



**CITY OF DUPONT**  
Department of Community Development  
1700 Civic Drive, DuPont, WA 98327  
Telephone: (253) 964-8121  
www.dupontwa.gov

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## MEMORANDUM

**To:** Mayor Courts, Deputy Mayor Corp and members of the City Council

**From:** Jeffrey S Wilson, AICP   
Director

**Date:** November 1, 2018

**Subject:** **Summary of Analysis and Recommendations for Repeal and Replacement of DMC 25.105 – Sensitive Area Regulations with new Critical Areas Regulations (CAO’s) for compliance with requirements of the Growth Management Act and the City’s Contractual Requirements under the Sequelitchew Creek Restoration Agreement**

The draft Critical Areas Regulations presented for Council review is the culmination of the versions recommended by the Planning Commission and subsequent staff revisions to incorporate recommendations to incorporate minor revisions to facilitate the Sequelitchew Creek restoration plan (see Attachment 6).

Pursuant to the Growth Management (RCW 36.70A.130(5a)) the City was required to update its Comprehensive Plan and Critical Areas Regulations by June 30, 2015. The city completed its comprehensive plan update in 2015, however the city has not updated its critical areas regulations and therefore we are currently technically out of compliance with the GMA until we adopt our updated CAO’s.

The update to the City’s critical areas regulations is required to occur every eight (8) years in conjunction with required updates to the comprehensive plan to ensure the city’s critical areas regulations are based on “Best Available Science” (BAS). The city’s critical areas consultant, Stantec was charged with reviewing the current regulations and current BAS and recommending changes, which met update requirements supported by BAS and maintained existing city protections to its critical areas.

The city initiated its update DMC Chapter 25.105 with the Planning Commission on January 9, 2017. After the initial presentation on January 9<sup>th</sup>, 2017, the Planning Commission held six (6) additional workshops in open public meetings with city staff and its consultant, Wayne Wright, Stantec to review all proposed amendments. After the conclusion of the workshops with the Planning Commission, city staff and its consultant prepared the final version of the draft CAO’s for a public hearing before the Planning Commission on May 22<sup>nd</sup>, 2017. After conclusion of the public hearing, the Commission made some minor revisions and adopted their recommendation for Council consideration (see Attachments 2 – 5).

Several years prior to this CAO update's development, multiple parties entered into the Settlement Agreement for DuPont Mine, Restoration of Sequalitchew Creek Watershed, and Preservation of Puget Sound Shorelines and Adjacent Open Space (2011 Agreement).

Specifically, those parties are the City, The Washington State Department of Ecology CalPortland, the Environmental Caucus which is the collective term for the following parties: Nisqually Delta Association (NDA); the Black Hills Audubon Society; Washington Environmental Council (WEC); the National Audubon Society; People for Puget Sound; the Tahoma Audubon Society; the Seattle Audubon Society; and Anderson Island Quality of Life Committee.

The 2011 Agreement required CalPortland and the Environmental Caucus to develop a plan for the restoration of Sequalitchew Creek (Restoration Plan). All parties agreed the City would have to ensure its CAO's would allow for the Restoration Plan to be enacted.

Subsequent to the Planning Commission's delivery to the Council of its final recommendation for the CAO update, CalPortland and the Environmental Caucus finally adopted the long awaited a Restoration Plan. The City, as noted above, is obligated to ensure that our revised CAO's will not prohibit work within critical areas necessary to enact the Restoration Plan.

Accordingly, upon receiving the Restoration Agreement, staff, our consultant and city attorney met with legal counsel from the CalPortland and the Environmental Caucus to review the Planning Commission's adopted recommendation (see Attachment 5) and to discuss potential revisions to ensure the restoration work within the critical area could be completed pursuant to the Restoration Plan. This Final Recommendation (Attachment 6) is comprised of the Planning Commission's final recommendation, council comments from the July 25, 2017 council workshop, staff clerical corrections and proposed language by staff, CalPortland and the Environmental Caucus to meet City obligations under the 2011 Agreement.

Staff, the City Attorney and our consultant will be provide a brief overview at the council meeting and are prepared to respond to questions from the council.

cc: DCD File No. TEXT-16-04 (Critical Areas Regulations)  
Mr. Ted Danek, City Administrator  
Mr. Gordon Karg, City Attorney  
Mr. Wayne Wright, Stantec

## Planning Commission Public Hearing

May 22, 2017

6:00 pm

**TO:** Planning Commission Members  
**FROM:** Jeff Wilson, Director of Community Development

**Agenda Item:** Proposed Amendments to DuPont Municipal Code (DMC) Chapter 25.105 - Sensitive to update the City's Sensitive Areas Regulations (Critical Areas Regulations) to comply with the requirements of the Growth Management Act and complete the process of the City's 2015 Comprehensive Plan Update.

**Applicant:** City of DuPont Department of Community Development

**City File Number:** TEXT 16-04

**Application Date:** June 2016

**Attachments:** See attached list

**Description of Proposal:** Proposed amendments to DuPont Municipal Code Chapter 25.05 are proposed in response to comments by the WA State Department of Commerce with the City's adoption of its updated Comprehensive Plan in 2015. The proposed amendments are necessary to implement of the Comprehensive Plan and are necessary to fulfill our requirements under the Growth Management Act to update our Critical Areas Regulations (CAO) to include "Best Available Science".

### Background:

1. Pursuant to RCW 36.70A.130(5a), our Comprehensive Plan and Development Regulations (including Critical Areas regulations) were to be completed by June 30, 2015.
2. The completed the required updates to the Comprehensive Plan in 2015.
3. We completed our development regulations update (misc. code amendments, excluding Critical Areas) in December of 2016.
4. Update of our Critical Areas regulations began January 2017. To date, we have held 7 workshops on the proposed amendments. The last workshop was held on May 8<sup>th</sup>.
5. Stantec was hired as the city consultant to work on the draft updates to our CAO to ensure that our updated regulations would comply with the requirements of "Best Available Science." The list of attachments to this report includes the bibliography of research of "Best Available Science" as the basis of and support for the proposed amendments.
6. The proposed amendments were submitted to the Department of Commerce on April 25, 2017.
7. An Environmental Determination was issued on May 11, 2017.

**Process:** Type V procedure as set forth in DMC 25.175.010. Following the public hearing, the Planning Commission shall make a recommendation to the City Council. The City Council will hold a public hearing and issue a final decision on the proposed amendments.

### Summary of Text Amendment

1. The proposed amendments provide completion of terms used throughout the regulations.
2. The proposed amendments include protections for Wetlands; Fish & Wildlife Habitat Conservation Areas; Geologically Hazardous Areas and Critical Aquifer Recharge Areas.
3. The proposed amendments provides a clear statement of intent and purpose of the city protect our critical areas.

**Staff Recommendation**

Staff recommends that the Planning Commission forward their recommendation to City Council for approval of the text amendments as proposed (Attachments 1 & 2).



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## MEETING MINUTES

May 22, 2017

**Commissioners in Attendance:** Chair Chris Barnes, Commissioner Beth Elliott, Commissioner Renee Buck, Commissioner Todd Tatum, Commissioner Dustin Marlett

**Excused:** Jenifer Brown

**Absent:**

**Staff in Attendance:** Planning Director, Jeff Wilson, City Attorney, Gordon Karg, Administrative Support, Janet Howald and Consultant, Wayne Wright, Stantec

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### 1. CALL TO ORDER

Chair Barnes called the meeting to order at 6:02 p.m.

### 2. ANNOUNCEMENT AND APPROVAL OF AGENDA

Chair Barnes asked for a motion to pass the Agenda. Commissioner Buck made a motion to approve the agenda. Commissioner Elliott seconded. The motion passed unanimously.

Mr. Karg requested to make a point of clarification. He wanted to ensure that as a matter of record that while five City Council Members were present which constitutes a quorum, these were not present to conduct business but were present as citizens. Council Member Eric Corp would be acting as liaison between the Commission and the Council.

### 3. APPROVAL OF MINUTES

Chair Barnes asked for a motion to pass the Minutes from the May 8, 2017 Meeting. Commissioner Buck moved to approve the Minutes. Commissioner Tatum seconded the motion. The motion passed unanimously.

Chair Barnes announced he had a note from Commissioner Brown informing she will not be attending and asked for a motion to excuse her from the meeting. Commissioner Buck moved to excuse Commissioner Brown. Commissioner Marlett seconded the motion. The motion passed unanimously.

### 4. AUDIENCE COMMENTS (Items not on the Agenda)

None

### 5. PUBLIC HEARINGS

Chair Barnes announced the public hearing for the proposed amendments to the Critical Area Update and the procedure to follow for public comment.

Director Wilson gave an Informational brief and background on the proposed amendments to the DuPont Municipal Code Chapter 25. 105 presently known as The Sensitive Areas Regulations that are being updated and the background and how this process has been performed. He also provided a history of the outdated current version and the time frame required by the Department of Commerce under the Growth Management Act. Upon updating the Comprehensive Plan, the City must also adopt new development regulations, which includes an update to the Critical Areas Regulations. The purpose of the update is to ensure that the regulations are based on the best available science. The intent is to ensure maintenance and protection of the City's Critical Areas.

Mr. Wright provided his professional education and background. He explained the current document is a rudimentary document known as Sensitive Areas Ordinance. The existing regulations are not based on best available science and lack the necessary specificity and tools to protect or enhance our critical area under the ordinance. The proposed draft, before the Commission is a "science based" ordinance, will allow the city to obtain its objectives to preserve, protect, enhance, rehabilitate and restore a critical area. Mr. Wright provided an overview of the changes, overview and meaning of the draft ordinance. The draft ordinance will now require an applicant to present a project for review with the City before an application is made to ensure appropriate questions and planning can be reviewed and addressed. The other addition includes options for mitigation which will may allow enhancements that can promote the goals and objectives applicable to the total watershed of Sequelitchew Creek.

Mr. Wilson proceeded to explain, that as a matter of record, the additional information to the packet provided is a revised attachments list reflecting attachments 1 thru 60. A comment email was received today and so the updated list now reflects 1 thru 60. The original packet contained attachments 1 thru 10 and 54 through 60. Attachments 11 thru 53 are documentation of the best available science. Mr. Wilson gave his professional background and overview of the process that has transpired and what it means for the city and the ordinance.

Chair Barnes opened the comment section to the Public Hearing.

Roger Westman, 2249 Palisades Blvd., DuPont, he stated he has been a resident of DuPont since 1999. He wished to draw attention to and cited specific items referenced from a comment letter submitted by Mr. Don Russell in attachment #60.

Don Dresser, 1437 Heron Ct, DuPont, stated he has been a resident in DuPont for 18 years and that the subject of the Critical Areas Ordinance has been addressed, in the past. He suggested that the city identify in detail, some areas on a map with emphasis on protection so City can over time, restore the Sequelitchew Creek and salmon to its natural habitat. He cited an article that appeared in the Tribune regarding the 9<sup>th</sup> Circuit Court of Appeals decision on culverts owned by WSDOT.

Bridget King, 1473 Kittson St, DuPont, informed she was speaking on behalf of the Sequelitchew Creek Council. She began by discussing the language and changes of the ordinance also addressing the question of what is the peoples power to question. She addressed the posed risks in the language of the ARC in how does it impact the protections of the previous settlement agreements. Ms. King asked for more time to consider the language in the Ordinance specifically addressing the best available science, making a clear message of the Comprehensive Plan and to find language to restore the Coho salmon, and that restoration plans are naturally supported. Ms. King submitted a comment letter at the end of her testimony.

Don Russell, 7746 Walnut Ave SW, Lakewood, He explained his appearing to testify as a resident from Lakewood and that he is an executive on the Executive Council of the Chambers – Clover Creek Watershed Council which is concerned on water quality issues in their watershed. He spoke of a concern in reference to classes of 1,2,3 4 of the wetlands. He indicated there no listing of distinct delineation of classification of wetlands currently existing on a map. He suggested to delineate and list inventory as a part of the ordinance and produce maps. He further discussed the degradation of Edmonds Marsh.

Chair Barnes closed the public comment section of the public hearing and offered the deliberation portion of the hearing and the decision as to whether to move this ordinance forward.

Commissioner Buck offered appreciation to all who participated including the testimonies and all that was involved but requests more time to read comments, reread the draft ordinance and have time before the next Planning Commission Meeting and voting to put before the next Council meeting.

Commissioner Elliott also expressed thanks for the comments and would like more time to review before making an informed decision.

Chair Barnes also offered thanks to the public for attending and appreciated the discussions that have ensued but agreed some additional time to read the information may be appropriate. He asked for a motion to the ordinance. Commissioner Buck moved to continue discussion at the next Planning Commission meeting and consider any amendments after having more time to review. Commissioner Tatum seconded the motion. Motion passed unanimously.

**6. UNFINISHED BUSINESS**

N/A

**7. NEW BUSINESS**

N/A

**8. ADMINISTRATIVE REPORTS**

Director Wilson discussed the Extended Agenda dated May 16, 2017 and the time frames, June 12<sup>th</sup> with the introduction to the proposed amendment to the Comp Plan review related to Yehle Village or specifically Patriots Landing. As the ordinance will be back on the next agenda as unfinished business so will have to evaluate whether the other topic will be able to be introduced so may need to evaluate and adjust the agenda schedule.

He explained discussed the projects going on board and is still waiting for the Hearing Examiners decision regarding the redevelopment of the DuPont Corporate Park or known as the Intel property which is due out this week.

There are three tracts on Hoffman Hill that are moving forward. Tract I and O preliminary plat applications have been reinstated. Tract J is had already received preliminary plat approval so moving toward final plat approval for development.

The Council will be meeting tomorrow and discussion will include the Memorandum of Understanding with Copperleaf LLC which is an entity that is looking at acquiring and developing the golf course property. Related to this, discussions are still continuing with Department of

Ecology on the Consent Decree which controls the land and what flexibility or may be applied for land use.

Comp plans will be bringing forth for a public hearing the adjustment of boundary of mineral resource overlay that relates to the single parcel on the other side of Sequelitchew Creek that is zoned for industrial use and is also controlled by the Consent Decree.

**9. AUDIENCE COMMENTS (Items not on the Agenda)**

Roger Westman, 2249 Palisade Blvd, DuPont, expressed appreciation that the Commissioners will be continuing to further review the draft ordinance with due diligence and discuss at the next Planning Commissioners meeting. Mr. Westman expressed concern regarding the audio system as it was not functioning properly.

Don Dresser, 1437 Heron Ct, DuPont, expressed thanks to everyone present the City staff, consultant and the public. He inquired as to the status of the mission site. Director Wilson reported that nothing new has come forward regarding the site.

**10. PLANNING COMMISSION MEMBER COMMENTS**

Commissioner Elliott gave thanks to everyone who attended the meeting and offered comments and to the City Staff for the work that has been done. She also looks forward to further discussion with the fellow Commissioners as they read the packet.

Commissioner Buck offered her appreciation to the audience as they offered their comments on the Critical Areas Ordinance and hopes the public will be engaged in future upcoming tasks.

Commissioner Tatum also expressed thanks to the public comments and appreciation to the Staff.

Commissioner Marlett also offered his appreciation to the comments from the citizens.

Chair Barnes also offered his appreciation and thanked the Staff. He thanked the public for attending and for the comments and what is to be considered in the next couple of weeks. As the Commissioners have been working on the Critical Areas Ordinance for months, he made a plea to the Commissioners to work hard in the next couple of weeks so a decision can be made at the next meeting and move forward.

**11. ADJOURNMENT**

Chair Barnes adjourned the meeting at 7:00p.m.



Chair, Chris Barnes

7/26/17

Date



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### MEETING MINUTES

June 12, 2017

**Commissioners in Attendance:** Chair Chris Barnes, Commissioner Beth Elliott, Commissioner Renee Buck, Commissioner Todd Tatum, Commissioner Dustin Marlett

**Excused:**

**Absent:** Commissioner Jenifer Brown(Resigned)

**Staff in Attendance:** Planning Director, Jeff Wilson, Administrative Support Specialist, Janet Howald

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**1. CALL TO ORDER**

Chair Barnes called the meeting to order at 6:00 pm.

Mr. Barnes began the meeting by informing that Commissioner Brown had submitted her resignation, effective immediately, due to work demands. He expressed his appreciation for her work and dedication along with wishing her well.

**2. ANNOUNCEMENT AND APPROVAL OF AGENDA**

Chair Barnes asked for a motion to pass the Agenda. Commissioner Tatum made a motion to approve the Agenda. Commissioner Buck seconded. The motion passed unanimously.

**3. APPROVAL OF MINUTES**

Aside of Commissioner Buck providing some punctuation comments, she recommended the removal of the word "regulation" on page 2 second paragraph. On page three, in the second sentence, she informed the name "Clover" needed to be added after Chambers.

Chair Barnes asked for a motion to pass the Minutes from the May 22, 2017, meeting with approval of corrections discussed. Commissioner Elliott moved to approve the minutes Commissioner Tatum seconded. The motion passed unanimously.

**4. AUDIENCE COMMENTS**

None

**5. PUBLIC HEARINGS**

N/A

**6. UNFINISHED BUSINESS**

Deliberation commenced on the proposed amendments to DuPont Municipal Code (DMC) Chapter 25-105-Sensitive Areas Regulations (File No. TEXT-16-04). Commissioner Tatum questioned the relationship between the City's Comprehensive Plan policies, the Growth Management Act and the Critical Areas Regulations. Director Wilson provided an overview.

Ms. Buck began with discussion regarding Attachment 60, a Comment Letter from Don Russell. In reference to the WAC 365-195-900 and suggested it would be appropriate to add a new paragraph under 25.105.20 General Provisions, E, 1, which would state; "Provide special consideration to the conservation for protection measures necessary to preserve or enhance anadromous fisheries in accordance to WAC 365-195-900." The following paragraphs will be renumbered. Commissioner Elliot made a motion to approve the verbiage into the ordinance. Commissioner Buck seconded. The motion passed unanimously.

Commissioner Buck made a motion to restructure 25.105.020 General Provisions, E.1.a to reflect "Avoid adverse impacts entirely, if reasonable; and E.1.b to reflect "Reduce adverse impacts, if avoidance is not possible, by:". Commission Elliott seconded the motion. The motion did not pass on a vote of 2-3 (Voting in favor were Commissioners Buck and Elliott with Commissioners Martlett, Tatum and Chair Barnes opposed)

Commissioner Buck made a motion to add an expanded definition at the end of Section 25.105.030, Definitions .055 to add a reference to the Washington Fish & Wildlife Habitat conservation area map illustrative and informational purposes only. Commissioner Elliott seconded. Motion passed 4-1.(Those in favor were Commissioners Buck, Elliott, Tatum and Chair Barnes)(Commissioner Marlett opposed).

Commissioner Elliott made a motion to add under 25.105.050, Critical Areas, Section A.4.b.ii- to add the words "and salmon habitat" at the end of the sentence. Commissioner Marlett seconded. The motion passed unanimously.

Commissioner Buck made a motion to remove the sentence, "However, habitat conservation does not require that all individuals of all species be protected", from 25.105.050, Critical Areas, Section B. Fish & Wildlife Habitat Conservation Areas. Commissioner Elliott seconded the motion. Motion passed 3-2(Voting in favor were Commissioners Buck, Elliott and Chair Barnes with Commissioners Tatum and Marlett opposed).

Director Wilson asked to speak at 7:15pm with Chair Barnes for a brief 5 minute recess to discuss the agenda. A motion was made by Commissioner Tatum for a 5 minute recess. The motion was seconded by Commissioner Elliott. The motion passed unanimously.

The meeting reconvened at 7:22pm. Chair Barnes explained that consultants were present to speak regarding the proposed development of Yehle Village and to best serve their time, he suggested taking a break from the deliberation of the Critical Areas Ordinance and allow the consultants time for their presentation. Commissioner Buck made a motion to temporarily table the Critical Areas Ordinance deliberation discussion and move forward onto the New Business and consultants, then continue discussion of the Critical Areas Ordinance. The motion was seconded by Commissioner Tatum. The motion passed unanimously.

## **7. NEW BUSINESS**

Director Wilson introduced Mr. Ryan Givens from AHBL Consulting. Mr. Givens explained he is a planner who is working as an extension of the Staff to help review land use applications and proposals. He provided a broad overview and introduction of a proposed project for Patriots Landing. A request has been submitted to amend the City's Comprehensive Plan and mapping for a portion of Yehle Park Village, and to amend a portion of the City's Municipal Code regarding the Mixed Use District zoning. A letter and photos were provided in the meeting packet. The applicant

held an open House/Community meeting at Patriots Landing on June 7, 2017. Additional meetings and information will be held.

Deliberation on proposed amendments to DuPont Municipal Code (DMC) Chapter 25.105-Sensitive Area Regulations (file TEXT-16-04) continued after discussion of the New Business.

Section 25.105.030, Definitions-.335 Slope-the definition of the Vertical distance and Horizontal distance will be corrected.

Section 25.105.030, Definitions-.140-Fish and wildlife habitat conservation areas.d.- The correct WAC citation will be inserted.

Consistency of punctuation and capitalization will be reviewed and made consistent throughout the ordinance.

Commissioner Elliott made a motion to insert the word “maintain” between the words restore and protect in the first paragraph of 25.105.010-Purpose. Commissioner Buck seconded. The motion passed unanimously.

Commissioner Buck made a motion to insert a new subsection into 25.105.050.B.2.e. The new subparagraph to be added is “ix. There will be no adverse impact to the full life cycle of the salmonid species”. Commissioner Elliott seconded the motion. The motion passed 3-2. (Voting in favor were Commissioners Buck, Elliott and Chair Barnes with Commissioners Marlett and Tatum opposed).

Section 25.105.050.A.4 D.3.c.-The correct DMC citation is to be inserted.

Commissioner Buck made a motion to re-open up the discussion for reconsideration for comment to define the language discussed in the recent addition to 25.105.050.B.2.e. ix. Commissioner Tatum seconded the motion. Motion passed unanimously.

Commissioner Buck made a motion to reconsider the language in 25.105.050.B.2.e.ix subparagraph ix to read “there be minimal impact to salmonid life cycle”. Commissioner Elliott seconded. The motion passed unanimously.

Section 25.105.130 B. A correction will be made to remove the superfluous punctuation marks at the end of the sentence.

Chair Barnes asked for a motion to be made to move the Ordinance to Council for consideration as there were no further changes. Commissioner Tatum made a motion to forward the Critical Areas Ordinance as amended today to the Council for approval. Commissioner Martlett seconded. The changes to be made were reviewed. Chair Barnes repeated the motion on the table. The motion passed 4-1. (Voting in favor were Commissioners Buck, Tatum, Martlett and Chair Barnes with Commissioner Elliott opposed)

## **8. ADMINISTRATIVE REPORTS**

Director Wilson discussed the Extended Agenda dated June 6, 2017 which includes various new projects, topics and time frames. The goal is to update the Comprehensive Plan and move up to the Council for action by the end of October as it should ideally be amended by the end of the year. The Comp Plan can only be amended once a year. If this goes into 2018 it precludes any

other updates being done in 2018. The ultimate goal is to get on a cycle of reviewing and updating a few areas every year to make management an easier process. On June 15, 2017 at noon, there will be a webinar presented by the MSRC on Land Use. Commissioner Buck is the only one to have signed up for this training. This may also be viewed at home. If you register to participate, please submit payment detail to Mr. Wilson for reimbursement.

**9. AUDIENCE COMMENTS**

None

**10. PLANNING COMMISSION MEMBER COMMENTS**

Commissioner Elliot expressed continuing concerns that not enough has been done to protect the wetlands and Sequalitchew Creek.

Commissioner Buck expressed thanks to Director Wilson for the upcoming training on Land Use.

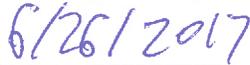
Chair Barnes expressed his thanks to Director Wilson and staff and Commissioners for the dedication and hard work put into the Ordinance.

Director Wilson informed that the mayor has reached out to recruit new applicants for the Commission.

**11. ADJOURNMENT**

Chair Barnes adjourned the meeting at 8:30 pm.

  
Chair, Chris Barnes

  
Date

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~~ **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~~ **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

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

#### 4. Wetland Mitigation

##### a. Requirements for Compensatory Mitigation:

##### i. Compensatory mitigation for alterations to wetlands shall be used only

(a) When impacts cannot be addressed by avoidance of impact;

(b) And shall achieve equivalent or greater biological functions resulting in no net loss of wetlands function.

ii. Compensatory mitigation plans shall be consistent with this Chapter and Wetland Mitigation in Washington State, Part 2: ~~Developing Mitigation Plans, Version 1, (Ecology Publication #06-06-011b) or as amended, and Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington) (Publication #09-06-32, Olympia, WA, December 2009), or other best available science as recommended by Dept. of Ecology;~~

iii. A performance bond or other approved financial surety is required before any project permits are issued. The purpose of the financial surety is to hold an applicant accountable for implementing the mitigation and monitoring plans. The release of financial surety is contingent on satisfactory completion by the applicant of the proposed construction mitigation and monitoring plans.

iv. Mitigation ratios shall be consistent with Subsection (3)(g)~~3-f~~ of this Section.

##### b. Compensating for Lost or Affected Functions.

Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except when either:

i. The lost wetland provides minimal functions, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington state watershed assessment plan or protocol; or

ii. Out of kind replacement will best meet formally identified regional goals, such as replacement of historically diminished wetland types and salmon habitat.

##### c. Preference of Mitigation Actions

Mitigation for lost or diminished wetland and buffer functions shall rely on the types 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   **25.105.050070 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~~  
11 ~~critical~~  
12 ~~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 sensitivecritical 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 sensitivecritical 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 sensitivecritical 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 sensitivecritical area shall be processed  
43 with a Type III procedure as set forth in DMC 25.175.010. A complete sensitivecritical 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 area 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 3<sup>rd</sup> 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 3<sup>rd</sup> 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.~~

DRAFT

**CITY OF DuPONT  
WASHINGTON**

**ORDINANCE NO. \_\_\_\_\_**

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**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF DUPONT, WASHINGTON, RELATING TO LAND USE;  
REPEALING AND REPLACING DUPONT MUNICIPAL  
CODE 25.105 – SENSITIVE AREAS REGULATION AND  
ADOPTING A NEW CRITICAL AREA ORDINANCE (CAO)**

WHEREAS, Pursuant to the Growth Management Act RCW 36.70A.130(5a) the City is required to update its CAO's every eight years; and

WHEREAS, The City's critical areas consultant, was charged with reviewing the current regulations and current Best Available Science (BAS) and recommending changes, to meet update requirements supported by BAS and maintain existing city protections to its critical areas; and

WHEREAS, the public process for the proposed amendments has provided for early and continuous public participation opportunities including Planning Commission workshops and public hearings; and

WHEREAS, on May 22, 2017 the Planning Commission conducted a public hearing on the proposed CAO's to and after considering the public comment received adopted a recommendation to the City Council to approve the proposed CAO; and

WHEREAS, on July 25, 2017 City Council held a workshop to review and provide input on the proposed CAO's; and

WHEREAS, staff, in consultation with representatives of non-governmental parties to the Settlement Agreement for DuPont Mine, Restoration of Sequatchew Creek Watershed, and Preservation of Puget Sound Shorelines and Adjacent Open Space, provided suggested input to ensure the contractually mandated plan for the restoration of Sequatchew Creek could be accomplished under the CAO's; and

WHEREAS, on November 20, 2018 the City Council conducted a public hearing to take public testimony regarding the proposed CAO's; and

WHEREAS, having considered among other things, public testimony, the recommendation of the Planning Commission and staff, the City Council has determined that repeal of the current DMC 25.105 and adoption of the proposed CAO's to replace DMC 25.105, attached as Exhibit A and incorporated herein by reference, is consistent with and would serve to further implement goals and

requirements of the Growth Management Act, are in the public interest and protect the public health, safety, and welfare;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DuPONT, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Incorporation of Recitals. The recitals set forth above are adopted and incorporated as if set forth fully herein.

Section 2. CAO's Adopted.  
The proposed replacement for DMC 25.105 is adopted and incorporated as set forth fully herein as shown on Exhibit "A".

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 4. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF  
ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

CITY OF DuPONT

\_\_\_\_\_  
Michael Courts, Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Karri Muir, City Clerk

Approved as to form:

\_\_\_\_\_  
Gordon P. Karg, City Attorney

Filed with the City Clerk:  
Passed by the City Council:  
Date of Publication:  
Effective Date:

1 **Chapter 25.105**  
2 **CRITICAL AREAS**

3 **Sections:**

- 4 25.105.010 Purpose.
- 5 25.105.020 General provisions.
- 6 25.105.030 Definitions
- 7 25.105.040 Applicability.
- 8 25.105.050 Critical Areas.
- 9 25.105.060 In-Lieu Fees.
- 10 25.105.070 Exemption and Exceptions.
- 11 25.105.080 Critical area permit submittal requirements.
- 12 25.105.090 Enforcement and Procedures of this Chapter.
- 13 25.105.100 Notice and performance securities.
- 14 25.105.110 Non-Conformance.
- 15 25.105.120 Suspension – Revocation.
- 16 20.105.130 Amendments.
- 17 25.105.140 Severability.
- 18 25.105.150 Appeals.
- 19 25.105.160 Assessment relief.
- 20 25.105.170 Limitations on actions.

21 **25.105.010 Purpose.**

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

**Commented [WW1]:** Staff edit – redundant with preserve.

30 The purposes of this chapter are to protect the public health, safety and welfare by preventing the adverse  
31 environmental impacts of development ~~listed in and~~ by:

**Commented [WW2]:** Staff edit for clarity and reduced confusion.

- 32 A. Preserving and protecting critical areas by regulating development adjacent to and within them  
33 and their buffers;
- 34 B. Educating the public as to the long-term importance of environmentally critical areas and the  
35 responsibilities of the city to protect and preserve the natural environment for future generations;
- 36 C. Directing a policy of no net loss of wetland and stream function, value, and area within the city;
- 37 D. Preventing to the extent practicable, adverse cumulative impacts to water quality, wetlands,  
38 stream corridors, and fish and wildlife habitats using best available science;
- 39 E. Encouraging improvements to, and good stewardship of, ~~all~~ surface water bodies and  
40 watercourses;
- 41 F. Protecting the public from injury, loss of life, property damage or financial loss due to flooding,  
42 erosion, landslides, seismic events, soil subsidence or steep slope failures;

**Commented [WW3]:** Staff edit to remove overbroad restrictions and possible conflict with other sections of this CAO.

- 1 G. Providing the city of DuPont with information necessary to approve, condition, or deny public or
- 2 private development proposals;
- 3 H. Alerting appraisers, assessors, owners, potential buyers, or lessees to the development limitations
- 4 of critical areas while also providing city officials, officers and agents with sufficient information
- 5 to adequately protect critical areas when approving, conditioning or denying;
- 6 I. Providing predictability and consistency to the city of DuPont's development review process;
- 7 J. Implementing the policies of the State Environmental Policy Act, the Growth Management Act,
- 8 Chapter 43.21C RCW, the city of DuPont comprehensive plan (adopted 2015 and as ~~amended in~~
- 9 ~~the future~~), and ~~all~~ city-related plans and policies. (Ord. 02-707 § 1)

**Commented [WW4]:** Staff edit to promote clarity and remove redundancy

**Commented [WW5]:** Staff edit to remove overbroad and overarching restrictions that may be in conflict with other ordinances

**Commented [WW6]:** Staff edit to reduce confusion as recommended by city attorney.

**Commented [WW7]:** Staff edit to focus topic on this CAO. Removed ambiguity

10 **25.105.020 General provisions.**

11 ~~Undisturbed open spaces in the form of critical areas are regulated by this chapter and are important in~~  
12 ~~maintaining plant and animal populations for priority species identified by the state and the city,~~  
13 ~~maintaining the aesthetic and natural character of the city, and to protect fragile resources that are sensitive~~  
14 ~~to the impacts of urban development, or may pose hazards to the community if developed.~~ Regulated critical  
15 areas are defined in this chapter and include the following areas and ecosystems: wetlands critical potable  
16 water aquifer recharge areas; fish and wildlife habitat conservation areas and geologically hazardous areas.  
17 Frequently flooded areas ~~are another critical area commonly addressed in ordinances such as this but these areas~~  
18 ~~for DuPont~~ have been incorporated in the Wetlands and Fish and Wildlife Habitat Conservation Areas sections of  
19 this ordinance. Critical areas shall also include their protective buffers as set forth in this chapter. The following  
20 general provisions will apply to the implementation of this chapter:

- 21 A. Abrogation and Greater Restrictions. This chapter shall be so construed as to achieve its purposes
- 22 without abrogating any existing regulations. However, where this chapter imposes greater
- 23 restrictions, the provisions of this chapter shall prevail.
- 24 B. Interpretation. The provisions of this chapter shall be held to be minimum requirements in their
- 25 interpretation and application and shall be liberally construed to serve the purposes of this
- 26 chapter.
- 27 C. Compliance with this chapter shall constitute adequate mitigation of impacts to sensitive areas
- 28 pursuant to the State Environmental Policy Act. (Ord. 02-707 § 1)
- 29 D. This document addresses only the city's critical areas – it does not designate any natural resource lands
- 30 as defined by the Growth Management Act.
- 31 E. Regulations in this chapter shall be implemented to protect the public health, safety, and welfare by:

**Commented [WW8]:** City Council suggested edit from July 18, 2017 workshop.

**Commented [WW9]:** Staff edit – typo.

**Formatted:** Font: Times New Roman, 11 pt

**Commented [WW10]:** Comment provided by parties to the 2012 restoration agreement.

**Commented [WW11]:** City attorney recommended edit to keep continuity and meet constitutional requirements.

- 32 1. Provide ~~age~~ special consideration to the conservation ~~for~~ protection measures necessary to
- 33 preserve or enhance anadromous fish in accordance ~~with RCW 36.70A.172(1) to WAC 365-~~
- 34 ~~195-900.~~
- 35 2. Applying the hierarchal ARC approach to development or alteration impacts in and adjacent to
- 36 critical areas in order of preference – Avoid, Reduce, and Compensate:
  - 37 a. Avoid adverse impact entirely, if reasonable;
  - 38 b. Reduce adverse impacts, if avoidance is not ~~possible~~ ~~reasonable~~;
  - 39 i. Minimizing or limiting the degree or magnitude of the development and its
  - 40 implementation by using appropriate technology, or by taking affirmative steps to
  - 41 avoid or reduce impacts,

- 1                   ii. Reducing or eliminating the impact over time by preservation and maintenance  
2                   operations during the life of the development activity;
- 3                   c. Compensating for unavoidable adverse critical area impacts by:
  - 4                   i. Rectifying the adverse impact by repairing, rehabilitating, or restoring the affected  
5                   environment,
  - 6                   ii. Compensating for unavoidable impacts by replacing, enhancing, or providing  
7                   substitute resources or environments;
- 8                   3. This chapter shall be applied to avoid publicly financed expenditures due to the misuse of  
9                   critical areas which cause on-site or off-site impacts;
  - 10                   a. Unnecessary maintenance and replacement of public facilities;
  - 11                   b. Public funding of mitigation for avoidable impacts;

**Commented [WW12]:** Staff edit and comment provided by parties to the 2012 restoration agreement

**Commented [WW13]:** Staff edit and comment provided by parties to the 2012 restoration agreement to drop sub element regarding cost for public emergency rescue and relief operations.

**Commented [WW14]:** Staff edit to focus on definitions included in this document.

**Commented [WW15]:** Comment provided by parties to the 2012 restoration agreement.

### 12 25.105.030 Definitions

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

- 15                   .005 **Alteration.** Means, with respect to critical areas, any human-induced action within critical areas or  
16                   its buffer that impacts the existing condition of the area. Alteration includes, but is not limited to:
  - 17                   a. Grading, filling, dredging, draining, channelizing, cutting, topping;
  - 18                   b. Clearing, relocating, or removing vegetation or fauna;
  - 19                   c. Paving, construction, modifying for surface water management purposes;
  - 20                   d. Human activity that impacts the existing topography, vegetation, hydrology, or wildlife habitat
  - 21                   e. Alteration does not include walking, passive recreation, non-vegetative or faunal litter  
22                   removal, regular maintenance of existing trails, or similar activities.
- 23                   .010 **Applicant.** Means a person who files an application for a development permit under this  
24                   code and who is either the owner of the land on which that proposed activity would be  
25                   located, a contract vendee, a lessee of the land, the person who would actually control and  
26                   direct the proposed activity, or the authorized agent of such a person.
- 27                   .015 **Aquifer recharge area.** Means geological and soil formations with recharging areas  
28                   influencing aquifers used for potable water where ground water is vulnerable to  
29                   contamination.
- 30                   .020 **Best available science.** Means current scientific information used in the process to  
31                   designate, protect, or restore critical areas that is derived from a valid scientific process as  
32                   defined by WAC 365-195-900.
- 33                   .025 **Best management practices (BMPs).** Means conservation practices or systems of practices  
34                   and management measures that:
  - 35                   a. Avoid or control soil loss and protect water quality from degradation caused by nutrients,  
36                   animal waste, toxins, and sediment; and
  - 37                   b. Avoid or minimize adverse impacts to surface water and ground water flow, and circulation  
38                   patterns; and

**Commented [WW16]:** Comment provided by parties to the 2012 restoration agreement. City attorney and staff agree.

- 1 c. Avoid or control the movement of sediment and erosion control caused by land alteration  
2 activities; and
- 3 d. Avoid or minimize adverse impacts to the chemical, physical, and biological characteristics of  
4 critical areas.
- 5 “BMPs” are those practices as defined by the State of Washington Department of Agriculture,  
6 Washington State Department of Ecology, Washington State Department of Health, Washington  
7 State Department of Fish and Wildlife, and other professional organizations.
- 8 .030 **Buffer.** Means an area on a landscape adjacent to any critical area which:
- 9 a. Physically isolates the critical area from surrounding areas using distance, height, visual and/or  
10 sound barriers;
- 11 b. Acts to minimize risk to the public from loss of life, well-being or property damage resulting  
12 from natural disasters associated with the critical area;
- 13 c. Protects the functions and values of the critical area from adverse impacts of adjacent activities;
- 14 d. Provides shading, input of organic debris and coarse sediments and, room for variation and  
15 changes in natural critical area characteristics;
- 16 e. Provides habitat for wildlife; and/or
- 17 f. Provides protection from harmful intrusion.
- 18 These buffer functions protect the public from losses suffered when the functions and values of  
19 critical areas are degraded.
- 20 .035 **Building pad.** Means a portion of a lot which has been altered or designated to provide an  
21 acceptable location for a structure on a short plat, subdivision, or lot line revision or other  
22 development application. ~~The area must be delineated on all land use approvals or permits.~~
- 23 .040 **Classified species.** Means endangered, threatened and priority species as defined by the  
24 State Department of Fish and Wildlife.
- 25 .045 **Compensatory mitigation.** Means replacing or rectifying a critical area impact or buffer  
26 loss. Compensatory mitigation can include, but is not limited to, restoration or creation of lost  
27 or impacted functional values. Enhancement of critical areas may be used for partial  
28 compensatory mitigation per the requirements of this chapter.
- 29 .050 **Creation.** Refers to a particular mitigation approach for wetland impact which involves the  
30 conversion of a persistent upland or shallow water area into a wetland by human activity. Of  
31 these, constructed wetlands, also referred to as treatment wetlands, are created for the primary  
32 purpose of contaminant or pollution removal from wastewater or runoff.
- 33 .055 **Critical Areas.** For the purposes of this chapter, “critical areas” include aquifer recharge  
34 areas used for potable water, fish and wildlife habitat conservation areas, geologically  
35 hazardous areas, and wetlands. Under the GMA, critical areas are to be classified,  
36 designated, and protected. In designating and protecting critical areas, the city shall use the  
37 best available science, consistent with RCW 36.70A.172. As used in this Chapter, the term  
38 “critical area” shall also encompass any required buffer or setback associated with that  
39 critical area. The Washington Fish & Wildlife, Ecology, and various federal agencies offer  
40 online mapping tools to help define general critical area locations and ~~Habitat conservation~~  
41 ~~area map~~ may be used for illustrative and informational purposes only.
- 42 .060 **Critical drainage corridor or area.** Means an area which has been determined (by the City  
43 of DuPont department of public works) to require more restrictive regulation than city-wide

Commented [WW17]: Staff edit – typo/grammar

Commented [WW18]: Staff edit with city attorney concurrence. Unnecessary sentence.

Commented [WW19]: Staff clarification to note several publicly available sources exist to assist with identifying critical areas.

- 1 standards afford, to mitigate flooding, drainage, erosion, or sedimentation problems which  
2 have resulted or will result from the cumulative impacts of development and urbanization. A  
3 critical drainage corridor is characterized as a year-round or intermittent naturally flowing  
4 watercourse which exhibits but is not limited to one or more of the following characteristics:
- 5 a. A stream or watercourse formed by nature or modified by humans;  
6 b. Generally consisting of a defined channel with a bed for a substantial portion of its length on  
7 the lot;  
8 c. Watercourses which exhibit the above characteristics and have been channelized or piped;  
9 and/or  
10 d. Perched ponds, ravines, or other natural drainage features.
- 11 .065 **Critical facility.** Means a facility for which even a slight chance of being located within a  
12 hazard area would be too great. Critical facilities include, but are not limited to, schools,  
13 hospitals, police, fire, and emergency response installations which produce, use or store  
14 hazardous materials or hazardous waste.
- 15 .070 **Critical habitat.** Means habitat areas associated with endangered, threatened or priority  
16 species as defined by the State Department of Wildlife. These habitats, if altered, could  
17 reduce the likelihood that the species will maintain population levels, survive, and reproduce  
18 over the long term. Such habitat areas are documented regarding lists, categories, and  
19 definitions of species promulgated by the Washington State Department of Wildlife or by ~~and~~  
20 regulations adopted currently or thereafter by the U.S. Fish and Wildlife Service.
- 21 .075 **Critical slope.** Means any area with slopes of 40 percent or steeper that exceed a vertical  
22 height of 10 feet. Critical slope is determined by measuring the vertical rise over any 25-foot  
23 horizontal run for a specific area that results in a percentage of 40 or more. The critical  
24 slope hazard area includes the area of land that extends for 10 feet from the top and toe of the  
25 slope.
- 26 .080 **Cumulative adverse impact.** Is the impact on the environment which results from the  
27 incremental impact of the action when added to other past, present and reasonably  
28 foreseeable future actions ~~regardless of what agency or person undertakes such other actions~~.  
29 Cumulative impacts can result from individually minor but collectively significant actions  
30 taking place over a period of time.
- 31 .090 **DMC.** DuPont Municipal Code.
- 32 .095 **Delineation.** Means a process used to locate and mark a critical area's edge or boundary in  
33 the field. Delineations are valid for a period of three years from the date that the city  
34 approves the delineation report is complete and accurate.
- 35 .100 **Development.** Means any alteration, grading, filling, building, earth moving, etc., as well as  
36 any structure or utility building operations. Preliminary mapping and survey work that is  
37 completed using best management practices and results in insignificant disturbance of  
38 vegetation and soil is not considered to be development activity. Development shall not  
39 include selective pruning of trees and shrubs for safety and view protection and the removal  
40 of noxious weeds; provided, that no heavy equipment is utilized and disturbance of  
41 vegetation and soil is insignificant.
- 42 .105 **Development proposal.** Means a building permit, clearing and grading permit, shoreline  
43 permit, rezone, conditional use permit, variance, lot line revision, Planned Unit Development,  
44 short and formal subdivision, street development permit, utility development permit, or any

Commented [WW20]: Staff edit – grammar.

Commented [WW21]: Staff edit – simplifies definition – City Attorney concurs.

development subject to stormwater drainage requirements under DuPont Ordinance. ~~For the purpose of this chapter, the following alterations shall also be considered a development proposal requiring a critical areas permit pursuant to DuPont Ordinance: any alteration occurring adjacent to or within a critical area or associated buffer that the Director determines may have a probable significant impact to the function and value of the critical area. See also "Alteration" in this section.~~

Commented [WW22]: Suggested edit by parties to the 2012 retransformation agreement.

.110 **Diameter at breast height (d.b.h.).** Means a tree's trunk diameter in inches measured four and one-half feet above the ground. On multi-stemmed or trunked trees, where the diameter at four and one-half feet above grade is ~~actually~~ greater than at a lower point on the tree, d.b.h. shall be measured at the narrowest diameter below four and one-half feet. In such cases the height of the measurement should be noted. For leaning trees, diameter shall be measured four and one-half feet up the stem in the direction of the lean. On multi-trunked trees, where tree splits into several trunks close to ground level, the diameter shall be the diameter equivalent to the sum of each individual trunk measured according to the principals listed above.

Commented [WW23]: Staff edit to remove unnecessary word.

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

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

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

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

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

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

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

- a. Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association. Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington identified by the Washington Department of Fish and Wildlife;
- b. Lands and waters containing documented habitats for plant and animal species listed in the Washington Department of Fish and Wildlife's Priority Habitats and Species Program List. Habitats and species of local significance may be added by action of the city council where the value and significance of such species locally can be established and sound scientific evidence can be presented to establish that the species' existence is determined to be locally significant;

- 1 c. ~~All~~ public and private tidelands or bedlands are regulated under the City of DuPont  
2 2013 Shoreline Master Program (SMP), as amended;
- 3 d. Streams and waters of the state (see WAC 190-080(5)(a)(vi)) that provide habitat to  
4 endangered or threatened species, or certain species that have been identified as being  
5 sensitive to habitat manipulation, as defined in WAC 222-16-030, Forest Practices Rules  
6 and Regulations; Lakes, ponds and streams planted with game fish, including those  
7 planted under the auspices of a federal, state, local or tribal program, and waters which  
8 support priority fish species as identified by the Department of Fish & Wildlife.
- 9 .145 **Frequently flooded areas.** Means lands subject to a one percent or greater chance of  
10 flooding in any given year or are mapped as such by the Federal Emergency Management  
11 Agency or the National Flood Insurance Program, or areas identified by the public works  
12 department as critical drainage corridors, lakes, coastal areas, and wetlands. ~~(NOTE-~~  
13 ~~Frequently Flooded areas have been incorporated into the Wetlands and Fish & Wildlife~~  
14 ~~Habitat Conservation Areas portions of this CAO and not addressed as a separate section).~~
- 15 .150 **Functions.** Means the beneficial roles served by critical areas including, but not limited to:  
16 water quality protection and enhancement of fish and wildlife habitat; food chain support;  
17 food storage, conveyance, and attenuation; ground water recharge and discharge; erosion  
18 control; wave attenuation; aesthetic value protection; and recreation.
- 19 .155 **Geologically hazardous areas.** Are susceptible to erosion, sliding or other potentially  
20 hazardous geological events. They pose a threat to the health and safety of citizens when  
21 used as sites for incompatible development. Geologically hazardous areas include erosion  
22 hazard areas, landslide hazard areas, steep slopes, and seismic hazard areas.
- 23 .160 **Geotechnical engineer.** Means a practicing geotechnical/civil engineer who has a valid  
24 Washington State engineering license and a valid certificate of registration in civil  
25 engineering, at least four years of professional employment as a geotechnical engineer with  
26 experience in landslide evaluation, and appropriate training and experience as specified in  
27 Chapter 18.43 RCW.
- 28 .165 **Hillsides.** The side of a hill which is sloped and lies between the foot and apex of the hill.
- 29 .170 **Hydric soils.** Means those soils which are saturated, flooded or ponded long enough during  
30 the growing season to reduce oxygen conditions, thereby influencing the growth of plants.  
31 The presence of hydric soil shall be determined following the criteria and methods described  
32 in the [approved federal wetland delineation manual and applicable regional](#)  
33 ~~supplements~~ ~~Washington State Wetland Identification and Delineation Manual (Ecology-~~  
34 ~~publication No. 96-94, adopted under WAC 173-22-080).~~
- 35 .175 **Hydrophytic vegetation.** Means plant life growing in water or soil that is at least  
36 periodically deficient in oxygen because of excessive water content.
- 37 .180 **Impervious surfaces.** Means areas or surfaces that cannot be easily penetrated by rain or  
38 surface water runoff. These areas include structures and roof projections, impervious decks,  
39 roads, driveways, and surfaces which substantially reduce and alter the natural filtration  
40 characteristics of the soil.
- 41 .185 **Infill development.** Means the development of a vacant or underutilized parcel or parcels  
42 that are similar in size and configuration to those found in the adjacent developed area. Infill  
43 development minimizes the need for new utilities and streets and supports the more efficient  
44 delivery of urban services through compact development patterns.

**Commented [WW24]:** Staff edit to remove overbroad restrictions that may be in conflict with this or other ordinances.

**Commented [WW25]:** Staff edit - Combined d and e from previous version to keep these items linked moving forward.

**Commented [WW26]:** Staff edit – redundant and city attorney concurs.

**Commented [WW27]:** Staff edit to link proper Clean Water Act guidance information. The WAC noted refers to the inserted reference.

- 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.** Means the  
14 most current manual developed by the Puget Sound Action Team that describes  
15 environmentally friendly techniques to develop land and manage stormwater runoff.
- 16 .210 **Mass Wasting.** Also known as slope movement or mass movement, is the geomorphic  
17 process by which soil, sand, and rock move downslope typically as a mass, largely under the  
18 force of gravity, but frequently affected by water and water content.
- 19 .215 **Mitigation.** Means a process used to reduce the severity of impacts from activities that  
20 potentially affect critical areas by the following means:
- 21 a. Avoiding the impact altogether by not taking a certain action or parts of an action;
- 22 b. ~~Minimizing impacts by limiting the degree or magnitude of the action and its implementation,~~  
23 ~~by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;~~  
24 ~~technology, or by taking affirmative steps to avoid or reduce impacts;~~
- 25 c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- 26 d. Reducing or eliminating the impact over time by preservation and maintenance operations  
27 during the life of the action;
- 28 e. ~~Compensating for the impact by replacing, enhancing, or providing substitute resources or~~  
29 ~~environments, and/or~~
- 30 e.f. ~~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 -Puget Sound region.
- 35 .230 **Noxious weed.** Means any plant which is invasive – for example, blackberries or nettles –  
36 and listed on the state noxious weed list in ~~WAC Chapter 16-750~~ ~~WAC~~.
- 37 .235 **Off-site compensation.** Means to compensate for lost or degraded critical areas by creating  
38 or restoring these areas at or adjacent to the site on which the impacts were located.
- 39 .240 **On-site compensation.** Means to compensate for lost or degraded critical areas by creating  
40 or restoring similar critical areas at a location outside the immediate area of the impacted  
41 critical area.

Commented [WW28]: Staff edit – typo.

Commented [WW29]: Staff edit – typo.

Commented [WW30]: Staff edit for consistency with WAC references.

- 1 .245 **Out-of-kind mitigation.** Means to compensate for lost or degraded critical areas by creating  
2 or enhancing critical areas whose characteristics do not closely approximate those destroyed  
3 or degraded by a development activity.
- 4 .250 **Ordinary High Water Mark.** (OHWM) as defined in the Shoreline Management Act  
5 (SMA) is a biological vegetation mark. Ecology's rules include a default tidal or fresh water  
6 elevation line for locations where the OHWM cannot be found. .255 **Peer review.** Means a  
7 review of a submitted critical areas report by a second practicing, licensed professional not  
8 associated with the original submittal selected and retained by the city. The second review  
9 must verify the adequacy of the information, the adequacy of the analysis, and the  
10 completeness of the original checklist. The cost for the peer review will be borne by the  
11 applicant.
- 12 .260 **Pond.** A body of standing water, either natural or artificial, that is smaller than a lake.
- 13 .265 **Pond, Perched.** A pond or lake that is isolated above the groundwater table by a layer of  
14 impervious soil such as rock or clay.
- 15 .270 **Practicable alternative.** Means an alternative available and capable of being carried out  
16 after taking into consideration cost, existing technology, and logistics in light of overall  
17 project purposes, and having less impacts to critical areas. It may include using an area not  
18 owned by the applicant which can reasonably be obtained, utilized, expanded, or managed in  
19 order to fulfil the basic purpose of the proposed development.
- 20 .275 **Pretreatment Facilities.** See "Wetlands, constructed"
- 21 .280 **Procedures manual.** Means a document that may be prepared by the Director, which  
22 outlines the process for determining whether critical areas are present on a lot as well as  
23 specific application and procedural details for permitting, site development and other  
24 requirements as described in this chapter.
- 25 .285 **Qualified critical area consultant.** Means a person who has the qualifications specified  
26 below to conduct critical areas studies pursuant to this chapter, and to make recommendations  
27 for critical area mitigation. For areas of potential geologic instability, the qualified critical  
28 areas consultant shall be an engineering geologist with a Washington specialty license in  
29 engineering geology as specified in Chapter 18.220 RCW or geotechnical engineer; provided,  
30 that:
- 31 a. An engineering geologist may provide a study including interpretation, evaluation, analysis, and  
32 application of geological information and data and may predict potential or likely changes in  
33 types and rates of surficial geologic processes due to proposed changes to a location, and  
34 mitigation measures, provided it does not contain specific engineering design; and
- 35 b. Engineering geologists may not provide engineering recommendations or design  
36 recommendations, but may contribute to a complete geotechnical report that is co-sealed by a  
37 geotechnical engineer.
- 38 c. For wetlands the qualified consultant shall possess, at a minimum, a Bachelor of Science or  
39 Bachelor of Arts or equivalent degree in hydrology, soil science, botany, ecology, or related  
40 field, and have at least two years of full-time work experience as a wetlands professional  
41 including delineating wetlands using state or federal manuals, preparing wetland reports,  
42 conducting function assessments, and developing and implementing mitigation plans.
- 43 .290 **Rehabilitation.** Means actions to return a critical area to a state in which its stability,  
44 functions and values are improved to more closely approach its un-impacted state. This  
45 definition is closely aligned with restoration (.305).

Commented [WW31]: Staff edit – typo.

- 1 .295 **Repair.** Means activities that restore the character, size, or scope of a project only to the  
2 previously authorized condition.
- 3 .300 **Reports and surveys.** Means required documents prepared by a professional to delineate  
4 areas and make recommendations for critical area delineations and related regulations.  
5 Examples of these reports and surveys include, but are not limited to:
- 6 a. Site inventory and/or survey  
7 b. Application and site construction plan;  
8 c. Critical area report;  
9 d. Site mitigation plan;  
10 e. Stormwater management plan.
- 11 .305 **Restoration.** Means actions to bring a critical area to a state in which its stability, functions  
12 and values approximate its unaltered state.
- 13 .310 **Retention/detention facility.** Means a drainage facility designed either to:
- 14 a. Retain runoff for a considerable length of time and release via evaporation, plant transpiration,  
15 and/or infiltration into the ground; or  
16 b. To detain runoff for a short period of time, and release to an associated surface/stormwater  
17 system at a rate not exceeding predevelopment (historical) flows.
- 18 .315 **Seismic hazard areas.** Includes areas subject to severe risk of damage because of seismic  
19 induced ground shaking, slope failure, settlement, soil liquefaction or surface faulting.  
20 Ground shaking is a primary risk, followed by slope failure. Soils on slopes greater than 40  
21 percent that are expected to be seasonally or perpetually saturated pose a specific risk of  
22 settlement, movement, or liquefaction. When saturated, these soils tend to be cohesionless  
23 and are unsuitable for foundations.
- 24 .320 **Setback.** Means the distance specified by these regulations between a structure and a buffer,  
25 property line, road, etc.
- 26 .325 **Significant vegetation.** Means any tree with a diameter of six inches or more at breast  
27 height, native “understory” vegetation from four to 10 feet in height, and any species listed in  
28 the Washington State Department of Wildlife Priority Habitats and Species Program Report.
- 29 .330 **Site.** Means the entire lot, series of lots or parcels on which a development is located or  
30 proposed to be located, including ~~all~~ contiguous undeveloped lots or parcels under common  
31 ownership of the applicants, or the client(s) represented by the applicant.
- 32 .335 **Slope.** Means an inclined ground surface, the inclination of which is expressed as a ratio  
33 (percentage) of vertical distance to horizontal distance by the following formula:
- 34 
$$\text{Vertical distance} / \text{Horizontal distance} \times 100 = \% \text{ slope}$$
- 35 .340 **Species of local significance.** Means those species that are of local concern due to their  
36 population status or their sensitivity to habitat manipulation or that are game species.
- 37 .345 **Steep slope.** As used in this chapter means a geologically hazardous area exhibiting all three  
38 of the following characteristics:
- 39 a. Slopes steeper than 15 percent;  
40 b. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a  
41 relatively impermeable sediment or bedrock; and

Commented [WW32]: Staff edit for unnecessary word.

- 1 c. Springs or ground water seepage.
- 2 .350 **Stormwater Management Manual.** Means the 2012 Department of Ecology Stormwater  
3 Management Manual for Western Washington and as amended ~~in the future.~~
- 4 .355 **Swale.** Means a shallow drainage conveyance facility with relatively gentle side slopes, and  
5 generally flow depths of less than one foot.
- 6 .360 **Terrestrial Habitats and Species.** Terrestrial habitats are entirely located on land, as  
7 compared with aquatic habitat, which is entirely in the water. Terrestrial species are those  
8 animals that reside and rely on the terrestrial (land-based habitats). Some species share  
9 terrestrial and aquatic habitats for varying life cycles or stages. Waterfowl and amphibians  
10 are good examples.
- 11 .365 **Threatened species.** Means any species which is likely to become an endangered species  
12 within the foreseeable future throughout all or a significant portion of its range.
- 13 .370 **Top of Slope and Toe of Slope.** The “top of slope” is a distinct, topographical break in  
14 slope that separates slopes inclined at less than 40 percent from slopes 40 percent or steeper.  
15 When no distinct break exists, the top of slope is the uppermost limits of the area where the  
16 ground surface drops 10 feet or more vertically within a horizontal distance of 25 feet. The  
17 “toe of slope” is a distinct topographical break in slope that separates slopes inclined at less  
18 than 40 percent from slopes 40 percent or steeper. When no distinct break exists, the toe of  
19 slope of a steep slope is the lowermost limit of the area where the ground surface drops 10  
20 feet or more vertically within a horizontal distance of 25 feet.
- 21 .375 **Utilities.** Means ~~all~~ all conduits, lines, and facilities used to distribute, collect, transmit, or  
22 control electrical power, natural gas, petroleum products, information (telecommunications),  
23 water, and sewage.
- 24 .380 **Wetland Classification.** For the purposes of general inventory, wetlands are defined by the  
25 criteria defined in the [approved federal wetland delineation manual and applicable regional](#)  
26 [supplements: Washington State Wetland Identification and Delineation Manual \(Ecology](#)  
27 [publication No. 96-94](#), adopted under WAC 173-22-080 as amended).
- 28 .385 **Wetlands, Constructed or Constructed wetlands.** Means intentional construction of a  
29 wetland on an area that was previously non-wetland for purposes of wetlands mitigation,  
30 wastewater or storm-water treatment, and managed as such.
- 31 .390 **Wetland or wetlands.** Means those areas that are inundated or saturated by ground or  
32 surface water at a frequency and duration sufficient to support, and that under normal  
33 circumstances do support, a prevalence of vegetation typically adapted for life in saturated  
34 soil conditions. Wetlands generally include bogs, swamps, marshes, ponds, and similar  
35 areas. Wetlands do not include those artificial wetlands intentionally created from non-  
36 wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales,  
37 canals, detention facilities, wastewater treatment facilities, farm ponds and landscape  
38 amenities, or those wetlands created after July 1, 1990, that were unintentionally created  
39 because of construction of a road, street, or highway. Wetlands may include those artificial  
40 wetlands intentionally created from non-wetland areas created to compensate for wetland  
41 impacts, including conversion of wetlands to mitigate (RCW 36.70A.030(20)).
- 42 .395 **Wetland edge.** Means the boundary of a wetland as delineated based on the definitions  
43 contained in the Washington State Wetland Identification and Delineation Manual (Ecology  
44 publication No. 96-94, adopted under WAC 173-22-080).

Commented [WW33]: Staff edit - as previously noted – this is a universal edit for the document.

Commented [WW34]: Staff edit to clarify and reduce the use of the term “all” to be more specific and clear.

Commented [WW35]: Staff edit – as previously noted – this is a universal edit for the document.

- 1 .400 **Wetland hydrology.** Means the characteristics of water movement on, over and through a  
2 wetland system; the science dealing with the properties, distribution, and circulation of water  
3 through a wetland.
- 4 .405 **Wetlands, Isolated or Isolated wetlands.** Means wetlands that meet the following criteria:  
5 a. Are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream; and  
6 b. Have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface  
7 water; and  
8 c. Have no surface water connection to lake, stream, estuary, or marine water body.
- 9 .4010 **Wetland Rating.** The rating for a wetland is as defined in the Washington State Wetlands  
10 Rating System for Western Washington – 2014 Update (Ecology Publication #14-06-029,  
11 October 2014, as amended).

**Commented [WW36]:** Staff edit to keep this CAO referenced as related and adopted documents change and are adopted at a higher governmental level.

12 **25.105.040 Applicability.**

- 13 A. This chapter establishes regulations for the protection of properties, which contain or are adjacent  
14 to critical areas. Critical areas are those which are now or may in the future be identified under  
15 the provisions of this chapter. The provisions of this chapter apply to development projects and  
16 actions undertaken by individuals and private or public entities. Actions may include, but are not  
17 limited to, landscaping and planting of exotic or ornamental vegetation; erection of garden  
18 structures such as sheds, fences, gazebos, etc.; clearing or alteration of existing natural  
19 vegetation; habitat enhancement or restoration; other alteration of property within or adjacent to a  
20 critical area; or any submitted development project. (Ord. 02-707 § 1)
- 21 B. **Conflicting Provisions** – The regulations in this chapter do not abrogate the DuPont Municipal  
22 Code but do supersede any conflicting regulations in the DuPont Municipal Code. If more than  
23 one (1) regulation applies to the subject property, then the regulation that provides the greatest  
24 protection to critical areas apply. For properties within jurisdiction of the Shoreline  
25 Management Act, the regulations of the City of DuPont Shoreline Master Program  
26 supersede any conflict in regulation in this chapter.  
27 ~~For properties within jurisdiction of the Shoreline Management Act, the regulations of the City of  
28 DuPont Shoreline Master Program supersede any conflict in regulation in this chapter.~~
- 29 C. **Other Jurisdictions** – Nothing in these regulations eliminates or otherwise affects the  
30 responsibility of the applicant or property owner to comply with all applicable local, state, and  
31 federal laws regulating development activities in critical areas, as herein defined.
- 32 D. **SEPA Compliance** – Nothing in these regulations or the decisions made pursuant to these  
33 regulations affects the authority of the City to review, condition, and deny projects under the  
34 State Environmental Policy Act, Chapter 43.21C RCW.

**Commented [WW37]:** Staff edit – spacing typo.

**Commented [WW38]:** Staff edit to remove “all”

35 **25.105.050 Critical Areas**

36 Within the jurisdiction of the City of DuPont, there are four critical area categories known to exist:  
37 wetlands and lakes; fish and wildlife habitat conservation areas; landslide and erosion hazard areas; and  
38 aquifer recharge areas. This section provides: descriptions and requirements for critical area identification  
39 and delineation; required buffers for critical areas; required mitigation sequence and measures if  
40 development or alteration impacts are unavoidable in or adjacent to a critical area; and requirements for  
41 management and protection of critical areas.

1 A. Wetlands & Lakes

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

19 1. Wetland Categories

- 20 a. Identification of wetlands and delineation of their boundaries pursuant to this  
21 Chapter shall be done in accordance with the approved federal wetland delineation  
22 manual and applicable regional supplement. All areas within the city meeting the  
23 wetland designation criteria in that procedure are hereby designated critical areas and  
24 are subject to the provisions of this Chapter. Wetland delineations are valid for five  
25 years; after which time the Director may determine whether a revision or additional  
26 assessment is necessary.
- 27 b. Wetlands shall be rated according to the Washington Department of Ecology  
28 wetland rating system, as set forth in the *Washington State Wetland Rating System*  
29 *for Western Washington: 2014 Update* (Ecology Publication #04-06- 029, or as  
30 revised and approved by Ecology), which contains the definitions, methods and  
31 criteria for determining a wetland's categorization as Category I, II, III or IV.
- 32 c. Wetland rating categories shall not change due to illegal modifications.

33 2. Wetland Buffers

- 34 a. A buffer shall be established adjacent to designated wetland areas. The purpose of the  
35 buffer area shall be to protect the integrity, functions, and values of the wetland area.  
36 Buffer widths shall be appropriate for the sensitivity of the wetland and for the risks  
37 associated with land use development. The following standard buffers have been  
38 established in accordance with the best available science (codified at WAC 365-195-900  
39 through 925). They are based on the category of wetland and the ~~habitat-combined~~  
40 ~~function~~ score as determined by a qualified wetland professional.

- 41 i. Category I 200 feet  
42 ii. Category II 100 feet  
43 iii. Category III 75 feet  
44 iv. Category IV 50 feet

**Commented [WW39]:** Comment provided by Ecology via telephone conversation July 11, 2017.

- 1 b. Increased buffer widths may be required by the City on a case-by-case basis when  
2 necessary to protect wetlands functions and values. This determination shall be  
3 supported by a Critical Area Report or other appropriate documentation showing that it is  
4 reasonably related to protection of the functions and values of the wetland, or when:
- 5 i. The buffer is within twenty-five (25) feet of the top or toe of a slope that is greater  
6 than thirty percent (30%); or,  
7 ii. The slope is susceptible to erosion and standard best management practices (BMPs)  
8 and erosion-control measures will not prevent adverse impacts to the wetland.
- 9 c. Buffer width averaging may be allowed by the City in accordance with an approved  
10 Critical Area Report provided that all of the following criteria are met:
- 11 i. It will not reduce ~~provide additional~~ protection to wetlands ~~or enhance their~~  
12 ~~functions~~;
- 13 ii. The total area contained in the buffer after averaging on the development proposal  
14 site does not decrease;
- 15 iii. The buffer at its narrowest point is not less than 75 percent of the standard width;  
16 and
- 17 iv. The Critical Area Report shall describe the current functions and values of the  
18 wetland and its buffer, and the measures that will be taken to ensure that there is no  
19 loss of wetland function due to averaging.
- 20 d. Reduced buffers may be allowed, with enhancements, in accordance with an approved  
21 Critical Area Report provided:
- 22 i. The existing condition of the buffer is degraded, and  
23 ii. Additional protection to the wetland is provided through the implementation of a  
24 buffer enhancement plan.  
25 iii. Buffer enhancement may include, but is not limited to:
- 26 e. Planting native vegetation that would increase value for fish and wildlife habitat, improve  
27 water quality, or provide aesthetic or recreational value;
- 28 f. Enhancement of wildlife habitat by incorporating structures that are likely to be used by  
29 wildlife, including wood duck boxes, bat boxes, nesting platforms, snags, rootwads,  
30 stumps, birdhouses, and nesting areas;
- 31 g. Removing non-native plant species and noxious weeds from the buffer area and  
32 replanting the area.
- 33 3. Allowed Activities in Wetlands and Wetland Buffers
- 34 a. Wetland enhancement, rehabilitation, or restoration ~~not associated with any other~~  
35 ~~development proposal~~ may be allowed if accomplished according to a plan approved by  
36 the Director for its design, implementation, maintenance and monitoring prepared by a  
37 civil engineer and a qualified biologist and carried out under the direct supervision of a  
38 qualified biologist;
- 39 b. Invasive species removal not involving mechanical methods or chemicals.  
40 c. Garbage, litter, and trash removal completed by use of hand tools.  
41 d. Hazard tree removal when deemed necessary by a certified arborist.

Commented [WW40]: Staff edit to remove confusing language.

Commented [WW41]: Section amended based on comments received by parties to the 2012 restoration agreement and approved by staff and city attorney.

1 e. Passive recreation activities (such as bird watching, hiking, canoeing, and other similar  
2 activities).

3 f. Alteration of other wetlands (other than Class I wetlands) when it can be demonstrated by the  
4 applicant through a wetlands analysis report and mitigation plan that the mitigation requirements  
5 of DMC 25.105.050 A.4-6 below can be met.  
6

**Commented [WW42]:** Comment and suggested addition by parties to the 2012 restoration agreement.

7 **4. Wetland Mitigation**

8 Other than alterations allowed under DMC 25.105.050 A.3, alterations of other wetlands are  
9 allowed only when the applicant can meet the mitigation standards of this subsection.

**Commented [WW43]:** Edit recommended by parties to the 2012 restoration agreement.

10 a. Requirements for Compensatory Wetland Mitigation:

**Commented [WW44]:** Staff edit to clarify mitigation focus of this section.

- 11 i. Compensatory mitigation for alterations to wetlands shall be used only  
12 (a) When impacts cannot be addressed by avoidance of impact;  
13 (b) And shall achieve equivalent or greater biological functions resulting in no  
14 net loss of wetland function.

- 15 ii. Compensatory mitigation plans shall be consistent with this Chapter and Wetland  
16 Mitigation in Washington State, Part 2: Developing Mitigation Plans, Version 1,  
17 (Ecology Publication #06-06-011b) or as amended, and Selecting Wetland  
18 Mitigation Sites Using a Watershed Approach (Western Washington) (Publication  
19 #09-06-32, Olympia, WA, December 2009). ~~or other best available science as~~  
20 ~~recommended by Dept. of Ecology.~~

**Commented [WW45]:** Edit suggested based on Ecology comment received via telephone call July 11, 2017.

- 21 iii. A performance bond or other approved financial surety is required before any  
22 project permits are issued. The purpose of the financial surety is to hold an  
23 applicant accountable for implementing the mitigation and monitoring plans. The  
24 release of financial surety is contingent on satisfactory completion of the proposed  
25 mitigation construction and monitoring by the applicant ~~of the proposed~~  
26 ~~construction mitigation and monitoring plans.~~

**Commented [WW46]:** Staff edit to promote clarity and remove confusion.

- 27 iv. Mitigation ratios shall be consistent with Subsection (3)(g) 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~~ ~~or~~ salmon habitat.

**Commented [WW47]:** Staff edit for clarity.

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:

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

- 1 (a) The goal of re-establishment is returning natural or historic functions to a  
2 former wetland.
- 3 (b) The goal of rehabilitation is repairing natural or historic functions of a  
4 degraded wetland.
- 5 ii. Creation (establishment) of wetlands on disturbed upland sites such as those with  
6 vegetative cover consisting primarily of non-native species or noxious weeds.  
7 This should be attempted only when there is an adequate source of water and it can  
8 be shown that the surface and subsurface hydrologic regime is conducive to the  
9 wetland community that is anticipated in the design.
- 10 iii. Enhancement of significantly degraded wetlands in combination with restoration or  
11 creation.  
12 Enhancement should be part of a mitigation package that includes replacing the  
13 altered area and meeting appropriate ratio requirements. Applicants proposing to  
14 enhance wetlands or associated buffers shall demonstrate:
- 15 (a) How the proposed enhancement will increase the wetland's/buffer's  
16 functions and values;
- 17 (b) How this increase in function will adequately compensate for the impacts;  
18 and
- 19 (c) How ~~all~~ other existing wetland functions and values at the mitigation site will  
20 be protected.
- 21 iv. Preservation of high-quality, at risk wetlands as compensation is generally  
22 acceptable when done in combination with restoration, creation, or enhancement,  
23 provided that a minimum of 1:1 acreage replacement is provided by re-  
24 establishment or creation. Ratios for preservation in combination with other forms  
25 of mitigation generally range from 10:1 to 20:1, as determined on a case-by-case  
26 basis, depending on the quality of the wetlands being altered and the quality of the  
27 wetlands being preserved.
- 28 d. Location of Compensatory Mitigation.  
29 Mitigation actions shall be conducted within the same sub-drainage basin and on the site  
30 of the development or alteration except when all of the following apply:
- 31 i. There are no reasonable on-site or in sub-drainage basin opportunities, or on-site  
32 and in subdrainage basin opportunities do not have a high likelihood of success  
33 due to development pressures, adjacent land uses, or on-site buffers or  
34 connectivity are inadequate;
- 35 ii. On site mitigation would require elimination of high quality upland habitat;
- 36 iii. Off-site mitigation has a greater likelihood of providing equal or improved  
37 wetland functions; and
- 38 e. Off-site locations shall be in the same sub-drainage basin and in the same Water  
39 Resource Inventory Area (WRIA) unless;
- 40 i. Established watershed goals for water quality, flood storage or conveyance, habitat,  
41 or other wetland functions and values have been established and strongly justify  
42 location of mitigation at another site; or

Commented [WW48]: Staff edit – typo.

Commented [WW49]: Staff edit to remove overbroad term.

- 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.

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

4.5. 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. 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.

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. [Fish & Wildlife Habitat Conservation Areas are defined in 25.105.030.140 of this chapter and is consistent with state agency definitions.](#) 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.~~

Commented [WW50]: Staff edit – inserted hanging sentence from below to remove confusing organization.

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

1. Stream and Stream Buffer Alterations.

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

Commented [WW51]: Staff edit – grammar.

- 1 i. Alterations may only be permitted if based upon a study meeting the necessary  
2 requirements as determined ~~and approved~~ by the Director;
- 3 ii. The applicant shall notify affected communities and native tribes of proposed  
4 alteration(s) prior to any alteration if the stream is in a flood hazard area. The  
5 applicant shall submit evidence of such notification to the Federal Emergency  
6 Management Agency;
- 7 iii. There shall be no introduction of any plant or wildlife which is not indigenous to  
8 the ~~City-State~~ into any stream or buffer unless authorized by a State or Federal  
9 permit or approval by the City;
- 10 iv. Unavoidable impacts to streams and stream functions shall be mitigated to achieve  
11 no net loss of stream function.
- 12 b. Utilities may be allowed in stream buffers if:
  - 13 i. No practical alternative location is available;
  - 14 ii. The utility corridor meets any additional requirements set forth in administrative  
15 rules and this Chapter including, but not limited to, requirements for installation,  
16 replacement of vegetation and maintenance;
  - 17 iii. The requirements for sewer utility corridors shall also apply to streams; and
  - 18 iv. Joint use of an approved sewer utility corridor by other utilities may be allowed;
- 19 c. The following surface water management activities and facilities may be allowed in  
20 stream buffers as follows:
  - 21 i. Surface water discharge to a stream from a detention facility, presettlement pond or  
22 other surface water management activity or facility may be allowed if the discharge  
23 is in compliance with the Surface Water Design Manual;
  - 24 ii. Public and private trails may be allowed in the stream buffers only upon adoption  
25 of administrative rules consistent with the following:
    - 26 iii. ~~The trail surface shall not be made of impervious materials, except that public trails~~  
27 ~~may be made of impervious materials if required to comply with the Americans~~  
28 ~~with Disabilities Act (ADA), or to provide for emergency access to remote areas;~~  
29 ~~and~~
    - 30 iv. ~~Buffers shall be expanded, where practicable, equal to the width of the trail~~  
31 ~~corridor including disturbed areas.~~
- 32 d. Stream crossings may be allowed if:
  - 33 i. ~~All~~ Road crossings use bridges or other construction techniques which do not  
34 disturb the stream bed or bank, except that bottomless culverts or other appropriate  
35 methods demonstrated to provide fisheries protection may be used if the applicant  
36 demonstrates that such methods and their implementation will pose no harm to the  
37 stream or inhibit migration of fish;
  - 38 ii. ~~All~~ Stream crossings are constructed during the summer low flow and are timed to  
39 avoid stream disturbance during periods when use is critical to salmonids;
  - 40 iii. Crossings do not occur over salmonid spawning areas unless the City determines  
41 that no other possible crossing site exists;

Commented [WW52]: Staff edit.

Commented [WW53]: City Attorney comment.

Commented [WW54]: Staff edit – corrected for matting error.

Commented [WW55]: Staff edit to remove unnecessary word.

Commented [WW56]: Staff edit to remove unnecessary word.

- 1           iv. Bridge piers or abutments are not placed within the FEMA floodway or the
- 2           ordinary high water mark;
- 3           v. Crossings do not diminish the flood-carrying capacity of the stream;
- 4           vi. Underground utility crossings are laterally drilled and located at a depth of four (4)
- 5           feet below the maximum depth of the scour for the base flood predicted by a civil
- 6           engineer licensed by the State of Washington; and
- 7           vii. Crossings are minimized and serve multiple purposes and properties whenever
- 8           possible.
- 9           e. For any stream alteration allowed by this section, the applicant shall demonstrate, based
- 10          on information provided by a civil engineer and/or a qualified biologist, that:
- 11           i. The equivalent base flood storage volume and function will be maintained;
- 12           ii. There will be no adverse impact to local groundwater;
- 13           iii. There will be no adverse increase in velocity;
- 14           iv. There will be no interbasin transfer of water;
- 15           v. There will be no adverse hydrologic disruption of surface water flow regimes;
- 16           vi. Requirements set out in the mitigation plan are met;
- 17           vii. The relocation conforms to other applicable laws; and
- 18           viii. All approved stream alteration work will be carried out under the direct supervision
- 19           of a qualified biologist
- 20           ix. ~~There will be minimal impact to salmonid life cycle.~~
- 21          2. Stream enhancement, rehabilitation, or restoration ~~not associated with any other development~~
- 22          ~~proposal~~ may be allowed if accomplished according to an approved plan by the Director, for
- 23          its design, implementation, maintenance and monitoring prepared by a civil engineer and a
- 24          qualified biologist and carried out under the direct supervision of a qualified biologist
- 25          pursuant to provisions.
- 26          3. Mitigation Requirements.
- 27           a. Mitigation shall be required when a stream or its buffer is altered in violation of law or
- 28           without any specific permission or approval by the City. A mitigation plan to offset
- 29           impacts shall demonstrate that:
- 30           i. The stream has been degraded and will not be further degraded by the
- 31           enhancement, rehabilitation, or restoration activity;
- 32           ii. The enhancement, rehabilitation, or restoration will reliably and demonstrably
- 33           improve the water quality and fish and wildlife habitat of the stream;
- 34           iii. The enhancement, rehabilitation, or restoration will have no lasting, significant,
- 35           adverse impact on any stream functions; and
- 36           iv. The enhancement, rehabilitation, or restoration will assist in stabilizing the stream
- 37           channel.
- 38           b. The following minimum requirements shall be met for the enhancement, rehabilitation, or
- 39           restoration of a stream:

**Commented [WW57]:** Staff edit to clarify "all" in this section.

**Commented [WW58]:** Staff edit to remove due to vague and overbroad requirement with lack of definition and parameters to be met. City Attorney concurs.

**Commented [WW59]:** Comment provided by parties to the 2012 restoration agreement. Agreed to by staff and City attorney.

- 1 i. All approved stream work shall be carried out under the direct supervision of a  
2 qualified biologist;
- 3 ii. Basin analysis shall be performed to determine hydrologic conditions;
- 4 iii. The natural channel dimensions shall be replicated including its depth, width,  
5 length and gradient at the original location, and the original horizontal alignment  
6 (meander lengths) shall be replaced;
- 7 iv. The bottom shall be restored with identical or similar materials;
- 8 v. The bank and buffer configuration shall be restored to its original condition;
- 9 vi. The channel, bank and buffer areas shall be replanted with vegetation native to the  
10 City which replicates the original vegetation in species, sizes and densities; and
- 11 vii. The original biologic functions of the stream shall be recreated to the extent  
12 possible.
- 13 c. The requirements in subsection 25.105.050(b) may be modified if the applicant  
14 demonstrates to the satisfaction of the Director that a greater biological function can  
15 otherwise be obtained.
- 16 d. Replacement or enhancement shall be required when a stream or buffer is altered  
17 pursuant to an approved development proposal or study meeting the necessary  
18 requirements as determined by the Director. There shall be no net loss of stream  
19 functions on a development proposal site and no impact on stream functions above or  
20 below the site due to approved alterations.
- 21 e. The requirements which apply to the restoration of streams in subsection (B) shall also  
22 apply to the relocation of streams, unless the applicant demonstrates to the satisfaction of  
23 the Director that a greater biological function can be obtained by modifying these  
24 requirements.
- 25 f. Replacement or enhancement for approved stream alterations shall be accomplished in  
26 streams and on the site unless the applicant demonstrates to the satisfaction of the  
27 Director:
- 28 i. Enhancement or replacement on the site is not possible;
- 29 ii. The off-site location is in the same drainage sub-basin as the original stream; and
- 30 iii. Greater biological and hydrological functions will be achieved.
- 31 g. Surface water management or flood control alterations shall not be considered  
32 "enhancement" unless other functions are simultaneously improved.
- 33 4. Performance Standards Applicable to ~~Any~~ Development in Fish and Wildlife Habitats.
- 34 a. Development activities allowed in fish and wildlife habitat conservation areas shall be  
35 consistent with the species located there, and shall be regulated additionally by  
36 restrictions defined in applicable federal, state and local regulations regarding the species  
37 and their habitat.
- 38 b. Habitat conservation areas identified in required habitat management plans are to be  
39 conserved for the management and maintenance of fish and wildlife habitat. Habitat  
40 conservation areas may overlap with other identified critical areas. Likely areas of  
41 overlap include critical drainage corridors, geologically hazardous areas, and wetlands.

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- 1 c. When habitat areas overlap with other critical areas, all the performance standards  
2 established for the overlaying critical area(s) shall apply. If multiple critical areas  
3 overlap in an area, the most restrictive conditions shall apply.
- 4 d. ~~H~~All habitat management plans required under this section shall incorporate mitigation  
5 recommendations developed in consideration of the Washington State Department of  
6 Fish and Wildlife's Aquatic Habitat Guidelines, the Department of Ecology's Stormwater  
7 Management Manual for the Puget Sound (2012), and Chapter 5 of the Low Impact  
8 Development Technical Guidance Manual for the Puget Sound (2012).
- 9 5. Performance Standards for Terrestrial Habitats and Species.
- 10 a. A habitat management plan shall be required for any development in or adjacent to areas  
11 identified as habitat for endangered, threatened or sensitive species and for breeding or  
12 nesting habitat of priority species. The plan shall incorporate mitigation  
13 recommendations developed in consideration of Washington Department of Fish and  
14 Wildlife habitat recommendations.
- 15 b. The habitat management plan shall show the exact location and extent of habitat  
16 conservation areas and any alteration of any habitat areas that may reduce the likelihood  
17 that the above listed species will survive or reproduce.
- 18 c. Development in or adjacent to areas used by state priority species shall be designed,  
19 located and constructed in consideration of Washington Department of Fish and Wildlife  
20 habitat recommendations, and consistent with best management practices (BMPs),  
21 including measures to avoid impacts due to construction noise, light and timing.
- 22 d. Developments occurring within the shoreline jurisdiction shall comply with the  
23 DuPont Shoreline Master Program, as amended~~Developments occurring within the~~  
24 ~~shoreline jurisdiction shall be mitigated to achieve no net loss of habitat function.~~
- 25 e. To preserve areas of native vegetation and to allow for habitat connectivity, the following  
26 development standards shall also be applied in terrestrial habitat conservation areas that  
27 lie within the shoreline jurisdiction:
- 28 i. Total impervious surface area shall be limited to 40 percent or 4,000 square feet,  
29 whichever is less; and
- 30 ii. At least 25 percent of the lot shall be required to be retained or restored in native  
31 vegetation.
- 32 6. Performance Standards for Marine Habitats and Species (refer to City of DuPont SMP).
- 33 a. Development in areas waterward of the ordinary high water mark shall require a habitat  
34 analysis and shall give special consideration to the preservation and enhancement of  
35 anadromous fish habitat.
- 36 b. Development proposals shall be designed to first avoid and then minimize environmental  
37 impacts.
- 38 c. Unavoidable impacts to marine habitat and environmental processes shall be mitigated to  
39 achieve no net loss of habitat function.
- 40 d. A habitat management plan shall be required for any development likely to cause impacts  
41 to marine habitat and environmental processes. The plan shall incorporate mitigation  
42 recommendations consistent with Washington Department of Fish and Wildlife habitat  
43 recommendations.

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Commented [WW63]: Staff edit to maintain consistency with SMP and CAO.

- 1 e. All in-water development shall meet the requirements of the Hydraulic Project Approval  
2 (HPA) process administered by Washington Department of Fish and Wildlife.
- 3 7. Buffers or Setbacks.
- 4 a. A 100-foot buffer is required on each side of a stream as measured from the ordinary high  
5 water mark (OHWM). To retain adequate natural habitat for classified species the buffer  
6 widths may be adjusted on a case-by-case basis, and the process and justification shall be  
7 described in the required habitat management plan.
- 8 b. Buffers shall consider the Washington Department of Fish & Wildlife, Priority Habitat  
9 and Species Management recommendations.
- 10 c. Buffer widths may be increased by the Director if species present are sensitive to or  
11 endangered by habitat alteration, or if the area supports unique or rare plant communities,  
12 or contains rearing and nesting sites for endangered, threatened or priority species.
- 13 d. Buffer widths may be reduced by the Director if the project includes buffer enhancement  
14 as part of an approved habitat management plan or if it is found that the affected property  
15 would be denied reasonable use.
- 16 e. Building setback lines shall be measured from the outside edge of required buffers and no  
17 setback shall be less than 15 feet from an established buffer.
- 18 8. Mitigation or Compensation for Terrestrial Habitats and Species.
- 19 a. Mitigation measures could include, but are not limited to:
- 20 i. Establishment of buffer zones;
- 21 ii. Preservation of critically important plants and trees;
- 22 iii. Limitation of access to habitat area;
- 23 iv. Seasonal restriction of construction activities;
- 24 v. Establishing a timetable for periodic review of the development;
- 25 vi. Using BMPs to avoid or reduce impacts;
- 26 vii. Reducing the size, scope, configuration, or density of the project.
- 27 viii. Participation in the city's in-lieu fee program (see section 25.105.060)
- 28 9. Report Required.
- 29 A habitat management plan shall be required for:
- 30 a. Any development in or adjacent to areas identified as habitat for endangered, threatened  
31 or sensitive species or for breeding or nesting habitat of priority species.
- 32 b. Development in areas waterward of the ordinary high water mark shall require a habitat  
33 analysis.
- 34 c. Any compensatory mitigation proposed for stream enhancement, rehabilitation, or  
35 restoration associated with out of kind mitigation for wetland impacts.
- 36 d. Unless otherwise exempt under this ordinance, a permit application to develop in the  
37 regulatory floodplain shall include an assessment of the impact of the project on federal,  
38 state or locally protected species and habitat, water quality and aquatic and riparian  
39 habitat. The assessment shall be:

- 1           i.    A biological evaluation or biological assessment developed per 50 CFR 402.12 to  
2           initiate federal interagency consultation under Endangered Species Act Section  
3           7(a)(2); or
- 4           ii.   Documentation that the activity fits within Section 4(d) of the Endangered Species  
5           Act; or
- 6           iii.   Documentation that the activity fits within a habitat conservation plan approved  
7           pursuant to Section 10 of the Endangered Species Act, where any such assessment  
8           has been prepared or is otherwise made available; or
- 9           iv.   An assessment prepared in accordance with Regional Guidance for Floodplain  
10          Habitat Assessment and Mitigation, FEMA Region X, 2013. The assessment shall  
11          determine if the project would adversely affect:
  - 12           (a) Species that are federal, state or local listed as threatened or endangered;
  - 13           (b) The primary constituent elements for critical habitat, when designated;
  - 14           (c) Essential fish habitat designated by the National Marine Fisheries Service;
  - 15           (d) Fish and wildlife habitat conservation areas;
  - 16           (e) Other protected areas and elements necessary for species conservation.

17    C.   Geologically Hazardous Areas

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

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

- 34    1.   Classification. For purposes of this chapter, geologically hazardous areas shall include all of  
35    the following:
  - 36       a.   Landslide Hazard Areas. Landslide hazard areas shall include areas potentially  
37       susceptible to landslides based on a combination of geologic, topographic, and  
38       hydrologic factors. They include any areas susceptible to mass movement due to any  
39       combination of bedrock, soil, slope (gradient), slope aspect, slope form (concave, convex,  
40       planar), geological structure, surface and subsurface hydrology, or other factors.  
41       Landslide hazard areas shall also include areas along which landslide material may be  
42       routed or which may be subject to deposition of landslide delivered material. Landslide  
43       hazard areas include but are not limited to the following areas:

- 1 i. Areas designated as quaternary slumps, earth-flows, mudflows, or landslides on  
2 maps published by the U.S. Geological Survey, Washington State Department of  
3 Natural Resources, or other reputable sources;
- 4 ii. Areas with all three (3) of the following characteristics:  
5 (a) Slopes steeper than 15%;  
6 (b) Hillsides intersecting geologic contacts with a relatively permeable sediment  
7 overlying a relatively impermeable sediment or bedrock; and,  
8 (c) Springs or groundwater seepage;
- 9 iii. Areas that have shown movement and/or are underlain or covered by mass wastage  
10 debris;
- 11 iv. Potentially unstable slopes resulting from river or stream erosion or undercutting  
12 by wave erosion;
- 13 v. Areas that show past sloughing or calving of sediment or rocks resulting in a steep  
14 slope that is poorly vegetated;
- 15 vi. Slopes that are parallel or sub-parallel to planes of weakness (which may include  
16 but not be limited to bedding planes, soft clay layers, joint systems, and fault  
17 planes) in subsurface materials;
- 18 vii. Any area with a slope of 40% or steeper and with a vertical relief of ten (10) or  
19 more feet except areas composed of competent bedrock or a properly engineered  
20 slopes designed and approved by a geotechnical engineer licensed in the state of  
21 Washington and experienced with the site;
- 22 viii. Areas within which land use activities could affect the slope stability, including but  
23 not limited to areas with subsurface hydrologic flow, groundwater recharge areas  
24 and surface water flow;
- 25 ix. Areas of historical landslide movement including coastal shoreline areas mapped  
26 by the Department of Ecology Coastal Zone Atlas or the Department of Natural  
27 Resources slope stability mapping as unstable ("U" or class 3), unstable old slides  
28 ("UOS" or class 4), or unstable recent slides ("URS" or class 5).
- 29 b. Erosion Hazard Areas. Erosion hazard areas shall include:  
30 i. Channel migration zones, also known as riverine erosion areas, are defined as the  
31 areas along a river or stream within which the channel(s) can be reasonably  
32 predicted to migrate over time. This is a result of natural and normally occurring  
33 geomorphic, hydrological, and related processes when considered with the  
34 characteristics of the river or stream and its surroundings, and in consideration of  
35 river and stream management plans. Channel migration hazard areas shall  
36 include: potential channel migration, channel avulsion, bank erosion, and stability  
37 of slopes along the river or stream;
- 38 ii. Coastal erosion areas that are subject to shoreline retreat from wind, wave, and  
39 tidal erosion.
- 40 2. Standards  
41 a. Landslide Hazard Areas:

- 1 i. General Standards. The following activities may be allowed in active landslide  
2 hazard areas when ~~all~~ reasonable measures have been taken to minimize risks and  
3 other adverse effects associated with landslide hazards, and when the amount and  
4 degree of the alteration are limited to the minimum needed to accomplish the  
5 project purpose:
- 6 (a) Developments that will have no threat to the health or safety of people and will  
7 not increase potential for landslides on or off the site and meet the reasonable  
8 use standards as set forth above.
- 9 (b) Utility lines and pipes that are above-ground, properly anchored and/or  
10 designed so that they will continue to function in the event of a slope failure or  
11 movement of the underlying materials and will not increase the risk or  
12 consequences of static or seismic slope instability or result in a risk of mass  
13 wasting. Such utility lines may be permitted only when the applicant  
14 demonstrates that no other feasible alternative is available to serve the affected  
15 population.
- 16 (c) Access roads and trails that are engineered and built to standards that avoid the  
17 need for major repair or reconstruction beyond that which would be required in  
18 non-hazard areas. Access roads and trails may be permitted only if the  
19 applicant demonstrates that no other feasible alternative exists, including  
20 through the provisions of Chapter 8 24 RCW. If such access through critical  
21 areas is granted, exceptions or deviations from technical standards for width or  
22 other dimensions and specific construction standards to minimize impacts,  
23 including drainage and drainage maintenance plans, may be required.
- 24 (d) Stormwater conveyance through a properly designed stormwater pipe when no  
25 other stormwater conveyance alternative is available. The pipe shall be  
26 located above-ground and be properly anchored and/or designed so that it will  
27 continue to function in the event of a slope failure or movement of the  
28 underlying materials and will not increase the risk or consequences of static or  
29 seismic slope instability or result in increased risk of mass wasting activity.
- 30 ii. Landslide Hazard Management Zone: Alteration may be allowed within 300 feet  
31 of an active landslide hazard area when the Director determines that the following  
32 standards are met:
- 33 (a) The proposed alteration includes ~~all~~ appropriate measures to avoid, eliminate,  
34 reduce, or otherwise mitigate risks to health and safety.
- 35 (b) The proposed alteration is located outside of a landslide hazard area and any  
36 required setback.
- 37 (c) The development will not decrease slope stability on adjacent properties. The  
38 development shall not increase the risk or frequency of landslide occurrences.
- 39 (d) The removal and disturbance of vegetation, clearing, or grading shall be limited  
40 to the area of the approved development.
- 41 (e) The development is outside of the area of potential upslope or downslope  
42 surface movement or potential deposition in the event of a slope failure.
- 43 (f) The development will not increase or concentrate surface water discharge or  
44 sedimentation to adjacent properties beyond predevelopment conditions.

**Commented [WW64]:** Staff edit to remove overarching and overbroad restrictions. City Attorney concurs

**Commented [WW65]:** Staff edit to remove overbroad restrictions

- 1 (g) The proposed alterations will not adversely impact other critical areas.
- 2 (h) Structures and improvements shall minimize alterations to the slope contour,  
3 and shall be designed to minimize impervious lot coverage unless such  
4 alterations or impervious surfaces are needed to maintain slope stability.
- 5 b. Erosion Hazard Areas: For coastal, riverine, and stream erosion hazard areas, the  
6 following activities shall be allowed when the applicable general protective measures are  
7 applied as follows:
- 8 i. Discharge of surface water drainage into a coastal or riverine erosion hazard area,  
9 provided there are no other alternatives for discharge, and the drainage is collected  
10 upland of the top of the active erosion hazard area and directed downhill in an  
11 appropriately designed stormwater pipe that includes an energy dissipating device  
12 at the base of the hazard area. The pipe shall be located on the surface of the  
13 ground and be properly anchored so that it will continue to function under erosion  
14 conditions and not create or contribute to adverse effects on downslope critical  
15 areas. The number of pipes should be minimized along the slope frontage.
- 16 ii. Stormwater retention and detention systems, such as dry wells and infiltration  
17 systems using buried pipe or French drains, provided they are located outside the  
18 identified channel migration zone, designed by a qualified professional and shall  
19 not affect the stability of the site.
- 20 iii. Utility lines when no feasible conveyance alternative is available. The line shall  
21 be located above ground and properly anchored and/or designed so that it will not  
22 preclude or interfere with channel migration and will continue to function under  
23 erosion conditions; provided, that utility lines may be located within channel  
24 migration zones if they are buried below the scour depth for the entire width of the  
25 CMZ.
- 26 iv. Public roads, bridges, and trails when no feasible alternative alignment is available.  
27 Facilities shall be designed such that the roadway prism and/or bridge structure will  
28 not be susceptible to damage from active erosion.
- 29 v. Access to private development sites may be allowed to provide access to portions  
30 of the site that are not critical areas, if there are no feasible alternative alignments.  
31 Alternative access shall be pursued to the maximum extent feasible, including  
32 through the provisions of Chapter 8.24 RCW. Exceptions or deviations from  
33 technical standards for width or other dimensions, and specific construction  
34 standards to minimize impacts may be specified.
- 35 vi. Stream bank stabilization and shoreline protection may be permitted subject to all  
36 ~~of~~ the following standards:
- 37 (a) Shoreline protection measures located within coastal or riverine erosion areas  
38 shall use soft armoring techniques (bioengineering erosion control measures as  
39 identified by the State Department of Ecology and the Department of Fish and  
40 Wildlife guidance) unless the applicant provides a geotechnical analysis  
41 demonstrating that bioengineering approaches will not adequately protect the  
42 property.
- 43 (b) The armoring will not adversely affect critical areas including habitat  
44 conservation areas or mitigation will be provided to compensate for adverse  
45 effects where avoidance is not feasible.

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- 1 (c) Hard bank armoring is discouraged and may occur only when the property  
2 contains an existing permanent structure(s) that is in danger from shoreline  
3 erosion caused by wave action or riverine processes and not erosion caused by  
4 upland conditions, such as the alteration of natural vegetation or drainage, and  
5 the armoring shall not increase erosion on adjacent properties and shall not  
6 eliminate or reduce sediment supply.
- 7 (d) The erosion is not being caused by upland conditions, such as the removal of  
8 vegetation or human alteration of existing drainage.
- 9 (e) Nonstructural measures, such as placing or relocating the development further  
10 from the shoreline, planting vegetation, or installing on-site drainage  
11 improvements, are not feasible or not sufficient.
- 12 vii. New public flood protection measures and expansion of existing ones may be  
13 permitted, subject to a state hydraulic project approval; provided, that  
14 bioengineering or soft armoring techniques shall be used where feasible. Hard  
15 bank armoring may occur only in situations where soft approaches do not provide  
16 adequate protection.
- 17 3. Setbacks
- 18 a. Landslide Hazard Area: The Director shall require setbacks from the edges of any  
19 identified landslide hazard area in accordance with the following:
  - 20 i. The size of the setback shall be based on the findings of a qualified professional  
21 and shall minimize the risk of property damage, death, or injury resulting from  
22 landslides both on and off the property.
  - 23 ii. The setback shall include consideration of the hydrologic contribution area to the  
24 potential landslide area and/or the area subject to the potential for mass movement,  
25 and the downhill area subject to potential deposition.
  - 26 iii. The setback shall include consideration of vegetation on the potential landslide area  
27 and in areas above and below the potential landslide area. The Director shall have  
28 the authority to require vegetation or other measures to protect or improve slope  
29 stability and shall have the authority to require a mitigation plan developed in  
30 accordance with this chapter, and an easement in accordance with this Title to  
31 ensure appropriate vegetation improvements are installed, maintained, and  
32 preserved.
  - 33 iv. Developments on sites that are directly adjacent to a wetland, marine shoreline, or  
34 other habitat conservation area as defined in this chapter may be subject to  
35 additional buffer requirements and standards as set forth in the subsequent articles  
36 of this chapter.
- 37 b. Erosion Hazard Areas: The Director shall have the authority to require setbacks from  
38 the edges of any coastal, stream, or riverine hazard erosion area in accordance with the  
39 following:
  - 40 i. The size of the setback shall be based on the findings of a qualified professional  
41 and shall protect critical areas and processes and minimize the risk of property  
42 damage, death or injury resulting from erosion over the life of the development,  
43 typically identified as 100 years.

- 1           ii.    The setback shall include the uphill area subject to potential erosion, the downhill  
2           area subject to potential deposition, and any area subject to landslide as a result of  
3           erosion.
- 4           iii.   The setback shall include woody vegetation adequate to stabilize the soil and  
5           prevent soil movement (native species are preferred). If the designated setback  
6           area lacks adequate woody vegetation, the Director shall have the authority to  
7           require vegetation enhancement or other measures to improve slope stability.
- 8           iv.    Developments on sites that are directly adjacent to a wetland or marine shoreline or  
9           other habitat conservation area as defined in this chapter may be subject to  
10          additional setback requirements and standards as set forth in the subsequent articles  
11          of this chapter.
- 12        4.    Development Requirements. The following requirements shall apply to all activities in  
13          geologically hazardous areas:
- 14        a.    Generally. New developments shall be located and/or engineered and constructed to  
15          reduce risks to life, health, safety, and buildings, and not increase potential for landslides  
16          or erosion that could impact either other properties, public resources, or other critical  
17          areas. The Director may impose conditions on development activity in a geologically  
18          hazardous area as needed to:
- 19            i.    Protect human life and safety; and
- 20            ii.   Minimize the potential for property damage related to seismic events, erosion  
21            and/or landslides;
- 22            iii.   Minimize the need for stream or river bank or coastal bluff stabilization in the  
23            future;
- 24            iv.   Reduce public liabilities for damages associated with geologic hazards.
- 25            v.    Protect slope stability and minimize erosion, seismic, and/or landslide hazard risks;
- 26            vi.   Maintain natural sediment and erosion processes that are integral to the health and  
27            sustainability of freshwater and marine ecosystems as well as minimizing impacts  
28            to stream, river, and coastal processes such as channel infill, channel migration,  
29            sediment transport, or flooding.
- 30        b.    Impact Avoidance. Impact avoidance measures shall include, but not be limited to,  
31          locating the use/development outside of the hazard area, reducing the number, size or  
32          scale of buildings, driveways and other features; altering the configuration or layout of  
33          the proposed development; implementing special engineering methods for construction,  
34          drainage, runoff management etc.; foregoing construction of accessory structures;  
35          preserving native vegetation; and other feasible protective measures as determined by an  
36          alternatives analysis. For some geologic hazards, impact avoidance may mean no  
37          development will be permitted on a property.
- 38        c.    Location of Alterations. New development shall be directed toward portions of a parcel  
39          or parcels under contiguous ownership that are not subject to, or at risk from, geological  
40          hazards and/or are outside any setback or buffer established by this Chapter.
- 41        d.    Critical Facilities Prohibited. Critical facilities as defined in WAC 16.16.800 shall not  
42          be constructed or located in geologically hazardous areas if there is a feasible alternative  
43          location outside geologically hazardous areas that would serve the intended service

- 1 population. If allowed, the critical facility shall be designed and operated to minimize  
2 the risk and danger to public health and safety to the maximum extent practicable.
- 3 e. Review by Qualified Professional. A geologist or other qualified professional, licensed  
4 in the State of Washington, shall review development proposals that occur in potentially  
5 geologically hazardous areas to determine the potential risk. If development takes place  
6 within an identified geologically hazardous area requiring design or structural elements to  
7 mitigate the hazard, the mitigation shall be designed by a qualified professional licensed  
8 in the State of Washington with expertise in mitigation of geological hazards.
- 9 f. Life of Structure. Proposed development shall be sited far enough from erosion and  
10 landslide hazard areas to ensure at least one hundred (100) years of useful life for the  
11 proposed structure(s) or infrastructure. The location should be determined by a geologist  
12 or other qualified professional, licensed in the State of Washington and be should be  
13 based on site specific evaluation of the landslide and/or erosion hazard.
- 14 g. Remodels and Additions. Any proposed remodel or addition to an existing permitted or  
15 non-conforming structure that exceeds a valuation of greater than 50% of the fair market  
16 value shall be required to ensure that the entire structure is improved in accordance with  
17 City of DuPont Building Code requirements.
- 18 h. Land Subdivision. Land that is located wholly within a landslide hazard area erosion  
19 hazard area or its buffer may not be subdivided to create buildable parcels entirely within  
20 the hazardous area. Land that is located partially within a hazard area or its setback may  
21 be divided provided that each resulting lot has sufficient buildable area outside of the  
22 hazardous area with provision for drainage, erosion control and related features that will  
23 not adversely affect the hazard area or its setback.

24 D. Aquifer Recharge Areas

25 Aquifer recharge areas are characterized as porous geologic formations which store surface water  
26 that has percolated into the soil (ground water). Currently the Red Salmon Springs Aquifer and  
27 the Outwash/Lakewood Glacier Aquifer are used as drinking water source for the City of DuPont.  
28 This section provides protection measures to effectively maintain the quality of potable ground  
29 water by prevention of contamination ~~so if needed in the future, ground water may be used as a~~  
30 ~~potable (drinking) water source. In order to protect the public health and safety, prevent~~  
31 ~~degradation of ground water now, and for potentially usable potable water, d~~Development in  
32 aquifer recharge areas shall be subject to the standards described in this section.

33 1. Classification.

- 34 ~~a. Aquifer recharge areas are those lands in DuPont which have an aquifer of potential~~  
35 ~~future or current use for drinking water, or which are a part of a system which maintains~~  
36 ~~or affects the water quality of a wetland or other significant surface body of water and~~  
37 ~~which allows water to enter the soil and geologic materials in ways and in quantities that~~  
38 ~~replenish natural ground water systems and aquifers.~~
- 39 ~~b.a.~~ Aquifers are highly susceptible to damage when the overlying soils and geologic  
40 formations that filter surface waters feeding the aquifer are very coarse textured, allowing  
41 rapid translocation of surface pollutants to the aquifer. Aquifers under fine textured soils  
42 and geologic formation are less susceptible to surface influences and pollution.
- 43 ~~e.b.~~ Aquifers underlying areas that are currently developed or industrialized are more  
44 vulnerable to pollution than aquifers in undeveloped areas. Combining aquifer

**Commented [WW67]:** Edit recommended by City attorney to focus on potable sources of groundwater which is consistent with WA law.

**Commented [WW68]:** Deletion requested by City Attorney to focus potable groundwater protection.

- 1                   susceptibility indexes with vulnerability indexes allows identification of those areas most  
2                   at risk. Aquifers with relatively high susceptibility indexes located in industrial areas  
3                   have the highest potential to become a significant public health hazard. High  
4                   vulnerability is characterized by land uses which produce contaminants that may degrade  
5                   ground water quality or reduce ground water quantity. Low vulnerability is  
6                   characterized by land uses which will not affect ground water quality or quantity.
- 7                   d.c. Vulnerability to pollution is a function of depth of ground water, permeability of soils  
8                   and geologic formations (susceptibility), presence of potential source of contamination,  
9                   and any other relevant factors.
- 10                  2. Regulated Development. The following types of development shall be regulated under this  
11                  chapter:
- 12                  a. Any development not connected to sanitary sewers which is located in a critical aquifer  
13                  recharge area. On-site sewage treatment shall be prohibited in critical aquifer recharge  
14                  areas.
- 15                  b. The following land uses shall require a hydrogeologic assessment of the proposed site:
- 16                      i. Hazardous substance processing or handling;
- 17                      ii. Hazardous waste treatment and storage facilities;
- 18                      iii. Underground storage of petroleum products;
- 19                      iv. Landfills, junkyards, auto wrecking yards; and
- 20                      v. Golf Courses; and
- 21                      vi. Large scale agriculture; or
- 22                      vii. Other land use of a similar nature.
- 23                  3. Performance Standards for Development. All regulated development, as identified in this  
24                  section, shall be designed and constructed subject to the following standards:
- 25                  a. Underground hazardous substance and/or petroleum storage facilities shall:
- 26                      i. Be designed to prevent releases due to corrosion or structural failure for the  
27                      operational life of the tank;
- 28                      ii. Be protected against corrosion, constructed of noncorrosive material, steel clad  
29                      with a noncorrosive material, or designed to include a secondary containment  
30                      system to prevent the release or threatened release of any stored substance; and
- 31                      iii. Use material in the construction or lining of the tank that is compatible with the  
32                      substance to be stored.
- 33                  b. Above ground hazardous substance and/or petroleum storage tanks shall:
- 34                      i. Not be fabricated, constructed, installed, used or maintained in any manner which  
35                      may allow the release of a hazardous substance to the ground, ground water, or  
36                      surface waters of DuPont within an aquifer recharge area;
- 37                      ii. Not be fabricated, constructed, installed, used or maintained without having  
38                      constructed around and under it an impervious containment area enclosing or  
39                      underlying the tank;
- 40                      iii. Require a secondary containment system either built into the tank structure or dike  
41                      system built outside the tank for all tanks located within an aquifer recharge area.

- 1 Propane and heating oil tanks are exempt from secondary containment system  
2 requirements;
- 3 iv. Be consistent with the Department of Ecology's standards for construction and  
4 installation.
- 5 c. Stormwater runoff will be controlled and treated using BMPs and facility design  
6 standards as defined in (cite DMC).
- 7 d. Agricultural and landscaping activities, specifically use of fertilizers, herbicides, and  
8 pesticides in highly susceptible areas, shall be controlled through state water quality  
9 standards.
- 10 c. Applicants shall also consider the guidance set forth in Chapter 5 of the Low Impact  
11 Development Technical Guidance Manual for the Puget Sound (2012) for  
12 recommendations concerning the protection of native soils and vegetation, and retention  
13 of hydrologic function, during clearing and grading for development proposals.
- 14 4. Mitigation or Compensation. Any regulated development listed in subsection  
15 25.105.050(D)(2) of this section which results in degradation of aquifer recharge areas or  
16 aquifer water quality will require restoration of on-site disturbance in full to predisturbance  
17 conditions. Additional compensation shall be required in the form of fines, provision of  
18 drinking water for areas dependent on the degraded aquifer, or alternative environmental  
19 restoration.
- 20 5. Report Required. A geohydrological report may be required in those areas identified as  
21 highly susceptible or vulnerable.

22 **25.105.060 In-Lieu Fees.**

- 23 To aid in the implementation of off-site mitigation, the City may develop an in-lieu fee program. This  
24 program shall be developed and approved through a public process and be consistent with federal rules,  
25 state policy on in-lieu fee mitigation, and state water quality regulations. An approved in-lieu-fee  
26 program sells compensatory mitigation credits to permittees whose obligation to provide compensatory  
27 mitigation is then transferred to the in-lieu program sponsor, a governmental or non-profit natural  
28 resource management entity. Credits from an approved in-lieu-fee program may be used when all of the  
29 following requirements are met:
- 30 A. The approval authority determines that it would provide environmentally appropriate  
31 compensation for the proposed impacts.
- 32 B. The mitigation will occur on a site identified using the site selection and prioritization process in  
33 the approved in-lieu-fee program instrument.
- 34 C. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee  
35 program instrument.
- 36 D. Land acquisition and initial physical and biological improvements of the mitigation site must be  
37 completed within three years of the credit sale.
- 38 E. Projects using in-lieu-fee credits shall have debits associated with the proposed impacts  
39 calculated by the applicant's qualified wetland scientist using the method consistent with the  
40 credit assessment method specified in the approved instrument for the in-lieu-fee program.
- 41 F. Credits from an approved in-lieu-fee program may be used to compensate for impacts located  
42 within the service area specified in the approved in-lieu-fee instrument.

1 **25.105.070 Exemptions and exceptions.**

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

5 A. Exemptions.

- 6 1. Existing structures or improvements (not covered under item b below) that do not meet the  
7 requirements of this chapter may be remodeled, reconstructed, or replaced providing the  
8 existing structures or improvements currently meet the originally intended use or function  
9 and that any new construction does not further intrude into or detrimentally disrupt a critical  
10 area and/or buffer. The burden of proof of functionality and material use, of existing  
11 structures or improvements, as well as impact of the proposed activity, is on the applicant and  
12 subject to the discretion of the Director.
- 13 2. Normal and routine maintenance of existing drainage ditches and drainage retention/detention  
14 facilities, and other existing utilities.
- 15 3. Clean-up activities through non-mechanical and non-chemical means such as trash removal  
16 and invasive plant removal are exempt activities under this chapter. Coordination of these  
17 activities should be made after prior consultation with the Director.
- 18 4. Exemption requests shall be made in writing and subject to the administrative authority of the  
19 Director.

20 B. Exceptions.

- 21 1. 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 critical area's functional value. An alternative site  
28 for the proposed activity shall be considered feasible if it is available and the proposed  
29 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) 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 critical areas; and
- 35 (b) 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 critical area.

38 2. Projects or alterations qualifying as an exception under this section shall be required  
39 to mitigate any impacts to critical areas in accordance with the mitigation  
40 requirements provided in this Chapter.

41 2.3. Exemption requests shall be made in writing and subject to the administrative authority of  
42 the Director.

Commented [WW69]: Staff edit – typo

1 **25.105.080 Critical area permit submittal requirements.**

2 ~~For the purposes of this chapter, the following alterations shall also be considered a development~~  
3 ~~proposal requiring a critical areas permit pursuant to DuPont Ordinance: any alteration occurring~~  
4 ~~adjacent to or within a critical area or associated buffer that the Director determines may have a~~  
5 ~~probable significant impact to the function and value of the critical area. Any development~~  
6 ~~proposal that adversely impacts a critical area or its buffer, as determined by the Director, shall~~  
7 ~~require a critical area permit unless it qualifies for an exemption or exception under DMC~~  
8 ~~25.105.070. Development outside a critical area or buffer that may nonetheless adversely affect~~  
9 ~~the critical area or buffer may be conditioned pursuant to the City's substantive authority under~~  
10 ~~the State Environmental Policy Act and DMC 23.01.150.~~

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11 A. ~~All~~ Nonexempt actions and development within or adjacent to a critical area shall be  
12 processed with a Type III procedure as set forth in DMC 25.175.010.

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**Commented [WW71]:** Comment and suggested addition offered by parties to the 2012 restoration agreement

13 B. A complete critical area development application shall contain the information contained  
14 in DMC 25.105.080 in addition to the information required by DMC 25.175.020 in  
15 addition to any specific submittal requirements of this chapter.

**Commented [WW72]:** Staff edit to remove unnecessary word.

**Commented [WW73]:** Staff edit from Type II to a Type II process.

- 16 1. Name, address, and phone number of the applicant(s) and property owner(s) (if different from  
17 the applicant).
- 18 2. Complete legal description of the subject property.
- 19 3. Statement of proposed development or action.
- 20 4. A site plan at a scale acceptable to the city showing existing conditions that include the  
21 following elements:

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- 22 a) Topographic contours at two-foot intervals;
- 23 b) Existing streets, roads and trails;
- 24 c) Existing structures and facilities;
- 25 d) Extent of critical areas as delineated in the field;
- 26 e) Location of existing trees and tree masses;
- 27 f) Soil types and their locations.

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- 28 5. A site plan at a scale acceptable to the city showing proposed development that include the  
29 following elements:

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- 30 +a) Topographic contours showing finished grade at two-foot intervals;
- 31 -b) Proposed streets, parking, trails and sidewalks;
- 32 -c) Location of proposed structures and facilities;
- 33 +d) Extent of critical areas and their buffers as delineated in the field;
- 34 -e) Location of major landscaping including those existing trees and tree masses to be  
35 retained.

- 36 6. A site plan at a scale acceptable to the city showing any proposed subdivision including:  
37 +a) Lot lines;
- 38 -b) Street rights-of-way;

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- 1 ~~3-c.~~ Utility easements;
- 2 ~~4-d.~~ Critical areas tracts;
- 3 ~~5-e.~~ Proposed storm drainage system and facilities. (Ord. 02-707 § 1)

4 **C. Permit Submittal Requirements**

- 5 1. Pre-application consultation. Any person preparing to submit an application for a  
6 development proposal as defined by 25.105.030.105, shall conduct a consultation  
7 meeting with the Director or his/her designee prior to submitting an application for  
8 development or other approval. At this meeting, the Director or his/her designee shall  
9 discuss the requirements of ~~this Ordinance Chapter 25.105~~; provide available critical area  
10 maps, scientific information, and other materials outline the review process; and, work  
11 with the applicant to identify any potential concerns that might arise during the review  
12 process, in addition to discussing other permit procedures and requirements.
- 13 2. Initial review. Following submittal of an application for a development proposal ~~or~~  
14 ~~use of land~~, the Director or his/her designee shall review the application, site  
15 conditions, and other information available pertaining to the site and the proposal and  
16 make a determination as to whether any critical areas may be affected by the proposal.
- 17 3. Site inspection. The property owner shall provide the City with reasonable access to  
18 the site for the purpose of inspections during any proposal review, enhancement,  
19 rehabilitation, or restoration effort, emergency action, or monitoring activity.
- 20 4. Critical area report required. If the information available indicates that the project  
21 area is within or adjacent to a critical area or buffer, or that the proposed activity is in  
22 close enough proximity to a critical area, as determined by the Director, that it will likely  
23 degrade a critical area, then the applicant shall be required to submit a critical area report  
24 prior to further review of the project. The Director will review the critical area report to  
25 determine whether a critical area permit is required under 25.105.080 A.

26 **D. Permit Review criteria**

- 27 1. For the purposes of this chapter, the following alterations shall also be considered a  
28 development proposal requiring a critical areas permit pursuant to DuPont Ordinance: any  
29 alteration occurring adjacent to or within a critical area or associated buffer that the Director  
30 determines may have a probable significant impact to the function and value of the critical  
31 area. ~~Any permit~~ An application for a critical areas permit ~~or approval that includes an~~  
32 alteration or development inside of or adjacent to a critical area, or is in close enough  
33 proximity to likely effect a critical area or its buffer as determined by the Director a, unless  
34 otherwise provided for in this Chapter, may be approved, approved with conditions, or  
35 denied based on the proposal's ability to comply with all the following criteria:
- 36 a. The proposal minimizes the impact on critical areas in accordance with  
37 mitigation as defined in the chapter;
- 38 b. The proposal does not pose an unreasonable threat to the public health, safety, or  
39 welfare on or off the development proposal site;
- 40 c. The proposal is consistent with the general purposes of this Ordinance and the  
41 public interest; and
- 42 d. Any alterations permitted to the critical area are mitigated in accordance with the  
43 mitigation requirements and standards of this Chapter; and,

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the 2012 restoration agreement.

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the 2012 restoration agreement and agreed to by staff and  
city attorney.

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sentence from definition to section 25.105.080. Comment  
received by parties to the 2012 restoration agreement  
Accepted by staff and City attorney.

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the 2012 restoration agreement. Agreed to by staff and city  
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- 1            ~~a-c.~~ The proposal protects the critical area functions and values consistent with the  
2            best available science; and
- 3            ~~f. The proposal is consistent with other applicable regulations and standards. The~~  
4            ~~granting of a critical areas permit should not be construed as approval of any~~  
5            ~~other required underlying permit or approval for the development proposal.~~
- 6            2. The City may condition the underlying permit or approval for any alteration or  
7            development within or adjacent to a critical areas or its buffer. ~~Additional conditions~~  
8            ~~may be placed on the proposal, or if it is in close enough proximity to and likely to~~  
9            ~~effect a critical area or its buffer as determined by the Director. Additional conditions~~  
10           ~~will be established as necessary to mitigate impacts to critical areas and to~~  
11           ~~conform to the standards required by this Ordinance. Any conditions of~~  
12           ~~approval of the critical areas permit shall be attached to the underlying permit or~~  
13           ~~approval.~~
- 14           3. ~~The applicant has the burden of proof that a proposal complies with the standards~~  
15           ~~set forth in this Chapter.~~
- 16           4. ~~Completion of the critical area review. The City's issuance of a critical areas~~  
17           ~~permit pursuant to this Chapter shall be final, concurrent with the final decision~~  
18           ~~to approve, condition, or deny the development proposal or other activity~~  
19           ~~involved.~~

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Commented [WW83]: Comments provided by parties to the 2012 restoration agreement and agreed to by staff and city attorney.

20 **25.105.090 Enforcement and Procedures of this Chapter.**

- 21            A. Peer Review. The Director may require a 3<sup>rd</sup> party peer review of any report or study required of  
22            an applicant to implement the provision of this Chapter to ensure accuracy of the information.  
23            The applicant shall bear the burden of any costs associated with this peer review. The Director is  
24            authorized to hire a 3<sup>rd</sup> party consultant to perform this review upon completion of a 3-party  
25            contract with the applicant to pay for the peer review prior to review of any permit proposal.

26 **25.105100 Notice and financial securities.**

- 27            A. Notice. The owner of any property containing critical areas or buffers on which a development  
28            project is submitted shall file for record with Pierce County a notice approved in form by the city.  
29            Such notice shall provide notice in the public record of the presence of any critical areas or  
30            buffers. The owner shall submit proof to the city that the notice has been filed for record within  
31            30 days after the approval of a development permit. The notice shall run with the land, and  
32            failure to provide such notice to any purchase prior to transferring any interest in the property  
33            shall be a violation of this chapter.
- 34            B. Performance Security. The city may require the applicant of a development proposal to post a  
35            financial security, in a form and amount determined by the Director, sufficient to guarantee  
36            satisfactory workmanship, materials, and performance of structures and improvements allowed or  
37            required by application of this chapter. The city shall release the security upon determining that  
38            all structures and improvements have been satisfactorily completed.
- 39            C. Maintenance Security. The city may require the applicant whose development proposal is  
40            subject to a mitigation plan to post a maintenance/monitoring financial security instrument in a  
41            form and amount determined sufficient to guarantee satisfactory performance for a period of up to  
42            five years, or longer if determined by the Director to ensure success of the required mitigation.  
43            The duration of maintenance/monitoring obligations shall be established by the city after  
44            consideration of the nature of the proposed mitigation and the likelihood and expense of  
45            mitigation failures. The city shall release the security upon determining that the effectiveness

1 and success of the mitigation plan has been satisfactory. The performance standards of the  
2 mitigation plan shall be agreed upon by the city and the applicant during the review process.  
3 (Ord. 02-707 § 1)

4 **25.105.110 Non-Conformance.**

5 Nonconforming Structures and Improvements. Structures and improvements in existence on the date the  
6 ordinance codified in this chapter becomes effective and that do not meet the setback or buffer  
7 requirements of this chapter for any defined critical area shall be considered legal nonconforming uses.  
8 Future alteration, re-construction, or expansion of legal non-conforming structures permitted under this  
9 section must meet all the requirements of this Chapter.

Commented [WW84]: Edit by City Attorney to clarify existing structures.

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

13 **25.105.120 Suspension – Revocation.**

14 In addition to enforcement procedures and penalties provided for in DMC Chapter 25.185 the Director  
15 may suspend or revoke a permit when the applicant or permittee has not complied with any or all of the  
16 conditions or limitations set forth in accordance with this Chapter, has exceeded the scope of work set  
17 forth in the permit, or has failed to undertake the project in the manner set forth in the approved  
18 application, or has failed to abide by any relevant Federal, State or City law, regulation or ordinance.

19 **25.105.130 Amendments.**

- 20 A. These regulations and the city inventory maps may from time to time be amended in accordance  
21 with the procedures and requirements in the general statutes and as new information concerning  
22 critical areas becomes available.
- 23 B. The city's shoreline master program at DMC Chapter 25 170 incorporates the critical areas  
24 ordinance by reference. Therefore, amendments to this chapter that are intended to alter  
25 development regulations applicable to shorelines jurisdiction must be processed as an amendment  
26 to the City of DuPont shoreline master program and shall be subject to approval by the  
27 Department of Ecology ).

28 **25.105.140 Severability.**

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

34 **25.105.150 Appeals.**

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

40 Any person with standing may appeal to the hearing examiner a final administrative order, final  
41 requirement, final permit decision, or final determination made; provided, that such appeal shall be filed  
42 in accordance with the appeal procedure for the underlying permit. If there is no appealable permit or if  
43 the appeal is for a reasonable use permit decision issued by the technical administrator, the appeal shall be  
44 filed in writing within 14 calendar days of the date the written decision, order, requirement, or

- 1 determination is issued and public notice provided, unless the decision is issued as part of a SEPA  
2 determination of nonsignificance for which a public comment period is required, in which case a 21-day  
3 appeal period shall be provided.
- 4 The appeal will be upheld if the applicant proves that the decision appealed is clearly erroneous or based  
5 upon error of law.
- 6 The hearing examiner shall have the authority to set an expiration date for any or all appeal approvals.  
7 The hearing examiner will render a decision pursuant to DMC Chapter 1.11; and DMC Chapter 25.185.
- 8 Each application for an appeal of an administrative decision to the hearing examiner shall be  
9 accompanied by a fee as stated in the unified fee schedule.
- 10 Pursuant to RCW Chapter 36.70C, the applicant, any party of record, or any City department may appeal  
11 any final decision of the hearing examiner before Pierce County Superior Court.
- 12 Any issue not raised in the original appeal filing is thereafter waived.
- 13 **25.105.160 Assessment Relief.**
- 14 A. The Pierce County assessor's office shall consider critical area regulations in determining the fair  
15 market value of land.
- 16 B. Any undeveloped critical area property which has recorded upon it an easement or which is the  
17 subject of a perpetual conservation restriction with the city or a nonprofit organization to  
18 permanently control some or all regulated activities in that portion of land assessed consistent  
19 with those restrictions, shall also be considered for exemption from special assessments to defray  
20 the cost of municipal improvements such as sanitary sewers, storm sewers, and water mains.
- 21 **25.105.170 Limitation of actions.**
- 22 Any final decision under this chapter shall be final and conclusive unless timely appealed by following  
23 the appeal procedures of this Chapter, DMC Chapter 1.11; DMC Chapter 25.185; and any relevant  
24 Federal, State, or City law, regulation or ordinance.