

Chapter 12.13
FISH AND WILDLIFE HABITAT CONSERVATION AREAS

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12.13.010 Designation of fish and wildlife habitat conservation areas.

(1) Fish and wildlife habitat conservation areas include:

- (a) Areas with which State or Federally Designated Endangered, Threatened, and Sensitive Species Have a Primary Association.
 - (i) The U.S. Fish and Wildlife Service and the National Marine Fisheries Service shall be consulted as necessary for current listing status.
 - (ii) 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 shall be consulted as necessary for current listing status.

A combined list of federally and state identified species is included in Appendix A at the end of this chapter and is to be used as a reference only and may not be the most up-to-date listing.
- (b) State Priority Habitats and Areas Associated with State Priority Species. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the State Department of Fish and Wildlife.
- (c) Habitats and Species of Local Importance. Habitats and species of local importance are those identified by the city of Buckley, including those that possess unusual or unique habitat warranting protection because of qualitative species diversity or habitat system health indicators.
- (d) Naturally Occurring Ponds under 20 Acres. Naturally occurring ponds are those ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds, and landscape amenities, unless such artificial ponds were intentionally created for mitigation.
- (e) Waters of the State. Waters of the state include 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](#) [WAC 222-16-030](#) ~~(or [WAC 222-16-030](#), depending on classification used).~~

- (f) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity.
 - (g) State Natural Area Preserves and Natural Resource Conservation Areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the State Department of Natural Resources.
 - (h) Land essential for preserving connections between habitat blocks and open spaces.
- (2) Mapping of Habitat Conservation Areas. The approximate location and extent of habitat conservation areas are shown on the adopted critical area maps as referenced in BMC 12.08.090(4) and (5). (Ord. 21-05 § 2, 2005).

12.13.020 Critical areas report – Additional requirements for habitat conservation areas.

In addition to the general critical areas report requirements of BMC 12.08.210, critical areas reports for habitat conservation areas must meet the requirements of this section. Critical areas reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

- (1) Prepared by a Qualified Professional. A critical areas report for a habitat conservation area shall be prepared by a qualified professional who is a biologist with experience preparing reports for the relevant type of habitat.
- (2) Area Addressed in Critical Areas Report. The following areas shall be addressed in a critical areas report for habitat conservation areas:
 - (a) The project area of the proposed activity;
 - (b) All habitat conservation areas and recommended buffers within 100 feet of the project area; and
 - (c) All shoreline areas, floodplains, and other critical areas, and related buffers within 100 feet of the project area.
- (3) Habitat Assessment. A habitat assessment is an investigation of the project area to evaluate the presence or absence of a potential critical fish or wildlife species or habitat. A critical areas report for a habitat conservation area shall contain an assessment of habitats including the following site- and proposal-related information at a minimum:
 - (a) Detailed description of vegetation on and adjacent to the project area;
 - (b) Identification of any species of local importance, priority species, or endangered, threatened, sensitive or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;
 - (c) A discussion of any federal, state, or local special management recommendations, including Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;
 - (d) A detailed discussion of the potential impacts on habitat by the project, including potential impacts to water quality;
 - (e) 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 BMC 12.08.240, Mitigation sequencing, and/or BMC 12.08.260, Innovative mitigation; and

- (f) A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.
- (4) Additional Information May Be Required. When appropriate due to the type of habitat or species present or the project area conditions, the planning director may also require the habitat management plan to include:
 - (a) An evaluation by an independent qualified professional regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate;
 - (b) A request for consultation with the Department of Fish and Wildlife or the local Native American Indian tribe; and
 - (c) Detailed surface and subsurface hydrologic features both on and adjacent to the site. (Ord. 21-05 § 2, 2005).

12.13.030 Performance standards – General requirements.

- (1) Alterations Shall Not Degrade the Functions and Values of Habitat. A habitat conservation area may be altered only if the proposed alteration of the habitat or the mitigation proposed does not degrade the quantitative and qualitative functions and values of the habitat. All new structures and land alterations shall be prohibited from habitat conservation areas, except in accordance with this title.
- (2) Nonindigenous Species Shall Not Be Introduced. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a habitat conservation area unless authorized by a state or federal permit or approval.
- (3) Mitigation Shall Result in Contiguous Corridors. Mitigation sites shall be located to achieve contiguous wildlife habitat corridors in accordance with a mitigation plan that is part of an approved critical areas report to minimize the isolating effects of development on habitat areas, so long as mitigation of aquatic habitat is located within the same aquatic ecosystem as the area disturbed.
- (4) Approvals of Activities May Be Conditioned. The planning director shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions may include, but are not limited to, the following:
 - (a) Establishment of buffer zones;
 - (b) Preservation of critically important vegetation;
 - (c) Limitation of access to the habitat area, including fencing to deter unauthorized access;
 - (d) Seasonal restriction of construction activities;
 - (e) Establishment of a duration and timetable for periodic review of mitigation activities; and
 - (f) Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation.
- (5) 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 impacts upstream or 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.

(6) Approvals shall be supported by the best available science.

(7) Buffers.

(a) Establishment of Buffers. The planning director 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 the type and intensity of human activity proposed to be conducted nearby, and shall be consistent with BMC 12.08.110. Habitat conservation areas and their buffers shall be preserved in perpetuity through the use of native growth protection areas and critical area tracts in accordance with BMC 12.08.370 and 12.08.380.

(b) 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.

(c) Habitat Buffer Averaging. The planning director may allow the recommended habitat area buffer width to be reduced in accordance with a critical areas report, the best available science, and the management recommendations issued by the State Department of Fish and Wildlife, only if:

(i) It will not reduce stream or habitat functions; and

(ii) It will not adversely affect salmonid habitat; and

(iii) It will provide additional natural resource protection, such as buffer enhancement; and

(iv) The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and

(v) The buffer area width is not reduced by more than 25 percent in any location.

(8) Signs and Fencing of Habitat Conservation Areas.

(a) 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 planning director 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.

(b) Permanent Signs. As a condition of any permit or authorization issued pursuant to this chapter, the planning director shall require the applicant to install permanent signs along the boundary of a habitat conservation area or buffer.

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 100 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 the City of Buckley

Regarding Uses and Restriction

- (c) Fencing.
 - (i) The planning director 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.
 - (ii) 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.
 - (iii) Fencing installed as part of a proposed activity or as required in this subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes habitat impacts.
- (9) Subdivisions. The subdivision and short subdivision of land in fish and wildlife habitat conservation areas and associated buffers is subject to the following:
 - (a) Land that is located wholly within a habitat conservation area or its buffer may not be subdivided.
 - (b) Land that is located partially within a habitat conservation area or its buffer may be divided; provided, that an accessible and contiguous portion of each new lot is located outside of the habitat conservation area or its buffer and meets the minimum lot size requirements of BMC Title 19. Each lot and/or parcel created through the subdivision or site plan process shall maintain a minimum buildable lot area not including a wetland or buffer area which totals 75 percent of the minimum lot size area for the zoning district where located.
 - (c) Access roads and utilities serving the proposed subdivision may be permitted within the habitat conservation area and associated buffers only if the city of Buckley determines that no other feasible alternative exists and when consistent with this title. (Ord. 21-05 § 2, 2005).

12.13.040 Performance standards – Specific habitats.

- (1) Endangered, Threatened, and Sensitive Species.
 - (a) No development [except public trail development](#) shall be allowed within a habitat conservation area or buffer with which state or federal endangered, threatened, or sensitive species have a primary association.
 - (b) Whenever activities are proposed on lands that contain or are adjacent to a habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with a critical areas report prepared by a qualified professional and approved by the city of Buckley. Approval for alteration of land adjacent to the habitat conservation area or its buffer shall not occur prior to consultation with the Department of Fish and Wildlife and the appropriate federal agency.
 - (c) Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292). Whenever activities are proposed on lands containing or adjacent to a verified nest territory or communal roost, a habitat management plan shall be developed by a qualified professional.

- (2) Anadromous Fish.
 - (a) 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:
 - (i) Activities shall be timed to occur only during the allowable work window as designated by the Department of Fish and Wildlife for the applicable species;
 - (ii) An alternative alignment or location for the activity is not feasible;
 - (iii) The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas; and
 - (iv) Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved critical areas report.
 - (b) Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically 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.
 - (c) Fills, when authorized by Chapter 19.42 BMC, shall not adversely impact anadromous fish or their habitat or shall mitigate any unavoidable impacts, and shall only be allowed for a water-dependent use.
- (3) Wetland Habitats. All proposed activities within or adjacent to habitat conservation areas containing wetlands shall conform to the wetland development performance standards set forth in Chapter 12.09 BMC, Wetlands. If nonwetlands habitat and wetlands are present at the same location, the provisions of this chapter or Chapter 12.09 BMC, Wetlands, whichever provides greater protection to the habitat, apply.
- (4) Riparian Habitat Areas. Unless otherwise allowed in this title, all structures and activities shall be located outside of the riparian habitat area.
 - (a) Establishment of Riparian Habitat Areas. Riparian habitat areas shall be established for habitats that include aquatic and terrestrial ecosystems that mutually benefit each other, and that are located adjacent to rivers, perennial or intermittent streams, seeps, and springs.
 - (b) 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 (4)(c) of this section, or a lesser width is allowed pursuant to subsection (4)(d) of this section. Widths shall be measured outward in each direction, 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 RHA widths
Type I/Type S	150 feet

Type II, Type F	100 feet
Type III, Type Np	50 feet
Type IV and Type Ns	25 feet

- (c) Increased Riparian Habitat Area Widths. The recommended riparian habitat area widths shall be increased, as follows:
 - (i) When the planning director determines on the basis of a report by a qualified professional that the recommended width is insufficient to prevent habitat degradation and to protect the structure and functions of the habitat area;
 - (ii) 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;
 - (iii) 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;
 - (iv) 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.
 - (d) Riparian Habitat Area Width Averaging. The planning director may allow the recommended riparian habitat area width to be reduced in accordance with a critical areas report only if:
 - (i) The width reduction will not reduce stream or habitat functions; and
 - (ii) The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and
 - (iii) The buffer width is not reduced to less than 50 percent of the standard width or 50 feet, whichever is greater, except for buffers in Class IV and V streams which are prohibited from averaging; and
 - (iv) Buffer width averaging is being conducted and/or implemented within or on the property where the averaging is being requested; and
 - (v) The width reduction will not be located within another critical area or associated buffer; and
 - (vi) The reduced riparian habitat area width is supported by best available science.
 - (e) Riparian Habitat Mitigation. Mitigation of adverse impacts to riparian habitat areas shall result in equivalent functions and values on a per function basis, be located as near the alteration as feasible, and be located in the same subdrainage basin as the habitat impacted.
 - (f) Alternative Mitigation for Riparian Habitat Areas. The performance standards set forth in this subsection may be modified at the city of Buckley’s discretion if the applicant demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected subdrainage basin as a result of alternative mitigation measures.
- (5) Aquatic Habitat. The following specific activities may be permitted within a riparian habitat area, pond, lake, water of the state, marine habitat or associated buffer when the activity complies with the provisions set forth in Chapter 19.42 BMC and subject to the standards of this subsection. The standards that provide the most protection to protected habitat and species shall apply.
- (a) 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:

- (i) Grading is allowed only during the dry season, which is typically regarded as beginning on May 1st and ending on October 1st of each year; provided, that the city of Buckley may extend or shorten the dry season on a case-by-case basis, determined on actual weather conditions.
 - (ii) 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.
 - (iii) 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.
 - (iv) Erosion and sediment control that meets or exceeds the standards set forth in Chapter 14.30 BMC shall be provided.
- (b) Shoreline Erosion Control Measures. All activities conducted in and/or around the shorelands area as defined within these regulations shall be required to comply with all provisions of Chapter 19.42 BMC, Shoreline Management. (Ord. 21-05 § 2, 2005).