

Chapter 25.105

CRITICAL AREAS

Sections:

- 25.105.010 Purpose.
- 25.105.020 General provisions.
- 25.105.030 Definitions.
- ~~25.105.030~~ ~~040~~ -Applicability.
- ~~25.105.040~~ ~~050~~ ~~Development restrictions~~ Critical Areas.
- ~~25.105.050 Exemptions and exceptions.~~
- 25.105.060 ~~Sensitive area permit submittal requirements~~ In-Lieu Fees.
- 25.105.070 ~~Development standards.~~ Exemption and Exceptions.
- 25.105.080 ~~Notice and performance securities and bonds~~ Critical area permit submittal requirements.
- 25.105.090 Enforcement and Procedures of this Chapter.
- 25.105.100 Notice and performance securities.
- ~~25.105.100~~ 110 Non-Conformance.
- ~~25.105.110~~ 120 Suspension – Revocation.
- ~~20.105.120~~ 130 Amendments.
- ~~25.105.130~~ 140 Severability.
- ~~25.105.140~~ 150 Appeals.
- ~~25.105.150~~ 160 Assessment relief.
- ~~25.105.160~~ 170 Limitations on actions.

25.105.010 Purpose.

This chapter has been prepared to express the citizens of DuPont’s desire to preserve, restore, maintain and protect critical areas within the city in compliance with The Washington State Growth Management Act (GMA). The ~~Washington Growth Management Act (GMA)~~ requires that critical areas within the city are to be protected by establishing protection standards for minimizing the impact of development of properties within and adjacent to critical areas. ~~This chapter has been prepared to also express the citizens of DuPont’s desire to preserve, restore and protect critical areas within the city.~~ -The goal of this chapter is to protect and improve the city of DuPont’s critical areas for the present and future generations. Wetlands, streams, geologically hazardous areas, aquifer recharge areas, and associated buffers together constitute environmentally critical areas that are of special concern to the city of DuPont.

The purposes of this chapter are to protect the public health, safety and welfare by preventing the adverse environmental impacts of development listed in ~~subsection (1)(a) of this section~~, and by:

- A. Preserving and protecting critical areas by regulating development adjacent to and within them and their buffers;
- B. Educating the public as to the long-term importance of environmentally critical areas and the responsibilities of the city to protect and preserve the natural environment for future generations;
- C. Directing a policy of no net loss of wetland and stream function, value, and area within the city;
- D. Preventing to the extent practicable, adverse cumulative impacts to water quality, wetlands, stream corridors, and fish and wildlife habitats using best available science;
- E. Encouraging improvements to, and good stewardship of, all surface water bodies and watercourses;

1 F. Protecting the public from injury, loss of life, property damage or financial loss due to flooding,
2 erosion, landslides, seismic events, soil subsidence or steep slope failures;

3 G. Providing the city of DuPont with information necessary to approve, condition, or deny public or
4 private development proposals;

5 H. Alerting appraisers, assessors, owners, potential buyers, or lessees to the development limitations
6 of critical areas while also providing city officials, officers and agents with sufficient information
7 to adequately protect critical areas when approving, conditioning or denying; ~~Alerting appraisers,~~
8 ~~assessors, owners and potential buyers or lessees to the development limitations of~~
9 ~~environmentally Critical areas;~~

10 I. Providing predictability and consistency to the city of DuPont's development review process;

11 J. Implementing the policies of the State Environmental Policy Act, the Growth Management Act,
12 Chapter 43.21C RCW, the city of DuPont comprehensive plan (adopted 2015 and as amended in
13 the future), and all city-related plans and policies. (Ord. 02-707 § 1)

14 ~~(1) Wetlands, hillsides, and streams, and the buffers of these areas together constitute environmentally-~~
15 ~~sensitive areas that are of special concern to the city of DuPont.-~~

16 ~~(a) Wetland ecosystems in the city of DuPont support a diverse, unique and rich group of plant and~~
17 ~~animal life. Habitat is especially productive at the interface between land and water ecosystems.~~
18 ~~Some species require wetland habitats for breeding, nesting, rearing of young, and feeding. Wetlands~~
19 ~~in DuPont also have a positive effect on water quality downstream or in aquifers by removing~~
20 ~~pollutants through the processes of sediment trapping, nutrient removal, and chemical detoxification.~~
21 ~~Wetlands also regulate the flow, retention and release of stormwater to surface and ground water~~
22 ~~systems. Eleven of the 14 wetlands identified in DuPont appear to be hydrologically connected to~~
23 ~~ground water sources. Development in wetlands can, therefore, result in: increased soil erosion and~~
24 ~~sedimentation of downstream water bodies; degraded water quality in streams and aquifers; loss of~~
25 ~~wildlife habitat; loss of ground water discharge and recharge areas; loss of stormwater retention and~~
26 ~~detention capacity.~~

27 ~~(b) Stream corridors in DuPont are habitat for both upland and downstream terrestrial and aquatic~~
28 ~~plant and animal life. As uplands are developed stream corridors become places of refuge for many~~
29 ~~wildlife species, providing food, water, cover, and space. Vegetation on stream banks and ravine~~
30 ~~sidewalls provide food and nutrients to the stream ecosystem, maintain soil stability which reduces~~
31 ~~erosion and downstream siltation, and provide cover necessary for wildlife, maintaining stream~~
32 ~~temperature and chemical requirements critical for certain aquatic species. Development in stream~~
33 ~~corridors can, therefore, result in: siltation of streams, damaging spawning grounds, aquatic insect~~
34 ~~populations and young fish, filling stream channels and causing flooding; loss of stream corridor~~
35 ~~vegetation; loss of wildlife habitat; stream channelization causing increased stream velocity and~~
36 ~~erosion of stream banks and ravine sidewalls.~~

37 ~~(c) The bluffs, ravines and hillsides of DuPont are distinctive physical features that contribute to the~~
38 ~~natural beauty of the city. These areas provide open space and viewing points of extraordinary vistas~~
39 ~~and serve to define the boundaries between different parts of the city. These areas are stabilized by~~
40 ~~existing vegetation, which moderate the effects of runoff and erosion from wind and rain. The natural~~
41 ~~drainage patterns on hillsides contribute to the amount of ground water recharge. Development on~~
42 ~~hillsides can, therefore, result in: loss of slope and soil stability, causing increased erosion and the~~
43 ~~potential for slope failures; increased runoff from removal of vegetation, which reduces the~~
44 ~~percolation of precipitation into the soil and intensifies erosion; destruction of the city's aesthetic~~
45 ~~resources; major public expenditures to repair damaged facilities and to protect against future~~
46 ~~damages due to slope instability caused by development activities.~~

47 ~~(d) The majority of DuPont is undeveloped and is in large part covered by second-growth forest. As~~
48 ~~such the city provides habitat to a variety of wildlife and plant species. As development occurs~~

1 remaining undisturbed open spaces in the form of the sensitive areas regulated by this chapter will
2 become increasingly important in maintaining plant and animal populations for priority species
3 identified by the state and the city. In addition these areas will become important features in
4 maintaining the aesthetic and natural character of the city.

5 (2) The purposes of this chapter are to protect the public health, safety and welfare by preventing the
6 adverse environmental impacts of development listed in subsection (1)(a) of this section, and by:

7 (a) Preserving and protecting environmentally sensitive areas by regulating development within them
8 and their buffers;

9 (b) Educating the public as to the long term importance of environmentally sensitive areas and the
10 responsibilities of the city to protect and preserve the natural environment for future generations;

11 (c) Encouraging a policy of no net loss of wetland and stream function, value and area within the
12 city;

13 (d) Preventing adverse cumulative impacts to water quality, wetlands, stream corridors, and fish and
14 wildlife habitats;

15 (e) Protecting the public from injury, loss of life, property damage or financial loss due to erosion,
16 landslides, soil subsidence or steep slope failures;

17 (f) Providing the city of DuPont with information necessary to approve, condition, or deny public or
18 private development proposals;

19 (g) Alerting appraisers, assessors, owners and potential buyers or lessees to the development
20 limitations of environmentally sensitive areas;

21 (h) Implementing the policies of the State Environmental Policy Act, the Growth Management Act,
22 Chapter 43.21C RCW, the city of DuPont comprehensive plan, and all city related plans and policies.
23 (Ord. 02-707 § 1)

24 25.105.020 General provisions.

25 Undisturbed open spaces in the form of the critical areas are regulated by this chapter and will are become
26 increasingly important in maintaining plant and animal populations for priority species identified by the
27 state and the city; maintaining the aesthetic and natural character of the city; and to protect fragile
28 resources that are sensitive to the impacts of urban development, or may pose hazards to the community if
29 developed. — In addition, these areas will become important features in maintaining the aesthetic and
30 natural character of the city. — Many elements of DuPont’s natural environment are fragile resources that are
31 sensitive to the impacts of urban development, or may pose hazards to the community if developed. — These
32 Regulated critical areas are defined in this chapter and include the following areas and ecosystems: wetlands
33 ; critical potable water aquifer recharge areas; fish and wildlife habitat conservation areas; frequently
34 flooded areas; and geologically hazardous — areas. Frequently flooded areas are another critical area
35 commonly addressed in ordinances such as this but these areas for DuPont have been incorporated in the Wetlands
36 and Fish and Wildlife Habitat Conservation Areas sections of this ordinance. — These are termed “e Critical areas
37 ” which shall also include their protective buffers as set forth in this chapter. The following general provisions
38 will apply to the implementation of this chapter: —, and are of special concern to the city and the — citizens of the
39 state.

40 A. (1) Abrogation and Greater Restrictions. This chapter shall be so construed as to achieve its
41 purposes without abrogating any existing regulations. However, where this chapter imposes
42 greater restrictions, the provisions of this chapter shall prevail.

43 B. (2) Interpretation. The provisions of this chapter shall be held to be minimum requirements in
44 their interpretation and application and shall be liberally construed to serve the purposes of this
45 chapter.

46 C. (3) Compliance with this chapter shall constitute adequate mitigation of impacts to sensitive areas
47 pursuant to the State Environmental Policy Act. (Ord. 02-707 § 1)

1 D. This document addresses only the city's critical areas – it does ~~has been determined that the city will not~~
2 designate —any natural resource lands as defined by the Growth Management Act.

3 E. Regulations in ~~It is the intent of~~ this chapter ~~to~~ shall be implemented to protect the public health, –
4 safety, and welfare by:

5 ~~—Reducing the potential for personal injury, loss of life or property damage due to flooding, erosion,~~
6 ~~landslides, seismic events, or soil subsidence;~~

7 1. Provide special consideration to the conservation for protection measures necessary to
8 preserve or enhance anadromous fish in accordance with RCW 36.70A.172(1).

9 2. Applying~~Using~~ the hierarchal ARC approach to development or alteration ~~critical area~~ impacts in
10 and adjacent to critical areas in order of preference – Avoid, Reduce, and Compensate:

11 a. Avoid adverse impact entirely, if reasonable; ~~First, if reasonable possible, avoid adverse~~
12 impacts entirely;

13 b. Reduce adverse impacts, if avoidance is not possible, ~~Second, if that is not reasonable or~~
14 possible, reduce adverse impacts by:

15 i. Minimizing or limiting the degree or magnitude of the development and its
16 implementation by using appropriate technology, or by taking affirmative steps to
17 avoid or reduce impacts,

18 ii. Reducing or eliminating the impact over time by preservation and maintenance
19 operations during the life of the development activity;

20 c. ~~Finally~~ compensating for unavoidable adverse critical area ~~the~~ impacts by:

21 i. Rectifying the adverse impact by repairing, rehabilitating, or restoring the affected
22 environment,

23 ii. Compensating for unavoidable impacts by replacing, enhancing, or providing
24 substitute resources or environments;

25 3. This chapter shall be applied to avoid ~~Protecting against~~ publicly financed expenditures due
26 to the misuse of critical areas which cause on-site or off-site:

27 a. Unnecessary maintenance and replacement of public facilities;

28 b. Public funding of mitigation for avoidable impacts;

29 i. Cost for public emergency rescue and relief operations where the causes are
30 avoidable.;

31 ~~—Degradation of the natural environment;~~

32 ~~—Protecting unique, fragile, and valuable elements of the environment, including~~
33 ~~fish and wildlife and their habitats;~~

34 ~~—Alerting appraisers, assessors, owners, potential buyers, or lessees to the~~
35 ~~development limitations of critical areas;~~

36 ~~—Providing city officials with sufficient information to adequately protect critical~~
37 ~~areas when approving, conditioning or denying~~

38 ~~—public or private development proposals;~~

~~Implementing the policies of the State Environmental Policy Act, the State Growth Management Act, this code, and the city comprehensive plan (adopted 2015 and as amended in the future).~~

25.105.030 Definitions

For the purposes of this chapter the following definitions shall apply, all definitions shall be narrowly construed to protect critical areas and their buffers.

.005 **Alteration.** Means, with respect to critical areas, any human-induced action that impacts the existing condition of the area. Alteration includes, but is not limited to:

- a. Grading, filling, dredging, draining, channelizing, cutting, topping;
- b. Clearing, relocating, or removing vegetation or fauna;
- c. Paving, construction, modifying for surface water management purposes;
- d. Human activity that impacts the existing topography, vegetation, hydrology, or wildlife habitat
- e. Alteration does not include walking, passive recreation, non-vegetative or faunal litter removal, regular maintenance of existing trails, or similar activities.

.010 **Applicant.** Means a person who files an application for a development permit under this code and who is either the owner of the land on which that proposed activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a person.

.015 **Aquifer recharge area.** Means geological and soil formations with recharging areas influencing aquifers used for potable water used for potable water where a potential source of drinking and ground water is vulnerable to contamination.

.020 **Best available science.** Means current scientific information used in the process to designate, protect, or restore critical areas that is derived from a valid scientific process as defined by WAC 365-195-900.

.025 **Best management practices (BMPs).** Means conservation practices or systems of practices and management measures that:

- a. Avoid or control soil loss and protect water quality from degradation caused by nutrients, animal waste, toxins, and sediment; and
- b. Avoid or minimize adverse impacts to surface water and ground water flow, and circulation patterns; and
- c. Avoid or control the movement of sediment and erosion control caused by land alteration activities; and
- d. Avoid or minimize adverse impacts to the chemical, physical, and biological characteristics of critical areas.

“BMPs” are those practices as defined by the State of Washington Department of Agriculture, Washington State Department of Ecology, Washington State Department of Health, Washington State Department of Fish and Wildlife, and other professional organizations. ~~Applicable BMPs may be more fully identified in the procedures manual to be adopted by the director.~~

.030 **Buffer.** Means an area on a landscape adjacent to any critical area which:

- 1 a. Physically isolates the critical area from surrounding areas using distance, height, visual and/or
- 2 sound barriers;
- 3 b. Acts to minimize risk to the public from loss of life, well-being or property damage resulting
- 4 from natural disasters associated with the critical area;
- 5 c. Protects the functions and values of the critical area from adverse impacts of adjacent activities;
- 6 d. Provides shading, input of organic debris and coarse sediments, room for variation and changes
- 7 in natural critical area characteristics;
- 8 e. Provides habitat for wildlife; and/or
- 9 f. Provides protection from harmful intrusion.

10 These buffer functions protect the public from losses suffered when the functions and values of

11 critical areas are degraded.

12 .035 **Building pad.** Means a portion of a lot which has been altered or designated to provide an

13 acceptable location for a structure on a short plat, subdivision, or lot line revision or other

14 development application. This area is determined by criteria set forth in this ordinance.

15 The area must be delineated on all land use approvals or permits.

16 .040 **Classified species.** Means endangered, threatened and priority species as defined by the

17 State Department of Fish and Wildlife.

18 .045 **Compensatory mitigation.** Means replacing or rectifying a critical area impact or buffer

19 loss. Compensatory mitigation can include, but is not limited to, restoration or creation of lost

20 or impacted functional values. Enhancement of critical areas may be used for partial

21 compensatory mitigation per the requirements of this chapter.

22 .050 **Creation.** Refers to a particular mitigation approach for wetland impact which involves the

23 conversion of a persistent upland or shallow water area into a wetland by human activity. Of

24 these, constructed wetlands, also referred to as treatment wetlands, are created for the primary

25 purpose of contaminant or pollution removal from wastewater or runoff.

26 .055 **Critical Areas.** For the purposes of this chapter, “critical areas” include aquifer recharge

27 areas used for potable water, fish, and wildlife habitat conservation areas, ~~frequently flooded~~

28 ~~areas and critical drainage corridors~~, geologically hazardous areas, and wetlands, ~~and streams~~.

29 Under the GMA, critical areas are to be classified, designated, and protected. In designating

30 and protecting critical areas, the city shall use the best available science, consistent with

31 RCW 36.70A.172. As used in this Chapter, the term “critical area” shall also encompass any

32 required buffer or setback associated with that critical area. The Washington Fish &

33 Wildlife Habitat conservation area map may be used for illustrative and informational

34 purposed only.

35 .060 **Critical drainage corridor or area.** Means an area which has been determined (by the City

36 of DuPont department of public works) to require more restrictive regulation than city-wide

37 standards afford, to mitigate flooding, drainage, erosion, or sedimentation problems which

38 have resulted or will result from the cumulative impacts of development and urbanization. A

39 critical drainage corridor is characterized as a year-round or intermittent naturally flowing

40 watercourse which exhibits but is not limited to one or more of the following characteristics:

- 41 a. A stream or watercourse formed by nature or modified by humans;
- 42 b. Generally consisting of a defined channel with a bed for a substantial portion of its length on
- 43 the lot;

1 c. Watercourses which exhibit the above characteristics and have been channelized or piped;
2 and/or

3 d. Perched ponds, ravines, or other natural drainage features.

4 .065 **Critical facility.** Means a facility for which even a slight chance of being located within a
5 hazard area would be too great. Critical facilities include, but are not limited to, schools,
6 hospitals, police, fire, and emergency response installations which produce, use or store
7 hazardous materials or hazardous waste.

8 .070 **Critical habitat.** Means habitat areas associated with endangered, threatened or priority
9 species as defined by the State Department of Wildlife. These habitats, if altered, could
10 reduce the likelihood that the species will maintain population levels, survive, and reproduce
11 over the long term. Such habitat areas are documented regarding lists, categories, and
12 definitions of species promulgated by the Washington State Department of Wildlife or by and
13 regulations adopted currently or thereafter by the U.S. Fish and Wildlife Service.

14 .075 **Critical slope.** Means any area with slopes of 40 percent or steeper that exceed a vertical
15 height of 10 feet. Critical slope is determined by measuring the vertical rise over any 25-foot
16 horizontal run for a specific area that results in a percentage of 40 or more. The critical
17 slope hazard area includes the area of land that extends for 10 feet from the top and toe of the
18 slope.

19 .080 **Cumulative adverse impact.** Is the impact on the environment which results from the
20 incremental impact of the action when added to other past, present and reasonably
21 foreseeable future actions regardless of what agency or person undertakes such other actions.
22 Cumulative impacts can result from individually minor but collectively significant actions
23 taking place over a period of time.

24 .090 **DMC.** DuPont Municipal Code.

25 .095 **Delineation.** Means a process used to locate and mark a critical area's edge or boundary in
26 the field. Delineations are valid for a period of three years from the date that the city
27 approves the delineation report is complete and accurate.

28 .100 **Development.** Means any alteration, grading, filling, building, earth moving, etc., as well as
29 any structure or utility building operations. Preliminary mapping and survey work that is
30 completed using best management practices and results in insignificant disturbance of
31 vegetation and soil is not considered to be development activity. Development shall not
32 include selective pruning of trees and shrubs for safety and view protection and the removal
33 of noxious weeds; provided, that no heavy equipment is utilized and disturbance of
34 vegetation and soil is insignificant.

35 .105 **Development proposal.** Means a building permit, clearing and grading permit, shoreline
36 permit, rezone, conditional use permit, variance, lot line revision, Planned Unit Development,
37 short and formal subdivision, street development permit, utility development permit, or any
38 development subject to stormwater drainage requirements under DuPont Ordinance. For the
39 purposes of this chapter, the following alterations shall also be considered a development
40 proposal requiring a critical areas permit pursuant to DuPont Ordinance: any alteration
41 occurring ~~in such close proximity~~ adjacent to or within a critical area or associated buffer that
42 the Director determines may ~~adversely~~ have a probable significant impact to the function and
43 value of the critical area. See also "Alteration" in this section.

44 .110 **Diameter at breast height (d.b.h.).** Means a tree's trunk diameter in inches measured four
45 and one-half feet above the ground. On multi-stemmed or trunked trees, where the diameter

1 at four and one-half feet above grade is actually greater than at a lower point on the tree,
2 d.b.h. shall be measured at the narrowest diameter below four and one-half feet. In such
3 cases the height of the measurement should be noted. For leaning trees, diameter shall be
4 measured four and one-half feet up the stem in the direction of the lean. On multi-trunked
5 trees, where tree splits into several trunks close to ground level, the diameter shall be the
6 diameter equivalent to the sum of each individual trunk measured according to the principals
7 listed above.

8 .115 **Director.** Means the Director of the City of DuPont Department of Community
9 Development or their designee.

10 .120 **Enhancement.** Means an action approved by the Director and taken with the intention and
11 probable effect of improving the condition and function of a critical area, such as improving
12 environmental functions in an existing, viable critical area by means of increasing plant
13 diversity, increasing wildlife habitat, installing environmentally compatible erosion controls,
14 or removing nonindigenous plant and/or animal species. Enhancement of one function
15 should not result in the degradation of other functions.

16 .125 **Endangered species.** Means any species which is in danger of extinction throughout all or a
17 significant portion of its range.

18 .130 **Erosion hazard area.** Means those areas containing soils which, according to the USDA
19 Soil Conservation Service, may experience severe to very severe erosion.

20 .135 **Exotic species.** Means plants or animals that are not native to the Puget Sound region.

21 .140 **Fish and wildlife habitat conservation areas.**

22 The following areas are defined as fish and wildlife habitat conservation areas and are
23 identified under this chapter:

24 a. Areas with which state or federally designated endangered, threatened, and sensitive
25 species have a primary association. Federally designated endangered and threatened
26 species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service
27 and the National Marine Fisheries Service that are in danger of extinction or threatened to
28 become endangered. State designated endangered, threatened, and sensitive species are
29 those fish and wildlife species native to the state of Washington identified by the
30 Washington Department of Fish and Wildlife;

31 b. Lands and waters containing documented habitats for plant and animal species listed in
32 the Washington Department of Fish and Wildlife's Priority Habitats and Species Program
33 List. Habitats and species of local significance may be added by action of the city
34 council where the value and significance of such species locally can be established and
35 sound scientific evidence can be presented to establish that the species' existence is
36 determined to be locally significant;

37 c. All public and private tidelands or bedlands are regulated under the City of DuPont 2013
38 Shoreline Master Program (SMP), as amended;

39 d. Streams and waters of the state (see WAC 222-16-.031 that provide habitat to endangered
40 or threatened species, or certain species that have been identified as being sensitive to
41 habitat manipulation, as defined in WAC 222-16-030, Forest Practices Rules and
42 Regulations;

43 ~~Streams and waters of the state (see WAC 190-080(5)(a)(vi)) that provide habitat to~~
44 ~~endangered or threatened species, or certain species that have been identified as being~~

~~sensitive to habitat manipulation, as defined in WAC 222 16 030, Forest Practices Rules and Regulations;~~

e. ~~Lakes, ponds and streams planted with game fish, including those planted under the auspices of a federal, state, local or tribal program, and waters which support priority fish species as identified by the Department of Fish & Wildlife. Include, but are not limited to, a seasonal range or habitat element with which a classified species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain population levels and reproduce over the long term. These may include areas of relative density or species richness, flyways, breeding habitat, winter range, migratory routes, and wildlife movement corridors.~~

.145 **Frequently flooded areas.** Means lands subject to a one percent or greater chance of flooding in any given year or are mapped as such by the Federal Emergency Management Agency or the National Flood Insurance Program, or areas identified by the public works department as critical drainage corridors, lakes, coastal areas, and wetlands (NOTE: Frequently Flooded areas have been incorporated into the Wetlands and Fish & Wildlife Habitat Conservation Areas portions of this CAO and not addressed as a separate section.).

.150 **Functions.** Means the beneficial roles served by critical areas including, but not limited to: water quality protection and enhancement of fish and wildlife habitat; food chain support; food storage, conveyance, and attenuation; ground water recharge and discharge; erosion control; wave attenuation; aesthetic value protection; and recreation.

.155 **Geologically hazardous areas.** Are susceptible to erosion, sliding or other potentially hazardous geological events. They pose a threat to the health and safety of citizens when used as sites for incompatible development. Geologically hazardous areas include erosion hazard areas, landslide hazard areas, steep slopes, and seismic hazard areas.

.160 **Geotechnical engineer.** Means a practicing geotechnical/civil engineer who has a valid Washington State engineering license and a valid certificate of registration in civil engineering, at least four years of professional employment as a geotechnical engineer with experience in landslide evaluation, and appropriate training and experience as specified in Chapter 18.43 RCW.

.165 **Hillsides.** The side of a hill which is sloped and lies between the foot and apex of the hill.

.170 **Hydric soils.** Means those soils which are saturated, flooded or ponded long enough during the growing season to reduce oxygen conditions, thereby influencing the growth of plants. The presence of hydric soil shall be determined following the criteria and methods described in the Washington State Wetland Identification and Delineation Manual (Ecology publication No. 96-94, adopted under WAC ~~173-22-080~~ 173-22-035).

.175 **Hydrophytic vegetation.** Means plant life growing in water or soil that is at least periodically deficient in oxygen because of excessive water content.

.180 **Impervious surfaces.** Means areas or surfaces that cannot be easily penetrated by rain or surface water runoff. These areas include structures and roof projections, impervious decks, roads, driveways, and surfaces which substantially reduce and alter the natural filtration characteristics of the soil.

.185 **Infill development.** Means the development of a vacant or underutilized parcel or parcels that are similar in size and configuration to those found in the adjacent developed area. Infill development minimizes the need for new utilities and streets and supports the more efficient delivery of urban services through compact development patterns.

- 1 .190 **In-Lieu Fee.** An approved in-lieu fee program sells compensatory mitigation credits to
2 permittees whose obligations to provide compensatory mitigation is then transferred to the in-
3 lieu fee program sponsor, a governmental or non-profit natural resource management entity.
- 4 .195 **Lakes.** A lake is a large body of water that is surrounded by land. The lake's water can be
5 fresh or, more rarely, salty. A lake is generally accepted as being bigger than a "pond." In
6 Washington State, Lakes larger than 20 acres are commonly managed under the Shoreline
7 Management Act.
- 8 .200 **Landslide hazard areas.** Means those areas potentially subject to risk of mass movement
9 due to a combination of geologic, topographic, and hydrologic factors, including historic
10 slope failures. These areas may be identified in the City of DuPont Comprehensive Plan,
11 U.S. Geological Service Maps, the Department of Ecology Coastal Zone Atlas, or through
12 site specific indicators, or conditions.
- 13 .205 **Low Impact Development Technical Guidance Manual for Puget Sound** ~~(2004 LID~~
14 Manual). Means the most current manual developed by the Puget Sound Action Team that
15 describes environmentally friendly techniques to develop land and manage stormwater
16 runoff.
- 17 .210 **Mass Wasting.** Also known as slope movement or mass movement, is the geomorphic
18 process by which soil, sand, and rock move downslope typically as a mass, largely under the
19 force of gravity, but frequently affected by water and water content.
- 20 .215 **Mitigation.** Means a process used to reduce the severity of impacts from activities that
21 potentially affect critical areas by the following means:
- 22 a. Avoiding the impact altogether by not taking a certain action or parts of an action;
23 b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation,
24 by using appropriate
25 c. technology, or by taking affirmative steps to avoid or reduce impacts;
26 d. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
27 e. Reducing or eliminating the impact over time by preservation and maintenance operations
28 during the life of the action;
29 f. Compensating for the impact by replacing, enhancing, or providing substitute resources or
30 environments; and/or 6. Monitoring the impact and taking appropriate corrective measures.
- 31 .220 **Monitoring.** Is defined as the establishment and operation of appropriate devices, methods,
32 systems and procedures necessary to monitor, compile, and analyze data on the condition of
33 wetlands or other critical areas.
- 34 .225 **Native vegetation.** Means plant species which are indigenous to the ~~Olympic Peninsula~~
35 Puget Sound region.
- 36 .230 **Noxious weed.** Means any plant which is invasive – for example, blackberries or nettles –
37 and listed on the state noxious weed list in Chapter 16-750 WAC.
- 38 .235 **Off-site compensation.** Means to compensate for lost or degraded critical areas by creating
39 or restoring these areas at or adjacent to the site on which the impacts were located.
- 40 .240 **On-site compensation.** Means to compensate for lost or degraded critical areas by creating
41 or restoring similar critical areas at a location outside the immediate area of the impacted

~~critical area. Means to compensate for lost or degraded critical areas by creating or restoring these areas at or adjacent to the site critical areas on which the impacts were located.~~

.245 **Out-of-kind compensation mitigation.** Means to compensate for lost or degraded critical areas by creating ~~substitute~~ or enhancing critical areas whose characteristics do not closely approximate those destroyed or degraded by a development activity.

.250 **Ordinary High Water Mark.** (OHWM) as defined in the Shoreline Management Act (SMA) is a biological vegetation mark. Ecology's rules include a default tidal or fresh water elevation line for locations where the OHWM cannot be found.

.255 **Peer review.** Means a review of a submitted critical areas report by a second practicing, licensed professional not associated with the original submittal selected and retained by the city. The second review must verify the adequacy of the information, the adequacy of the analysis, and the completeness of the original checklist. The cost for the peer review will be borne by the applicant.

.260 **Pond.** A body of standing water, either natural or artificial, that is smaller than a lake.

.265 **Pond, Perched.** A pond or lake that is isolated above the groundwater table by a layer of impervious soil such as rock or clay.

~~.270~~⁶⁵ **Practicable alternative.** Means an alternative available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and having less impacts to critical areas. It may include using an area not owned by the applicant which can reasonably be obtained, utilized, expanded, or managed in order to fulfil the basic purpose of the proposed development.

~~.275~~ **Pretreatment Facilities.** See "Wetlands, constructed."

~~.280~~⁷⁵ **Procedures manual.** Means a document that may be prepared by the Director, which outlines the process for determining whether critical areas are present on a lot as well as specific application and procedural details for permitting, site development and other requirements as described in this chapter.

~~.285~~ **Qualified critical area consultant.** Means a person who has the qualifications specified below to conduct critical areas studies pursuant to this chapter, and to make recommendations for critical area mitigation. For areas of potential geologic instability, the qualified critical areas consultant shall be an engineering geologist with a Washington specialty license in engineering geology as specified in Chapter 18.220 RCW or geotechnical engineer; provided, that:

a. An engineering geologist may provide a study including interpretation, evaluation, analysis, and application of geological information and data and may predict potential or likely changes in types and rates of surficial geologic processes due to proposed changes to a location, and mitigation measures, provided it does not contain specific engineering design; and

b. Engineering geologists may not provide engineering recommendations or design recommendations, but may contribute to a complete geotechnical report that is co-sealed by a geotechnical engineer.

c. For wetlands the qualified consultant shall possess, at a minimum, a Bachelor of Science or Bachelor of Arts or equivalent degree in hydrology, soil science, botany, ecology, or related field, and have at least two years of full-time work experience as a wetlands professional including delineating wetlands using state or federal manuals, preparing wetland reports, conducting function assessments, and developing and implementing mitigation plans.

1 .290~~85~~ Rehabilitation. Means actions to return a critical area to a state in which its stability,
2 functions and values are improved to more closely approach its un-impacted state. This
3 definition is closely aligned with restoration (.305~~280~~ below).

4 .295~~0~~ Repair. Means activities that restore the character, size, or scope of a project only to the
5 previously authorized condition.

6 .300~~295~~ Reports and surveys. Means required documents prepared by a professional to delineate
7 areas and make recommendations for critical area delineations and related regulations.
8 Examples of these reports and surveys include, but are not limited to:

9 a. Site inventory and/or survey

10 b. Application and site construction plan;

11 c. Critical area report;

12 d. Site mitigation plan;

13 e. Stormwater management plan.

14 .305~~0~~ Restoration. Means actions to ~~return~~bring a critical area to a state in which its stability,
15 functions and values approximate its unaltered state ~~as closely as possible.~~

16 .310~~05~~ Retention/detention facility. Means a drainage facility designed either to:

17 a. Retain runoff for a considerable length of time and release via evaporation, plant transpiration,
18 and/or infiltration into the ground; or

19 b. To detain runoff for a short period of time, and release to an associated surface/stormwater
20 system at a rate not exceeding predevelopment (historical) flows.

21 .315~~0~~ Seismic hazard areas. Includes areas subject to severe risk of damage because of seismic
22 induced ground shaking, slope failure, settlement, soil liquefaction or surface faulting.
23 Ground shaking is a primary risk, followed by slope failure. Soils on slopes greater than 40
24 percent that are expected to be seasonally or perpetually saturated pose a specific risk of
25 settlement, movement, or liquefaction. When saturated, these soils tend to be cohesionless
26 and are unsuitable for foundations.

27 .320~~15~~ Setback. Means the distance specified by these regulations between a structure and a buffer,
28 property line, road, etc.

29 .325~~0~~ Significant vegetation. Means any tree with a diameter of six inches or more at breast
30 height, native “understory” vegetation from four to 10 feet in height, and any species listed in
31 the Washington State Department of Wildlife Priority Habitats and Species Program Report.

32 .330~~25~~ Site. Means the entire lot, series of lots or parcels on which a development is located or
33 proposed to be located, including all contiguous undeveloped lots or parcels under common
34 ownership of the applicants, or the client(s) represented by the applicant.

35 .335~~0~~ Slope. Means an inclined ground surface, the inclination of which is expressed as a ratio
36 (percentage) of vertical distance to horizontal distance by the following formula:

37
$$\frac{\text{Vertical distance}}{\text{Horizontal distance}} \times 100 = \% \text{ slope}$$

38 .340~~35~~ Species of local significance. Means those species that are of local concern due to their
39 population status or their sensitivity to habitat manipulation or that are game species.

40 .345~~0~~ Steep slope. As used in this chapter means a geologically hazardous area exhibiting all three
41 of the following characteristics:

- 1 a. Slopes steeper than 15 percent;
- 2 b. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a
- 3 relatively impermeable sediment or bedrock; and
- 4 c. Springs or ground water seepage.

5 ~~.35045~~ **Stormwater Management Manual.** Means the 2012 Department of Ecology Stormwater

6 Management Manual for Western Washington and as amended in the future.

7 ~~.3550~~ **Swale.** Means a shallow drainage conveyance facility with relatively gentle side slopes, and

8 generally flow depths of less than one foot.

9 ~~.36055~~ **Terrestrial Habitats and Species.** Terrestrial habitats are entirely located on land, as

10 compared with aquatic habitat, which is entirely in the water. Terrestrial species are those

11 animals that reside and rely on the terrestrial (land-based habitats). Some species share

12 terrestrial and aquatic habitats for varying life cycles or stages. Waterfowl and amphibians

13 are good examples.

14 ~~.3650~~ **Threatened species.** Means any species which is likely to become an endangered species

15 within the foreseeable future throughout all or a significant portion of its range.

16 ~~.37065~~ **Top of Slope and Toe of Slope.** The “top of slope” is a distinct, topographical break in

17 slope that separates slopes inclined at less than 40 percent from slopes 40 percent or steeper.

18 When no distinct break exists, the top of slope is the uppermost limits of the area where the

19 ground surface drops 10 feet or more vertically within a horizontal distance of 25 feet. The

20 “toe of slope” is a distinct topographical break in slope that separates slopes inclined at less

21 than 40 percent from slopes 40 percent or steeper. When no distinct break exists, the toe of

22 slope of a steep slope is the lowermost limit of the area where the ground surface drops 10

23 feet or more vertically within a horizontal distance of 25 feet.

24 ~~.3750~~ **Utilities.** Means all lines and facilities used to distribute, collect, transmit, or control

25 electrical power, natural gas, petroleum products, information (telecommunications), water,

26 and sewage.

27 ~~.38075~~ **Wetland Classification.** For the purposes of general inventory, wetlands are defined by the

28 criteria defined in the Washington State Wetland Identification and Delineation Manual

29 (Ecology publication No. 96-94, adopted under WAC ~~173-22-080~~ 173-22-035 as amended).

30 ~~.3850~~ **Wetlands, Constructed or Constructed wetlands.** Means intentional construction of a

31 wetland on an area that was previously non-wetland for purposes of wetlands mitigation,

32 wastewater or storm-water treatment, and managed as such.

33 ~~.39085~~ **Wetland or wetlands.** Means those areas that are inundated or saturated by ground or

34 surface water at a frequency and duration sufficient to support, and that under normal

35 circumstances do support, a prevalence of vegetation typically adapted for life in saturated

36 soil conditions. Wetlands generally include bogs, swamps, marshes, ponds, and similar

37 areas. Wetlands do not include those artificial wetlands intentionally created from non-

38 wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales,

39 canals, detention facilities, wastewater treatment facilities, farm ponds and landscape

40 amenities, or those wetlands created after July 1, 1990, that were unintentionally created

41 because of construction of a road, street, or highway. Wetlands may include those artificial

42 wetlands intentionally created from non-wetland areas created to compensate for wetland

43 impacts, including conversion of wetlands to mitigate (RCW 36.70A.030(21)).

1 .3950 Wetland edge. Means the boundary of a wetland as delineated based on the definitions
2 contained in the Washington State Wetland Identification and Delineation Manual (Ecology
3 publication No. 96-94, adopted under WAC ~~173-22-080~~173-22-035).

4 .400~~395~~Wetland hydrology. Means the characteristics of water movement on, over and through a
5 wetland system; the science dealing with the properties, distribution, and circulation of water
6 through a wetland.

7 .4050 Wetlands, Isolated or Isolated wetlands. Means wetlands that meet the following criteria:

8 a. Are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream; and

9 b. Have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface
10 water; and

11 c. Have no surface water connection to lake, stream, estuary, or marine water body.

12 .4010~~5~~ Wetland Rating. The rating for a wetland is as defined in the Washington State Wetlands
13 Rating System for Western Washington – 2014 Update (Ecology Publication #14-06-029,
14 October 2014).

15 **25.105.~~030~~040 Applicability.**

16 A. This chapter establishes regulations for the protection of properties, which contain or are adjacent
17 to ~~sensitive-critical~~ areas. ~~Sensitive~~Critical areas are those which are now or may in the future be
18 identified under the provisions of this chapter. The provisions of this chapter apply to
19 development projects and actions undertaken by individuals and private or public entities.
20 Actions may include, but are not limited to, landscaping and planting of exotic or ornamental
21 vegetation; erection of garden structures such as sheds, fences, gazebos, etc.; clearing or
22 alteration of existing natural vegetation; habitat enhancement or restoration; other alteration of
23 property within or adjacent to a critical area; or any submitted development project. (Ord. 02-707
24 § 1)

25 B. Conflicting Provisions – The regulations in this chapter do not abrogate the DuPont Municipal
26 Code but do supersede any conflicting regulations in the DuPont Municipal Code.– If more than
27 one (1) regulation applies to the subject property, then the regulation that provides the greatest
28 protection to critical areas apply.

29 For properties within jurisdiction of the Shoreline Management Act, the regulations of the City of
30 DuPont Shoreline Master Program supersede any ~~conflict~~conflict in regulation in this chapter.

31 ~~If more than one (1) regulation applies to the subject property, then the regulationiregulation that~~
32 ~~provides the greatestgreatest protection to criticalsensitive areas apply.~~

33 C. Other Jurisdictions – Nothing ~~inthese~~in these regulations eliminates or otherwise affects the
34 responsibility of the applicant or ~~proeprty~~property owner to comply with all applicable local,
35 state, and federal laws regulating ~~developmnet~~development activities in critical areas, as herein
36 defined.

37 D. SEPA Compliance – Nothing in these regulations or the decisions made pursuant to these
38 regulations affects the authority of the City to review, condition, and deny projects under the
39 State Environmental Policy Act, Chapter 43.21C RCW.

1 25.105.050 Critical Areas

2 Within the jurisdiction of the City of DuPont, there are four critical area categories known to exist. ~~These Critical areas within the City of DuPont are:~~ ~~-wetlands and lakes;~~ ~~fish and wildlife habitat~~
3 ~~conservation areas;~~ ~~landslide and erosion hazard areas;~~ ~~and aquifer recharge areas. ~~Each of these~~~~
4 ~~categories have unique features and functions that support a wide variety of ecosystem services. ~~These~~~~
5 ~~following sections~~ provides: descriptions and requirements ~~guidance for toward~~ critical area identification
6 ~~and delineation;~~ required buffers for critical areas; required mitigation sequence and measures if
7 development or alteration impacts are unavoidable in or adjacent to a critical area.; ~~and requirements for~~
8 ~~management and protection of critical areas. ~~and protection.~~~~

10 A. Wetlands & Lakes

11 Wetland and lake ecosystems in the city of DuPont support a diverse, unique, and rich group of
12 plant and animal life. ~~Habitat is especially productive at the interface between land and water~~
13 ecosystems. This interface fluctuates seasonally based on hydrologic conditions and is subject to
14 localized flooding at times which accentuates the function and importance of assigned buffers.
15 Some species require wetland habitats for breeding, nesting, rearing of young, and feeding.
16 Wetlands in DuPont also have a positive effect on water quality downstream or in aquifers by
17 removing pollutants through the processes of sediment trapping, nutrient removal, and chemical
18 detoxification. ~~Wetlands also regulate the flow, retention, and release of stormwater to surface~~
19 and ground water systems. ~~Eleven of the 14 wetlands historically identified in DuPont appear to~~
20 be hydrologically connected to ground water sources. ~~Development in or adjacent to wetlands~~
21 can, therefore, result in: increased soil erosion and sedimentation of downstream water bodies;
22 degraded water quality in streams and aquifers; loss of wildlife habitat; loss of ground water
23 discharge and recharge areas; loss of stormwater retention and detention capacity. Development
24 or alterations in or adjacent to, or in close enough proximity as determined by the ~~director~~Director
25 to ~~activities associated with~~ wetlands, lakes, and their riparian buffers, must incorporate the ARC
26 mitigation sequencing during the planning process. ~~DuPont encourages impact avoidance of~~
27 impact as the preferred alternative to any proposal.

28 1. Wetland Categories

29 a. Identification of wetlands and delineation of their boundaries pursuant to this
30 Chapter shall be done in accordance with the approved federal wetland delineation
31 manual and applicable regional supplement. ~~All areas within the city meeting the~~
32 wetland designation criteria in that procedure are hereby designated critical areas and
33 are subject to the provisions of this Chapter. ~~Wetland delineations are valid for five~~
34 years; after which time the Director may determine whether a revision or additional
35 assessment is necessary.

36 b. Wetlands shall be rated according to the Washington Department of Ecology
37 wetland rating system, as set forth in the *Washington State Wetland Rating System*
38 *for Western Washington: 2014 Update* (Ecology Publication #04-06- 029, or as
39 revised and approved by Ecology), which contains the definitions, methods and
40 criteria for determining a wetland's categorization as Category I, II, III or IV.

41 c. Wetland rating categories shall not change due to illegal modifications.

42 2. Wetland Buffers

43 a. A buffer shall be established adjacent to designated wetland areas. ~~The purpose of the~~
44 buffer area shall be to protect the integrity, functions, and values of the wetland area.
45 Buffer widths shall be appropriate for the sensitivity of the wetland and for the risks

1 associated with land use development. -The following standard buffers have been
2 established in accordance with the best available science (codified at WAC 365-195-900
3 through 925). They are based on the category of wetland and the habitat score as
4 determined by a qualified wetland professional.

5 i. Category I 200 feet

6 ii. Category II 100 feet

7 iii. Category III 75 feet

8 iv. Category IV 50 feet

9 b. Increased buffer widths may ~~shall~~ be required by the City on a case-by-case basis when
10 necessary to protect wetlands functions and values. This determination shall be
11 supported by a Critical Area Report or other appropriate documentation showing that it is
12 reasonably related to protection of the functions and values of the wetland, or when:

13 i. The buffer is within twenty-five (25) feet of the top or toe of a slope that is greater
14 than thirty percent (30%); or;

15 ii. The slope is susceptible to erosion and standard best management practices (BMPs)
16 and erosion-control measures will not prevent adverse impacts to the wetland.

17 c. Buffer width averaging may be allowed by the City in accordance with an approved
18 Critical Area Report provided that all of the following criteria are met:

19 i. It will not reduce provide additional protection to wetlands or enhance their
20 functions;

21 ii. The total area contained in the buffer after averaging on the development proposal
22 site does not decrease;

23 iii. The buffer at its narrowest point is not less than 75 percent of the standard width;
24 and

25 iv. The Critical Area Report shall describe the current functions and values of the
26 wetland and its buffer, and the measures that will be taken to ensure that there is no
27 loss of wetland function due to averaging.

28 d. Reduced buffers may be allowed, with enhancements, in accordance with an approved
29 Critical Area Report provided:

30 i. The existing condition of the buffer is degraded, and

31 ii. Additional protection to the wetland is provided through the implementation of a
32 buffer enhancement plan.

33 iii. Buffer enhancement may include, but is not limited to:

34 e. Planting native vegetation that would increase value for fish and wildlife habitat, improve
35 water quality, or provide aesthetic or recreational value;

36 f. Enhancement of wildlife habitat by incorporating structures that are likely to be used by
37 wildlife, including wood duck boxes, bat boxes, nesting platforms, snags, rootwads,
38 stumps, birdhouses, and nesting areas;

39 g. Removing non-native plant species and noxious weeds from the buffer area and
40 replanting the area.

41 3. ~~Permit Submittal Requirements~~ Allowed Activities in Wetlands and Wetland Buffers

- 1 a. Wetland enhancement, rehabilitation, or restoration not associated with any other
- 2 development proposal may be allowed if accomplished according to a plan for its design,
- 3 implementation, maintenance and monitoring prepared by a civil engineer and a qualified
- 4 biologist and carried out under the direct supervision of a qualified biologist.
- 5 b. Invasive species removal not involving mechanical methods or chemicals.
- 6 c. Garbage, litter, and trash removal completed by use of hand tools.
- 7 d. Hazard tree removal when deemed necessary by a certified arborist.
- 8 e. Passive recreation activities (such as bird watching, hiking, canoeing, and other similar
- 9 activities).

10 4. Wetland Mitigation

11 a. Requirements for Compensatory Mitigation:

- 12 i. Compensatory mitigation for alterations to wetlands shall be used only
- 13 (a) When impacts cannot be -addressed by avoidance of impact;
- 14 (b) And shall achieve equivalent or greater biological functions resulting in no
- 15 net loss of wetlands function.
- 16 ii. Compensatory mitigation plans shall be consistent with this Chapter and Wetland
- 17 Mitigation in Washington State, Part 2: -Developing Mitigation Plans, Version 1,
- 18 (Ecology Publication #06-06-011b) or as amended, and Selecting Wetland
- 19 Mitigation Sites Using a Watershed Approach (Western Washington) (Publication
- 20 #09-06-32, Olympia, WA, December 2009), or other best available science as
- 21 recommended by Dept. of Ecology;
- 22 iii. A performance bond or other approved financial surety is required before any
- 23 project permits are issued. The purpose of the financial surety is to hold an
- 24 applicant accountable for implementing the mitigation and monitoring plans. The
- 25 release of financial surety is contingent on satisfactory completion by the applicant
- 26 of the proposed construction mitigation and monitoring plans.
- 27 iv. Mitigation ratios shall be consistent with Subsection (3)(g)~~3-f~~ of this Section.

28 b. Compensating for Lost or Affected Functions.

29 Compensatory mitigation shall address the functions affected by the proposed project,

30 with an intention to achieve functional equivalency or improvement of functions. The

31 goal shall be for the compensatory mitigation to provide similar wetland functions as

32 those lost, except when either:

- 33 i. The lost wetland provides minimal functions, and the proposed compensatory
- 34 mitigation action(s) will provide equal or greater functions or will provide
- 35 functions shown to be limiting within a watershed through a formal Washington
- 36 state watershed assessment plan or protocol; or
- 37 ii. Out of kind replacement will best meet formally identified regional goals, such as
- 38 replacement of historically diminished wetland types and salmon habitat.

39 c. Preference of Mitigation Actions

40 Mitigation for lost or diminished wetland and buffer functions shall rely on the types

41 below in the following order of preference:

1 i. Restoration (re-establishment and rehabilitation) of wetlands.

2 (a) The goal of re-establishment is returning natural or historic functions to a
3 former wetland.

4 (b) The goal of rehabilitation is repairing natural or historic functions of a
5 degraded wetland.

6 ii. Creation (establishment) wetlands on disturbed upland sites such as those with
7 vegetative cover consisting primarily of non-native species or noxious weeds.

8 This should be attempted only when there is an adequate source of water and it can
9 be shown that the surface and subsurface hydrologic regime is conducive to the
10 wetland community that is anticipated in the design.

11 iii. Enhancement of significantly degraded wetlands in combination with restoration or
12 creation.

13 Enhancement should be part of a mitigation package that includes replacing the
14 altered area and meeting appropriate ratio requirements. Applicants proposing to
15 enhance wetlands or associated buffers shall demonstrate:

16 (a) How the proposed enhancement will increase the wetland's/buffer's
17 functions and values;

18 (b) How this increase in function will adequately compensate for the impacts;
19 and

20 (c) How all other existing wetland functions and values at the mitigation site will
21 be protected.

22 iv. Preservation of high-quality, at risk wetlands as compensation is generally
23 acceptable when done in combination with restoration, creation, or enhancement,
24 provided that a minimum of 1:1 acreage replacement is provided by re-
25 establishment or creation. Ratios for preservation in combination with other forms
26 of mitigation generally range from 10:1 to 20:1, as determined on a case-by-case
27 basis, depending on the quality of the wetlands being altered and the quality of the
28 wetlands being preserved.

29 d. Location of Compensatory Mitigation.

30 Mitigation actions shall be conducted within the same sub-drainage basin and on the site
31 of the development or alteration except when all of the following apply:

32 i. There are no reasonable on-site or in sub-drainage basin opportunities, or on-site
33 and in subdrainage basin opportunities do not have a high likelihood of success
34 due to development pressures, adjacent land uses, or on-site buffers or
35 connectivity are inadequate;

36 ii. On site mitigation would require elimination of high quality upland habitat;

37 iii. Off-site mitigation has a greater likelihood of providing equal or improved
38 wetland functions; and

39 e. Off-site locations shall be in the same sub-drainage basin and in the same Water
40 Resource Inventory Area (WRIA) unless;

- i. Established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions and values have been established and strongly justify location of mitigation at another site; or
- ii. Credits from a state-certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the certified bank instrument;
- iii. If compensatory wetland or wetland buffer mitigation is proposed off site, a signed statement of consent is required from owners of all affected properties. This statement shall be submitted to the city and a Notice recorded with the Pierce County Assessor prior to approval of a compensatory mitigation plan.

f. Timing of Compensatory Mitigation.

Mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development causing the wetland alteration. Construction of mitigation projects shall be timed to reduce impacts to existing wildlife and flora.

g. Wetland Mitigation Ratios.

In the following table the first number indicates the acreage of replacement wetlands and the second number indicates the acreage of wetlands altered.

<u>Category and Wetland Type</u>	<u>Creation</u>	<u>Rehabilitation</u>	<u>Enhancement</u>
<u>Category I</u>	<u>4:1</u>	<u>8:1</u>	<u>16:1</u>
<u>Category II</u>	<u>3:1</u>	<u>6:1</u>	<u>12:1</u>
<u>Category III</u>	<u>2:1</u>	<u>4:1</u>	<u>8:1</u>
<u>Category IV</u>	<u>1.5:1</u>	<u>3:1</u>	<u>6:1</u>

5. Wetland Out of Kind Mitigation

Out of kind mitigation is allowed when the impacts from a proposal can be mitigated in a manner that achieves a higher watershed function. ~~and meets greater goals of advancing Endangered Species recovery. In the City of DuPont, the City has placed an emphasis on recovery of hydrologic function and performance of Sequelitchew Creek. Wetland impacts that require mitigation may consider restoration efforts targeting Sequelitchew Creek. In such instances, a habitat management and restoration plan will be required to address the proposed mitigation benefits and compensatory results of out of kind mitigation. See Fish & Wildlife Habitat section (25.105.053.008) of this chapter for added guidance.~~

B. Fish & Wildlife Habitat Conservation Areas

The Washington State Department of Wildlife defines, identifies and maps priority habitat and species and prepares management recommendations for them. Priority habitat types found in urban growth areas like DuPont include wetlands, critical drainage corridors, marine bluffs, and urban natural open space. Some of these areas, especially wetlands and critical drainage corridors, provide excellent animal and bird habitat areas. This section outlines techniques for the city to use in evaluating land uses and protecting habitat areas which may be adversely impacted by these uses. These regulations are intended to provide reasonable measures to protect and conserve the habitat of fish and wildlife species and thereby maintain or increase their populations within DuPont. Habitat conservation will be accomplished by actively managing to maintain these species in their preferred habitats. ~~However, habitat conservation does not require that all individuals of all species be protected.~~

1 1. Fish & Wildlife Habitat Conservation Areas are defined in 25.105.030.140 of this chapter.

2 ~~1. The following areas are defined as fish and wildlife habitat conservation areas and are~~
3 ~~identified under this chapter:~~

4 ~~Areas with which state or federally designated endangered, threatened, and sensitive species~~
5 ~~have a primary association. Federally designated endangered and threatened species are those~~
6 ~~fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National~~
7 ~~Marine Fisheries Service that are in danger of extinction or threatened to become endangered.~~
8 ~~State designated endangered, threatened, and sensitive species are those fish and wildlife species~~
9 ~~native to the state of Washington identified by the Washington Department of Fish and Wildlife;~~
10 ~~Lands and waters containing documented habitats for plant and animal species listed in the~~
11 ~~Washington Department of Fish and Wildlife's Priority Habitats and Species Program List.~~
12 ~~Habitats and species of local significance may be added by action of the city council where the~~
13 ~~value and significance of such species locally can be established and sound scientific evidence~~
14 ~~can be presented to establish that the species' existence is determined to be locally significant;~~
15 ~~All public and private tidelands or bedlands are regulated under the City of DuPont 2013~~
16 ~~Shoreline Master Program (SMP), as amended;~~
17 ~~Streams and waters of the state (see WAC 190-080(5)(a)(vi)) that provide habitat to endangered~~
18 ~~or threatened species, or certain species that have been identified as being sensitive to habitat~~
19 ~~manipulation, as defined in WAC 222-16-030, Forest Practices Rules and Regulations;~~
20 ~~Lakes, ponds and streams planted with game fish, including those planted under the auspices~~
21 ~~of a federal, state, local or tribal program, and waters which support priority fish species as~~
22 ~~identified by the Department of Fish & Wildlife.~~

23 2. Permitted Stream and Stream Buffer Alterations.

24 a. If alterations to or development in ~~Alterations to~~ streams and stream buffers is not
25 reasonably avoidable, alterations or development may be allowed only if the ~~as~~ following
26 requirements are met:

27 i. Alterations may only be permitted if based upon a study meeting the necessary
28 requirements as determined by the Director;

29 ii. The applicant shall notify affected communities and native tribes of proposed
30 alteration(s) prior to any alteration if the stream is in a flood hazard area. ~~The~~
31 applicant shall submit evidence of such notification to the Federal Emergency
32 Management Agency;

33 iii. There shall be no introduction of any plant or wildlife which is not indigenous to
34 the City into any stream or buffer unless authorized by a State or Federal permit or
35 approval by the City;

36 iv. Unavoidable impacts to streams and stream functions shall be mitigated to achieve
37 no net loss of stream function.

38 b. Utilities may be allowed in stream buffers if:

39 i. No practical alternative location is available;

40 ii. The utility corridor meets any additional requirements set forth in administrative
41 rules and this Chapter including, but not limited to, requirements for installation,
42 replacement of vegetation and maintenance;

43 iii. The requirements for sewer utility corridors shall also apply to streams; and

- 1 iv. Joint use of an approved sewer utility corridor by other utilities may be allowed;
- 2 c. The following surface water management activities and facilities may be allowed in
- 3 stream buffers as follows:
- 4 i. Surface water discharge to a stream from a detention facility, presettlement pond or
- 5 other surface water management activity or facility may be allowed if the discharge
- 6 is in compliance with the Surface Water Design Manual;
- 7 ii. Public and private trails may be allowed in the stream buffers only upon adoption
- 8 of administrative rules consistent with the following:
- 9 iii. The trail surface shall not be made of impervious materials, except that public trails
- 10 may be made of impervious materials if required to comply with the Americans
- 11 with Disabilities Act (ADA); or to provide for emergency access to remote areas;
- 12 and
- 13 iv. Buffers shall be expanded, where practicable, equal to the width of the trail
- 14 corridor including disturbed areas.
- 15 d. Stream crossings may be allowed if:
- 16 i. All road crossings use bridges or other construction techniques which do not
- 17 disturb the stream bed or bank, except that bottomless culverts or other appropriate
- 18 methods demonstrated to provide fisheries protection may be used if the applicant
- 19 demonstrates that such methods and their implementation will pose no harm to the
- 20 stream or inhibit migration of fish;
- 21 ii. All crossings are constructed during the summer low flow and are timed to avoid
- 22 stream disturbance during periods when use is critical to salmonids;
- 23 iii. Crossings do not occur over salmonid spawning areas unless the City determines
- 24 that no other possible crossing site exists;
- 25 iv. Bridge piers or abutments are not placed within the FEMA floodway or the
- 26 ordinary high water mark;
- 27 v. Crossings do not diminish the flood-carrying capacity of the stream;
- 28 vi. Underground utility crossings are laterally drilled and located at a depth of four (4)
- 29 feet below the maximum depth of the scour for the base flood predicted by a civil
- 30 engineer licensed by the State of Washington; and
- 31 vii. Crossings are minimized and serve multiple purposes and properties whenever
- 32 possible.
- 33 e. For any stream alteration allowed by this section, the applicant shall demonstrate, based
- 34 on information provided by a civil engineer and/or a qualified biologist, that:
- 35 i. The equivalent base flood storage volume and function will be maintained;
- 36 ii. There will be no adverse impact to local groundwater;
- 37 iii. There will be no adverse increase in velocity;
- 38 iv. There will be no interbasin transfer of water;
- 39 v. There will be no ~~increase in the sediment load~~ adverse hydrologic disruption of
- 40 surf~~v~~ace water flow regimes;
- 41 vi. Requirements set out in the mitigation plan are met;

1 vii. The relocation conforms to other applicable laws; and

2 viii. All work will be carried out under the direct supervision of a qualified
3 biologist. ~~Stream enhancement not associated with any other development proposal~~
4 ~~may be allowed if accomplished according to a plan for its design, implementation,~~
5 ~~maintenance and monitoring prepared by a civil engineer and a qualified biologist~~
6 ~~and carried out under the direct supervision of a qualified biologist pursuant to~~
7 ~~provisions contained in administrative rules.~~

8 ix. There will be minimal impact to salmonid life cycle.

9 3. Stream enhancement, rehabilitation, or restoration not associated with any other development
10 proposal may be allowed if accomplished according to an approved plan by the Director, for
11 its design, implementation, maintenance and monitoring prepared by a civil engineer and a
12 qualified biologist and carried out under the direct supervision of a qualified biologist
13 pursuant to provisions.

14 4. Mitigation Requirements.

15 a. ~~Restoration~~ Mitigation shall be required when a stream or its buffer is altered in violation
16 of law or without any specific permission or approval by the City. -A mitigation plan for
17 the restoration to offset impacts shall demonstrate that:

18 i. The stream has been degraded and will not be further degraded by the
19 enhancement, rehabilitation, or restoration activity;

20 ii. The enhancement, rehabilitation, or restoration will reliably and demonstrably
21 improve the water quality and fish and wildlife habitat of the stream;

22 iii. The enhancement, rehabilitation, or restoration will have no lasting, significant,
23 adverse impact on any stream functions; and

24 iv. The enhancement, rehabilitation, or restoration will assist in stabilizing the stream
25 channel.

26 b. The following minimum requirements shall be met for the enhancement, rehabilitation, or
27 restoration of a stream:

28 i. All work shall be carried out under the direct supervision of a qualified biologist;

29 ii. Basin analysis shall be performed to determine hydrologic conditions;

30 iii. The natural channel dimensions shall be replicated including its depth, width,
31 length and gradient at the original location, and the original horizontal alignment
32 (meander lengths) shall be replaced;

33 iv. The bottom shall be restored with identical or similar materials;

34 v. The bank and buffer configuration shall be restored to its original condition;

35 vi. The channel, bank and buffer areas shall be replanted with vegetation native to the
36 City which replicates the original vegetation in species, sizes and densities; and

37 vii. The original biologic functions of the stream shall be recreated to the extent
38 possible.

39 c. The requirements in subsection 25.105.050(bB) may be modified if the applicant
40 demonstrates to the satisfaction of the Director that a greater biological function can
41 otherwise be obtained.

1 d. Replacement or enhancement shall be required when a stream or buffer is altered
2 pursuant to an approved development proposal or ~~special~~ study meeting the necessary
3 requirements as determined by the Director. There shall be no net loss of stream
4 functions on a development proposal site and no impact on stream functions above or
5 below the site due to approved alterations.

6 e. The requirements which apply to the restoration of streams in subsection (B) shall also
7 apply to the relocation of streams, unless the applicant demonstrates to the satisfaction of
8 the Director that a greater biological function can be obtained by modifying these
9 requirements.

10 f. Replacement or enhancement for approved stream alterations shall be accomplished in
11 streams and on the site unless the applicant demonstrates to the satisfaction of the
12 Director:-

13 i. Enhancement or replacement on the site is not possible;

14 ii. The off-site location is in the same drainage sub-basin as the original stream; and

15 iii. Greater biological and hydrological functions will be achieved.

16 g. Surface water management or flood control alterations shall not be considered
17 “enhancement” unless other functions are simultaneously improved.

18 5. Performance Standards Applicable to All Development in Fish and Wildlife Habitats.

19 a. Development activities allowed in fish and wildlife habitat conservation areas shall be
20 consistent with the species located there, and shall be regulated additionally by
21 restrictions defined in applicable federal, state and local regulations regarding the species
22 and their habitat.

23 b. Habitat conservation areas identified in required habitat management plans are to be
24 conserved for the management and maintenance of fish and wildlife habitat. Habitat
25 conservation areas may overlap with other identified critical areas. Likely areas of
26 overlap include critical drainage corridors, geologically hazardous areas, and wetlands.

27 c. When habitat areas overlap with other critical areas, all the performance standards
28 established for the overlaying critical area(s) shall apply. If multiple critical areas
29 overlap in an area, the most restrictive conditions shall apply.

30 d. All habitat management plans required under this section shall incorporate mitigation
31 recommendations developed in consideration of the Washington State Department of
32 Fish and Wildlife’s Aquatic Habitat Guidelines, the Department of Ecology’s Stormwater
33 Management Manual for the Puget Sound (2012), and Chapter 5 of the Low Impact
34 Development Technical Guidance Manual for the Puget Sound (~~2004~~2012).

35 6. Performance Standards for Terrestrial Habitats and Species.

36 a. A habitat management plan shall be required for any development in or adjacent to areas
37 identified as habitat for endangered, threatened or sensitive species and for breeding or
38 nesting habitat of priority species. The plan shall incorporate mitigation
39 recommendations developed in consideration of Washington Department of Fish and
40 Wildlife habitat recommendations.

41 b. The habitat management plan shall show the exact location and extent of habitat
42 conservation areas and any alteration of any habitat areas that may reduce the likelihood
43 that the above listed species will survive or reproduce.

1 c. Development in or adjacent to areas used by state priority species shall be designed,
2 located and constructed in consideration of Washington Department of Fish and Wildlife
3 habitat recommendations, and consistent with best management practices (BMPs),
4 including measures to avoid impacts due to construction noise, light and timing.

5 d. Developments occurring within the shoreline jurisdiction shall be mitigated to achieve no
6 net loss of habitat function.

7 e. To preserve areas of native vegetation and to allow for habitat connectivity, the following
8 development standards shall also be applied in terrestrial habitat conservation areas that
9 lie within the shoreline jurisdiction:

10 i. Total impervious surface area shall be limited to 40 percent or 4,000 square feet,
11 whichever is less; and

12 ii. At least 25 percent of the lot shall be required to be retained or restored in native
13 vegetation.

14 7. Performance Standards for Marine Habitats and Species (refer to City of DuPont SMP).

15 a. Development in areas waterward of the ordinary high water mark shall require a habitat
16 analysis and shall give special consideration to the preservation and enhancement of
17 anadromous fish habitat.

18 b. Development proposals shall be designed to first avoid and then minimize environmental
19 impacts.

20 c. Unavoidable impacts to marine habitat and environmental processes shall be mitigated to
21 achieve no net loss of habitat function.

22 d. A habitat management plan shall be required for any development likely to cause impacts
23 to marine habitat and environmental processes.- The plan shall incorporate mitigation
24 recommendations consistent with Washington Department of Fish and Wildlife habitat
25 recommendations.

26 e. All in-water development shall meet the requirements of the Hydraulic Project Approval
27 (HPA) process administered by Washington Department of Fish and Wildlife.

28 8. Buffers or Setbacks.

29 a. A 100-foot buffer is required on each side of a stream as measured from the ordinary high
30 water mark (OHWM). To retain adequate natural habitat for classified species the buffer
31 widths may be adjusted on a case-by-case basis, and the process and justification shall be
32 described in the required habitat management plan.

33 b. Buffers shall consider the Washington Department of Fish & Wildlife, Priority Habitat
34 and Species Management recommendations.

35 c. Buffer widths may be increased by the Director if species present are sensitive to or
36 endangered by habitat alteration, or if the area supports unique or rare plant communities,
37 or contains rearing and nesting sites for endangered, threatened or priority species.

38 d. Buffer widths may be reduced by the Director if the project includes buffer enhancement
39 as part of an approved habitat management plan or if it is found that the affected property
40 would be denied reasonable use.

41 e. Building setback lines shall be measured from the outside edge of required buffers and no
42 setback shall be less than 15 feet from an established buffer.

1 9. Mitigation or Compensation for Terrestrial Habitats and Species.

2 a. Mitigation measures could include, but are not limited to:

3 i. Establishment of buffer zones;

4 ii. Preservation of critically important plants and trees;

5 iii. Limitation of access to habitat area;

6 iv. Seasonal restriction of construction activities;

7 v. Establishing a timetable for periodic review of the development;

8 vi. Using BMPs to avoid or reduce impacts;

9 vii. Reducing the size, scope, configuration, or density of the project.

10 viii. Participation in the city's in-lieu fee program (see section 25.105.060)

11 10. Report Required.

12 A habitat management plan shall be required for:

13 a. Any development in or adjacent to areas identified as habitat for endangered, threatened
14 or sensitive species or for breeding or nesting habitat of priority species.

15 b. Development in areas waterward of the ordinary high water mark shall require a habitat
16 analysis.

17 c. Any compensatory mitigation proposed for stream enhancement, rehabilitation, or
18 restoration associated with out of kind mitigation for wetland impacts.

19 d. Unless otherwise exempt under this ordinance, a permit application to develop in the
20 regulatory floodplain shall include an assessment of the impact of the project on federal,
21 state or locally protected species and habitat, water quality and aquatic and riparian
22 habitat. The assessment shall be:

23 i. A biological evaluation or biological assessment developed per 50 CFR 402.12 to
24 initiate federal interagency consultation under Endangered Species Act Section
25 7(a)(2); or

26 ii. Documentation that the activity fits within Section 4(d) of the Endangered Species
27 Act; or

28 iii. Documentation that the activity fits within a habitat conservation plan approved
29 pursuant to Section 10 of the Endangered Species Act, where any such assessment
30 has been prepared or is otherwise made available; or

31 iv. An assessment prepared in accordance with Regional Guidance for Floodplain
32 Habitat Assessment and Mitigation, FEMA Region X, ~~2010~~2013. The assessment
33 shall determine if the project would adversely affect:

34 (a) Species that are federal, state or local listed as threatened or endangered;

35 (b) The primary constituent elements for critical habitat, when designated;

36 (c) Essential fish habitat designated by the National Marine Fisheries Service;

37 (d) Fish and wildlife habitat conservation areas;

38 (e) Other protected areas and elements necessary for species conservation.

1 C. Geologically Hazardous Areas

2 The bluffs, ravines and hillsides of DuPont are distinctive physical features that contribute to the
3 natural beauty of the city. These areas provide open space and viewing points of extraordinary
4 vistas and serve to define the boundaries between different parts of the city. These areas are
5 stabilized by existing vegetation, which moderate the effects of runoff and erosion from wind and
6 rain. The natural drainage patterns on hillsides contribute to the amount of ground water
7 recharge. Development on hillsides can, therefore, result in: loss of slope and soil stability,
8 causing increased erosion and the potential for slope failures; increased runoff from removal of
9 vegetation, which reduces the percolation of precipitation into the soil and intensifies erosion;
10 destruction of the city's aesthetic resources; major public expenditures to repair damaged
11 facilities and to protect against future damages due to slope instability caused by development
12 activities.

13 Lands determined to be susceptible to landslide or erosion hazard areas (including channel
14 migration zones), are hereby designated as geologically hazardous areas. Development in these
15 geologic hazard areas can put human life, safety, health, and development at risk, alter geologic
16 processes, adversely affect natural resources, and put the development and surrounding
17 developments and uses at risk.

18 1. Classification. For purposes of this chapter, geologically hazardous areas shall include all of
19 the following:

20 a. Landslide Hazard Areas. Landslide hazard areas shall include areas potentially
21 susceptible to landslides based on a combination of geologic, topographic, and
22 hydrologic factors. They include any areas susceptible to mass movement due to any
23 combination of bedrock, soil, slope (gradient), slope aspect, slope form (concave, convex,
24 planar), geological structure, surface and subsurface hydrology, or other factors.
25 Landslide hazard areas shall also include areas along which landslide material may be
26 routed or which may be subject to deposition of landslide delivered material. Landslide
27 hazard areas include but are not limited to the following areas:

28 i. Areas designated as quaternary slumps, earth-flows, mudflows, or landslides on
29 maps published by the U.S. Geological Survey, Washington State Department of
30 Natural Resources, or other reputable sources;

31 ii. Areas with all three (3) of the following characteristics:

32 (a) Slopes steeper than 15%;

33 (b) Hillsides intersecting geologic contacts with a relatively permeable sediment
34 overlying a relatively impermeable sediment or bedrock; and,

35 (c) Springs or groundwater seepage;

36 iii. Areas that have shown movement and/or are underlain or covered by mass wastage
37 debris;

38 iv. Potentially unstable slopes resulting from river or stream erosion or undercutting
39 by wave erosion;

40 v. Areas that show past sloughing or calving of sediment or rocks resulting in a steep
41 slope that is poorly vegetated;

42 vi. Slopes that are parallel or sub-parallel to planes of weakness (which may include
43 but not be limited to bedding planes, soft clay layers, joint systems, and fault
44 planes) in subsurface materials;

1 vii. Any area with a slope of 40% or steeper and with a vertical relief of ten (10) or
2 more feet except areas composed of competent bedrock or a properly engineered
3 slopes designed and approved by a geotechnical engineer licensed in the state of
4 Washington and experienced with the site;

5 viii. Areas within which land use activities could affect the slope stability, including but
6 not limited to areas with subsurface hydrologic flow, groundwater recharge areas
7 and surface water flow;

8 ix. Areas of historical landslide movement including coastal shoreline areas mapped
9 by the Department of Ecology Coastal Zone Atlas or the Department of Natural
10 Resources slope stability mapping as unstable (“U” or class 3), unstable old slides
11 (“UOS” or class 4), or unstable recent slides (“URS” or class 5).

12 b. Erosion Hazard Areas. Erosion hazard areas shall include:

13 i. Channel migration zones, also known as riverine erosion areas, are defined as the
14 areas along a river or stream within which the channel(s) can be reasonably
15 predicted to migrate over time. This is a result of natural and normally occurring
16 geomorphic, hydrological, and related processes when considered with the
17 characteristics of the river or stream and its surroundings, and in consideration of
18 river and stream management plans. Channel migration hazard areas shall
19 include: potential channel migration, channel avulsion, bank erosion, and stability
20 of slopes along the river or stream;

21 ii. Coastal erosion areas that are subject to shoreline retreat from wind, wave, and
22 tidal erosion.

23 2. Standards

24 a. Landslide Hazard Areas:

25 i. General Standards. The following activities may be allowed in active landslide
26 hazard areas when all reasonable measures have been taken to minimize risks and
27 other adverse effects associated with landslide hazards, and when the amount and
28 degree of the alteration are limited to the minimum needed to accomplish the
29 project purpose:

30 (a) Developments that will have no threat to the health or safety of people and will
31 not increase potential for landslides on or off the site and meet the reasonable
32 use standards as set forth above.

33 (b) Utility lines and pipes that are above-ground, properly anchored and/or
34 designed so that they will continue to function in the event of a slope failure or
35 movement of the underlying materials and will not increase the risk or
36 consequences of static or seismic slope instability or result in a risk of mass
37 wasting. Such utility lines may be permitted only when the applicant
38 demonstrates that no other feasible alternative is available to serve the affected
39 population.

40 (c) Access roads and trails that are engineered and built to standards that avoid the
41 need for major repair or reconstruction beyond that which would be required in
42 non-hazard areas. Access roads and trails may be permitted only if the
43 applicant demonstrates that no other feasible alternative exists, including
44 through the provisions of Chapter 8.24 RCW. If such access through critical
45 areas is granted, exceptions or deviations from technical standards for width or

1 other dimensions and specific construction standards to minimize impacts,
2 including drainage and drainage maintenance plans, may be required.

3 (d) Stormwater conveyance through a properly designed stormwater pipe when no
4 other stormwater conveyance alternative is available. The pipe shall be
5 located above-ground and be properly anchored and/or designed so that it will
6 continue to function in the event of a slope failure or movement of the
7 underlying materials and will not increase the risk or consequences of static or
8 seismic slope instability or result in increased risk of mass wasting activity.

9 ii. Landslide Hazard Management Zone: Alteration may be allowed within 300 feet
10 of an active landslide hazard area when the Director determines that the following
11 standards are met:

12 (a) The proposed alteration includes all appropriate measures to avoid, eliminate,
13 reduce, or otherwise mitigate risks to health and safety.

14 (b) The proposed alteration is located outside of a landslide hazard area and any
15 required setback.

16 (c) The development will not decrease slope stability on adjacent properties. The
17 development shall not increase the risk or frequency of landslide occurrences.

18 (d) The removal and disturbance of vegetation, clearing, or grading shall be limited
19 to the area of the approved development.

20 (e) The development is outside of the area of potential upslope or downslope
21 surface movement or potential deposition in the event of a slope failure.

22 (f) The development will not increase or concentrate surface water discharge or
23 sedimentation to adjacent properties beyond predevelopment conditions.

24 (g) The proposed alterations will not adversely impact other critical areas.

25 (h) Structures and improvements shall minimize alterations to the slope contour,
26 and shall be designed to minimize impervious lot coverage unless such
27 alterations or impervious surfaces are needed to maintain slope stability.

28 b. Erosion Hazard Areas: For coastal, riverine, and stream erosion hazard areas, the
29 following activities shall be allowed when the applicable general protective measures are
30 applied as follows:

31 i. Discharge of surface water drainage into a coastal or riverine erosion hazard area,
32 provided there are no other alternatives for discharge, and the drainage is collected
33 upland of the top of the active erosion hazard area and directed downhill in an
34 appropriately designed stormwater pipe that includes an energy dissipating device
35 at the base of the hazard area. The pipe shall be located on the surface of the
36 ground and be properly anchored so that it will continue to function under erosion
37 conditions and not create or contribute to adverse effects on downslope critical
38 areas. The number of pipes should be minimized along the slope frontage.

39 ii. Stormwater retention and detention systems, such as dry wells and infiltration
40 systems using buried pipe or French drains, provided they are located outside the
41 identified channel migration zone, designed by a qualified professional and shall
42 not affect the stability of the site.

43 iii. Utility lines when no feasible conveyance alternative is available. The line shall
44 be located above ground and properly anchored and/or designed so that it will not

1 preclude or interfere with channel migration and will continue to function under
2 erosion conditions; provided, that utility lines may be located within channel
3 migration zones if they are buried below the scour depth for the entire width of the
4 CMZ.

5 iv. Public roads, bridges, and trails when no feasible alternative alignment is available.
6 Facilities shall be designed such that the roadway prism and/or bridge structure will
7 not be susceptible to damage from active erosion.

8 v. Access to private development sites may be allowed to provide access to portions
9 of the site that are not critical areas, if there are no feasible alternative alignments.
10 Alternative access shall be pursued to the maximum extent feasible, including
11 through the provisions of Chapter 8.24 RCW. Exceptions or deviations from
12 technical standards for width or other dimensions, and specific construction
13 standards to minimize impacts may be specified.

14 vi. Stream bank stabilization and shoreline protection may be permitted subject to all
15 of the following standards:

16 (a) Shoreline protection measures located within coastal or riverine erosion areas
17 shall use soft armoring techniques (bioengineering erosion control measures as
18 identified by the State Department of Ecology and the Department of Fish and
19 Wildlife guidance) unless the applicant provides a geotechnical analysis
20 demonstrating that bioengineering approaches will not adequately protect the
21 property.

22 (b) The armoring will not adversely affect critical areas including habitat
23 conservation areas or mitigation will be provided to compensate for adverse
24 effects where avoidance is not feasible.

25 (c) Hard bank armoring is discouraged and may occur only when the property
26 contains an existing permanent structure(s) that is in danger from shoreline
27 erosion caused by wave action or riverine processes and not erosion caused by
28 upland conditions, such as the alteration of natural vegetation or drainage, and
29 the armoring shall not increase erosion on adjacent properties and shall not
30 eliminate or reduce sediment supply.

31 (d) The erosion is not being caused by upland conditions, such as the removal of
32 vegetation or human alteration of existing drainage.

33 (e) Nonstructural measures, such as placing or relocating the development further
34 from the shoreline, planting vegetation, or installing on-site drainage
35 improvements, are not feasible or not sufficient.

36 vii. New public flood protection measures and expansion of existing ones may be
37 permitted, subject to a state hydraulic project approval; provided, that
38 bioengineering or soft armoring techniques shall be used where feasible. Hard
39 bank armoring may occur only in situations where soft approaches do not provide
40 adequate protection.

41 3. Setbacks

42 a. Landslide Hazard Area: The Director shall require setbacks from the edges of any
43 identified landslide hazard area in accordance with the following:

- i. The size of the setback shall be based on the findings of a qualified professional and shall minimize the risk of property damage, death, or injury resulting from landslides both on and off the property.
- ii. The setback shall include consideration of the hydrologic contribution area to the potential landslide area and/or the area subject to the potential for mass movement, and the downhill area subject to potential deposition.
- iii. The setback shall include consideration of vegetation on the potential landslide area and in areas above and below the potential landslide area. The Director shall have the authority to require vegetation or other measures to protect or improve slope stability and shall have the authority to require a mitigation plan developed in accordance with this chapter, and an easement in accordance with this Title to ensure appropriate vegetation improvements are installed, maintained, and preserved.
- iv. Developments on sites that are directly adjacent to a wetland, marine shoreline, or other habitat conservation area as defined in this chapter may be subject to additional buffer requirements and standards as set forth in the subsequent articles of this chapter.

b. Erosion Hazard Areas: The Director shall have the authority to require setbacks from the edges of any coastal, stream, or riverine hazard erosion area in accordance with the following:

- i. The size of the setback shall be based on the findings of a qualified professional and shall protect critical areas and processes and minimize the risk of property damage, death or injury resulting from erosion over the life of the development, typically identified as 100 years.
- ii. The setback shall include the uphill area subject to potential erosion, the downhill area subject to potential deposition, and any area subject to landslide as a result of erosion.
- iii. The setback shall include woody vegetation adequate to stabilize the soil and prevent soil movement (native species are preferred). If the designated setback area lacks adequate woody vegetation, the ~~director~~ Director shall have the authority to require vegetation enhancement or other measures to improve slope stability.
- iv. Developments on sites that are directly adjacent to a wetland or marine shoreline or other habitat conservation area as defined in this chapter may be subject to additional setback requirements and standards as set forth in the subsequent articles of this chapter.

4. Development Requirements. The following requirements shall apply to all activities in geologically hazardous areas:

- a. Generally. New developments shall be located and/or engineered and constructed to reduce risks to life, health, safety, and buildings, and not increase potential for landslides or erosion that could impact either other properties, public resources, or other critical areas. The Director may impose conditions on development activity in a geologically hazardous area as needed to:
 - i. Protect human life and safety; and

1 ii. Minimize the potential for property damage related to seismic events, erosion
2 and/or landslides;

3 iii. Minimize the need for stream or river bank or coastal bluff stabilization in the
4 future;

5 iv. Reduce public liabilities for damages associated with geologic hazards.

6 v. Protect slope stability and minimize erosion, seismic, and/or landslide hazard risks;

7 vi. Maintain natural sediment and erosion processes that are integral to the health and
8 sustainability of freshwater and marine ecosystems as well as minimizing impacts
9 to stream, river, and coastal processes such as channel infill, channel migration,
10 sediment transport, or flooding.

11 b. Impact Avoidance. Impact avoidance measures shall include, but not be limited to,
12 locating the use/development outside of the hazard area, reducing the number, size or
13 scale of buildings, driveways and other features; altering the configuration or layout of
14 the proposed development; implementing special engineering methods for construction,
15 drainage, runoff management etc.; foregoing construction of accessory structures;
16 preserving native vegetation; and other feasible protective measures as determined by an
17 alternatives analysis. For some geologic hazards, impact avoidance may mean no
18 development will be permitted on a property.

19 c. Location of Alterations. New development shall be directed toward portions of a parcel
20 or parcels under contiguous ownership that are not subject to, or at risk from, geological
21 hazards and/or are outside any setback or buffer established by this Chapter.

22 d. Critical Facilities Prohibited. Critical facilities as defined in WAC 16.16.800 shall not
23 be constructed or located in geologically hazardous areas if there is a feasible alternative
24 location outside geologically hazardous areas that would serve the intended service
25 population. If allowed, the critical facility shall be designed and operated to minimize
26 the risk and danger to public health and safety to the maximum extent practicable.

27 e. Review by Qualified Professional. A geologist or other qualified professional, licensed
28 in the State of Washington, shall review development proposals that occur in potentially
29 geologically hazardous areas to determine the potential risk. If development takes place
30 within an identified geologically hazardous area requiring design or structural elements to
31 mitigate the hazard, the mitigation shall be designed by a qualified professional licensed
32 in the State of Washington with expertise in mitigation of geological hazards.

33 f. Life of Structure. Proposed development shall be sited far enough from erosion and
34 landslide hazard areas to ensure at least one hundred (100) years of useful life for the
35 proposed structure(s) or infrastructure. The location should be determined by a geologist
36 or other qualified professional, licensed in the State of Washington and be should be
37 based on site specific evaluation of the landslide and/or erosion hazard.

38 g. Remodels and Additions. Any proposed remodel or addition to an existing permitted or
39 non-conforming structure that exceeds a valuation of greater than 50% of the fair market
40 value shall be required to ensure that the entire structure is improved in accordance with
41 City of DuPont Building Code requirements.

42 h. Land Subdivision. Land that is located wholly within a landslide hazard area erosion
43 hazard area or its buffer may not be subdivided to create buildable parcels entirely within
44 the hazardous area. Land that is located partially within a hazard area or its setback may
45 be divided provided that each resulting lot has sufficient buildable area outside of the

1 hazardous area with provision for drainage, erosion control and related features that will
2 not adversely affect the hazard area or its setback.

3 D. Aquifer Recharge Areas

4 Aquifer recharge areas are characterized as porous geologic formations which store surface water
5 that has percolated into the soil (ground water). Currently the Red Salmon Springs Aquifer and
6 the Outwash/Lakewood Glacier Aquifer are used as drinking water source for the City of DuPont.
7 This section provides protection measures to effectively maintain the quality of ground water by
8 prevention of contamination so if needed in the future, ground water may be used as a potable
9 (drinking) water source. In order to protect the public health and safety, prevent degradation of
10 ground water now, and for potentially usable potable water — and to provide for regulations that
11 prevent and control risks to the degradation of ground water quality and quantity, development in
12 aquifer recharge areas shall be subject to the standards described in this section.

13 1. Classification.

- 14 a. Aquifer recharge areas are those lands in DuPont which have an aquifer of potential
15 future or current use for drinking water, or which are a part of a system which maintains
16 or affects the water quality of a wetland or other significant surface body of water and
17 which allows water to enter the soil and geologic materials in ways and in quantities that
18 replenish natural ground water systems and aquifers.
- 19 b. Aquifers are highly susceptible to damage when the overlying soils and geologic
20 formations that filter surface waters feeding the aquifer are very coarse textured, allowing
21 rapid translocation of surface pollutants to the aquifer. Aquifers under fine textured soils
22 and geologic formation are less susceptible to surface influences and pollution.
- 23 c. Aquifers underlying areas that are currently developed or industrialized are more
24 vulnerable to pollution than aquifers in undeveloped areas. Combining aquifer
25 susceptibility indexes with vulnerability indexes allows identification of those areas most
26 at risk. Aquifers with relatively high susceptibility indexes located in industrial areas
27 have the highest potential to become a significant public health hazard. High
28 vulnerability is characterized by land uses which produce contaminants that may degrade
29 ground water quality or reduce ground water quantity. Low vulnerability is
30 characterized by land uses which will not affect ground water quality or quantity.
- 31 d. Vulnerability to pollution is a function of depth of ground water, permeability of soils
32 and geologic formations (susceptibility), presence of potential source of contamination,
33 and any other relevant factors.

34 2. Regulated Development. The following types of development shall be regulated under this
35 chapter:

- 36 a. Any development not connected to sanitary sewers which is located in a critical aquifer
37 recharge area. On-site sewage treatment shall be prohibited in critical aquifer recharge
38 areas.
- 39 b. The following land uses shall require a hydrogeologic assessment of the proposed site:
- 40 i. Hazardous substance processing or handling;
- 41 ii. Hazardous waste treatment and storage facilities;
- 42 iii. Underground storage of petroleum products;

1 iv. Landfills, junkyards, auto wrecking yards; and

2 v. Golf Courses; and

3 vi. Large scale agriculture; or

4 vii. Other land use of a similar nature.

5 3. Performance Standards for Development. All regulated development, as identified in this
6 section, shall be designed and constructed subject to the following standards:

7 a. Underground hazardous substance and/or petroleum storage facilities shall:

8 i. Be designed to prevent releases due to corrosion or structural failure for the
9 operational life of the tank;

10 ii. Be protected against corrosion, constructed of noncorrosive material, steel clad
11 with a noncorrosive material, or designed to include a secondary containment
12 system to prevent the release or threatened release of any stored substance; and

13 iii. Use material in the construction or lining of the tank that is compatible with the
14 substance to be stored.

15 b. Above ground hazardous substance and/or petroleum storage tanks shall:

16 i. Not be fabricated, constructed, installed, used or maintained in any manner which
17 may allow the release of a hazardous substance to the ground, ground water, or
18 surface waters of DuPont within an aquifer recharge area;

19 ii. Not be fabricated, constructed, installed, used or maintained without having
20 constructed around and under it an impervious containment area enclosing or
21 underlying the tank;

22 iii. Require a secondary containment system either built into the tank structure or dike
23 system built outside the tank for all tanks located within an aquifer recharge area.
24 Propane and heating oil tanks are exempt from secondary containment system
25 requirements;

26 iv. Be consistent with the Department of Ecology's standards for construction and
27 installation.

28 c. Stormwater runoff will be controlled and treated using BMPs and facility design
29 standards as defined in (cite DMC).

30 d. Agricultural and landscaping activities, specifically use of fertilizers, herbicides, and
31 pesticides in highly susceptible areas, shall be controlled through state water quality
32 standards.

33 e. Applicants shall also consider the guidance set forth in Chapter 5 of the Low Impact
34 Development Technical Guidance Manual for the Puget Sound (2004/2012) for
35 recommendations concerning the protection of native soils and vegetation, and retention
36 of hydrologic function, during clearing and grading for development proposals.

37 4. Mitigation or Compensation. Any regulated development listed in subsection
38 25.105.05-0(D)(23).iii of this section which results in degradation of aquifer recharge areas
39 or aquifer water quality will require restoration of on-site disturbance in full to predisturbance
40 conditions. Additional compensation shall be required in the form of fines, provision of
41 drinking water for areas dependent on the degraded aquifer, or alternative environmental
42 restoration.

1 5. Report Required. A geohydrological report may be required in those areas identified as
2 highly susceptible or vulnerable.

3 ~~25.105.040050~~ **Development restrictions.**

4 ~~(1) Undevelopable SensitiveCritical Areas. Except as provided in DMC 25.105.070, no action or~~
5 ~~development may take place in the following sensitivecritical areas:~~

6 ~~(a) Wetlands and Their Buffers. The edge of the wetland and the outside edge of its buffer as~~
7 ~~determined and field marked by a professional wetlands biologist or similarly qualified professional;~~

8 ~~(b) Streams and Their Buffers. The top of the upper bank of the stream and the outside edge of its~~
9 ~~buffer as determined and field marked by a professional biologist, ecologist, or similarly qualified~~
10 ~~professional;~~

11 ~~(c) Ravine Sidewalls, Bluffs, Slopes of 40 Percent or Greater and Their Buffers. The top, toe, and~~
12 ~~edges of ravine sidewalls, bluffs, and steep slopes and the outside edge of their buffers as determined~~
13 ~~and field marked by a qualified geotechnical engineer or similarly qualified professional.~~

14 ~~(2) Developable SensitiveCritical Areas. Hillsides with slopes of 15 percent to 40 percent may be~~
15 ~~developed pursuant to DMC 25.105.070. Hillsides with slopes of less than 15 percent are not subject to~~
16 ~~the hillside development provisions in DMC 25.105.070(3). (Ord. 02-707 § 1)~~

17 **25.105.060 In-Lieu Fees.**

18 To aid in the implementation of off-site mitigation, the City may develop an in-lieu fee program. This
19 program shall be developed and approved through a public process and be consistent with federal rules,
20 state policy on in-lieu fee mitigation, and state water quality regulations. An approved in-lieu-fee
21 program sells compensatory mitigation credits to permittees whose obligation to provide compensatory
22 mitigation is then transferred to the in-lieu program sponsor, a governmental or non-profit natural
23 resource management entity. Credits from an approved in-lieu-fee program may be used when all of the
24 following requirements are met~~paragraphs 1-6 below apply:~~

25 A. The approval authority determines that it would provide environmentally appropriate
26 compensation for the proposed impacts.

27 B. The mitigation will occur on a site identified using the site selection and prioritization process in
28 the approved in-lieu-fee program instrument.

29 C. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee
30 program instrument.

31 D. Land acquisition and initial physical and biological improvements of the mitigation site must be
32 completed within three years of the credit sale.

33 E. Projects using in-lieu-fee credits shall have debits associated with the proposed impacts
34 calculated by the applicant's qualified wetland scientist using the method consistent with the
35 credit assessment method specified in the approved instrument for the in-lieu-fee program.

36 F. Credits from an approved in-lieu-fee program may be used to compensate for impacts located
37 within the service area specified in the approved in-lieu-fee instrument.

38 ~~25.105.050~~**070 Exemptions and exceptions.**

39 Certain actions are exempt from the requirements of this chapter while other actions may be granted
40 specific exceptions or modifications as provided in this chapter. Exemptions and exceptions shall be
41 narrowly construed to protect critical areas and their buffers.

1 A. ~~(1)~~ Exemptions.

2 1. ~~(a)~~ Existing structures or improvements (not covered under item b below) that do not meet
3 the requirements of this chapter may be remodeled, reconstructed, or replaced providing the
4 existing structures or improvements ~~are functional~~ currently meet the originally intended use
5 or function and that any new construction does not further intrude into or detrimentally
6 disrupt a critical area and/or buffer. The burden of proof of functionality and material use, of
7 existing structures or improvements, as well as impact of the proposed activity, is on the
8 applicant and subject to the discretion of the Director. ~~Existing structures or improvements
9 that do not meet the requirements of this chapter may be remodeled, reconstructed, or
10 replaced providing that any new construction does not further intrude into a sensitive/critical
11 area and/or buffer.~~

12 2. ~~(b)~~ Normal and routine maintenance of existing drainage ditches and drainage
13 retention/detention facilities, and other existing utilities.

14 ~~2.3.~~ Clean-up activities through non-mechanical and non-chemical means such as trash removal
15 and invasive plant removal are exempt activities under this chapter. Coordination of these
16 activities should be made after prior consultation with the Director.

17 ~~3.4. (c)~~ Exemption requests shall be made in writing and subject to the administrative authority of
18 the Director. ~~Exemption requests shall be made in writing and be processed with a Type I
19 procedure as set forth in DMC 25.175.010.~~

20 B. ~~(2)~~ Exceptions.

21 1. ~~(a)~~ Construction of new transportation corridors such as roads, sidewalks, and trails; utilities
22 such as water and sewer lines, gas lines, telecommunications and underground power lines;
23 recreation facilities such as boardwalks, viewing platforms and pedestrian bridges; research
24 facilities and monitoring stations where it can clearly be demonstrated that the project is
25 needed for the benefit of the public; and no feasible alternative exists or to gain access to
26 private property; and there is no feasible alternative to the proposed location; and the
27 proposed location results in no net loss in a sensitive/critical area's functional value. An
28 alternative site for the proposed activity shall be considered feasible if it is available and the
29 proposed activity can be carried out on the site after taking into consideration costs, existing
30 technology, infrastructure, and logistics, in light of overall project purposes. There is no
31 feasible alternative when the following can be demonstrated:

32 (a) ~~(i)~~ The basic purpose of the public transportation or underground utility project cannot
33 reasonably be accomplished using one or more other sites in the city that would avoid or
34 result in less adverse impacts on sensitive/critical areas; and

35 (b) ~~(ii)~~ The basic purpose of the project cannot be accomplished by a reduction in the size,
36 scope, or configuration of the project as proposed or by changing the design of the project
37 in a way that would avoid or result in fewer adverse effects on the sensitive/critical area.

38 2. ~~(b)~~ Exemption requests shall be made in writing and subject to the administrative authority of
39 the Director. ~~Exception requests shall be made in writing and processed with a Type III
40 procedure as set forth in DMC 25.175.010. (Ord. 02-707 § 1)~~

41 **25.105.060080 SensitiveCritical area permit submittal requirements.**

42 All nonexempt actions and development within or adjacent to a sensitive/critical area shall be processed
43 with a Type III procedure as set forth in DMC 25.175.010. A complete sensitive/critical area development
44 application shall contain the information contained in DMC 25.105.080 in addition to the information
45 required by DMC 25.175.020 in addition to any specific submittal requirements of this chapter.

- 1 A. ~~(1)~~ Name, address, and phone number of the applicant(s) and property owner(s) (if different from
2 the applicant).
- 3 B. ~~(2)~~ Complete legal description of the subject property.
- 4 C. ~~(3)~~ Statement of proposed development or action.
- 5 D. ~~(4)~~ A site plan at a scale acceptable to the city showing existing conditions that include the
6 following elements:
 - 7 1. ~~(a)~~ Topographic contours at two-foot intervals;
 - 8 2. ~~(b)~~ Existing streets, roads and trails;
 - 9 3. ~~(c)~~ Existing structures and facilities;
 - 10 4. ~~(d)~~ Extent of ~~sensitive~~critical areas as delineated in the field;
 - 11 5. ~~(e)~~ Location of existing trees and tree masses;
 - 12 6. ~~(f)~~ Soil types and their locations.
- 13 E. ~~(5)~~ A site plan at a scale acceptable to the city showing proposed development that include the
14 following elements:
 - 15 1. ~~(a)~~ Topographic contours showing finished grade at two-foot intervals;
 - 16 2. ~~(b)~~ Proposed streets, parking, trails and sidewalks;
 - 17 3. ~~(c)~~ Location of proposed structures and facilities;
 - 18 4. ~~(d)~~ Extent of ~~sensitive~~critical areas and their buffers as delineated in the field;
 - 19 5. ~~(e)~~ Location of major landscaping including those existing trees and tree masses to be
20 retained.
- 21 F. ~~(6)~~ A site plan at a scale acceptable to the city showing proposed subdivision including:
 - 22 1. ~~(a)~~ Lot lines;
 - 23 2. ~~(b)~~ Street rights-of-way;
 - 24 3. ~~(c)~~ Utility easements;
 - 25 4. ~~(d)~~ ~~Sensitive~~Critical areas tracts;
 - 26 5. ~~(e)~~ Proposed storm drainage system and facilities. (Ord. 02-707 § 1)

27 G. Permit Submittal Requirements

- 28 1. Pre-application consultation. Any person preparing to submit an application for
29 development or use of land where the proposal is located within or adjacent to a critical
30 areas or its buffer, or is in close enough proximity to likely effect a critical area or its
31 buffer as determined by the Director or is likely to impact a critical areas as defined by
32 25.105.030.105, shall conduct a consultation meeting with the Director or his/her designee
33 prior to submitting an application for development or other approval. At this meeting,
34 the Director or his/her designee shall discuss the requirements of this Ordinance; provide
35 available critical area maps, scientific information, and other materials outline the review
36 process; and, work with the applicant to identify any potential concerns that might arise
37 during the review process, in addition to discussing other permit procedures and
38 requirements.

- 1 2. Initial review. Following submittal of an application for development or use of land,
2 the ~~Public Works~~ Director or his/her designee shall review the application, site
3 conditions, and other information available pertaining to the site and the proposal and
4 make a determination as to whether any critical areas may be affected by the proposal.
- 5 3. Site inspection. The property owner shall provide the City with reasonable access to
6 the site for the purpose of inspections during any proposal review, enhancement,
7 rehabilitation, or restoration effort, emergency action, or monitoring activity.
- 8 4. Critical area report required. If the information available indicates that the project
9 area is within or adjacent to a critical area or buffer, or that the proposed activity is in
10 close enough proximity to a critical area, as determined by the Director, that it will likely
11 to degrade a critical area, then the applicant shall be required to submit a critical area
12 report prior to further review of the project.
- 13 5. Review criteria:
 - 14 a. Any permit or approval that includes an alteration or development inside of or adjacent
15 to a critical area, or is in close enough proximity to likely effect a critical area or its
16 buffer as determined by the Director ~~to a critical area or its buffer.~~, -unless otherwise
17 provided for in this Chapter Ordinance, may be approved, approved with conditions, or
18 denied based on the proposal's ability to comply with all the following criteria:
 - 19 b. The proposal minimizes the impact on critical areas in accordance with
20 Mitigation sequencing mitigation as defined in the chapter;
 - 21 c. The proposal does not pose an unreasonable threat to the public health, safety, or
22 welfare on or off the development proposal site;
 - 23 d. The proposal is consistent with the general purposes of this Ordinance and the
24 public interest; and
 - 25 e. Any alterations permitted to the critical area are mitigated in accordance with the
26 mitigation requirements and standards of this Chapter; and
 - 27 f. The proposal protects the critical area functions and values consistent with the
28 best available science; and
 - 29 g. The proposal is consistent with other applicable regulations and standards. A
30 favorable critical areas review should not be construed as endorsement or approval
31 of any underlying permit or approval.
- 32 6. The City may condition the underlying permit or approval for any alteration or
33 development within or adjacent to a critical areas or its buffer, or is in close enough
34 proximity to likely effect a critical area or its buffer as determined by the Director as
35 necessary to mitigate impacts to critical areas and to conform to the standards required
36 by this Ordinance. Any conditions of approval shall be attached to the underlying
37 permit or approval.
- 38 7. The applicant has the burden of proving that a proposal complies with the standards set-
39 forth in this Chapter Ordinance.
- 40 8. Completion of the critical area review. The City's determination regarding critical areas
41 pursuant to this Chapter Ordinance shall be final, concurrent with the final decision to
42 approve, condition, or deny the development proposal or other activity involved.

1 ~~25.105.070 Development standards.~~

2 ~~(1) Wetlands. If a wetland is located on or adjacent to the site of a development proposal, all actions on~~
3 ~~the site shall be in compliance with the following requirements and restrictions:~~

4 ~~(a) Wetland Buffers. The following buffers of undisturbed native vegetation shall be provided:~~

5 ~~(i) Class I Wetlands: 200-foot buffer.~~

6 ~~(ii) Class II Wetlands: 100-foot buffer.~~

7 ~~(b) Additional Buffers. The city may require either additional native vegetation to achieve the~~
8 ~~purposes of this chapter or increased buffer widths when environmental information indicates the~~
9 ~~necessity for greater buffers in order to achieve the purposes identified in DMC 25.105.020. In cases~~
10 ~~where additional buffers are not feasible, the city may require the applicant to undertake alternative~~
11 ~~on-site or off-site mitigation measures, including but not limited to a financial contribution to~~
12 ~~projects or programs which seek to protect and increase the wetland resources within the city.~~

13 ~~(c) Decreased Buffers. The city may reduce the required buffer width on a case-by-case basis where~~
14 ~~it can be demonstrated by the applicant that:~~

15 ~~(i) The adjacent land is extensively vegetated and has less than 15 percent slopes and that no~~
16 ~~direct or indirect short-term or long-term adverse impacts to the wetland, as determined by the~~
17 ~~city, will result from a development activity; or~~

18 ~~(ii) The project includes a wetland enhancement or wetland buffer enhancement and mitigation~~
19 ~~plan using native vegetation which substantiates that an enhanced buffer will improve the~~
20 ~~functional attributes of the buffer to provide additional protection for wetlands functions and~~
21 ~~values.~~

22 ~~(d) Buffer Enhancement and Mitigation Plan. The city shall approve a wetland buffer enhancement~~
23 ~~and mitigation plan before issuing any permits for development activity on a lot upon which a~~
24 ~~wetland buffer reduction, alteration, restoration, or enhancement is proposed. The mitigation plan~~
25 ~~shall:~~

26 ~~(i) Be prepared by a qualified wetland professional using accepted methodologies; and~~

27 ~~(ii) Include a discussion of the wetland's existing functional values; and~~

28 ~~(iii) Describe how the buffer's protective value will be enhanced and when mitigation will occur~~
29 ~~relative to project construction; and~~

30 ~~(iv) Provide for adequate monitoring to ensure success of the mitigation plan; and~~

31 ~~(v) Include a contingency plan specifying what corrective measures will be taken if the buffer~~
32 ~~enhancement is unsuccessful.~~

33 ~~(e) Building Setback Lines. On properties subject to the provisions of this chapter minimum building~~
34 ~~setbacks from the edge of a wetland buffer shall be 15 feet.~~

35 ~~(f) Wetland Alteration. Alteration of Class I wetlands is prohibited. Class II wetlands may be altered~~
36 ~~only when it can be demonstrated by the applicant through a wetlands analysis report and mitigation~~
37 ~~plan that the following conditions can be met:~~

38 ~~(i) The alteration would result in no net loss of wetland function or value; and~~

39 ~~(ii) No alternative to the alteration exists through on-site design or through acquisition of~~
40 ~~additional area; or~~

1 ~~(iii) The alteration would increase or maintain the existing wetland functions and values, or that~~
2 ~~the alteration would result in an enhanced or a higher value or less common wetland type which~~
3 ~~would improve the function and value of the wetland as indicated within the wetland analysis~~
4 ~~report and the mitigation plan.~~

5 ~~(g) Wetland and Buffer Tracts. As a condition of any permit issued pursuant to this chapter, the~~
6 ~~applicant shall be required to create a sensitivecritical areas tract or tracts containing the areas~~
7 ~~determined to be wetlands and/or wetlands buffers. SensitiveCritical area tracts are legally created~~
8 ~~tracts containing wetlands and their buffers that shall remain undeveloped in perpetuity.~~
9 ~~SensitiveCritical area tracts are an integral part of the lot in which they are created, are not intended~~
10 ~~for sale, lease or transfer to any other than a public agency, and may not be subdivided. The city of~~
11 ~~DuPont shall require that the sensitivecritical area tracts created pursuant to this chapter be protected~~
12 ~~by one of the following methods:~~

13 ~~(i) The applicant shall convey an irrevocable offer to dedicate the tract to the city of DuPont or~~
14 ~~other public or nonprofit entity approved by the city; or~~

15 ~~(ii) The applicant shall establish and record a permanent and irrevocable deed restriction on the~~
16 ~~property title of all lots containing a sensitivecritical area tract or tracts created as a condition of~~
17 ~~an approved development permit. Such deed restriction shall prohibit in perpetuity the~~
18 ~~development, alteration, or disturbance of vegetation within the sensitivecritical area tract except~~
19 ~~for purposes of habitat enhancement as part of an enhancement project, which has received prior~~
20 ~~written approval from the city.~~

21 ~~(2) Ravine Sidewalls, Bluffs and Slopes of 40 Percent.~~

22 ~~(a) Buffers. A 50-foot undisturbed buffer of native vegetation shall be established from the top, toe~~
23 ~~and sides of ravine sidewalls, bluffs, and slopes of 40 percent.~~

24 ~~(b) Increased Buffers. The city may require increased buffers if environmental studies indicate such~~
25 ~~increases are necessary to mitigate landslide, seismic and erosion hazards, or as otherwise necessary~~
26 ~~to protect the public health, safety and welfare.~~

27 ~~(c) Buffer Reduction. The city may allow reduction of a buffer to not less than 25 feet if the city~~
28 ~~approves a geotechnical report which demonstrates that:~~

29 ~~(i) The proposed development will not create a hazard to the subject property, surrounding~~
30 ~~properties, erosion, or sedimentation to off-site properties or bodies of water; and~~

31 ~~(ii) The proposal addresses the existing geological constraints of the site, including an~~
32 ~~assessment of soils and hydrology; and~~

33 ~~(iii) The proposed methods of construction will minimize erosion and landslide potential and~~
34 ~~will improve or not adversely affect the stability of the ravine sidewall, bluff, or slope; and~~

35 ~~(iv) The proposal uses construction techniques which minimize disruption of existing~~
36 ~~topography and natural vegetation.~~

37 ~~(d) Development Conditions. As part of any approval of development near an area of steep slopes the~~
38 ~~city may require:~~

39 ~~(i) All impacts identified in the geotechnical report be mitigated; and~~

40 ~~(ii) All utilities and roadways to and within the site be located so as to require the minimum~~
41 ~~amount of modification to the slope; and~~

42 ~~(iii) The city may retain consultants at the applicant's expense to ensure that the mitigation~~
43 ~~measures are implemented.~~

1 ~~(e) Ravine, Sidewalls and Bluff Tracts. As a condition of any permit issued pursuant to this chapter,~~
2 ~~the applicant shall be required to create a sensitivecritical areas tract or tracts containing the areas~~
3 ~~determined to be a ravine, ravine sidewall, bluff or related buffer. SensitiveCritical area tracts are~~
4 ~~legally created tracts containing ravine, ravine sidewall or bluffs and their buffers that shall remain~~
5 ~~undeveloped in perpetuity. SensitiveCritical area tracts are an integral part of the lot in which they~~
6 ~~are created, are not intended for sale, lease or transfer to any other than a public agency, and may not~~
7 ~~be subdivided. The city of DuPont shall require that the sensitivecritical area tracts created pursuant~~
8 ~~to this chapter be protected by one of the following methods:~~

9 ~~(i) The applicant shall convey an irrevocable offer to dedicate the tract to the city of DuPont or~~
10 ~~other public or nonprofit entity approved by the city; or~~

11 ~~(ii) The applicant shall establish and record a permanent and irrevocable deed restriction on the~~
12 ~~property title of all lots containing a sensitivecritical area tract or tracts created as a condition of~~
13 ~~an approved development permit. Such deed restriction shall prohibit in perpetuity the~~
14 ~~development, alteration, or disturbance of the sensitivecritical area tract except for purposes of~~
15 ~~habitat enhancement as part of an enhancement project which has received prior written approval~~
16 ~~from the city.~~

17 ~~(3) Hillside Development Standards (Slopes Greater Than 15 Percent).~~

18 ~~(a) Hillside Development. While slopes of less than 40 percent are not identified by this chapter as~~
19 ~~environmentally sensitivecritical, improper development or construction on such slopes can cause~~
20 ~~erosion, soil subsidence, property damage and damage to environmentally sensitivecritical areas~~
21 ~~regulated by this chapter. Development on hillsides with slopes of 15 percent or greater shall comply~~
22 ~~with the following requirements. For purposes of this section, disturbances shall include but not be~~
23 ~~limited to clearing, grading, filling, excavation, construction, paving, or removal of vegetation.~~

24 ~~(b) Submittal Requirements. Applications for projects proposed within areas identified by the city to~~
25 ~~have slopes in excess of 15 percent, or are adjacent to such slopes or determined by the city based on~~
26 ~~a site specific analysis to contain over 15 percent slopes, shall provide the following information~~
27 ~~unless the city waives specific submittal requirements as unnecessary for review of a specific~~
28 ~~application. Such studies shall contain the following information and be prepared by a licensed~~
29 ~~professional engineer:~~

30 ~~(i) A description of how the proposed project and its associated grading plan will or will not~~
31 ~~impact: slope stability, erosion, and landslide hazard; drainage, surface and subsurface~~
32 ~~hydrology, and water quality; existing vegetation as it relates to steep slopes, soil stability, and~~
33 ~~natural habitat value of the subject property and adjoining properties.~~

34 ~~(ii) Recommended methods for mitigating identified impacts and a description of how these~~
35 ~~mitigation measures may impact adjacent properties.~~

36 ~~(iii) The city may retain consultants at the applicant's expense to review the mitigation plan and~~
37 ~~to ensure that the mitigation measures are implemented.~~

38 ~~(4) Streams.~~

39 ~~(a) Buffers. A 100 foot buffer is required on each side of a stream bank.~~

40 ~~(b) Increased Buffer Width. The city may require increased buffer widths as necessary to protect~~
41 ~~streams when the stream is particularly sensitivecritical to disturbances or the development poses~~
42 ~~unusual impacts. Circumstances which require buffers beyond minimum requirements may include~~
43 ~~but are not limited to:~~

1 ~~(i) The stream reach affected by the development proposal serves as a critical fish habitat for~~
2 ~~spawning or rearing as determined by the city using information from sources such as but not~~
3 ~~limited to the Washington State Department of Fisheries, U.S. Fish and Wildlife Service, and~~
4 ~~native tribes; or~~

5 ~~(ii) The land adjacent to the stream and its associated buffer is classified as a geologically~~
6 ~~hazardous or unstable area; or~~

7 ~~(iii) The riparian corridor is underlain with highly infiltrative soils that provide ground water~~
8 ~~which nourishes the stream or by till soils that produce high runoff if cleared of vegetation; or~~

9 ~~(iv) A trail or utility corridor is proposed within the buffer.~~

10 ~~(c) Decreased Buffer Width. The city may reduce the required buffer width on a case by case basis~~
11 ~~where it can be demonstrated that:~~

12 ~~(i) The adjacent land contains extensive undisturbed vegetation and has less than 15 percent~~
13 ~~slopes and that no adverse impact to the stream system will result from the proposed reduction;~~
14 ~~or~~

15 ~~(ii) The proposal includes a buffer enhancement plan using native vegetation which substantiates~~
16 ~~that an enhanced buffer will improve the functional values of the buffer to provide additional~~
17 ~~protection of the stream system; or~~

18 ~~(iii) There has previously been substantial alteration of the buffer for the stream on the subject~~
19 ~~lot or property and a lesser buffer than that required by this section will incorporate buffer~~
20 ~~enhancement measures which will actually improve the functions and values of the existing~~
21 ~~stream buffer; or~~

22 ~~(iv) There has previously been substantial alteration of the buffer for the stream on adjoining lots~~
23 ~~and a lesser buffer than required by this section will not reduce the functions and values of the~~
24 ~~stream system.~~

25 ~~(d) Streams and Stream Buffer Tracts. As a condition of any permit issued pursuant to this chapter,~~
26 ~~the applicant shall be required to create a sensitivecritical areas tract or tracts containing the areas~~
27 ~~determined to be streams and/or stream buffers. SensitiveCritical area tracts are legally created tracts~~
28 ~~containing streams and their buffers that shall remain undeveloped in perpetuity. SensitiveCritical~~
29 ~~area tracts are an integral part of the lot in which they are created, are not intended for sale, lease or~~
30 ~~transfer to any other than a public agency, and may not be subdivided. The city of DuPont shall~~
31 ~~require that the sensitivecritical area tracts created pursuant to this chapter be protected by one of the~~
32 ~~following methods:~~

33 ~~(i) The applicant shall convey an irrevocable offer to dedicate the tract to the city of DuPont or~~
34 ~~other public or nonprofit entity specified approved by the city; or~~

35 ~~(ii) The applicant shall establish and record a permanent and irrevocable deed restriction on the~~
36 ~~property title of all lots containing a sensitivecritical area tract or tracts created as a condition of~~
37 ~~an approved development permit. Such deed restriction shall prohibit in perpetuity the~~
38 ~~development, alteration, or disturbance of the sensitivecritical area tract except for purposes of~~
39 ~~habitat enhancement as part of an enhancement project which has received prior written approval~~
40 ~~from the city. (Ord. 02-707 § 1)~~

41 25.105.090 Enforcement and Procedures of this Chapter.

42 A. Peer Review. The Director may require a 3rd party peer review of any report or study required of
43 an applicant to ~~implement~~ implement the provision of this Chapter to ensure accuracy of the
44 information. ~~The at the expense of the~~ applicant shall bear the burden of any costs associated

1 with this peer review. The Director is authorized to hire a 3rd party consultant to perform this
2 review upon completion of a 3-party contract with the applicant to pay for the peer review prior
3 to review of any permit proposal.

4 **25.105.~~080090~~100 Notice and ~~performance securities~~financial securities and ~~bonds~~.**

5 A. ~~(1)~~-Notice. The owner of any property containing sensitivecritical areas or buffers on which a
6 development project is submitted shall file for record with Pierce County a notice approved in
7 form by the city. Such notice shall provide notice in the public record of the presence of any
8 sensitivecritical areas or buffers. The owner shall submit proof to the city that the notice has
9 been filed for record within 30 days after the approval of a development permit. The notice shall
10 run with the land, and failure to provide such notice to any purchase prior to transferring any
11 interest in the property shall be a violation of this chapter.

12 B. ~~(2)~~-Performance ~~Securities~~Security. The city may require the applicant of a development
13 proposal to post a ~~cash performance bond or other~~financial security, ~~acceptable security~~ in a form
14 and amount determined by the Director, sufficient to guarantee satisfactory workmanship,
15 materials, and performance of structures and improvements allowed or required by application of
16 this chapter. The city shall release the security upon determining that all structures and
17 improvements have been satisfactorily completed.

18 C. ~~(3)~~-~~Bonds~~Maintenance Security. The city may require the applicant whose development
19 proposal is subject to a mitigation plan to post a maintenance/monitoring ~~bond or other~~financial
20 security instrument in a form and amount determined sufficient to guarantee satisfactory
21 performance for a period of up to five years, or longer if determined by the Director to ensure
22 success of the required mitigation. The duration of maintenance/monitoring obligations shall be
23 established by the city after consideration of the nature of the proposed mitigation and the
24 likelihood and expense of mitigation failures. The city shall release the security upon
25 determining that the effectiveness and success of the mitigation plan has been satisfactory. The
26 performance standards of the mitigation plan shall be agreed upon by the city and the applicant
27 during the review process. (Ord. 02-707 § 1)

28 **25.105.~~100~~110 Non-Conformance.**

29 Nonconforming Structures and Improvements. Structures and improvements in existence on the date the
30 ordinance codified in this chapter becomes effective and that do not meet the setback or buffer
31 requirements of this chapter for any defined critical area shall be considered legal nonconforming uses.

32 No permit granted pursuant to this chapter, except as permitted pursuant to 25.105.070, shall remove an
33 applicant's obligation to comply in all respects with the applicable provisions of any other federal, state,
34 or local law or regulation.

35 **25.105.~~110~~120 Suspension – Revocation.**

36 In addition to enforcement procedures and penalties provided for in DMC Chapter 25.185 the Director
37 may suspend or revoke a permit when ~~if (s)he finds that~~ the applicant or permittee has not complied with
38 any or all of the conditions or limitations set forth in accordance with this Chapter, has exceeded the
39 scope of work set forth in the permit, or has failed to undertake the project in the manner set forth in the
40 approved application, or has failed to abide by any relevant Federal, State or City law, regulation or
41 ordinance.

42 **25.105.130 Amendments.**

43 A. These regulations and the city inventory maps may from time to time be amended in accordance
44 with the procedures and requirements in the general statutes and as new information concerning
45 critical areas becomes available.

1 B. The city's shoreline master program at DMC Chapter 25.170 incorporates the critical areas
2 ordinance (~~add DuPont references to applicable codes~~) by reference. Therefore, amendments to
3 this chapter that are intended to alter development regulations applicable to shorelines jurisdiction
4 must be processed as an amendment to the City of DuPont shoreline master program and shall
5 be subject to approval by the Department of Ecology. (~~add DuPont references to applicable~~
6 codes).

7 **25.105.140 Severability.**

8 In the event any one or more of the provisions of this chapter shall for any reason be held to be invalid,
9 such invalidity shall not affect or invalidate any other provision of this chapter, but this chapter shall be
10 construed and enforced as if such invalid provision had not been contained therein; provided, that any
11 provision which shall for any reason be held because of its extent to be invalid shall be deemed to be in
12 effect to the extent permitted by law.

13 **25.105.150 Appeals.**

14 Final permit decisions made by the Director shall be subject to appeal in accordance with the procedures
15 of DMC Title 25 and DMC Chapter 1.11, and any other relevant Federal, State or City law, regulation or
16 ordinance; provided, that the applicant may request administrative review by the Director and
17 development services prior to initiating a formal appeal process. Decisions of conditions applied to
18 specific permits shall be subject to the appeal provisions for that permit.

19 Any person with standing may appeal to the hearing examiner a final administrative order, final
20 requirement, final permit decision, or final determination made; provided, that such appeal shall be filed
21 in accordance with the appeal procedure for the underlying permit. If there is no appealable permit or if
22 the appeal is for a reasonable use permit decision issued by the technical administrator, the appeal shall be
23 filed in writing within 14 calendar days of the date the written decision, order, requirement, or
24 determination is issued and public notice provided, unless the decision is issued as part of a SEPA
25 determination of nonsignificance for which a public comment period is required, in which case a 21-day
26 appeal period shall be provided.

27 The appeal will be upheld if the applicant proves that the decision appealed is clearly erroneous or based
28 upon error of law.

29 The hearing examiner shall have the authority to set an expiration date for any or all appeal approvals.
30 The hearing examiner will render a decision pursuant to DMC Chapter 1.11; and DMC Chapter 25.185.

31 Each application for an appeal of an administrative decision to the hearing examiner shall be
32 accompanied by a fee as stated in the unified fee schedule.

33 Pursuant to RCW Chapter 36.70C, the applicant, any party of record, or any City department may appeal
34 any final decision of the hearing examiner before Pierce County Superior Court. ~~on a form provided by~~
35 the City

36 Any issue not raised in the original appeal filing is thereafter waived.

37 **25.105.150160 Assessment Relief.**

38 A. The Pierce County assessor's office shall consider critical area regulations in determining the fair
39 market value of land.

40 B. Any undeveloped critical area property which has recorded upon it an easement or which is the
41 subject of a perpetual conservation restriction with the city or a nonprofit organization to
42 permanently control some or all regulated activities in that portion of land assessed consistent
43 with those restrictions, shall also be considered for exemption from special assessments to defray
44 the cost of municipal improvements such as sanitary sewers, storm sewers, and water mains.

- 1 **25.105.160170** Limitation of actions.
- 2 Any final decision under this chapter shall be final and conclusive unless timely appealed by following
- 3 the appeal procedures of this ~~of~~ Chapter, DMC Chapter 1.11; DMC Chapter 25.185; and any relevant
- 4 Federal, State, or City law, regulation or ordinance ~~— DuPont MC.~~

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