

## Chapter 21.70

### Conservation of Critical Areas\*

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- 21.70.010 Definitions. As used in this chapter:

(1) "Applicant" means a person who files an application for permit under this chapter and who is either the owner of the land on which that proposed activity would be

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\* Prior ordinance history: Ord. Q-17 and P-89.

located, a lessee of the land, the person who would actually control and direct the proposed activity or the authorized agent of such a person.

(2) "Buffer zone" means an area required by this chapter that provides a natural vegetated zone surrounding a natural, restored or newly created critical area which serves as a buffer between the critical area and its associated upland areas and as an integral part of the habitat ecosystem.

(3) "Compensation" means replacement by creation, enhancement or restoration of a wetland equivalent in size, function and value to the one being altered or lost due to development. Compensation may also include the use of monetary contributions to a mitigation fund.

(4) "Creation" means bringing a wetland or stream corridor into existence at a site in which a wetland or stream corridor did not formerly exist.

(5) "Critical areas" means and includes the following ecosystems: areas with a critical recharging effect on aquifers used for drinking water, fish and wildlife habitat, frequently flooded areas, geological hazardous areas and wetlands and streams.

(6) "Critical habitat" means habitat necessary for the survival of endangered, threatened, rare, sensitive or monitor species.

(7) "Enhancement" means a process undertaken to rehabilitate or improve an existing degraded wetland by increasing or decreasing plant diversity and increasing water quality, wildlife habitat or erosion controls.

(8) "Exotic" means any species of plants or animals that are foreign to the planning area.

(9) "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" means a technical manual which describes technical criteria, field indicators and other sources of information, and methods for identifying and delineating jurisdictional wetlands in the United States. When referenced in this chapter this manual will be cited as follows: Federal Interagency Committee for Wetland Delineation. 1989. Federal Manual for Identifying and Delineating Jurisdictional Wetlands. U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and U.S.D.A. Soil Conservation Service, Washington D.C. Cooperative technical publication. 76 pp. plus appendices.

(10) "Flood hazard area" means lands listed in the floodplain which is an area adjacent to a lake, stream or other body of water lying outside the ordinary bank of the water body and periodically inundated by flood flow subject to one percent or greater expectancy of flooding in any given year.

(11) "Function" means the beneficial role critical areas serve including but not limited to fish and wildlife habitat, storage, conveyance, floodwater and stormwater retention and provision of erosion, landslide and sediment control and groundwater recharge.

(12) "Habitat" means the specific area or environment in which a particular type of plant or animal lives.

(13) "High intensity land use" means uses associated with moderate or high levels of human or structural disturbance including but not limited to, medium and high density residential, multi-family residential, active recreation, commercial and industrial land uses. R-3 zoning and above, to the maximum of twenty units per-acre is high intensity land use.

(14) "Hydric soils" means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined by following the methods described in the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands."

(15) "In-kind compensation" means to replace wetlands with substitute wetlands whose characteristics closely approximate those destroyed or degraded by a regulatory activity. The replacement must be equal to or greater than the wetland destroyed or degraded.

(16) "Isolated wetland" means those regulated wetlands which:

(A) Are outside of and not contiguous to any one hundred year floodplain of a lake, river, or stream;

(B) Have no contiguous hydric soils or aquatic plant between the wetland and any surface water; and

(C) Have no surface water connection to a lake, river or stream.

(17) "Low intensity land use" means land uses which are associated with low levels of human disturbance or low wetland habitat impacts, including but not limited to, passive recreation, open space, educational field trips or small gardens. A maximum of four units per-acre is defined as low intensity.

(18) "Mitigation" means a negotiated action involving the avoidance, reduction or compensation for possible adverse impacts. In the following order of preference this includes:

(A) Avoiding the impacts altogether by not taking action;

(B) Reducing or eliminating impacts by preservation or maintenance;

(C) Minimizing impacts by limiting degree or magnitude;

(D) Rectifying impacts by repairing, rehabilitating or restoring;

(E) Compensating for impacts by in-kind replacement; or

(F) Monitoring impacts by a planned evaluation process.

(19) "Non-scientific information" means information which may supplement scientific information, but it is not an adequate substitute for valid and available scientific information.

(20) "Open space area" means land of varied size which contain distinctive geologic, botanic, zoologic, historic, scenic or other critical area features. These areas are often undeveloped and serve as greenbelts and wildlife habitats. Specific types of open space include gulches, steep slopes and wetlands.

(21) "Qualified Professional" means someone who demonstrates sufficient scientific knowledge and a proven ability and familiarity with the subject through past professional performance.

(22) "Rare threatened and endangered species" means plant or animal species that are regionally relatively uncommon, and nearing endangered status, or whose existence is in immediate jeopardy and that are usually restricted to highly specific habitats.

(23) "Restoration" means improving, enhancing and reestablishing a once viable and now degraded wetland or stream to a state in which its stability, functions and values approach its unaltered state.

(24) "Unavoidable and necessary impact" means impacts to a regulated wetland or stream and its associated buffer that will remain after it has been demonstrated that no practical alternative exists.

(25) "Wetlands non-regulatory" means, for incentives and non-regulatory purposes, those lands that are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For the purpose of this definition, wetlands must have one or more of the following attributes:

- (A) At least periodically, the land supports predominately hydrophytes;
- (B) The substrate is predominantly undrained hydric soil; or
- (C) The substrate is non-soil and is saturated with water or covered by shallow water at some time during the growing season of the year.

(26) "Wetlands regulatory" means areas that are inundated or saturated by surface water or ground water at a frequency or duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include small lakes, ponds, streams, swamps, bogs, marshes and similar areas. The method for describing the wetland boundary can be found in the 1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands. Wetlands do not include those artificial wetlands intentionally created from non wetland sites, including but not limited to irrigation and drainage ditches, grass-lined swales, canals, detention facilities, farm ponds and landscape amenities if routinely maintained for those purposes. However, wetlands do include those artificial wetlands intentionally created to mitigate conversion of wetlands. (Ord. T-03 §1(part), 2002).

21.70.015 Established. The following standards and criteria are established in order to ensure maximum protection for critical areas by discouraging and/or mitigating development activities in identified wetlands, wildlife habitat and frequently flooded areas. Furthermore, these standards are also established to afford the necessary preservation and protection assurances that will guarantee the unnecessary degradation of the functions and values of identified critical areas. (Ord. T-03 §1(part), 2002).

21.70.020 Purpose. The purpose of this chapter is to:

- (1) Maintain the character of the city and to safeguard the public interest in the preservation and conservation of natural areas.
- (2) Designate and classify ecologically sensitive and hazardous areas and to protect these areas and their functions and values, while also allowing for reasonable use of private property.
- (3) Implement the goals, policies, guidelines, and requirements of the City of Cheney Comprehensive Plan and the Growth Management Act (GMA). (Ord. T-03 §1(part), 2002).

21.70.025 General provisions. The city of Cheney finds that critical areas provide a variety of valuable and beneficial biological and physical functions that benefit the city and its residents. The beneficial functions and values provided by critical areas include, but are not limited to, water quality protection and enhancement, wildlife habitat, food chain support, flood storage, ground water recharge and discharge, and aesthetic value protection. (Ord. T-03 §1(part), 2002).

21.70.030 Applicability. All development in the city of Cheney, which affects critical areas, as defined herein shall be subject to the provisions of this chapter. The provisions of this chapter shall apply to all lands, all land uses and development activity, and all structures and facilities in the city, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the city. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purposes and requirements of this chapter. (Ord. T-03 §1(part), 2002).

21.70.035 Exemptions. The proponent of the activity may submit a written request for exemption to the planning director or his designee that describes the activity and states the exemption listed in this section that applies. The planning director or his designee shall review the exemption request to verify that it complies with this chapter and approve or deny the exception. If the exception is approved, it shall be placed on file with the planning department. If the exception is denied, the proponent may continue in the review process and shall be subject to the requirements of this chapter.

(1) All exempted activities shall use reasonable methods to avoid potential impacts to critical areas. To be exempt from this chapter does not give permission to degrade a critical area. Any incidental damage to, or alteration of, an activity shall be restored, rehabilitate, or replaced at the responsible party's expense.

(2) The following development, activities, and associated uses shall be exempt from the provisions of this chapter, provided that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements:

(a) Emergencies.

(b) Operation, maintenance, or repair of existing structures, infrastructure, utilities, and public roads that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer.

(c) Passive outdoor activities to include recreation, education, and scientific research activities that do not degrade the critical area.

(3) Exception--Reasonable Use. If an applicant for a development proposal demonstrates to the satisfaction of the planning director or designated authority that application of the standards of this chapter would deny all reasonable use of the property, development as conditioned may be allowed. The applicant shall pay a fee as determined by the director, which may cover mailing and processing and submit documentation demonstrating all of the following;

(a) Application of this chapter would deny all reasonable use of this property.

(b) There is no reasonable use with less impact on the wetland or wildlife habitat area.

(c) The requested use or activity will not result in any damage to other property and will not threaten the public health, safety, or welfare on or off the property.

(d) Any alteration to the wetland, or wildlife habitat area is the minimum necessary to allow for the reasonable use of the property.

(e) The inability of the applicant to derive reasonable use is not the results of action by the applicant in subdividing the property or adjusting boundary lines thereby creating the undevelopable condition thirty days after August 13, 2002.

(4) The planning director shall include findings on each of the evaluation criteria listed above in a written decision. The written decision shall be mailed to the applicant and adjacent property owners. The written decision shall include conditions necessary to serve the purpose of the ordinance and shall provide an appeal procedure as contained in Section 21.70.175 of this chapter. (Ord. T-03 §1(part), 2002).

21.70.040 Authority. As provided herein, the planning director or his designee is given the authority to interpret and apply, and the responsibility to enforce this chapter to accomplish the stated purpose. The city of Cheney may withhold, condition, or deny development permits or activity approvals to ensure that the proposed action is consistent with this chapter. (Ord. T-03 §1(part), 2002).

21.70.045 Relationship to other regulations. (a) These critical area regulations shall apply as an overlay and in addition to zoning and other regulations adopted by the city.

(b) They shall apply concurrently with review under the State Environmental Policy Act (SEPA) as locally adopted.

(c) Any conditions required pursuant to this chapter shall be included in the SEPA review and threshold determination.

(d) Any individual critical area adjoined by another type of critical area shall have the buffer and meet the requirements that provide the most protection to the critical areas involved.

(e) When any provision of this chapter or any existing regulation, easement, covenant, or deed restriction conflicts with this chapter, that which provides more protection to the critical areas shall apply.

(f) Compliance with the provisions of this chapter does not constitute compliance with other federal, state, or local regulations and permit requirements that may be required.

(g) The applicant is responsible for complying with these requirements, apart from the requirements of this chapter.

(h) The administrative procedures followed during the critical area review process shall conform to the standards and requirements of the city's zoning, subdivision, and environmental regulations. (Ord. T-03 §1(part), 2002).

21.70.050 Allowed activities. The following activities are allowed:

(1) Development permits and approvals that involve both discretionary land use approvals such as subdivisions, rezones, or conditional use permits and construction approvals such as building permits if all of the following conditions have been met:

(A) The provisions of this title have been previously addressed as part of another approval.

(B) There have been no material changes in the potential impact to the critical area or buffer since prior approval.

(C) There is no information available that is applicable to any critical area review of the site or particular critical area.

(D) The permit or approval has not expired or, if no expiration date, no more than five years has elapsed since the issuance of that permit or approval.

(E) Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured. (Ord. T-03 §1(part), 2002).

21.70.055 Critical area pre-application checklist. Prior to the city of Cheney's consideration of any proposed activity not found to be exempt under Section 21.70.035 or allowed activities under Section 21.70.050 the applicant shall submit to the department a complete critical area checklist form provided by the city of Cheney. (Ord. T-03 §1(part), 2002).

21.70.060 Best available science. (a) Critical area reports and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas and must give special consideration to conservation and protection measures necessary to preserve or enhance their functions and values.

(b) The best available science is that scientific information applicable to the critical area. These data must be prepared by local, state, or federal natural resource agencies, a qualified scientific professional or team of qualified scientific professionals that is consistent with criteria established in WAC 365-195-900 through WAC 265-195-925.

(c) In the context of critical area protection, a valid scientific process is one that produces reliable information useful in understanding the consequences of a local government's regulatory decisions, and in developing critical area policies and development regulations that will be effective in protecting the functions and values of critical areas. To determine whether information received during the permit review process is reliable scientific information, the planning director or his designee shall determine whether the source of the information displays the characteristics of a valid scientific process. Such characteristics are as follows:

(1) Peer Review. The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The proponents of the information have addressed the criticism of the peer reviewers. Publication in a referred scientific journal usually indicates that the information has been appropriately peer reviewed.

(2) Methods. The methods used to obtain the information are clearly stated and reproducible. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer reviewed to assure their reliability and validity.

(3) Logical Conclusions and Reasonable Inferences. The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained.

(4) Quantitative Analysis. The data has been analyzed using appropriate statistical or quantitative methods.

(5) Context. The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent existing information.

(6) References. The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other pertinent existing information. (Ord. T-03 §1(part), 2002)

21.70.065 Categories of wetlands. The following rating system is hereby adopted as the rating system for categorizing wetlands for the city of Cheney. Wetlands shall be rated according to the Department of Ecology wetland rating system as slightly modified. The criteria are given below:

(1) Wetland Rating Categories.

(A) Category I: Category I wetlands are those that meet the following criteria:

(i) Documented habitat for federal or state listed endangered or threatened fish, animal, or plant species.

(ii) High quality native wetland communities including documented category I, or II quality National Heritage wetland sites.

(iii) High quality regionally rare wetland communities with irreplaceable ecological functions including sphagnum bogs and fens, or mature forested swamps over one-half of one acre in size.

(iv) Wetlands of exceptional local significance.

(B) Category II. Category II wetlands are those defined as category I wetlands and meet the following criteria:

(i) Documented habitat for state listed sensitive plant, fish, or animal species.

(ii) Wetlands that contain plant, fish, or animal species listed as priority species by the Department of Fish and Wildlife.

(iii) Wetlands types with significant functions that may not be adequately replicated through creation or restoration.

(iv) Documented wetlands of local significance.

(v) Wetlands possessing significant habitat value based on a score of twenty-two or more points in the habitat rating system.

(C) Category III. Category III wetlands are those that do satisfy category I, II, or IV criteria, and with a habitat value rating of twenty-one points or less.

(D) Category IV. Category IV wetlands are those that meet the following criteria:

(i) Hydrologically isolated wetlands that are less than or equal to one acre in size, have only one wetland class, and are dominated (over eighty percent area coverage) by a single non-native plant specie; or

(ii) Hydrologically isolated wetlands of that are less than or equal to two acres in size, and have only one wetland class and greater than ninety percent area cover of non-native plant species.

(2) Date of Wetland Rating. Wetland rating categories shall be applied as the wetland exists on the date of the adoption of the rating system by the city of Cheney.

(3) Mapping and Paper Resources. The approximate location and extent of wetlands are shown on the adopted critical area maps. The following are additional resources available to indicate the probable location of wetlands and associated soil series.

- (A) National wetlands inventory maps (NWI);
- (B) USDA soil conservation county soil survey;
- (C) USDA, county hydric soil list;

(D) The exact location of a wetland's boundary shall be determined through the performance of a field investigation by a wetland professional applying the Washington State Identification and Delineation Manual or the Corps of Engineers Wetland Delineation Manual, 1987 (revised). As required by RCW 36.70A.175 (Ecology Publication #96-94). (Ord. T-03 §1(part), 2002).

21.70.070 Classes of wildlife conservation areas. The following rating system is hereby adopted as the rating system for classifying wildlife conservation areas for the city of Cheney.

(1) Class 1 Wildlife Conservation Area. Class 1 wildlife conservation areas are lands including the following:

(A) All seasonal ranges and habitat elements with which federal and state listed endangered, threatened and sensitive species have primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

(B) Areas targeted for preservation by federal, state and/or local governments which provide fish and wildlife benefits, such as important waterfowl areas identified by the U.S. Fish and Wildlife Service and state conservation areas identified by Washington State.

(2) Class 2 Wildlife Conservation Areas. Class 2 wildlife conservation areas are all season ranges and habitat elements with which state listed candidate and monitored species or priority game species have a primary association and which, if altered, may produce a likelihood that the species will maintain and reproduce over the long term.

(3) Class 3 Wildlife Conservation Areas. Class 3 wildlife conservation areas are habitats which include attributes such as comparatively high wildlife density, high wildlife species richness, significant wildlife breeding habitat, seasonal ranges or movement corridors of limited availability and/or high vulnerability. These habitats may include caves, islands, meadows, mature forests, snag-rich areas, talus slopes and urban natural open space. (Ord. T-03 §1(part), 2002).

21.70.075 Additional report requirements--Habitat conservation areas. In addition to the general critical area report requirements, critical area reports for habitat conservation areas must meet the requirements for this section.

(1) Prepared by a Qualified Professional. A critical areas report for a habitat conservation area shall be prepared by a qualified professional who has professional course work and training and has prepared reports for the relevant type of habitat. (2) Area Addressed in the Critical Area Report.

(A) The project area of the proposed activity.  
(B) All habitat conservation area within two hundred feet of the project area.

(C) All shorelines, flood plains, and other critical areas and related buffers within two hundred 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 potential critical wildlife species habitat. A critical area habitat report shall contain the following:

(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, or sensitive species that have primary association with the habitat on or adjacent to the project area, and assessment of potential impacts to the use of the site by the species.

(C) A discussion of any federal, state, or local special management recommendations.

(D) A detailed discussion of potential impacts on habitat by the project, including impacts to water quality.

(E) A discussion of measures including avoidance, minimization and mitigation, proposed to preserve existing habitats in accordance with the following:

(i) The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas. Unless otherwise provided in this title, if alteration to the critical area is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a developing proposal or alteration shall be mitigated in accordance with an approved critical area report and SEPA documents.

(ii) Mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.

(iii) Mitigation shall not be implemented until after city approval of a critical area report that includes a mitigation plan, and mitigation shall be in accordance with the provisions of the approved critical area report.

(F) A discussion of ongoing management practices that will protect the habitat after the project site has been developed, including monitoring and maintenance.

(4) When appropriate the planning director may request additional information relevant to the habitat characteristics and management of the site. (Ord. T-03 §1(part), 2002).

21.70.080 Habitat performance standards--General requirements. (a) Alterations Shall Not Degrade the Functions and Values of the Habitat. A habitat conservation area may be altered only if the proposed alterations of the habitat or the mitigation proposed do not degrade the functions and values of the habitat.

(b) Non-Indigenous Species Shall Not Be Introduced. No non-indigenous plant, wildlife, or fish species shall be introduced into a habitat conservation area unless authorized by a federal or state permit or approval.

(c) Mitigation Shall Attempt to Preserve Contiguous Corridors. Where wildlife corridors exist such as along stream corridors mitigation shall preserve those corridors by appropriate buffer widths.

(d) Approvals of Activities May Be Conditioned. The planning director may condition approval of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate adverse impacts.

(e) Mitigation Shall Achieve Equivalent or Greater Biological Function. Mitigation alterations to habitat conservation areas shall achieve equivalent or greater biological function. Mitigation shall address each function affected by alteration to the habitat.

(f) Buffers, Establishment of Buffers.

(1) The planning director shall require the establishment of buffer areas for activities in or adjacent to habitat conservation areas when needed to protect habitat functions and values. Buffer widths shall reflect the sensitivity of the habitat type and intensity of human activity proposed to be conducted nearby and shall be consistent with recommendations issued by state Department of Fish and Wildlife.

(2) The planning director may allow the recommended habitat area buffer width to be reduced in accordance with the following guidelines;

(A) It will not reduce habitat functions and values.

(B) It will provide additional resource protection, such as buffer enhancement.

(C) The total area contained in a buffer area after averaging is no less than the area that would have been contained in the standard buffer.

(D) Maximum buffer width reduction is fifty percent.

(g) Signs and Fencing of Habitat Conservation Areas. The outer perimeter of the habitat conservation area or buffer shall be marked in the field by appropriate temporary markers during construction and if necessary shall be delineated by a permanent marker after completion of the activity at the discretion of the planning director. Fencing may be required at the discretion of the planning director to exclude harmful disturbances such as grazing animals. (Ord. T-03 §1(part), 2002).

21.70.085 Specific habitats--Performance standards. (a) Wetland Habitats. All proposed activities within or adjacent to habitat conservation areas containing wetlands, conform to wetland development performance standards set forth in this chapter. Whichever critical area has the greater protection shall apply. (Ord. T-03 §1(part), 2002).

21.70.090 Riparian habitat areas. (a) Riparian Habit Areas. Unless otherwise allowed in this title, all structures and activities shall be located outside the riparian habitat area.

(1) Riparian habitat areas shall be established for habitats that include aquatic and terrestrial ecosystems that mutually benefit each other, and are located adjacent to rivers, perennial, and some intermittent streams.

(2) Riparian habitat widths are indicated in the table below. The width shall be measured outward from both sides of the stream from the ordinary high water mark or from the top of the stream bank.

Stream type	Recommended RHA Width
Type 1 & 2 or shorelines of the state	250 feet
Type 3; or other perennial or	200 feet

fish bearing stream, 5-20 feet wide Type 3; or other perennial or fish bearing stream, >5 feet wide	150 feet
Type 4; and 5; perennial non-fish streams, and intermittent streams with aquatic habitat	100 feet

(3) Increased Riparian Habitat Area Widths. The recommended riparian habitat area widths shall be increased at the discretion of the planning director (or his designated authority) if the recommended width is insufficient to prevent habitat degradation and/or deterioration of riparian functions and values.

(4) Riparian Habitat Area Width Reduction. The planning director (or his designated authority) may allow the reduction of riparian habit width if:

- (A) The width will not reduce stream or habitat functions and values,
- (B) The proposal will provide for equivalent or increased habitat area.
- (C) The riparian habitat width is not reduced by more than twenty-five percent.

(5) Riparian Habitat Mitigation. Mitigation of adverse impacts to riparian habit areas shall result in equivalent functions and values, be located as near the alteration as feasible, and be located in the same sub drainage basin as the habitat impacted. Mitigation requirements shall be the same as outlined in subsection 21.70.075(C)(5). Mitigation requirements may be modified at the discretion of the planning director if it is demonstrated that alternative mitigation measure will result in no net loss of habitat functions and values. (Ord. T-03 §1(part), 2002).

21.70.095 Frequently flooded areas. Development criteria and guidelines for effectively managing frequently flooded areas under the city of Cheney’s jurisdiction will adhere to the established criteria set forth under Chapter 19.20 of the Cheney Municipal Code. (Ord. T-03 §1(part), 2002). 21.70.100 Pre-permit consultations. Any person preparing to submit an application for development or use of land that may be regulated by this title is strongly encouraged, but not required, to meet with the approving authority during the earliest possible stages of planning. At this meeting the director shall discuss requirements of this title, provide resources pertaining to known critical areas, and outline the review process. Effort put into pre-application consultations and planning will help applicants create projects that will be more quickly and easily processed. (Ord. T-03 §1(part), 2002).

21.70.105 Information requirement. Unless the Cheney planning commission waives one or more of the following requirements, applications for binding site plans or preliminary plat approvals under this chapter shall include:

- (1) A description and map(s) showing the entire parcel of land owned by the applicant and the exact boundary of the critical area on the parcel; the boundary must be delineated in accordance with the 1989 edition of the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands."

(2) A site plan for the proposed activity showing the location, width, depth and length of all existing and proposed structures, roads and equipment within the critical area and its buffer;

(3) Elevations of the site and adjacent lands within the critical area and its buffer at contour intervals of no greater than five feet;

(4) North arrow and scale at one of the following: 1"=10', 1"=20', 1"=30', 1"=40', 1"=50' or 1"=100';

(5) Critical Area Report Prepared by a Qualified Professional. The critical area report shall use valid scientific methods in the analysis of the field data and resource data and reference the source of science used. The report should contain the following:

(A) The name and contact information of the applicant, a description of the proposal, and identification of the permit requested.

(B) A copy of the site plan for the development proposal showing;

(i) Identified critical areas, buffers, and the developmental proposal dimensions. Map scale and N arrow will be included. (ii)

Any storm water or drainage alterations that would impact the wetland or its buffers.

(iii) A statement of the resources and methodology used in the report reflecting "best available science."

(iv) An assessment of the probable cumulative impacts to the critical areas resulting from the proposed development of the site.

(v) Recommended site development alternatives to minimize any impacts on the functions and values of the critical areas and their buffers.

(vi) Recommendations for adequate mitigation, as needed, to offset any unavoidable impacts on the critical area and its buffer. Mitigation will require the submission of a mitigation plan in accordance with requirements in Section 21.70.120.

(vii) Any additional information required for the critical area as specified by the planning director (or designated authority) that reflect unique characteristics of the site or portions of other reports required by other laws and regulations pertaining to the site. (Ord. T-03 §1(part), 2002).

21.70.110 Buffer zones. Buffer zones shall be required for all regulated activities adjacent to a regulated critical area. Standard buffer zones may be enlarged or reduced by the planning commission as a condition of approval based upon degree and type of mitigation proposed. The width of the required buffer zones will adhere to the designated standard buffer for wetlands based upon their comparative importance. The standard buffer widths presume the existence of relatively intact native vegetation community in the buffer zone adequate to protect the wetland and functions. Required standard buffer widths, based on wetland category and land use intensity, are as follow:

Category I wetland standards apply to: (1) Class I wildlife conservation areas,  
(2) All frequently flooded areas.

Category II wetland standards apply to: Class 2 wildlife conservation areas.

Category III wetland apply to: Class 3 wildlife conservation areas.

standards apply to:

(1) Standard Buffer Zone Widths:

(A) Category I

- (i) high intensity land use 300 feet
- (ii) low intensity land use 200 feet

(B) Category II

- (i) high intensity land use 200 feet
- (ii) low intensity land use 100 feet

(C) Category III

- (i) high intensity land use 100 feet
- (ii) low intensity land use 50 feet

(D) Category IV

- (i) high intensity land use 50 feet
- (ii) low intensity land use 25 feet

(2) Measurement of Wetland Buffers. All buffers shall be measured from the wetland boundary as surveyed in the field. The width of the buffer shall be determined according to the wetland category and land use.

(A) The planning director or his designated authority shall require increased buffer widths in accordance of the recommendation of a wetland professional and the best available science on a case-by-case basis when a larger buffer is necessary to protect the wetland function and values. The determination shall be based on one or more of the following criteria:

- (i) A larger buffer is needed to protect other critical areas,
- (ii) The buffer or slope of adjacent uplands is greater than fifteen percent or is susceptible to erosion that will adversely impact the wetland, or
- (iii) The buffer has minimal vegetation cover for its habitat class (forested, scrub-shrub, emergent) to insure the protection of its functions and values. A vegetation planting and enhancement plan may substitute for the increased buffer width if the plan is monitored to ensure success.

(3) Increased Standard Buffer Zone Width. The planning commission shall require increased standard buffer zone widths on a case-by-case basis when a large buffer is necessary to protect critical area functions and values based on local conditions. Such determination shall be attached as a permit condition and shall demonstrate:

- (A) A larger buffer is necessary to maintain viable populations of existing species; or
- (B) The wetlands are used by species proposed or listed by the federal government or the state as endangered, threatened, rare, sensitive or being monitored as being critical or having outstanding potential as habitat for those species or has unusual nesting or resting sites; or
- (C) The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts; or
- (D) The adjacent land has minimal vegetative cover or slopes greater than twenty-five percent.

(4) Reduction of Standard Buffer Zone Width. The planning director may allow the standard wetland buffer width to be reduced in accordance with an approved critical

area report on a case-by-case basis when it is determined that a smaller area is adequate to protect the wetland functions and values. All of the following criteria must be met.

(A) Requiring the standard buffer poses a significant hardship on the landowner.

(B) The existing buffer is well vegetated and has less than ten percent slopes.

(C) No direct short or long term adverse impacts to the wetlands will result from the proposed activity.

(D) The planning director may require monitoring of the buffer and wetland and indicate corrective measures if necessary.

(E) In no case shall the standard buffer width be reduced by more than twenty-five percent or a buffer width of fifty feet except for category IV wetlands.

(5) Wetland Buffer Width Averaging. The planning director may allow modification of the standard wetland buffer width in accordance with an approved critical area report on a case-by-case basis by averaging buffer widths. Averaging of buffer widths may only be allowed where a qualified wetlands professional demonstrates that:

(A) It will not reduce wetland functions or values.

(B) The wetland has variations in sensitivity due to existing characteristics of slope, soils, vegetation and the wetland would benefit from a wider buffer in places and not be adversely impacted by a narrower buffer in other places.

(C) The total area contained in the buffer area after averaging is no less than the area contained in the standard buffer.

(D) The buffer width is not reduced to less than fifty percent of the standard buffer width or fifty feet, except in category IV wetlands.

(E) Except as otherwise specified in this title buffers shall be maintained in a natural vegetation cover.

(6) Maintenance of Buffer Zones. Except where otherwise specified, critical area buffer zones shall be retained in their natural condition. Where buffer disturbance has occurred during construction, re-vegetation with approved vegetation shall be required.

(7) Permitted Uses in a Critical Area Buffer Zone. Regulated activities shall not be allowed in a buffer zone except for the following:

(A) Activities having minimal adverse impacts on regulated critical areas. These will include low intensity, passive recreational activities, short term scientific educational activities and trails.

(B) Storm water management facilities having no reasonable alternative on-site location and are sited and designed so as the buffer, as a whole, protects the wetland in question.

(C) A minimum building setback line of fifteen feet is required from the edge of any wetland buffer or the setback of the appropriate zone in which the building is located, whichever is greater. The setback shall be identified on the site plan that is filed as part of the application.

(8) Signs and Demarcation of Wetlands.

(A) Temporary Markers. The outer perimeter of a wetland and buffer shall be marked in the field by pursuant to an approved permit so that no unauthorized intrusion into the buffer or wetland occurs prior to and during construction. The marker

(stakes, flagging, tape, etc.) shall be at the discretion of the planning director and the director shall inspect the site before construction begins.

(B) Permanent Signs. As a condition of any permit or authorization issued pursuant to this chapter, the planning director may require the applicant to install permanent signs along the boundary of the wetland or buffer. The design, spacing, and wording of the signs is left to the discretion of the planning director. (Ord. T-03 §1(part), 2002).

21.70.115 Preservation and protection goals. It is the short term goal of the ordinance codified in this chapter that there be no "net loss" of the acreage or functional values of all wetlands regulated by this chapter. The long term goal is a "net gain" in functional values. (Ord. T-03 §1(part), 2002).

21.70.120 Mitigation. All wetland and/or wildlife habitat restoration, creation and/or enhancement projects required pursuant to this chapter either as a permit condition or as a result of an enforcement action shall follow a mitigation plan prepared by a qualified professional and approved by the planning commission. The applicant or violator shall receive written approval of the mitigation plan by the planning commission prior to commencement of any critical area restoration, creation or enhancement activity. To realize wetland preservation goals, the city will use the following methods of wetland impact mitigation in order of preference:

(1) The applicant shall avoid all impacts that degrade the functions and values of a critical area. Unless otherwise provided in this title, if alteration to the critical area is unavoidable, all adverse impacts to a critical area and associated buffer resulting from a development proposal shall be mitigated in accordance with an approved critical area report, an approved mitigation plan, and SEPA documents.

(2) Mitigation shall be in-kind and onsite, when possible, and sufficient to maintain the functions and values of the critical area.

(3) Mitigation shall not be implemented until after the planning director or designated authority has approved the appropriate critical area report and mitigation plan.

(4) Mitigation Measures. Mitigation shall achieve equivalent or greater biological and habitat functions as existed in the wetland prior to mitigation. Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to the critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following order of preference:

(A) Avoid impact altogether by not taking a certain action or parts of an action;

(B) Minimize impact by limiting the degree or magnitude of the action by project redesign, relocation, timing changes, or technological applications.

(C) Rectifying the impacts to wetlands, frequently flooded areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to conditions equal to or higher quality than at the time of initiation of the project.

(D) Restoring, replacing, or enhancing the wetland on the site of the project.

(E) Restoring, replacing, or enhancing degraded wetlands in the same sub-basin.

(F) Creating wetlands on upland sites that were former wetlands, or are disturbed upland sites.

(G) Preserving high quality wetlands that are under eminent threat.

(H) Reduce or eliminate the impact over time by prevention and maintenance operations during the life of the actions.

(I) Compensate for the impact by replacing, enhancing or providing substitute resources or environments.

(J) All mitigation efforts will be monitored and remedial action taken if necessary. Mitigation can include a combination of the above measures.

(5) Mitigation actions shall be conducted within the same sub-drainage basin and on the site of the wetland impacted except:

(A) There are no reasonable on site or sub-basin opportunities or the opportunities have a poor chance of success.

(B) Off-site mitigation has a greater likelihood of providing equal or improved wetland functions and values (including mitigation banking). (Ord. T-03 §1(part), 2002).

21.70.125 Hardships. (a) Regulated activities shall not be authorized within a wetland except where it can be demonstrated that the impact is both unavoidable and necessary or that all reasonable economic uses are denied.

(b) With respect to category I wetlands, an applicant must demonstrate that denial of the permit would impose an extraordinary hardship on the part of the applicant brought about by circumstances peculiar to the property.

(c) With respect to all other wetlands, the following provisions shall apply:

(1) For water dependent activities, unavoidable and necessary impacts can be demonstrated where there are no practical alternatives which would not involve a wetland or which would not have less adverse impact on a wetland, and would not have other significant adverse environmental consequences. Under no circumstances will such facilities be permitted in wetlands of outstanding significance.

(2) Where non water-dependent activities are proposed, the applicant must demonstrate that:

(A) A reduction in the size, scope, configuration or density of the project as proposed and all alternative designs of the project as proposed that would avoid, or result in less, adverse impact on the wetland or its buffer will not accomplish the basic purpose of the project; and

(B) In cases where the applicant has made an attempt to incorporate the proposed alternatives and they prove to be unacceptable due to constraints such as zoning, deficiencies of infrastructure or parcel size.

(d) For water dependent activities, unavoidable and necessary impacts can be demonstrated where there are no practical alternatives which would not involve a wetland or which would not have less adverse impact on a wetland, and would not have other significant adverse environmental consequences. Under no circumstances will such facilities be permitted in wetlands of outstanding significance.

(e) Where non water-dependent activities are proposed, the applicant must demonstrate that:

(1) A reduction in the size, scope, configuration or density of the project as proposed and all alternative designs of the project as proposed that would avoid, or result in less, adverse impact on the wetland or its buffer will not accomplish the basic purpose of the project; and

(2) In cases where the applicant has made an attempt to incorporate the proposed alternatives and they prove to be unacceptable due to constraints such as zoning, deficiencies of infrastructure or parcel size. (Ord. T-03 §1(part), 2002).

21.70.130 Mitigation plan requirements. When mitigation is required, the applicant shall submit for approval by the city of Cheney and the planning director or his designated authority a mitigation plan prepared by a qualified professional. The mitigation plan shall include:

(1) Environmental Goals and Objectives. The mitigation plan should include a written report identifying environmental goals and objectives of the compensation proposed including:

(A) A description and site plan map of the critical area to be mitigated and the specific mitigation actions to be taken. The mitigation actions should be described in detail and include the site selection criteria that address compensation goals. The goals and objectives shall be related to the functions and values of the impacted critical area.

(B) A time line should be identified for beginning and completion of site compensation construction activities.

(2) Performance Standards. The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained. These could include but are not limited to (area restored or enhanced, area excavated, functioning area and duration of hydrology, planting species numbers and survival goals, wildlife counts and plant coverage) etc.

(3) Detailed Construction Plans. The mitigation plan shall include written specifications and descriptions of the mitigation proposed, such as:

(A) The proposed construction sequence, timing, and duration;

(B) Grading and excavation specifications (grade and slope);

(C) Erosion and sediment and water quality control features;

(D) A planting plan specifying plant species, quantities, location, spacing, density, and measures to protect and maintain plants until established. The written specifications shall be accompanied by detailed site dia-grams, scaled cross sections, topographic maps, and final grade and slope elevations. (Ord. T-03 §1(part), 2002).

21.70.135 Additional report requirements for wetlands. In addition to the general critical area report requirements in Section 21.70.110, critical area reports for wetlands must meet the requirements of this section.

(1) Prepared by a Qualified Professional. A qualified professional is a wetland scientist that by certification, or, applicable course work, or, by two or more years of successful professional experience, including field work and preparing wetland reports, has demonstrated his professional competence in wetland science.

- (2) Additional areas not addressed in the critical area report such as:
- (A) The project area of the proposed activity.
  - (B) All wetlands and buffers within three hundred feet (if necessary) of the proposed project area.
  - (C) All shorelines, water features, floodplains, and other critical areas and buffers within three hundred feet (if necessary) of the project area.
- (3) Additional Wetland Analysis. In addition to the minimum required contents of a critical area report, the wetland report shall address the following site and proposal related information.
- (A) A written assessment and accompanying maps of the wetlands and buffers adjoining the project area, including the following:
    - (i) Wetland delineation and required buffers,
    - (ii) Existing wetland acreage,
    - (iii) Wetland category, vegetative, faunal, and hydrologic characteristics,
    - (iv) Hydric soil characteristics,
    - (v) Topographic elevations (as available). (Ord. T-03 §1(part), 2002).

21.70.140 Monitoring program. The mitigation plan shall include a program for monitoring construction, and for assessing a completed project by a critical area specialist. A protocol for the schedule of monitoring and reporting shall be implemented that verify the performance standards are being met. The period of monitoring shall be adequate to verify that the performance goals and objectives are being met and will vary at the discretion of the planning director (or his designated authority). Monitoring would never be less than three years. (Ord. T-03 §1(part), 2002).

21.70.145 Contingency plan. The mitigation plan should identify courses of action and remedial measures if the performance standards are not being met. (Ord. T-03 §1(part), 2002).

21.70.150 Financial guarantees. The mitigation plan shall include financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. The requirement of financial guarantees is at the discretion of the planning director based on the size, complexity, and cost of the mitigation project. If financial guarantees are required they shall be of sufficient funding to ensure, mitigation, maintenance, and monitoring. (Ord. T-03 §1(part), 2002).

21.70.155 Critical areas markers and signs. (a) The boundary of a critical area will be delineated by survey stakes and tape at the time of the completion of the critical area report. The boundary will be maintained until completion of the project. The required buffer edge will be delineated by plastic tape, or bales, or any other effective marker to prohibit construction activities from encroaching into the critical area or the buffer.

(b) Upon completion of the project the boundary of the critical area will be delineated at appropriate intervals by a permanent sign or marker the design of which will be left to the discretion of the planning director. (Ord. T-03 §1(part), 2002).

21.07.160 Critical area restoration, creation and enhancement. Under certain circumstances, property owners may be permitted to fill or otherwise alter a wetland if they agree to mitigate or compensate for impacts that occur as a result of a project. Wetland creation and restoration projects are designed to create new wetlands or to restore historical wetlands, while enhancement projects aim to improve existing wetlands or add functions and values.

(1) Compensating for Wetland Impacts. As a condition of any permit allowing alteration of wetlands and/or wet-land buffers, or as an enforcement action pursuant to Section 21.70.140, the city shall require that the applicant engage in the restoration, creation or enhancement of wetlands and their buffers in order to off-set the impacts resulting from the applicant's or violator's actions. The applicant shall develop a plan that provides for land acquisition, construction, maintenance and monitoring of replacement wetlands in terms of acreage, function, geographic location and settings, and that are larger than the original wetlands. The overall goal of any compensatory project shall be no net loss of wetland function and acreage and to strive for a net resource gain in wetlands over present conditions. Compensation shall be completed or approved prior to wetland destruction.

Compensatory mitigation shall follow an approved mitigation plan pursuant to Section 21.70.120 and shall meet minimum performance standards. Given the uncertainties in scientific knowledge and the need for expertise and monitoring, wetland compensatory projects may be permitted only when the city finds that the compensation project is associated with an activity or development otherwise permitted and that the restored, created or enhanced wetland will be as persistent as the wetland it replaces. In addition, applicants shall:

(A) Demonstrate sufficient scientific expertise, supervisory capability and financial resources to carry out the project.

(B) Demonstrate the capability of monitoring the site and to make corrections during this period if the project fails to meet projected goals.

(C) Protect and manage or provide for the protection and management of the compensation area to avoid further development or degradation and to provide for longterm persistence of the compensation area.

(2) Wetland Restoration and Creation.

(A) Any person who alters regulated wetlands shall restore or create equivalent areas or greater areas of wetlands than those altered in order to compensate for wetland losses.

(B) Where feasible, restored or created wetlands shall be a higher category than the altered wetland.

(C) Compensation areas shall be determined according to function, acreage, type, location, time factors, ability to be self-sustaining and projected success. Wetland functions and values shall be calculated using the best professional judgment of a qualified wetland ecologist using the best available techniques. Multiple compensation projects may be proposed for one project in order to best achieve the goal of no net loss.

(3) Acreage Replacement Ratio. The following ratios shall apply to creation or restoration that is in kind, on-site, or in the same sub-basin, and has a high probability of success. These ratios do not apply to remedial actions as a result of unauthorized actions. Greater ratios will apply in those cases. These ratios do not apply to the use of credits from a certified wetland mitigation bank, in which the ratios would be consistent with the requirements of the banks certification.

Category I	6:1
Category II or III	
Forested	3:1
Scrub-shrub	2:1
Emergent	1.5:1
Category IV	1.25:1

(A) Increased Ratio Replacement. The city may increase the ratios under the following circumstances:

- (i) Uncertainty as to the probable success of the proposed restoration or creation,
- (ii) A significant period of time will elapse between impact and replication of wetland functions,
- (iii) Wetland functions,
- (iv) Projected loss of wetland functional values,
- (v) The mitigation is outside the sub-basin,
- (vi) The mitigation is the result of un-authorized or illegal activities,
- (vii) Off-site compensation.

(B) Decreased Replacement Ratio. The planning director or his designated authority may decrease these ratios under the following circumstances:

- (i) Findings of special studies coordinated with agencies with expertise which demonstrate that no net loss of wetland function or value is attained under the decreased ratio,
- (ii) Documented by a qualified wetland specialist demonstrates that the proposed mitigation action will result in a wetland with significantly greater functions and values than the one being impacted,
- (iii) The proposed mitigation actions have been completed prior to the project and have demonstrated at equivalent functions and values,
- (iv) In all cases, a minimum acreage replacement ratio of 1:1 is required.

(4) Wetlands Enhancement. Impacts to wetlands may be mitigated by enhancement of existing degraded wetlands. Applicants must submit a mitigation plan that demonstrates how the enhancement will increase the functions and values of the wetland. The enhancement proposal must not reduce existing wetland functions.

(A) Any applicant proposing to alter wetlands may propose to enhance existing significantly degraded wetlands in order to compensate for wetland losses. Applicants proposing to enhance wetlands shall identify how enhancement conforms to

the overall goals and requirements of the local wetlands protection program and established regional goals.

(B) A wetlands enhancement compensation project may be used as mitigation, provided that enhancement for one function and value will not degrade another function and value and that acreage replacement ratios shall be doubled to recognize existing functional values and, provide further, that category I wetlands shall not be enhanced as mitigation.

(C) At a minimum, enhancement acreage will be double the acreage required for restoration, or creation.

(5) Location.

(A) On-site compensation shall be provided except where the applicant can demonstrate that: the hydrology and ecosystem of the original wetland and those who benefit from the hydrology and ecosystem will not be substantially damaged by the on-site loss.

(B) On-site compensation is not significantly feasible due to problems with hydrology, soils or other factors.

(C) Compensation is not practical due to potential adverse impact from surrounding land use.

(D) Existing functional values at the site of the proposed restoration are significantly greater than lost wetland functional values.

(E) That established regional goals for flood storage, flood conveyance, habitat or other wetland functions have been established and strongly justify location of compensatory measures at another site. (Ord. T-03 §1(part), 2002).

21.70.165 Enforcement actions. The city of Cheney may bring appropriate actions at law or equity including actions of injunctive relief, to insure that no uses are made of a regulated critical area or their buffers that are inconsistent with this chapter. The city of Cheney may serve upon a person a cease and desist order if the activity being undertaken on regulated critical areas or their buffer is in violation of these rules as described in Chapter 21.70. (Ord. T-03 §1(part), 2002).

21.70.170 Abrogation and greater restrictions. It is not intended that this chapter repeal, abrogate or impair any existing regulations, easements, covenants or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail. (Ord. T-03 §1(part), 2002).

21.70.175 Appeals. All decisions rendered by the planning director, or designee, regarding this chapter shall be final unless, within ten days of the written decision, the original applicant or another party of record to the proceedings appeals the decision in writing to the planning commission. For any appeal under this section the city shall provide for the record that shall consist of the following:

- (1) Written findings and conclusions;
- (2) Written minutes to the proceedings;
- (3) A typed transcript of the proceedings upon request and at a fee of five dollars per page;

(4) A taped recording of the proceedings upon request at a fee of five dollars per cassette. (Ord. T-03 §1(part), 2002).