridges, and rights-of-way. Construction of trails, roadways, and minor road bridging, less than or equal to thirty (30) feet wide, may be permitted in accordance with the report subject to the following standards:
 - a. There is no other feasible alternative route with less impact on the environment;
 - b. The crossing minimizes interruption of downstream movement of wood and gravel;
 - c. Mitigation for impacts is provided pursuant to a mitigation plan of the report;
 - d. Road bridges are designed according to the Department of Fish and Wildlife *Fish Passage Design at Road Culverts*, March 1999, and the National Marine Fisheries Services *Guidelines for Salmonid Passage at Stream Crossings*, 2000; and
 - e. Trails and associated viewing platforms shall not be made of continuous impervious materials.

7. Utility Facilities. New utility lines and facilities may be permitted to cross watercourses in accordance with the report if they comply with the following standards:
 - a. Fish and wildlife habitat areas shall be avoided to the maximum extent possible;
 - b. Installation shall be accomplished by boring beneath the scour depth and Hyporheic zone of the water body and channel migration zone, where feasible;
 - c. The utilities shall cross at an angle greater than sixty (60) degrees to the centerline of the channel in streams or perpendicular to the channel centerline whenever boring under the channel is not feasible;
 - d. Crossings shall be contained within the footprint of an existing road or utility crossing where possible;
 - e. The utility route shall avoid paralleling the stream or following a down-valley course near the channel; and
 - f. The utility installation shall not increase or decrease the natural rate of shore migration or channel migration.
8. Public flood protection measures. New public flood protection measures and expansion of existing ones may be permitted, subject to the City's review of a report and the approval of a Federal Biological Assessment by the federal agency responsible for reviewing actions related to a federally listed species.
9. Instream structures. Instream structures, such as, but not limited to, high flow bypasses, sediment ponds, instream ponds, retention and detention facilities, tide gates, dams and weirs, shall be allowed only as part of an approved watershed basin restoration project approved by the City and upon acquisition of any required state or federal permits. The structure shall be designed to avoid modifying flows and water quality in ways that may adversely affect habitat conservation areas.
10. Stormwater conveyance facilities. Conveyance structures may be permitted in accordance with the report subject to the following standards:
 - a. No other feasible alternatives with less impact exist;
 - b. Mitigation for impacts is provided;

- c. Stormwater conveyance facilities shall incorporate fish habitat features; and
- d. Vegetation shall be maintained and, if necessary, added adjacent to all open channels and ponds in order to retard erosion, filter out sediments, and shade the water.

11. On-site sewage systems and wells.

- a. New on-site sewage systems and individual wells may be permitted in accordance with the report only if accessory to an approved residential structure, for which it is not feasible to connect to a public sanitary sewer system.
- b. Repairs to failing on-site sewage systems associated with an existing structure shall be accomplished by utilizing one of the following methods that result in the least impact:
 - i. Connection to an available public sanitary sewer system;
 - ii. Replacement with a new on-site sewage system located in a portion of the site that has already been disturbed by development and is located landward as far as possible, provided the proposed sewage system is in compliance with the Benton County Health Department; or
 - iii. Repair to the existing on-site septic system.

E. Anadromous fish

- 1. All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:
 - a. Activities shall be times to occur only during the allowable work window as designated by the Department of Fish and Wildlife for the applicable species;
 - b. An alternative alignment or location for the activity is not feasible;
 - c. The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas, and

- d. Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved critical area report.
2. Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.
3. Fills may only intrude into water bodies use by anadromous fish when the applicant demonstrates that the fill is for a water-dependent use that is in the public interest and when the fill is consistent with other applicable regulations adopted by the City, including but not limited to permitting process construction standards, building codes, shorelines management program, and environmental review (SEPA) procedures. (Ord 874, December 2010)