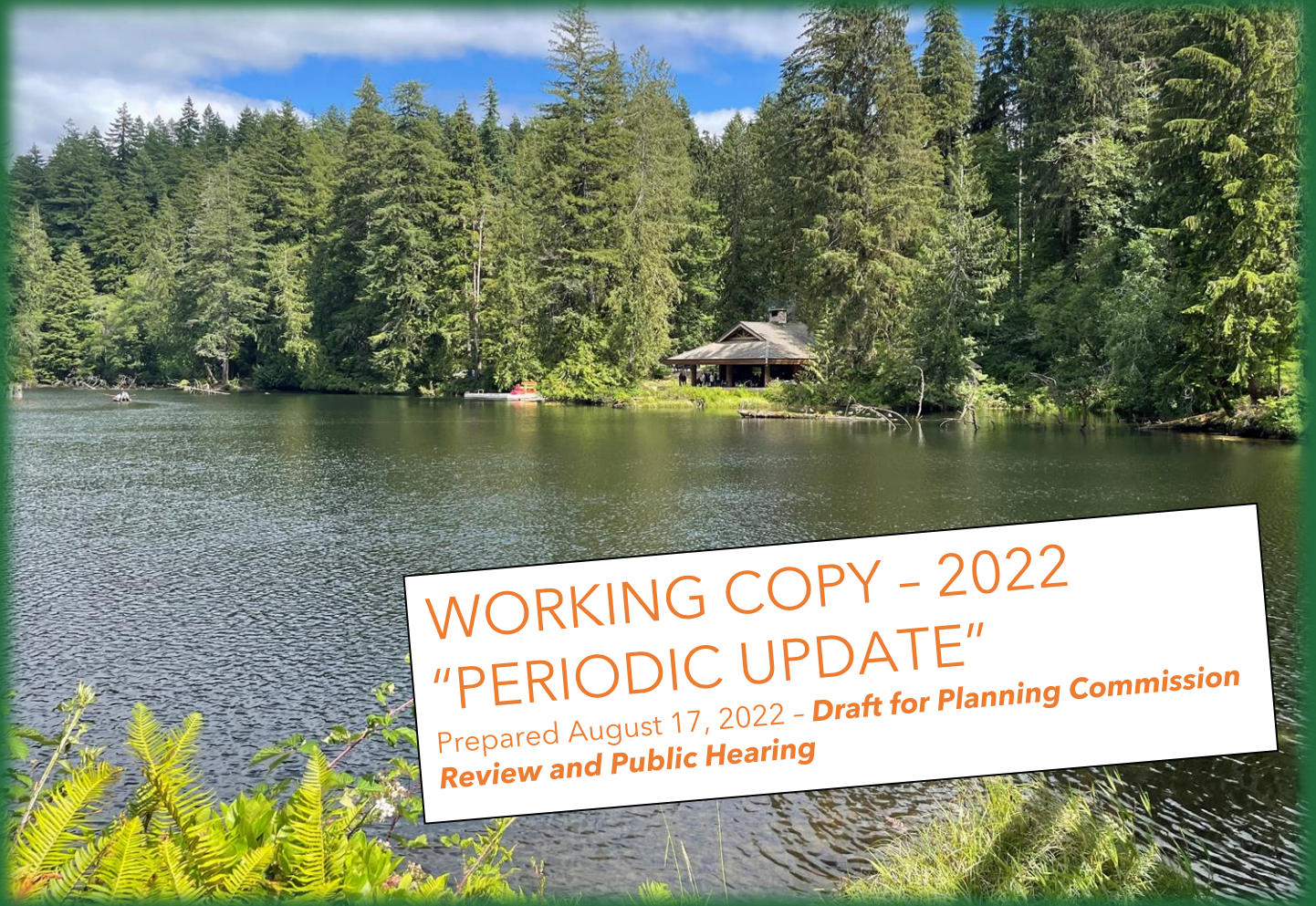


# Montesano Shoreline Master Program (2022)



**WORKING COPY - 2022**  
**"PERIODIC UPDATE"**  
Prepared August 17, 2022 - **Draft for Planning Commission**  
**Review and Public Hearing**

Adopted by Ordinance No. \_\_\_\_\_ and Pending Acceptance by Ecology  
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Prepared by:



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# LIST OF ABBREVIATIONS

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BAS –	Best Available Science
BMPs –	Best Management Practices
CAC –	Citizen Advisory Committee for the Shoreline Master Plan Update Process
CAO –	Critical Areas Ordinance
City –	City of Montesano
CMZ –	Channel Migration Zone
DAHP –	Washington State Department of Archaeology and Historic Preservation
Ecology –	Washington State Department of Ecology
ESA –	Federal Endangered Species Act
FEMA –	Federal Emergency Management Agency
FIRM –	Flood Insurance Rate Map
FPA –	Washington State Forest Practices Act (Chapter 76.09 RCW)
GMA –	Washington State Growth Management Act (Chapter 36.70A RCW)
HPA –	Hydraulic Project Approval
LUPA –	Land Use Petition Act
MMC –	Montesano Municipal Code
OHWM –	Ordinary High Water Mark
RCW –	Revised Code of Washington
SEPA –	State Environmental Policy Act (Chapter 43.21C RCW)
SMA –	Shoreline Management Act (Chapter 90.58 RCW)
SMP –	Shoreline Master Program
State –	State of Washington
USACE –	United States Army Corps of Engineers
WAC –	Washington Administrative Code
WDFW –	Washington State Department of Fish and Wildlife
WDNR –	Washington State Department of Natural Resources
WSDOT –	Washington State Department of Transportation

# 1 INTRODUCTION

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## 1.01 REQUIREMENTS OF THE SHORELINE MANAGEMENT ACT

The State Legislature passed the Washington's Shoreline Management Act (SMA) (Chapter 90.58 Revised Code of Washington [RCW]) in 1971 and citizens of the state approved the SMA through referendum in 1972 "...to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." The SMA requires the city of Montesano to plan for the use of shorelines of the state within its jurisdiction. The SMA and Chapter 173-26 Washington Administrative Code (WAC) established broad policies that give preference to shoreline uses that:

- **Encourage water-dependent uses:** "...uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the states' shorelines..."
- **Protect shoreline natural resources:** including "...the land and its vegetation and wildlife, and the water of the state and their aquatic life..."
- **Promote public access:** "...the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and people generally."

The SMA recognizes that "...shorelines are among the most valuable and fragile..." of the state's resources. The city recognizes and protects private property rights in shoreline jurisdiction, while aiming to preserve the quality of these unique resources for all state residents.

The primary purpose of the SMA is to manage and protect the state's shoreline resources by planning for reasonable and appropriate uses. In order to protect the public interest in preserving these shorelines, the SMA establishes a coordinated planning program between the city and the state to address development and uses occurring in the state's shorelines.

Under the SMA, a Shoreline Master Program (SMP) is created and implemented based on a cooperative program of shoreline management between the city and the state. With citizen contributions collected through the city's shoreline planning process, the city developed this SMP, and will implement and administer it through shoreline permits and reviews. The Washington State Department of Ecology (Ecology) provided funding for the update, and reviews and approves the city's SMP and certain city shoreline permit decisions.



## 1.02 AUTHORITY

The Shoreline Management Act of 1971, Chapter 90.58 RCW, is the authority for the enactment and administration of the SMP. The city's Shoreline Administrator is appointed by the Mayor and is charged with the responsibility of administering the SMP.

## 1.03 PURPOSE AND INTENT

The four purposes of the SMP are to:

- A. Carry out the responsibilities imposed on the city by the SMA;
- B. Promote the public health, safety, and general welfare, by providing a guide and regulation for the future development of the shoreline resources of the city;
- C. Further, by adoption, the policies of the SMA and the goals of the SMP; and
- D. Comply with the state SMP Guidelines (Chapter 173-26 WAC); including a particular focus on regulations and mitigation standards to ensure that development under the SMP will not cause a net loss of ecological functions.

## 1.04 SHORELINE MASTER PROGRAM DEVELOPMENT

Montesano adopted its original Shoreline Master Program in November 1992 (Ord 1333). The Department of Ecology adopted the 2003 Shoreline Management Act (GMA) Guidelines (Chapter 173-26 Washington Administrative Code (WAC)) (Guidelines) which required comprehensive local government review and updates of Shoreline Master Programs.

The city obtained grant number G1400394 from Ecology in 2013 to conduct thea comprehensive SMP update. The first step in the update process involved an inventory of the areas of the city's shoreline jurisdiction. The Chehalis and Wynoochee Rivers, Sylvia Creek, and Sylvia Lake and their associated wetlands, floodways, and floodplains comprise the areas in the city's shoreline jurisdiction. There are approximately five miles of creeks and rivers and 352 acres of lakes and reservoirs that meet the definition of shorelines of the state in the city.

The Public Participation Plan guided public interaction throughout the development of the SMP. The Citizen Advisory Committee (CAC) reviewed SMP documents, particularly proposed shoreline environment designations, policies, and regulations, and provided feedback in a series of public meetings.

The Shoreline Inventory and Characterization described existing biological and physical conditions for the six shoreline reaches covering the city. These reaches were analyzed and characterized to create a baseline from which future development actions in shoreline jurisdiction will be measured. A Technical Advisory Committee (TAC) reviewed and commented on the Shoreline Inventory and Characterization.

The public discussed the findings of the Shoreline Inventory and Characterization and proposed shoreline environment designations at a community meeting. Shoreline environment designations were assigned for shoreline jurisdiction in the city. Then goals, policies, and regulations for each shoreline environment designation and for all activities subject to the SMA were developed to maintain the baseline condition. The CAC and the public reviewed these documents.

In the Cumulative Impacts Analysis and the No Net Loss Report, the city analyzed whether the updated SMP, implemented over time, yields no net loss of ecological functions when considering reasonably foreseeable development in shoreline jurisdiction relative to the baseline established by the Shoreline Inventory and Characterization.

The city developed the Restoration Plan to address voluntary, non-regulatory actions the city would take to improve the shoreline jurisdiction above the baseline condition. Ideally, the SMP, in combination with other city and regional efforts, will ultimately produce a net improvement in ecological functions of the shoreline.

In 2022 Montesano received another grant from Ecology (SEASMP-2123-MonteC-00153) to perform further work on the SMP, to update the SMP according to the latest state statutes and laws (associated with the periodic update requirement per RCW 90.58.080). The process is known as a “periodic update” and the City will be required take action to review and, if necessary, revise its master program every eight years on a periodic update cycle.

## **1.05 APPLICABILITY**

- A. The SMP shall not apply retroactively to existing, legally established structures, uses, and developments in place at the time of Ecology adoption of the SMP.
- B. All proposed uses, activities, and development occurring within shoreline jurisdiction must conform to the SMA and the SMP whether or not a permit or other form of authorization is required, except when specifically exempted by statute.
- C. In addition to the requirements of the SMA, permit review, implementation, and enforcement procedures affecting private property must be conducted in a manner

consistent with all relevant constitutional and other legal limitations on the regulation of the private property.

- D. Federal agencies are subject to this SMP and Chapter 90.58 RCW, as provided by the Coastal Zone Management Act (Title 16 United States Code §1451 et seq.) and WAC 173-27-060(1).

E. As recognized by RCW 90.58.350, the provisions of the SMP do not affect treaty rights of affected tribes.

F. Requirements to obtain a shoreline substantial development permit, shoreline conditional use permit, shoreline variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:

1. Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to Chapter 70.105D RCW, or to the Department of Ecology when it conducts a remedial action under Chapter 70.105D RCW.
2. Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit.
3. WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a shoreline substantial development permit, shoreline conditional use permit, shoreline variance, letter of exemption, or other local review.
4. Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.
- 4-5. Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to Chapter 80.50 RCW.

## **1.06 SHORELINE JURISDICTION**

### **1.06.01 EXTENT OF SHORELINE JURISDICTION**

The SMA defines the extent of the geographic area in the city subject to the SMP, referred to in the SMP as shoreline jurisdiction. According to RCW 90.58.030, the SMP applies to the following shorelines of the state within the city:

- A. Segments of streams or rivers where the mean annual flow is more than 20 cubic feet per second.
- B. Lakes and reservoirs 20 acres and greater in area.
- C. Shorelands adjacent to these waterbodies. These include:
  1. Lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark (OHWM);
  2. Adopted Federal Emergency Management Agency (FEMA) floodways, and contiguous floodplain areas landward two hundred feet from such adopted FEMA floodways; and
  3. All wetlands and river deltas associated with the streams, lakes, and tidal waters subject to the SMA.

The following waterbodies are subject to the SMA and the city's SMP:

- Chehalis River
- Wynoochee River
- Sylvia Creek
- Sylvia Lake

The city, as recommended by the CAC and Planning Commission and approved by the City Council, did not choose to include additional subareas in shoreline jurisdiction during the SMP planning process. These additional areas included the following:

- The area beyond the minimum shorelands along stream corridors as defined in the SMA.
- The "...land necessary for buffers for critical areas as defined in Chapter 36.70A RCW that occur within shorelines of the state."

The extent of shoreline jurisdiction in the city is depicted on the official shoreline map included in SMP Appendix 1: Shoreline Environment Designation Map. The map only approximately represents the lateral extent of shoreline jurisdiction. The actual lateral extent of shoreline



jurisdiction shall be determined on a case-by-case basis established by the location of the OHWM, adopted FEMA floodways, and the presence of associated wetlands. In circumstances where shoreline jurisdiction does not include an entire parcel, only that portion of the parcel within the shoreline jurisdiction and any use, activity or development on that portion of the parcel is subject to the SMP.

The actual location of the OHWM, floodway, floodplain, and wetland boundaries shall be determined at the time a development is proposed.

## **1.06.02 SHORELINES OF STATEWIDE SIGNIFICANCE**

### **A. Adoption of Policy**

In implementing the objectives for shorelines of statewide significance, the city based its decisions in preparing the SMP on the following policies in order of priority, with one being the highest and seven being the lowest.

1. Recognize and protect the statewide interest over local interest.
2. Preserve the natural character of the shoreline.
3. Result in long term over short-term benefit.
4. Protect the resources and ecology of the shoreline.
5. Increase public access to publicly owned areas of the shoreline.
6. Increase recreational opportunities for the public in the shoreline.
7. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

Uses that are not consistent with these policies should not be permitted on shorelines of statewide significance.

### **B. Designation of Shorelines of Statewide Significance**

Specific larger waterbodies west of the Cascades crest are classified as shorelines of statewide significance in RCW 90.58.030(2)(f):

1. Lakes, whether natural, artificial, or a combination thereof, with a surface acreage of 1,000 acres or more measured at the OHWM; and
2. Natural rivers or segments thereof downstream of a point where the mean annual flow is measured at 1,000 cubic feet per second or more.

In the city, the Chehalis River, the Wynoochee River, and their associated shorelands are defined as shorelines of statewide significance. These shorelines are considered

resources for all people of the state, thus preference is given to uses that favor long-range goals and support the overall public interest.

**C. *Policies for Shorelines of Statewide Significance***

The statewide interest should be recognized and protected over the local interest in shorelines of statewide significance. To ensure that statewide interests are protected over local interests, the city shall review all development proposals within shorelines of statewide significance for consistency with RCW 90.58.030 and the following policies:

1. Encourage redevelopment of shorelines where it restores or enhances shoreline ecological functions and processes impaired by prior development activities.
2. The city should consult with Ecology, the Washington State Department of Fish and Wildlife (WDFW), the Confederated Tribes of the Chehalis Reservation, the Shoalwater Bay Tribe, and the Quinault Indian Tribe, and other resources agencies for development proposals that could affect anadromous fisheries.
3. Where commercial timber cutting takes place pursuant to SMP Section 5.09 and RCW 90.58.150, reforestation should take place as soon as feasible.
4. Activities that use shoreline resources on a sustained yield or non-consuming basis and that are compatible with other appropriate uses should be given priority over uses not meeting these criteria.
5. The range of options for shoreline use should be preserved to the maximum possible extent for succeeding generations. Development that consumes valuable, scarce, or irreplaceable natural resources should not be permitted if alternative sites are available.
6. Potential short-term economic gains or convenience should be measured against potential long term and/or costly impairment of natural features.
7. Protection or enhancement of aesthetic values should be actively promoted in design review of new or expanding development.
8. Resources and ecological systems of shorelines of statewide significance and those limited shorelines containing unique, scarce, and/or sensitive resources should be protected to the maximum extent feasible.
9. Erosion and sedimentation from development sites should be controlled to minimize adverse impacts on ecosystem processes. If site conditions preclude effective erosion and sediment control, excavations, land clearing, or other activities likely to result in significant erosion should be severely limited.

10. Public access development in extremely environmentally sensitive areas should be restricted or prohibited. All forms of recreation or access development should be designed to protect the resource base upon which such uses in general depend.
11. Public and private developments should be encouraged to provide trails, viewpoints, water access points, and shoreline related recreation opportunities whenever feasible. Such development is recognized as a high priority use.
12. Development not requiring a waterside or shoreline location should be located inland so that lawful public enjoyment of shorelines is enhanced.

#### **1.06.03 OFFICIAL SHORELINE MAP**

The city's Community Development Department shall keep the Official Shoreline Map for the city. Unofficial copies of the official map may be included or distributed with copies of the SMP.

### **1.07 RELATIONSHIP TO OTHER CODES, ORDINANCES, AND PLANS**

All applicable local, state, and federal laws shall apply to properties in shoreline jurisdiction. Should a conflict occur between the provisions of the SMP or between the SMP and the laws, regulations, codes, or rules promulgated by any other authority having jurisdiction within the city, the most restrictive requirement shall be applied, except when constrained by state or federal law, or where specifically provided otherwise in the SMP.

While the city is not subject to all of the requirements of the Growth Management Act (GMA), it will strive to ensure that there is consistency between the SMP's shoreline environment designation provisions and Comprehensive Plan elements and development regulations.

### **1.08 LIBERAL CONSTRUCTION**

As provided for in RCW 90.58.900, the SMP is exempted from the rule of strict construction and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

### **1.09 SEVERABILITY**

As provided for in RCW 90.58.910, should any section or provision of the SMP be declared invalid, such decision shall not affect the validity of the SMP as a whole.

## **1.10 TITLE**

This document shall be known and may be cited as the *City of Montesano Shoreline Master Program* or SMP.

## **1.11 EFFECTIVE DATE**

The SMP is hereby adopted on the [REDACTED] date of [REDACTED], 20[REDACTED]. The SMP and all amendments thereto shall become effective fourteen days from the date of Ecology's written notice of final action to the city.



## 2 SHORELINE MANAGEMENT GOALS

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### 2.01 SHORELINE MASTER PROGRAM GOALS

The state SMP Guidelines, found in WAC 173-26-186(3), require that all relevant policy goals must be addressed in the planning policies of the SMP. This section contains goals that express the long-term vision of the city's citizens for their shorelines. Goals provide the basis for the more detailed SMP shoreline use environments, policies, regulations, and administrative procedures in subsequent chapters.

Nine goals relating to shorelines management have been identified: Economic Development, Public Access, Recreation, Circulation, Shoreline Use, Conservation, Historic, Cultural, Scientific, and Educational, Flood Hazard Preservation, and Restoration. Each of these is described below.

### 2.02 ECONOMIC DEVELOPMENT GOAL

**Goal ED-1.** Protect current economic activity that is consistent with the objectives of the SMP and encourage new environmentally sensitive development. Encourage new economic development to locate in areas already developed with similar uses, which are consistent with the SMP.

### 2.03 PUBLIC ACCESS GOAL

**Goal PA-1.** Increase and enhance public access to publicly owned shoreline areas consistent with private rights, public safety, and the natural shoreline character.

### 2.04 RECREATION GOAL

**Goal REC-1.** Encourage the development of diverse, convenient water-related and water-dependent recreation opportunities without destroying the integrity and character of the shoreline.

## **2.05 CIRCULATION GOAL**

**Goal CIR-1.** Provide safe, reasonable, and adequate circulation systems to shorelines where routes will have the least possible adverse effect on unique shoreline features and existing ecological systems.

## **2.06 SHORELINE USE GOAL**

**Goal SU-1.** To preserve and develop shoreline areas in a manner that assures a balance of shoreline development that retains or improves the quality of the environment as it is designated for that area. Provide guidance on types of activity allowed in the shoreline areas.

## **2.07 CONSERVATION GOAL**

**Goal CONS-1.** Insure that utilization of a resource takes place with the minimum adverse impact to natural systems. Preserve the scenic aesthetic quality of shoreline areas and vistas to the greatest extent possible.

## **2.08 HISTORIC, CULTURAL, SCIENTIFIC, AND EDUCATIONAL GOAL**

**Goal HCSE-1.** Protect, preserve, and restore important archaeological, historical, and cultural sites for educational and scientific contributions and enjoyment of the public.

## **2.09 FLOOD HAZARD PREVENTION GOAL**

**Goal FHP-1.** Recognize statewide interests over individual interests in the prevention and minimization of flood damages.

## **2.10 RESTORATION GOAL**

**Goal REST-1.** Encourage restoration of previously degraded areas so that they may be renewed or restored to a natural or useful condition.

# 3 SHORELINE ENVIRONMENT DESIGNATIONS

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## 3.01 SHORELINE ENVIRONMENT DESIGNATION SYSTEM

The SMA's requirements for shoreline environment designations are found in WAC 173-26-211. The city classified and mapped its shoreline jurisdiction into shoreline environment designations based on the following four criteria found in the state SMP Guidelines (WAC 173-26-211(2)(a)):

- A. **Existing land use patterns.** What land uses have developed in each of the shoreline areas to date, as documented in the *Shoreline Inventory and Characterization Report* and the SMP map folio.
- B. **Biological and physical character of the shoreline.** The range of ecological characteristics and functions identified for each of the shoreline reaches documented in the *Shoreline Inventory and Characterization Report*.
- C. **The goals and aspirations of the city as expressed through the city's Comprehensive Plan.** The city's Comprehensive Plan provides guidance through its goals and policies, land use designations, various elements such as land use, housing, transportation, capital facilities, and economic development, as well as implementing development codes, parks and recreation plans, sub-area plans, and other plans.
- D. **Specific criteria for each shoreline environment designation.** The specific criteria for the aquatic, high-intensity, natural, shoreline residential, and urban conservancy shoreline environment designations are found in WAC 173-26-211(5). The city may establish different shoreline environment designations, provided they are consistent with the purposes and policies of the state SMP Guidelines.

Based on these four criteria, this chapter establishes the five shoreline environment designations used in the city in shoreline jurisdiction defined in SMP Section 1.06. The locations of the shoreline environment designations are illustrated in SMP Appendix 1: Shoreline Environment Designation Map and each shoreline environment designation is described in this chapter by a statement of purpose, followed by designation criteria, and management policies specific to that shoreline environment designation.

### **3.01.01 AQUATIC**

#### **A. Purpose**

The purpose of the Aquatic shoreline environment designation is to protect, restore, and manage the unique characteristics and resources of shoreline jurisdiction waterward of the OHWM.

#### **B. Designation Criteria**

Assign the Aquatic shoreline environment designation to lands waterward of the OHWM.

#### **C. Management Policies**

Development within the Aquatic shoreline environment designation shall be consistent with the following policies:

1. Allow new over-water structures only for water-dependent uses, public access, or ecological restoration.
2. Limit the size of new over-water structures to the minimum necessary to support the structure's intended use.
3. Encourage multiple uses of over-water facilities to reduce the impacts of development and increase effective use of water resources in shoreline jurisdiction.
4. Minimize interference with surface navigation, consider impacts to public views, and allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration in the location and design of all developments and uses.
5. Design and manage shoreline uses and modifications to prevent degradation of water quality and alteration of natural hydrographic conditions.
6. Prohibit uses that adversely affect the ecological functions of critical freshwater habitats except where necessary to achieve the objectives of RCW 90.58.020, and then only when the impacts are mitigated.
7. Reserve space in shoreline jurisdiction for shoreline preferred uses, while considering upland and in-water uses, water quality, navigation, presence of aquatic vegetation, existing critical habitats, aesthetics, public access, and views.



### **3.01.02 HIGH INTENSITY**

#### **A. Purpose**

The purpose of the High Intensity shoreline environment designation is to provide for high intensity water-oriented commercial and transportation uses while protecting existing ecological functions and restoring ecological functions in shoreline jurisdiction that have been degraded.

#### **B. Designation Criteria**

Assign the High Intensity shoreline environment designation to areas in the shoreline jurisdiction that currently support high intensity uses related to commerce, industry, public facilities, or transportation, or are suitable for high intensity water-oriented uses. The areas of shoreline jurisdiction assigned this designation should have the following characteristics:

1. Can support high-intensity uses without degradation to existing shoreline function;
2. Designated by the city's Comprehensive Plan and zoning for high intensity, commercial, industry, public, or mixed-use development; and
3. Have few biophysical limitations to development such as floodways, floodplains, steep slopes, or landslide hazard areas.

#### **C. Management Policies**

Development within the High Intensity shoreline environment designation shall be consistent with the following policies:

1. Prioritize uses on sites with physical access to the water in the following order of preference:
  - a. Water-dependent
  - b. Water-related
  - c. Water-enjoyment
2. Allow the development of new non-water-oriented uses as part of mixed-use development.
3. Allow the development of new non-water-oriented uses where the use will not conflict with or limit future opportunities for water-oriented uses.
4. Design new development located in shoreline jurisdiction to result in no net loss of ecological function.

5. Restore and remediate shoreline areas within new development sites consistent with state and federal laws.
6. Require visual and physical access where feasible with physical access prioritized over visual access.
7. Require full use of existing developed lands in shoreline jurisdiction served by existing or planned infrastructure in shoreline jurisdiction before expanding intensive development.

### **3.01.03 NATURAL**

#### **A. Purpose**

The purpose of the Natural shoreline environment designation is to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions. Only low-intensity uses should be allowed in order to maintain the ecological functions and ecosystem-wide processes.

#### **B. Designation Criteria**

The Natural shoreline environment designation will be assigned to shoreline areas that are:

1. Ecologically intact and currently perform an important function or ecosystem-wide process that would be damaged by human activity;
2. Ecosystems of particular scientific and educational interest; or
3. Unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety.

Such shoreline areas include largely undisturbed portions of shoreline areas, wetlands, and ecologically intact shoreline habitats.

#### **C. Management Policies**

Development within the Natural shoreline environment designation shall be consistent with the following policies:

1. Any use that would substantially degrade the ecological functions or natural character of the shoreline area should be prohibited.
2. The following new uses should not be allowed in the Natural shoreline environment designation:
  - a. Commercial uses;

- b. Industrial uses;
  - c. Non-water-oriented recreation; and
  - d. Roads, ~~utility corridors~~, and parking areas that can be located outside of the Natural shoreline environment designation.
3. Scientific, historic, cultural, educational research uses, and low-intensity water-oriented recreational uses that do not affect ecological functions may be allowed.
  4. Single-family residential development may be allowed as a conditional use within the Natural shoreline environment designation if its density and intensity is limited as necessary to protect ecological functions and be consistent with the purpose of this shoreline environment designation.
  5. Low-intensity agricultural uses may be allowed in the Natural shoreline environment designation when such use does not expand or alter practices in a manner inconsistent with the purpose of the designation.
  6. New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions should be prohibited.
  7. Subdivision of property in a configuration that will require significant vegetation removal or shoreline modification that adversely affects ecological functions should be prohibited.

### **3.01.04 SHORELINE RESIDENTIAL**

#### **A. Purpose**

The purpose of the Shoreline Residential shoreline environment designation is to accommodate residential development and accessory structures and uses that are consistent with the SMP. An additional purpose is to provide appropriate public access and recreational development.

#### **B. Designation Criteria**

The Shoreline Residential shoreline environment designation is assigned to the shoreline areas that are predominantly residential or are planned and platted for residential development. These areas contain the following characteristics:

1. They contain existing residential development or are proposed primarily for residential development in Comprehensive Plans and zoning codes; and
2. They do not contain significant environmental hazards or sensitive areas.

### **C. Management Policies**

Development within the Shoreline Residential shoreline environment designation shall be consistent with the following policies:

1. Preserve ecological functions by establishing development standards for height of structures, shoreline buffers, shoreline structural setbacks, shoreline stabilization, critical area protection, and water quality protection to assure no net loss of ecological functions in shoreline jurisdiction.
2. Provide public access and joint use for community recreational facilities, where feasible and applicable for multifamily developments, residential developments containing more than four or lots, and recreational developments.
3. Ensure access, utilities, and public services are available and adequate to serve existing needs or planned future development.
4. Limit commercial development to water-oriented uses. Home occupations consistent with Montesano Municipal Code (MMC) 17.44.023: Home Occupations should be allowed.

### **3.01.05 URBAN CONSERVANCY**

#### **A. Purpose**

The Urban Conservancy shoreline environment designation is intended to provide for ecological protection and rehabilitation in relatively undeveloped areas of shoreline jurisdiction, while allowing agricultural use, water-oriented and non-water-oriented recreational development, low intensity residential development, and limited development suitable to lands characterized by ecological and flood hazard constraints.

#### **B. Designation Criteria**

The Urban Conservancy shoreline environment designation is assigned to shoreline jurisdiction areas that:

1. Are appropriate and planned for low-intensity agricultural, recreational, and residential development that is compatible with maintaining or restoring the ecological functions of the area in shoreline jurisdiction and that are not generally suitable for water-dependent uses;
2. Are suitable for water-related or water-enjoyment uses;
3. Possess development limitations, due to the presence of critical environmental features including:

- a. Erosion hazard areas;
  - b. Wetlands;
  - c. Flood hazard areas; or
  - d. Habitat areas.
- 4. Have the potential for development that is compatible with ecological restoration;
  - 5. Retain important ecological functions, even though partially developed; or
  - 6. Are undesignated areas.

**C. *Management Policies***

Development within the Urban Conservancy shoreline environment designation shall be consistent with the following policies:

- 1. Allow uses that preserve the natural character of the shoreline environment designation, promote preservation of open space, floodway, floodplain, or critical areas directly, or over the long-term as the primary allowed uses. Allow uses that result in restoration of ecological functions if the use is otherwise compatible with the purpose of the environment and setting.
- 2. Implement public access and public recreation objectives whenever feasible and significant ecological impacts can be mitigated.
- 3. Give preferred water-oriented uses priority instead of non-water-oriented uses. Water-dependent and recreational development should be given highest priority.
- 4. Water-dependent and water-enjoyment recreation facilities that do not deplete the resource over time, such as boating and water access facilities, angling, and wildlife viewing trails are preferred uses, provided significant adverse impacts to the shoreline are mitigated.
- 5. Agriculture, forest practices, and low-intensity residential development when consistent with provisions of the SMP are preferred uses.
- 6. Ensure that standards for new development for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications do not result in a net loss of ecological functions or degrade other shoreline values.

## **3.02 INTERPRETATION OF SHORELINE ENVIRONMENT DESIGNATION BOUNDARIES**

### **3.02.01 SHORELINE ENVIRONMENT DESIGNATION MAP**

Shoreline environment designations are ~~found-depicted~~ in SMP Appendix 1: Shoreline Environment Designation Map and are based upon the best data available at the time of the update. As shoreline areas change over time, this map may no longer clearly identify the location and boundaries of the city shoreline environment designations. If the need arises to determine the exact boundaries of a shoreline environment designation, the process outlined in SMP Section 3.02.02 ~~below~~ should be used.

### **3.02.02 DETERMINING SHORELINE ENVIRONMENT DESIGNATION BOUNDARIES**

- A. If the exact location of a shoreline environment designation boundary line is unclear, the following rules shall apply:
1. Boundaries that are shown as approximately following lot, tract, or section lines shall be so construed.
  2. Boundaries that are shown as approximately following roads or railways shall be respectively construed to follow the nearest right-of-way edge.
  3. Boundaries that are shown as approximately parallel to or extensions of features described in SMP Section 3.02.02(A)(1) or (2), shall be construed to be parallel to or extensions of features in SMP Section 3.02.02(A)(1) or (2) when determining boundaries.
  4. Where boundary line adjustments or other modifications not indicated on the official shoreline map involve two or more parcels with different shoreline environment designations, a designation of Urban Conservancy shall be assigned as the shoreline environment designation for the subject properties. These designations will remain until the shoreline environment designation can be redesignated through the SMP amendment process found in SMP Section 7.09.
- B. In the event of a shoreline environment designation mapping error, the Shoreline Administrator shall utilize the criteria contained in RCW 90.58.030(2), Chapter 173-22 WAC, and the common boundary criteria contained in SMP Section 3.02.02(A) to establish the appropriate shoreline environment designation through the SMP amendment process found in SMP Section 7.09.

**Commented [NS1]:** City requested that this instead say that the most applicable or neighboring designation be assigned by the Shoreline Administrator. We will ask Ecology if that will be OK (not violate SMA rules)

- C. All shoreline areas waterward of the OHWM shall be designated Aquatic. All shoreline areas landward of the OHWM shall be designated a shoreline environment designation other than Aquatic.
- D. Only one shoreline environment designation shall apply to a given shoreland area.
- E. Unmapped or undesignated areas of shoreline jurisdiction shall be assigned automatically an Urban Conservancy shoreline environment designation, until that portion of shoreline jurisdiction can be redesignated through the SMP amendment process found in SMP Section 7.09.

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DRAFT

# 4 GENERAL POLICIES & REGULATIONS

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## 4.01 INTRODUCTION

Building on the general SMP goals found in SMP Chapter 2: Shoreline Management Goals, the following general policies and regulations apply to all developments, uses, or activities in any shoreline environment designation in shoreline jurisdiction. The intent of the general policies and regulations is to protect environmental resources, reduce the likelihood of harm to life or property from hazardous conditions, and promote access to shorelines.

Each section below in this chapter contains a description of its purpose, followed by policies and regulations. Policies are statements of principles that guide and determine present and future decisions. Regulations are rules that govern developments, uses, or activities.

The policies and regulations contained in this chapter are derived from the SMA and the state SMP Guidelines. The policies and regulations supplement other adopted ordinances and rules and they are intended to ensure that no net loss occurs. Where there is discrepancy between regulations, those regulations that provide greater protection to shoreline jurisdiction shall apply in accordance with SMP Section 1.07.

## 4.02 ARCHAEOLOGICAL AND HISTORIC RESOURCES

The purpose of this section is to prevent destruction or damage to sites containing irreplaceable archaeological or historic resources within shoreline jurisdiction. The policies and regulations apply to areas of known or supposed archaeological and historic resources as recorded by the Washington State Department of Archaeology and Historic Preservation (DAHP), the city, affected tribes, as well as sites that are uncovered during site development.

### 4.02.01 POLICIES

- A. Encourage consultation with professional archaeologists and historians to identify areas containing potentially valuable archaeological or historic resources, and establish procedures for salvaging the resource. Appropriate agencies to consult include, but are not limited to, the Chehalis Valley Historical Museum, the DAHP, the Confederated Tribes of the Chehalis Reservation, the Shoalwater Bay Tribe, and the Quinault Indian Tribe.



- B. Condition shoreline permits to allow for site inspection and evaluation, and ensure proper salvage of archaeological and historic resources in areas known to contain such resources.
- C. Preserve archeological or historic sites permanently for scientific study and public observation whenever feasible.
- D. Prevent the destruction of or damage to a site that has been inadvertently uncovered and has historic, cultural, scientific, or educational value as identified by the appropriate authorities, including affected tribes and the DAHP.
- E. Design and operate the proposed development to be compatible with the continued protection of the site, where development or demolition activity is proposed adjacent to an identified archaeological or historic site.

#### **4.02.02     REGULATIONS**

- A. Upon receipt of application for a shoreline permit or request for a statement of exemption for development on properties within 500 feet of a site known to contain a historic, cultural, or archaeological resource(s), the city shall require a cultural resource site assessment. The site assessment shall be conducted by a professional archaeologist or historic preservation professional, as applicable, to determine the presence of historic or archaeological resources. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the landowner or responsible party.
- B. Where a professional archaeologist has identified an area or site as having significant value, or where an area or site is listed in local, state, or federal historical registers, the Shoreline Administrator may condition the development approval to preserve the features. Potential conditions may include measures to preserve or retrieve the resources, modify the site development plan to reduce impacts, or mitigate the impacts as authorized through the State Environmental Policy Act (SEPA), or other local, state, or federal laws.
- C. The applicant shall stop work immediately and contact the Shoreline Administrator, the DAHP, and affected tribes if any archaeological resources are uncovered during work within shoreline jurisdiction.

### **4.03 ENVIRONMENTAL IMPACTS AND MITIGATION**

This section addresses the requirements for no net loss of ecological functions in shoreline jurisdiction by requiring mitigation for shoreline impacts. These provisions apply throughout shoreline jurisdiction.

#### **4.03.01 POLICY**

Avoid or mitigate impacts to shoreline jurisdiction to ensure the standards of no net loss to function are met.

#### **4.03.02 REGULATIONS**

- A. The environmental impacts of development proposals shall be analyzed and include measures to mitigate environmental impacts not otherwise avoided or minimized by compliance with the SMP and other applicable regulations.
- B. Mitigation measures shall be considered and applied in the following sequence of steps, listed in order of 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;
  - 5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
  - 6. Monitoring the impact and the compensation projects and taking appropriate corrective measures.
- C. In determining appropriate mitigation measures applicable to development in shoreline jurisdiction, lower priority measures should be applied only where higher priority measures are determined to be infeasible or inapplicable.
- D. Mitigation shall not be required that exceeds what is necessary to assure the development will result in no net loss of ecological functions in shoreline jurisdiction.

- E. When compensatory measures are appropriate pursuant to the mitigation priority sequence above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation measures that have been identified within a watershed plan, and address limiting factors or other critical resource conservation needs in shoreline jurisdiction may be authorized. Authorization of compensatory mitigation measures may require appropriate safeguards, terms, or conditions as necessary to ensure no net loss of ecological functions.

#### **4.04 CRITICAL AREAS AND SHORELINE VEGETATION CONSERVATION**

This section is intended to protect the ecological functions and ecosystem-wide processes performed by critical areas, buffers, and vegetation in shoreline jurisdiction. Within the SMP, buffers for rivers, lakes, and streams that are shorelines of the state are considered “shoreline buffers” while the buffers for all other critical areas regulated under SMP Appendix 2: Critical Areas Regulations are called “critical areas buffers.” Native vegetation conservation is emphasized within both of the areas. Native vegetation supports many ecological functions or processes in shoreline and critical area buffers, and retaining the vegetation will help the city to meet the SMA requirement of no net loss of shoreline ecological functions.

Provisions for shoreline vegetation conservation within this section include regulations regarding natural plant clearing, vegetation restoration, and the control of invasive weeds and non-native species. These provisions apply to any activity, development, or use in shoreline jurisdiction unless otherwise stated, whether or not that activity requires a shoreline permit. Such activities include clearing, grading, grubbing, and trimming of vegetation. Provisions also apply to vegetation protection and enhancement activities, but exclude agricultural activities and activities covered under the Washington State Forest Practices Act (FPA), unless otherwise stated.

SMP Appendix 2: Critical Areas Regulations applies to the management of critical areas in shoreline jurisdiction in the city, including wetlands, critical aquifer recharge areas, frequently flooded areas, landslide hazard areas, erosion hazard areas, seismic hazard areas, and fish and wildlife habitat conservation areas. Exceptions to the applicability of the provisions in SMP Appendix 2: Critical Areas Regulations within shoreline jurisdiction are outlined in SMP Section 4.04.02(A) ~~below~~.

#### **4.04.01     *POLICIES***

- A. Ensure no net loss of shoreline ecological functions through the effective integration of the SMP with existing city critical areas regulations.
- B. Include critical areas objectives in the protection and restoration of degraded ecological functions and ecosystem-wide processes.
- C. Balance the various facets of the SMP in critical area regulations, including public access, water-dependent uses, aesthetic considerations, and the maintenance of shoreline ecological functions.
- D. Protect and restore ecological functions and ecosystem-wide processes provided by native vegetation along shorelines.
- E. Explore opportunities to eliminate non-native vegetation and invasive species and encourage the planting and enhancement of native vegetation within shoreline jurisdiction.
- F. Replant cleared and disturbed sites promptly after completion of any clearance or construction with native vegetation in those locations where there was previously native vegetation or with other species in those areas previously vegetated with non-native or ornamental species.
- G. Allow the selective pruning of trees for safety and view protection.
- H. Conduct removal of invasive aquatic vegetation in a manner that minimizes adverse impacts to native plant communities and wildlife habitats, and appropriately handles and disposes of weed materials and attached sediments.
- I. Permit clearing of vegetation associated with dike or levee maintenance as necessary to provide protection from flood hazards.

#### **4.04.02     *REGULATIONS***

- A.     *Critical Areas Regulations Adopted***
  - 1. Whether or not a shoreline permit or written statement of exemption is required, the provisions of this section shall apply to all uses, alterations, or developments within shoreline jurisdiction or shoreline buffers. All shoreline uses and activities shall be located, designed, constructed, and managed to protect the ecological functions and ecosystem wide processes provided by critical areas and shoreline vegetation.

2. The critical areas regulations found in SMP Appendix 2: Critical Areas Regulations are integral and applicable to the SMP. All uses and development occurring within critical areas or their buffers within shoreline jurisdiction shall comply with ~~these~~ those regulations.
3. If there are any conflicts or unclear distinctions between the provisions of SMP Appendix 2: Critical Areas Regulations and this section, the requirements most consistent with the SMA and most protective of the resource shall apply, as determined by the Shoreline Administrator.
4. Within shoreline jurisdiction, critical area review, ~~approval, notice, and appeal periods/processes~~ shall be integrated with the associated shoreline permit or exemption found in SMP Chapter 7: Shoreline Administration. Approvals, noticing, and appeals periods/process shall be implemented according to the shoreline permit or exemption procedures found in SMP Chapter 7: Shoreline Administration.
5. Within shoreline jurisdiction, applicants seeking relief from the ~~buffer~~ provisions of SMP Appendix 2: Critical Areas Regulations shall apply for a shoreline variance under SMP Section 7.04.03.
6. The provisions of SMP Appendix 2: Critical Areas Regulations do not extend shoreline jurisdiction beyond the limits specified in SMP Section 1.06.01: Shoreline Jurisdiction.

Commented [NS3]: Requested by City

Commented [NS4]: Requested by City

**B. Shoreline Buffer Table**

1. The required critical area buffers for WDFW Type S waters, as established in SMP Appendix 2: Critical Areas Regulations and modified by SMP Table 4-1: Shoreline Buffers, shall be considered shoreline buffers.
2. The buffers for all other critical areas shall be established in accordance with the standards found in SMP Appendix 2: Critical Areas Regulations. If buffers for two or more contiguous critical areas overlap, such as buffers for shoreline and a wetland, the wider buffer applies.
3. New uses and development that are not water-dependent, water-related, or water-enjoyment, accessory to water-dependent, water-related, or water-enjoyment uses or development, or that do not facilitate public access to waters of the state generally will not be authorized in shoreline buffers, except those uses and activities allowed in Section 4.04.02(D)(1).
4. SMP Table 4-1: Shoreline Buffers establishes shoreline buffers by shoreline environment designation.

5. Shoreline buffers are measured landward from the OHWM in a horizontal direction perpendicular to the OHWM.
6. "N/A" in SMP Table 4-1: Shoreline Buffers means the requirement is not applicable.
7. Subcategories for types of uses or activities include the following terms:
  - a. Water-dependent means a use that cannot exist in any other location and is dependent on the water due to the intrinsic nature of its operations, such as a port or sewer outfall.
  - b. Water-related means a use that is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location, such as a fish processing plant or a sewer treatment plant.
  - c. Water-enjoyment means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use. Examples include public trails, golf courses, parks, etc.
  - d. Non-water-oriented means everything else: a grocery store, etc.
8. The minimum shoreline buffer from the OHWM for a particular use is determined by finding the use and the most appropriate subcategory row and then finding the intersection with the appropriate shoreline environment designation column.
9. Shoreline structural setbacks of 10 feet are required from the landward edge of the shoreline buffer. Shoreline structural setbacks are used to protect the shoreline buffer from disturbance during construction and from the impacts related to use of a structure.

**Table 4-1: Shoreline Buffers**

Standard Shoreline Buffer from the OHWM (1)	High Intensity	Shoreline Residential	Urban Conservancy	Natural
<b>Agriculture (New Agricultural Activities Only)</b>				
Water-dependent structures and uses	0 feet	0 feet	0 feet	0 feet
Water-related and water-enjoyment structures and uses	50 feet	50 feet	75 feet	100 feet

<b>Standard Shoreline Buffer from the OHWM (1)</b>	<b>High Intensity</b>	<b>Shoreline Residential</b>	<b>Urban Conservancy</b>	<b>Natural</b>
Non-water-oriented structures and uses	100 feet	100 feet	150 feet	200 feet
<b>Aquaculture</b>				
Water-dependent structures and uses	0 feet	0 feet	0 feet	0 feet
Water-related and water-enjoyment structures and uses	50 feet	50 feet	75 feet	100 feet
Non-water-dependent structures and uses	100 feet	100 feet	150 feet	200 feet
<b>Boating and Water Access Facilities</b>				
Water-dependent structures and uses	0 feet	0 feet	0 feet	N/A
Water-related and water-enjoyment structures and uses	50 feet	50 feet	75 feet	N/A
<b>Commercial Development</b>				
Water-dependent structures and uses	0 feet	N/A	N/A	N/A
Water-related and water-enjoyment structures and uses	50 feet	N/A	N/A	N/A
Non-water-oriented structures and uses	100 feet	N/A	N/A	N/A
<b>Forest Practices (2)</b>	N/A	N/A	150 feet	N/A
<b>Industrial Development</b>				
Water-dependent structures and uses	0 feet	N/A	N/A	N/A
Water-related and water-enjoyment structures and uses	50 feet	N/A	N/A	N/A
Non-water-oriented structures and uses	100 feet	N/A	N/A	N/A
<b>Mining</b>	100 feet	100 feet	150 feet	N/A
<b>Parking (accessory to a permitted use only)</b>	100 feet	100 feet	150 feet	200 feet
<b>Recreational Development (3)</b>				
Water-dependent structures and uses	0 feet	0 feet	0 feet	0 feet
Water-related and water-enjoyment structures and uses	50 feet	50 feet	75 feet	100 feet
Non-water-oriented structures and uses	100 feet	100 feet	150 feet	200 feet
<b>Residential Development</b>	100 feet	100 feet	150 feet	200 feet
<b>Signs (Freestanding Structures)</b>	100 feet	100 feet	150 feet	200 feet
<b>Transportation Facilities</b>				

Standard Shoreline Buffer from the OHWM (1)	High Intensity	Shoreline Residential	Urban Conservancy	Natural
Bridges for motorized and non-motorized uses	0 feet	0 feet	0 feet	0 feet
Expansion of roads within existing right-of-way	(4)	(4)	(4)	(4)
New roads related to permitted shoreline uses	(4)	(4)	(4)	(4)
Expansion of roads outside of a right-of-way or relocation of existing roads	(4)	(4)	(4)	(4)
<b>Utilities (Primary)</b>				
Water-dependent structures	0 feet	0 feet	0 feet	0 feet
Water-related structures	50 feet	50 feet	75 feet	100 feet
Non-water-oriented structures	<u>50 feet</u> (5)	<u>50 feet</u> (5)	<u>75 feet</u> (5)	<u>100 feet</u> (5)

Commented [NS5]: There were no entries here before, only the footnote

**Notes:**

- (1) Reductions in the shoreline buffer from the OHWM may be authorized according to the standards in SMP Section 4.04.02(C) ~~below~~.
- (2) Where the FPA applies, the stricter of the SMP or FPA buffer shall be used. For Shorelines of Statewide Significance see SMP Section 5.09.02(C).
- (3) Passive, water-oriented recreational uses are allowed within shoreline buffers; provided, the use does not include the construction of structures. Wildlife viewing structures, permeable trails, or raised boardwalks may be allowed on a limited basis within riparian and wetland buffers in accordance with the mitigation sequence found in SMP 4.03 and the provisions of SMP Appendix 2: Critical Areas Regulations.
- (4) Only allowed within shoreline jurisdiction when no other option for the location of the facility exists in accordance with SMP Section 5.16.03.
- (5) Only allowed within shoreline jurisdiction when no other option for the location of the facility exists in accordance with SMP Section 5.17.03.



**C. *Standard Shoreline Buffer Width Reduction Options***

Standard shoreline buffers may be reduced consistent with the mitigation sequence found in SMP 4.03 and the provisions of SMP Appendix 2: Critical Areas Regulations using the following procedures. Only one of the four buffer width reduction options below may be selected per development:

**1. Shoreline Buffer Averaging**

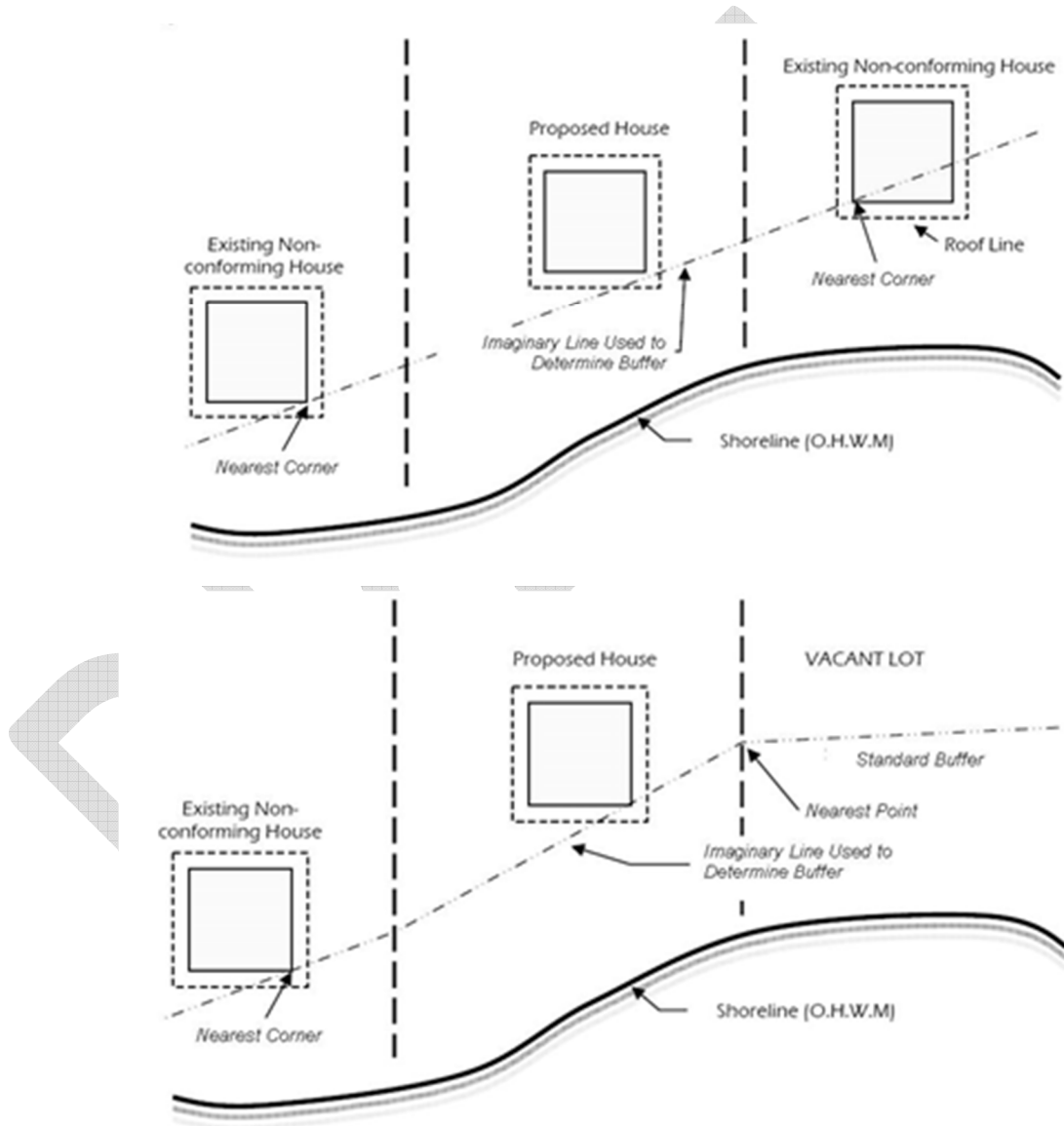
- a. The width of a standard shoreline buffer may be averaged, thereby reducing the width of a portion of the shoreline buffer and increasing the width of another portion of the shoreline buffer.
- b. A mitigation plan shall be prepared by the applicant as outlined in SMP Appendix 2: Section 2.06.08 with shoreline functions substituted for wetland functions. The applicant will need to demonstrate to the satisfaction of the Shoreline Administrator that the following criteria are addressed:
  - 1) The waterbody and associated shoreline buffer have significant differences in characteristics depending on location that affect its habitat functions;
  - 2) The shoreline buffer is increased adjacent to the higher-functioning area of habitat or more sensitive portion of the waterbody and decreased adjacent to the lower-functioning or less sensitive portion;
  - 3) The shoreline buffer averaging does not reduce the ecological functions or values of the waterbody and associated shoreline buffer, or the shoreline buffer averaging, in conjunction with vegetation enhancement, increases ecological functions or values;
  - 4) The total area of the shoreline buffer after averaging is equal to the area of the required shoreline buffer without averaging and all increases in shoreline buffer dimension for averaging are generally parallel to the OHWM;
  - 5) The shoreline buffer at its narrowest point is never less than 75% of the required width;
  - 6) The slopes adjacent to the waterbody within the shoreline buffer area are stable and the gradient does not exceed 30%; and
  - 7) The applicant implements all feasible measures to reduce the adverse effects of adjacent land uses and ensure no net loss of ecological functions.

**2. Common Line Provisions**

- a. To accommodate adequate shoreline views comparable to adjacent existing residences, the Shoreline Administrator may reduce the standard shoreline buffer for a new single-family residence consistent with the following criteria:
  - 1) The proposed residence must be located within 150 feet of an adjacent legally established single-family residential primary structure that encroaches on the shoreline buffer. Accessory structures such as sheds or garages shall not be used to determine a common line shoreline buffer.
  - 2) For the purpose of this reduction, the nearest corners of the foundations of the adjacent residences are those closest to the side-yard property line of the proposed residence.
  - 3) Existing Residences on Both Sides: Where there are existing residences adjacent on both sides of the proposed residence, the common line shoreline buffer shall be determined as the greater of either:
    - a) A common line drawn between the nearest corners of the foundations of each adjacent residence, or
    - b) A common line calculated by the average of both adjacent residences' existing setbacks from the OHWM.
  - 4) Existing Residence on One Side: Where there is only one existing residence adjacent to the proposed residence, the common line shoreline buffer shall be determined as the greater of either:
    - a) A common line drawn between nearest corner of the foundation for the adjacent residence and the nearest point of the standard shoreline buffer on the adjacent vacant lot; or
    - b) A common line calculated by the average of the adjacent residence's setback from the OHWM and the standard shoreline buffer for the adjacent vacant lot.
- b. If the conditions in SMP Section 4.04.02(C)(2)(a) are met, the applicant may prepare a mitigation plan as outlined in SMP Appendix 2: Section 2.06.08 with shoreline functions substituted for wetland functions and demonstrate to the satisfaction of the Shoreline Administrator that:
  - 1) A mitigation plan in accordance with SMP Appendix 2: Section 2.06.08 demonstrates that enhancing the shoreline buffer by removing invasive plants, planting native vegetation, installing habitat features, or other means

will result in a shoreline buffer of a reduced width that functions at a higher level than the existing standard shoreline buffer; or

- 2) Conditions unique to the site, including legally existing uses, developments established prior to the effective date of the SMP, or naturally existing topographic barriers, exist between the proposed development and the OHWM, which substantially prevent or impair delivery of most natural functions from the subject upland property to the waterbody.



### 3. Interrupted Buffer Provisions

- a. The Shoreline Administrator may allow a reduced buffer where a legally established substantial improvement such as a road, railroad, or structure serves

to eliminate or greatly reduce the impact of a proposed activity upon a wetland or shoreline buffer.

- b. Where such a substantial improvement exists, the buffer may be reduced to the waterward edge of the existing substantial improvement.
- c. If a project has the potential to impact the functions of a shoreline or wetland, or its buffer, even though such an improvement exists, the Shoreline Administrator shall require the applicant to submit a critical area report to ensure that no-net loss of shoreline ecological functions will occur.
- d. As used within this section only, substantial improvements shall include developed public infrastructure such as roads and railroads, and private improvements such as homes or commercial structures. Substantial improvements shall not include paved trails, sidewalks, private driveways, parking areas, or accessory buildings that do not require a building permit.

#### 4. Shoreline Buffer Width Reduction

- a. The width of a standard shoreline buffer may be reduced up to 25% administratively if shoreline buffer averaging (SMP Section 4.04.02(C)(1)), common line provisions (SMP Section 4.04.02(C)(2)), or reduction for road or railroads in buffer (SMP Section 4.04.02(C)(3)) are infeasible.
- b. If the conditions in SMP Section 4.04.02(C)(4)(a) are met, the applicant may prepare a mitigation plan as outlined in SMP Appendix 2: Section 2.06.08 with shoreline functions substituted for wetland functions and demonstrate to the satisfaction of the Shoreline Administrator that:
  - 1) A mitigation plan in accordance with SMP Appendix 2: Section 2.06.08 demonstrates that enhancing the shoreline buffer by removing invasive plants, planting native vegetation, installing habitat features, or other means will result in a shoreline buffer of a reduced width that functions at a higher level than the existing standard shoreline buffer; or
  - 2) Conditions unique to the site, including legally existing uses, developments established prior to the effective date of the SMP, or naturally existing topographic barriers, exist between the proposed development and the OHWM, which substantially prevent or impair delivery of most natural functions from the subject upland property to the waterbody.

### **D. *General Buffer Regulations***

#### 1. Shoreline Buffers

The following new uses and activities are allowed within shoreline buffers without a shoreline variance, when located, constructed, and maintained in a manner that minimizes adverse impacts on shoreline ecological functions, and when otherwise in compliance with this SMP:

~~a. Uses and activities outlined in SMP Appendix 2: Section 2.06.05: Regulated Activities, when consistent with all other applicable provisions of the SMP.~~

~~b.a.~~ b.a. Accessory Uses. Uses and development accessory to water-dependent uses shall be located outside the shoreline buffer unless at least one of the following criteria is met:

- 1) A location in the shoreline buffer is necessary for operation of the primary water-dependent use or development, such as a road to a boat launch facility; or
- 2) The accessory use is on legally established public lands and is primarily related to access, enjoyment, and use of the water; and the use does not conflict with or limit opportunities for other water-oriented uses.

~~c.b.~~ c.b. Essential Public Facilities. Essential public facilities, as defined by RCW 36.70A.200, may be located and expanded in the shoreline buffer if the use cannot be reasonably accommodated or accomplished outside of the standard or reduced shoreline buffer.

- 1) Essential public facilities must demonstrate that alternative sites are not available.
- 2) These uses must be designed and located to minimize intrusion into the shoreline buffer and shall be consistent with the mitigation sequence in SMP Section 4.03 and applicable critical area regulations.

~~d.c.~~ d.c. Water-oriented education, scientific research, and passive recreational uses. These uses may include, but are not limited to fishing, bird watching, hiking, hunting, boating, horseback riding, skiing, swimming, canoeing, and bicycling. Such uses are allowed within shoreline buffers provided the use does not include construction. Wildlife viewing structures and permeable trails or raised boardwalks may be allowed on a limited basis within riparian and wetland buffers in accordance with the mitigation sequence in SMP Section 4.03 and applicable critical area regulations.

~~e.d.~~ e.d. Site investigative work necessary for land use application submittals such as surveys, soil logs, drainage tests, and other related work, including monitoring

of restoration or mitigation sites. In every case, shoreline buffer impacts should be avoided or minimized and disturbed areas shall be immediately restored.

~~f.e.~~ Shoreline modifications in conformance with the applicable provisions found in SMP Chapter 6: Shoreline Modification Policies & Regulations.

## ~~2. Critical Areas Buffers~~

~~The uses and activities allowed within critical areas buffers in SMP Appendix 2: Critical Areas Regulations, may be allowed without a shoreline variance, when located, constructed, and maintained in a manner that minimizes adverse impacts on shoreline ecological functions, and in compliance with the SMP.~~

### **E. Vegetation Conservation Standards**

1. Shoreline buffers protect the ecological functions of the shoreline, help to reduce the impacts of land uses on the waterbody or aquatic resource, and provide a transition between aquatic and upland areas.
2. Authorized uses shall be designed to avoid removing existing native vegetation to the maximum extent feasible within shoreline and critical areas buffers consistent with safe construction practices, and other provisions of this section. Any impacts to existing native vegetation must follow the mitigation sequence in SMP Section 4.03 ~~above~~ and comply with SMP Appendix 2: Critical Areas Regulations, as modified in SMP Section 4.04.02(A) ~~above~~.
3. Removal of vegetation within shoreline and critical areas buffers shall require a critical area report and/or a mitigation plan in coordination with the requirements of SMP Appendix 2: Critical Areas Regulations. The Shoreline Administrator may require a critical area report for critical areas regulations exempt activities if necessary to document compliance with the provisions in the SMP.
4. Removal of native vegetation from shoreline buffers must be compensated at a minimum 1:1 ratio, which the Shoreline Administrator may increase if necessary to assure no net loss of shoreline ecological functions. Increases may be necessary to compensate for temporal losses, uncertainty of performance, and differences in ecological functions and values.
5. Mitigation ratios shall be based on a scientifically valid measure of habitat function, value, and area. Critical area reports shall include a description of how the proposal complies with the mitigation sequence in SMP Section 4.03 and how mitigation areas will be monitored and maintained to ensure no net loss of shoreline ecological functions.

6. Vegetation conservation standards shall not apply retroactively to existing, legally established uses and developments. Existing, lawfully established landscaping and gardens within shoreline jurisdiction may be maintained in their existing condition. In the context of this regulation, maintenance includes, but is not limited to, mowing lawns, weeding, removal of noxious and invasive species, harvesting and replanting of garden crops, pruning, and replacement planting of ornamental vegetation or indigenous native species to maintain the condition and appearance of such areas.
7. Clearing of invasive, noxious non-native vegetation in shoreline buffers is allowed by hand labor or with light equipment. Removal of noxious weeds as listed by the state in Chapter 16-750 WAC is allowed in a manner consistent with Washington State Noxious Weed Control Board regulations. Native vegetation shall be promptly reestablished in the disturbed area.
8. In shoreline buffers, pruning shall comply with the National Arborist Association pruning standards. Trees that are felled in shoreline buffers should be left in place. The exception to this regulation is that hazard trees, which are dead, diseased, leaning, or structurally unsound trees that are deemed an emergency, may be removed at any time. The City's Professional Forester reviews all tree removal requests, including emergency hazard trees.
9. In those instances where the management of vegetation required by this section conflicts with provisions in state, federal, or other flood hazard agency documents that govern licensed or certified flood hazard reduction measures, the requirements of the SMP will not apply. The applicant shall submit documentation of conflicting provisions with a shoreline permit application and shall comply with all other provisions of the SMP that are not strictly prohibited by certifying or licensing agencies.

***F. Revegetation***

1. Surfaces that are cleared of vegetation in shoreline or critical area buffers, aside from normal maintenance described in SMP Section 4.04.02(E)(6), and are not developed must be replanted within one year. Replanted areas shall be planned and maintained such that within three years the vegetation cover is at least 90% reestablished. Areas that fail to reestablish vegetation adequately shall be replanted with approved plant materials until such time as the plantings are viable. Revegetation areas will be maintained in good growing condition, and kept free of noxious weeds, and with removal of dead or dying plants for a five-year monitoring period.

2. Vegetation shall be planted in similar quantities and species to what existed previously on the site to achieve no net loss of ecological function. Disturbed ornamental landscapes, including grass, may be replaced with similar species, unless mitigation is necessary to address project impacts.
3. Native plants are preferred for all revegetation. Non-native species on the Grays Harbor County's list of invasive species shall not be allowed.

**G. *Aquatic Vegetation Control***

1. Aquatic vegetation control shall only occur when native plant communities and associated habitats are threatened or where an existing water-dependent use is restricted by the presence of weeds. Aquatic vegetation control shall occur in compliance with all other applicable laws and standards, including WDFW requirements such as the Aquatic Plants and Fish Pamphlet, which serves as the Hydraulic Project Approval (HPA) for some types of aquatic weed or plant control and removal.
2. The application of herbicides or pesticides in lakes, wetlands, or ditches requires a permit from Ecology and may require preparation of a SEPA checklist for review by other agencies. The applicator must have a pesticide applicator license from the Washington State Department of Agriculture.

## **4.05 FLOOD HAZARD MANAGEMENT**

This section applies to actions taken to reduce flood damage or hazards in shoreline jurisdiction as well as uses, development, and shoreline modifications that may increase flood hazards. As used by the SMP, "flood hazard management measures" include shoreline modifications that directly control of the location of floodwaters, while "shoreline stabilization measures" act to prevent the erosion of land from currents and waves – a more indirect control of the location of flood and non-flood water. Shoreline stabilization measures are addressed in SMP Chapter 6: Shoreline Modification Policies & Regulations.

Measures to reduce flood hazards may consist of: nonstructural measures, such as shoreline buffers, land use controls, wetland restoration, dike removal, use relocation, biotechnical measures, and stormwater management programs; and structural measures, such as dikes, levees, revetments, floodwalls, dams, channel realignment, and elevation of structures consistent with the National Flood Insurance Program.

The city currently implements flood hazard management through:



- The City of Montesano Comprehensive Plan;
- The City of Montesano Critical Areas Ordinance (CAO), [codified as MMC Chapter 14.30](#);
- [The City of Montesano Flood Damage Prevention Code, found in MMC Chapter 1740](#);
- The current edition of the Stormwater Management Manual as prepared by Ecology;
- The Grays Harbor County Comprehensive Flood Hazard Management Plan;
- The Grays Harbor County All Hazard Mitigation Plan;
- The Chehalis River Basin Comprehensive Flood Hazard Management Plan; and
- Watershed Management Plans.

#### **4.05.01      *POLICIES***

- A. Assure flood hazard protection measures do not result in a net loss of shoreline ecological functions.
- B. Plan for and facilitate returning river and stream conditions to more natural hydrological conditions where feasible and appropriate.
- C. Achieve flood hazard management through a coordinated and integrated approach of plans, regulations, and programs.
- D. Prefer nonstructural flood hazard management measures to structural measures where feasible. New structural flood hazard reduction measures should only be allowed when demonstrated to be necessary, nonstructural methods are insufficient, and mitigation is accomplished.
- E. Limit development and shoreline modifications that interfere with the natural process of channel migration within the channel migration zone (CMZ).
- F. Require new publicly funded dike or levee projects to dedicate and improve public access, subject to the exceptions in SMP Section 4.06.

#### **4.05.02      *REGULATIONS***

- A. All proposed flood hazard management projects shall comply with the Grays Harbor County All Hazard Mitigation Plan and MMC Chapter 17.40 ~~(Article II): Flood Hazard District~~, where applicable.
- B. Development in floodplains shall not increase flood hazards.
- C. New development or new uses in shoreline jurisdiction, including subdivision of land, shall not be established when it would be reasonably foreseeable that the use or

development would require structural flood hazard reduction measures within the CMZ or floodway.

- D. New structural flood hazard management measures may be permitted if:
  - 1. No net loss of ecological functions and values will occur;
  - 2. A scientific and engineering analysis prepared by a qualified professional confirms they are necessary to protect existing development;
  - 3. Nonstructural flood hazard management measures are not feasible; and
  - 4. Appropriate vegetation conservation actions are undertaken as outlined in SMP Section 4.04.
- E. If new structural flood hazard management measures are required and no alternative exists, as documented in the appropriate scientific and engineering analysis prepared by a qualified professional, the structural measures shall be placed landward of any associated wetlands and shoreline buffer areas.
- F. New publicly-funded structural flood hazard management measures, including dikes and levees, shall dedicate and improve public access except when those improvements would:
  - 1. Cause health or safety hazards or security problems;
  - 2. Result in significant immitigable ecological impacts;
  - 3. Create a conflict of uses; or
  - 4. Cost a disproportionate or unreasonable amount relative to the total long-term cost of the development.
- G. Removal of gravel for flood management purposes shall be consistent with SMP Section 6.04, and permitted only after a biological and geomorphological study prepared by a qualified professional demonstrates that the extraction:
  - 1. Provides a long-term benefit to flood hazard management;
  - 2. Does not result in a net loss of ecological functions; and
  - 3. It is part of a comprehensive flood management solution.
- H. New development within floodways and the CMZ shall not interfere with the process of channel migration or cause a net loss of ecological functions.
- I. Development in the CMZ and floodways, is limited to:
  - 1. Actions that protect or restore ecosystem-wide processes or ecological functions;

2. Forest practices in compliance with the FPA;
3. Existing and ongoing agricultural practices, provided no new restrictions to channel movement occur;
4. Mining uses conducted consistent with the shoreline environment designation and the provisions of WAC 173-26-241(3)(h);
5. Bridges, utility lines, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in an unreasonable and disproportionate cost;
6. Repair and maintenance of an existing legal use, provided that the repair and maintenance does not cause significant ecological impacts or increase flood hazards to other uses;
7. Modifications or additions to an existing nonagricultural legal use, provided that channel migration is not further limited and that the new development includes appropriate protection of ecological functions; or
8. Measures to reduce shoreline erosion, if it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, the measure does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions, and the measure includes appropriate mitigation of impacts to ecological functions associated with the river or stream.

## **4.06 PUBLIC ACCESS**

This section applies to shoreline public access, including the protection of scenic vistas. As provided in WAC 173-26-221(4), public access to the shorelines of the state is the ability of the public “...to reach, touch, and enjoy the water’s edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations.” Allowing for appropriate public access to shorelines of the state is a key component of the SMA. Consideration must be given to protection of the visual quality of the shoreline resource and to maintenance of view corridors to and from the water and adjacent shoreland features.

### **4.06.01 POLICIES**

- A. Protect and enhance the public’s visual and physical access to shorelines of the state to the greatest extent feasible.

- B. Increase the amount and ~~diversity~~ different types of public access opportunities to shorelines where consistent with the natural shoreline character, property rights, and public safety.
- C. Maintain, enhance, and increase public access in accordance with the following priorities unless found infeasible:
  - 1. Maintain existing public access sites and facilities, rights-of-way, and easements.
  - 2. Enhance public access opportunities on existing public lands and easements.
  - 3. Acquire property or easements to add opportunities for public access to shorelines.
  - 4. Encourage public access to shorelines as part of shoreline development.
- D. Ensure shoreline development plans by public entities include public access measures unless it is unsafe, unsecure, or negatively affects the shoreline environment.
- E. Ensure that development does not impair or detract from public access to the water through standards for design, construction, and operation.
- F. Provide public access as close as feasible to the OHWM without adversely effecting a sensitive environment and design with provisions for access for all persons.
- G. Development, uses, and activities on or near the shoreline should not impair or detract from the public's visual access to the water.
- H. Balance enhancement of views with the protection of shoreline vegetation that may partially impair views.
- I. Maintain, enhance, and preserve visual access of the shoreline from street-ends, public utilities, and rights-of-way.

#### **4.06.02 REGULATIONS**

- A. Public access shall be designed to achieve no net loss of ecological functions. Where impacts are identified, mitigation shall be required.
- B. Public access shall be required for the following shoreline developments and uses:
  - 1. Shoreline recreation in accordance with SMP Section 5.13;
  - 2. New structural public flood hazard reduction measures, such as dikes and levees;
  - 3. Shoreline development by public entities, including the city, state agencies, and public utility districts; and
  - 4. All other development not subject to the restrictions in SMP Section 4.06.02(C).

- C. Public access is not required when any of the following conditions are present:
1. The subdivision of land into four or fewer parcels;
  2. A development consisting of a building containing four or fewer dwelling units;
  3. Unavoidable health or safety hazards to the public exist that cannot be prevented by any feasible means;
  4. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
  5. Public access results in significant environmental impacts that cannot be mitigated;
  6. Significant undue and unavoidable conflict between any access provisions and the proposed or adjacent uses would occur and cannot be mitigated;
  7. The cost of providing the access, easement, or amenity is unreasonably disproportionate to the total long-term cost of the proposed development;
  8. Legal limitations preclude public access;
  9. The subject site is separated from the shoreline waterbody by intervening public or private improvements such as roads, railroads, existing structures, and/or other similar improvements, and public access is not desirable or feasible; or
  10. Adequate public access already exists along the subject shoreline and there are no gaps or enhancements that need to be addressed.
- D. In addressing SMP Section 4.06.02(C) ~~above~~, the applicant must demonstrate that all feasible alternatives to allow public access have been exhausted, including:
1. Regulating access by such means as limiting hours of use to daylight hours;
  2. Separating uses by such means as fences, terracing, landscaping, signage, etc.;
  3. Providing access that is physically separated from the proposal, such as a nearby street end, an offsite viewpoint, or a trail system; or
  4. Where physical access is not feasible, visual access is provided instead.
- E. The Shoreline Administrator must support a determination that no public access is feasible in the findings in the underlying permit.
- F. Physical public access shall be designed to connect to existing public rights-of-way or existing or future public access points on adjacent or abutting properties. Appropriate design and safety standards should be utilized in the design of the access.

- G. Public access facilities shall be compatible with adjacent private properties using vegetative buffering or other techniques to define the separation between public and private space.
- H. Where there is an irreconcilable conflict between water-dependent shoreline uses, physical public access, and maintenance of views from adjacent properties, water-dependent uses and physical public access shall have priority, unless there is a compelling reason to the contrary.
- I. Public access easements or tracts and relevant permit conditions shall be recorded as a separate document or on the face of a plat or short plat with the Grays Harbor County Auditor at the time of permit or plat approval.
- J. The applicant shall construct, install, and maintain approved signs that indicate the public's right to access the shoreline and the hours of operation for the shoreline access. These signs shall be placed in conspicuous locations at public access sites. Where public access is prohibited, property owners may install signs subject to size and location restrictions found in SMP Section 5.15 that indicate that no public access is permitted.
- K. Required public access sites must be fully developed and available for public use at the time of occupancy or use of the development.
- L. The city may not vacate any road, street, or alley abutting a body of water except as provided under RCW 35.79.035.
- M. In addressing the protection of scenic vistas of the shoreline, the following must be taken into consideration:
  - 1. Public lands such as street ends, rights-of-way, and utilities shall provide visual access to the water and shoreline.
  - 2. Development on or over the water shall be constructed as far landward as feasible to avoid interference with views from surrounding properties to the shoreline and adjoining waters.

## **4.07 WATER QUALITY**

This section addresses the requirement to prevent impacts to water quality and stormwater quantity that would result in a loss of ecological functions, a significant impact to aesthetic qualities, or recreational opportunities.

#### **4.07.01    POLICIES**

- A. Protect the shoreline jurisdiction by ensuring that surface water quality and quantity regulations are administered by the city.
- B. Prevent impacts to water quality and stormwater quantity that would result in net loss of shoreline ecological function, significant impacts to aesthetic qualities, or recreational opportunities.

#### **4.07.02    REGULATION**

- A. All development in shoreline jurisdiction shall comply with the appropriate requirements of the SMP and the applicable city stormwater management programs and regulations , and the Stormwater Manual for Western Washington, current edition, prepared by Ecology.

# 5 SPECIFIC SHORELINE USE POLICIES & REGULATIONS

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## 5.01 INTRODUCTION

Building on the general SMP goals found in SMP Chapter 2: Shoreline Management Goals, this chapter contains specific shoreline use policies and regulations that apply to specific uses or development in any shoreline environment designation. Each section includes policies and regulations. Policies are statements of principles that guide and determine present and future decisions. Regulations are rules that govern developments, uses, or activities.

## 5.02 GENERAL SHORELINE USE

These policies and regulations apply to all developments and uses within shoreline jurisdiction, regardless of whether shoreline permits or written letters of exemption are required.

### 5.02.01 POLICIES

- A. Shorelines are a limited ecological and economic resource. Apply the following priorities in the order presented below when determining allowable uses or resolving use conflicts in shoreline jurisdiction:
  1. Reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health;
  2. Reserve shoreline areas for water-dependent and associated water-related uses. Mixed-use developments that include water-dependent uses may be allowed when specific conditions are met;
  3. Reserve shoreline areas for other water-related and water-enjoyment uses that are compatible with ecological protection and restoration objectives;
  4. Locate single-family residential uses where they are appropriate and can be developed without significant impact to ecological functions or displacement of water-dependent uses; ~~and~~
  5. Limit non-water-oriented uses to those locations where the uses described above are inappropriate or where non-water-oriented uses demonstrably contribute to the objectives of the SMA; ~~and~~



6. Allow parking only as an accessory to a primary use.
- B. Where feasible locate accessory structures or uses, such as parking, service buildings or areas, access roads, utilities, signs, and storage, landward of required shoreline buffers and water-oriented developments or other approved uses.
- C. Locate, design, and manage uses and development to minimize impacts through bulk and dimensional regulations, shoreline buffers, and other measures to:
  1. Ensure that the development will not result in a net loss of shoreline ecological functions; and
  2. Support the long-term beneficial use of the shoreline, and protect and maintain shoreline ecological functions and processes.
- D. Develop regulations for shoreline buffers consistent with protecting existing ecological functions, accommodating water-oriented and preferred uses, recognizing existing development patterns, and minimizing the creation of nonconforming uses and developments.
- E. Do not permit uses where they would result in a net loss of shoreline ecological functions, adversely affect the quality or extent of habitat for native species, adversely affect other habitat conservation areas, or interfere with navigation or other water-dependent uses.
- F. Avoid adverse impacts to the shoreline or, if that is not feasible, minimize to the extent feasible and mitigate unavoidable impacts.

#### **5.02.02 REGULATIONS**

These regulations apply to all developments and uses within shoreline jurisdiction, regardless of whether a shoreline permit or written letter of exemption is required.

- A. Use and development standards shall not apply retroactively to existing, legally established structures, or uses and developments in place at the time of the adoption of the SMP update. Existing structures, uses and developments, including residential appurtenances, may be maintained, repaired, and operated within shoreline jurisdiction and the shoreline buffers established in the SMP.
- B. Development shall comply with all bulk and dimensional requirements found in the zoning and subdivision codes.
- C. Shoreline developments shall locate water-oriented portions along the shoreline and place other facilities landward or outside shoreline jurisdiction, where feasible.

- D. Parking is allowed only as an accessory to a primary use.
- E. Accessory uses, such as parking, stormwater management facilities, and utilities shall be located outside of shoreline buffer unless authorized in SMP Section 4.04.02(D)(1)(b).
- F. Shoreline uses and developments shall be designed to complement the setting of the property and minimize glare. Shoreline applicants shall demonstrate efforts to minimize potential impacts to the extent feasible.

### **5.03 ALLOWED SHORELINE USES**

- A. SMP Table 5-1: Permitted, Conditional, and Prohibited Uses ~~below~~ establishes the uses and development allowed within the shoreline environment designations. Where there is a conflict between the table and the written provisions in the SMP, the written provisions shall apply.
- B. Authorized uses and development are subject to the policies and regulations of the SMP and are only allowed in shoreline jurisdiction where allowed by the underlying zoning.
- C. Uses and development identified as “Permitted” require either a shoreline substantial development permit in accordance with SMP Section 7.04.01 or an exemption from the requirement to obtain such a permit in accordance with SMP Section 7.04.04. If any part of a proposed development is not eligible for an exemption, then a shoreline substantial development permit is required for the entire proposed development.
- D. Uses identified as “Conditional” require a shoreline conditional use permit pursuant SMP Section 7.04.02. Any use not listed in SMP Table 5-1: Permitted, Conditional, and Prohibited Uses shall require a shoreline conditional use permit.
- E. Uses identified as “Prohibited” are not allowed in shoreline jurisdiction.
- F. Accessory uses and structures shall be subject to the same shoreline permit process and SMP provisions as their primary use. An accessory use shall not be established prior to the establishment of ~~its~~ the related primary use.

Table 5-1: Permitted, Conditional, and Prohibited Uses

Shoreline Uses (1)	High Intensity	Shoreline Residential	Urban Conservancy	Natural	Aquatic (2)
<b>Key: P = Permitted Use, C = Conditional Use, X = Prohibited</b>					
<b>Agriculture (New agricultural activities only) (3)(4)</b>	P	P	P	C	X
<b>Aquaculture</b>	C	C	C	C	C
<b>Boating and Water Access Facilities</b>					
Boat Ramps and Launches	P	P	C	X	See adjacent upland shoreline environment designation
Public Piers / Docks	P	P	C	X	
Public Recreational Floats	P	P	C	X	
All Other Boating and Water Access Facilities	X	X	X	X	
<b>Commercial Development</b>	P	X	X	X	X
<b>Forest Practices</b>	X	X	P	X	X
<b>Industrial Development</b>	P	X	X	X	X
<b>Mining (5)</b>	P	C	C	X	C (6)(5)
<b>Parking (7)(6)</b>	P	P	P	C	X
<b>Recreational Development (8)(7)</b>					
Water-oriented	P	P	P	C (9)(8)	P (10)(9)
Non-water-oriented	P	P	P	X	X
Trails	P	P	P	C	X
<b>Residential Development (11)(10)</b>	P	P	P	C	X
<b>Signs</b>	P	P	P	C	X
<b>Transportation Facilities</b>					
Bridges for motorized and non-motorized uses	C	C	C	C	C
Expansion of roads <u>with within</u> existing right-of-way	P	P	P	P	X
New roads related to permitted shoreline uses	P	P	P	C	X
Expansion of roads outside of a right-of-way or relocation of existing roads	P	PC	C	C	X
<b>Utilities (Associated with a Permitted Use)</b>	P	P	P	P	X
<b>Utilities (Primary)</b>					
Solid waste disposal or transfer sites	X	X	X	X	X
Other	C	C	C	C	C

Commented [NS7]: Change requested by City

Commented [NS8]: Requested addition by City

## Notes:

- (1) Any use that would substantially degrade the ecological functions in shoreline jurisdiction should not be allowed.
  - (2) Where a use would be located both upland and overwater, the more restrictive standards apply.
  - (3) Includes agricultural commercial uses such as roadside stands, on-farm markets, pumpkin patches, and Christmas tree farms. New agricultural activities in the Natural shoreline environment designation are limited to very low intensity uses.
  - (4) Upland finfish facilities in shoreline jurisdiction require a shoreline conditional use permit.
  - (5) Mining within any CMZ that is within shoreline jurisdiction shall require a shoreline conditional use permit.
  - (6)(5) New mining waterward of the OHWM or CMZ of a shoreline waterbody shall not be permitted unless meeting the requirements of SMP Section 5.11.02(D).
  - (7)(6) Parking is allowed as an accessory use to an approved use in SMP Section 5.12. Off-street parking lots or parking structures as a primary use are prohibited in all shoreline environment designations.
  - (8)(7) Concession stands, gift shops, and interpretive centers are permitted as accessory uses when limited to the minimum size necessary for the use and serving a related, permitted recreational use in the High Intensity, Shoreline Residential or Urban Conservancy shoreline environment designations.
  - (9)(8) Water-oriented recreational development uses in the Natural shoreline environment designation are limited to low intensity uses.
  - (10)(9) Only water-dependent uses are permitted in the Aquatic shoreline environment designation.
  - (11)(10) Home occupations are incidental and accessory to a residential use. Use the 'Residential' use category to determine whether they are allowed in a particular shoreline environment designation.
- 

## 5.04 DEVELOPMENT STANDARDS

The following development standards apply in addition to the shoreline buffer and structural setback requirements included in SMP Section 4.04: Critical Areas and Shoreline Vegetation

Conservation. New development shall be located and designed to avoid the need for future shoreline stabilization measures to the extent feasible as defined in SMP Section 6.07.02(A).

#### **5.04.01 DENSITY AND LOT COVERAGE**

- A. Density and maximum lot coverage of residential uses allowed in shoreline jurisdiction shall be in accordance with the underlying zoning requirements of the MMC.

#### **5.04.02 SHORELINE HEIGHT STANDARDS**

- A. To limit the obstruction of views from public property or residences, SMP Table 5-2: Shoreline Height Regulations establishes the maximum shoreline height for new or expanded buildings or structures above average grade level in shoreline jurisdiction.
- B. The following structures are exempt from the shoreline height standard requirements: dams, power or light poles, bridges, chimneys, tanks, towers, cupolas, steeples, flagpoles, smokestacks, silos, elevators, fire or parapet walls, open railings, and/or similar necessary building appurtenances. These structures may exceed the shoreline height limit provided all other requirements of the city are met and no usable floor space above the shoreline height limit is added.
- C. Development in the High Intensity shoreline environment designations may be increased to the underlying zoning district height limit through a shoreline variance that meets the criteria in SMP Section 7.04.03 provided:
  - 1. The increase does not substantially block views from upland residential properties;
  - 2. The increase will serve overriding considerations of the public interest pursuant to RCW 90.58.320;
  - 3. Greater height is demonstrated to be needed for an essential element of an allowed use;
  - 4. The project includes compensating elements that substantially enhance the visual and physical public access to the shoreline, if required; and
  - 5. It is demonstrated that No Net Loss of shoreline ecological function will be achieved.

**Table 5-2: Shoreline Height Regulations**

Standard	High Intensity	Shoreline Residential	Urban Conservancy	Natural	Aquatic
Maximum Shoreline Height	35 feet (1)	35 feet	35 feet	35 feet	35 feet

**Notes:**

- (1) Maximum shoreline height may be increased to the maximum height limit specified in MMC Title 17 subject to approval of a view corridor analysis under SMP Section 5.04.02(D) and demonstration that the proposal meets the shoreline variance criteria in SMP Section 7.04.03.
- 

**D. View Corridor Review Process**

1. Applicants for new or expanded buildings or structures exceeding 35 feet in height above average grade level shall address impacts to views from substantial numbers of residences and public areas as follows:
  - a. Site design shall provide for view corridors between buildings using building separation, structural setbacks, upper story setbacks, pitched roofs, and other mitigation.
  - b. To determine appropriate view corridor location, the Shoreline Administrator shall review shoreline public access plans, location of state- or federally-designated scenic highways, government-prepared view studies, SEPA documents, or applicant-prepared studies.
  - c. The maximum width of a view corridor shall not exceed 25% of the lot width.
2. The following view analysis standards and procedures apply to the view corridor review process:
  - a. The applicant shall prepare a view analysis conducted consistent with the application requirements in SMP Section 7.02.03. The view analysis shall address:
    - 1) The cumulative view obstruction created by the proposed development combined with other developments that exceed 35 feet in height within a 1,000-foot radius of the proposed development;

- 2) Available view corridors; and
  - 3) Surface water views lost, compromised, or retained.
- b. For phased developments, the view analysis shall be prepared in the first phase and include all proposed buildings.
  - c. Applicants proposing building or structure heights above 35 feet in the High Intensity shoreline environment designation that are consistent with the SMP and underlying zoning allowances, may be approved as part of a shoreline variance if the following criteria are met:
    - 1) The building or structure will not affect a substantial number of residences. The applicant shall review residences in the area adjoining the project area;
    - 2) The increase will serve overriding considerations of the public interest pursuant to RCW 90.58.320; and
    - 3) The development will not cause an obstruction of view from public properties or substantial number of residences. The applicant shall demonstrate through photographs, videos, photo-based simulations, or computer-generated simulations that the proposed development will obstruct less than 30% of the view of the shoreline enjoyed by a substantial number of residences on areas adjoining such shorelines.

## **5.05 AGRICULTURE**

Agriculture includes, but is not limited to, the commercial production of horticultural, viticultural, and floricultural products, vegetables, fruit, berries, grains, feed or forage for livestock, Christmas trees, and livestock that has long term commercial significance as well as other definitions of agricultural use found in WAC 173-26-020(3).

### **5.05.01 POLICIES**

- A. Permit all agricultural activities existing as of the effective date of the updated SMP to continue.
- B. Protect valuable agricultural lands from incompatible and preemptive patterns of development so that they may remain in productive agricultural use.
- C. Prohibit the creation of new agricultural lands by diking, draining, or filling of wetlands.

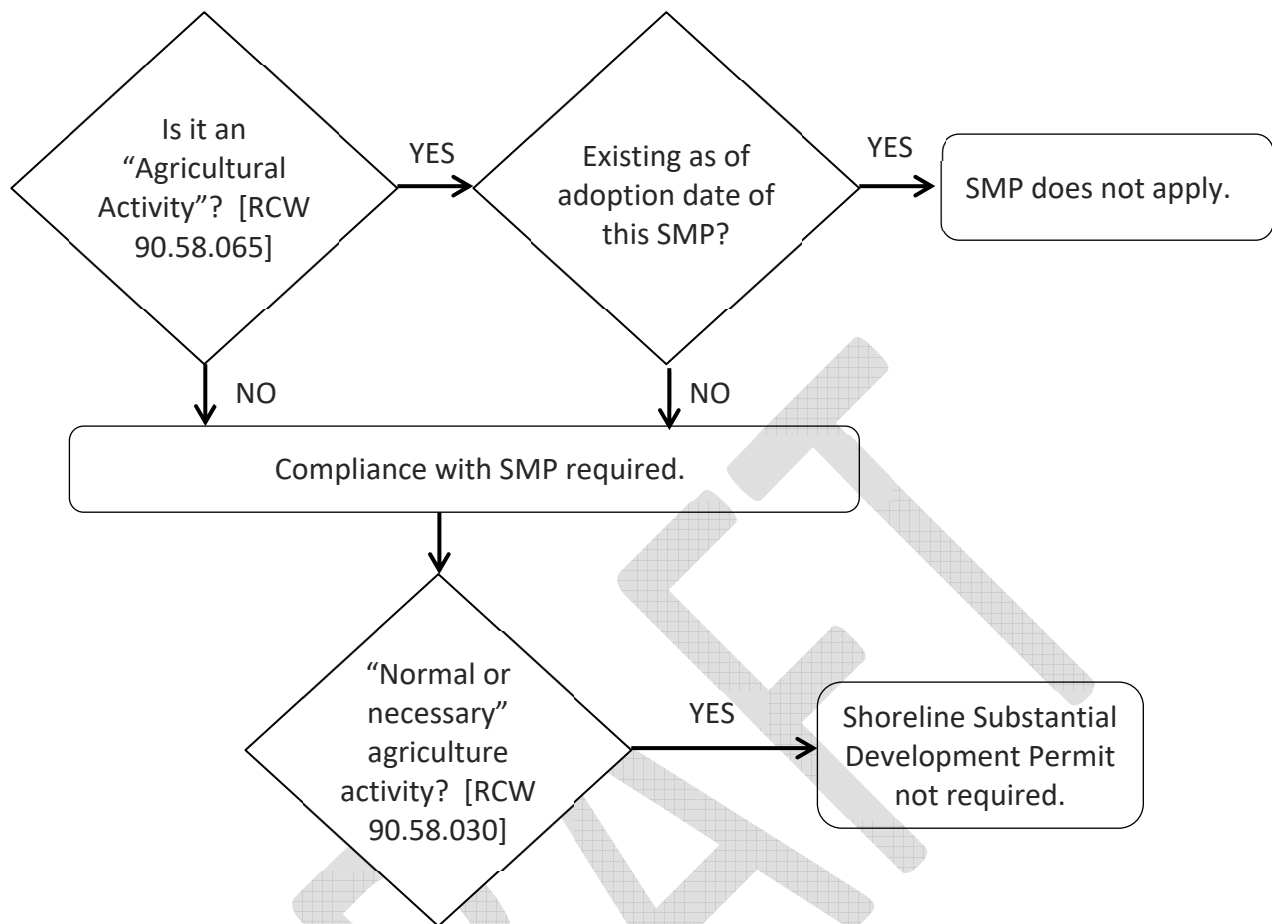
- D. Locate and design new agricultural activities on land not currently in agricultural use to assure no net loss of ecological functions and not to have a significant adverse impact on other resources and values in shoreline jurisdiction.
- E. Maintain a vegetative buffer between agricultural lands and water bodies or wetlands in order to reduce harmful bank erosion and resulting sedimentation, enhance water quality by slowing and filtering runoff, and maintain habitat for fish and wildlife.
- F. Maintain vegetative cover in areas subject to frequent flooding.
- G. Prohibit the storage of toxic or hazardous chemicals used for agricultural practices in shoreline areas subject to flooding.
- H. Permit upland finfish facilities in shoreline jurisdiction as a shoreline conditional use to allow the city and Ecology to review proposals on a case-by-case basis using the most current and best information.
- I. Locate animal feeding operations, retention and storage ponds, feedlot waste storage, and manure storage outside of the shoreline jurisdiction to prevent contamination of water bodies and degradation of the shoreline.
- J. Use appropriate farm management techniques to prevent contamination of nearby water bodies and adverse effects on valuable plant, fish, and animal life from fertilizer, including animal waste, and pesticide use and application.

#### **5.05.02 REGULATIONS**

##### **A. Applicability**

The SMA permits specific agricultural activities to be excepted from regulation under the SMP. Other agricultural practices qualify for a more limited exemption from the requirement to obtain a shoreline substantial development permit.





1. **Excepted Activities.** If an activity qualifies as agricultural activity on agricultural land, as defined in RCW 90.58.065, and the activity existed as of the date of adoption of the SMP, then the provisions of this SMP do not apply and a shoreline permit is not required for that activity.
  - a. Maintaining, repairing, and replacing agricultural facilities, including modernization and replacement of existing facilities.
  - b. In all other cases not specifically excepted under the SMA, all substantive SMP provisions apply. For example, the following activities are subject to the provisions of the SMP:
    - 1) New or expanded agricultural activities on land not meeting the definition of agricultural land;
    - 2) Conversion of non-agricultural lands to agricultural activities;
    - 3) Conversion of agricultural lands to other uses;

- 4) Replacement of agricultural facilities closer to the shoreline than the original facility; or
  - 5) Development on agricultural land that does not meet the definition of agricultural activities.
2. Permit-Exempt Activities. If an activity does not qualify as excepted as described in SMP Section 5.05.02(A)(1) ~~above~~, it may still qualify for an exemption from the requirement to obtain a shoreline Substantial Development Permit under RCW 90.58.030(3)(e) and WAC 173-27-040(2).
- Pursuant to WAC 173-27-040(1), such exemptions are to be construed narrowly, and an exemption from the substantial development permit process is not an exemption from compliance with the SMP. For example, the following construction and practices normal or necessary for farming, irrigation, and ranching activities are permit-exempt:
- a. Agricultural service roads and utilities on shorelands;
  - b. Construction of a barn or similar agricultural structure;
  - c. Construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels;
  - d. Operation, maintenance, or construction of canals, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and stored groundwater from the irrigation of lands; or
  - e. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system.
3. A shoreline substantial development permit is required for all agricultural development not specifically exempted by the provisions of RCW 90.58.030(3)(e)(iv).

**B. *Development Standards for New Agricultural Activities***

1. Agricultural uses and development shall be consistent with the shoreline environment designation in which it is proposed, ensure no net loss of ecological function, and not have a significant adverse impact on other shoreline resources and values.
2. The following uses are prohibited:

- a. The disposal of inorganic farm wastes, chemicals, fertilizers, and associated containers and equipment, including junk vehicles and equipment;
  - b. Disposal of debris and brush;
  - c. The application of agricultural fertilizers, including animal waste disposal, herbicides, and pesticides shall be prohibited within 100' landward of the OHWM;
  - d. Aerial spraying of fertilizers, chemical pesticides or herbicides over water bodies, wetland, within a floodway, and within 200 feet landward of the OHWM is prohibited; and
  - e. The storage of toxic or hazardous chemicals used for agricultural practices in shoreline areas subject to flooding.
3. Agricultural practices must prevent and control erosion of soils and bank materials within shoreline areas.
  4. Pesticides and herbicides must be handled, applied, and disposed of in accordance with provisions of the Washington Pesticide Application Act (Chapter 17.21 RCW) and the Washington Pesticide Control Act (Chapter 15.58 RCW).
  5. Feedlot operations and animal waste retention and storage areas must not be located within shoreline jurisdiction unless direct manure runoff is prevented.
  6. Within 100-year floodplain boundaries all liquid manure storage shall be diked and, if feasible, adequately covered. No storage lagoons are allowed in the floodway, and top of lagoon dikes shall be one foot above 100-year flood elevation.
  7. A buffer of natural or planted permanent native vegetation shall be maintained between areas used for crops or intensive grazing and adjacent waters and wetlands. The plant composition and width of the buffer shall be based on site conditions, including type of vegetation, soils types, drainage patterns and slope, but shall not be less than the buffers established in SMP Table 4-1: Shoreline Buffers. The buffer shall be sufficient to retard surface runoff, reduce siltation, and provide adequate riparian habitat. New or redeveloped agricultural sites shall submit a map to the Shoreline Administrator to identify buffer areas.
  8. Agricultural-commercial uses (such as roadside stands, pumpkin patches, etc.) are allowed consistent with agricultural uses where indicated in SMP Table 5-1: Permitted, Conditional, and Prohibited Uses and shall be consistent with commercial use standards in SMP Section 5.08.

9. Conversion of agricultural land to non-agricultural uses shall be consistent with the shoreline environment designation in which it is proposed. Conversions shall be subject to the general regulations and those use-specific regulations applicable to the proposed use, and shall not result in a net loss of shoreline ecological functions.
10. Upland finfish facilities in shoreline jurisdiction require a shoreline conditional use permit. Review of the application by the Shoreline Administrator will include consideration of the following:
  - a. Specific site conditions;
  - b. Current and locally applicable science;
  - c. Presence of critical freshwater habitats and priority species ;
  - d. Potential use conflicts;
  - e. Cumulative impacts; and
  - f. Potential mitigation and monitoring requirements

## **5.06 AQUACULTURE**

Aquaculture is the culture or farming of fish, shellfish, or other aquatic plants and animals, excluding upland finfish facilities, which are regulated in SMP Section 5.05. Aquaculture is a preferred use in the shoreline jurisdiction. Locations for aquaculture are relatively restricted due to requirements for water quality, temperature, flows, oxygen content, and adjacent land uses.

### **5.06.01 POLICIES**

- A. Design, locate, and operate aquaculture uses in a manner that supports the long-term beneficial use of the shoreline and protects and maintains shoreline ecological functions and processes.
- B. Do not allow aquaculture in locations that would result in a net loss of shoreline ecological functions, adversely affect the quality or extent of habitat for native species, or interfere with navigation or other water-dependent uses.
- C. Minimize the potential of cumulative adverse impacts from aquaculture on water quality, sediment quality, benthic and pelagic organisms, wild fish populations, or other federal Endangered Species Act (ESA) listed species because of antibiotic resistant bacteria, escapement of non-native species, and/or other factors.

- D. Give latitude when implementing regulations for this use, because the technology associated with some forms of aquaculture is in formative stages.
- E. Minimize potential aesthetic impacts associated with aquaculture uses through the consideration of view impacts on surrounding properties and public access points.
- F. Protect legally established aquaculture enterprises from incompatible uses that may seek to locate nearby and uses or developments that have a high probability of damaging or destroying the aquaculture operations.
- G. Recognize limited availability of suitable locations for aquaculture uses because of specific requirements related to water quality, temperature, oxygen content, currents, adjacent land use, wind protection and navigation.

#### **5.06.02 REGULATIONS**

##### **A. Applicability**

1. Review as part of this SMP is required for all new aquaculture facilities or farms, as well as projects that seek to expand an aquaculture use beyond the area for which a previous permit was issued.
2. Ongoing maintenance, harvest, replanting, or changing of culture techniques or species do not require review under the SMP, unless the cultivation of the new species or the use of a new culture technique has the potential for significant adverse environmental impacts.
3. A written statement of exemption in accordance with SMP Section 7.04.04 is required for all aquaculture activities that are reviewed as part of this SMP, but that do not require a shoreline substantial development permit, conditional use permit, or shoreline variance.

##### **B. Location**

1. Water-dependent portions of aquaculture facilities and their necessary accessories may be located waterward of the OHWM in the Aquatic shoreline environment or in the shoreline buffer. Water intakes and discharge structures, water and power conveyances, and fish collection and discharge structures are considered water-dependent or accessory to water-dependent facilities.
2. All other elements of aquaculture facilities shall be located outside the shoreline buffer, unless those facilities are deemed water-related and proximity to the water-dependent project elements is critical to implementation of the facility's purpose.

3. Sites shall be selected to avoid or minimize alteration of the shoreline. Applicants for aquaculture operations shall be required to demonstrate that the location of the proposed facilities avoids and minimizes impacts to on-site critical areas and habitats to the maximum extent feasible, and limits impacts on existing public access points, navigable waters, and other water-dependent uses.
4. Aquaculture facilities shall be designed and located so as not to spread disease to native aquatic life, establish new non-native species that cause significant ecological impacts, or significantly affect the aesthetic qualities of the shoreline.

**C. General Requirements**

1. Aquaculture that involves substantial aquatic substrate modification or sedimentation through dredging, trenching, digging, or other mechanisms, shall not be permitted in areas where the proposal would have long-term adverse impacts on the strength or viability of native stocks. The degree of proposed substrate modification shall be the minimum necessary for feasible aquaculture operations at the site.
2. New aquaculture proposals shall comply with mitigation sequence in SMP Section 4.03. Aquaculture uses that would have a significant adverse impact on natural shoreline processes, result in a net loss of shoreline ecological functions, interfere with navigation, or conflict with other water-dependent uses are prohibited.
3. New aquatic species that were not previously found or cultivated in the shoreline jurisdiction shall not be introduced into fresh waters without prior written approval of the WDFW and the Washington State Department of Health.
4. Permanent water-dependent instream facilities must be properly anchored to prevent channel migration, erosion or a safety hazard, and must evaluate and mitigate potential adverse effects on adjacent properties upstream and downstream.
5. No processing of aquaculture products, except for the sorting or culling of the cultured organism and the washing or removal of surface materials or organisms after harvest, shall occur in or over the water unless specifically approved by permit. All other processing facilities shall be located on land. If within shoreline jurisdiction, such facilities shall be subject to the applicable policies and regulations of SMP Section 5.06 and SMP Section 5.10.

6. Aquaculture structures and equipment shall be of sound construction and shall be so maintained. Abandoned or unsafe structures or equipment shall be removed or repaired promptly by the owner.
7. Aquacultural uses shall comply with all applicable noise, air, and water quality standards. All projects shall be designed, operated, and maintained to minimize odor and noise.
8. Aquacultural uses shall be restricted to reasonable hours or days of operation when necessary to minimize substantial, adverse impacts from noise, light, or glare on nearby residents, other sensitive uses, or critical habitat.
9. Aquaculture facilities shall not substantially degrade the aesthetic qualities of the shoreline. Aquaculture structures and equipment, except navigation aids, shall be designed, operated, and maintained to blend into their surroundings.

***D. Application Requirements***

1. Commercial aquaculture shall conform to all applicable state and federal regulations. The city may accept application documentation required by other permitting agencies for new and expanded aquaculture uses and development to minimize redundancy in permit application requirements.
2. Additional studies or information may be required by the city, which may include but is not limited to monitoring and adaptive management plans and information on the presence of and potential impacts to, including ecological and visual impacts, existing shoreline or water conditions and/or uses, vegetation and overwater structures.
3. The city shall provide public notice to affected tribes and all property owners within 300 feet of the proposed project boundary.

## **5.07 BOATING AND WATER ACCESS FACILITIES**

This section applies to all in-water and overwater structures and uses that facilitate water access or the launching or mooring of vessels, including all public and private docks, piers, launch ramps, and recreational floats. It does not apply to long-term commercial boat storage located landward of the OHWM, which is regulated in SMP Section 5.08.

### **5.07.01    POLICIES**

- A. Encourage the construction and operation of boating and water access facilities to allow public access for enjoyment of city shorelines.
- B. Site, design, construct, and operate boating and water access facilities to incorporate best management practices (BMPs) and ensure no net loss of shoreline ecological functions.
- C. Balance the encouragement of public access and the protection of ecological functions in the expansion of existing or construction of new boating and water access facilities.
- D. Consider regional and local needs when determining the location of boating and water access facilities, identifying potential ideal sites near planned high-use areas.
- E. Minimize the amount of shoreline modification, in-water structures, overwater cover, changes to water circulation and quality, and effects to fish and wildlife habitat from boating and water access facilities. The length, width, and height of overwater structures should be no greater than that required for safety and feasibility for the primary use.
- F. Ensure that boating and water access facilities do not impact the navigability of the waterbody or adversely affect other water-dependent uses.
- G. Allow the construction of new docks and piers only for public access or water-dependent uses.
- H. Allow recreational floats only where they support public or private recreational uses.
- I. Minimize impacts to adjacent uses and users, such as aesthetic, lighting, or noise-related impacts, impacts to public visual access to the shoreline, or offsite impacts caused by public access to the shoreline. If impact avoidance is not feasible, require mitigation.
- J. Limit the lighting of boating and water access facilities to the minimum extent necessary.

### **5.07.02    REGULATIONS**

#### **A. Location Standards**

1. New boating and access facilities shall maintain the rights of navigation on the waters of the state.
2. Boating and other water access facilities shall be sited and designed to ensure no net loss of shoreline ecological functions.



3. Boating and other water access facilities shall meet Washington State Department of Natural Resources (WDNR) requirements and other state guidance if located in or over state-owned aquatic lands.
4. Boating and water access facilities shall be located where:
  - a. There is adequate water mixing and flushing;
  - b. Such facilities will not adversely affect flood channel capacity or otherwise create a flood hazard;
  - c. Water depths are adequate to minimize spoil disposal, filling, and other channel maintenance activities; and
  - d. Water depths are adequate to prevent the facility from grounding out at the lowest low water or the facility includes stoppers to prevent grounding.
5. Boating and water access facilities shall not be located:
  - a. Along braided or meandering river channels where the channel is subject to change in alignment;
  - b. On point bars or other accretion beaches;
  - c. Where new dredging or new ongoing maintenance dredging will be required;
  - d. In areas with important habitat for aquatic species or where wave action caused by boating use would increase bank erosion rates; or
  - e. In areas where it would be incompatible with the need to protect the public health, safety, and welfare.
6. Boating and water access facilities shall be designed to ensure that lawfully existing or planned public shoreline access is not blocked, obstructed, or made dangerous.
7. Major boating and water access facilities shall be located only where adequate utility services are available or can be provided concurrently.

***B. General Design Standards for Boating and Water Access Facilities***

1. All boating and water access facilities shall be designed and operated to avoid or minimize impacts. Unavoidable impacts must be mitigated consistent with the mitigation sequence in SMP Section 4.03 and the regulations for critical areas in SMP Section 4.04.
2. All boating and water access facilities and shoreline modifications to support these uses shall be the minimum size necessary to accommodate the anticipated demand for the facility.

3. Boating and water access facilities shall be designed to provide physical and/or visual public access to the shoreline for as many water-oriented recreational uses as feasible, commensurate with the scale of the proposal.
4. Project applicants shall comply with all city, state, and federal policies and regulations, including all applicable health, safety, and welfare requirements associated with the primary or accessory use. These standards include but are not limited to WDNR and WDFW standards and regulations including Hydraulic Code Rules (Chapter 220-660 WAC).
5. All boating or water access facilities shall be constructed and maintained in a safe condition. Abandoned or unsafe boating or water access facilities shall be removed or repaired promptly by the owner.
6. Boating or water access facilities shall be made out of materials that have been approved by applicable state and federal agencies.
7. Lighting associated with boating or water access facilities shall be shielded to avoid causing glare on adjacent properties or waterbodies. Illumination levels shall be the minimum necessary for safety.
8. Boating or water access facilities must be limited to day moorage only. No live-aboard vessels or floating homes are allowed.
9. Upland boat storage may be allowed within shoreline jurisdiction provided impermeable surface limitations and other standards are met, mitigation sequencing is followed, and impacts can be mitigated to achieve no net loss.

**C. *Supplementary Standards for Boat Ramps and Launches***

1. New boat ramps and launches shall follow BMPs and the standards in WAC 220-660-150 to avoid impacts to shoreline ecological functions, such as effects to nearshore habitat.
2. Boat ramps and launches may be permitted for recreational uses and developments with more than four residential units subject to SMP Table 5-1: Permitted, Conditional, and Prohibited Uses.
3. Boat ramps and launches shall be sited to minimize impacts to aquatic and upland wildlife habitats, native emergent vegetation, fluvial processes, water quality, and navigation. All facilities shall be located and designed using mitigation sequencing.
4. Boat ramps and launches shall be located where water depths are adequate to eliminate or minimize the need for dredging, filling, or other maintenance activities.

5. The applicant shall demonstrate that the proposed length of a boat ramp or launch is the minimum necessary to launch the intended craft safely.
6. Boat ramp and launch entrances shall be located on existing grade, avoiding landfill where feasible, and shall not obstruct access to and along the shoreline.
7. Boat ramps and launches shall be located where access streets are adequate to handle the traffic load generated by the facility and shall be designed to minimize other circulation and access conflicts. Designs which would result in the backing of trailers on public roads shall be prohibited.
8. Boat ramps and launches shall be permitted on accretion shoreforms, provided any necessary grading is not harmful to affected resources and any accessory facilities are located out of the floodway. Parking and shuttle areas shall not be located on scarce accretion shoreforms, which have high value for general shoreline recreation.
9. Boat ramps and launches shall be designed and shall be constructed using methods and technology recognized and approved by state and federal resource agencies as BMPs.

***D. Supplementary Standards for Docks and Piers***

1. New docks and piers shall follow BMPs and the standards in WAC 220-660-140 to avoid impacts to shoreline ecological functions, such as effects to nearshore habitat.
2. New docks and piers shall be allowed only for water-dependent public access uses. Docks and piers shall meet the following standards:
  - a. Docks and piers serving private developments or single-family residences are prohibited.
  - b. New docks and piers shall be permitted only when they are intended for a water-dependent public use.
3. The maximum dimensions of a dock or pier shall meet the following development standards. An explanation of why the dock or pier length was chosen shall be submitted with the application.
  - a. Docks and piers may be up to six feet in width and shall not exceed 100 feet beyond the OHWM.
  - b. Docks and piers shall be set back a minimum of ten feet from side property lines.
  - c. Proposed docks and piers that do not comply with the dimensional standards above may only be approved if they obtain a shoreline variance. Pursuant to WAC 173-27-040(2)(b), any existing legal nonconforming dock or pier may be

repaired or restored to its original size, dimension, and location without the need for a shoreline variance, if it is below the replacement thresholds found in SMP Section 5.07.02(F)(1). Projects undertaken pursuant to this section must be permitted within two years of removal of the pre-existing, nonconforming structure.

***E. Supplementary Standards for Recreational Floats***

1. New recreational floats shall follow BMPs and the standards in WAC 220-660-140 to avoid impacts to shoreline ecological functions, such as effects to nearshore habitat
2. New recreational floats shall not exceed 250 square feet in size.
3. New public recreational floats may be permitted as specified in SMP Table 5-1: Permitted, Conditional, and Prohibited Uses, so long as the following requirements are met:
  - a. The recreational float complies with all requirements established by state and federal agencies, and other agencies that have jurisdiction.
  - b. The recreational float is located as close to the shore as feasible and no farther waterward than the existing floats and established swimming areas.
4. Recreational floats shall be designed and intended for swimming or other non-motorized uses.
5. Recreational floats must be built so that the deck surface is one foot above the water's surface.
6. Retrieval lines for recreational floats shall not float at or near the surface of the water.

***F. Existing Uses and Structures***

1. Replacement

If the replacement of 50% or more of the boating and water access facility occurs as part of a project, it is considered a new facility and must be designed consistent with any applicable standards for new boating and water access facilities.

2. Modification or Enlargement

- a. Applicants must demonstrate that there is a need for modification or enlargement due to increased or changed use or demand, safety concerns, or inadequate depth of water.

- b. Enlarged portions of boating and water access facilities must comply with any applicable design and mitigation standards for new facilities.
- 3. Repair
  - a. Repairs to existing legally established boating and water access facilities that fall below the standards identified in SMP Section 5.07.02(F)(1) are permitted consistent with all other applicable codes and regulations.
  - b. All repairs must utilize any material standards specified for new facilities.

#### **G. Mitigation**

- 1. New or expanded boating and water access facilities should follow the mitigation sequence in SMP Section 4.03.
- 2. Compensatory mitigation proposals must provide mitigation at a minimum 1:1 ratio, by area, of new overwater cover to mitigation action using one or more of the potential mitigation measures listed below. The ratio should be increased if the measure will take more than one year to provide equivalent function or if the measure does not have a high success rate, as determined by a qualified professional.
- 3. For new development and expansion of existing boating and water access facilities, appropriate compensatory mitigation may include items including but not limited to, one or more of the following measures:
  - a. Removal of any legal existing overwater or in-water structures that are not the subject of the application or otherwise required to be removed;
  - b. Removal or ecological improvement of hardened shoreline, including existing launch ramps or structural shoreline stabilization;
  - c. Removal of man-made debris waterward of the OHWM or other material detrimental to ecological functions and ecosystem-wide processes; or
  - d. Planting of native vegetation along the shoreline immediately landward of the OHWM consisting of a density and composition of trees and shrubs typically found in undisturbed areas adjacent to the subject waterbody.

#### **H. Application Requirements**

In addition to the general application requirements, the following submittals, as applicable, are necessary for all new or expanded boating and water access facilities:

1. A description of the proposed boating and water access facility, including its size, location, design, and any shoreline stabilization or other modification measures;
2. The ownership of the property and aquatic lands;
3. Habitat surveys and critical area studies consistent with SMP Section 4.04;
4. Assessment of potential impacts to existing ecological processes, including but not limited to sediment transport, hydrologic patterns, and vegetation disturbance;
5. A mitigation plan for unavoidable adverse impacts to ecological functions or processes pursuant to SMP Section 4.04;
6. A slope bathymetry map when deemed beneficial by the Shoreline Administrator; and
7. An assessment of existing water-dependent uses in the vicinity and a documentation of the potential impacts to those uses and mitigating measures.

## **5.08 COMMERCIAL DEVELOPMENT**

Commercial uses and developments are those uses that are involved in wholesale and retail trade or business activities. Many commercial developments are intensive users of space because of extensive floor areas and facilities, such as parking, necessary to service them.

### **5.08.01 POLICIES**

- A. Limit new commercial development located in shoreline areas to those that are water-oriented uses and activities as defined herein. Encourage commercial development in descending order of preference as follows:
  1. Water-dependent uses;
  2. Water-related uses; and
  3. Water-enjoyment uses.
- B. Encourage new commercial development along shorelines to locate in areas where current commercial uses exist, if the locations are suitable for such use.
- C. Encourage non-water-oriented commercial development to locate outside of shoreline jurisdiction.
- D. Design new commercial development to protect health, safety, and welfare; provide public access where feasible; and ensure no net loss of shoreline ecological functions.

- E. Minimize the adverse impacts that m\_\_\_\_\_ay result from commercial buildings, such as blocked views, aesthetic impacts, traffic, or noise.
- F. Public access should be required where commercial uses are proposed on land in public ownership.

#### **5.08.02 REGULATIONS**

- A. Commercial development shall not result in a net loss of shoreline ecological functions ~~or nor~~ have significant negative impacts to shoreline uses, resources, and values such as navigation, recreation, and public access.
- B. New non-water-oriented commercial development is prohibited in shoreline jurisdiction unless it meets one of the following criteria:
  - 1. The commercial use is part of a mixed-use project that includes a water-dependent, water-related, or water-enjoyment use and provides a significant public benefit such as providing public access or ecological restoration;
  - 2. Navigability is severely limited at that location and the commercial use provides a significant public benefit such as public access or ecological restoration; or
  - 3. The commercial use is physically separated from the shoreline by another property, railroad, or public right of way.
- C. Water-dependent commercial uses and development shall be given preference over water-related and water-enjoyment commercial uses. Water-oriented uses shall be given preference over non-water oriented uses. The applicant shall demonstrate that the proposed design, layout, and operation of commercial uses meet the definitions of water-dependent, water-related or water-enjoyment.
- D. Non-water-dependent commercial uses over water are prohibited in shoreline jurisdiction.
- E. All loading and service areas shall be located on the upland side of the commercial activity or provisions must be made to set back and screen the loading and service area from the shoreline and water body.
- F. The Shoreline Administrator shall require the following information in ~~its~~ his or her review of commercial development proposals:
  - 1. Nature of the commercial activity, including a breakdown of specific components;
  - 2. Need for shoreline location;
  - 3. Special considerations for enhancing the relationship of the activity to the shoreline;

4. Provisions for public visual and physical access to the shoreline; and
5. Provisions to ensure that the development will not cause adverse negative environmental impacts.

## **5.09 FOREST PRACTICES**

Forest management practices are those methods used for the protection, production, and harvesting of timber. The FPA (Chapter 76.09 RCW) is the basis of management of commercial forest uses within shoreline jurisdiction. The WDNR regulates forest practices including those within shoreline jurisdiction.

### **5.09.01 POLICIES**

- A. Effectively balance timber harvesting with the preservation of shoreline ecological functions, public access to shorelines, and other shoreline goals.
- B. Ensure state and federal water quality standards are maintained while conducting timber-harvesting practices in shoreline jurisdiction.
- C. Prevent the accumulation of slash and other debris in waterways during logging and thinning operations.
- D. Ensure that timber harvesting in shorelines of statewide significance does not exceed the limitations established in RCW 90.58.150, except in cases where selective logging is found to be ecologically detrimental or inadequate for the preparation of land for other uses authorized in the SMP.
- E. Ensure the maintenance of shoreline buffers while conducting logging within shoreline jurisdiction.
- F. Promote proper road, trail, and bridge design, location and construction, and maintenance practices to prevent development of roads and structures that would adversely affect shoreline resources.
- G. Ensure that forest practice conversions to non-forestry uses do not result in a net loss of ecological functions or significant adverse impacts to other shoreline uses, resources, and values such as navigation, recreation, and public access.



### **5.09.02 REGULATIONS**

- A. Aside from timber cutting, all forest practices, including forest conversions, building roads, trails, and bridges, and placing culverts in the shoreline jurisdiction, shall comply with the applicable policies and provisions of the FPA, the SMP, Chapter 76.09 RCW as amended, and Chapter 222 WAC as administered by the city. A forest practice that only involves timber cutting is not a development under the Shoreline Management Act and does not require a shoreline substantial development permit or a shoreline exemption.
- B. Preparatory work associated with the conversion of land to non-forest practices or developments shall:
  - 1. Limit the conversion to the minimum necessary to accomplish the purpose and intent of the SMP on the subject property.
  - 2. Ensure no net loss of shoreline ecological functions or significant adverse impacts to shoreline uses, resources, and values provided for in RCW 90.58.020 such as navigation, recreation, and public access.
  - 3. Demonstrate that conversion practices are conducted in a manner consistent with the shoreline environment designation in which they are located.
- C. Within shoreline jurisdiction along shorelines of statewide significance, only selective commercial timber cutting may be permitted so that no more than 30% of the merchantable timber may be harvested in any ten-year period.
  - 1. Other timber harvesting methods may be permitted with a shoreline conditional use permit in those limited instances where the topography, soil conditions, or silviculture practices necessary for regeneration render selective logging ecologically detrimental.
  - 2. Clear cutting of timber solely incidental to the conversion and preparation of land for uses authorized in the SMP may be permitted.

## **5.10 INDUSTRIAL DEVELOPMENT**

Industrial development encompasses manufacturing, production, processing, and storage of raw materials and finished products.

#### **5.10.01     *POLICIES***

- A. Ensure a sufficient amount of land is designated to accommodate water-dependent or water-related industry. Water dependent industrial uses are a priority over non-water dependent industrial uses.
- B. Locate, design, and construct industrial development in a manner that assures no net loss of shoreline ecological functions and does not have significant adverse impacts to other shoreline resources and values.
- C. Encourage new industrial development to locate in areas where environmental cleanup and restoration can be incorporated in the project.
- D. Encourage public access to the shoreline as part of industrial developments where feasible.

#### **5.10.02     *REGULATIONS***

- A. Water-dependent industrial uses and development shall be given preference over water-related and nonwater-oriented industrial uses. Water-related uses shall be given preference over non-water oriented uses. The applicant shall demonstrate that the proposed design, layout, and operation of industrial uses meet the definitions of water-dependent or water-related uses.
- B. Non-water-oriented industrial uses are prohibited in shoreline jurisdiction unless they meet one of the following criteria:
  - 1. It is part of a mixed-use project that includes a water-dependent, water-related, or water-enjoyment use and provides a significant public benefit such as providing public access or ecological restoration;
  - 2. Navigability is severely limited on the site and the industrial use provides a significant public benefit of providing public access or ecological restoration; or
  - 3. The site is physically separated from the shoreline by another property or public right of way.
- C. Public access should be incorporated where feasible. Public access shall be required where feasible for new industrial development on publicly owned land.
- D. Industrial development shall not result in a net loss of shoreline ecological functions or have significant negative impacts to shoreline use, resources, and values such as navigation, recreation, and public access.

- E. All developments shall include the capability to contain and clean up spills, discharges, or pollutants, and shall be responsible for any pollution that they cause.
- F. Procedures for handling toxic materials in shoreline areas shall prevent their entering the air or water.
- G. Accessory development, which does not require a shoreline location, shall be located upland of the water-dependent portions of the development and set back from the OHWM as set forth in the shoreline environment designation.
- H. All new or expanded upland industrial development shall be set back and buffered from adjacent shoreline properties, ~~which are~~ used for non-industrial purposes. Buffers shall be of adequate width, height, and plant and soil composition to protect shorelines and such other properties from visual or noise intrusion, minimize erosion, and protect water quality. New or expanded industrial development shall be set back and buffered from the shoreline except those water-dependent portions of the development, which require direct access to the water, or shoreline, and any adverse impacts ~~are~~ shall be minimized.
- I. Buffers shall not be used for storage of industrial equipment or materials, or for waste disposal, but may be used for outdoor recreation if consistent with public access and other provisions of the SMP.

## **5.11 MINING**

Mining is the removal of sand, soil, gravel, minerals, and other materials for commercial and other uses. Mining in the shoreline can alter the natural character, resources, and ecology of shorelines.

### **5.11.01 POLICIES**

- A. Design and conduct new mining and associated uses to result in no net loss of shoreline ecological functions and processes.
- B. Do not locate new mining on shorelines where unavoidable adverse impacts on other users or resources taken together, equal or outweigh the benefits from mining.
- C. Minimize the impacts of mining, such as aesthetics, dust, noise, etc., on existing public access points and water-dependent or enjoyment uses.
- D. Begin land reclamation immediately after the termination of mining operations. Use of reclaimed mine property must be consistent with the SMP and provide appropriate

ecological functions consistent with the location and Washington State Surface Mining Reclamation Act requirements.

#### **5.11.02 REGULATIONS**

- A. Application for mining permits within shoreline jurisdiction shall be accompanied by operation plans, reclamation plans, and an analysis of environmental impacts sufficient to make a determination as to whether the project will result in net loss of shoreline ecological functions and processes during the course of mining and after reclamation.
- B. Mining operations and subsequent uses shall not cause permanent impairment or loss of floodwater storage, wetlands, or other stream corridor features and habitats. Mitigation shall provide for the replacement of impacted functions at the ratio or rate necessary to achieve no net loss of shoreline ecological function.
- C. The evaluation of impacts of mining shall be integrated with relevant environment review requirements of the SEPA (Chapter 43.21 RCW) and SEPA rules (Chapter 197-11 WAC).
- D. New mining waterward of the OHWM of a shoreline waterbody shall not be permitted unless allowed by WAC 173-26-241(3)(h)(ii)(D).
- E. In considering renewal, extension, or reauthorization of mining waterward of the OHWM in locations where mining was previously conducted, compliance with WAC 173-26-241(3)(h)(ii)(D) shall be required where no such review has previously been conducted. Where there has been a prior review of the mining activities, the Shoreline Administrator shall review the previous determinations to assure compliance under current site conditions.
- F. Mining within any CMZ that is within shoreline jurisdiction shall require a shoreline conditional use permit.
- G. For mining proposals that meet the definition of surface mine in RCW 78.44.031, the proposal shall be consistent with WDNR Surface Mine Reclamation standards found in Chapter 332-18 WAC and Chapter 78.44 RCW. A reclamation plan that complies with the format and standards of Chapter 78.44 RCW shall be included with a shoreline permit application.
- H. A minimum 100-foot buffer of undisturbed soils and native vegetation shall be maintained and/or planted between the extraction site, including all accessory facilities, and adjacent properties and abutting bodies of water or wetlands. If vegetative screening is not feasible, the city may require artificial ~~screen~~screening or fencing to suit the site, operations, and shoreline area.

- I. In reviewing the permit application and reclamation plan, the Shoreline Administrator shall determine whether the plan is consistent with the SMP and other applicable city regulations. After the applicant has been given reasonable opportunity to revise the plan, an inconsistent reclamation plan shall constitute sufficient grounds for denial of a shoreline permit.
- J. Subsequent use of reclaimed sites shall be consistent with the shoreline environment designation and the use criteria provisions of the SMP.

## **5.12 PARKING**

Parking is the temporary storage of automobiles or other motorized vehicles. The following provisions apply to parking that is allowed as an accessory to a permitted shoreline use. Stand ~~along~~alone parking facilities are prohibited in shoreline jurisdiction.

### **5.12.01 POLICIES**

- A. Locate parking outside of shoreline jurisdiction whenever practical.
- B. Design parking to minimize adverse impacts including those related to stormwater run-off, water quality, visual qualities, public access, vegetation, and habitat.
- C. Plan parking to achieve optimum use, so that parking could potentially serve more than one use.

### **5.12.02 REGULATIONS**

- A. Parking facilities as a primary use are prohibited in shoreline jurisdiction.
- B. Parking facilities serving individual buildings in shoreline jurisdiction shall be located upland from the principal structure being served, except in the following cases:
  1. When parking facilities are within or beneath the structure and adequately screened.
  2. Where the existing configuration of a commercial or industrial building has parking situated between the structure and the shoreline. No expansion of the parking area towards the water shall be allowed.
  3. When parking to address specific Americans with Disabilities Act requirements is required and cannot be placed in another location.

- C. ~~Exterior-Non-structured~~ parking facilities (surface parking lots) shall be designed and landscaped to minimize adverse impacts upon adjacent and abutting properties shoreline jurisdiction.
- D. Existing parking areas that are of a non-paved surface, such as gravel, may be paved provided such facilities comply with all applicable water quality, stormwater, landscaping, and other applicable requirements and regulations. Paved parking areas shall be designed to incorporate LID practices, such as permeable surfaces and bioswales, to the extent feasible.

## 5.13 RECREATIONAL DEVELOPMENT

Recreational development includes commercial and public facilities that provide recreational opportunities to the public. This section applies to public and private recreational uses and development, accessory recreational uses and development, ~~and but~~ excludes private recreational uses ~~associated with established for~~ residential development (such as a pool for a multi-family building).

### 5.13.01 POLICIES

- A. Prevent recreational development from resulting in a net loss of shoreline ecological functions.
- B. Encourage the development of recreational facilities that allow the public to access and enjoy shorelines.
- C. Encourage preservation of scenic views and vistas.
- D. Create new public access points to shorelines on public lands and promote the ongoing maintenance of shoreline public access.
- E. Encourage the linkage of shoreline parks, recreation area, and public access points as linear systems, such as hiking paths, bicycle paths, easements, or scenic drives.
- F. Protect the rights of private property owners, and help to minimize adverse the impacts on private land associated with neighboring public access points.
- G. Related the location and design of shoreline recreational developments to local population characteristics and special activity demands. Acquisition priorities should consider transit access and access for the physically impaired, where planned or available.

- H. Encourage a variety of compatible recreational experiences and activities to satisfy diverse recreational needs.

### **5.13.02 REGULATIONS**

- A. Recreational uses and facilities proposed within shoreline jurisdiction shall be primarily designed to promote access, enjoyment, and use of the water and shorelines of the state. Non-water-related recreational uses shall predominantly be located outside of shoreline jurisdiction.
- B. Recreational development shall be located, designed, and constructed in a manner that assures no net loss of shoreline ecological functions.
- C. Recreational development shall maintain, enhance, or restore desirable shoreline features including unique and fragile areas, scenic views, and aesthetic values.
- D. State and local health agencies ~~that have~~ having regulatory authority over recreation facilities shall be consulted by ~~local governments~~ the city when issuing permits.
- E. Most recreational facilities are prohibited in critical areas and shall be located outside ~~officially~~ mapped floodways. Wildlife viewing structures and permeable trails or raised boardwalks are allowed within riparian and wetland buffers in accordance with the mitigation sequence in SMP Section 4.03 and critical area regulations in SMP Section 4.04.
- F. For recreation developments that require the use of fertilizers, pesticides, or other toxic chemicals applicants shall submit plans demonstrating that the BMPs used to prevent these chemical applications and resultant leachate from entering adjacent water bodies. Buffer strips and ~~if practical~~ shade trees if practical shall be included in the development. The city shall determine the maximum width necessary for buffer strips. In no case shall the buffer strip be ~~less~~ fewer than 25 feet wide.
- G. Where recreation facilities include overwater structures designed for public access to shorelines, such as public viewing or fishing platforms, the structures shall comply with the relevant requirements of SMP Section 5.07.
- H. Signs indicating the public's right of access to shoreline areas shall be installed and maintained in a conspicuous location at the point of access and entrance.
- I. Design of Rrecreational facilities shall ~~make~~ include adequate provisions, such as screening, buffer strips, fences, and signs, to minimize impacts to adjacent private properties.



- J. Recreational development proposals shall include facilities for water supply, wastewater, and garbage disposal in conformance with city standards.
- K. In addition to these standards, commercial recreational development shall be consistent with the provisions for commercial development in SMP Section 5.08.

## **5.14 RESIDENTIAL DEVELOPMENT**

Residential development includes single-family residences, multifamily development, and appurtenant structures and uses, (including garages, sheds, fences, necessary utilities, and driveways) as well as the creation of new residential lots through land division. Single-family residences are a priority use within shoreline jurisdiction when developed in a manner consistent with no net loss of environmental functions.

The construction of a single-family residence by an owner, lessee, or contract purchaser for their own use or for the use of their family that does not exceed a height of 35 feet above average grade level may be exempt from the requirement for a shoreline substantial development permit but must be consistent with all applicable policies and regulations in the SMP. Refer to the application and interpretation of exemptions in WAC 173-27-040(2)(g).

### **5.14.01 POLICIES**

- A. Develop residential uses in a manner that ensures no net loss of shoreline ecological functions and is consistent with provisions relating to shoreline buffer areas, shoreline armoring, vegetation conservation requirements, on-site sewage system standards, and aesthetic enhancement.
- B. Control residential uses and development in areas subject to environmental limitations, such as wetlands, stream buffers, and areas of frequent flooding.
- C. Set back residential development and uses from steep slopes and shorelines vulnerable to erosion so that structural shoreline stabilization or flood hazard reduction measures are not required to protect such structures.
- D. Permit residential development only where there are adequate provisions for utilities, circulation, and access.
- E. Prohibit new overwater residential development.
- F. Encourage public access to the shoreline as part of all new residential development, and require public access in accordance with SMP Section 4.06 for new multifamily residential development and subdivisions that include more than four parcels.



- G. Consider single-family residences a priority use in planning for uses in shoreline jurisdiction when developed with no net loss of environmental functions.

#### **5.14.02 REGULATIONS**

- A. Residential uses and development may be allowed in conformance with the development requirements of the city and the provisions of the SMP.
- B. Residential subdivisions shall:
1. Comply with all applicable subdivision, critical areas, and zoning regulations.
  2. Include facilities for water supply, wastewater, stormwater, solid waste, access, utilities, and other support facilities in conformance with city standards.
  3. Be designed, configured, and developed to:
    - a. Assure that no net loss of ecological functions will result from the initial division of the land, at full build-out of all the lots, and throughout all phases of development.
    - b. Avoid critical areas and their buffers in accordance with SMP Section 4.03.
    - c. Prevent the need for new hard or soft shoreline stabilization or flood hazard reduction measures in accordance with SMP Section 6.07 and SMP Section 4.05.
    - d. Minimize physical impacts to vegetation and other natural features within the shoreline.
    - e. Assure that lots in proposed subdivisions are sufficiently sized and oriented to allow future residential development, without ~~these~~ such residential uses requiring a shoreline variance. Lot configurations shall plan for building sites outside of required shoreline and critical area buffers.
- C. Each residential structure, including accessory and appurtenant structures and uses, shall:
1. Comply with all applicable critical areas and zoning regulations.
  2. Meet all applicable critical areas, vegetation conservation, and water quality standards of SMP Chapter 4: General Policies & Regulations.
  3. Be designed, sited, and constructed to:
    - a. Assure no net loss of shoreline ecological functions.
    - b. Prevent the need for new structural flood hazard management measures to the greatest extent feasible.

- c. Be sufficiently set back from steep slopes and shorelines vulnerable to erosion, in accordance with the required critical area and shoreline buffers, to ensure that structural improvements and stabilization structures are not necessary to protect such structures and uses.
- D. New multifamily developments ~~over-with~~ five or more units ~~in size~~ shall provide public access as required by SMP Section 4.06.
- E. Subdivisions and planned unit developments of five or more lots or units shall dedicate, improve, and provide maintenance provisions for a pedestrian easement, which provides area sufficient to ensure usable access to and along the shoreline for all residents of the development and the public.
- F. The primary residential use on any lot shall be established (meaning that a permit must be issued and construction must have begun) prior to any accessory residential uses. Accessory and appurtenant uses and structures not specifically addressed in the SMP shall be subject to the same regulations as the primary residence.
- G. Primary residential uses are prohibited over the water.
- H. Residential accessory and appurtenant structures and uses shall be prohibited over the water, unless clearly water-dependent.
- I. Residential appurtenant and accessory structures or uses are prohibited within shoreline buffers unless specifically authorized in SMP Section 4.04.

## **5.15 SIGNS**

The following provisions apply to any commercial or advertising sign directing attention to a business, professional service, community, site, facility, or entertainment.

### **5.15.01 POLICIES**

- A. Limit off-premise outdoor advertising signs within the shoreline environment.
- B. Ensure that signs are sized and placed to protect vistas and viewpoints of shorelines, waterbodies, and surrounding landscapes from public properties and rights of way.

### **5.15.02 REGULATIONS**

- A. Signs shall comply with applicable city regulations.

- B. All signs shall be located and designed to minimize interference with visual access to shoreline jurisdiction.
- C. Signs may be allowed if they:
  - 1. Do not obstruct sight distance of drivers and non-motorized roadway users;
  - 2. Conform with Washington State Department of Transportation (WSDOT) standards for signs on public highways where applicable; and
  - 3. Meet one of the following two conditions:
    - a. Are official in nature, such as traffic control, wayfinding, monument, historic, or cultural site markers, etc., and are located within the public right-of-way; or
    - b. Are located on the public or private property that contains the use advertised.

## **5.16 TRANSPORTATION FACILITIES**

Transportation facilities include structures and development that provide for the movement of people, goods, and services by land, air, and/or water. Transportation facilities include highways, bridges, bikeways, airports, and other related facilities. This section applies to new and expanded transportation facilities within shoreline jurisdiction.

### **5.16.01 POLICIES**

- A. Minimize new transportation facilities in shoreline jurisdiction.
- B. Plan, locate, and design new transportation facilities where routes will have the least adverse effect on shoreline features, shoreline ecological functions, and existing or planned water-dependent uses.
- C. Maintain and reconstruct roads in accordance with the BMPs adopted by the city and WSDOT.
- D. Require that public and private developments provide circulation facilities including roads, streets, alleys, pedestrian, bicycle, and public transportation facilities in a manner consistent with city, state, and federal standards and adopted levels of service.
- E. Preserve the aesthetic values of the shoreline environment along roadways.
- F. Acquire and retain abandoned or unused road or railroad rights-of-way that offer opportunities for public access to the water.

- G. Promote the creation and upkeep of viewpoints, rest areas, and picnic areas that are located along transportation facilities in shoreline jurisdiction.
- H. Seek to provide for safe pedestrian and non-motorized travel along scenic corridors, public roadways, and multi-use trails in shoreline jurisdiction.
- I. Design road and railroad structures ~~so such~~ that flood debris will not be trapped by the structure.

#### **5.16.02 APPLICABILITY**

- A. This section applies to public and private transportation facilities serving motorized and nonmotorized uses.
- B. This section does not apply to a ~~A~~ driveway for an individual single-family residence as such driveway is considered part of the primary use ~~and it should be~~ is subject to reviewed review in accordance with as part of SMP Section 5.14.

#### **5.16.03 REGULATIONS**

- A. Transportation facilities shall ~~only~~ be placed within shoreline jurisdiction; only when no other option for the location of the facility exists. If no alternative exists to placing a new transportation facility in shoreline jurisdiction, a mitigation plan prepared by a qualified professional must be prepared consistent with the provisions of with SMP Section 4.04.
- B. When located within shoreline jurisdiction, new and expanded transportation facilities shall:
  - 1. Be set back from the OHWM as far as feasible and locate any new water crossings as near to perpendicular with the waterbody as feasible, unless an alternate path would minimize the disturbance of native vegetation or result in the avoidance of critical areas;
  - 2. Be designed with the minimum pavement area required;
  - 3. Minimize adverse effects to unique or fragile shoreline features;
  - 4. Implement the mitigation sequence in SMP Section 4.03 and ensure no net loss of shoreline ecological functions;
  - 5. Avoid adverse impacts on existing or planned water-dependent uses;

6. Allow joint use of the right-of-way with nonmotorized uses and existing or planned primary utility facilities to consolidate the crossings of waterbodies and minimize adverse impacts to shoreline jurisdiction, where feasible; and
  7. Provide and maintain visual access to scenic vistas on public roads, where feasible. Visual access may include, but is not limited to turnouts, rest areas, and picnic areas.
- C. Existing roads that are of a non-paved surface, such as gravel, may be paved, if the facilities comply with all applicable mitigation, water quality, stormwater, and landscaping standards, as well as other requirements of the SMP and city regulations.
  - D. Construction projects may be conditioned to occur only during established seasonal work windows ~~may be required for construction projects~~ to minimize impacts to shoreline functions.
  - E. Where public access to shorelines across transportation facilities is intended, facility designs must provide safe crossings for pedestrians and non-motorized ~~vehicular crossings~~ vehicle users.
  - F. Crossings of waterbodies, such as bridges, shall be designed to minimize impact to aquatic habitat, allow for fish passage, and not inhibit the passage of flood debris.

## 5.17 UTILITIES

The provisions of this section apply only to facilities that produce, convey, store, or process power, gas, sewage, communications, oil, waste, and the like. On-site utility features serving a primary use, such as an electrical line or water, sewer or gas lines to an individual use, are considered accessory utilities and shall be considered under the standards of the primary use of the property.

### 5.17.01 POLICIES

- A. Ensure that the installation of new utilities results in no net loss of shoreline ecological functions.
- B. Allow only those utilities, which are necessary to serve shoreline uses; ~~and~~ locate utility lines, facilities, and rights-of-way outside of the shoreline jurisdiction where feasible.

- C. Locate water-oriented utilities, such as sewage treatment, water reclamation, and some power facilities, where they do not interfere with other existing or planned public uses of the water and shoreline.
- D. Locate and design utilities to accommodate future growth and development.
- E. Locate utilities so as not to obstruct or destroy scenic views wherever facilities must be placed in a shoreline area. When feasible, place utility lines underground ~~when feasible~~ to minimize damage to the shoreline aesthetic quality.
- F. Locate utility in existing rights of way or corridors whenever feasible.
- G. Restore shoreline areas damaged by the installation or maintenance of utilities.
- H. Provide public access to the shoreline whenever a major utility line or facility utilizes a shoreline location or crossing, unless the utility presents a serious hazard to the public.

#### **5.17.02     *APPLICABILITY***

- A. This section applies to public and private utility facilities and lines serving more than an individual development or use.
- B. Utilities serving an individual development or use are considered part of the primary use and should be reviewed under the regulations for that use.

#### **5.17.03     *REGULATIONS***

- A. All utility system projects and maintenance shall be designed, located, and installed in a manner, which results in no net loss of ecological function.
- B. Water-oriented utilities are allowed in shoreline jurisdiction.
- C. If a utility is required to be sited in shoreline jurisdiction, a mitigation plan prepared by a qualified professional must be prepared consistent with the provisions of SMP Section 4.04.
- D. Where utilities must be located in shoreline jurisdiction, the utilities must:
  - 1. Be designed and constructed to meet all adopted engineering standards of the city.
  - 2. Provide for compatible, multiple use sites, and rights-of-way whenever feasible. Compatible uses include shoreline access points, trails, and other forms of recreation and transportation, provided these uses do not interfere with utility operation, endanger public health and safety, or cause a significant and disproportionate liability for the owner.

3. Minimize processes affecting the rate of channel migration or shoreline erosion. Where this may occur, the Shoreline Administrator may require a monitoring plan and adaptive management measures prepared by a qualified professional as appropriate.
  4. Limit clearing to the minimum necessary for installation or maintenance. Impacts associated with removal of vegetation or clearing shall be mitigated on site.
- E. In addition to the standards above, utility lines within shoreline jurisdiction shall:
1. Be undergrounded in areas developed on an urban level, except where technical, environmental, or geological conditions make undergrounding infeasible.
  2. Be sited within the footprint of an existing right-of-way or utility easement, wherever feasible in locations where ~~right-of ways~~ rights-of-way and easements exist.
  3. Avoid paralleling the shoreline or following a down-valley course near the channel, except where located in an existing road or easement footprint.
- F. If an underwater location is necessary for the siting of utilities, the following performance standards apply:
1. The design, installation, and operation shall minimize impacts to the waterway and the resident aquatic ecosystems.
  2. Seasonal work windows may be made a condition of approval.
  3. All state and federal permits must be obtained.
  4. A maintenance schedule and emergency repair protocol shall be prepared and recorded with the city.
- G. After the installation of a utility system or the completion of a maintenance project, the disturbed area shall be regraded to match the natural terrain and replanted to prevent erosion and provide appropriate vegetative cover, including meeting standards of SMP Section 4.04.



# 6 SHORELINE MODIFICATION POLICIES & REGULATIONS

## 6.01 INTRODUCTION

Building on the general SMP goals found in SMP Chapter 2: Shoreline Management Goals, this chapter contains specific shoreline modifications policies and regulations that apply to those activities that modify the physical form of the shoreline in any shoreline environment designation. By definition, shoreline modifications activities are undertaken in support of or in preparation for a permitted shoreline use. A single permitted use may require several different shoreline modifications.

Shoreline modification activities include the construction of in-water structures, overwater structures and launching facilities, and shoreline stabilization measures, as well as actions such as clearing, grading, and fill, and dredging and dredge material disposal. At a minimum, shoreline modification policies and regulations are intended to assure no net loss of the ecological functions necessary to sustain shoreline natural resources.

Each section includes policies and regulations. Policies are statements of principles that guide and determine present and future decisions. Regulations are rules that govern developments, uses, or activities.

### 6.01.01 SHORELINE MODIFICATION TABLE

SMP Table 6-1: Shoreline Modifications establish what specific shoreline modification activities are allowed within each of the shoreline environment designations. Shoreline modification activities may be permitted, allowed with a conditional use permit, or may be listed as “not applicable” to a shoreline environment designation. Refer to individual standards in this chapter for a full explanation of modifications and required conditions for permitted uses.

**Table 6-1: Shoreline Modifications**

Shoreline Modifications (1)	High Intensity	Shoreline Residential	Urban Conservancy	Natural	Aquatic
<b>Key: P = Permitted Use, C = Conditional Use, N/A = Not Applicable</b>					



<b>Shoreline Modifications (1)</b>	<b>High Intensity</b>	<b>Shoreline Residential</b>	<b>Urban Conservancy</b>	<b>Natural</b>	<b>Aquatic</b>
<b>Clearing and Grading</b>	P	P	P	C	N/A
<b>Fill</b>					
Fill Landward of the OHWM	P	P	P	C	N/A
Fill Waterward of the OHWM (2)	N/A	N/A	N/A	N/A	C
<b>Dredging and Dredge Material Disposal (2)</b>	C	C	C	C	C
<b>In-Water Structures (3)</b>	N/A	N/A	N/A	N/A	C
<b>Restoration (4)</b>	P	P	P	P	P
<b>Shoreline Stabilization</b>					
Hard Shoreline Stabilization Measures	P	P	C	X	C
Soft Shoreline Stabilization Measures	P	P	P	C	C

**Notes:**

- (1) In the event of a conflict between SMP Table 6-1: Shoreline Modifications and the regulatory text, the text shall hold.
- (2) In the shoreline environment designations where these activities are allowed, fill waterward of the OHWM and dredging are only permitted in limited situations. See SMP Section 6.03 and SMP Section 6.04 for requirements.
- (3) All in-water structures require a shoreline conditional use permit, except when such structures are installed to protect or restore ecological functions, such as woody debris installed in streams. In such cases, it would be considered a permitted shoreline modification.
- (4) Exemptions from shoreline permitting are available for certain restoration activities as outlined in WAC 173-27-040(2)(o) and WAC 173-27-040(2)(p). Projects are still required to comply with the SMP.

## 6.02 GENERAL SHORELINE MODIFICATION PROVISIONS

The following provisions apply to all shoreline modification activities, whether shoreline modifications address a single or multiple properties. Where other requirements may conflict with the provisions contained in this chapter, the more restrictive standard shall apply.

### **6.02.01    POLICIES**

- A. Ensure shoreline modifications individually and cumulatively do not result in a net loss of ecological functions.
- B. Limit the number and extent of shoreline modification activities to reduce the negative effects of shoreline modifications to the greatest extent feasible.
- C. Plan for enhancement of impaired ecological functions where it is feasible, appropriate, and accommodates permitted uses.
- D. Allow only shoreline modifications that are appropriate to the specific shoreline environmental designation in which they are located.
- E. Prefer those types of shoreline modifications that have a lesser impact on ecological functions. Promote soft over hard shoreline modification measures.

### **6.02.02    REGULATIONS**

- A. Structural shoreline modifications may be allowed if they are demonstrated to be necessary to support or protect a legally permitted shoreline structure or use that is in danger of loss or substantial damage or are necessary for mitigation or enhancement.
- B. Shoreline modifications shall be limited in number and extent.
- C. The Shoreline Administrator shall base all decisions regarding shoreline modification on available scientific and technical information and a comprehensive analysis of site-specific conditions which must be provided by the applicant.
- D. Shoreline modifications must be designed and located to ensure that they will not result in a net loss of shoreline ecological functions and will not have significant adverse impacts to shoreline uses, resources, and values provided for in RCW 90.58.020.
- E. Shoreline modifications and uses shall be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.
- F. Shoreline modification standards shall not apply retroactively to existing, legally established shoreline modifications. Existing structures may be maintained, repaired, and operated within shoreline jurisdiction and within the shoreline buffers established in the SMP. Repair and replacement provisions in later sections of this chapter may apply to specific modifications.
- G. All disturbed upland areas shall be restored and protected from erosion by using native vegetation or other means.

- H. All shoreline modifications are subject to the mitigation sequence in SMP Section 4.03, with appropriate mitigation required for unavoidable impacts to ecological functions. If critical areas in shoreline jurisdiction are impacted, the project is also subject to relevant requirements of SMP Section 4.04.

## **6.03 CLEARING, GRADING, AND FILL**

Clearing, grading, and fill are the activities associated with preparing a site for development, as well as physically altering topography. The clearing and grading regulations in this section apply to activities landward of the OHWM and fill activity applies both waterward and landward of the OHWM.

See SMP Section 6.04 for dredging for purposes of flood control, navigation, primary utility installation, the construction of water-dependent portions of essential public facilities, or restoration.

### **6.03.01 POLICIES**

- A. Protect shoreline ecological functions, including channel migration, by regulating clearing, grading, and fill.
- B. Permit clearing, grading, and fill only to the minimum extent necessary to accommodate an approved shoreline use or development and with no net loss of shoreline ecological functions and processes.
- C. Require that BMPs be utilized during clearing, grading, and fill activity.
- D. Allow clearing, grading, and fill only as part of a permitted development in shoreline jurisdiction.
- E. Permit clearing, grading, and fill associated with dike or levee maintenance as necessary to provide protection from flood hazards when consistent with the flood hazard management provisions in SMP Section 4.05.
- F. Ensure that the placement of fill does not result in a loss of flood storage.
- G. Encourage the enhancement and voluntary restoration of landforms for habitat along shorelines.

### **6.03.02 REGULATIONS**

- A. All clearing, grading, and fill shall be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration.
- B. Clearing, grading, and fill shall be minimized to the extent feasible and only allowed when necessary to accommodate an approved shoreline use or development.
- C. Speculative clearing, grading, and fill are prohibited.
- D. When clearing, grading, or fill causes adverse impacts to ecological functions, a mitigation plan prepared by a qualified professional must be prepared consistent with the provisions of SMP Section 4.04.
- E. Clearing, grading, and fill within wetlands, floodways, or CMZs, and fill waterward of the OHWM, is only allowed when:
  - 1. Due consideration has been given to the site specific conditions;
  - 2. All impacts have been mitigated;
  - 3. All required state and federal permits have been obtained; and
  - 4. The shoreline use or development is one of the following:
    - a. A water-dependent use or public access to the shoreline;
    - b. The cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan;
    - c. The disposal of dredged material considered suitable under, and conducted in accordance with, the WDNR's Dredged Material Management Program and the United States Army Corps of Engineers' (USACE) Dredged Material Management Office. See also SMP Section 6.04;
    - d. The expansion or alteration of transportation facilities of statewide significance that are currently located in the shoreline, where alternatives to fill are infeasible;
    - e. Ecological enhancement, restoration or mitigation, when consistent with an approved plan; or
    - f. The protection of historic or cultural resources when fill is the most feasible method to avoid continued degradation, disturbance, or erosion of a site. Such fill must be coordinated with any affected tribes and comply with applicable provisions of SMP Section 4.02.

- F. All fill waterward of the OHWM that is not associated with an ecological restoration project shall require a shoreline conditional use permit.
- G. Upland clearing, grading, and fill outside of wetlands, floodways, and CMZs is permitted provided it:
  - 1. Is the minimum necessary to implement the approved use or modification;
  - 2. Does not significantly change the topography of the landscape in a manner that affects hydrology or increases the risk of slope failure, consistent with the applicable provisions of SMP Section 4.04; and
  - 3. Is conducted outside required shoreline buffers, unless specifically authorized by the SMP, or is necessary to provide protection to historic or cultural resources.
- H. Grading and fill shall be designed to blend physically and visually with the existing topography whenever feasible, so as not to interfere with lawful access ~~and or the~~ enjoyment of scenery.
- C. Clearing, grading, and fill shall not be located where shoreline stabilization will be necessary to protect the materials placed or removed, except when part of an approved plan for protection of historic or cultural resources, or as part of an approved environmental cleanup plan or project.
- D. Cut and fill slopes shall generally be sloped no steeper than one foot vertical for every two feet horizontal (1:2) unless a specific engineering analysis provided by a qualified professional has been provided that demonstrates the stability of a steeper slope.
- E. A temporary erosion and sediment control plan, including BMPs, consistent with the city's stormwater manual, shall be submitted to and approved by the Shoreline Administrator prior to commencement of all clearing, grading, and fill activities.
- F. To prevent a loss of flood storage, compensatory storage shall be ~~provided~~ established commensurate with the amount of fill placed in the floodway per SMP Section 4.05.
- G. Fill placed on state-owned aquatic lands must comply with WDNR and WDFW standards and regulations.

## 6.04 DREDGING AND DREDGE MATERIAL DISPOSAL

This section is intended to cover dredging and dredge material disposal. It is not intended to cover mining or other excavations waterward of the OHWM that are incidental to construction of an authorized use or modification such as bulkhead replacements, large woody debris installations, boat launch ramp installation, or pile placement. These in-water substrate

modifications should be conducted in accordance with all applicable regulations for the proposed use found in the SMP.

#### **6.04.01     *POLICIES***

- A. Conduct dredging in a manner that utilizes mitigation sequencing and ensures no net loss of shoreline ecological functions.
- B. Allow dredging for navigation channels when needed to assure safe and efficient accommodation of existing navigational uses, and then only when significant ecological impacts are minimized and mitigated.
- C. Permit dredging as part of restoration or enhancement, public access, flood storage, or navigation if deemed consistent with the SMP.
- D. Prohibit dredging waterward of the OHWM to obtain fill except when the dredge material is necessary for the restoration of shoreline ecological functions or as part of a flood hazard management program.
- E. Site new development to avoid the need for new and maintenance dredging. Where avoidance is not feasible, ensure the site is designed to minimize the need for dredging.
- F. Prefer the disposal of dredged material on land outside of shoreline jurisdiction to open water disposal.
- G. Coordinate local, state, and federal permit requirements for dredging.

#### **6.04.02     *REGULATIONS***

##### **A.     *Dredging***

- 1. Dredging and dredge disposal proposals shall utilize the mitigation sequence in SMP Section 4.03. Where adverse impacts are unavoidable, a mitigation plan shall be prepared by a qualified professional consistent with the provisions of SMP Section 4.04.
- 2. Dredging shall only be permitted for the following activities:
  - a. Development of new or expanded moorages or water-dependent industrial uses where there are no other feasible alternatives, significant ecological impacts are minimized, and mitigation is provided.
  - b. Development of essential public facilities where no feasible alternative location exists.
  - c. Maintenance of irrigation reservoirs, drains, canals, and ditches for agricultural purposes, when the facility is not already exempt from the SMP.

- d. Restoration or enhancement of shoreline ecological functions and processes that benefit water quality or fish and wildlife habitat.
- e. Trenching to allow the installation of underground utilities, if no feasible alternative location for the utilities exists, and:
  - 1) Impacts to fish and wildlife habitat are minimized to the maximum extent feasible;
  - 2) The utility installation does not increase or decrease the natural rate, extent, or chance of channel migration; and
  - 3) Appropriate BMPs are employed to prevent water quality impacts or other environmental degradation.
- f. Establishment, expansion, relocation, or reconfiguration of navigation channels where necessary to assure the safe and efficient accommodation of existing navigational uses.
- g. Maintenance dredging of established navigation channels and basins, so long as the dredging is restricted to the previously dredged or authorized location, depth, and width.
- h. Flood hazard reduction.
- 3. Applicants must receive all applicable state and federal permits prior to the commencement of any dredging.
- 4. Dredging shall be prohibited for the primary purpose of obtaining fill material, except when permitted under SMP Section 4.05 or when necessary for the restoration of shoreline ecological functions. In the latter case:
  - a. Dredge material must be placed waterward of the OHWM.
  - b. The project must be associated with either a MTCA or CERCLA habitat restoration project or, if the project is approved through a shoreline conditional use permit, the project may be another significant habitat enhancement project.
- 5. New development shall be sited and designed to avoid or minimize the need for new or maintenance dredging.

**B. Dredge Material Disposal**

- 1. Dredge material disposal within shoreline jurisdiction may be permitted so long as:

- a. Shoreline ecological functions and processes are preserved, restored, or enhanced. Factors to consider include surface and groundwater protection, erosion, sedimentation, and the impacts of floodwaters or runoff.
  - b. The disposal will not adversely affect public or private property.
2. The disposal of dredged material is considered suitable under, and conducted in accordance with, the WDNR's Dredged Material Management Program and the USACE's Dredged Material Management Office.
3. Disposal of dredge material within CMZs is discouraged. In the limited instances where it is allowed, such disposal shall require a shoreline conditional use permit. This provision is not intended to address the discharge of dredge material into the flowing current of a river or in deep water within the channel where it does not substantially affect the geohydrologic character of the CMZ.
4. Dredge material disposal in open waters may be approved when authorized by applicable state and federal agencies and when one of the following conditions apply:
  - a. Land disposal is infeasible, inconsistent with the SMP, or prohibited by law; or
  - b. Disposal as part of a program to restore or enhance shoreline ecological functions and processes is not feasible.
5. If applicable, the use of dredge material to benefit shoreline resources shall be addressed through the implementation of a regional interagency dredge material management plan or watershed plan.

**C. *Submittal Requirements***

A detailed description of the purpose of the proposed dredging and an analysis of compliance with the policies and regulations of the SMP shall be required for all dredging applications. Materials prepared for state or federal permits such as an HPA may be used to support the analysis.

## **6.05 IN-WATER STRUCTURES**

This section applies to in-water structures as defined in SMP Chapter 8: Definitions.



### **6.05.01    POLICIES**

- A. Design in-water structures to be compatible with the long-term use of resources, such as public access, recreation, and fish migration.
- B. Locate, design, construct, and maintain in-water structures to give due consideration to:
  - 1. The full range of public interests;
  - 2. Watershed processes, including prevention of damage to other properties and other shoreline resources from alterations to geologic and hydrologic processes;
  - 3. Scenic vistas;
  - 4. Historic and cultural resources; and
  - 5. Ecological functions, with special emphasis on protecting and restoring priority habitats and species.
- C. Site and design in-water structures to be consistent with appropriate engineering principles, including guidelines of the WDFW, NRCS, and the USACE.
- D. Incorporate applicable watershed, surface water management, and restoration plans in the planning and design of in-water structures.
- E. Encourage nonstructural and non-regulatory methods to protect, enhance, and restore shoreline resources and ecological functions as an alternative to in-water structures.
- F. Consider alternatives to hard in-water structures, such as soft in-water structures or several smaller discontinuous structures, as part of an application where physical conditions make such alternatives with less impact feasible.
- G. Incorporate native vegetation as part of the design of in-water structures to enhance ecological functions, create a more natural appearance, improve ecological processes, and provide more flexibility for long-term shoreline management.
- H. Require a shoreline conditional use permit for dams, weirs, and similar structures, except for those structures installed to protect or restore ecological functions, such as woody debris, engineered logjams, or habitat-forming rock weirs installed in streams.
- I. Only allow groins and weirs to be placed waterward of the OHWM in limited instances.

### **6.05.02    REGULATIONS**

- A. In-water structures ~~shall~~ require a shoreline conditional use permit, except for those structures installed to protect or restore ecological functions, such as woody debris installed in streams.

- B. In-water structures shall be designed, constructed, and maintained to ensure no net loss of shoreline ecological functions.
- C. A professional engineer licensed in the state shall certify the designs of all in-water structures and include a monitoring and maintenance schedule.
- D. Appropriate engineering principles and BMPs, including guidelines of the WDFW, NRCS, and the USACE, shall be used in the design of in-water structures. The WDFW's Integrated Streambank Protection Guidelines may be used for BMPs for in-water structures.
- E. The mitigation sequence in SMP Section 4.03 shall be required, with mitigation required for all unavoidable impacts to ecological functions. If critical areas in shoreline jurisdiction are impacted, the project is subject to SMP Section 4.04.
- F. Projects involving in-water work may not commence without having obtained all applicable city, state, and federal permits and approvals.
- G. If at any time, because of in-water work, fish are observed to be in distress or water quality problems develop, immediate notification shall be made to the appropriate state or federal agencies, including Ecology, the WDFW, National Marine Fisheries Service, or U.S. Fish and Wildlife Service.
- H. Alteration or disturbance of the bank and bank vegetation shall be limited to the minimum necessary to perform the in-water work. All disturbed areas shall be protected from erosion and shall be restored using vegetation or other means.
- I. Waste material resulting from the installation and removal of an in-water structure shall be deposited in an approved upland disposal site outside of shoreline jurisdiction.
- J. Natural in-water features such as snags, uprooted trees, or stumps should be left in place unless removal is approved by the WDFW.
- K. Motor vehicles, appliances, or other solid waste shall not be used as in-water structures. ~~Demolition debris that is non-toxic,~~ Reclaimed materials including demolition debris that is non-toxic may be used.
- L. In-water structures designed by public entities shall include public access under SMP Section 4.06 whenever feasible. At a minimum, in-water structures should not decrease public access or the use potential of shorelines.
- M. In-water structures and uses shall be sited and designed to avoid the need for future shoreline stabilization and dredging.

N. New, expanded, or replacement in-water structures shall only be permitted if ~~it can be demonstrated~~ the applicant can demonstrate that:

1. The proposed structure utilizes BMPs and will not result in a net loss of shoreline ecological functions;
2. The proposed in-water structure supports water-dependent uses, public access, shoreline stabilization, shoreline restoration, or some other specific public purpose; and
3. The benefits to the region outweigh the short and long-term resource losses from such work.

## **6.06 RESTORATION**

Shoreline habitat and natural systems enhancement and restoration projects include those activities proposed and conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines.

Examples of shoreline habitat and natural systems enhancement projects include floodplain restoration projects, fish passage barrier removal or improvement, and projects to increase shoreline habitat complexity, among others. Projects that qualify as streamlined fish enhancement projects per RCW 77.55.181 shall be considered under this section.

### **6.06.01 POLICIES**

- A. Use principles of landscape and conservation ecology to design restoration and enhancement actions and improve shoreline ecological functions and processes. Consider the restoration of ecosystem-wide physical and biological processes that affect shoreline habitat structure and functions as the primary goal of these actions.
- B. Encourage cooperative shoreline restoration and enhancement programs between local, State, and Federal agencies, tribes, nonprofit organizations, and landowners to improve impaired ecological functions.
- C. Target restoration and enhancement projects that support the life cycles of priority species, such as Chinook salmon and other anadromous fish; locally important plants, fish and wildlife; and other populations or habitats for which a prioritized restoration or recovery plan is available.
- D. Encourage restoration and enhancement projects by developing project permitting and processing guidelines that streamline permit review.

- E. Seek and support funding opportunities to implement restoration and enhancement projects.
- F. Avoid adverse impacts to critical areas, fish and wildlife habitat conservation areas, water quality, and water storage capacity in all shoreline restoration and enhancement projects.

#### **6.06.02 REGULATIONS**

- A. The city's Shoreline Restoration Plan identifies potential restoration priorities and projects in shoreline areas throughout the city. The plan may be used as a guide for shoreline restoration and enhancement projects.
- B. Where the Shoreline Restoration Plan is not used in the creation of a proposed restoration or enhancement project, the Shoreline Administrator shall review the proposal to assure that the project addresses legitimate restoration needs and priorities.
- C. All shoreline restoration and enhancement projects shall be designed and implemented by qualified professionals using best available science (BAS) and BMPs.
- D. Shoreline restoration and enhancement projects shall protect the integrity of onsite and adjacent natural resources, including aquatic and terrestrial habitats, processes, and properties.
- E. Shoreline restoration and enhancement projects shall demonstrate that no significant change to river current, sediment transport, or water quality will result from the project.
- F. Restoration and enhancement projects shall be designed, maintained, and monitored to ensure long-term success. Measures to ensure the success of the project shall be identified by a qualified professional in any plan or details submitted for the project. Monitoring periods should generally not be less than three years.
- G. Shoreline restoration and enhancement efforts shall not significantly interfere with the normal public use of the navigable waters of the State without appropriate mitigation. For projects on State-owned aquatic lands, project proponents must coordinate with the WDNR to ensure the project will be appropriately located, prior to the solicitation of permits from regulatory agencies.
- H. Shoreline restoration and ecological enhancement projects are permitted in all shoreline environment designations and may include shoreline modification actions

such as clearing, shoreline stabilization, dredging or filling, provided that the primary purpose of such actions is clearly restoration of the natural character and ecological functions of the shoreline.

- I. In accordance with RCW 90.58.580, the city may waive the need for a shoreline substantial development permit for development on land that is brought under shoreline jurisdiction due to a shoreline restoration project that causes or would cause a landward shift in the OHWM. Any relief granted shall be strictly in accordance with the limited provisions of RCW 90.58.580, including the specific approval of Ecology.

## **6.07 SHORELINE STABILIZATION**

Shoreline stabilization includes structural and nonstructural measures taken to address erosion impacts caused by natural processes, such as currents, floods, ~~and or~~ waves. "Hard" structural shoreline stabilization measures include solid, hard surfaces, such as concrete or boulder bulkheads. "Soft" structural shoreline stabilization measures rely on less rigid materials, such as anchored logs and limited rock placement in conjunction with other components. Generally, the harder the structural shoreline stabilization measure, the greater the impact on shoreline processes. Nonstructural shoreline stabilization measures include shoreline buffers, relocation of structures, groundwater management, and planning and regulatory measures to avoid the need for stabilization structures.

### **6.07.01 POLICIES**

- A. Use structural shoreline stabilization measures only when nonstructural shoreline stabilization measures have been determined to be infeasible. The use of shoreline stabilization measures should be based on the following hierarchy of preference:
  1. Take no action. Allow the shoreline to retreat naturally, increase shoreline buffers, and relocate structures.
  2. Use flexible, bioengineered structures constructed of natural materials such as protective berms, large woody debris, or vegetative stabilization.
  3. Employ rigid structures constructed of artificial materials such as riprap or concrete.
- B. Locate and design shoreline stabilization measures to fit the physical character of the specific shoreline reach, which may differ substantially from adjacent reaches.

- C. Coordinate the development of shoreline stabilization measures between affected property owners and public agencies.
- D. Consider the probable effects of proposed shoreline stabilization measures on neighboring properties.
- E. Restrict the size of new shoreline stabilization structures to the minimum necessary.
- F. Only permit new or expanded shoreline stabilization structures in limited instances.
- G. Locate, design, and maintain shoreline stabilization structures to protect and maintain shoreline ecological functions, ongoing shoreline processes, and the integrity of shoreline features.
- H. Locate and design shoreline stabilization structures to avoid the need for future structures, where feasible.
- I. Prohibit the installation of shoreline stabilization structures to create additional property.
- J. Design land subdivisions to assure that future development on created lots will not require shoreline stabilization structures for reasonable development to occur.
- K. Require new development on steep slopes or bluffs to be set back so that, the need for shoreline stabilization structures is unlikely during the life of the development.
- L. Prohibit new development requiring shoreline stabilization structures that are likely to cause adverse impacts to adjacent or down-current properties and shoreline areas.
- M. Incorporate multiple use, restoration, and public shoreline access in the location, design, and maintenance of shoreline stabilization structures for public developments, whenever compatible with the primary purpose of the shoreline stabilization.
- N. Utilize BMPs in the design of shoreline stabilization structures.
- O. Allow new or expanded shoreline stabilization structures for ecological enhancement and restoration projects, or hazardous substance remediation projects only when nonstructural measures are infeasible or would be insufficient to achieve enhancement, restoration, or remediation objectives.

## **6.07.02 REGULATIONS**

### **A. Design and Location of New Development**

1. New development that requires shoreline stabilization measures that cause significant impacts to adjacent or down-current properties and shorelines shall not be allowed.

2. Land subdivisions shall be designed to assure that future development of the created lots will not require shoreline stabilization structures for reasonable development to occur as demonstrated by a geotechnical analysis of the site and shoreline conditions.
3. New development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization structures are unlikely to be necessary during the life of the development as demonstrated by a geotechnical analysis.
4. If the applicant submits a proposal that is consistent with the critical area buffer requirements in SMP Appendix 2: Critical Areas Regulations and expected to have little need for future shoreline stabilization as proposed, the Shoreline Administrator may waive the need for a geotechnical analysis to be conducted per SMP Sections 6.07.02(A)(3) and (4).

**B. *Repair and Maintenance of Existing Shoreline Stabilization Structures***

1. The following items distinguish between maintenance and repair of a shoreline stabilization structure and a new structure:
  - a. Maintenance and repair includes modifications to an existing shoreline stabilization structure that is designed to ensure the continued function of the existing structure.
  - b. A modification that increases the size of the existing shoreline stabilization structure shall be considered a new structure, not maintenance or repair.
  - c. Replacement of greater than 50 percent or 35 feet of linear length of an existing shoreline stabilization structure, whichever is smaller, as measured on a cumulative basis since the structure was established, is not considered repair or maintenance, and is considered a new structure.
  - d. Removal of an existing shoreline stabilization structure, including its footing or bottom course of rock, prior to the placement of a new structure, is considered a new structure for the purposes of this section. Removal of only the material above the footings or bottom course of rock is not considered a new structure and it qualifies as maintenance and repair.
  - e. The placement of a new shoreline stabilization structure landward of a failing shoreline stabilization structure shall be considered a new structure subject to all the requirements of SMP Section 6.07, not maintenance or repair.
2. When an application proposes repair and maintenance of an existing legally established shoreline stabilization structure, it is subject to the following standards:



- a. Repair and maintenance of existing shoreline stabilization structures must be consistent with the requirements of SMP Section 4.04.
  - b. Areas of temporary disturbance within the shoreline buffer associated with maintenance and repair shall be restored to their pre-project condition within 30 days.
3. Repair of shoreline stabilization structures meeting all the criteria for exemption from a shoreline substantial development permit must still comply with SMP Section 6.07.02(E) and the SMP.

**C. *Replacement or Enlargement of Existing Shoreline Stabilization Structures***

1. Replacement or enlargement of an existing shoreline stabilization structure shall be considered a new structure.
2. For purposes of this section, replacement means the construction of a new structure to perform the shoreline stabilization function of an existing structure that can no longer adequately serve its purpose.

**D. *Standards to Demonstrate Need for Shoreline Stabilization Structures***

1. New shoreline stabilization structures shall only be allowed, when demonstrated to be necessary as follows:
  - a. To protect an existing primary structure, including a residence, if there is conclusive evidence documented by a geotechnical analysis that the primary structure is in danger from shoreline erosion caused by natural processes. Normal sloughing, erosion of steep bluffs, or shoreline erosion in itself, without a geotechnical analysis, is not demonstration of need. The geotechnical analysis shall evaluate on-site drainage issues and address problems away from the OHWM before considering new shoreline stabilization structures.
  - b. In support of water-dependent development when all of the following conditions ~~below~~ apply:
    - 1) Site erosion is not being caused by upland conditions, such as drainage and the loss of vegetation;
    - 2) Nonstructural measures, such as planting vegetation or installing on-site drainage improvements, are not feasible or sufficient to address erosion causes or impacts adequately; and
    - 3) The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical analysis.



- c. In support of new non-water-dependent development, including residences, when all of the conditions from water-dependent development from SMP Section 6.07.02(D)(1)(b) apply and nonstructural measures, such as placing the proposed development farther from the shoreline are not feasible or sufficient to address the erosion impacts adequately. Natural processes must be causing the shoreline erosion.
  - d. To protect historic or cultural resources, or as part of restoration or hazardous substance remediation projects pursuant to Chapter 70.105D RCW, when nonstructural measures, such as planting vegetation or installing on-site drainage improvements, are not feasible or sufficient to adequately address the causes of erosion or avoid continued degradation, disturbance, or erosion of a site.
2. Where a project is specially intended to reduce flood hazards, a flood hazard shoreline stabilization structure shall only be allowed when a scientific and engineering analysis by a qualified professional demonstrates:
- a. ~~That it~~ The structure is necessary to protect existing development;
  - b. ~~That non~~ Nonstructural measures are not feasible;
  - c. ~~That it~~ Impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss; and
  - d. ~~That a~~ Appropriate vegetation conservation actions are undertaken consistent with SMP Chapter 4.04.
3. A geotechnical analysis is not required when an applicant proposes to replace an existing shoreline stabilization structure with a softer measure, unless the project is a flood hazard reduction project or deemed necessary by the Shoreline Administrator. To help determine the need for a geotechnical analysis, the applicant shall submit to the Shoreline Administrator site photographs and a written narrative that describes the need to protect the primary uses or structures from erosion caused by waves or other natural processes operating at or waterward of the OHWM.
4. Replacement of hard shoreline stabilization structures shall not encroach waterward of the OHWM or the existing shoreline stabilization measure unless the primary residence was constructed prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement for the shoreline stabilization structure shall be attached to and waterward of the existing structure.

All other replacement of hard stabilization structures shall be located at or landward of the existing shoreline stabilization measure.

**E. General Design Standards**

1. Shoreline stabilization measures shall not result in a net loss of shoreline ecological function.
2. When a hard or soft shoreline stabilization structure is demonstrated to be necessary, the following design standards shall be incorporated as part of the design:
  - a. Impacts to sediment transport shall be avoided, minimized, or mitigated.
  - b. Shoreline stabilization structures shall be the minimum size necessary by height, depth, and mass, and not extend waterward more than the minimum amount needed to achieve effective stabilization, except for those elements that enhance shoreline ecological functions and minimize impacts.
  - c. Soft structural shoreline stabilization measures shall be used to the maximum extent feasible for new, enlarged, or replacement shoreline stabilization structures, unless demonstrated insufficient to protect primary structures in a geotechnical analysis.
  - d. When feasible, hard structural shoreline stabilization measures shall be limited to the portion of the site necessary to protect primary structures or connect to existing shoreline stabilization measures on adjacent properties.
  - e. All clearing, grading, and fill associated with shoreline stabilization structures shall be conducted landward of the OHWM to the maximum extent feasible unless it is infeasible due to safety or environmental concerns.
  - f. Fill behind shoreline stabilization structures is limited to one cubic yard per running foot of stabilization. Filling in excess of this amount shall be considered a regulated activity subject to the regulations in SMP Section 6.03 and require a shoreline substantial development permit or shoreline conditional use permit.
  - g. All approved new, enlarged, or replacement shoreline stabilization structures shall be designed using BMPs, including the WDFW's Integrated Streambank Protection Guidelines, and minimize and mitigate unavoidable adverse impacts to ecological functions, consistent with SMP Section 4.04.
  - h. New structures that are specifically designed for flood hazard reduction shall be placed landward of associated wetlands and designated vegetation conservation

areas, except when the measure would increase ecological functions, such as when included as part of a wetland restoration. Provided that, such flood hazard reduction structures may be authorized if it is determined that no other alternative to reduce the flood hazard to existing development is feasible. The need for, and analysis of feasible alternatives to, structural improvements shall be documented through a geotechnical analysis.

- i. All new, enlarged, or replacement shoreline stabilization structures shall be designed and sited so as to mitigate adverse impacts to ecological functions. Mitigation measures shall be identified by the project proponent as part of the project application, and may be supplemented by the city, or state or federal agencies, depending on the level of impact.
- j. When a new shoreline stabilization structure is proposed on a site where adjacent properties do not have shoreline stabilization structures, the new structure shall tie in with the existing contours of the adjoining properties, as feasible, to prevent erosion of the neighboring land.
- k. When a new shoreline stabilization structure is proposed on a site where adjacent properties have shoreline stabilization structures, the new structure may tie in with the existing structures on the adjoining properties. The new structure shall minimize, to the maximum extent feasible, the portion of the new structure that is waterward of the OHWM to connect to the existing structures.
- l. Shoreline stabilization structures shall be designed to ensure that the project remains stable during storm events, flood events on rivers, and wave conditions on lakes.
- m. Shoreline stabilization shall be designed not to interfere significantly with normal surface or subsurface drainage into the adjacent waterbody.
- n. All shoreline stabilization shall be designed to avoid hazards to navigation.
- o. Shoreline stabilization shall be designed not to restrict appropriate public access to the shoreline. Where a shoreline stabilization structure is required at a public access site, provisions for safe access to the water shall be incorporated into the design.
- p. Publicly financed or subsidized shoreline erosion control measures shall allow appropriate public access to the shoreline except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions.

- q. Stairs or other water access measures may be incorporated into shoreline stabilization design, but they shall not extend waterward of the OHWM.

**F. Submittal Requirements**

In addition to submitting an application for the appropriate shoreline permit, the applicant shall submit a geotechnical analysis prepared by an engineer licensed by the state as part of a request to construct a new, enlarged, or replacement shoreline stabilization structure. This analysis must include:

1. Adequate provisions to address the standards for geotechnical reports in WAC 173-26-231(3)(a)(iii)(D).
2. Detailed construction plans for all shoreline stabilization structures, including, but not limited to, the following:
  - a. Plan and cross-section views of the existing and proposed shoreline configuration, showing OHWM and accurate existing and proposed topography;
  - b. A detailed construction sequence and specifications for all materials; and
  - c. A mitigation and monitoring plan to ensure no net loss of shoreline functions.

# 7 SHORELINE ADMINISTRATION

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## 7.01 INTRODUCTION

SMP Chapter 7: Shoreline Administration describes the administrative procedures and enforcement of a permit system that implements the SMP, together with amendments or additions thereto. Issuance of a shoreline permit or letter of exemption from the Shoreline Administrator does not exclude the requirements for other city, state, and federal permits, procedures, and regulations.

## 7.02 PERMIT PROCESSING - GENERAL

### 7.02.01 SHORELINE ADMINISTRATOR

- A. The Shoreline Administrator shall be responsible for the administration of the permit system in accordance with the requirements of the SMA and regulations adopted as part of the SMP. This shall include, but not be limited to, determinations of whether a development is exempt or requires a shoreline substantial development permit, conditional use permit, and/or shoreline variance.
- B. The Shoreline Administrator shall ensure that administrative provisions are in place so that SMP permit procedures and enforcement are conducted in a manner consistent with relevant constitutional limitations on regulation of private property.
- C. Administrative Interpretation.
  1. The Shoreline Administrator shall have authority to interpret this SMP when such interpretation is clearly consistent with the goals and policies of this SMP and the SMA.
  2. As part of this process, the Shoreline Administrator shall consult with Ecology to insure that formal written interpretations are consistent with the purpose and intent of the SMA and Chapter 173-26 WAC.
  3. Formal interpretations shall be kept on file by the city and shall be available for public review, and shall periodically be incorporated into the SMP during required update processes.
- D. The Shoreline Administrator shall determine if the application is complete based upon the information required by this section.

- E. The Shoreline Administrator may recommend conditions to the [Hearings-Hearing](#) Examiner for the approval of permits as necessary to ensure consistency of the project with the SMA and the SMP.

#### **7.02.02 PROVISIONS APPLICABLE TO ALL SHORELINE PERMITS**

- A. Unless specifically exempted by statute, all proposed uses and development occurring within shoreline jurisdiction must conform to the development standards in the MMC, Chapter 90.58 RCW, the SMA, and this SMP whether or not a permit is required.
- B. No authorization to undertake a use or development in shoreline jurisdiction shall be granted by the city, unless, upon review, the use or development is determined to be consistent with the policy and provisions of the SMP.
- C. RCW 36.70A.480 governs the relationship between the SMP and the city's development regulations to protect critical areas that are adopted under Chapter 36.70A RCW.
- D. Applications for shoreline substantial development permits, [shoreline](#) conditional use permits, and [shoreline](#) variances shall be processed in accordance with the SMP.
- E. The applicant shall meet all of the review criteria for all development found in WAC 173-27-140.
- F. A shoreline substantial development shall not be undertaken within the city unless a shoreline substantial development permit has been obtained, the appeal period has been completed, and any appeals have been resolved.
- G. All purchasers or transferees of property shall comply with the provisions of the SMA, the SMP, and any shoreline substantial development permit, conditional use permit, variance, permit revision, or letter of exemption.

#### **7.02.03 APPLICATION REQUIREMENTS**

- A. Applications for shoreline permits and/or letters of exemptions shall be made on forms provided by the Shoreline Administrator. An applicant for a shoreline substantial development permit who wishes to request a shoreline conditional use permit and/or [shoreline](#) variance shall submit the shoreline conditional use permit and/or [shoreline](#) variance application(s) and the shoreline substantial development permit application simultaneously.
- B. Applications shall be substantially consistent with the information required by WAC 173-27-180 and include any additional submittals deemed necessary by the Shoreline Administrator for proper review of the proposal.

## 7.03 APPLICATION - NOTICES

The following is applicable for the notice requirements all notices related to actions under the SMP:

- A. Within ten days from receiving a complete application and associated information, the Shoreline Administrator shall mail notice of the proposed project to all real property owners within 300 feet of the boundary of the property upon which the development is proposed. The list of property owners shall be from the most recent Grays Harbor County Assessor's records and supplied by the applicant. The Shoreline Administrator shall ~~post notice or~~ require the applicant to post a notice of a minimum 8 inch by 10 inch in size in a conspicuous manner on the property upon which the project is to be constructed.
- B. The Shoreline Administrator shall deliver the legal notice, containing the information required by WAC 173-27-180, to the newspaper to be published at least once a week on the same day of the week for two consecutive weeks in a newspaper of general circulation within the area in which the development is proposed. Advertising costs will be the responsibility of the applicant.
- C. The Shoreline Administrator shall give notice of the application no less than 30 days prior to permit issuance.
- D. When a public hearing is required, public notice shall be given at least 15 days before the public hearing. The notices shall include a statement that a person desiring to present his/her views may do so orally or in writing at the public hearing, or may submit written comments prior to the public hearing which will be provided to the ~~Hearings~~ Hearing Examiner.
- E. The public notice shall also state that a person interested in the ~~Hearings~~ Hearing Examiner action on an application for a permit may notify the Shoreline Administrator of ~~his/her~~ their interest in writing within 30 days of the last date of publication of the notice. Such notification to the Shoreline Administrator or the submission of views to the ~~Hearings~~ Hearing Examiner shall entitle said persons to a copy of the action taken on the application.
- E-F. The target permit review time for WSDOT projects is 90 days, pursuant to RCW 47.01.485. Pursuant to RCW 90.58.140, Washington State Department of Transportation projects that address significant public safety risks may begin twenty-one days after the

date of filing if all components of the project will achieve no net loss of shoreline ecological functions.

## **7.04 SHORELINE PERMITS AND APPROVALS**

### **7.04.01 SHORELINE SUBSTANTIAL DEVELOPMENT PERMITS**

The following is applicable for all shoreline substantial development permits:

- A. The applicant shall meet all of the review criteria for a shoreline substantial development permit as listed in WAC 173-27-150.
- B. A shoreline substantial development permit shall be granted by the Shoreline Administrator without a public hearing unless one or more of the following conditions apply:
  1. One or more interested persons has submitted to the Shoreline Administrator, within 15 days of the final publication of notice of the application, a written request for a public hearing together with a valid statement of the reasons for the request;
  2. The estimated total cost of the proposed development exceeds ~~\$500,000~~ \$1,000,000; or
  3. The Shoreline Administrator determines that the proposed development is one of broad public significance.
- C. If a public hearing is required, the Hearing Examiner shall issue a decision on a shoreline substantial development permit, after the Shoreline Administrator completes a recommendation to the examiner that may contain conditions as necessary to assure consistency of the proposal with the above criteria and when the development proposed is consistent with the standards in WAC 173-27-140 and WAC 173-27-150.

**Commented [NS9]:** Change requested by City

**Commented [NS10]:** Change requested by City. I could not find any SMA rule or guidance that would prevent that change.

### **7.04.02 SHORELINE CONDITIONAL USE PERMITS**

- A. The criteria in WAC 173-27-140 and WAC 173-27-160 shall constitute the minimum criteria for review and approval of a shoreline conditional use permit.
- B. Uses that are not classified or set forth in the SMP may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the SMP.
- C. Uses that are specifically prohibited may not be authorized.



- D. The Hearing Examiner may attach conditions to the approval of permits as necessary to assure consistency of the proposal with the above criteria.
- E. The decision of the Hearing Examiner shall be the final decision of the city. Ecology shall be the final authority authorizing a shoreline conditional use permit consistent with WAC 173-27-200.

#### **7.04.03 SHORELINE VARIANCES**

- A. The criteria in WAC 173-27-140 and WAC 173-027-170 shall constitute the minimum criteria for review and approval of a shoreline variance.
- B. The Hearing Examiner may attach conditions to the approval of the shoreline variance as necessary to assure consistency of the proposal with the above criteria.
- C. The decision of the Hearing Examiner shall be the final decision of the city. Ecology shall be the final authority authorizing a shoreline variance consistent with WAC 173-27-200.

#### **7.04.04 SHORELINE LETTERS OF EXEMPTION**

The following is applicable for all shoreline letters of exemption:

- A. A letter of exemption shall be required for a development that is exempt from the requirements for a shoreline substantial development permit.
- B. To qualify for a letter of exemption, the proposed use, activity, or development must meet all of the requirements for an exemption. Exemptions and the standards for interpreting exemptions are found in WAC 173-27-040.
- C. The Shoreline Administrator may issue a letter of exemption for emergency construction necessary to protect property from damage by the elements in accordance with WAC 173-27-040. All emergency construction shall be consistent with the policies of Chapter 90.58 RCW and the SMP. As a general matter, flooding or other seasonal events that can be anticipated and that may occur but that are not imminent, are not an emergency.
- D. For exempt development proposals subject to review, approval, and permitting by a state or federal agency in shoreline jurisdiction or identified in this SMP as requiring a shoreline letter of exemption, the Shoreline Administrator shall prepare a letter of exemption in accordance with WAC 173-27-050(1). The letter of exemption shall indicate the specific exemption provisions from WAC 173-27-040(2) that are being applied to the development and it shall provide a summary of the analysis demonstrating consistency of the project with the SMA and the SMP. The letter of

exemption granted may be conditioned to ensure that the activity is consistent with the SMA and the SMP.

- E. Ecology is designated as the coordinating agency for the state with regard to permits issued by the USACE. The following is intended to facilitate Ecology's coordination of actions, with regard to exempt development, with Federal permit review.
  - 1. The Shoreline Administrator shall prepare a letter of exemption, and transmit a copy to the applicant and Ecology whenever a development is determined by the Shoreline Administrator to be exempt from the shoreline substantial development permit requirements and the development is subject to one or more of the following Federal permit requirements:
    - a. A USACE Section 10 permit under the Rivers and Harbors Act of 1899. The provisions of Section 10 of the Rivers and Harbors Act generally apply to a project occurring on or over navigable waters. Specific applicability information should be obtained from the USACE; or
    - b. A Section 404 permit under the Federal Water Pollution Control Act of 1972. The provisions of Section 404 of the Federal Water Pollution Control Act generally apply to a project that may involve discharge of dredge or fill material to any water or wetland area. Specific applicability information should be obtained from the USACE.
  - 2. Ecology will be notified prior to issuance of the letter of exemption.
  - 3. Before determining that a proposal is exempt, the Shoreline Administrator may conduct a site inspection and/or request additional information to ensure that the proposal meets the exemption criteria.
- F. Exempt proposals shall be consistent with the goals and policies of the SMP.
  - 1. ~~Exemptions shall be construed narrowly.~~ Only those developments that meet the precise terms of one or more of the exemptions listed in WAC 173-27-040 may be granted exemptions from the substantial development permit process.
  - 2. Exempt proposals shall be consistent with the goals, policies, and provisions of the SMA and the SMP. A letter of exemption from the substantial development permit process is not an exemption from compliance with the SMA or the SMP, or from any other regulatory requirements.
  - 3. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the SMP, such development or use can only be authorized by approval of a shoreline variance.

Commented [NS11]: City requested this phrase be removed

4. The burden of proof that a development or use is exempt from the shoreline permit process is on the applicant.
5. If any part of a proposed development is not eligible for exemption, then a shoreline substantial development permit is required for the entire proposed development project.
6. The Shoreline Administrator may attach conditions to letters of exemption as necessary to assure consistency of the proposal with the SMA and the SMP.

## **7.05 PUBLIC HEARING AND DECISION**

### **7.05.01 BURDEN OF PROOF FOR DEVELOPMENT CONFORMANCE**

The burden of proving that the proposed development is consistent with the criteria set forth in the SMP, as well as the requirements of the SMA shall be on the applicant.

### **7.05.02 PUBLIC HEARING PROCESS**

- A. The Hearing Examiner shall hold at least one open record public hearing on each application for a shoreline conditional use permit or shoreline variance, and on each substantial development permit where the conditions of SMP Section 7.04.01(A)(2) are met. The Hearing Examiner will make the final decision at a closed record hearing.
- B. If, for any reason, testimony on a matter set for public hearing, or being heard, cannot be completed on the date set for such hearing, the Hearing Examiner may, before adjournment or recess of such matters under consideration, publicly announce the time and place of the continued hearing and no further notice is required.
- C. When the Hearing Examiner renders the final decision, the Hearing Examiner shall make and enter written findings from the record and conclusions thereof, which support the decision. The findings and conclusions shall set forth the manner in which the decision is consistent with the criteria set forth in the SMA and city regulations.

### **7.05.03 NOTICE OF DECISION**

The Shoreline Administrator shall notify the following persons in writing of the ~~Hearings~~ Hearing Examiner's final approval, conditional approval, or disapproval of a shoreline substantial development permit, conditional use permit, or variance within 14 days of the ~~Hearings-Hearing~~ Hearing Examiner's final decision:

- A. The applicant;

- B. Ecology;
- C. The State Attorney General;
- D. Any person who has provided written or oral comments on the application at the public hearing; and
- E. Any person who has written the Shoreline Administrator requesting notification.

#### **7.05.04 DEVELOPMENT START**

- A. Development in accordance with a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance shall not be authorized until 21 days from the date of filing of the approved shoreline substantial development permit, conditional use permit, or variance with Ecology and Attorney General, or until all review proceedings initiated within 21 days of the date of such filing have been terminated.
- B. The date of filing of a substantial development permit is the date of receipt by Ecology of the city's decision.
- C. Shoreline conditional use permits and shoreline variances are subject to Ecology review and approval before the 21-day period starts. The date of filing of a shoreline conditional use permit or shoreline variance is the date Ecology's decision is transmitted to the city.
- D. The date of filing of a shoreline substantial development permit transmitted simultaneously with a shoreline conditional use permit or shoreline variance, or both, is the date Ecology's decision is transmitted to the city.

#### **7.05.05 APPEALS OF DECISIONS**

- A. Any person aggrieved by the granting or denying of a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance, or by the rescinding of a permit in accordance with the provisions of the SMP, may seek review from the State Shorelines Hearings Board. A request for review may be done by filing a petition for review with the board within 21 days of the date of filing of the final decision, as defined by RCW 90.58.140(6) and by concurrently filing copies of such request with the City Clerk – Treasurer, Ecology and the Attorney General's office. State Shorelines Hearings Board regulations are provided in RCW 90.58.180 and Chapter 461-08 WAC.
- B. An appeal of a letter of exemption follows the Land Use Petition Act (LUPA) judicial review of land use decisions process found in Chapter 36.70C RCW.

## **7.06 TIME REQUIREMENTS AND REVISIONS**

### **7.06.01 TIME REQUIREMENTS FOR SHORELINE PERMITS**

The time requirements of WAC 173-27-090 shall apply to all shoreline substantial development permits, shoreline conditional use permits or shoreline variances authorized in accordance with this SMP.

### **7.06.02 REVISIONS OF SHORELINE PERMITS**

- A. A permit revision is required whenever the applicant proposes substantive changes to the design, terms, or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the SMP, and/or the SMA. Changes, which are not substantive in effect, do not require approval of a revision.
- B. Permit revisions shall be processed in accordance with WAC 173-27-100.
- C. If the revision involves a shoreline variance or shoreline conditional use, which was conditioned by Ecology, the revision must be reviewed and approved by Ecology under the SMA.
- D. Revisions to permits under WAC 173-27-100 shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.

## **7.07 NONCONFORMING DEVELOPMENT**

- A. Nonconforming use or development means a shoreline use, development, or structure that was lawfully constructed or established prior to the effective date of the SMA or the SMP, or amendments thereto, that does not conform to present regulations or standards of the SMP. Provided that, legally established existing residential structures and appurtenances located landward of the OHWM and outside the floodway that do not meet the standards of this program are considered to be conforming.
- B. The nonconforming use and development standards in MMC Chapter 17.45: Nonconforming Uses, Lots and Structures (as of Ord 1366, 1995) shall apply to the shoreline jurisdiction.
- C. For nonconforming shoreline uses, development or structures, in addition to the standards established in MMC Chapter 17.45, the following standards shall apply:

1. Legally established uses and developments may be maintained, repaired, and operated within shoreline jurisdiction and within shoreline buffers established in the SMP.
2. A nonconforming use, development, or structure, which is moved any distance, must be brought into conformance with the SMA and the SMP.
3. An undeveloped lot, tract, parcel, site, or division of land located landward of the OHWM, which was established in accordance with city and state subdivision requirements prior to the effective date of the SMA and the SMP, may be developed if permitted by other city land use regulations so long as such development conforms to all other requirements of the SMA and the SMP.
4. A use that is listed as a conditional use but which existed prior to adoption of the SMP and for which a shoreline conditional use permit has not been obtained shall be considered a nonconforming use. If the use seeks to expand, however a [shoreline](#) conditional use permit shall be required.
5. A structure for which a shoreline variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities. If an applicant seeks to expand the nonconformity, the expansion will require further review as a shoreline variance.

## **7.08 ENFORCEMENT AND PENALTIES**

### **7.08.01 ENFORCEMENT**

- A. The Shoreline Administrator or a designated representative shall enforce all provisions of the SMP. For such purposes, the Shoreline Administrator or a designated representative shall have the power of a police officer.
- B. The choice of enforcement action and the severity of any penalty should be based on the nature of the violation and the damage or risk to the public or to public resources. The existence or degree of bad faith of the persons subject to the enforcement action; the benefits that accrue to the violator; and the cost of obtaining compliance may also be considered.
- C. The enforcement procedures and penalties contained in Part II of Chapter 173-27 WAC are hereby incorporated by reference.

#### **7.08.02 PENALTY**

A person found to have willfully engaged in activities in shoreline jurisdiction in violation of the SMA or in violation of the SMP or rules or regulations adopted pursuant thereto shall be subject to the penalty provisions of the city's code, RCW 90.58.210 and RCW 90.58.220, and WAC 173-27-270 and WAC 173-27-280. In the case of activities that result in significant net loss of habitat, the person or corporation who engaged in the activity must restore the habitat and water quality to its previous condition, and pay for all lost income and potential income to the city and its residents.

Hazardous, toxic, or harmful materials shall not be dumped or discharged intentionally or accidentally within shoreline jurisdiction. If any hazardous materials are split or discharged into the environment, responsible parties shall clean up the discharge, restore the environment to its pre-discharge state, and compensate affected individuals and businesses of lost wages and revenues.

##### **A. Civil Penalty**

1. Action: The City Attorney, when authorized by the Mayor, shall bring such injunctive, declaratory, or other actions as are necessary to insure that uses in shoreline jurisdiction are not in conflict with the provisions of the SMA and the SMP.
2. Noncompliance: Any person who fails to conform to the terms of a permit issued under the SMP or who undertakes a development or use in shoreline jurisdiction without first obtaining any permit required under the SMP or who fails to comply with a cease and desist order issued under regulations shall also be subject to a civil penalty not to exceed \$1,000 for each violation. Each permit violation or each day of continued development without a required permit shall constitute a separate violation.
3. Aiding and Abetting: Any person who, through an act of commission or omission, aids, or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.
4. Notice of Penalty: The penalty provided for in this section shall be imposed by a notice in writing, by certified mail either with return receipt requested or by personal service, to the person incurring the same from the city, Ecology, or both. The notice shall include the "content of order" specified in SMP Section 7.08.02(A)(6).
5. Remission and Joint Order: Within thirty days after the notice is received, the person incurring the penalty may apply in writing to the ~~Hearings~~-Hearing Examiner



for remission or mitigation of the penalty. Upon receipt of the application, the Hearings-Hearing Examiner may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty.

Any penalty imposed pursuant to this section shall be subject to review by the Hearings-Hearing Examiner. In accordance with RCW 90.58.050 and RCW 90.58.210 (4), any penalty jointly imposed by the city and Ecology shall be appealed to the State Shorelines Hearings Board. When a penalty is imposed jointly by the city and Ecology, it may be remitted or mitigated only upon such terms as both the city and Ecology agree.

6. Regulatory Order: Content of order shall contain:
  - a. A description of the specific nature, location, extent, and time of violation and the damage or potential damage including applicable SMA or SMP language; and
  - b. A notice that the violation or the potential violation cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time.A civil penalty under this section may be issued with the order and it shall specify a date certain or schedule by which payment will be complete.
7. Effective Date: The cease and desist order issued under this subsection shall become effective immediately upon receipt by the person to whom the order is directed.
8. Compliance: Failure to comply with the terms of a cease and desist order can result in enforcement actions including the issuance of a civil penalty.

**B. Property Lien**

Any person who fails to pay the prescribed penalty as authorized in this section shall be subject to a lien upon the affected property until the penalty is paid in full. The City Attorney shall record the lien with the Grays Harbor County Auditor.

**C. Mandatory Civil Penalties**

Issuance of civil penalties is mandatory one or more of in the following instances:

1. The violator has ignored the issuance of an order or notice of violation;
2. The violation causes or contributes to significant environmental damage to shoreline jurisdiction as determined by the city; or



3. A person causes, aids, or abets in a violation within two years after issuance of a similar regulatory order, notice of violation, or penalty by the city or Ecology against said person.

**D. Minimum Penalty Levels**

1. The minimum penalty for all mandatory penalties is \$250.
2. For all other penalties, the minimum penalty is \$100.

**E. General Criminal Penalty**

In addition to incurring civil liability under SMP Section 7.08.02(A), any person found to have willfully engaged in activities in shoreline jurisdiction in violation of the provisions of the SMA or SMP shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$100 or by imprisonment in the Grays Harbor County Jail for each separate offense, or by both such fine and imprisonment. Provided, that the fine for each separate offense for the third and all subsequent violations in any five-year period shall not be less than \$500.

**F. Development and Building Permits**

1. No building permit, septic tank permit, or other development permit shall be issued for any parcel of land developed or divided in violation of the SMP. All purchasers or transferees of property shall comply with provisions of the SMA and SMP. A purchaser or transferee may recover damages from any person, firm, corporation, or agent selling, transferring, or leasing land in violation of the SMA or SMP, including any amount reasonably spent as a result of inability to obtain development permits and spent to conform to the requirements of the SMA or SMP as well as cost of investigation, suit, and reasonable attorney's fees occasioned thereby.
2. A purchaser, transferee, or lessor may, as an alternative to making his property conform to these requirements, rescind the sale, transfer, or lease, and recover cost of investigation and reasonable attorney's fees occasioned thereby from the violator.

**7.08.03 PUBLIC AND PRIVATE REDRESS**

- A. A person subject to the regulatory program of the SMP who violates any provision of the SMP or the provisions of a permit issued pursuant thereto shall be liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to such violation. The City Attorney may sue for damages under SMP Section 7.08 on behalf of the city.

- B. Private persons shall have the right to sue for damages under this section on their own behalf and on behalf of all persons similarly situated. ~~If liability has been established for the cost of restoring an area affected by violation, the court shall make provisions to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including monetary damages, the court, in its discretion, may award attorneys' fees and costs of the suit to the prevailing party.~~

#### **7.08.04 DELINQUENT PERMIT PENALTY**

- A. A person applying for a permit after commencement of the use or activity ~~may be is~~ required ~~, at the discretion of the city~~ to pay a delinquent permit penalty not ~~to less~~ than exceed three times the appropriate permit fee ~~paid by the applicant~~.
- B. A person who has caused, aided, or abetted a violation within two years after the issuance of a regulatory order, notice of violation, or penalty by the city or Ecology against said person may be subject to a delinquent permit penalty ~~no not~~ to exceed ten times the appropriate permit fee paid by the applicant. Delinquent permit penalties shall be paid in full prior to resuming the use or activity.

### **7.09 SHORELINE MASTER PROGRAM – ADMINISTRATION**

#### **7.09.01 GENERAL ADMINISTRATION**

- A. The Shoreline Administrator shall keep a record all project review actions within shoreline jurisdiction, including shoreline permits, letters of exemption, and enforcement actions.
- B. As part of shoreline permit review process, the city shall evaluate shoreline conditions on an ongoing basis to ensure no net loss of ecological functions, to protect and enhance visual quality, and to identify and protect significant historic or cultural resources in the shoreline. Specific issues to address in evaluations may include the following:
1. Water quality;
  2. Conservation of aquatic vegetation and control of noxious weeds;
  3. Changing visual character as a result of new development or redevelopment and individual vegetation conservation practices along shoreline and upland areas;
  4. Shoreline stabilization and modifications; and

5. Significant historic or cultural resources within shoreline jurisdiction resulting from research, inventories, discoveries, or new information.

#### **7.09.02 SHORELINE MASTER PROGRAM REVIEW**

The following guidelines are to be used for review of the SMP:

- A. The SMP shall be reviewed periodically at least once every eight years as required by RCW 90.58.080(4)(b) beginning on or before June 30, 2022 and every eight years thereafter. Amendments shall be made as necessary to reflect changing local circumstances, new information or improved data, and changes in state statutes and regulations.
- B. As part of an SMP update, the city shall consider the cumulative impacts of recent development on the ecological functions of the shoreline. As part of this review, the city should assemble a list of recent permit activities in the shoreline jurisdiction by watershed, including any applications for vegetation clearing, docks, or structures, among other items. A brief description of identified impacts and mitigation should be provided as part of the assessment.
- C. The city's established permit tracking system, aerial photos, reviewing of other available data, and field observations as feasible shall be used to document the cumulative effect of all project review actions in the city's shoreline jurisdiction.
- D. It will also be used to evaluate periodically the effectiveness of the SMP in achieving no net loss of ecological functions in shoreline jurisdiction with respect to both permitting authorized developments, including mitigation and restoration actions, letters of exemption, and enforcement actions. This process may involve a joint effort by the city, state resource agencies, affected tribes, and other parties.
- E. The SMP review and update process shall be consistent with the requirements of Chapter 173-26 WAC or its successor and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public.
- F. During the amendment process, the city should use a process that is designed to assure that proposed regulatory or administrative actions do not infringe upon constitutionally established private property rights. Related to the constitutional takings limitation, a process established for this purpose is set forth in a publication entitled, *State of Washington, Attorney General's Recommended Process for Evaluation of Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property*, first published in February 1992.

**Commented [NS14]:** FYI - This is the correct date per the RCW. However, Ecology granted an extra year for this round of changes.

### **7.09.03 SHORELINE MASTER PROGRAM AMENDMENTS**

The following guidelines are to be used for amendments to the SMP:

- A. Any of the provisions of the SMP may be amended as provided for in RCW 90.58.120, RCW 90.58.200, and Chapter 173-26 WAC. Standards in WAC 173-26-201 in particular articulate many of the factors to consider as part of the revisions. Amendments shall also be subject to the procedures in the MMC.
- B. Amendments or revisions to the SMP, as provided by law, do not become effective until approved by Ecology.

### **7.09.04 ANNEXATION OF A SHORELINE OF THE STATE**

- A. Except as provided in WAC 173-26-150, in the event of annexation of a shoreline of the state, the city assuming jurisdiction shall notify Ecology of such annexation and develop or amend the city's SMP to include the annexed area. Such SMP development or amendment shall be consistent with the policy of RCW 90.58.020 and the applicable guidelines and shall be submitted to Ecology for approval no later than one year from the effective date of annexation.
- B. Until a new or amended master program is adopted by Ecology, any decision on an application for a shoreline permit in the annexed shoreline area shall be based upon compliance with the SMP in effect for the area prior to annexation.

# 8 DEFINITIONS

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## 8.01 UNLISTED WORDS OR PHRASES

Any word or phrase not defined in SMP Chapter 8: Definitions that is called into question when administering the SMP shall be defined utilizing the SMA and its implementing rules.

The Shoreline Administrator may obtain secondary definition sources from one of the following sources:

- A. The city's code.
- B. Any city resolution, ordinance, policy, or regulation.
- C. The most applicable statute or regulation from the state.
- D. Legal definitions generated from case law or provided within a law dictionary.
- E. The common dictionary.

## 8.02 DEFINITIONS

### A

**Accessory Use** – A use incidental, related and clear subordinate to the principal use of a lot or main building. An accessory use is only located on the same lot as a permitted principal use.

**Act** – The Washington State Shoreline Management Act (SMA) (Chapter 90.58 RCW and addressed in Chapter 173-27 WAC).

**Adoption by Rule** – An official action by Ecology to make the city's SMP effective through rule consistent with the requirements of the Administrative Procedure Act, Chapter 34.05, thereby incorporating the adopted SMP or amendment into the state master program.

**Agriculture** – The use of land for agricultural purposes, including farming, dairying, pasturage, horticulture, floriculture, viticulture, apiaries, and animal and poultry husbandry, and the necessary accessory uses for storing produce; provided, however, that the operation of any such accessory use shall be incidental to that of normal agricultural activities. In all cases, the use of agriculture related terms should be consistent with the specific meanings provided in WAC 173-26-020.

**Agricultural activities** – Agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing

land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation.

**Agricultural products** – Includes, but is not limited to, horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including, but not limited to, meat, upland finfish, poultry and poultry products, and dairy products.

**Agricultural equipment and facilities** – Includes, but is not limited to the following:

- A. The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including, but not limited to, pumps, pipes, tapes, canals, ditches, and drains;
- B. Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;
- C. Farm residences and associated equipment, lands, and facilities; and
- D. Roadside stands and on-farm markets for marketing fruit or vegetables.

**Agricultural land** – Those specific land areas on which agricultural activities are conducted as of the date of adoption of a SMP pursuant to these guidelines as evidenced by aerial photography or other documentation. After the effective date of the master program, land converted to agricultural use is subject to compliance with the requirements of the master program.

**Alteration** – 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.

**Applicant** – Any person or entity designated or named in writing by the property or easement owner to be the applicant, in an application for a shoreline development proposal, permit, or approval.

**Appurtenance** – A building, structure, or development necessarily connected to the use and enjoyment of a single-family residence that is located landward of the OHWM and of the perimeter of any wetland. On a statewide basis, normal appurtenances include a garage, deck, driveway, utilities, fences, installation of a septic tank and drain field, and grading which does not exceed 250 cubic yards (except to construct a conventional drain field) and which does not involve placement of fill in any wetland or waterward of the OHWM. Refer to WAC 173-27-040(2)(g).

**Aquaculture** – The culture or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture does not include the harvest of wild geoduck associated with the state managed wildstock geoduck fishery.

**Aquifer Recharge Area** – The incorporated area of the city is designated as an aquifer recharge area.

**Archaeological Standards** – Rules, regulations, or guidelines related to the scientific study of material remains of past human life and activities.

**Associated Wetlands** – Those wetlands that are in proximity to, and either influence or are influenced by, tidal waters or a lake or stream subject to the SMA. Refer to WAC 173-22-030(1).

**Average Grade Level** - The average of the natural or existing topography of the portion of the lot, parcel, or tract of real property, which will be directly under the proposed building or structure: In the case of structures to be built over water, average grade level shall be the elevation of the OHWM. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure.

## **B**

**Best Available Science (BAS)** – 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 WAC 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.

**Berm** – A linear mound or series of mounds of sand or gravel generally that parallels the water at or landward of the line of the OHWM. In addition, a linear mound used to screen an adjacent use, such as a parking lot, from transmitting excess noise and glare.

**Best Management Practices (BMPs)** – BMPs are 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 run-off and in receiving waters and include conservation practices or systems of practices and management measures that:

- A. Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, or sediment;
- B. Minimize adverse impacts to surface water and ground water flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;
- C. Protect trees, vegetation, and soils designated to be retained during and following site construction and use native plant species appropriate to the site for re-vegetation of disturbed areas; and
- D. Provide standards for proper use of chemical herbicides within critical areas.

**Bog** – A low nutrient, acidic wetland with organic soils and characteristic bog plants, as described in Washington State Wetland Rating System for Western Washington: 2014 Update (Washington State Department of Ecology Publication #14-06-29, Olympia, WA, October 2014), which is sensitive to disturbance and impossible to re-create through compensatory mitigation.

**Commented [NS15]:** Updated per changes from the ECY Guidance document

**Buffer or Buffer Zone** – The area contiguous with a shoreline of the state or a critical area that maintains the functions and/or structural stability of the shoreline of the state or critical area.

**Bulkhead** – A vertical or nearly vertical erosion protection structure placed parallel to the shoreline consisting of concrete, timber, steel, rock, or other permanent material not readily subject to erosion.

## C

**Channel Migration Zone (CMZ)** – The area along a river or stream within which the channel can reasonably be expected to migrate over time because of normally occurring processes. It encompasses that area of lateral stream channel movement that can be identified by credible scientific information that is subject to erosion, bank destabilization, rapid stream incision, and/or channel shifting, as well as adjacent areas that are susceptible to channel erosion. For the purpose of this SMP, linear facilities parallel to the direction of flow, including roads and railroads and flood control levees permanently maintained by a public agency, may be considered to form the boundary of a CMZ. The area within which a river channel that is likely to move over an interval of time is referred to as the CMZ or the meander belt.

**Chapter 90.58 RCW** – The Shoreline Management Act of 1971, as amended.



**City** – The city of Montesano.

**Clean Water Act** – The primary federal law providing water pollution prevention and control; previously known as the Federal Water Pollution Control Act. See 33 USC 1251 et seq.

**Clearing** – 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.

**Comprehensive Plan** – The document, including maps adopted by the city in accordance with applicable state law, that guides land use development within the city.

**Conditional Use** – A use, development, or substantial development that is classified as a conditional use or is not classified within the applicable SMP. Refer to WAC 173-27-030(4).

**County** – Grays Harbor County.

**Creation** – The manipulation of the physical, chemical, or biological characteristics to develop a wetland on an upland or deepwater site, where a wetland did not previously exist. Creation results in a gain in wetland acreage and function. A typical action is the excavation of upland soils to elevations that will produce a wetland hydroperiod and hydric soils, and support the growth of hydrophytic plant species.

**Critical Aquifer Recharge Areas** – Those areas that have been identified as having a critical recharging effect on aquifer use for potable water in community water systems.

**Critical Areas** – Defined under Chapter 36.70A RCW includes the following areas ~~and or~~ ecosystems:

- A. Wetlands;
- B. Areas with a critical recharging effect on aquifers used for potable waters;
- C. Fish and wildlife habitat conservation areas;
- D. Frequently flooded areas; and
- E. Geologically hazardous areas

**Critical Areas Special Study** – A study that identifies and characterizes any critical area as a part of the larger development proposal site, assesses any hazards to the proposed development, assesses impacts of the development proposal on any critical areas on or adjacent to the development proposal site, and assesses the impacts of any alteration proposed for a critical area. Studies propose adequate mitigation, maintenance and monitoring plans and bonding measures. Critical areas special studies include a scale map of the development proposal site and a written report.

**Cumulative Impact** – The impact on the environment, which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over an interval of time.

## D

**Data Maps** – A series of maps maintained by the city for graphically depicting the boundaries of critical areas.

**Date of Filing** – The date of receipt by Ecology. For a substantial development permit, the date of filing is the date of receipt by Ecology. For shoreline conditional use and variance permits, and substantial development permits simultaneously transmitted with a shoreline conditional use or variance permit, the date of filing is the date Ecology's decision is transmitted to the city.

**Developable Area** – A site or portion of a site that may be used as the location of development, in accordance with the rules of this SMP.

**Development** – The construction or exterior alteration of buildings or structures; dredging; drilling; dumping; filling; removal of sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or a project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to Chapter 90.58 RCW at any state of water level (RCW 90.58.030(3)(a)). “Development” does not include dismantling or removing structures if there is no other associated development or re-development.

**DRASTIC** - DRASTIC is a system developed jointly by the U.S. Environmental Protection Agency (USEPA) and the National Water Well Association (NWWA) to map potential aquifer vulnerability to contamination.

**Dredging** – Excavating or displacing of the bottom or shoreline of a waterbody. Dredging can be accomplished with mechanical or hydraulic machines. Most dredging is done to maintain channel depths or berths for navigational purposes; other dredging is for cleanup of polluted sediments.

## E

**Ecological Functions** – The work performed or the role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

**Ecology** – The Washington State Department of Ecology.

**Ecosystem-wide Processes** – The suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

**Emergency** – 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 SMP. Emergency construction is construed narrowly as that which is necessary to protect property from the elements (RCW 90.58.030(3)(e)(iii) and WAC 173-27-040(2)(d)).

**Endangered Species Act (ESA)** – A federal law intended to protect any fish or wildlife species that are threatened with extinction throughout all or a significant portion of its range.

**Enhancement** – The manipulation of the physical, chemical, or biological characteristics of a shoreline buffer or wetland 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 shoreline buffer or wetland function(s) and can lead to a decline in other shoreline buffer or wetland functions, but does not result in a gain in shoreline buffer or wetland area. Examples are planting vegetation, controlling non-native or invasive species, and modifying site elevations to alter hydroperiods.

**Environmental Impacts** – 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 SEPA. Refer to WAC 197-11-600 and WAC 197-11-444.

**Environments, (Shoreline Environment)** – Designations given specific shoreline areas based on the existing development pattern, the biophysical capabilities and limitations, and the goals and aspirations of local citizenry, as part of an SMP.

**Exemption** – Certain specific developments are exempt from the definition of substantial developments and are therefore exempt from the shoreline substantial development permit process of the SMA. A use or activity that is exempt from the substantial development provisions of the SMA must still be carried out in compliance with policies and standards of the SMA and the city's SMP. Shoreline conditional use permits and variances may also still be required even though the use or activity does not need a shoreline substantial development permit (WAC 173-27-040).

## **F**

**Fair Market Value** – The open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the

development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of donated, contributed or found labor, equipment or materials (WAC 173-27-030(8)).

**Feasible** – An action, such as a development project, mitigation, or preservation requirement, that meets all of the following conditions:

- A. 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;
- B. The action provides a reasonable likelihood of achieving its intended purpose; and
- C. The action does not physically preclude achieving the project's primary intended legal use.

In cases where the SMP Guidelines require certain actions unless they are infeasible, 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 time frames.

**Fill** – Raising the elevation or creating dry land by adding soil, sand, rock, gravel, sediment, earth-retaining structure, or other material to an area waterward of the OHWM, in wetland, or on shorelands.

**Fish and Wildlife Habitat Conservation Areas** – They are defined as follows:

- A. "Fish and wildlife habitat conservation areas" are 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 habitat or habit elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species.
- B. "Habitats of local importance" designated as fish and wildlife habitat conservation areas include those areas found to be locally important by counties and cities.
- C. "Fish and wildlife habitat conservation areas" does 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.

A. Areas with which federally (50 CFR 17.11 and 50 CFR 17.12) or state (WAC 232-12-011 and 232-12-014) listed endangered and threatened species of fish and wildlife have a primary association;

B. Lakes, ponds, streams, and rivers planted with game fish, including fish planted under the auspices of a federal, state, local, or tribal program, which supports priority fish species as identified by the WDFW.

Commented [N16]: Updated to match RCW 36.70A.030

**Floodplain** – Term is synonymous with 100-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 or a reasonable method that meets the objectives of the SMA (WAC 173-22-030(2)).

**Floodway** – The area that has been established in effective federal emergency management agency flood insurance rate maps or floodway maps. The floodway does not include lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

**Frequently Flooded Areas** – Those lands in the floodplain that are subject to a one percent or greater chance of flooding in any given year. The one-hundred-year floodplain designations of the National Flood Insurance Program delineate the presence of frequently flooded areas.

**Functions and Values** – 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.

## G

**Geologically Hazardous Areas** – "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns. All lands within the city's comprehensive plan study area, which will be classified as either: (1) known or suspected risk, (2) no risk, or (3) risk unknown--data are not available, to determine the presence or absence of a geological hazard. Geological hazards include:

Commented [NS17]: Updated per RCW 36.70A.030(10) from 2012.

- A. Erosion hazard areas include areas that because of natural characteristics, including vegetative cover, soil texture, slope, gradient, and rainfall patterns, or manmade

changes to such characteristics, are vulnerable to erosion. Erosion hazard areas are those areas that have a severe or very severe erosion potential as detailed in the soil descriptions contained in the most recent "Soil Survey of Grays Harbor County Area, Washington" issued by Soil Conservation Service, USDA.

- B. Landslide hazard areas include areas potentially subject to landslides based upon the following combination of geologic, topographic, and hydrologic factors:
  - 1. Areas of historic failure;
  - 2. Areas with all three of the following characteristics:
    - a. Slopes of twenty-five percent gradient or greater,
    - b. Hillsides intersecting geologic contacts with a relatively permeable sediment overlaying a relatively impermeable sediment or bedrock, and
    - c. Springs or groundwater seepage;
  - 3. Slopes that are parallel or subparallel to planes or weakness in subsurface materials;
  - 4. Privately owned areas with slopes that have gradients greater than eighty percent subject to rock fall during seismic shaking;
  - 5. Areas potentially unstable as a result of rapid stream incision or stream bank erosion;
  - 6. Areas located in a canyon or an active alluvial fan presently or potentially subject to one percent or greater chance of inundation by debris flows or catastrophic flooding;
  - 7. Areas with slope gradients of forty percent or greater not composed of consolidated rock. These will be of at least ten feet of vertical relief.
- C. Seismic hazard areas include areas subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, soil liquefaction, or surface faulting.

**Geotechnical Report or Geotechnical Analysis** – A scientific study or evaluation conducted by a qualified 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 shoreline geology and processes.

**Grading** – The movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

**Groin** – A barrier-type structure extending from, and usually perpendicular to, the backshore into a waterbody. Its purpose is to protect a shoreline and adjacent upland by influencing the movement of water or deposition of materials. This is accomplished by building or preserving an accretion beach on its updrift side by trapping littoral drift. A groin is relatively narrow in width but varies greatly in length. A groin is sometimes built in a series as a system and may be permeable or impermeable, high or low, and fixed or adjustable.

**Growth Management Act (GMA)** – Chapter 36.70A RCW and Chapter 36.70B RCW, as amended.

**Guidelines** – See Shoreline Management Program (SMP) Guidelines (Chapter 173-26 WAC).

## H

**Hazardous Substances** – 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.

**Hearing Examiner** - "Examiner" or "hearing examiner" means the hearing examiner of the city of Montesano. See MMC Chapter 2.38.

**Height** – Measured from average grade level to the highest point of a structure: provided that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines, or the applicable SMP specifically requires that such appurtenances be included: provided further that temporary construction equipment is excluded in this calculation.

**Historic Condition** – Condition of the land, including flora, fauna, soil, topography, and hydrology that existed before the area and vicinity were developed or altered by Euro-American settlement, or in some cases before any human habitation occurred.

**Historic Resources** – Those historic or cultural properties or items that fall under the jurisdiction of the DAHP.

## I – J – K

**Impermeable Surface** – The area of a lot that is covered by impermeable surfaces, measured by percentage. A non-vertical surface artificially covered or hardened so as to prevent or impede the percolation of water into the soil mantle including, but not limited to, roof tops, swimming pools, paved or graveled roads and walkways or parking areas, but excluding landscaping and surface water retention/detention facilities.

**Impervious Surface** – 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.

**In-Kind Compensation** – To replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity.

**In-Water Structure** – A structure placed by humans within a stream or river waterward of the OHWM that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.

**Infiltration** – The downward entry of water into the immediate surface of soil.

**Interested Party** – Synonymous with party of record, all persons, agencies or organizations who have submitted written comments in response to a notice of application; made oral comments in a formal public hearing conducted on the application; or notified the city of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail (WAC 173-27-030(12)).

**Isolated Wetlands** – A wetland that is hydrologically isolated from other aquatic resources, as determined by the United States Army Corps of Engineers (USACE). Isolated wetlands may perform important functions and are protected by state law (RCW 90.48) whether or not they are protected by federal law. Those wetlands that are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream and have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water, including other wetlands.

**Commented [NS18]:** Updated per changes from the ECY Guidance document

**Mature and Old-Growth Forested Wetland** – A wetland having at least 1 contiguous acre of either old-growth forest or mature forest, as described in Washington State Wetland Rating System for Western Washington: 2014 Update (Washington State Department of Ecology Publication #14-06-29, Olympia, WA, October 2014).

**Commented [NS19]:** Add per per changes from the ECY Guidance document



## L

**Landscaping** – Vegetation ground cover including shrubs, trees, flower beds, grass, ivy and other similar plants and including tree bark and other materials which aid vegetative growth and maintenance.

**Low Impact Development (LID)** – A stormwater and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation, and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design.

## M

**Mature Forested Wetland** – A wetland where at least one acre of the wetland surface is covered by woody vegetation greater than 20 feet in height with a crown cover of at least 30 percent and where at least 8 trees/acre are 80 to 200 years old or have average diameters (d. b. h.) exceeding 21 inches (53 centimeters) measured from the uphill side of the tree trunk at 4.5 feet up from the ground.

**May** – An action that is acceptable, provided it conforms to the provisions of the SMP.

**Mitigation or Mitigation Sequencing** – Avoiding, reducing, or compensating for a proposal's environmental impact(s). See WAC 197-11-768 and WAC 173-26-020(30). Mitigation or mitigation sequencing means the following sequence of steps listed in order of priority, with (a) of this subsection being top priority:

- A. Avoiding the impact all together by not taking a certain action or parts of an action;
- B. 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;
- C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- D. Reducing or eliminating the impact over time by preservation and maintenance operations;
- E. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and

F. Monitoring the impact and the compensation projects and taking appropriate corrective measures.

**Monitoring** – 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.

**Must** – A mandate; the action is required.

## N

**Native Vegetation** – ~~Plant species that occur naturally in a particular region or environment and were present before European colonization. Vegetation comprised of plant species that are indigenous to an area.~~

**Commented [NS20]:** Updated per changes from the ECY Guidance document

**Natural or existing topography** – The topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling.

**Nonconforming Use or Development** – A shoreline use, building, or structure which was lawfully constructed or established prior to the effective date of the applicable SMA/SMP provision, and which no longer conforms to the applicable shoreline provisions (WAC 173-27-080).

**Non-Water-Oriented Uses** – Those uses that are not water-dependent, water-related, or water-enjoyment, which have little or no relationship to the shoreline and are not considered priority uses under the SMA. Examples include professional offices, automobile sales or repair shops, mini-storage facilities, multifamily residential development, department stores, and gas stations.

**Normal Maintenance** – Those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition (WAC 173-27-040(2)(b)). See also Normal Repair.

**Normal Repair** – To restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location, and external appearance, within a reasonable period after decay or partial destruction except where repair involves total replacement which is not common practice or causes substantial adverse effects to the shoreline resource or environment (WAC 173-27-040(2)(b)). See also Normal Maintenance.

## O

**Off-Site Compensation** – To replace critical areas away from the site on which a critical area has been impacted.

**On-Site Compensation** – To replace critical areas at or adjacent to the site on which a critical areas has been impacted.

**Ordinary High Water Mark (OHWM)** – That mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by the city or Ecology: provided, that in an area where the OHWM cannot be found, the OHWM adjoining fresh water shall be the line of mean high water. See RCW 90.58.030(2)(c) and WAC 173-22-030(5).

**Off-Site Replacement** – To replace wetlands or other shoreline environmental resources away from the site on which a resource has been impacted by a regulated activity.

**Over-Water Structure** – A device or structure projecting over the OHWM, including, but not limited to bridges for motorized or non-motorized uses, piers, docks, floats, and moorage.

## **P – Q**

**Permit (or Shoreline Permit)** – A shoreline substantial development permit, conditional use permit, or variance, or any combination thereof, authorized by the Act. Refer to WAC 173-27-030(13).

**Practical Alternative** – 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.

**Practicable Alternatives** – Alternatives to the proposed project that will accomplish essentially the same objective as the original project while avoiding or having less adverse impacts.

**Preservation** – The removal of a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. 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 acres but may result in a gain in functions over the long term.

**Primary structure** – A structure that is central to the fundamental use of the property and is not accessory to the use of another structure on the same property.

**Priority Habitat** – A habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes:

- A. Comparatively high fish or wildlife density;
- B. Comparatively high fish or wildlife species diversity;
- C. Fish spawning habitat;

- D. Important wildlife habitat;
- E. Important fish or wildlife seasonal range;
- F. Important fish or wildlife movement corridor;
- G. Rearing and foraging habitat;
- H. Important marine mammal haul-out;
- I. Refugia habitat;
- J. Limited availability;
- K. High vulnerability to habitat alteration;
- L. Unique or dependent species; or
- M. 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 a consolidated marine/estuarine shoreline, talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority or non-priority fish and wildlife.

**Priority Species** – Species requiring protective measures or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the following four criteria: ~~listed below.~~

- A. Criterion 1. State-listed or state proposed species. The state Department of Fish and Wildlife maintains the most current listing and should be consulted as necessary for current listing status. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the WDFW (POL-M-6001) for possible listing as endangered, threatened, or sensitive ~~according to the process and criteria defined in WAC 232-12-297.~~
- B. Criterion 2. Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations.

**Commented [NS21]:** The WAC sections cited are no longer used.

- C. Criterion 3. Species of recreational, commercial, or tribal importance. Native and non-native fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.
- D. Criterion 4. Species listed under the ESA as either proposed, threatened, or endangered.

**Project Area** – All areas, including those within 50 feet of the area, proposed to be disturbed, altered, or used by the proposed activity or the construction of any proposed structures. When the action binds the land, such as a subdivision, short subdivision, binding site plan, planned unit development, or rezone, the project area shall include the entire parcel, at a minimum.

**Proposed, Threatened, and Endangered Species** – Those native species that are proposed to be listed or are listed in rule by the WDFW as threatened or endangered, or that are proposed to be listed as threatened or endangered or that are listed as threatened or endangered under the ESA.

**Provisions** – Policies, regulations, standards, guideline criteria or shoreline environment designations.

**Public Access** – Public access is the ability of the public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. Refer to WAC 173-26-221(4).

**Public Interest** – The interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected such as an effect on public property or on health, safety, or general welfare resulting from a use or development (WAC 173-27-030(14)).

**Public Use** – To be made available daily to the public on a first-come, first-served basis, and may not be leased to private parties on more than a day use basis. Refer to WAC 332-30-106.

**Qualified Professional** – 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.

- A. A qualified professional for habitats or wetlands must have a degree in biology and professional experience related to the subject species.
- B. A qualified professional for a geological hazard must be a professional geotechnical engineer or geologist, licensed in the state of Washington.

- C. A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

## R

**RCW** – Revised Code of Washington.

**Recreational Facilities** – Facilities such as parks, trails, and pathways, whether public, private or commercial, that provide a means for relaxation, play, or amusement. For the purposes of the SMP, recreational facilities are divided into two categories:

- A. Water-dependent (i.e. – moorage facilities, fishing piers, community docks); and
- B. Non-water-dependent (i.e. – sports fields, golf courses, and RV camping).

**Re-establishment** – The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in rebuilding a former wetland and results in a gain in wetland acres and functions. Activities could include removing fill, plugging ditches, or breaking drain tiles.

**Rehabilitation** – The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions and processes of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or returning tidal influence to a wetland.

**Repair or Maintenance** – An activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.

**Residential Development** – Development, which is primarily devoted to or designed for use as a dwelling(s). Residential development includes single-family development, multifamily development and the creation of new residential lots through land division.

**Restore, Restoration, or Ecological Restoration** – The reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

**Riparian** – Of, on, or pertaining to the banks of a river, stream, or lake.

**Riprap** – A layer, facing, or protective mound of stones placed to prevent erosion, scour, or sloughing of a structure or embankment; also, the stone so used.

**Run-Off** – Water that is not absorbed into the soil but rather flows along the ground surface following the topography.

## S

**Shall** – A mandate; the action must be done.

**Shorelands or Shoreland Areas** – Those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the OHWM; adopted FEMA floodways and contiguous floodplain areas landward 200 feet from such adopted FEMA floodways and all wetlands and river deltas associated with the streams, lakes, and tidal waters, which are subject to the provisions of the SMA.

**Shoreline Administrator** – As appointed by the city's Mayor, the city's Shoreline Administrator is charged with the responsibility of administering the SMP.

**Shoreline Buffer** – A required vegetated open space, specified in the SMP, measured horizontally upland from and perpendicular to the OHWM. Shoreline Buffers are naturally vegetated areas that protect the ecological functions of the shoreline and help to reduce the impacts of land uses on the waterbody.

**Shoreline Environment Designations** – The categories of shorelines established by the city's SMP in order to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas. See WAC 173-26-211.

**Shoreline Jurisdiction** - The term describing all of the geographic areas covered by the SMA, related rules, the applicable SMP, and such areas within the city that are under the SMA. See definitions of Shorelines, Shorelines of the State, Shorelines of Statewide Significance, Shorelands, and Wetlands.

**Shoreline Management Act (SMA)** – Chapter 90.58 RCW, as amended. Washington's SMA was passed by the Legislature in 1971 and adopted by the public in a 1972 referendum. The goal of the SMA is to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

**Shoreline Master Program (SMP)** – The comprehensive use plan and related use regulations, together with maps, diagrams, charts, or other descriptive material and text, which is used by the city to administer and enforce the permit system for shoreline management. SMP must be developed in accordance with the policies of the SMA, be approved and adopted by the state, and be consistent with the rules (WACs) adopted by Ecology.

**Shoreline Master Program (SMP) Guidelines** – The state standards that the city must follow in drafting its SMP. The Guidelines translate the broad policies of the SMA into standards for regulation of shoreline uses.

**Shoreline Modification** – Those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

**Shoreline Permit** – A shoreline substantial development permit, conditional use permit, variance, revision, or any combination thereof (WAC 173-27-030(13)).

**Shoreline Stabilization** – Actions taken to address erosion impacts to property and dwellings, businesses, buildings, or structures caused by natural processes, such as current, flood, tides, wind, or wave action. These actions include structural measures such as bulkheads and nonstructural methods such as soil bioengineering. New stabilization measures include enlargement of existing structures.

**Shoreline Structural Setback** – A required structural setback, specified in the SMP, measured horizontally upland from a shoreline buffer and perpendicular to the OHWM, if used with a shoreline buffer, or measured horizontally upland from and perpendicular to the OHWM, if used without a shoreline buffer, as specified in SMP Chapter 4: General Policies & Regulations. It establishes a definite point beyond which the building shall not extend. A shoreline structural setback protects the waterbody and shoreline buffer from the impacts related to use of a structure.

**Shorelines** – All of the water areas of the state, including reservoirs and their associated shorelands, together with the lands underlying them, except those areas excluded under RCW 90.58.030(2)(e).

**Shorelines Hearings Board** – A state-level quasi-judicial body, created by the SMA, which hears appeals on the granting, denying, or rescinding of a shoreline permit, enforcement penalty and approval of SMPs in jurisdictions not fully planning under GMA. See RCW 90.58.170 and RCW 90.58.180.

**Shorelines of Statewide Significance** – A select category of shorelines of the state, defined in RCW 90.58.030(2)(e), where special preservationist policies apply and where greater planning authority is granted by the SMA. Permit review must acknowledge the use priorities for these areas established by the SMA. See RCW 90.58.020.

**Shorelines of the State** – The total of Shorelines and Shorelines of Statewide Significance.



**Should** – A particular action is required unless there is a demonstrated, compelling reason, based on policy of the SMA and the SMP, against taking the action.

**Sign** – A device, structure, fixture, or placard that uses words, letters, numbers, symbols, graphic designs, logos, or trademarks for the purpose of: a) providing information or directions or b) identifying or advertising a place, establishment, product, good, or service.

**Significant Vegetation Removal** – The removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

**Significantly Degrade** – To cause significant ecological impact.

**Single-Family Residence** – A detached dwelling designed for and occupied by one family including those buildings, structures and developments within a contiguous ownership which are a normal appurtenance (WAC 173-27-040(2)(g)).

**Soil Survey** – The most recent soil survey for the local area or county by the National Resources Conservation Service, United States Department of Agriculture.

**Solid Waste** – All garbage, rubbish trash, refuse, debris, scrap, waste materials and discarded materials of all types whatsoever, whether the sources be residential or commercial, exclusive of hazardous wastes, and including all source-separated recyclable materials and yard waste.

**Species** – Any group of animals or plants classified as a species or subspecies as commonly accepted by the scientific community.

**Species, Endangered** – 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 232-12-297, Section 2.4). Endangered species are legally designated in WAC 220-610-010

Commented [NS22]: This is no longer used

**Species of Local Importance** – Those species of local concern designated by the city due to their population status or their sensitivity to habitat manipulation.

~~**Species, Priority** – 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.~~

~~**Species, Sensitive** – Any wildlife species native to the state of Washington that is vulnerable or declining and is likely to become endangered or threatened throughout a significant portion of~~

~~its range within the state without cooperative management or removal of threats (WAC 232-12-297, Section 2.6).~~

~~**Species, Threatened**—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 range within the state without cooperative management or removal of threats (WAC 232-12-297, Section 2.5).~~

**Species, Listed** -- Any species listed under the federal Endangered Species Act or state endangered, threatened, and sensitive, or priority lists.

**Steep Slopes** – Any ground that rises at an inclination of forty percent or more within a vertical elevation change of at least ten feet (a vertical rise of ten feet or more for every twenty-five feet of horizontal distance). A slope is delineated by establishing its toe and top as measured by averaging the inclination over at least ten feet of vertical relief.

- A. Toe of a slope is a distinct topographic break in slope, which separates slopes inclined at less than forty percent from slopes equal to or in excess of forty percent. Where no distinct break exists, the toe of a steep slope is the lowermost limit of the area where the ground surface drops ten feet or more vertically within a horizontal distance of twenty-five feet.
- B. Top of a slope is a distinct, topographic break in slope, which separates slopes inclined at less than forty percent from slopes equal to or in excess of forty percent. Where no distinct break in slope exists, the top of slope shall be the uppermost limit of the area where the ground surface drops ten feet or more vertically within a horizontal distance of twenty-five feet.

**Stream** – A naturally occurring body of periodic or continuously flowing water where: a) the mean annual flow is greater than 20 cubic feet per second and b) the water is contained within a channel. A channel is an open conduit either naturally or artificially created. This definition does not include artificially created irrigation, return flow, or stock watering channels (WAC 173-22-030(8)).

**Strict Construction** – The close or narrow reading and interpretation of a statute or written document.

**Structure** – A permanent or temporary edifice or building, or a piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above or below the surface of the ground or water, except for vessels (WAC 173-27-030(15)).

**Structural Shoreline Stabilization** –Hard structural stabilization measures refer to those with solid, hard surfaces, such as concrete groins, retaining walls, and bulkheads, while soft

structural stabilization measures rely on less rigid materials, such as biotechnical vegetation measures or beach enhancement. There is a range of measures varying from soft to hard that include vegetation enhancement, upland drainage control, biotechnical measures, beach enhancement, anchor trees, gravel placement, rock revetments, gabions, concrete groins, retaining walls, and bluff walls, and bulkheads. Generally, the harder the construction measure, the greater the impact on shoreline processes, including sediment transport, geomorphology, and biological functions.

**Substantial Development** – A development of which the total cost or fair market value exceeds ~~\$8,504.00~~ ~~6,416.00~~, or any development, which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this definition must be adjusted for inflation by the Office of Financial Management every five years, beginning ~~July 1, 2022~~, ~~July 1, 2007~~, based upon changes in the consumer price index during that time period. Consumer price index means, for a calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The Office of Financial Management must calculate the new dollar threshold and transmit it to the Office of the Code Reviser for publication in the *Washington State Register* at least one month before the new dollar threshold is to take effect (RCW 90.58.030(3)(e)). A list of developments, uses, and activities that are not considered substantial development is provided in SMP Chapter 7: Shoreline Administration (WAC 173-27-040(2)(a)).

## T – U

**Unavoidable Impacts** – Adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

**Upland** – Generally described as the dry land area above and landward of the OHWM.

**Utilities** – Services and facilities that produce, transmit, store, process, or dispose of electric power, gas, water, stormwater, sewage, and communications.

**Utilities, Accessory** – Utilities comprised of small-scale distribution and collection facilities connected directly to development within the shoreline area. Examples include local power, telephone, cable, gas, water, sewer, and stormwater service lines.

**Utilities, Primary** – Utilities comprised of trunk lines or mains that serve neighborhoods, areas, and cities. Examples include solid waste handling and disposal sites, water transmission lines, sewage treatment facilities and mains, power generating or transmission facilities, gas storage and transmission facilities and stormwater mains and regional facilities.

## V – W – Y – Z

**Variance** – A means to grant relief from the specific bulk, dimensional or performance standards specified in the SMP, but not a means to vary a shoreline use. Shoreline variances must be specifically approved, approved with conditions, or denied by Ecology (See WAC 173-27-170).

**Water-Dependent Use** – A use or a portion of a use, which cannot exist in any other location and is dependent on the water due to the intrinsic nature of its operations. Examples of water-dependent uses may include moorage structures (including those associated with residential properties), ship cargo terminal loading areas, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float plane facilities and sewer outfalls.

**Water-Enjoyment Use** – A recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

**Water-Oriented Use** – Any combination of water-dependent, water-related, or water enjoyment uses that serves as an all-encompassing definition for priority uses under the SMA.

**Water-Related Use** – A use or a portion of a use, which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

- A. Of a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
- B. The use provides a necessary service supportive of the water-dependent commercial activities and the proximity of the use to its customers makes its services less expensive or more convenient. Examples include manufacturers of ship parts large enough that transportation becomes a significant factor in the products cost, professional services serving primarily water-dependent uses and storage of water-transported foods. Examples of water-related uses may include warehousing of goods transported by water, seafood processing plants, hydroelectric generating plants, gravel storage when transported by barge, oil refineries where transport is by tanker and log storage.

**Water Quality** – The physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological

characteristics. Where used in the SMP, the term water quantity refers only to development and uses regulated under the SMP and affecting water quantity, such as impermeable surfaces and stormwater handling practices. Water quantity, for purposes of the SMP, does not mean the withdrawal of ground water or diversion of surface water in accordance with RCW 90.03.250 through RCW 90.03.340.

**Watershed Restoration Plan** – A plan developed or sponsored by the WDFW, Ecology, or the WSDOT acting within or in accordance with its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted in accordance with SEPA.

**Weir** – A low dam built across a stream to raise its level, divert its flow, or measure its flow. Weirs have been used to address erosion and scouring of stream channels, but can also have negative impacts depending on how they are constructed, such as detrimental effects on fish habitat conditions.

**Wetland or Wetland Areas** – Areas that are inundated or saturated by surface 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 non-wetland 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. However, ~~w~~Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands, if permitted by the county or city.

**Wetland Mitigation Bank** – A site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved expressly for providing advance mitigation to compensate for future, permitted impacts to similar resources.

**Wetland Mosaic** – An area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; on average, patches are less than 100 feet from each other; and areas delineated as vegetated wetland are more than 50% of the total area of the entire mosaic, including uplands and open water.

**Commented [NS23]:** Matches RCW 36.70A.030

"If permitted by the county or city" added for aligning with WAC 365-190-030

# APPENDIX 1: SHORELINE ENVIRONMENT DESIGNATION MAP

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# Shoreline Environment Designations

Figure 1  
(Upper Syliva Creek & Sylvia Lake)

## Shoreline Environment Designation

- High Intensity
- Shoreline Residential
- Urban Conservancy
- Natural
- Aquatic
- SMA Lakes
- SMA Rivers
- Montesano City Limits<sup>^</sup>
- Parcels<sup>^</sup>
- Highways

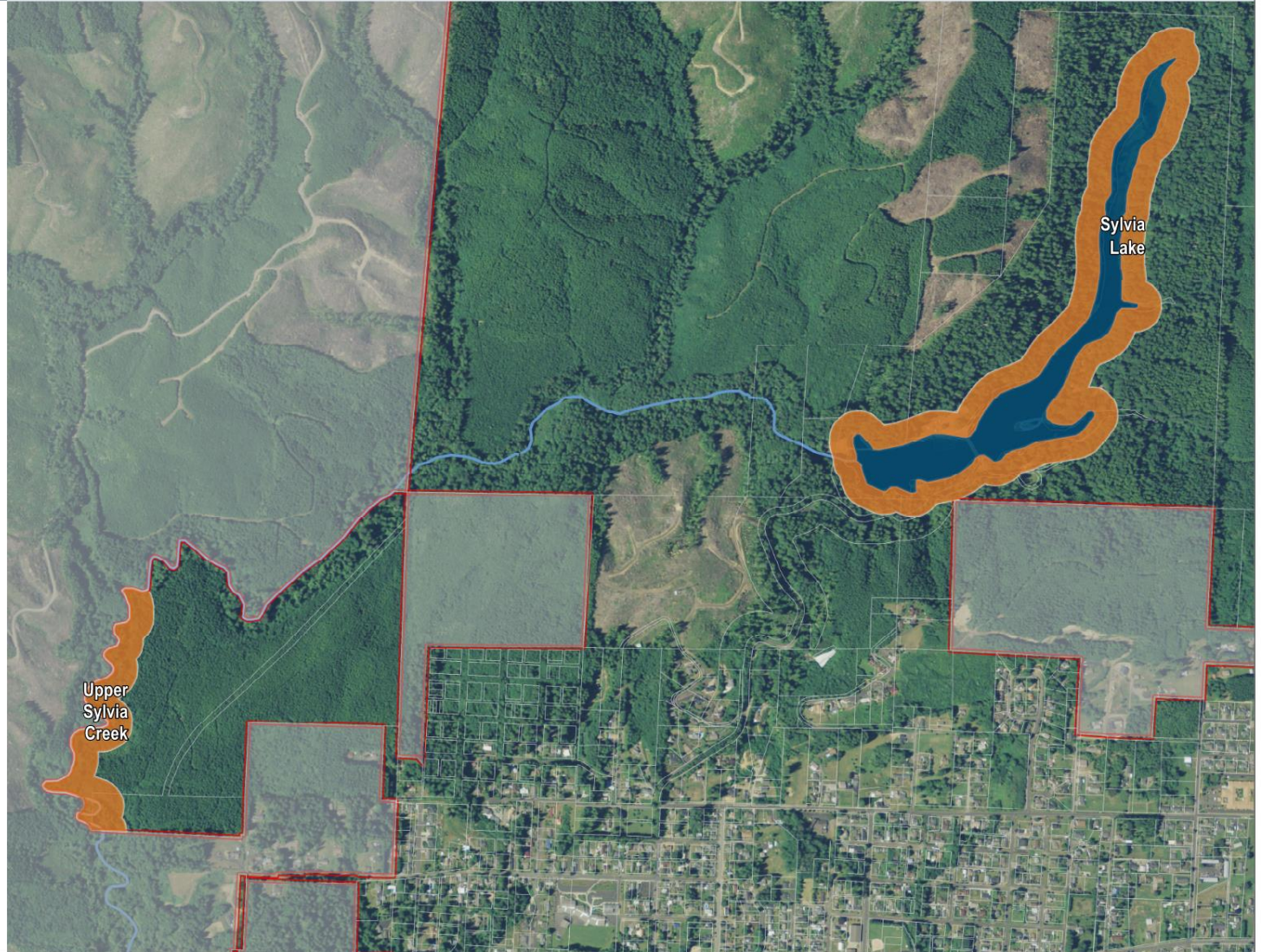
<sup>^</sup>Data as of April 2022



Source: Grays Harbor County, USFWS NWI (2011), FEMA Preliminary DFIRM (2013), DNR, WSDOT, Ecology, NRCS NAIP (2013)

Shoreline jurisdiction boundaries depicted on this map are approximate. They have not been formally delineated or surveyed and are intended for planning purposes only. Additional site-specific evaluation may be needed to confirm/verify information shown on this map.

Date: August 23, 2022





**City of Montesano**  
Shoreline Master Program

# Shoreline Environment Designations

Figure 2  
(Lower Sylvia Creek, Chehalis River  
& Wynoochee River)

**Shoreline Environment Designation**

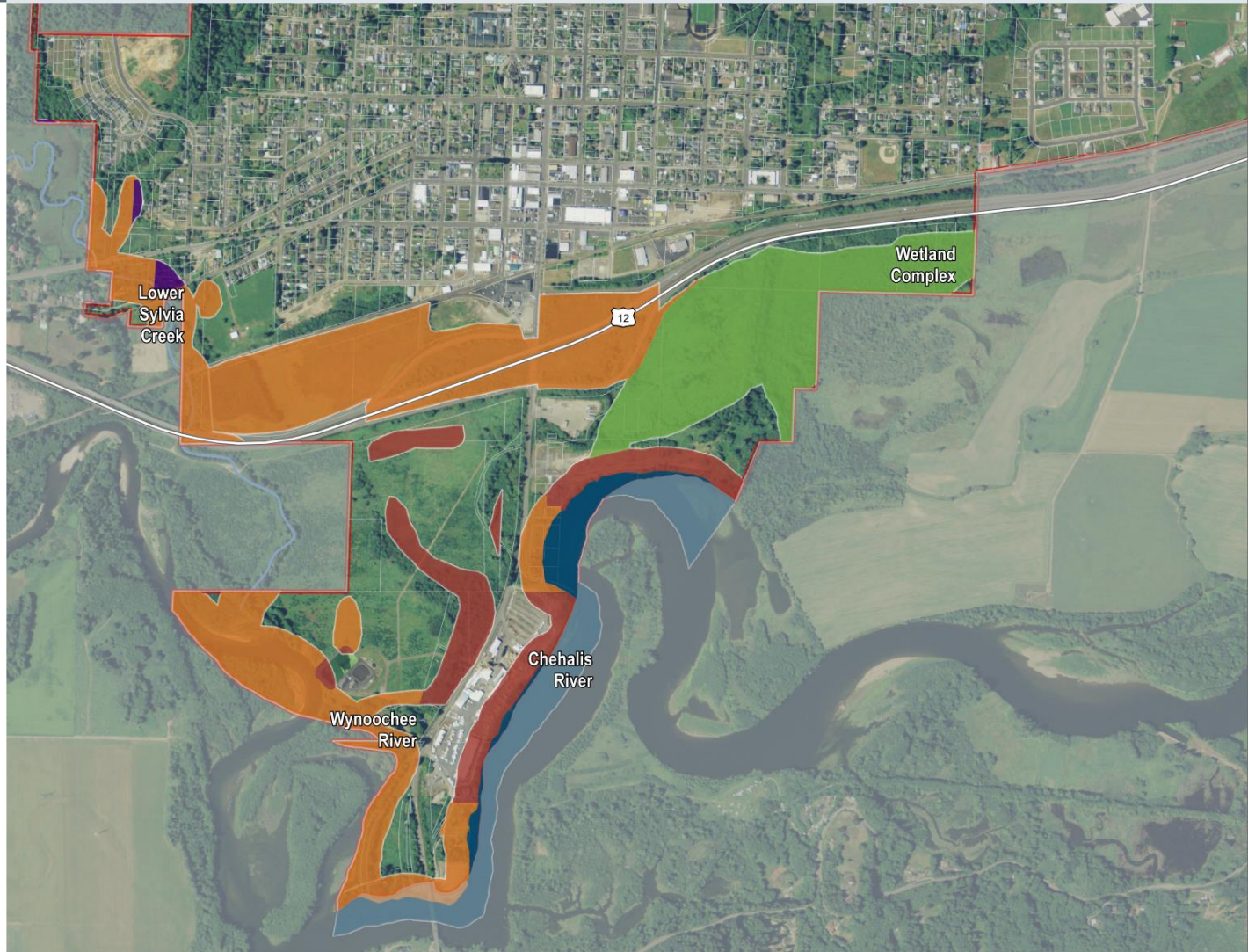
- High Intensity
- Shoreline Residential
- Urban Conservancy
- Natural
- Aquatic
- SMA Lakes
- SMA Rivers
- Montesano City Limits<sup>^</sup>
- Parcels<sup>^</sup>
- Highways

<sup>^</sup>Data as of April 2022

0 0.125 0.25 Miles 1:10,000

Source: Grays Harbor County, USFWS NWI (2011), FEMA Preliminary DFIRM (2013), DNR, WSDOT, Ecology, NRCS NAIP (2013)  
Shoreline jurisdiction boundaries depicted on this map are approximate. They have not been formally delineated or surveyed and are intended for planning purposes only. Additional site-specific evaluation may be needed to confirm/verify information shown on this map.

Date: August 23, 2022





# APPENDIX 2: CRITICAL AREAS REGULATIONS

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## **2.01 PURPOSE**

Flood, erosion, landslide and seismic hazard areas; slopes greater than forty percent and steeper; streams; wetlands; and their buffers constitute critical areas that are of special concern to the city. The purpose of this Appendix is to protect these areas and their functions and values in shoreline jurisdiction, while also protecting public health, safety, and welfare by:

- A. Protecting and restoring critical areas;
- B. Mitigating impacts to critical areas by regulating their development;
- C. Protecting the public from damage due to landslide, subsidence, or erosion;
- D. Preventing any adverse impacts to water quality, wetlands, and streams;
- E. Protecting the public against losses from:
  - 1. Unnecessary maintenance and replacement of public facilities;
  - 2. Publicly funded mitigation of avoidable impacts; and
  - 3. Cost for public emergency rescue and relief operations;
- F. Alerting appraisers, assessors, owners, buyers or lessees to the development limitations of the critical areas;
- G. Providing the City Council and the responsible city agency with information to approve, condition, or deny public or private development proposals;
- H. Protecting the economic and ecological values of the environment.

## **2.02 ESTABLISHMENT OF CRITICAL AREAS – PROVISION FOR DATA MAPS**

- A. List of Critical Areas. Certain portions of the incorporated area of the city have been divided into the following critical areas:
  - 1. Wetlands;
  - 2. Critical aquifer recharge areas;
  - 3. Frequently flooded areas;
  - 4. Geologically hazardous areas;
  - 5. Fish and wildlife conservation areas.

- B. Critical areas are designated on a series of data maps. The data maps are for reference only and do not provide a final critical area designation.
1. The city adopts by reference the following data maps and science resources for wetlands in the city's shoreline jurisdiction:
    - a. National Wetlands Inventory Maps, US Fish and Wildlife Service.
    - b. Soil Survey of Grays Harbor County Area, Pacific County, and Wahkiakum County Washington, Map Sheets 48, 49, 54 and 55, USDA, 1986.
  2. The city adopts by reference the following maps and science resources for critical aquifer recharge areas in the city's shoreline jurisdiction:
    - a. Critical aquifer recharge area maps, city of Montesano.
  3. The city adopts by reference the following data maps and science resources for frequently flooded areas in the city's shoreline jurisdiction:
    - a. Those areas of special flood hazard identified by the Federal Insurance Administration in the adopted flood insurance study, which is the scientific and engineering report with an accompanying flood insurance map(s) and any revisions thereto, designating frequently flooded areas. The flood insurance study and accompanying map(s) are hereby adopted by reference.
  4. The city adopts by reference the following data maps and science resources for landslide, erosion, and seismic hazard areas in the city's shoreline jurisdiction:
    - a. Soil Survey of Grays Harbor County Area, Pacific County, and Wahkiakum County Washington, Map Sheets 48, 49, 54 and 55, USDA, 1986.
    - b. "Liquefaction Susceptibility and Site Class Maps for Washington State," by Stephen P. Palmer, Sammantha L. Magsino, Eric L. Bilderback, James L. Poelstra, Derek S. Folger, and Rebecca A. Niggemann, WDNR, Division of Geology and Earth Resources, 2004; Report and associated maps.
  5. The city adopts by reference the following data maps and science resources for fish and wildlife habitat conservation areas in the city's shoreline jurisdiction. The approximate locations and extents of fish and wildlife habitat conservation areas may be shown on, but shall not be limited to, the following list of maps.
    - a. WDFW Priority Habitat and Species maps.
    - b. WDNR water type maps.

- c. WDNR Natural Heritage Program maps.
  - d. Anadromous and resident salmonid distribution maps contained in the Habitat Limiting Factors reports published by the Washington Conservation Commission.
  - e. WDNR State natural area preserves and natural resource conservation area maps.
- C. The critical areas data maps are intended to alert the development community, appraisers, and current or prospective property owners of a potential encounter with a use or development limiting factor based on the natural systems. The presence of a critical area on the data maps is sufficient foundation for the Shoreline Administrator to order an analysis for the factor(s) identified prior to acceptance of a development application as being complete and ready for processing under the provisions of the SMP.

## **2.03 INTERPRETATION OF DATA MAPS**

- A. The Shoreline Administrator is responsible for interpreting data maps.
- B. The data maps are to be used as a general guide to the location and extent of critical areas. Critical areas indicated on the data maps are presumed to exist in the locations shown and are protected under all the provisions of this Appendix. The exact location of critical areas shall be determined by the applicant through field investigations performed by qualified professionals using the definitions found in this appendix. All development applications are required to show the boundary(s) of all critical areas that are within, adjacent to, or are likely to be affected by the development on a scaled drawing prior to the development application being considered "complete" for processing purposes.

## **2.04 EFFECT OF DATA MAPS – APPLICABILITY**

### **2.04.01 EFFECT OF DATA MAPS**

The conclusion by the Shoreline Administrator that a parcel of land or a part of parcel of land that is the subject of a proposed development application is within the boundary(s) of one or more critical areas, as shown on the data maps or other information, shall serve as cause for additional investigation and analysis to be conducted by the applicant. In the

event of multiple designations, each critical area will be addressed independently and collectively for determining development limitations and appropriate mitigating measures.

#### **2.04.02 APPLICABILITY**

This Appendix applies to all real property within the city's shoreline jurisdiction, as defined in SMP Section 1.06 or amended in the future.

### **2.05 GENERAL PROVISIONS**

- A. All development proposals, whether public or private, shall comply with the requirements and purposes of this Appendix and the SMP. Responsibility for enforcement of this Appendix shall rest with the Shoreline Administrator. For the purposes of this Appendix, "development proposals" include proposals which require any of the following: building permit, grade and fill permit, shoreline substantial development permit, shoreline variance, shoreline conditional use permit, conditional use permit, unclassified use permit, variance, zone reclassification, shoreline environment redesignation, planned unit development, subdivision, short subdivision, master plan development, binding site plan, or any subsequently adopted permits or required approvals not expressly exempted from this Appendix.
- B. When sufficient information to evaluate a proposal is not available, the Shoreline Administrator shall notify the applicant that special studies are required. A special study shall include a site analysis, a discussion of potential impacts, and specific mitigation measures designed to mitigate the potential impacts. A monitoring program shall be required to evaluate the effectiveness of the mitigation measures.
- C. Upon receipt of a development application tendered pursuant to the SMP, the data maps shall be consulted for the purposes of determining whether the property subject to the application is within, adjacent to, or likely to affect any area shown as a critical area. When such areas are encountered, the applicant will promptly be notified and the type(s) of critical areas disclosed. Instructions shall be provided to the applicant on the type of evaluation and site-specific analysis that will be required as a supplement to the application materials necessary to bring the application up to a standard that can be characterized as complete and eligible for processing. If the subject property does not lie within or partly within the critical areas as depicted on the data maps or the Shoreline Administrator does not have additional information that suggests that critical

areas may be present, the application will be considered complete, provided the application requirements of the SMP are satisfied.

- D. From the effective date of the SMP, no development application processed under the SMP shall be approved without a written finding that this Appendix has been considered, additional information has been assembled under this Appendix or was not required, and that the purpose and intent of this Appendix has been accorded substantial consideration.
- E. The requirements set forth in this Appendix shall be considered as minimum requirements in the processing of development applications under the SMP and represent standards in addition to the requirements set forth in the SMP.
- F. No site analysis required by this Appendix will be considered complete without a detailed resume of the principal author(s) which disclose(s) their technical training and experience and demonstrates their stature as qualified professionals.

#### **2.05.01 IMPLEMENTATION OF SHORELINE PERMIT OR EXEMPTION WITH CRITICAL AREAS ELEMENTS**

- A. Bonding.
  - 1. Performance Bonds. Upon issuance of a permit or exemption, if it is deemed reasonably necessary in order to protect the public interest, as a condition of the issuance, the Shoreline Administrator may require the party to whom or to which the permit for the development proposal has been issued to post a cash performance bond or other security acceptable to the Shoreline Administrator in an amount and with surety and conditions sufficient to secure compliance with conditions and limitations set forth in the permit. The amount and the conditions of the bond shall be consistent with the purposes of the Appendix. In the event of a breach of any condition of any such bond, the city may institute an action in a court of competent jurisdiction upon such bond and prosecute the same to judgment and execution. The Shoreline Administrator shall release the bond upon determining that:
    - a. All activities have been completed in compliance with the terms and conditions of the permit and the requirements of this Appendix;
    - b. Upon the posting by the applicant of a maintenance bond, if required.

- c. Until such written release of the bond, the principal or surety cannot be terminated or canceled.
2. Maintenance Bonds. The Shoreline Administrator shall, if necessary, require the holder of a permit or exemption issued pursuant to this Appendix to post a cash performance bond or other security acceptable to the Shoreline Administrator in an amount and with surety and conditions sufficient to guarantee that structures, improvements, and mitigation required by the permit or by this Appendix perform satisfactorily for a minimum of two years after they have been completed. The Shoreline Administrator shall release the maintenance bond upon determining that performance standards established for evaluating the effectiveness and success of the structures, improvements, and/or compensatory mitigation have been satisfactorily met for the required period.

For compensation projects, the performance standards shall be those contained in the mitigation plan developed and approved during the permit review process. The maintenance bond applicable to a compensation project shall not be released until the Shoreline Administrator determines that performance standards established for evaluating the effect and success of the project have been met.

- B. Suspension - Revocation. In addition to other Penalties provided for elsewhere, the Shoreline Administrator may suspend or revoke a permit if the Shoreline Administrator finds that the applicant or permittee has not complied with any or all of the conditions or limitations set forth in the permit, has exceeded the scope of work set forth in the permit, or has failed to undertake the project in the manner set forth in the approved application.
- C. Publication of Notice of Action. The Shoreline Administrator shall cause notice of the Shoreline Administrator's issuance, conditional issuance, revocation, or suspension of a permit to be published in the city's official newspaper or, in the Shoreline Administrator's discretion, in a daily newspaper having a broad circulation in the area wherein the critical area lies. Such notice shall be published within ten working days of the decision or order and shall include at least the following:
  1. A brief description of the project, including location;
  2. The decision or order of the Shoreline Administrator with respect to the project;
  3. Notification that the permit file is open for public inspection during regular business hours, and the address where such file may be inspected; and

4. If applicable, a statement that there is a right to appeal or seek judicial review of the decision.

## **2.05.02 APPEALS**

Any decision of the Shoreline Administrator in the administration of this Appendix may be appealed pursuant to the provisions of SMP Section 7.05.05.

## **2.05.03 ENFORCEMENT**

- A. Enforcement procedures are located in SMP Section 7.08: Enforcement and Penalties.
- B. When a critical area or its buffer has been altered in violation of the SMP or any other provision of the MMC, all ongoing development work shall stop and the critical area shall be restored, or mitigation shall be required. The Shoreline Administrator shall have the authority to issue a "stop work" order to cease all ongoing development work and order restoration, rehabilitation, mitigation, or replacement measures at the owner's or other responsible party's expense to compensate for violation of provisions of this Appendix.
  1. Requirement for Restoration Plan. All development work shall remain stopped until a restoration or mitigation plan is prepared and approved by the Shoreline Administrator. Such a plan shall be prepared by a qualified professional using the currently accepted scientific principles and shall describe how the actions proposed meet the minimum requirements described in the following sections:
    - a. SMP Appendix 2: Section ~~2.05-05(B)~~ 2.06 for wetlands ~~and fish and wildlife habitat conservation areas~~;
    - b. SMP Appendix 2: Section 2.07 for critical aquifer recharge areas;
    - c. SMP Appendix 2: Section 2.08 for frequently flooded areas;
    - d. SMP Appendix 2: Section 2.09 for landslide hazard areas;
    - e. SMP Appendix 2: Section 2.10 for erosion hazard areas; ~~and~~
    - f. SMP Appendix 2: Section 2.11 for seismic hazard areas; ~~and~~
    - g. SMP Appendix 2: Section 2.12 for and fish and wildlife habitat conservation areas.



The Shoreline Administrator may, at the violator's expense, seek expert advice in determining the adequacy of the restoration plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

2. Minimum Performance Standards for Wetland and Fish and Wildlife Habitat Conservation Area Restoration. The following minimum performance standards shall be met for the restoration of a wetland or a fish and wildlife habitat conservation area; provided, that if the violator can demonstrate that greater functions and habitat values can be obtained, these standards may be modified:
  - a. The historic structure, functions, and values of the affected wetland or fish and wildlife habitat conservation area shall be restored, including water quality and habitat functions;
  - b. The historic soil types and configuration shall be ~~replicated~~ restored to the extent practicable;
  - c. The wetland or fish and wildlife habitat conservation area and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities. The historic functions and values should be replicated at the location of the alteration; and
  - d. Information demonstrating compliance with other applicable provisions of this Appendix shall be submitted to the Shoreline Administrator.
3. Site Investigations. The Shoreline Administrator is authorized to make site inspections and take such actions as are necessary to enforce this Appendix. The Administrator shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.
4. Subject to approval of the City Council, the Shoreline Administrator may request as part of a civil order, or may enter into a settlement agreement to resolve an alleged violation of this Appendix, of a party found to have violated, or alleged to have violated this Appendix, a restoration or mitigation plan meeting the requirements of this section. Any such plan shall be subject to expert review at the party's expense.

## 2.06 WETLANDS

### 2.06.01 PURPOSE

The purpose of this section includes the following:

- A. Recognize and protect the beneficial functions performed by many wetlands, which include, but are not limited to, providing food, breeding, nesting and/or rearing habitat for fish and wildlife; recharging and discharging ground water; contributing to stream flow during low flow periods; stabilizing stream banks and shorelines; storing storm and flood waters to reduce flooding and erosion; and improving water quality through biofiltration, adsorption, and retention and transformation of sediments, nutrients, and toxicants.
- B. Regulate land use to avoid adverse effects on wetlands and maintain the functions and values of wetlands throughout Montesano's shoreline jurisdiction.
- C. Establish review procedures for development proposals in and adjacent to wetlands.
  1. Compliance with the provisions of the Chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Shoreline Substantial Development Permits, HPA permits, Army Corps of Engineers Section 404 permits, NPDES permits). The applicant is responsible for complying with these requirements, apart from the process established in this Chapter.

### 2.06.02 IDENTIFICATION AND DELINEATION

Identification of wetlands and delineation of their boundaries pursuant to this Appendix shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements<sup>1</sup>. All areas within shoreline jurisdiction meeting the wetland designation criteria in that procedure are designated critical areas and are subject to the provisions of this Appendix. Wetland delineations are valid for five years; after such date, the city shall determine whether a revision or additional assessment is necessary.

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<sup>1</sup> Wetlands are delineated using the 1987 Federal Wetland Delineation Manual and Regional Supplements in accordance with WAC 173-22-035

### 2.06.03 RATING

Wetlands shall be rated according to the Ecology wetland rating system, as set forth in the *Washington State Wetland Rating System for Western Washington: 2014 Update*, currently listed in Ecology Publication #14-06-029, now existing or hereafter amended or succeeded, which contain the definitions and methods for determining whether the criteria below are met:

A. Category I. Category I wetlands are:

1. Relatively undisturbed estuarine wetlands larger than 1 acre;
2. Wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as wetlands of high conservation value;
3. Bogs;
4. Mature and old-growth forested wetlands larger than 1 acre; and
5. Wetlands that perform functions at high levels (scoring 23 or more points ~~or more out of 27 points~~ on the questions related to functions). These wetlands: (1) represent unique or rare wetland types; (2) are more critical to disturbance than most wetlands; (3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (4) provide a high level of functions.

B. Category II. Category II wetlands are:

1. Estuarine wetlands smaller than 1 acre, or disturbed estuarine wetlands larger than 1 acre; and
2. Wetlands with a moderately high level of functions ~~that perform functions well~~ (scoring between 20-22 points on the questions relating to functions).

C. Category III. Category III wetlands are:

Wetlands with a moderate level of functions (scoring between 16 and 19 points). Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

D. Category IV. Category IV wetlands are:

Wetlands that have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that should be able to be replaced, or in some cases to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

#### **2.06.04 ILLEGAL MODIFICATIONS**

Wetland rating categories shall not change due to illegal modifications made by the applicant or with the applicant's knowledge.

#### **2.06.05 REGULATED ACTIVITIES**

- A. For any regulated activity, a critical areas report prepared pursuant to the provisions of SMP Appendix 2: Section 2.06.07: Critical Areas Report for Wetlands may be required to support the requested activity.
- B. The following activities are regulated if they occur in a regulated wetland or its buffer:
  - 1. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
  - 2. The dumping of, discharging of, or filling with any material;
  - 3. The draining, flooding, or disturbing of the water level or water table;
  - 4. Pile driving;
  - 5. The placing of obstructions;
  - 6. The construction, reconstruction, demolition, or expansion of any structure;
  - 7. The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland;
  - 8. "Class IV - General Forest Practices" under the authority of the "1992 Washington State Forest Practices Act Rules and Regulations," WAC 222-12-030, or as hereafter amended or succeeded;
  - 9. Activities that result in:
    - a. A significant change of water temperature;

- b. A significant change of physical or chemical characteristics of the sources of water to the wetland;
  - c. A significant change in the quantity, timing, or duration of the water entering the wetland; or
  - d. The introduction of pollutants.
- C. Subdivisions. The subdivision and/or short subdivision of land in wetlands and associated buffers are subject to the following:
- 1. Land that is located wholly within a wetland or its buffer may not be subdivided.
  - 2. Land that is located partially within a wetland or its buffer may be subdivided provided that an accessible and contiguous portion of each new lot is:
    - a. Located outside of the wetland and its buffer; and
    - b. Meets the minimum lot size requirements of the applicable section of MMC Title 17: Zoning.

#### 2.06.06 WETLAND BUFFERS

- A. Buffer Requirements. The standard following buffer widths in SMP Appendix 2: Table A2-1: Wetland Buffer Requirements have been established in accordance with the BAS. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the *Washington State Wetland Rating System for Western Washington: 2014 Update* (Ecology Publication #14-06-029, or as revised and approved by Ecology). The adjacent land use intensity is assumed to be high. The use of the standard buffer widths requires the implementation of the measures in SMP Appendix 2: Table A2-2: Required Measures to Minimize Impacts to Wetlands, where applicable, to minimize the impacts of the adjacent land uses.

1. For wetlands that score 6 points or more for habitat function, the buffer widths in Table A2-1 can be used if both of the following criteria are met:

- a. A relatively undisturbed, vegetated corridor at least 100 feet wide is protected between the wetland and any other undisturbed area, as defined in the 2014 wetland rating system, or any other Priority Habitat Habitats as defined by the Washington State Department of Fish and Wildlife. The latest definitions of priority

**Commented [NS24]:** We suggest these updates, made according to new Ecology Guidance document (ECY PUB 16-06-001 and --002)

habitats and their locations are available on the WDFW web site at: <http://wdfw.wa.gov/hab/phshabs.htm> ) The corridor must be protected for the entire distance between the wetland and the relatively undisturbed area or Priority Habitat by some type of legal protection such as a conservation easement. Presence or absence of a nearby habitat must be confirmed by a qualified biologist. If no option for providing a corridor is available, SMP Appendix 2: Table A2-1 may be used with the required measures in SMP Appendix 2: Table A2-2 alone.

b. All of the measures in SMP Appendix 2: Table A2-2 are implemented, where applicable, to minimize the impacts of the adjacent land uses.

2. For wetlands that score 3-5 habitat points, only the measures in SMP Appendix 2: Table A2-2 are required for the use of SMP Appendix 2: Table A2-1 buffer widths.

3. If an applicant chooses not to apply the mitigation measures in SMP Appendix 2: Table A2-2: Required Measures to Minimize Impacts to Wetlands, ~~or is unable to provide a protected corridor where available,~~ then SMP Appendix 2: Table A2-3 must be used. ~~a 33 percent increase in the width of all buffers is required. For example, a 75-foot buffer with the mitigation measures would be a 100-foot buffer without them.~~

4. The buffer widths in SMP Appendix 2: Table A2-1 and SMP Appendix 2: Table A2-3.3 assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided

~~B. The standard buffer widths assume the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is not unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.~~

~~C. Additional buffer widths are added to the standard buffer widths. For example, a Category I wetland scoring eight points for habitat function would require a buffer of 225 feet (75 feet + 150 feet).~~

~~D-B.~~ A 10-foot structural setback from the landward edge of buffer is required.  
Structural setbacks are used to protect the wetland from the impacts related to use of a structure.

**SMP Appendix 2: Table A2-1: Wetland Buffer Requirements**

Wetland Category	Standard Buffer Width	Additional Buffer width if wetland scores 5 habitat points	Additional buffer width if wetland scores 6-7 habitat points	Additional buffer width if wetland scores 8-9 habitat points
<u>Category I:</u>				
Based on total score	75 ft.	Add 30 ft.	Add 90 ft.	Add 150 ft.
Bogs and Wetlands of High Conservation Value	190 ft.		Add 35 ft.	
Forested	75 ft.	Add 30 ft.	Add 90 ft.	Add 150 ft.
Estuarine	150 ft.			
<u>Category II:</u> (All)	75 ft.	Add 30 ft.	Add 90 ft.	Add 150 ft.
<u>Category III:</u> (All)	60 ft.	Add 45 ft.	Add 105 ft.	Add 165 ft.
<u>Category IV:</u> (All)	40 ft.			

**SMP Appendix 2: Table A2-1: Wetland Buffer Requirements if Table A2-2 is Implemented and Corridor Provided.**

	<b><u>Buffer width (in feet) based on habitat score</u></b>		
	<b><u>Score 3-5</u></b>	<b><u>Score 6-7</u></b>	<b><u>Score 8-9</u></b>
<b><u>Wetland Category:</u></b>			
<b><u>Category I:</u></b>			
Based on total score	<u>75</u>	<u>110</u>	<u>225</u>
Bogs and Wetlands of High Conservation Value	<u>190</u>	<u>190</u>	<u>225</u>
Forested	<u>75</u>	<u>110</u>	<u>225</u>
Estuarine	<u>150</u> <u>(buffer width not based on habitat scores)</u>		
<b><u>Category II:</u></b>			
<b><u>Based on total score</u></b>	<u>75</u>	<u>110</u>	<u>225</u>
<b><u>Estuarine</u></b>	<u>150</u> <u>(buffer width not based on habitat scores)</u>		
<b><u>Category III: (All)</u></b>	<u>60</u>	<u>110</u>	<u>225</u>
<b><u>Category IV: (All)</u></b>		<u>40</u>	

**Commented [NS25]:** City would like this to be 25' or 0'



**SMP Appendix 2: Table A2-2: Required Measures to Minimize Impacts to Wetlands**

Disturbance	Required Measures to Minimize Impacts (1)
Lights	<ul style="list-style-type: none"> <li>• Direct lights away from wetland</li> </ul>
Noise	<ul style="list-style-type: none"> <li>• Locate activity that generates noise away from wetland</li> <li>• If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</li> <li>• For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer</li> </ul>
Toxic runoff	<ul style="list-style-type: none"> <li>• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</li> <li>• Establish covenants limiting use of pesticides within 150 ft. of wetland</li> <li>• Apply integrated pest management</li> </ul>
Stormwater runoff	<ul style="list-style-type: none"> <li>• Retrofit stormwater detention and treatment for roads and existing adjacent development</li> <li>• Prevent channelized flow from lawns that directly enters the buffer</li> <li>• Use Low Intensity Development Techniques (<a href="#">for more information refer to the drainage ordinance and manual per Pumping System Assessment Tool publication on LID techniques issued by the US DOE at energy.gov Home Technical Assistance</a>)</li> </ul>
Change in water regime	<ul style="list-style-type: none"> <li>• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</li> </ul>
Pets and human disturbance	<ul style="list-style-type: none"> <li>• Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion</li> <li>• Place wetland and its buffer in a separate tract or protect with a conservation easement</li> </ul>
Dust	<ul style="list-style-type: none"> <li>• Use BMPs to control dust</li> </ul>
<del>Disruption of corridors or connections</del>	<ul style="list-style-type: none"> <li><del>• Maintain connections to offsite areas that are undisturbed</del></li> <li><del>• Restore corridors or connections to offsite habitats by replanting</del></li> </ul>

**Notes:**

(1) Measures are required, where applicable to a specific proposal.

**SMP Appendix 2: Table A2-3: Wetland Buffer Requirements if Table A2-2 is NOT Implemented or Corridor NOT Provided.**

	<u>Buffer width (in feet) based on habitat score</u>		
<u>Wetland Category</u>	<u>Score: 3-5</u>	<u>Score: 6-7</u>	<u>Score: 8-9</u>
<u>Category I:</u>			
<u>Based on total score</u>	<u>100</u>	<u>150</u>	<u>300</u>
<u>Bogs and Wetlands of High Conservation Value</u>	<u>250</u>	<u>250</u>	<u>300</u>
<u>Forested</u>	<u>100</u>	<u>150</u>	<u>300</u>
<u>Estuarine</u>	<u>200</u> <u>(buffer width not based on habitat scores)</u>		
<u>Category II:</u>			
<u>Based on total score</u>	<u>100</u>	<u>150</u>	<u>300</u>
<u>Estuarine</u>	<u>150</u> <u>(buffer width not based on habitat scores)</u>		
<u>Category III: (All)</u>	<u>80</u>	<u>150</u>	<u>300</u>
<u>Category IV: (All)</u>	<u>50</u>		

**2.06.07 CRITICAL AREA REPORT FOR WETLANDS**

- A. If the Shoreline Administrator determines that the site of a proposed development includes, is likely to include, or is adjacent to a wetland; a wetland report, prepared by a qualified professional, shall be required. The expense of preparing the wetland report shall be borne by the applicant.
- B. Minimum Standards for Wetland Reports. A wetland report consists of a written report and accompanying plan sheets:
  1. The written report shall include at a minimum:
    - a. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the wetland critical area report; a description of the proposal; identification of all the city, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.
    - b. A statement specifying the accuracy of the report and all assumptions made and relied upon.

- c. Documentation of any fieldwork performed on the site, including field data sheets for delineations, rating system forms, baseline hydrologic data, etc.
- d. A description of the methodologies used to conduct the wetland delineations, rating system forms, or impact analyses, including references.
- e. Identification and characterization of all critical areas, wetlands, water bodies, shorelines, floodplains, and buffers on or adjacent to the proposed project area. For areas off site of the project site, estimate conditions within 300 feet of the project boundaries using the best available information.
- f. For each wetland identified on site and within 300 feet of the project site provide: the wetland rating, including a description of and score for each function, per *Wetland Ratings* (SMP Appendix 2: Section 2.06.03); required buffers; hydrogeomorphic classification; wetland acreage based on a professional survey from the field delineation (acreages for on-site portion and entire wetland area including off-site portions); Cowardin classification of vegetation communities; habitat elements; soil conditions based on site assessment and/or soil survey information; and to the extent feasible, hydrologic information such as location and condition of inlet/outlets (if they can be legally accessed), estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g., algal mats, drift lines, flood debris, etc.). Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site.
- g. A description of the proposed actions, including an estimation of acreages of impacts to wetlands and buffers based on the field delineation and survey and an analysis of site development alternatives, including a no-development alternative.
- h. An assessment of the probable cumulative impacts to the wetlands and buffers resulting from the proposed development.
- i. A description of reasonable efforts made to apply mitigation sequencing pursuant to *Mitigation Sequencing* (SMP Appendix 2: Section 2.06.08) to avoid, minimize, and mitigate impacts to critical areas.
- j. A discussion of measures, including avoidance, minimization, and compensation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land-use activity.

**Commented [NS26]:** City would like to see this changed to 200' (however it appears to me that 300' should be the requirement as that is the largest buffer)

- k. A conservation strategy for habitat and native vegetation that addresses methods to protect and enhance on-site habitat and wetland functions.
  - l. An evaluation of the functions of the wetland and ~~adjacent~~ its buffer. Include reference for the method used and data sheets.
2. A copy of the site plan sheet(s) for the project must be included with the written report and must include, at a minimum:
- a. Maps (to scale) depicting delineated and surveyed wetland and required buffers on site, including buffers for off-site critical areas that extend onto the project site; the development proposal; other critical areas; grading and clearing limits; areas of proposed impacts to wetlands and/or buffers (include square footage estimates).
  - b. A depiction of the proposed stormwater management facilities and outlets (to scale) for the development, including estimated areas of intrusion into the buffers of any critical areas. The written report shall contain a discussion of the potential impacts to the wetland(s) associated with anticipated hydroperiod alterations from the project.

#### **2.06.08 COMPENSATORY MITIGATION ~~REQUIREMENTS~~**

- A. Compensatory mitigation for alterations to wetlands shall achieve equivalent or greater functions. Compensatory mitigation plans shall be consistent with *Wetland Mitigation in Washington State, Part 2: Developing Mitigation Plans*, 2006 (Ecology, USACE Seattle District, and U.S. Environmental Protection Agency publication number 06-06-011b, or as revised), and *Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)* (Publication #09-06-32, Olympia, WA, December 2009).
- B. Mitigation Sequencing. Before impacting any wetland or its buffer, an applicant shall demonstrate that the following actions have been taken. Actions are listed ~~Mitigation shall be required~~ in the following order of preference:
  - 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~~; or
  5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or
  6. Monitoring the required compensation impact and taking appropriate remedial or corrective measures when necessary.
- C. Compensation for Lost or Affected Functions. Compensation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except when:
1. The lost wetland provides minimal functions as determined by site-specific function assessment, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington State watershed assessment plan or protocol; or
  2. Out-of-kind replacement of wetland type or functions, where permitted, will best meet watershed goals formally identified by the city, such as replacement of historically diminished wetland types.
- D. Preference of Mitigation Actions. Methods to achieve compensation for wetland functions shall be approached in the following order of preference:
1. Restoration (re-establishment and rehabilitation) of wetlands;
  2. Creation (establishment) of wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of nonnative introduced species; this should only be attempted when there is an adequate source of water and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is anticipated in the design; and
  3. Enhancement of significantly degraded wetlands in combination with restoration or creation; such enhancement should be part of a mitigation package that includes replacing the impacted area and meeting appropriate ratio requirements.

E. ~~Types of Compensatory Mitigation. Mitigation for lost or diminished wetland and buffer functions shall rely on a type listed below in order of preference. A lower preference~~

Commented [NS27]: Not sure if this should remain?

form of mitigation shall be used only if the applicant's qualified wetland professional demonstrates to the approval authority's satisfaction that all higher-ranked types of mitigation are not viable, consistent with the criteria in this section.

1. Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland. For the purpose of tracking net gains in wetland acres, restoration is divided into:

a. Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.

b. Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.

2. Establishment (Creation): The manipulation of the physical, chemical, or biological characteristics of a site to develop a wetland on an upland or deepwater site where a wetland did not previously exist. Establishment results in a gain in wetland acres. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species.

a. If a site is not available for wetland restoration to compensate for expected wetland and/or buffer impacts, the approval authority may authorize creation of a wetland and buffer upon demonstration by the applicant's qualified wetland professional that:

i. The hydrology and soil conditions at the proposed mitigation site are conducive for sustaining the proposed wetland and that creation of a wetland at the site will not likely cause hydrologic problems elsewhere;

ii. Adjacent land uses and site conditions do not jeopardize the viability of the proposed wetland and buffer (e.g., due to the presence of invasive

plants or noxious weeds, stormwater runoff, noise, light, or other impacts); and

iii. The proposed wetland and buffer will eventually be self-sustaining with little or no long-term maintenance.

3. Enhancement. The manipulation of the physical, chemical, or biological characteristics of a wetland site 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, flood water retention, or wildlife habitat. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Activities typically consist of planting vegetation, controlling non-native or invasive species, modifying site elevations or the proportion of open water to influence hydroperiods, or some combination of these activities. Applicants proposing to enhance wetlands or associated buffers shall demonstrate how the proposed enhancement will increase the wetland's/buffer's functions, how this increase in function will adequately compensate for the impacts, and how existing wetland functions at the mitigation site will be protected.
4. Protection/Maintenance (Preservation). Removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This includes the purchase of land or easements, or repairing water control structures or fences. This term also includes activities commonly associated with the term preservation. Preservation does not result in a gain of wetland acres. Permanent protection of a Category I or II wetland and associated buffer at risk of degradation can be used only if:
- a. The approval authority determines that the proposed preservation is the best mitigation option;
  - b. The proposed preservation site is under threat of undesirable ecological change due to permitted, planned, or likely actions that will not be adequately mitigated under existing regulations
  - c. The area proposed for preservation is of high quality or critical for the health of the watershed or basin due to its location. Some of the following features may be indicative of high-quality sites:



- i. Category I or II wetland rating (using the wetland rating system for western Washington)
- ii. Rare or irreplaceable wetland type (for example, bogs, mature forested wetlands, estuarine wetlands) or aquatic habitat that is rare or a limited resource in the area;
- iii. The presence of habitat for priority or locally important wildlife species; or also list has provides biological and/or hydrological connectivity;
- iv. Provides biological and/or hydrological connectivity; v. Priority sites in an adopted watershed plan.
- d. Permanent preservation of the wetland and buffer will be provided through a conservation easement or tract held by an appropriate natural land resource manager, such as a land trust.
- e. The approval authority may approve other legal and administrative mechanisms in lieu of a conservation easement if it determines they are adequate to protect the site.
- f. Ratios for preservation in combination with other forms of mitigation generally range from 10:1 to 20:1, as determined on a case-by-case basis, depending on the quality of the wetlands being impacted and the quality of the wetlands being preserved. Ratios for preservation as the sole means of mitigation generally start at 20:1

**E-F.** Type and Location of Mitigation. Unless it is determined that a higher level of ecological functioning would result from an alternate approach, compensatory mitigation for ecological functions shall be either in-kind and on-site, or in-kind and within the same sub-basin or drift cell (if estuarine wetlands are impacted). Mitigation actions shall be conducted within the same sub-drainage basin and on the site of the alteration except when all of the following apply:

1. There are no reasonable on-site or in-sub-drainage basin opportunities (e.g., on-site options would require elimination of high functioning upland habitat), or on-site and in-sub-drainage basin opportunities do not have a high likelihood of success based on a determination of the natural capacity of the site to compensate for the impacts. Considerations should include: anticipated wetland mitigation replacement ratios, buffer conditions and proposed widths, available water to maintain anticipated



hydrogeomorphic classes of wetlands when restored, proposed flood storage capacity, potential to mitigate riparian fish and wildlife impacts (such as connectivity);

2. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and
3. Off-site locations shall be in the same sub-drainage basin unless:
  - a. Established watershed goals for the water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the city and strongly justify location of mitigation at another site; or
  - b. Credits from a state certified wetland mitigation bank are used as mitigation and the use of credits is consistent with the terms of the ~~bank's certification~~certified bank instrument.

G. Timing of Compensatory Mitigation. It is preferred that compensation projects be completed prior to activities that will disturb the on-site wetlands. At the least, compensatory mitigation shall be completed immediately following disturbance and prior to use or occupancy of the action or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife and flora.

- a. The Shoreline Administrator may authorize a one-time temporary delay in completing construction or installation of the temporary compensatory mitigation when the applicant provides a written explanation from a qualified wetland professional as to the rationale for the delay. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties (e.g., project delay lapses past a fisheries window; or plant installation should be delayed until the dormant season to ensure greater survivability of installed materials). The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, and general welfare of the public. The request for temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the mitigation plan. The justification must be verified and approved by the Shoreline Administrator.

F.H. Wetland Mitigation Ratios. In approving alteration or creation of a wetland or wetland buffer, the Shoreline Administrator shall require that an area larger than the

altered portion of the wetland or wetland buffer be provided as compensation for destruction of the functions of the altered wetland and to assure that such functional values are replaced. The following ratios shall provide a starting point for discussions with each proponent of compensatory mitigation:

**SMP Appendix 2: Table A2-34: Mitigation Ratios**

Mitigation Ratios				
Category and Type of Wetland	Re-establishment or Creation	Rehabilitation (2)	1:1 Re-establishment or Creation (R/C) and Enhancement (E)	Enhancement Only
Category 1:				
Forested	6:1	12:1	1:1 R/C and 20:1 E	24:1
Based on score for functions	4:1	8:1	1:1 R/C and 12:1 E	16:1
Natural Heritage site	Not considered possible (1)	6:1 Rehabilitation of a Natural Heritage site	Not considered possible (1)	Case-by-case
Bog	Not considered possible (1)	6:1 Rehabilitation of a bog	Not considered possible (1)	Case-by-case
Estuarine	Case-by-case	6:1 Rehabilitation of an estuarine wetland	Case-by-case	Case-by-case
Category II:				
Estuarine	Case-by-case	4:1 Rehabilitation of an estuarine wetland	Case-by-case	Case-by-case
All other Category II	3:1	6:1	1:1 R/C and 8:1 E	12:1
All Category III	2:1	4:1	1:1 R/C and 4:1 E	8:1

**Commented [NS28]:** City would like to see these be reduced by half

**Commented [NS29]:** City would like to see these be reduced by half

Mitigation Ratios				
Category and Type of Wetland	Re-establishment or Creation	Rehabilitation (2)	1:1 Re-establishment or Creation (R/C) and Enhancement (E)	Enhancement Only
All Category IV	1.5:1	3:1	1:1 R/C and 2:1 E	6:1

Commented [NS30]: City would like to see changes

**Notes:**

- (1) Natural Heritage sites and bogs are considered irreplaceable wetlands, and therefore no amount of compensation would replace these ecosystems. Avoidance is the best option. In the rare cases when impacts cannot be avoided, replacement ratios will be assigned on a case-by-case basis. However, these ratios will be significantly higher than the other ratios for Category I wetlands.
- (2) Rehabilitation ratios are based on the assumption that actions judged most effective for that site are being implemented.

## 2.07 CRITICAL AQUIFER RECHARGE AREAS

### 2.07.01 CLASSIFICATION

For the purposes of this Appendix, the boundaries of the city's aquifer recharge areas are the boundaries of the two highest DRASTIC zones which are rated 180 and above on the DRASTIC index range.

### 2.07.02 REGULATION

- A. Permeable Surfaces. Whenever feasible, uses that are not identified as a threat to the aquifer shall provide as much open permeable space as feasible, and impervious surfaces shall be minimized.
- B. Hydrogeologic Assessment.
  1. Only the following uses of land shall require a hydrogeologic assessment of the proposed site if the site is located within an aquifer recharge area:

- a. Hazardous substance processing and handling;
  - b. Hazardous waste treatment and storage facility;
  - c. Disposal of on-site sewage for subdivisions and commercial and industrial sites;
  - d. Waste water treatment plant sludge disposal categorized as S-3, S-4 and S-5;
  - e. Animal feed lots; or
  - f. Landfills.
2. The hydrogeologic assessment shall include, but is not limited to:
- a. Information sources;
  - b. Geologic setting;
  - c. Background water quality;
  - d. Groundwater elevations;
  - e. Location/depth to perched water tables;
  - f. Recharge potential of facility site;
  - g. Groundwater flow direction and gradient;
  - h. Currently available data on wells located within one thousand feet of site;
  - i. Currently available data on any spring within one thousand feet of site;
  - j. Surface water location and recharge potential;
  - k. Water source supply to facility;
  - l. Any sampling schedules necessary; and
  - m. Discussion of the effects of the proposed project on the groundwater resource.
3. The hydrogeologic assessment shall be submitted by a qualified professional.
4. Uses requiring a hydrogeologic assessment may be conditioned or denied based upon the Shoreline Administrator's evaluation of the hydrogeologic assessment. The hydrogeologic assessment must show the use does not present a threat to the aquifer system and that the proposed use will not cause contaminants to enter the aquifer.

### **2.07.03 UNDERGROUND AND ABOVEGROUND STORAGE TANK STANDARDS**

- A. All new underground storage facilities used or to be used for the underground storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:
  - 1. Prevent releases due to corrosion or structural failure for the operational life of the tank;
  - 2. 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 substance; and
  - 3. Use material in the construction or lining of the tank which is compatible with the substance to be stored.
- B. Aboveground Tanks.
  - 1. No new aboveground storage facility or part thereof shall be fabricated, constructed, installed, used, or maintained in any manner which may allow the release of a hazardous substance to the ground, ground waters, or surface waters within an aquifer recharge area.
  - 2. No new aboveground tank or part thereof shall be fabricated, constructed, installed, used, or maintained without having constructed around and under it an impervious containment area enclosing or underlying the tank or part thereof.
  - 3. A new aboveground tank will require a secondary containment system either built into the tank structure or a dike system built outside the tank for all tanks located within an aquifer recharge area.

## **2.08 FREQUENTLY FLOODED AREAS**

### **2.08.01 GENERAL**

Floodplains and other areas subject to flooding perform important hydrologic functions.

### **2.08.02 CLASSIFICATION**

Any flood hazard area shall be as identified in the most recent scientific and engineering report entitled "The Flood Insurance Study for Grays Harbor County," with accompanying flood insurance rate maps (FIRMs) prepared by the FEMA.

### **2.08.03 REGULATION**

All developments must follow the provisions set forth in MMC Title 17.40 Overlay Districts, Article II: Flood Hazard District.

## **2.09 LANDSLIDE HAZARD AREAS**

Development proposals on sites containing landslide hazard areas shall meet the following requirements:

### **2.09.01 SLOPES OVER FORTY PERCENT – DEVELOPMENT STANDARDS**

All proposed developments on slopes forty percent or steeper should be avoided if feasible.

A. Alterations. Alterations to slopes over forty percent shall be allowed as follows:

1. Utilities. Construction of public and private utility corridors may be allowed on steep slopes provided that a special critical area study prepared by a qualified professional indicates such alteration will not subject the area to the risk of landslide or erosion.
2. View Corridors. The city shall allow the logging, trimming, and limbing of vegetation on steep slopes for the creation and maintenance of views; provided, that the soils are not disturbed and other critical areas and their buffers are avoided.
3. Trails. Public and private trails may be allowed on forty percent steep slopes or greater, provided they adhere to the construction and maintenance standards in the most current U.S. Forest Service "Trails Management Handbook" and "Standard Specifications for Construction of Trails."
4. Surface Water Management. Steep slopes may be used for approved surface water conveyance. Installation techniques shall minimize disturbance to the slope and vegetation and be prepared by a qualified professional.

B. Limited Exemptions.

1. Slopes forty percent and steeper with a vertical elevation change of up to twenty feet may be exempted from the provisions of this section based on city review of a geotechnical report prepared by a qualified professional which demonstrates that no adverse impact will result from the exemption.
2. Any slope which has been created through previous, legal grading activities may be regarded as part of an approved development proposal. Any slope which remains

equal to or in excess of forty percent following site development shall be subject to the development standards for slopes over forty percent.

3. Unless otherwise specified, the following restrictions apply to vegetation removal or introduction in steep slopes, landslide hazard areas and their buffers:
  - a. There shall be no removal of any vegetation from any steep slope hazard area or buffer except for the limited plant removal necessary for surveying purposes and for the removal of hazard trees or for view corridors as set forth in SMP Appendix 2: Section 2.09.01(A)(2) ~~above~~.
  - b. Harvesting of timber and reforestation to prevent erosion is permitted.
  - c. On slopes, which have been disturbed by human activity or infested by noxious weeds, replacement with native species or other appropriate vegetation may be allowed subject to approval by the city.

#### **2.09.02 SLOPES FIFTEEN TO THIRTY-NINE PERCENT – DEVELOPMENT STANDARDS**

- A. A landslide hazard area, located on a slope less than forty percent, may only be altered in the following circumstances:
  1. If the development proposal will not decrease slope stability on adjacent properties; and
  2. If the landslide hazard area can be modified or the development proposal can be designed so the landslide hazard to the project and adjacent property is eliminated or mitigated and the development proposal on that site is certified as safe by a geologist, civil or geotechnical engineer.
  3. If the development proposal will not increase surface water discharge or sedimentation to adjacent properties.
- B. Where such alterations are approved, buffers will not be required.

#### **2.09.03 BUFFERS**

A minimum buffer equal to the height of the slope or 50 feet, whichever is greater, shall be established from all edges of a landslide hazard area and from landslide hazard areas with slopes less than forty percent unless these areas are approved for alteration pursuant to SMP Appendix 2: Section 2.09.02(A). Existing native vegetation within ten feet of the buffer area shall be maintained.

#### **2.09.04 MODIFICATIONS TO BUFFER WIDTH**

When the geotechnical report demonstrates that a lesser buffer distance, and design and engineering solutions, will meet the intent of this Appendix, such reduced buffer and design and engineering solutions may be permitted. Should the geotechnical report indicate that a greater buffer than that required by SMP Appendix 2: Section 2.09.03 is needed to meet the intent of this Appendix, the greater buffer shall be required.

#### **2.09.05 STRUCTURAL SETBACK LINES**

Structural setback lines of ten feet shall be required from the edge of a landslide hazard buffer.

### **2.10 EROSION HAZARD AREAS**

#### **2.10.01 CRITERIA**

Erosion hazard areas are identified by the presence of vegetative cover, soil texture, slope, and rainfall patterns, or human-induced changes to such characteristics, which create site conditions which are vulnerable to erosion.

#### **2.10.02 MAPPING**

Erosion hazard areas are those areas that have a severe or very-severe erosion potential as detailed in the soil descriptions contained in the most recent edition of the "Soil Survey of Grays Harbor County Area, Washington," Soil Conservation Service, USDA.

#### **2.10.03 DEVELOPMENT STANDARDS**

A. For all regulated activities proposed within erosion hazard areas, a geotechnical report prepared by a professional engineer licensed with the state of Washington with expertise in geotechnical engineering shall be submitted. Geotechnical reports shall correspond to the definition of "critical area special study" contained in this Appendix. Provided, where an applicant can demonstrate through submittal of a geotechnical assessment that there are no erosion hazards on-site, the requirement for the geotechnical report may be waived. The geotechnical assessment shall include at a minimum the following:

1. A discussion of the surface and subsurface geologic conditions of the site;



2. A site plan of the area delineating all areas of the site subject to erosion hazards, based on mapping and criteria referenced in SMP Appendix 2: Section 2.10.02 and SMP Appendix 2: Section 2.10.01. The submittal must include a contour map of the proposed site, at a scale of one inch equals two hundred feet. Slopes shall be clearly delineated for the ranges between fifteen and thirty-nine percent, and forty percent or greater, including figures for aerial coverage of each slope category on-site.
- B. If the geotechnical assessment demonstrates, to the satisfaction of the Shoreline Administrator, that the proposed site is not located in any erosion hazard area, based upon the criteria set forth in this subsection, then the requirements of this section shall not apply.

#### **2.10.04 PERFORMANCE STANDARDS**

- A. The Shoreline Administrator shall evaluate all geotechnical reports for erosion hazard areas to ensure that the following standards are met:
1. Location and Extent of Development.
    - a. Development shall be located to minimize disturbance and removal of vegetation;
    - b. Structures shall be clustered where feasible to reduce disturbance and maintain natural topographic character;
    - c. Structures shall conform to the natural contours of the slope and foundations should be tiered where feasible to conform to existing topography of the site.
  2. Design of Development.
    - a. All development proposals shall be designed to minimize the footprint of building and other disturbed areas;
    - b. All development shall be designed to minimize impervious lot coverage;
    - c. Roads, walkways and parking areas shall be designed to parallel the natural contours;
    - d. Access shall be in the least critical area of the site.
    - e. Buffers. A minimum buffer of twenty-five feet shall be established from all edges of an erosion hazard area.
    - f. Structural Setback Lines. Structural setback lines of eight feet shall be required from the edge of an erosion hazard area buffer.

## **2.11 SEISMIC HAZARD AREAS**

### **2.11.01 GENERAL**

Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, or soil liquefaction.

### **2.11.02 CLASSIFICATION**

- A. Criteria. Seismic hazard areas are areas underlain by alluvial and recessional outwash surficial geologic units.
- B. Mapping. Seismic hazard areas are alluvial and recessional outwash units, if any, which are identified in any study which may be hereafter adopted by the City Council through formal action.
- C. Regulation. For all regulated activities except the construction of a single-family residential structure, proposed within seismic hazard areas, a geotechnical report prepared by a professional engineer licensed with the state with expertise in geotechnical engineering shall be submitted. Provided, where an applicant can demonstrate through submittal of a geotechnical assessment that there are no seismic hazards on-site or that the seismic hazard can be mitigated, the requirement for the geotechnical report may be waived. Single-family and duplex residential structures shall be exempt from the requirements of SMP Appendix 2: Section 2.11. Single-family and duplex residential structures shall meet appropriate Uniform Building Code requirements for seismic hazard areas.
  - 1. Geotechnical Report. The geotechnical report shall address the existing geologic, topographic, and hydraulic conditions on a site, including an evaluation of the ability of the site to accommodate the proposed activity. The geotechnical report shall include at a minimum the following:
    - a. A discussion of the surface and subsurface geologic conditions of the site;
    - b. A site plan of the area delineating all areas of the property subject to seismic hazards, based on mapping and criteria referenced above;
    - c. A discussion of mitigation measures which can be taken to eliminate seismic risks associated with the underlying surficial geology; and
    - d. An evaluation of the effectiveness of the proposed mitigation measures.

The development proposal may be approved, approved with conditions, or denied based on the Shoreline Administrator's evaluation of the ability of the proposed mitigation measures to eliminate seismic risks associated with the underlying surficial geology.

2. Geotechnical Assessments.

- a. Should the Shoreline Administrator question the presence of seismic hazard areas on the site, the applicant may submit a geotechnical assessment prepared by a professional engineer licensed in the state of Washington with expertise in geotechnical engineering.
- b. The geotechnical assessment shall include at a minimum the following:
  - 1) A discussion of the surface and subsurface geologic conditions of the site;
  - 2) A site plan of the area delineating all areas of the site subject to seismic hazards, based on mapping and criteria referenced above. If the geotechnical assessment demonstrates, to the satisfaction of the Shoreline Administrator, that the proposed site is not located in any seismic hazard areas, based upon the criteria set forth above, then the requirements of this section shall not apply.

- D. Plat Notification. For all proposed short subdivision and subdivision proposals within seismic hazard areas, the applicant shall include a note on the face of the plat. The note shall be as set forth below:

*Notice: This site lies within a seismic hazard area as defined in city of Montesano's Critical Areas Regulations. Restrictions on use or alteration of the site may exist due to natural conditions of the site and resulting regulation.*

The note shall be recorded prior to final plat approval of any short subdivision or subdivision.

## **2.12 FISH AND WILDLIFE HABITAT CONSERVATION AREAS**

### **2.12.01 GENERAL**

Fish and wildlife habitat areas are those areas identified as being of critical importance to maintenance of fish, wildlife, and plant species, including:

- A. Areas with which federally or state listed endangered and threatened species of fish, wildlife, and plants have a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term;
- B. Waters of the state, including all water bodies classified by the WDNR water typing classification system as detailed in WAC 222-16-030;
- C. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and
- D. State natural area preserves and natural resource conservation areas.

#### **2.12.02 CLASSIFICATION**

Fish and wildlife habitat areas are identified in the following WDFW documents and data sources:

- A. Priority Habitats and Species Program;
- B. Non-Game Data Base; and
- C. Washington Rivers Information System.

#### **2.12.03 REGULATION**

- A. Habitat Assessment. For all regulated activities proposed on a site which contains or is within 100 feet of fish and wildlife habitat, a habitat assessment shall be submitted. The habitat assessment shall be prepared by a professional wildlife biologist with a degree in biology or zoology. At a minimum, the habitat assessment shall contain:
  - 1. A discussion of species or habitats known or expected to be located on or within 100 feet of the site, including state or federal endangered and threatened species;
  - 2. A site plan which clearly identifies and delineates critical fish and wildlife habitats found within 100 feet of the site.
- B. Habitat Management Plan. If the habitat assessment demonstrates to the satisfaction of the Shoreline Administrator that fish and wildlife habitat are not located on or within 100 feet of the site, then the development can proceed without further requirement for special wildlife studies. Otherwise, a habitat management plan shall be submitted. All habitat management plans shall be prepared by a professional biologist or zoologist with a degree in one of those fields. The habitat management plan shall contain at a minimum:

1. A discussion of the project's effects on fish and wildlife habitat;
2. A discussion of any federal, state, or local special management recommendations which have been developed for species or habitats located on the site;
3. A discussion of measures proposed to preserve existing habitats;
4. An evaluation of the effectiveness of any proposed mitigation measures; and
5. A discussion of ongoing management practices which will protect fish and wildlife habitats after the project site has been fully developed, including proposed monitoring and maintenance programs.

Habitat management plans shall be forwarded to the WDFW and similar appropriate state and federal agencies for their comments at the discretion of the city. ~~Bald eagle management plans shall comply with bald eagle protection rules as per WAC 232-12-292.~~

All projects may be conditioned based on comments from agencies and the Shoreline Administrator's evaluation of the impacts of the project. Projects may be denied if the proposal will result in extirpation or isolation of endangered or threatened fish and wildlife species.

- C. Fish and Wildlife Habitat Buffer. Based on the information provided by the habitat management plan, buffers consisting of undisturbed natural vegetation shall be required to ensure retention of endangered and threatened fish and wildlife habitat areas. Buffers for fish habitat and water bodies are established by SMP Appendix 2: Table 2-4: Water Body Buffers ~~below~~. For all other wildlife buffers, the width of the buffers shall be determined on a case-by-case evaluation by the Shoreline Administrator.
- D. Buffers on Water Bodies. A buffer, consisting of undisturbed natural vegetation, shall be required along all water bodies, as classified by the DNR water typing classification system (WAC 222-16-030). The buffer shall extend landward from the OHWM of the water body. The buffer widths are listed in SMP Appendix 2: Table 2-4: Water Body Buffers ~~below~~.

**SMP Appendix 2: Table A2-3: Water Body Buffers**

WDNR Water Type	Buffer Width in Feet
S	See SMP Section 4.04.02(B)

**Commented [NS31]:** Bald Eagle delisted from State Sensitive - February 4, 2017  
a. 2011: Downlisted from State Threatened to Sensitive (this ended the requirement to develop Bald Eagle Protection Plans per WAC 220-610-100)  
b. 2007: Delisted from federal Threatened (but still covered by the federal Bald and Golden Eagle Protection Act)

F	100 feet
Np	75 feet
Ns	50 feet

- E. Allowable Activities in the Buffer. Alterations may be made within the buffer if in accordance with SMP Section 4.04.02(D).
- F. Mitigation for Streams. Standards for Restoration, Enhancement or Replacement.
1. Restoration is required when a stream or its buffer has been altered in violation of this Appendix or any prior ordinance applying to the treatment of streams, or when an unapproved or unanticipated alteration occurs during the construction of an approved development proposal; provided, that a mitigation plan for the restoration demonstrates that:
    - a. The stream is degraded and will not be further degraded by the restoration activity;
    - b. The restoration will reliably and demonstrably improve the water quality and fish and wildlife habitat of the stream;
    - c. The restoration will have no lasting significant adverse impacts on any in-stream resource;
    - d. All work will be carried out under the direct supervision of a qualified biologist; and
    - e. The following minimum performance standards shall be met for restoration of a stream; provided, that these standards may be modified if the applicant can demonstrate that greater habitat value can be obtained:
      - 1) The natural channel dimensions should be replicated including identical depth, width, length and gradient at the original location and the original horizontal alignment should be replaced;
      - 2) The bottom should be restored with identical or similar materials;
      - 3) The bank and buffer configuration should be restored to the original conditions;

- 4) The channel, bank and buffer areas should be replanted with native vegetation which replicates the original in species, sizes and densities; and
  - 5) The original habitat value should be recreated.
2. Replacement or enhancement is required when the Shoreline Administrator approves the alteration of a stream or buffer. There will be no net loss of stream functions on a development proposal site and no impact on stream functions above or below the site due to approved alterations.
  - a. Replacement. When an approved alteration involves the relocation of a stream or alteration of its buffer, the performance standards in SMP Appendix 2: Section 2.12.03(F)(1) are required in order to replicate the structure and function of the original stream and/or buffer, unless the applicant can demonstrate that greater habitat value can be obtained through varying these standards.
  - b. Enhancement. Enhancement, when allowed, should improve the functions and values of the streams. Surface water management or flood control alterations shall not be considered enhancement unless other functions and values are simultaneously increased.
  - c. Location. Replacement or enhancement for streams and buffers shall be accomplished in streams and stream buffers, and shall occur on-site unless the applicant demonstrates that on-site replacement or enhancement is not feasible, that the off-site alternative is in the same drainage sub-basin and that greater biological and hydrological values will be derived.

## **2.13 ADMINISTRATION**

The Shoreline Administrator of the city is hereby directed to administer the provisions of this Appendix, and the city may appoint other employees as may be necessary to assist in its administration. The Shoreline Administrator shall adopt and revise, as required, such forms and instructions as are necessary or appropriate to serve the public and carry out the provisions of this Appendix.