City of Othello
Washington
Ordinance No. 1551

AN ORDINANCE AMENDING CHAPTER 13.08 TITILED "CRITICAL AREAS" AND CHAPTER 13.10 TITLED "CRITICAL AREAS-CRITICAL AQUIFIER RECHARGE AREAS"

THE CITY COUNCIL OF THE CITY OF OTHELLO, WASHINGTON ORDAINS AS FOLLOWS:

Section 1. **Amendment**. Othello Municipal Code Chapter 13.08 titled "Critical Areas" is hereby amended as follows:

Chapter 13.08

CRITICAL AREAS

Sections:

13.08.010 Authority, and relationship to other regulations.

(a) ~~The Legislature of the state of Washington has, in~~ RCW 36.70A.060~~, mandated~~ requires that local governments ~~to~~ adopt development regulations to ensure the conservation of agricultural, forest and mineral resource lands and to adopt development regulations precluding land uses or development that is incompatible with critical areas designated under RCW 36.70A.170.

(b) Relationship to Other Regulations.

(1) These critical areas regulations shall apply as an overlay and in addition to zoning and other regulations adopted by the city. Regulations specific to each type of critical area are found in OMC 13.10, Critical Aquifer Recharge Areas, 13.11 Fish and Wildlife Habitat Conservation Areas, 13.12 Frequently Flooded Areas, 13.13 Geologically Hazardous Areas, and 13.14 Wetlands.

(2) Any individual critical area adjoined by another type of critical area shall have the buffer and meet the requirements that provide the most protection to the critical areas involved. When any provision of this chapter or any existing regulation, easement, covenant, or deed restriction conflicts with this chapter, that which provides more protection to the critical areas shall apply.

(3) These critical areas regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as locally adopted. Any conditions required pursuant to this chapter shall be included in the SEPA review and threshold determination.

(4) Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Hydraulic Permit Act (HPA) permits, Section 106 of the National Historic Preservation Act, U.S. Army Corps of Engineers Section 404 permits, National Pollution Discharge Elimination System permits). The applicant is responsible for complying with these requirements, apart from the process established in this chapter. (Ord. 1505 § 1 (part), 2018: Ord. 1291 § 1 (part), 2009: Ord. 1288 § 1 (part), 2009).

13.08.030 Definitions.

For the purposes of this chapter the definitions set forth in this chapter shall apply. Unless specifically defined in this chapter, or within the other chapters in this title specific to each type of critical area, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

"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, clearing of vegetation, construction, compaction, excavation, or any other activity that changes the character of the critical area.

"Aquifer recharge areas" means areas that, due to the presence of certain soils, geology, and surface water, act to recharge ground-water by percolation.

"Aquifers" refer to ground-water-bearing geologic formations that contain enough saturated permeable material to yield significant quantities of water to wells. ~~Shallow (less than one hundred feet), perched (trapped on an impervious layer of clay) or caused from irrigation (Columbia Basin Irrigation Project) is not considered an aquifer.~~

"Artificial wetlands intentionally created from nonwetland sites" are only those wetlands which, upon examination using best available science, are found to have all three of the following criteria:

(1) The wetland is sustained by water that has been intentionally pumped or piped for irrigation or disposal and if the pumping or piped flow ceased, the wetland would naturally disappear.

(2) The wetland was created by water that was intentionally applied to land for irrigation, disposal, or seeped from water in reservoirs, canals, drains, retention or treatment facilities.

(3) The wetland did not exist prior to the United States Bureau of Reclamation Columbia Basin Irrigation Project.

"Best available science (BAS)" means information from research, inventory, monitoring, surveys, modeling, synthesis, expert opinion, and assessment that is used to designate, protect, or restore critical areas that is derived from a valid scientific process as defined by WAC 365-195-900 through 365-195-925. BAS is derived from a process that includes peer-reviewed literature, standard methods, logical conclusions and reasonable inferences, quantitative analysis, and documented references to produce reliable information.

"Best management practices (BMPs)" means the utilization of methods, techniques, or products which have been demonstrated to be the most effective and reliable in minimizing environmental impacts. BMPs encompass a variety of behavioral, procedural, and structural measures that reduce the amount of contaminants in stormwater runoff and in receiving waters and include conservation practices or systems of practices and management measures that:

(1) Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, or sediment;

(2) Minimize adverse impacts to surface water and ground water flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;

(3) Protect trees, vegetation and soils designated to be retained during and following site construction and use native plant species appropriate to the site for revegetation of disturbed areas; and

(4) Provide standards for proper use of chemical herbicides within critical areas.

"Buffer management" means actions and practices conducted for the purpose of protection and enhancement of critical areas by moderating or eliminating adverse impacts from adjacent land(s) or areas to create a buffer from encroachment by urban growth areas.

"Buffer or buffer zone" means the area contiguous with a critical area that maintains the functions and/or structural stability of the critical area.

"Candidate species" means a native species under review for possible listing as endangered, threatened, or sensitive. A species will be considered for candidate designation if sufficient scientific evidence suggests that its status may meet criteria defined for "endangered," "threatened" or "sensitive." Currently listed state threatened or state sensitive species may also be designated as state candidate species if their status is in question.

"Clearing" means the removal of vegetation or plant cover by manual, chemical, or mechanical means. Clearing includes, but is not limited to, actions such as cutting, felling, thinning, flooding, killing, poisoning, girdling, uprooting, or burning.

"Compensation" means actions necessary to replace project-induced critical area and buffer losses, including land acquisition, planning, construction plans, monitoring, and contingency actions.

"Conservation easement" means a legal agreement that the property owner enters into to restrict uses of the land. Such restrictions can include, but are not limited to, passive recreation uses such as trails or scientific uses and fences or other barriers to protect habitat. The easement is recorded on a property deed, runs with the land, and is legally binding on all present and future owners of the property, therefore, providing permanent or long-term protection.

"Council" means the council of the city of Othello.

"Critical aquifer recharge areas" (CARAs) are areas described in ~~designated by~~ WAC 365-190-~~080(2)~~100(4)(b) that are determined to have a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(3~~2~~).

"Critical areas" are defined under RCW 36.70A.030 and include the following areas and ecosystems:

(1) Frequently flooded areas;

(2) Areas with a critical recharging effect on aquifers used for potable water;

~~(3) Geologically hazardous areas;~~

(4) Fish and wildlife habitat conservation areas; and

(5) Wetlands.

"Director" means the city of Othello community development director.

"Emergency" means an unanticipated and imminent threat to public health, safety, or the environment, requiring immediate action within a time too short to allow full compliance with the CAO.

"Endangered species" means any wildlife species native to the state of Washington that is seriously threatened with extinction throughout all or a significant portion of its range within the state (WAC 220-610-110).

"Enhancement" means the manipulation of the physical, chemical, or biological characteristics of a buffer, or wetland, or other area to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, floodwater retention, or wildlife habitat. Enhancement results in a change in buffer or wetland function(s) and can lead to a decline in other buffer or wetland functions, but does not result in a gain in buffer or wetland area. Examples are planting vegetation, controlling nonnative or invasive species, and modifying site elevations to alter hydroperiods.

"Environmental impacts" means the effects or consequences of actions on the natural and built environments. Environmental impacts include effects upon the elements of the environment listed in the State Environmental Policy Act (SEPA). Refer to WAC 197-11-600 and 197-11-444.

"Erosion" means the process whereby wind, rain, water, and other natural agents mobilize and transport particles.

"Feasible" means an action, such as a development project, mitigation, or preservation requirement, that meets all of the following conditions:

(1) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;

(2) The action provides a reasonable likelihood of achieving its intended purpose; and

(3) The action does not physically preclude achieving the project's primary intended legal use.

The burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the city may weigh the action's relative public costs and public benefits, considered in the short- and long-term periods.

"Fish and wildlife habitat conservation areas" means areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered,

may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitats or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness.

Fish and wildlife habitat conservation areas do not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company (WAC 365-190-030(6)(a)).

"Floodplain" is synonymous with one-hundred-year floodplain. The land area that is susceptible to being inundated with a one percent chance of being equaled or exceeded in a given year. The limits of this area are based on flood regulation ordinance maps.

"Floodway" means the channel of a stream or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot (WAC 173-158-030).

"Frequently flooded areas" include lands in the floodplain subject to a one percent or greater chance of flooding in any given year. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands and the like. The one-hundred-year floodplain designations of the National Flood Insurance Program delineate the presence of frequently flooded areas.

"Functions and values" means the services provided by critical areas to society, including, but not limited to, improving and maintaining water quality, providing fish and wildlife habitat, supporting terrestrial and aquatic food chains, reducing flooding and erosive flows, wave attenuation, historical or archaeological importance, educational opportunities, and recreation.

"Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, need mitigation to be suited to the siting of commercial, residential, or industrial development to address public health or safety concerns.

"Geotechnical report or geotechnical analysis" means a scientific study or evaluation conducted by a qualified expert professional that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local geology and processes.

"Ground-water management program" means a comprehensive program designed to protect ground-water quality, to assure ground-water quantity, and to provide for efficient management of water resources while recognizing existing ground-water rights and meeting future needs consistent with local and state objectives, policies and authorities within a designated ground water management area or sub-area developed pursuant to Chapter 173-100 WAC.

"Habitat" means the environment occupied by individuals of a particular species, population or community.

"Habitat conservation areas" means areas designated as fish and wildlife habitat conservation areas.

"Hazardous substances" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical, or biological properties described in WAC 173-303-090 or 173-303-100.

"Impacts" means adverse effects of one thing upon another.

"Impervious surface" means any alterations to the surface of a soil that prevents or retards the entry of water into it compared to its undisturbed condition, or any reductions in infiltration that cause water to run off the surface in greater quantities or at an increased rate of flow compared to that present prior to development. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces, which similarly impede the natural infiltration of stormwater.

"Infiltration" means the downward entry of water into the immediate surface of soil.

"Injection well(s)" include:

(1) "Class I" means a well used to inject industrial, commercial, or municipal waste fluids beneath the lowermost formation containing, within one-quarter mile of the well bore, an underground source of drinking water.

(2) "Class II" means a well used to inject fluids:

(A) Brought to the surface in connection with conventional oil or natural gas exploration or production and may be commingled with wastewaters from gas plants that are an integral part of production operations, unless those waters are classified as dangerous wastes at the time of injection;

(B) For enhanced recovery of oil or natural gas; or

(C) For storage of hydrocarbons that are liquid at standard temperature and pressure.

(3) "Class III" means a well used for extraction of minerals, including but not limited to the injection of fluids for:

(A) In-situ production of uranium or other metals that have not been conventionally mined;

(B) Mining of sulfur by Frasch process; or

(C) Solution mining of salts or potash.

(4) "Class IV" means a well used to inject dangerous or radioactive waste fluids.

(5) "Class V" means all injection wells not included in Class I, II, III, or IV.

"Local habitat area" means an area that contains sufficient food, water, or cover for native terrestrial or aquatic species that the city has identified in this chapter as being of significant local concern.

"Long-term commercial significance" means the capacity, productivity and soil composition of land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

"Major development" includes proposed development projects that are subject to objective and subjective standards that require the exercise of limited discretion about nontechnical issues and which may require a public hearing. Included within this type of development are subdivisions, conditional use permits, planned residential developments, shoreline substantial development permits and other similar applications.

"Minor development" includes proposed development projects that are subject to clear, objective and nondiscretionary standards that require the exercise of professional judgment about technical issues. Included within this type of development are single-family building permits, temporary use permits, boundary line adjustments, short subdivisions, home occupations, and accessory uses and/or structures.

"Mitigation" or "mitigation sequencing" means avoiding, reducing, or compensating for a proposal's environmental impact(s). See WAC 197-11-768. Mitigation or mitigation sequencing means the following sequence of steps listed in order of priority, the first listed item being the top priority:

(1) Avoiding the impact altogether by not taking a certain action or parts of an action;

(2) Minimizing impacts 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;

(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

(5) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

(6) Monitoring the impact and the compensation projects and taking appropriate corrective measures to achieve the identified goal.

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

"Native," when referring to plants or plant communities, means those species or communities that are indigenous to the watershed, including extirpated species.

"Native species," when referring to wildlife, means any wildlife species naturally occurring in Washington for purposes of breeding, resting, or foraging, excluding introduced species not historically found in this state (WAC 220-610-110).

"New construction" means structures for which the "start of construction" commenced on or after the effective date of the ordinance codified in this chapter.

"Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or any agency of the state or local governmental unit however designated.

"Practical alternative" means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, with less of an impact to critical areas.

"Preservation" means the removal of a threat to, or preventing the decline of, wetland or other critical area conditions by an action in or near a wetland or other critical area. This term includes the purchase of land or easements, repairing water control structures or fences, or structural protection. Preservation does not result in a gain of wetland or other critical area acres but may result in a gain in functions over the long term.

"Primary association" means key habitat components that are critical to the life cycle of native wildlife species, i.e., nesting sites, wintering areas, and migration corridors. Loss of these values will result in fragmentation into sub-populations or extinction of populations from local areas.

"Priority habitat" means a habitat type with unique or significant value to one or more species. Per WAC 173-26-020, an area classified and mapped as priority habitat must have one or more of the following attributes:

(1) Comparatively high fish or wildlife density;

(2) Comparatively high fish or wildlife species diversity;

(3) Fish spawning habitat;

(4) Important wildlife habitat;

(5) Important fish or wildlife seasonal range;

(6) Important fish or wildlife movement corridor;

(7) Rearing and foraging habitat;

(8) Important marine mammal haul-out;

(9) Refugia habitat;

(10) Limited availability;

(11) High vulnerability to habitat alteration;

(12) Unique or dependent species; or

(13) Shellfish bed.

A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be described by a successional stage (such as old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as talus slopes, caves, and snags) of key value to fish and wildlife. A priority habitat may contain priority and/or nonpriority fish and wildlife.

"Priority habitats and species program" means Washington Department of Fish and Wildlife's system of classifying habitats and associated species that are of specific concern due to population status and/or sensitivity to habitat manipulation.

"Priority species" means any fish or wildlife species requiring protective measures and/or management guidelines to ensure its persistence at genetically viable population levels as classified by the WDFW, including endangered, threatened, sensitive, candidate, and monitor species, and those of recreational, commercial, or tribal importance.

"Qualified professional" means a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and two years of related work experience.

(1) A qualified professional for habitats or wetlands must have a degree in geology, hydrology, or biology and professional experience related to the subject species.

(2) A qualified professional for a geological hazard must be a professional engineer or geologist licensed in the state of Washington.

(3) A qualified professional for CARAs means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

"Reasonable use" means a legal concept articulated by federal and state courts in regulatory taking cases.

"Regulated activities" include land clearing, grading, placement of fill or waste material, removal of protected native vegetation, construction, platting, zone changes, and other habitat-altering activities.

"Restoration" means actions performed to reestablish wetland functional characteristics and processes which have been lost by alterations, activities or catastrophic events within an area which no longer meets the definition of a wetland.

"Review authority" means the decision maker that issues the final land use order, not the appeal authority.

"Sensitive species" means any wildlife species native to the state of Washington that is vulnerable or declining, and is likely to become endangered or threatened in a significant portion of its ranges within the state, without cooperative management or removal of threats. (WAC 220-610-110).

"SEPA" means State Environmental Policy Act, Chapter 43.21C RCW and Chapter 197-11 WAC.

"Sole source aquifer" means an aquifer designated by EPA as the sole or principal source of drinking water for a given aquifer service area; that is, an aquifer which is needed to supply fifty percent or more of the drinking water for that area and for which there is no reasonably available alternative source should the aquifer become contaminated.

"Start of construction" means the date the building permit was issued, provided the actual start of construction, placement of a manufactured home on a foundation or other permanent construction beyond the stage of excavation was within one hundred eighty days of the permit date.

(1) The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation.

(2) Permanent construction does not include:

(A) Land preparation, such as clearing, grading and filling;

(B) Installation of streets and/or walkways;

(C) Excavation for a basement, footings, piers, or foundation or the erection of temporary forms;

(D) Construction of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

"Threatened" species means any wildlife species native to the state of Washington that is likely to become an endangered species within the foreseeable future throughout a significant portion of its ranges within the state without cooperative management or the removal of threats. (WAC 220-610-110).

"Utility line" means pipe, conduit, cable, irrigation canal, drain, storage or retention pond, or other similar facility by which services are conveyed to the public or individual recipients. Such services shall include, but are not limited to, water supply, sanitary sewer, irrigation, power, gas, stormwater, and communications.

"Wellhead protection area" means the surface and subsurface area surrounding a water well or well field supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field.

"Wetland" or "wetlands" 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.

"Wetland delineation" means the flagging or staking in the field of the edges of the wetland by a qualified consultant or their representative, in accordance with the approved Federal Wetland Delineation Manual and applicable regional supplement. (Ord. 1505 § 1 (part), 2018: Ord. 1291 § 1 (part), 2009: Ord. 1288 § 1 (part), 2009).

13.08.040 Applicability and critical areas map.

(a) Applicability.

(1) The provisions of this chapter shall apply to all lands, all land uses and development activity, and all structures and facilities in the city, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the city. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purposes and requirements of this chapter.

(2) When the requirements of this chapter are more stringent than those of other Othello codes and regulations, the requirements of this chapter shall apply.

(3) Where a site contains two or more critical areas, the site shall meet the minimum standards and requirements for each identified critical area as set forth in this chapter.

(4) The city shall regulate all uses, activities, and developments within, adjacent to, or likely to affect one or more critical areas, consistent with the best available science (BAS) and the provisions herein. The city shall not approve any zoning code amendment, zoning variance, land use permit, building permit, site improvement permit, short subdivision, major subdivision, or otherwise issue any authorization to alter the condition of any land or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated buffer, if the proposed activity does not comply with the requirements of this chapter.

(b) Jurisdiction—Critical Areas. Critical areas potentially located within the city and regulated by this title include:

(1) Critical aquifer recharge areas;

(2) Fish and wildlife habitat conservation areas;

(3) Frequently flooded areas;

(4) Geologically hazardous areas; and

(5) Wetlands.

(c) Buffers. Critical areas include the protective buffer areas to lands identified as critical areas.

(d) Areas Adjacent to Critical Areas Are Subject to Regulation. Areas adjacent to critical areas other than CARAs shall be considered to be within the jurisdiction of these requirements and regulations to support the intent of this chapter and ensure protection of the functions and values of critical areas. "Adjacent" shall mean any activity located:

(1) On a site immediately adjoining a critical area;

(2) A distance equal to or less than the required critical area buffer width and building setback;

(3) A distance equal to or less than six hundred sixty feet from a bald eagle nest;

(4) A distance equal to or less than three hundred feet upland from a stream, wetland, or water body;or

(5) Within the floodway, floodplain, or channel migration zone~~; or~~.

~~(6) A distance equal to or less than two hundred feet from a CARA.~~

(e) Reference Maps and Inventories. The distribution of critical areas within the city are described and displayed in reference materials. These reference materials are intended for general information only and do not depict site-specific designations. These reference materials include but are not limited to the following:

(1) Maps.

(A) Any maps created through a critical areas review process;

(B) WDFW priority habitats and species maps, as amended;

(C) USGS quadrangle maps;

(D) Flood insurance rate maps (FEMA), as amended;

(E) Flood boundary and floodway maps (FEMA), as amended;

(F) Aerial photographs;

(G) USFWS National Wetlands Inventory maps, as amended;

(H) Columbia Basin Ground Water Management Area maps, as amended;

(I) Columbia Basin Irrigation Project topography and retracement maps from 1939 to 1943 and from 1960, as well as other preconstruction and construction maps developed for the project;

(J) Previously completed maps in the vicinity of a permit application;

(K) Geological hazard area maps, as listed in Section 13.13.030;

(L) Washington State Department of Health Source Water Assessment Program (SWAP) Mapping Application.

(2) Documents.

(A) Flood Insurance Study for Adams County, Washington and Incorporated Areas, dated January 16, 2009, with accompanying digital flood insurance rate maps, as amended;

(B) City of Othello comprehensive plan, as amended;

(C) Natural Resources Conservation Service Soil Survey for Adams County;

(D) The 1987 Federal (Corps of Engineers) Wetland Delineation Manual and Regional Supplements in accordance with WAC 173-22-035;

(E) Washington State Wetlands Rating System for Eastern Washington (Revised, Publication No. 14-06-030, October 2014), as revised;

(F) Management Recommendations for Washington's Priority Habitats and Species (WDFW) as amended;

(G) Management Recommendations for Washington's Priority Habitats—Wetlands (WDFW) as amended;

(H) Previously completed special reports conducted in the vicinity of a permit application;

(I) Columbia Basin Ground Water Management Area Plan, as amended.

(f) Use of Existing Procedures and Laws. The following laws and procedures shall be used to implement this chapter:

(1) Othello Municipal Code. Development activity regulated by Title 16, Subdivisions, and Title 17, Zoning, that will occur within a protected critical area or critical area buffer shall comply with the provisions of this chapter.

(2) The State Environmental Policy Act (SEPA), Chapter 43.21C RCW and Chapter 197-11 WAC. Development activity that is likely to have a significant adverse impact upon identified critical areas regulated by this chapter shall not be categorically exempt from SEPA review and shall demonstrate compliance with this chapter.

(g) State and Federal Agency Review. Regulated activities subject to this chapter shall be routed to appropriate state and federal agencies for review and comment as required through the SEPA review process.

(h) Applicability by Activity. The level of review required for uses or activities is established under this chapter.

(1) Exempt (E). Activities or uses that are exempt require no review and do not need to meet the standards of this chapter.

(2) Review Required (RR). Activities and uses that are categorized as "review required" must comply with the standards of this chapter but no special report is needed. Determination of compliance with this chapter shall be determined through the review process required for the underlying development permit application.

(3) Critical Area Report (CAR). For activities where a critical area report is required, the applicant must submit a report consistent with this chapter and with the underlying development application and will submit additional application fees consistent with the adopted fee schedule.

(4) The director shall have the discretion to determine whether the proposed activity may adversely impact protected critical areas and/or their buffers and shall assign the appropriate level of review, exempt, review required, or critical areas report. The decision of the director may be appealed to the hearing examiner. (Ord. 1505 § 1 (part), 2018: Ord. 1291 § 1 (part), 2009: Ord. 1288 § 1 (part), 2009).

13.08.050 Allowed uses.

(a) Approval Required. Unless the requirements of this chapter are met, Othello shall not grant any approval or permission to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement regulated through the following: building permit, commercial or residential; binding site plan; franchise right-of-way construction permit; site development permit; right-of-way permit; shoreline permits; short subdivision; use permits; subdivision; utility permits; or any subsequently adopted permit or required approval not expressly exempted by this chapter.

(b) Compliance with Federal or State Requirements. Compliance with these regulations does not remove an applicant's obligation to comply with applicable provisions of any other federal, state, or local law or regulation.

(c) Review Process. The uses listed in this section may be approved, subject to a review process, if the proposed development activity meets the standards in Section 13.08.160, Development standards, and Section 13.08.170, Mitigation.

(d) Allowed Uses. The city may allow the following uses on critical areas and within buffer areas subject to the review and mitigation requirements of this chapter:

(1) Pervious trails for nonmotorized uses;

(2) Below- or above-ground public utilities, facilities and improvements, initiated by the city, where necessary to serve development consistent with the Othello comprehensive plan, including: streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, open space, and parks and recreational facilities, anticipated in the capital facilities plan, where there is no other

reasonable alternative, based on topographic and environmental conditions, as determined by the director;

(3) Removal of diseased or dangerous trees, as determined by the city public works director, or the removal of invasive or nuisance plants;

(4) Construction, replacement, or alteration of a single-family dwelling unit in a residential zoning district on a legal lot of record created prior to the effective date of the ordinance codified in this chapter so long as the replacement or expansion conforms to the height regulations, lot coverage and dimension standards and other design provisions for the zone in which the residence is located. The dwelling unit shall be used solely for single-family purposes. Approval is subject to a review process. The city may modify underlying zoning district dimensional standards applicable by up to a fifty percent adjustment, if necessary to protect critical areas. Any expansion of an existing dwelling unit shall occur only on the upland side of the dwelling, the expansion shall be limited to twenty-five percent of the existing footprint or one thousand square feet, whichever is smaller; and the expansion shall be allowed only within the wetland buffer, not within the wetland itself;

(5) Existing agricultural practices on lands used continuously for agricultural purposes since December 31, 2006.

~~(e) Limited Uses. Limited uses shall avoid critical areas, and where allowed within buffer areas shall be subject to the mitigation measures and implementation of a monitoring plan as described in Section 13.08.170. All limited uses shall be consistent with the provisions of this chapter and SEPA. Limited uses include:~~

~~(1) Subdivision or Short Plat. The subdivision or short plat process may be used when there are provisions (e.g., dedication of land or conservation easements) that prohibit building construction on critical areas.~~

~~(2) Development Subject to Site Plan Review. Any new building or structure affecting critical areas shall be subject to site plan review, unless otherwise exempted in this chapter. (Ord. 1505 § 1 (part), 2018: Ord. 1291 § 1 (part), 2009: Ord. 1288 § 1 (part), 2009).~~

13.08.070 Exemptions.

(a) Exempt Activities in All Critical Areas. The following developments, activities, and associated uses shall be exempt from the provisions of this chapter; provided, that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements~~, and a written request for exemption has been filed with and approved by the director~~.

To be exempt from this chapter does not give permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense.

(1) Emergencies. Emergency activities are those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventative action in a time frame too short to allow for compliance with the requirements of this chapter. Emergency actions

that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. The person or agency undertaking such action shall notify the city within one working day following commencement of the emergency activity. Following the emergency, appropriate mitigation shall be implemented and permanent activities, installations or impacts are subject to review and compliance with the applicable standards.

(A) Authorization. Notwithstanding the provisions of this chapter, the director may issue a temporary emergency permit prospectively or, in the case of imminent threats to public health, safety or welfare, retroactively, where the anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by the applicable laws.

(B) Prior to issuing an emergency permit, the director shall issue a finding that extraordinary circumstances exist and that the potential threat to public health, safety or welfare from the emergency situation is clearly significant and substantial.

(C) Conditions. Any emergency permit granted shall incorporate, to the greatest extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for nonemergency activities and shall:

(i) Be limited in duration to the time required to complete the authorized emergency activity, not to exceed ninety days; and

(ii) Require, within this ninety-day period, the restoration of any wetland altered as a result of the emergency activity, except that if more than the ninety days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration.

(D) Notice. Notice of issuance of an emergency permit shall be published in a newspaper having general circulation in the city of Othello not later than ten days after issuance of such permit.

(E) Termination. The emergency permit may be terminated at any time without process upon a determination by the city that the action is no longer necessary to protect human health or the environment.

(2) Repair. Repair or replacement of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees or drainage systems, including operation and maintenance of existing facilities, that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed maintenance or repair.

(3) Activities within the Improved Public Right-of-Way or Recorded Easement. Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or recorded easement, or a city-authorized private roadway, except those private activities that alter a wetland or

watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater.

(4) Chemical Applications. The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary; provided, that their use shall be restricted in accordance with Department of Fish and Wildlife Management Recommendations and the regulations of the Department of Ecology, Department of Agriculture, and the U.S. Environmental Protection Agency.

(5) Minor Site Investigative Work. Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored.

(6) Boundary Markers. Construction or modification of boundary markers or fences.

(7) Construction and modifications to existing structures that do not increase the footprint of the structure.

(8) The removal of the following vegetation with hand labor and light equipment, and vegetation removal that is a hazard to electrical power lines with handheld and walk-beside equipment such as mowers and weed eaters in compliance with the provisions contained in the ANSI A300 (Part 1) guidelines, including, but not limited to:

(A) Invasive nonnative weeds.

(B) Emergency or hazard tree removal conducted so that habitat impacts are minimized.

(C) Public improvement projects located within existing impervious surface areas.

(D) Public agency and utility exemption.

(b) Exemption ~~Request and~~ Review Process. ~~The proponent of the activity shall submit a completed exemption request form to the director that describes the activity and states the exemption listed in this section that applies.~~ The director shall review the exemption ~~request~~ to verify that it complies with this chapter and approve or deny the exemption. If the exemption is approved, it shall be placed on file with the department and the ~~requesting party~~ proponent notified. If the exemption is denied, the proponent may continue in the review process and shall be subject to the requirements of this chapter. Determinations shall be subject to appeal pursuant to Chapter 19.11.

(c) Exempt Activities Shall Minimize Impacts to Critical Areas. All exempted activities shall use reasonable methods to avoid potential adverse impacts to critical areas. To be exempt from this chapter does not give permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense. (Ord. 1505 § 1 (part), 2018: Ord. 1291 § 1 (part), 2009: Ord. 1288 § 1 (part), 2009).

13.08.090 Amendments.

The provisions of this chapter may be amended from time to time, ~~but not more frequently than one time in a year,~~ through a public review and hearing process that includes at least one public hearing by the city planning commission and at least one public meeting by the city council. (Ord. 1505 § 1 (part), 2018: Ord. 1291 § 1 (part), 2009: Ord. 1288 § 1 (part), 2009).

13.08.120 General critical area protective measures.

(a) Protection of Critical Areas.

(1) Any action taken pursuant to this chapter shall result in equivalent or greater functions and values of the critical areas associated with the proposed action, as determined by the best available science. All actions and developments shall be designed and constructed in accordance with Section 13.08.170 to avoid, minimize, and restore all adverse impacts. Applicants must first demonstrate an inability to avoid or reduce impacts, before restoration and compensation of impacts will be allowed. No activity or use shall be allowed that results in a net loss of the functions or values of critical areas.

(b) Critical Area Markers and Signs. <u>This section is not applicable to CARAs.</u>

(1) Temporary Markers. The outer perimeter of the critical area buffer and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary "clearing limits" fencing in such a way as to ensure that unauthorized intrusion will not occur. The marking is subject to inspection by the director prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.

(2) Fencing. Fencing installed as part of a proposed activity or as required in this section shall be designed not to interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

(3) Permanent Signs. As a condition of any permit or authorization issued pursuant to this chapter, the director may require the applicant to install permanent signs along the boundary of a critical area or buffer.

(4) Permanent Signs—Specifications. Permanent signs shall be made of an enamel-coated metal face and attached to a metal post or another nontreated material of equal durability. Signs must be posted at an interval of one per lot or every fifty feet, whichever is less, and must be maintained by the property owner in perpetuity. The signs shall be worded as follows or with alternative language approved by the director:

Protected Area

Do Not Disturb

Contact the city of Othello

Regarding Uses, Restrictions, and Opportunities for Stewardship

(5) The provisions of subsection (a)(1) of this section may be modified as necessary to assure protection of sensitive features or wildlife.

(c) Notice on Title. This section is not applicable to CARAs.

(1) In order to inform subsequent purchasers of real property of the existence of critical areas, the owner of any property containing a critical area or buffer on which a development proposal is submitted shall file a notice with the county auditor according to the direction of the city. The notice shall state the presence of the critical area or buffer on the property, the application of this chapter to the property, and the fact that limitations on actions in or affecting the critical area or buffer may exist. The notice shall run with the land.

(2) This notice on title shall not be required for a development proposal by a public agency or public or private utility:

(A) Within a recorded easement or right-of-way;

(B) Where the agency or utility has been adjudicated the right to an easement or right-of-way; or

(C) On the site of a permanent public facility.

(3) The applicant shall submit proof that the notice has been filed for public record before the city approves any permit.

(d) Critical Area Tracts.

(1) Critical area tracts shall be used in development proposals for major subdivisions, short subdivisions, master planned developments, and binding site plans, to delineate and protect those contiguous critical areas and buffers listed below that total five thousand or more square feet:

(A) All landslide hazard areas and buffers;

(B) All wetlands and buffers;

(C) All habitat conservation areas; and

(D) All other lands to be protected from alterations as conditioned by project approval.

(2) Critical area tracts shall be recorded on all documents of title of record for all affected lots.

(3) Critical area tracts shall be designated on the face of the plat or recorded as a drawing in a format approved by the city attorney. The designation shall include the following restriction:

(A) An assurance that native vegetation will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and

(B) The right of the city to enforce the terms of the restriction.

(4) The city may require that any required critical area tract be dedicated to the city, held in an undivided interest by each owner of a building lot within the development with the ownership interest passing with the ownership of the lot, or held by an incorporated homeowners' association or other legal entity.

(e) Building Setbacks. This section is not applicable to CARAs.

(1) Unless otherwise provided, buildings and other structures shall be set back a distance of fifteen feet from the edges of all critical area buffers or from the edges of all critical areas, if no buffers are required. The following may be allowed in the building setback area:

(A) Landscaping;

(B) Uncovered decks;

(C) Building overhangs, if such overhangs do not extend more than eighteen inches into the setback area; and

(D) Impervious ground surfaces, such as driveways and patios, if such improvements are subject to water quality regulations as adopted in the Stormwater Management Manual for Eastern Washington, current edition, prepared by Ecology. (Ord. 1505 § 1 (part), 2018).

13.08.160 Development standards.

Within critical areas other than CARAs, the city shall prohibit soil excavation, grading, removal of native vegetation species, draining, intentional burning, planting of invasive or nuisance vegetation, placement of structures and new construction on critical areas unless otherwise authorized in this chapter. Development within CARAs is regulated in OMC 13.10.

(a) Applicability. These development standards apply to uses on critical areas and within buffers unless otherwise exempted in this chapter.

(b) Performance Standards. In order to approve application for development on lands subject to this chapter, the director shall find that the following standards have been met:

(1) All reasonable alternatives for locating the development activity in such a way so as to avoid critical areas have been considered and the development activity will be located in the least environmentally sensitive area as practicable and the purpose of this chapter is fulfilled.

(2) The city has approved the vegetation removal methods and the removal of native plants has been avoided, to the extent practicable.

(3) All adverse impacts to all affected critical areas and buffers are either avoided or fully mitigated.

(4) The plan minimizes cuts and fills.

(5) The director has reviewed and approved an erosion control plan, grading plan, and vegetation removal and replanting plan prior to construction activity.

(6) All activities have received applicable state and federal permits, and comply with SEPA requirements if the lead agency makes a threshold determination of significance (DS), or a mitigated determination of nonsignificance (MDNS).

(7) Compliance with this chapter does not constitute compliance with state and federal environmental standards. The applicant shall be responsible for demonstrating such compliance.

(c) Review Process.

(1) The review process shall be the type specified in Chapter 19.09 for each particular land use action unless otherwise specified in this chapter.

(2) Applications to develop on critical areas or their buffers shall not be subject to review if, within a one-year period, the cumulative impact on critical areas is:

(A) Disturbance of less than ten cubic feet of soil; or

(B) An activity, the fair market cost of which is less than five hundred dollars. (Ord. 1505 § 1 (part), 2018: Ord. 1291 § 1 (part), 2009: Ord. 1288 § 1 (part), 2009).

13.08.170 Mitigation.

(a) Mitigation Requirements—Generally. Per WAC 365-196-830, compensatory mitigation is applicable only to geohazard areas and wetlands, and not to other types of critical areas; therefore, 13.08.170 is applicable only to geohazard areas and wetlands.

(1) The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas. Unless otherwise provided in this chapter, if alteration to the critical area is unavoidable, all adverse impacts to critical areas and buffers resulting from a development proposal shall be mitigated using BAS in accordance with an approved critical area report and SEPA documents, to result in no net loss of critical area functions and values.

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

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

(b) Mitigation Sequencing. Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following sequential order of preference. Mitigation for individual actions may include a combination of the below measures.

(1) Avoiding the impact altogether by not taking a certain action or parts of an action;

(2) Minimizing impacts 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;

(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

(5) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

(6) Monitoring the impact and the compensation projects and taking appropriate corrective measures.

(c) Innovative Mitigation. The city may encourage, facilitate, and approve innovative mitigation projects that are based on the BAS. Advance mitigation or mitigation banking are examples of alternative mitigation projects allowed under the provisions of this section wherein one or more applicants, or an organization with demonstrated capability, may undertake a mitigation project together if it is demonstrated that all of the following circumstances exist:

(1) Creation or enhancement of a larger system of critical areas and open space is preferable to the preservation of many individual habitat areas;

(2) The group demonstrates the organizational and fiscal capability to act cooperatively;

(3) The group demonstrates that long-term management of the habitat area will be provided; and

(4) There is a clear potential for success of the proposed mitigation at the identified mitigation site.

Conducting mitigation as part of a cooperative process does not reduce or eliminate the required replacement ratios. Chapter 173-700 WAC and Chapter 90.84 RCW provide state rules and laws on wetland mitigation banks.

(d) Mitigation Plan Approval. City approval of a mitigation plan is a prerequisite for approval of any development activities in critical areas.

(1) The applicant shall submit a written request describing the extent and nature of the proposed development activity on critical areas and buffers. The request shall include boundary locations of all critical areas and attendant buffers.

(2) The application for development shall include a mitigation plan prepared in compliance with this section. Wetland mitigation plans shall be developed utilizing the guidelines found in the most recent version of Wetland Mitigation in Washington State, Part 1, Agency Policies and Guidance (Version 1, Publication No. 06-06-011a, March 2006) and Wetland Mitigation in Washington State, Part 2, Developing Mitigation Plans (Version 1, Publication No. 06-06-011b, March 2006) or subsequent guidance.

(3) The city may require the applicant to prepare special reports evaluating potential adverse impacts upon critical areas and potential mitigation measures as part of the land use application process. These reports may include, but are not limited to, the following: stormwater management plan; hydrology, geology, and soils report; grading and erosion control plan; native vegetation report; fish and wildlife assessment and impact report; water quality report; wetlands delineation; and other reports determined necessary by the city.

(4) The city shall consult with state and federal resource management agencies and, in order to protect wildlife habitat or natural resource values, shall attach such conditions as may be necessary to effectively mitigate identified adverse impacts of the proposed development activity.

(5) The city may request third-party peer review of an application by qualified professionals and may incorporate recommendations from such third-party reports in findings approving or denying the application.

(6) All reports recommending mitigation shall include provisions for monitoring of programs and replacement of improvements, on an annual basis, consistent with report recommendations and at one-, three-, five- and seven-year intervals.

(7) The city may require replacement mitigation to be established and functional prior to project construction.

(e) Mitigation Plan Requirements. When mitigation is required, the applicant shall submit for approval by the city a mitigation plan as part of the critical area report. The mitigation plan shall include:

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

(A) A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area;

(B) A review of the BAS supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed; and

(C) An analysis of the likelihood of success of the compensation project.

(2) Performance Standards. The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of this chapter have been met.

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

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

(B) Grading and excavation details;

(C) Erosion and sediment control features;

(D) A planting plan specifying plant species, quantities, locations, size, spacing, and density; and

(E) Measures to protect and maintain plants until established.

These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated outcome.

(4) Monitoring Program. The mitigation plan shall include a program for monitoring construction of the compensation project and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring, and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five years. Scrub-shrub or forested vegetation communities may require ten years or more to reach eighty percent canopy closure.

(5) Contingency Plan. The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.

(6) Financial Guarantees. The mitigation plan shall include financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures shall be posted in accordance with Section 13.08.200. (Ord. 1505 § 1 (part), 2018: Ord. 1291 § 1 (part), 2009: Ord. 1288 § 1 (part), 2009).

~~**13.08.180 Modification to overlay zone.**~~

~~The city may establish and modify the boundaries of the critical areas overlay district based upon expert studies.~~

~~(a) Land to be conserved as public or private open space, through dedication, conservation easements or other appropriate means, shall retain a critical areas overlay designation.~~

~~(b) Land approved for private building construction shall be removed from this overlay district.~~

~~(c) The city shall maintain a record of all administrative amendments to the critical areas overlay district, including findings in support of the decision to modify the boundaries of the overlay district. (Ord. 1505 § 1 (part), 2018: Ord. 1291 § 1 (part), 2009: Ord. 1288 § 1 (part), 2009).~~

Section 2. **Amendment**. Othello Municipal Code Chapter 13.10 titled "Critical Areas-Critical Aquifer Recharge Areas" is hereby amended as follows:

Chapter 13.10

CRITICAL AREAS- CRITICAL AQUIFER RECHARGE AREAS

Sections:

13.10.010 Purpose, goals and policies.

(a) Purpose. ~~As of the adoption of this chapter there are no identified critical aquifer recharge areas in the city of Othello. However, it~~ It is the intent of the city to promote public health and safety by acknowledging the importance of preserving critical aquifer recharge areas (CARAs) ~~that may annex into the city~~. These areas serve the vital function of replenishing ground water resources which, in Eastern Washington, account for a major share of the water for irrigation, municipal, industrial and domestic uses. Potable water is an essential life-sustaining element. Much of Washington's water comes from ground water supplies. Preventing contamination is necessary to avoid exorbitant costs, hardships and potential physical harm to people. In order to protect the public health and safety, prevent degradation of ground water now, and for potentially usable potable water, and to provide for regulations that prevent and control risks of degradation of ground water quality and quantity, future development in critical aquifer recharge areas shall be subject to the standards described in this section.

(b) Goals and Policies. The following reflect the goals and policies of the community:

(1) Goal. The city seeks to protect the public health, safety and welfare of its residents by protecting the functions and values of critical aquifer recharge areas and protecting the quality and quantity of ground water used for public water supplies.

(2) Policies.

(A) As ~~additional~~ data becomes available ~~and when the city expands its physical boundaries via annexation~~, identify, map and maintain ~~critical ground water supply~~

~~areas,~~ critical aquifer recharge areas~~, and/or unconfined aquifers used for potable water~~, both in the city limits and the surrounding planning area.

(B) Prohibit landfills, detrimental underground injection wells, mining, wood treatment facilities, and the storage, processing, or disposal of radioactive substances within a designated critical aquifer recharge area.

(C) Require performance standards to regulate the placement, storage, generation, and/or disposal of hazardous materials, including fuel, within a designated critical aquifer recharge area.

(D) ~~Evaluate proposed divisions of land within aquifer recharge areas for potential impacts on ground water quality.~~

~~(E)~~ The city will support and encourage the Washington State Department of Ecology efforts to enforce the decommissioning requirements for unused wells. (Ord. 1505 § 2 (part), 2018).

13.10.020 Critical aquifer recharge areas designation.

Critical aquifer recharge areas (CARAs) are those areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(4)(b). CARAs have prevailing geographic conditions associated with infiltration rates that create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water. These areas include the following:

(a) Wellhead Protection Areas. Wellhead protection areas are ~~may be~~ defined by the boundaries of the ten-year time of ground water travel or boundaries established using alternate criteria approved by the Washington State Department of Health in those settings where ground water time of travel is not a reasonable delineation criterion, in accordance with WAC 246-290-135.

(b) Sole Source Aquifers. Sole source aquifers are areas that have been designated by the U.S. Environmental Protection Agency pursuant to the Federal Safe Drinking Water Act.

(c) Susceptible Ground Water Management Areas. Susceptible ground water management areas are areas that have been designated as moderately or highly vulnerable or susceptible in an adopted ground water management program developed pursuant to Chapter 173-100 WAC.

(d) Moderately or Highly Vulnerable Aquifer Recharge Areas. Aquifer recharge areas that are moderately or highly vulnerable to degradation or depletion because of hydrogeologic characteristics are those areas delineated by a hydrogeologic study prepared in accordance with the State Department of Ecology guidelines (Ecology Publication # 96-02).

(e) Moderately or Highly Susceptible Aquifer Recharge Areas. Aquifer recharge areas moderately or highly susceptible to degradation or depletion because of hydrogeologic characteristics are those areas meeting the criteria established by the State Department of Ecology. (Ord. 1505 § 2 (part), 2018).

13.10.030 Critical aquifer recharge areas susceptibility ratings.
Critical aquifer recharge areas shall be rated as having high, moderate, or low susceptibility based on soil permeability, geologic matrix, infiltration and depth to water as determined by the criteria established by the State Department of Ecology (Ecology Publication # 05-10-028). (Ord. 1505 § 2 (part), 2018).

13.10.040 Mapping of critical aquifer recharge areas.
~~As of the time of adoption of the ordinance codified in this chapter, the city does not know of any critical aquifer recharge areas within city limits.~~ If additional ~~any~~ critical aquifer recharge areas are identified in the future, the city will add their approximate location and extent ~~of critical aquifer recharge areas~~ to the adopted critical areas map. ~~Alternatively, only source locations may be shown, in which case WAC 246-290-135 shall be used to define the radius around them as the recharge area.~~ (Ord. 1505 § 2 (part), 2018).

13.10.050 Activities allowed in critical aquifer recharge areas without a critical areas report.
In addition to the allowed uses set forth in Section 13.08.050, the ~~The~~ following activities are allowed in critical aquifer recharge areas ~~pursuant to Section 13.08.050, Allowed uses,~~ and do not require submission of a critical areas report.

(a) Construction of structures and improvements, including additions, resulting in less than five percent (5%) or two thousand five hundred (2500) square feet, ~~(~~whichever is greater~~),~~ total site impervious surface area that does not result in a change of use or increase the use of a hazardous substance.

(b) Development and improvement of parks, recreation facilities, open space or conservation areas resulting in less than five percent (5%) total site impervious surface area that do not increase the use of a hazardous substance.

(c) On-site domestic septic systems releasing less than fourteen thousand five hundred (14,500) gallons of effluent per day and that are limited to a maximum density of one system per ~~one~~ acre. (Ord. 1505 § 2 (part), 2018).

(d) Subdivisions and associated construction, when connected to city sewer.

(e) Commercial and industrial development that does not use hazardous materials or generate hazardous waste or have other impacts on groundwater.

13.10.060 Critical area report—Additional requirements for critical aquifer recharge areas.
A hydrogeological ~~geohydrological~~ report may be required in those areas identified as highly susceptible or vulnerable.

In addition to the general critical area report requirements of Section 13.08.100, critical area reports for critical aquifer recharge areas must meet the requirements of this section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

(a) Prepared by a Qualified Professional. A critical aquifer recharge area critical areas report shall be prepared by a qualified professional who is a hydrogeologist, geologist, or engineer, who is licensed in the state of Washington and has experience in preparing hydrogeologic assessments.

(b) Hydrogeologic Assessment Required. For all proposed activities to be located in a critical aquifer recharge area, a critical area report shall contain a level one hydrogeological assessment. A level two hydrogeologic assessment shall be required for any of the following proposed activities:

(1) Activities that result in five percent (5%) or more impervious site area;

(2) Activities that divert, alter, or reduce the flow of surface or ground waters, or otherwise reduce the recharging of the aquifer;

(3) The use of hazardous substances, other than household chemicals used according to the directions specified on the packaging for domestic applications;

(4) The use of injection wells, including on-site septic systems, except those domestic septic systems releasing less than fourteen thousand five hundred (14,500) gallons of effluent per day and that are limited to a maximum density of one system per ~~one~~ acre; or

(5) Any other activity determined by the director as likely to have an adverse impact on ground water quality or quantity or in the recharge of an aquifer.

(c) Level One Hydrogeologic Assessment. A level one hydrogeologic assessment shall include the following site- and proposal-related information at a minimum:

(1) Available information regarding geologic or hydrogeologic characteristics of the site including the surface location of all critical aquifer recharge areas located on site or immediately adjacent to the site, and permeability of the unsaturated zone;

(2) Ground water depth, flow direction and gradient based on available information;

(3) Currently available data on wells and springs within one thousand three hundred feet (1300') of the project area;

(4) Location of other critical areas, including surface waters, within one thousand three hundred feet (1300') of the project area;

(5) Available historic water quality data for the area to be affected by the proposed activity; and

(6) Best management practices proposed to be utilized.

(d) Level Two Hydrogeologic Assessments. A level two hydrogeologic assessment shall include the following site- and proposal-related information at a minimum, in addition to the requirements for a level one hydrogeological assessment:

(1) Historic groundwater quality data for the area to be affected by the proposed activity compiled for at least the previous five-year period;

(2) Ground water monitoring plan provisions;

(3) Discussion of the effects of the proposed project on the ground water quality and quantity, including:

(A) Predictive evaluation of ground water withdrawal effects on nearby surface wells and surface water features; and

(B) Predictive evaluation of contaminant transport based on potential releases to ground water; and

(4) A spill plan that identifies equipment and/or structures that could fail, resulting in an impact. Spill plans shall include provisions for regular inspection, repair and replacement of structures and equipment that could fail. (Ord. 1505 § 2 (part), 2018).

13.10.070 Performance standards—General requirements.

(a) Activities may only be permitted in a critical aquifer recharge area if the applicant can show that the proposed activity will not cause contaminants to enter the aquifer and that the proposed activity will not adversely affect the recharging of the aquifer.

(b) The proposed activity must comply with the ~~water~~ source water protection requirements and recommendations of the U.S. Environmental Protection Agency, Washington State Department of Health and the city of Othello wellhead protection program ~~plan~~ and Source Water Protection Plan.

(c) The proposed activity must be designed and constructed in accordance with the locally adopted surface water management or water quality regulations, including the Othello comprehensive plan. (Ord. 1505 § 2 (part), 2018).

(d) Stormwater control measures for all projects must be in compliance with the most recent version of the Stormwater Management Manual for Eastern Washington (Ecology Publication # 18-10-044).

(e) All projects shall submit a list, including quantities, of all hazardous materials proposed to be used and/or stored onsite. Performance standards may be required, depending on the nature of the hazardous material(s) and the susceptibility and vulnerability of the area.

13.10.080 Performance standards—Specific uses.

(a) The following listed specific uses, when allowed within a designated critical aquifer recharge area, must meet the listed requirements.

(b) Storage Tanks. All storage tanks must comply with local building code requirements and must conform to the following requirements:

(1) Underground Tanks. All new underground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes and/or petroleum storage shall be fabricated, designed, constructed, installed and used so as to:

(A) Prevent releases due to corrosion or structural failure for the operational life of the tank;

(B) Be protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substances; and

(C) Use material in the construction or lining of the tank that is compatible with the substance to be stored.

(2) Aboveground Tanks. All new aboveground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes and/or petroleum storage shall be fabricated, designed, constructed, installed and used so as to:

(A) Not allow the release of a hazardous substance to the ground, ground waters, or surface waters;

(B) Have a primary containment area enclosing or underlying the tank or part thereof; and

(C) Provide either a secondary containment system built into the tank structure or a secondary containment dike system built outside the tank for all tanks. However, propane and heating oil tanks are exempt from secondary containment system requirements;

(D) Be consistent with the Department of Ecology's standards for construction and installation (Chapter 173-350-330 WAC).

(c) Vehicle Repair and Servicing.

(1) Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.

(2) No dry wells, also known as Underground Injection Control (UIC) wells, shall be allowed in designated critical aquifer recharge areas on sites used for vehicle repair and servicing. Dry wells (UICs) existing on the site prior to facility establishment must be abandoned using techniques approved by the State Department of Ecology (Chapter 173-218 WAC) prior to commencement of the proposed activity.

(d) Residential Use of Pesticides and Nutrients. Application of household pesticides, herbicides and fertilizers shall not exceed times and rates specified in the packaging.

(e) Use of Reclaimed Water for Surface Percolation or Direct Recharge or Injection. Water reuse projects for reclaimed water must be in accordance with the adopted water or sewer ~~comprehensive~~ plans that have been approved by, as appropriate, the State Departments of Ecology and Health, in accordance with Ecology publication # 15-10-024.

(1) Use of reclaimed water for surface percolation must meet the ground water recharge criteria given in RCW 90.46.080(1) and 90.46.010(10). The State Department of Ecology may establish additional discharge limits in accordance with RCW 90.48.080.

(2) Direct injection must be in accordance with the standards ~~developed by authority of RCW 90.46.042~~ set forth in Chapter 173-219 WAC.

(f) Agricultural and landscaping activities, specifically use of fertilizers, herbicides and pesticides in highly susceptible areas, shall be controlled through ~~state water quality~~ Department of Agriculture standards.

(g) State and Federal Regulations. The uses listed below shall be conditioned as necessary to protect critical aquifer recharge areas in accordance with the applicable state and federal regulations.

Statutes, Regulations, and Guidance Pertaining to Ground Water Impacting Activities

Activity	Statute—Regulation—Guidance
Aboveground Storage Tanks	~~WAC~~ Chapter 173-303-640 WAC
~~Animal Feedlots~~	~~Chapter 173-216 WAC, Chapter 173-220 WAC~~ [*Llyn Doremus of Dept of Ecology recommends prohibiting within Othello's CARAs since CAFOs are a source of groundwater contamination throughout WA*]
Automobile Washers	Chapter 173-216 WAC~~, Best Management Practices for Vehicle and Equipment Discharges (Washington Department of Ecology WQ-R-95-96)~~
Below Ground Storage Tanks	Chapter 173-360A WAC
Chemical Treatment Storage and Disposal Facilities	~~WAC~~ Chapter 173-303-~~182~~282 WAC
Hazardous Waste Generator (Boat Repair Shops, Biological Research Facility, Dry Cleaners, Furniture Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, etc.)	Chapter 173-303 WAC
Junk Yards and Salvage Yards	Chapter 173-304 WAC~~,~~; Vehicle and Metal Recyclers: A Guide for Implementing the Industrial Stormwater General National Pollutant Discharge Elimination System Permit Requirements ~~Best Management Practices to Prevent Stormwater Pollution at Vehicle Recycler Facilities~~ (Washington State

Activity	Statute—Regulation—Guidance
	Department of Ecology 94-146, Revised March 2011)
~~Oil and Gas Drilling~~	~~WAC 332-12-450, Chapter 173-218 WAC~~ [*Llyn Doremus of Dept of Ecology recommends prohibiting within Othello's CARAs since there aren't oil and gas reserves in E WA anyway]*
Large On-Site Sewage Systems ~~(Large Scale)~~	Chapter 246-272B ~~173-240~~ WAC
On-Site Sewage Systems (< 14,500 gallons/day)	Chapter 246-272A WAC, Local Health Ordinances
Pesticide Storage and Use	Chapters 15.54 and 17.21 RCW
Solid Waste Handling and Recycling Facilities	Chapter 173-304 WAC
Wastewater Application to Land Surface	Chapters 173-216 and 173-200 WAC, Washington State Department of Ecology Land ~~Application~~ Treatment Guidelines and Groundwater Quality Standards~~, Best Management Practices for Irrigated Agriculture~~

(Ord. 1505 § 2 (part), 2018).

13.10.090 Prohibited uses and activities.
The following activities and uses are prohibited in critical aquifer recharge areas:

(a) Landfills. Landfills, including hazardous waste, municipal solid waste, special waste, wood waste, and inert and demolition waste landfills;

(b) Underground Injection Wells. Class I, III, and IV wells are prohibited; Class V injection wells may be permitted subject to the following:

(1) ~~The application for the~~ Class V injection well has been ~~undergone a review and received approval from~~ registered with the Washington State Department of Ecology in accordance with Chapter 173-218 WAC and the local department of health, if applicable.

(c) Mining.

(1) Metals and hard rock mining; and

(2) Sand and gravel mining, prohibited from critical aquifer recharge areas determined to be highly susceptible or vulnerable.

(d) Wood Treatment Facilities. Wood treatment facilities, including wood preserving and wood products preserving, that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);

(e) Storage, Processing, or Disposal of Radioactive Substances. Facilities that store, process, or dispose of radioactive substances; ~~and~~

(f) Animal feedlots and Concentrated Animal Feeding Operations (CAFOs);

(g) Oil and gas drilling; and

(h) Other Prohibited Uses or Activities.

(1) Activities that the city determines would significantly reduce the recharge to aquifers currently or potentially used as a potable water source;

(2) Activities that the city determines that would significantly reduce the recharge to aquifers that are a source of significant base flow to a regulated stream; and

(3) Activities that are not connected to an available sanitary sewer system are prohibited from critical aquifer recharge areas associated with sole source aquifers. (Ord. 1505 § 2 (part), 2018).

Section 3. **Effective date**. This Ordinance shall be in full force and effect five (5) days after passage and publication as provided by law.

PASSED by the City Council of Othello, Washington this ___ day of ___, 2020.

By: _____
Shawn Logan, Mayor

ATTEST:

By: _____
Tania D. Morelos, City Clerk

APPROVED AS TO FORM:

_____
Kelly E. Konkright, WSBA #33544
City Attorney

PASSED the 10th day of August, 2020
APPROVED the 10th day of August, 2020
PUBLISHED the 19th day of August, 2020