Town of Concrete Critical Area Regulations (CARs)
(Note: This Master Program adopts by direct reference the attached CARs. The provisions of this Master Program amend and are the controlling critical area regulations within shoreline management jurisdiction.)

Attachment B
Chapter 16.12
CRITICAL AREAS REGULATIONS (CAR)

Sections:
16.12.010 Purpose, intent and applicability.
16.12.030 Best available science.
16.12.040 Permitted, conditional and prohibited uses.
16.12.050 Project review required.
16.12.060 Critical area markers, signs and fencing.
16.12.080 Critical area tracts and designations on site plans.
16.12.090 Building setbacks.
16.12.100 Wetlands.
16.12.110 Critical aquifer recharge areas.
16.12.120 Habitat conservation areas.
16.12.130 Density/floor area calculations and transfer of density/floor area.
16.12.140 Frequently flooded areas.
16.12.150 Geologically hazardous areas.
16.12.160 Special consideration for anadromous fisheries.
16.12.180 Lorenzan Creek setback requirement.

16.12.010 Purpose, intent and applicability.

(1) The purpose of this chapter is to designate, classify and protect the functions and values of critical areas and anadromous fisheries in a manner consistent with state law while allowing for reasonable use of private property. By adopting this chapter, the town of Concrete acknowledges that critical areas and anadromous fisheries provide a variety of important biological and physical functions that benefit the community and its residents or may pose a threat to human safety or property.

(2) The CAO district (zone) consists of that area within 225 feet of critical areas located in all or in part within the incorporated town limits, including wetlands (all areas which meet the definition of a wetland), critical aquifer recharge areas (as designated by Skagit County Code 14.24.310 and consistent with requirements of the Growth Management Act), frequently flooded areas (within District A as shown in the Federal Emergency Management Agency National Flood Insurance Program Map), geologically hazardous areas (as designated by the U.S. Geological Survey Soil Survey Map and the 1999 Skagit County Potential Landslide and Erosion Areas Map), habitat conservation areas (as designated by the Washington Department of Fish and Wildlife Habitats and Species Map), and anadromous fisheries (as designated by the Washington Department of Fish and Wildlife Habitats and Species Map). Any development proposed on a parcel of land within the CAO district shall be subject to project review as required in CMC 16.12.050 unless specifically exempted. [Ord. 631 § 1, 2008]


“Alteration” means any human-induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to, grading, filling, channelizing, dredging, construction, compaction, excavation or any other activity that alters the character of the critical area.
“Anadromous fisheries” means endangered, threatened, rare, sensitive, or monitor species of anadromous fish, or resident fish species or species of local importance, that occupy an area proposed for development during life stages important to species survival.

“Applicant” means a person who files an application for a permit under this chapter and who is either the owner of the land on which that proposed activity would be located, a lessee of the land, the person who would actually control and direct the proposed activity or the authorized agent of such a person.


“Best management practices” means conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, and sediment; minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical, and biological characteristics of wetlands; protect trees and vegetation designated to be retained during and following site construction; and provide standards for proper use of chemical herbicides within critical areas.

“Buffer” means an area required by this chapter that provides a natural vegetated zone surrounding a natural, restored or newly created critical area which serves as a buffer between the critical area and the adjacent developed area and as an integral part of the habitat ecosystem.

“Critical aquifer recharge areas” means areas designated by using criteria in WAC 365-190-080(2) that are determined to have a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-080(2).

“Development” means any activity upon the land consisting of construction or alteration of structures, earth movement, dredging, dumping, grading, filling, mining, removal of any sand, gravel, or minerals, driving of piles, drilling operations, bulk heading, clearing of vegetation, or other land disturbance. Development includes the storage or use of equipment or materials inconsistent with the existing use. Development also includes approvals issued by the town that bind land to specific patterns of use, including, but not limited to, subdivisions, short subdivisions, zone changes, conditional use permits, and binding site plans. Development does not include the following activities:

(a) Interior building improvements;
(b) Exterior structure maintenance activities, including painting and roofing;
(c) Routine landscape maintenance of established native vegetation, ornamental landscaping, such as lawn mowing, pruning and weeding;
(d) Maintenance of the following existing facilities that does not expand the affected area: septic tanks (routine cleaning); wells, individual utility service connections; and individual cemetery plots in established and approved cemeteries.

“Frequently flooded area” means an area within a floodplain subject to a one percent or greater chance of flooding in any given year.

“Functions and values” means the beneficial roles served by critical areas including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, ground water recharge and discharge, erosion control, wave attenuation, protection from hazards, historical and archaeological and aesthetic value protection, and recreation. These beneficial roles are not listed in order of priority.

“Geologically hazardous area” means an area susceptible to erosion, sliding, earthquake or other geological event and thus not suited to siting of commercial, residential or industrial development consistent with public health or safety concerns.
“Habitat conservation area (HCA)” means habitat necessary for the survival of endangered, threatened, rare, sensitive, priority or monitor species.

“Hydrogeologic susceptibility” refers to the permeability of soils and underlying ground that protect a critical aquifer recharge area from contamination. A high susceptibility rating indicates very high permeability of soils and/or a shallow water table that is more likely to be impacted by a contaminant released on the surface.

“Mitigation” means a negotiated action involving the avoidance, reduction or compensation for possible adverse impact. Mitigation actions include the following, in order of preference:

(a) Avoiding the impacts altogether by not taking action;
(b) Reducing or eliminating impacts by preservation or maintenance;
(c) Minimizing impacts by limiting degree or magnitude;
(d) Rectifying impacts by repairing, rehabilitating or restoring;
(e) Compensating for impacts by in-kind replacement;
(f) Monitoring impacts by a planned evaluation process.

“Monitoring” means evaluating the impacts of development proposals on the biological, hydrological and geological elements of ecosystems and assessing the performance of required mitigation measures throughout the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features, and includes gathering baseline data.

“Native vegetation” means plant species that are indigenous to the area in question.

“Priority habitat” means habitat type or elements with unique or significant value to one or more species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element (WAC 173-26-020(34)).

“Qualified professional” means a person or professional services firm contracted with the town with experience and trained personnel in a discipline applicable to the critical area in question. A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology or a related field, and two years of related work experience. A qualified professional for habitats, wetlands or anadromous fisheries must have a degree in biology or a related field and professional experience related to the subject species. A qualified professional for a frequently flooded area or geologically hazardous area must be a professional engineer or geologist licensed in the state of Washington. A qualified professional for critical aquifer recharge areas must be a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments. A qualified professional may include a consulting firm or agency which the town is contracting with to provide critical area review of projects.

“Restoration” means measures taken to restore an altered or damaged natural feature including:

(a) Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration;
(b) Actions performed to reestablish structural and functional characteristics of the critical area that have been lost by alteration, past management activities, or catastrophic events;
(c) Actions taken to protect and enhance anadromous fisheries resources.

“SEPA” means the Washington State Environmental Policy Act, Chapter 43.21C RCW.

“Species, endangered” means any fish or wildlife species that is threatened with extinction throughout all or a significant portion of its range and is listed by the state or federal government as an endangered species.

“Species of local importance” means those species of local concern due to their population status or their sensitivity to habitat manipulation, or that are game species.

“Species, priority” means any fish or wildlife species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels as classified by the Washington Department of Fish and Wildlife, including endangered, threatened, sensitive, candidate and monitor species, and those of recreational, commercial, or tribal importance.
“Species, threatened” means any fish or wildlife species that is likely to become an endangered species within the foreseeable future through a significant portion of its range without cooperative management or removal of threats, and is listed by the state or federal government as a threatened species.

“Wetland” means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands. [Ord. 631 § 1, 2008]

16.12.030

**Best available science.**

The town has reviewed and incorporated best available science in the development of this chapter. The following sources, in the most updated version available on the date of the ordinance codified in this chapter, are considered the best available science for delineation of critical areas:

1. **Wetlands.**
   (a) U.S. Fish and Wildlife National Wetlands Inventory Map.
   (b) Washington State Wetland Identification and Delineation Manual (Ecology Publication No. 96-94, March 1997), or as revised.

2. **Critical Aquifer Recharge Areas.**
   (a) Skagit County Code 14.24.310, Aquifer recharge areas designations.
   (b) Skagit County hydrology map.
   (c) “Critical Aquifer Recharge Areas” guidance document available through Ecology as Publication No. 05-10-028, January 2005.

3. **Frequently Flooded Areas.**
   (a) Federal Emergency Management Agency Flood Insurance Program Map.

4. **Geologically Hazardous Areas.**
   (a) Skagit County landslide and erosion areas map.
   (b) U.S. Geological Survey Soil Survey Map.

5. **Habitat Conservation Areas.**
   (a) Washington Department of Fish and Wildlife Priority Habitat and Species Map.

6. **Special Consideration for Anadromous Fisheries.**
   (a) Washington Department of Fish and Wildlife Priority Habitat and Species Map. [Ord. 631 § 1, 2008]

16.12.040

**Permitted, conditional and prohibited uses.**

(1) Permitted uses or uses allowed by conditional use permit or uses altogether prohibited in the CAO district shall be the same as those listed in the underlying zoning district.
(2) Proposed uses or sites within the CAO district that are currently regulated under the Skagit County shoreline management program or other county, state or federal regulations, or uses listed as categorical exemptions from the State Environmental Policy Act, shall be subject to the most restrictive of the applicable regulations and associated review requirements. [Ord. 631 § 1, 2008]

16.12.050 Project review required.

1. Land use or building permits for development within the CAO district shall be subject to review under provisions of this chapter unless specifically exempted in subsection (5) of this section.

2. Applicants shall be required to submit a critical areas checklist, provided by the town, for review with their permit application that describes the project and proposed site and informs the town of any potential impacts on critical areas. If the applicant has submitted a critical areas checklist to Skagit County, pursuant to Skagit County Code 14.24.080, the same checklist may be submitted to the town to fulfill this requirement.

3. For those projects determined by the town planner and/or building official likely to have a significant impact on a critical area(s), the applicant shall submit a technical report as part of the application. The technical report shall be prepared by a qualified professional(s) with demonstrated qualifications in the area of concern and shall apply best available science as part of its analysis. The town may require, at its discretion, an independent, third party review of any technical report in order to ensure its sufficiency. The applicant shall be responsible for the costs associated with this review. At a minimum, the technical report shall:
   (a) Identify the precise limits of the critical area(s) and its function and resource values;
   (b) Analyze the potential impacts of the proposed development on the critical area(s); and
   (c) Provide a detailed plan for mitigation of those impacts, to be implemented by the applicant.

4. If the applicant has submitted a technical report to another jurisdiction as part of a county, state or federal permit application, SEPA or NEPA environmental review, the same technical report may be submitted to the town to fulfill this requirement. If the applicant has undergone critical areas review and has a current permit authorizing the proposed critical areas alteration from another jurisdiction including but not limited to the Army Corps of Engineers, Department of Ecology, or Washington Department of Fish and Wildlife, the town may waive the project review requirements under this section.

5. The following activities shall be allowed in critical areas without a critical area review, provided they are conducted using best management practices and at a time and in a manner designed to minimize adverse impacts to the critical area. The town may require a critical areas permit to ensure the critical area is protected using best management practices.
   (a) Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife;
   (b) Outdoor recreational activities which do not involve disturbance of the resource or site, including but not limited to fishing, hunting, bird watching, hiking, horseback riding, and bicycling;
   (c) Harvesting wild crops in a manner that is not injurious to the natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops or alteration of the resource by changing existing topography, vegetation, water conditions, or water resources;
   (d) Education, scientific research and use of nature trails;
   (e) Site investigation work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities;
   (f) Existing and ongoing agriculture activities, including farming, horticulture, aquaculture, irrigation, ranching or grazing of animals;
   (g) Normal and routine maintenance of legally constructed irrigation and drainage ditches;
   (h) Normal and routine maintenance, repair or operation of existing serviceable structures, facilities or improved areas, not including expansion, change in character or scope or construction of a maintenance road;
(i) Emergency construction necessary to protect life or property from immediate damage by the elements;
(j) Minor modification (such as construction of a patio, balcony or second story) of existing serviceable structures where the modification does not adversely impact the functions of the critical area or associated buffer;
(k) Construction of serviceable structures that are 640 square feet or less (such as a garage, carport or storage shed) where the placement or building of the structure does not adversely impact the functions of the critical area or associated buffer;
(l) Clearing nonnative vegetation, invasive species or hazardous trees that do not adversely impact the functions of the critical area or associated buffer. Such activity shall require a critical areas permit from the town of Concrete;
(m) Replacement, operation, repair, modification, installation, or construction in existing developed utility corridors, an improved city street right-of-way or city-authorized private street of all electric facilities, lines, equipment, or appurtenances, not including substations;
(n) Relocation of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment, or appurtenances, only when required by a local governmental agency that approves the new location of the facilities and only when all other alternative sites have been examined and determined to be infeasible; mitigation will be required. Local approval does not relieve the applicant of the need to obtain applicable state and federal permits (e.g., permits authorizing in-water work);
(o) Replacement, operation, repair, modification, installation, or construction of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment, or appurtenances when such facilities are located within an improved public right-of-way or authorized private street;
(p) Maintenance, operation, repair, modification, or replacement of publicly improved streets as long as any such alteration does not involve the expansion of streets or related improvements into previously unimproved rights-of-way or portions of rights-of-way;
(q) Maintenance, operation, or repair of parks, trails and publicly improved recreation areas as long as any such alteration does not involve the expansion of improvements into previously unimproved areas or new clearing of native vegetation beyond routine pruning and related activities.

(6) The town requires applicants to demonstrate that development on a site determined to have critical areas will protect the resource by taking one of the following mitigation steps (listed in order of preference):
(a) Avoid impacts to the resources altogether.
(b) Minimize the impact by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
(c) Rectify the impact by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project.
(d) Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action.
(e) Compensate for the impact by replacing, enhancing or providing substitute resources or environments.
(f) Monitor the impact and take appropriate corrective measures.

(7) If a critical area within the incorporated town limits is subject to regulation by a county, state or federal agency (i.e., waters of the state), it is the responsibility of the applicant to satisfy environmental review and mitigation requirements of that agency.

(8) If a critical area on the property that is being developed in the town crosses a jurisdictional line, the town shall coordinate with Skagit County or the appropriate jurisdiction in the review of the project.

(9) Site Assessment Required. If, after the site visit, the town determines that the proposed activity area is within 225 feet, or within a distance otherwise specified in this chapter, of an area that may contain critical area indicators, or if the director determines that the proposed activity will adversely impact a critical area or
its associated buffer, then a complete critical areas site assessment shall be required. Critical areas site assessments, as described in more detail in the various sections for each type of critical area, shall be submitted as part of a complete application for a development permit or other approval of land use activities having the potential to impact critical areas or their buffers, by a qualified expert.

(10) Development on Preexisting Lots.
(a) For development proposals and other land use activities that can adversely impact critical areas on preexisting lots, which are not part of a proposed land division or other form of multiple lot development, critical areas shall be identified on a scaled site plan showing the location of the critical area, structures (existing and proposed) and their distances from the critical area and lot lines to show relative location within the subject parcel(s). The project or activity shall be conditioned for critical area protection using best management practices.
(b) For development on preexisting lots, such as single-family residential or commercial building permits, within the CAO district that may impact critical areas, the applicant shall provide a habitat management plan incorporating best management practices to ensure that the development does not adversely impact the functions of the critical area. Such plan shall be submitted for review and approval by the town planner or designee. [Ord. 631 § 1, 2008]

16.12.060 Critical area markers, signs and fencing.
The town planner, at mitigation sites or where a buffer reduction has been authorized, shall require fencing, signs and or survey markers as needed to delineate and protect critical areas. If found to be necessary, permanent fencing shall be required at the edge of the critical area or buffer. Fencing installed in accordance with this section shall be designed to not interfere with fish and wildlife migration and shall be constructed in a manner that minimizes critical area impacts. [Ord. 631 § 1, 2008]

The owner of any property containing critical areas or buffers on which a development proposal is submitted or any property on which mitigation is established as a result of development, except a public right-of-way or the site of a permanent public facility, shall file a notice approved by the city with the county property records office. The required contents and form of the notice shall be determined by the director. The notice shall inform the public of the presence of critical areas, buffers or mitigation sites on the property, of the application of this chapter to the property and that limitations on actions in or affecting such critical areas or buffers may exist. The notice shall run with the land. [Ord. 631 § 1, 2008]

16.12.080 Critical area tracts and designations on site plans.
(1) Critical area tracts shall be used to protect those critical areas and buffers listed below in development proposals for subdivisions, short subdivisions, planned unit developments or binding site plans and shall be recorded on all documents of title of record for all affected lots:
(a) All landslide hazard areas and buffers that are one acre or greater in size;
(b) All wetlands and buffers; and
(c) All streams and buffers.
(2) Any required critical area tract shall be held in an undivided interest by each owner of a building lot within the development with this ownership interest passing with the ownership of the lot or shall be held by an incorporated homeowners’ association or other legal entity which assures the ownership, maintenance, and protection of the tract, or dedicated to the city, at the city’s discretion. [Ord. 631 § 1, 2008]
16.12.090  
**Building setbacks.**

Unless otherwise provided, building setbacks shall be located a distance of 10 feet from the edges of a required critical area buffer. [Ord. 631 § 1, 2008]

16.12.100  
**Wetlands.**

(1) The existence of a wetland and the location of its boundary shall be determined by a qualified professional through the performance of a field investigation using the Washington State Wetlands Identification and Delineation Manual (Ecology Publication No. 96-94), or as revised. Qualified professionals shall perform wetland determinations, delineations and classifications using the acceptable methodology. A technical report will be prepared by a qualified professional and submitted by the applicant.

(2) The town of Concrete wetlands will be classified by the Washington State Wetlands Rating System for Western Washington, August 2004, or as revised.

(3) Development near wetlands shall observe buffers from the edge of the wetland. The size and extent of the required buffer will be determined on a site-specific basis using the Wetlands in Washington State – Volume 2: Guidance for Protecting and Managing Wetlands, April 2005 (Ecology Publication No. 05-06-008), for guidance. The town’s buffer widths are based in part on Buffer Alternative 3. No development or activity shall occur within the required buffer unless the applicant can demonstrate that the proposed use or activity will not degrade the functions and values of the wetland. In no case shall any development reduce the buffer width by more 25 percent of the required buffer.

(4) The following critical area buffers are hereby established. Buffers are measured from the wetland boundary:

<table>
<thead>
<tr>
<th>Category</th>
<th>Wetland Characteristic</th>
<th>Buffer</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Natural heritage wetlands</td>
<td>190 feet</td>
</tr>
<tr>
<td></td>
<td>Bogs</td>
<td>190 feet</td>
</tr>
<tr>
<td></td>
<td>Forested</td>
<td>Based on score for habitat or water quality functions</td>
</tr>
<tr>
<td></td>
<td>Habitat score of 29 to 36</td>
<td>225 feet</td>
</tr>
<tr>
<td></td>
<td>Habitat score of 20 to 28</td>
<td>110 feet</td>
</tr>
<tr>
<td></td>
<td>Water quality score of 24 to 32 and habitat score of less than 20</td>
<td>75 feet</td>
</tr>
<tr>
<td></td>
<td>Not meeting any of the above</td>
<td>75 feet</td>
</tr>
<tr>
<td>II</td>
<td>Habitat score of 29 to 36</td>
<td>225 feet</td>
</tr>
<tr>
<td></td>
<td>Habitat score of 20 to 28</td>
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<tr>
<td></td>
<td>Not meeting any of the above</td>
<td>75 feet</td>
</tr>
<tr>
<td>III</td>
<td>Habitat score of 20 to 28</td>
<td>110 feet</td>
</tr>
<tr>
<td></td>
<td>Not meeting any of the above</td>
<td>60 feet</td>
</tr>
</tbody>
</table>
(a) Requirements for Exemption of Small Wetlands.

(i) Wetlands less than 1,000 square feet in size may be exempt from these regulations where it has been shown by the applicant that they are not associated with a riparian corridor, they are not part of a wetland mosaic, and they do not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife (WDFW). However, exempted wetlands continue to be regulated by state and federal agencies.

(ii) The 2004 Wetland Rating System for Western Washington shall be used to determine category and to evaluate the functions of wetlands between 1,000 square feet and 4,000 square feet in size. The following criteria, in addition to local knowledge of natural resources, shall be used when determining the exemption of wetlands between 1,000 square feet and 4,000 square feet from the requirement to avoid impacts:

(A) The requirement to avoid impacts may be removed for Category III and IV wetlands between 1,000 square feet and 4,000 square feet, providing they meet all of the following criteria:
   1. The wetland is not associated with a riparian corridor; and
   2. The wetland is not part of a wetland mosaic; and
   3. The wetland does not score 20 points or greater for habitat in the 2004 Western Washington Rating System; and
   4. The wetland does not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife (WDFW).

(B) Impacts allowed under this provision to the wetlands will be fully mitigated as required in subsection (5) of this section.

(C) All Category I and II wetlands between 1,000 square feet and 4,000 square feet shall be evaluated with full mitigation sequencing; that is, avoidance, minimization, compensation for unavoidable impacts and buffer establishment. All approved impacts should be adequately compensated by mitigation.

(b) Performance Standards. Development on sites with a wetland or wetland critical area buffer shall incorporate the following performance standards in design of the development, as applicable:

(i) Lights shall be directed away from the wetland.

(ii) Activity that generates noise, such as parking lots, generators, and residential uses, shall be located away from the wetland, or any noise shall be minimized through use of design and insulation techniques.

(iii) Toxic runoff from new impervious areas shall be routed away from the wetlands.

(iv) Treated water may be allowed to enter the wetland critical area buffer.

(v) The outer edge of the wetland critical area buffer shall be planted with dense vegetation to limit pet or human use.

(vi) Use of pesticides, insecticides and fertilizers within 150 feet of the edge of the buffer shall be limited. Property owners and contractors shall follow regulations of the State Departments of Agriculture, Ecology, and the U.S. EPA regarding chemical applications.

(5) If activities result in the loss or degradation of a regulated wetland, a mitigation or enhancement plan prepared by a qualified professional shall be submitted for review and approval by the town. Any mitigation or replacement wetland shall be located in the same watershed as the impacted wetland of the same category and level of function. Where mitigation ratios are necessary the town recommends using Table 1a, Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance (Version 1, Publication No. 06-06-011a, March 2006).
(6) Buffer Width Averaging. Buffer averaging allows limited reduction of the buffer width in specified locations, while requiring increases in others. Averaging of required buffer widths will be allowed only if the applicant demonstrates that all of the following criteria are met:

(a) Averaging is necessary to accomplish the purposes of the proposal and that no reasonable alternative is available; and

(b) The total area contained within the wetland buffer after averaging is no less than that contained within the standard buffer prior to averaging. The buffer width shall not be reduced below 25 percent of the standard buffer width or 25 feet, whichever is greater, unless the administrative official determines that no other reasonable alternative exists and that no net loss of wetland functional values will result, based on a functional assessment provided by the applicant utilizing a methodology approved by the administrative official.

(7) Wetland buffers may be used for enhancement, conservation and restoration activities, passive recreation (including trails, wildlife viewing structures and fishing access areas) and stormwater management facilities (limited to outfalls or biofiltration swales) are allowed only if they do not alter the hydroperiod of the wetland or adversely affect water quality. Pedestrian trails in wetland buffers shall be limited to permeable surfaces and shall be no more than five feet in width. Trails should be located only in the outer 25 percent of a wetland buffer and should be designed to avoid removal of significant trees. Stormwater management facilities are limited to the outer 25 percent of the wetland buffer of Category III and IV wetlands. [Ord. 631 § 1, 2008]

16.12.110 Critical aquifer recharge areas.

(1) The existence of a critical aquifer recharge area and its boundary shall be determined by a qualified professional using Skagit County aquifer recharge area designations as guidance. Aquifer characterization and rating of hydrogeologic susceptibility to contamination will be conducted using the guidelines and methodology provided in the Washington Department of Ecology Guidance Document for the Establishment of Critical Aquifer Recharge Area Ordinances (Publication No. 05-10-02897). A technical report prepared by a qualified professional will be submitted by the applicant.

(2) In areas designated as high susceptibility for aquifer contamination, all uses shall be connected to the town’s sewer system to prevent possible contamination of the aquifer by septic system leaks. No new uses on a septic system are permitted in high susceptibility areas of critical aquifer recharge.

(3) Impervious surfaces shall be minimized within the critical aquifer recharge areas to protect the aquifer from contamination by storm runoff.

(4) Best management practices shall be followed by commercial and industrial uses located in the critical aquifer recharge areas to ensure that potential contaminants do not reach the aquifer.

(5) If the proposed development involves the use of any hazardous materials or substances regulated by the county, state or federal government, a spill prevention and emergency response plan shall be prepared and submitted for review and approval by the town and fire district. [Ord. 631 § 1, 2008]

16.12.120 Habitat conservation areas.

(1) The applicant for development in the CAO district that may impact habitat conservation areas shall provide a habitat management plan which identifies critical areas within the project area, prepared by a qualified professional with knowledge of the species in question, for evaluation by local, state, and federal agencies.

(2) The habitat management plan shall address the project area of the proposed activity, all habitat conservation areas, and shall recommend appropriate buffers to protect the critical area.

(3) The habitat management plan shall be based on best available science and best management practices and shall be designed to achieve specific habitat objectives and shall include, at a minimum:

(a) A detailed description of vegetation on and adjacent to the project area;
(b) Identification of any species of local importance, priority species, or endangered, threatened, sensitive or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;

(c) A discussion of any federal, state or local special management recommendations, including Washington Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;

(d) A detailed discussion of the potential impact on habitat by the project, including potential impact to water quality;

(e) A discussion of mitigation measures proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity;

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

(4) A habitat conservation area may be altered only if the proposed alteration of the habitat or the mitigation proposed does not degrade the functions and values of the habitat.

(5) No plant, wildlife or fish species that is not indigenous to the region shall be introduced into a habitat conservation area unless authorized by a state or federal permit approval.

<table>
<thead>
<tr>
<th>Water Type Riparian Buffer</th>
</tr>
</thead>
<tbody>
<tr>
<td>S (Shorelines)</td>
</tr>
<tr>
<td>F (Fish)</td>
</tr>
<tr>
<td>NP (Nonfish perennial)</td>
</tr>
<tr>
<td>NS (Nonfish seasonal)</td>
</tr>
</tbody>
</table>

Once buffers are established, they shall not be altered except as allowed in this subsection. Riparian buffers not currently meeting the minimum standards shall be restored; provided, that such restoration does not conflict with other provisions of this chapter. In implementing buffer widths other than the standard riparian buffers identified above, the town may provide opportunity for review and comment from appropriate federal, state or tribal natural resource agencies to ensure the use of best available science. These comments shall be included in the public record along with the basis and rationale for requirement or approval of any such nonstandard buffers.

(a) Increasing Buffer Widths. The town has the authority to increase the standard buffer widths on a case-by-case basis, or to establish nonriparian buffer widths, when such buffers are necessary to protect priority fish or wildlife (e.g., great blue heron nesting colonies, osprey or cavity nesting ducks). This determination shall be supported by appropriate documentation from the Departments of Ecology and Fish and Wildlife, showing that the increased buffer width is reasonably related to the protection of the fish and/or wildlife using the HCA.

(b) Decreasing Buffer Widths. Decreasing standard buffers will be allowed by the town council only if the applicant demonstrates that all of the following criteria are met:

(i) A decrease is necessary to accomplish the purposes of the proposal and no reasonable alternative is available;

(ii) Decreasing width will not adversely affect the fish and wildlife habitat functions and values;

(iii) If a portion of a buffer is to be reduced, the remaining buffer area will be enhanced, using native vegetation, artificial habitat features, vegetative screening and/or barrier fencing as appropriate to improve the functional attributes of the buffer and to provide equivalent or better protection for fish and wildlife habitat functions and values;

(iv) The buffer width shall not be reduced below 50 percent of the standard buffer width unless the town council determines that no other reasonable alternative exists and that no net loss of HCA riparian functional values will result, based on a functional assessment provided by the applicant utilizing a methodology approved by the town.
(6) Allowed Uses in HCAs or Buffers.

(a) Docks. Docks designed to facilitate low impact uses, such as education and/or private, non-commercial recreation may be permitted within fish and wildlife HCAs under the following conditions:
   (i) The activity will have minimum adverse impact to the fish and wildlife habitat conservation area;
   (ii) The activity will not significantly degrade surface or groundwater;
   (iii) The intrusion into the fish and wildlife habitat conservation area and its buffers is mitigated; and
   (iv) The director may provide opportunity for review and comment by federal, state and tribal natural resource agencies.

(b) Limited park or recreational access to a fish and wildlife habitat area or its required buffer; provided, that all of the following are satisfied:
   (i) The access is part of a public park or a recreational resort development that is dependent on the access for its location and recreational function;
   (ii) The access is limited to the minimum necessary to accomplish the recreational function;
   (iii) The access and the balance of the development is consistent with other requirements of the Concrete Municipal Code and the Skagit County shoreline management master program; and
   (iv) The proponent obtains a written approval from the town council for the limited access and associated mitigation.

(c) Low impact uses and activities which are consistent with the purpose and function of the habitat buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the habitat involved; provided, that such activity shall not result in a decrease in riparian functional values and shall not prevent or inhibit the buffer’s recovery to at least prealtered condition or function. Examples of uses and activities which may be permitted in appropriate cases include removal of noxious vegetation, pedestrian trails, viewing platforms, and stormwater management facilities such as grass-lined swales and wet ponds or stormwater wetlands.

(d) In the riparian buffer, removal of hazardous, diseased or dead trees and vegetation when necessary to control fire, or to halt the spread of disease or damaging insects consistent with the State Forest Practices Act, Chapter 75.09 RCW, or when the removal is necessary to avoid a hazard such as landslides that pose a threat to existing structures may be permitted with prior written approval. Any removed tree or vegetation shall be replaced with appropriate species. Replacement shall be performed consistent with accepted restoration standards for riparian areas within one calendar year. The director may approve alternative tree species to promote fish and wildlife habitat.

Prior to commencement of tree or vegetation removal anchor replacement, the landowner must obtain written approval from the director. [Ord. 631 §1, 2008]

16.12.130  
Density/floor area calculations and transfer of density/floor area.

(1) An owner of a site or property in the R residential zoning district containing critical areas shall be entitled to transfer the residential density attributable to the critical area(s), including buffers, on the property to the unconstrained portion of the same property zoning districts subject to compliance to the requirements of this code for residential planned unit developments, and cluster subdivisions.

(2) An owner of a site or property in the airport land use district, CL commercial/light industry district, TC town center district, I industrial district, P public lands district and O-S open space zoning districts containing critical areas shall be entitled to transfer the floor area attributable to the critical area(s) including buffers to the unconstrained portion of the same property subject to the requirements of the dimensional and density requirements within the applicable zoning district. Parking for the transferred floor area may be reduced to provide and ensure economic use of the property. [Ord. 631 §1, 2008]
Frequently flooded areas.

Development in areas of special flood hazards shall comply with Chapter 15.08 CMC, Floodplain Management. [Ord. 631 § 1, 2008]

Geologically hazardous areas.

(1) A minimum 50-foot buffer shall be established from the boundary of an identified geological hazard, including landslide hazard areas, seismic hazard areas, mine hazard areas, landfills or steep slope areas (40 percent or greater), except as specified in this section. The buffer may be increased as deemed necessary to protect public health, safety and welfare, based on information contained in a geotechnical report prepared by a qualified professional submitted by the applicant.

(2) Buffers may be decreased in size, provided the geotechnical report substantiates the following findings:

   (a) The proposed development will not create a hazard to the subject property, surrounding properties or rights-of-way, erosion or sedimentation to off-site properties or bodies of water;

   (b) The proposal uses construction techniques that minimize destruction of existing topography and natural vegetation;

   (c) The proposal mitigates all impacts identified in the geotechnical report.

(3) The following activities are allowed in geologically hazardous areas, provided they do not create a hazard to the subject property or surrounding properties, do not increase erosion or sedimentation, do not compromise the stability of the slope, and utilize techniques to minimize the destruction of existing topography and natural vegetation:

   (a) Additions to existing residences that are 640 square feet or less.

   (b) Installation of fences.

   (c) Removal of vegetation may be permitted only when necessary to protect the public health, safety, and general welfare. Significant trees and shrubs removed shall be replaced with similar species at a location approved by the town. Such activities shall require a critical areas permit by the town of Concrete.

   (d) Activities identified in CMC 16.12.050(E). [Ord. 631 § 1, 2008]

Special consideration for anadromous fisheries.

(1) The applicant for development proposed in the CAO district that may impact anadromous fisheries shall provide an anadromous fisheries protection plan prepared by a qualified professional with knowledge of the species in question. If the applicant must submit a habitat management plan, these reports and mitigation plans may be combined.

(2) The anadromous fisheries protection plan shall be based on best available science and best management practices and shall be designed to protect and enhance anadromous fisheries resources and shall include, at a minimum:

   (a) A detailed description of the landscape and vegetation on and adjacent to the project area;

   (b) Identification of any endangered, threatened, rare, sensitive, or monitor species of anadromous fish, or resident fish species or species of local importance that are known to occur on or adjacent to the proposed site, and a detailed description of those species’ life cycles and limiting factors;

   (c) A discussion of any federal, state or local special management recommendations have been developed for salmonid recovery or anadromous fish species or habitats located on or adjacent to the project area;

   (d) A detailed description of the potential impact on anadromous fisheries by the project, particularly with regard to life stages important to species survival;

   (e) A discussion of conservation or protection measures proposed to preserve and enhance existing habitat and restore any habitat that was degraded prior to development;
(f) A discussion of continuing management practices that will protect and enhance anadromous fisheries and associated habitat after the project site has been developed, including proposed monitoring and maintenance programs. [Ord. 631 § 1, 2008]

16.12.170

Reasonable use allowance.

If application of the requirements in this chapter would deny all reasonable economic use of the lot, development will be permitted if the applicant demonstrates all of the following to the satisfaction of the town as part of the critical areas review in addition to demonstrating all of the findings required of variances from provisions of the zoning ordinance:

(1) There is no other reasonable use or feasible alternative to the proposed development with less impact on the critical area;
(2) The proposed development does not pose a threat to the public health, safety and welfare on or off of the subject property;
(3) Any alterations permitted to the requirements of this chapter shall be the minimum necessary to allow for reasonable use of the property;
(4) The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line and creating the undevelopable condition after the effective date of the ordinance codified in this chapter;
(5) The proposal mitigates the impact on the critical area to the maximum extent possible;
(6) Reasonable use of property shall generally be described as one dwelling unit per legal lot of record, or one equivalent residential unit for commercial and industrial uses per legal lot of record;
(7) The town may assist applicants in providing the information required in this section;
(8) Appeals. The applicant may appeal a decision of the town planner and/or building official on a reasonable use allowance application to the town council. [Ord. 631 § 1, 2008]

16.12.180

Lorenzan Creek setback requirement.

This chapter incorporates by reference the settlement agreement between the town of Concrete, State of Washington Department of Fish and Wildlife, and the State of Washington Department of Ecology, Exhibit B, of Shorelines Hearing Board Case No. 98-18. [Ord. 631 § 1, 2008]

16.12.190

Application.

This chapter shall apply to all development activities and land use approvals required by the town of Concrete for which a complete application is filed and fee paid after the effective date of the ordinance codified in this chapter. [Ord. 631 § 1, 2008]

16.12.200

Enforcement.

Enforcement of this chapter is as described in Chapter 19.84 CMC, contained in the zoning code. [Ord. 631 § 1, 2008]