PLANNING COMMISSION MEETING AGENDA
Council Chambers, 1000 Laurel Street

March 27, 2019
Wednesday

Regular Meeting
7:00 p.m.

1. Call to Order and Flag Salute

2. Roll Call

3. Additions/Deletions to Agenda

4. Citizen Participation

5. Approval of Minutes

A. January 9, 2019 Regular Meeting

6. Public Hearing-Shoreline Master Program Review

7. Regular Agenda

A. Vacant Building draft Ordinance

8. Commissioner Reports

9. Adjournment

Planning Commission may add and take action on other items not listed on this agenda.
If you need ADA accommodations, please contact City Hall at (253) 517-2705 at least 24 hours prior to the meeting.
Thank you.

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PLANNING COMMISSION MINUTES

Regular Meeting
Wednesday, January 9, 2019
7:00 p.m.

1. CALL TO ORDER AND FLAG SALUTE

Chair LaVergne opened the meeting and Commissioner Whalen led the flag salute.

2. ROLL CALL

Present: Chair LaVergne, Commissioners Gillespie, Balsley, Whalen, Boyle, Sweat and White.

Staff Present: Trisha Summers, City Clerk

3. STAFF UPDATES

An updated map and description of active City development projects were provided.

4. ADDITIONS, DELETIONS TO AGENDA

None

5. CITIZEN PARTICIPATION

None

6. APPROVAL OF MINUTES

A. December 12, 2018

MOTION TO APPROVE MINUTES (Sweat/Balsley) – **Passed 6/1.**

7. REGULAR AGENDA

A. Welcome from the Chair

- Chair LaVergne welcomed Tom Boyle back to the Planning Commission. He would like to focus on the work plan for 2019 with efficiency. Chair LaVergne is looking forward to working with the commission this year. There have been some concerns about Director Howlett not being at the meetings but he is willing to attend from time to time with notice.

- Chair LaVergne asked the commission what their goals for 2019 are.

- White: Glad to hear council is helping prioritize list and he will contribute the best he can to the work plan.

- Boyle: The Commission may have to take on two items at once to work through to complete the work plan. I like the work plan and am eager for its prioritization.

- Whalen: I would prefer to function as the vice chair instead of co-chair. I will not be too strong but will jump in and help as needed. I plan to get work done by being effective and clear.

- Gillespie: I want to spend more time outside of planning commission meetings doing homework to be more productive in meetings.

- Balsley: I will support the work plan and help get as much done as possible.

- Sweat: To get through the work plan that has been established. I have only been on the commission for a year so I am looking forward to learning more.

B. Vacant Building Regulations

- Commissioners started revisions to the draft Vacant Building Ordinance and will continue reviewing and revising at their February meeting.

8. COMMISSIONER REPORTS

Commissioner Sweat

- Please remember to use microphones during the meetings and speak so that all can hear you.

Commissioner White

- Nothing to report

Commissioner Boyle

- Thanks to staff for the work plan. It's an honor to be working with you all.
- Congrats to all of you on completing the sign code!
- Appreciates the time you all spend, as a citizen of Milton it means a lot.

Commissioner Whalen

- Thank you for a productive meeting!

Commissioner Balsley

- Great to be here serving on the commission another year.
- February 13th is the Economic Forecast luncheon at the Chamber.
- March Chamber lunch is the State of the Cities, planning commission should attend.
- Recently posed the question to some local business owners about what they thought of a Vacant Building Ordinance. Overall, they thought it was a good idea for the cities but that it needed to be a clear plan.

Commissioner Gillespie

- Suggested that everyone prepares on their own before next months' meeting so that we can go through the draft Ordinance quickly and efficiently.

9. ADJOURNMENT

The meeting was adjourned at 9:06 PM.

_____

Chair Ryan LaVergne

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Agenda Item #: 6

To: Chair LaVergne and Planning Commission Members

From: Brittany Port, AICP, Contract Senior Planner

Date: March 27, 2019

Re: **Shoreline Master Program Periodic Review - Recommendation to City Council**

ATTACHMENTS:
1) Draft SMP (as submitted to Ecology on January 10, 2019)
2) SMP Periodic Review Checklist (submitted to Ecology on January 10, 2019)
3) Amendments to MMC 18.12
4) Findings of Fact
5) SEPA Determination of Non-Significance

TYPE OF ACTION:

☐ Information Only ☒ Discussion ☒ Action ☐ Public Hearing ☐ Expenditure

Recommendation(s):

Public Hearing: Staff recommends that the Planning Commission hold a public hearing as required by the Municipal Code for legislative actions.

Council Recommendation: Staff recommends that the Planning Commission adopt the attached findings of fact and make the following motion to recommend approval of the Shoreline Master Program amendments to the City Council.

Motion: "I move to approve the proposed changes to Milton Municipal Code 18.12 and the Shoreline Master Program; to forward the document on to appropriate City Staff for review and refinement; and then send it on to Council for their action."

Issue: Make a recommendation to the City Council on the Draft Shoreline Master Program after holding a public hearing on the proposal.

Background: The Planning Commission has been working on amendments to the City's Shoreline Master Program necessitated by the periodic review as required by RCW 90.58.080. The Shoreline Master Program is a document that plans for the City's shorelines of statewide significance and shorelands within 200' of their ordinary high water mark. The City is required

to review its SMP and prepare amendments to address changing local circumstances, new information or improved data. The legislature adopted a staggered review cycle which requires that this document is reviewed and amended every 8 years. The Shoreline Master Program is locally adopted by the City and then approved by the Department of Ecology.

Over the last few months, City staff have been adhering to the periodic review process as required by the Department of Ecology. A public open house was held in accordance with the City's adopted public participation plan in November, 2018. The City reviewed and prepared amendments to the Shoreline Master Program in conjunction with the Planning Commission, and then submitted it to the Department of Ecology for initial review. No comments have been received on the SMP from the Department of Ecology as of the date of this hearing.

The City has opted to conduct a joint public comment period with the Department of Ecology. The public comment period is open from March 11, 2019, to April 10, 2019. All comments will be provided directly to the City who will forward them on to the Department of Ecology.

Discussion: City staff prepared a draft amended Shoreline Master Program for review by the Planning Commission at their November 14, 2018 meeting. Following the work session with Planning Commission, City staff made the changes as directed and submitted the draft Shoreline Master Program to the Department of Ecology for their review on January 10, 2019. The changes included:

- Clarifying the critical areas regulations within Section 3.B.3 and Appendix C (previously Appendix C was structured to just adopt the City's Critical Area Ordinance contained within the Municipal Code, as the critical area regulations within the SMP are modified in several places, staff opted to remove the discussion of the regulation modifications in Section 3.B.3 and structure Appendix C to look more like an Appendix rather than appearing as a verbatim adoption of Ordinance 1671/1865).
- Per Planning Commission direction opting NOT to extend coverage to any additional appurtenances not already listed (i.e. pools).
- Per Planning Commission direction opting NOT to allow nonconforming single family residences within the shoreline jurisdiction to be considered conforming.
- Ensuring the references to the updated wetland rating system are consistent throughout the Appendix.

Grant No. 1000047

Ordinance No. 1803-12

City of Milton
Shoreline Master Program

~~FINAL~~

~~November 13th, 2012~~Draft Amendment for Planning Commission

January 10, 2019

Prepared by:

City of Milton

1904 3rd Ave, Suite 725
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750 6th Street South
Kirkland, WA 98033

This report was funded in part through a grant from the Washington Department of Ecology.

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1 Introduction to the SMP

1.A. WHAT IS THE SHORELINE MASTER PROGRAM (SMP)?

The City of Milton Shoreline Master Program (SMP) is a planning document that outlines goals and policies for the shorelines of the City, and also establishes regulations for development occurring within two hundred feet of the shoreline.

1.A.1. Supporting Documents

The Milton Shoreline Master Program is supported by the following documents which were completed as part of the Shoreline Master Program update process:

- Shoreline Analysis Report for the City of Milton Shorelines: Surprise Lake and Hylebos Creek, December 2010
- Cumulative Impacts Analysis for City of Milton Shorelines: Surprise Lake and Hylebos Creek, November 2011;
- Shoreline Restoration Plan Component of the Shoreline Master Program for the City of Milton Shorelines: Surprise Lake and Hylebos Creek, November 2011; and
- No Net Loss Report for the City of Milton Shorelines: Surprise Lake and Hylebos Creek, January 2012.

1.A.2. Other Applicable Regulations

Most of the uses, developments, and activities regulated under the SMP are also subject to the City's Comprehensive Plan, the Milton Municipal Code, the International Building Code, and various other provisions of City, state and federal laws. Any applicant must comply with all applicable laws prior to commencing any use, development, or activity. Milton will ensure consistency between the SMP and other City codes, plans and programs by reviewing each for consistency during periodic updates of the City's Comprehensive Plan as required by State statute. If there is a difference between the SMP and a related document, the more restrictive requirements shall apply.

1.B. HISTORY AND REQUIREMENTS OF THE SHORELINE MANAGEMENT ACT (SMA)

Washington's Shoreline Management Act (Act) was adopted by the public in a 1972 referendum "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." The Act has three broad policies:

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1. **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...”
2. **Protect shoreline natural resources**: including "...the land and its vegetation and wildlife, and the water of the state and their aquatic life..."
3. **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 the people generally."

This Act recognizes that "shorelines are among the most valuable and fragile" of the state's resources. The Act, and the City of Milton, recognize and protect private property rights along the shoreline, while aiming to preserve the quality of this unique resource for all state residents.

The primary purpose of the Act is to provide for the management and protection of the state's shoreline resources by planning for reasonable and appropriate uses. In order to protect the public interest in preserving these shorelines, the Act establishes a coordinated planning program between the state and local jurisdictions to use in addressing the types and effects of development occurring along the state's shorelines. By law, the City is responsible for the following:

1. Development of an inventory of the natural characteristics and land use patterns along shorelines covered by the act.
2. Preparation of a Shoreline Master Program to determine the future of the shorelines.
3. Development of a permit system to further the goals and policies of both the act and the local Master Plan.
4. Development of a Restoration Plan that includes goals, policies and actions for restoration of impaired shoreline ecological functions.

1.C. IMPLEMENTATION OF THE SHORELINE MANAGEMENT ACT

Washington State law specifies implementation of the Shoreline Management Act as follows:

> *The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern*

throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto. (RCW 90.58.020)

1.D. GEOGRAPHIC APPLICATIONS OF THE SMA

As defined by the Shoreline Management Act of 1971, shorelines include certain waters of the state plus their associated shorelands. At a minimum, the waterbodies designated as shorelines of the state are streams whose mean annual flow is 20 cubic feet per second (cfs) or greater and lakes whose area is greater than 20 acres. Shorelands are defined as:

those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter…Any county or city may determine that portion of a one-hundred-year-floodplain to be included in its SMP as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet

therefrom… Any city or county may also include in its SMP land necessary for buffers for critical areas. (RCW 90.58.030)

The lateral extent of the Shoreline Jurisdiction shall be determined for specific cases based on the location of the ordinary high water mark (OHWM), floodway, and presence of associated wetlands. The specific location of the OHWM shall be determined on a case-by-case basis because the OHWM will vary over time and according to variety of factors including wind, waves, erosion, accretion, soils, substrates, vegetation, land use changes, runoff, groundwater, and the activities of beavers and other organisms.

Within the City of Milton, Surprise Lake has a surface area of approximately 32 acres. Thus, the lake, its shorelands, and any associated wetlands are considered part of Shoreline Jurisdiction.

The 20 cfs cutoff point for Hylebos Creek is located just upstream of its confluence with West Hylebos Creek. All aquatic areas, shorelands 200 feet from the OHWM, and associated wetlands downstream from this point, are considered part of Shoreline Jurisdiction. A large riparian wetland is present near the 20 cfs cutoff point and extends upstream along Hylebos Creek. Since this riparian wetland intersects within the 200 foot Shoreline Jurisdiction, the entire wetland, even those parts extending upstream of the 20 cfs point, are considered associated to Hylebos Creek, and therefore part of Milton's Shoreline Jurisdiction. This area of proposed Shoreline Jurisdiction can be seen in the environment designation map in Appendix A. The entire jurisdiction assessment and determination process can be reviewed in detail in the Shoreline Analysis Report for the City of Milton Shorelines: Surprise Lake and Hylebos Creek.

1.D.1. Applicable Area

The City of Milton is located partially in King County and partially in Pierce County. The City is bordered to the north by the City of Federal Way and unincorporated portions of King County. The City is bordered to the east and southeast by the City of Edgewood and to the southwest by the City of Fife. Unincorporated portions of Pierce County border the City to the west. The City covers approximately 2.6 square miles. The study area for this report includes all land currently within the City's proposed Shoreline Jurisdiction. The total land area subject to the City's updated SMP is approximately 47.8 acres (0.075 square mile), and includes approximately 1.53 miles of shoreline.

1.E. HOW THE SHORELINE MASTER PROGRAM IS USED

The City of Milton Shoreline Master Program is a planning document that outlines goals and policies for shorelines of the state within the City limits, and also establishes regulations for development occurring within Shoreline Jurisdiction.

In order to preserve and enhance the shorelines of the state in the City of Milton, it is important that all development proposals relating to shorelines of the state are evaluated in terms of the City's Shoreline Master Program and that the City Shoreline Administrator is consulted. The Shoreline Administrator for the City of Milton is the Planning Director or his/her designee.

The Shoreline Management Act (SMA) defines, for local jurisdictions, the regulatory framework for how shorelines of the state should be regulated. The guidelines in Chapter 173-26 WAC direct each community to develop regulations appropriate to that community. Shorelines of the state that meet the criteria established in WAC 173-26-211 are given a shoreline environment designation. The purpose of the shoreline designation system is to ensure that land use, development, or other activity occurring within the designated Shoreline Jurisdiction is appropriate for that area and that consideration is given to the special requirements of that environment.

The Milton Shoreline Master Program addresses a broad range of uses that could be proposed in Shoreline Jurisdiction. This breadth is intended to ensure that Milton's Shoreline Jurisdiction is protected from activities and uses that, if unmonitored, could be developed inappropriately and could cause damage to the ecological system of the shoreline, displace "preferred uses" as identified in Chapter 90.58 RCW, or cause the degradation of shoreline aesthetic values. The Milton Shoreline Master Program provides the regulatory parameters within which development may occur. In addition, it identifies those uses deemed unacceptable within Milton Shoreline Jurisdiction, as well as those uses which may be considered through a discretionary permit such as a Conditional Use Permit or Shoreline Variance.

1.E.1. The Shoreline Permit

There are four types of permits: the Shoreline Substantial Development Permit, the Shoreline Conditional Use Permit, the Shoreline Variance, and a Letter of Exemption. All of these permits use the same application form; however, they are processed slightly differently and have different criteria for approval.

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Letter of Exemption

Shoreline Exemptions require City review to determine whether the proposal is indeed exempt from Shoreline Substantial Development Permits. Furthermore the City may place conditions in the letter of exemption AND/OR on the associated permit in order to assure the proposal meets the policies and regulations of the Shoreline Master Program.

Shoreline Substantial Development Permit

Requests for a Shoreline Substantial Development Permit are reviewed and approved by the Shoreline Administrator. If a project does not meet the list of exemptions in Chapter 7, a Shoreline Substantial Development Permit is required.

Shoreline Variances and Shoreline Conditional Use Permits

Requests for a Shoreline Variance or Shoreline Conditional Use Permit require review by the City of Milton Hearing Examiner (Chapter 18.12 MMC). There may be instances where a Shoreline Conditional Use Permit or Shoreline Variance may be required without the need for a Shoreline Substantial Development Permit.

The Hearing Examiner shall hold a public hearing on the proposal and approve, approve with conditions, or deny the application. The Hearing Examiner's decision is final, unless an appeal is filed pursuant to the procedures described in Chapter 18.12 MMC. After the Hearing Examiner issues a decision, requests for Shoreline Conditional Use Permits and Shoreline Variance Permits are subject to approval, approval with conditions, or denial by the Department of Ecology. All Shoreline Permits can be appealed to the Shoreline Hearings Board pursuant to Chapter 7 of this SMP

Requests for Shoreline Conditional Use Permits and Shoreline Variances require final approval from the Department of Ecology.

A map of the Shoreline Jurisdiction is presented in Appendix A and descriptions of the various shoreline designations are presented in Chapter 2 of this SMP.

1.F. PUBLIC PROCESS FOR ADOPTION OF MILTON'S SHORELINE MASTER PLAN (SMP)

The City of Milton involved the public and solicited feedback throughout the update process of this Shoreline Master Program. The City notified and solicited input from all relevant organizations and agencies at the beginning and throughout the local adoption process of the SMP update. City staff worked closely with the City of Milton Planning Commission (Commission) throughout the update process.

To solicit public input the City held a total of 3 public open houses during the writing phase of the SMP to solicit public input.

The planning process is outlined below:

Summer 2010	The planning team conducted the inventory and prepared background information
Nov. 3, 2010	The planning team briefed the Planning Commission on the inventory work, described the SMP process and presented a background discussion of the administration of the SMA. Before this session a public open house was conducted to provide participants with similar information and discuss issues of special concern.
Jan. 26, 2011	The Planning Commission reviewed the first three chapters trough General Provisions of an early SMP draft .
Feb. 8, 2011	The Planning Commission considered alternative approaches to address shoreline stabilization measures, overwater structures and residential development standards
March 23, April 27, and May 25, 2011	The Planning Commission continued review of draft SMP provisions
Jun 22, 2011	The planning team conducted a public open house to review proposed draft SMP language and the Planning Commission gave direction regarding the submittal to the Department of Ecology.
July 31, 2011	The City submitted a draft SMP to Ecology for review
Oct 13, 2011	The planning team met with Ecology staff to review the Department's comments and the City's proposed responses. Several outstanding issues were resolved and the planning team incorporated responses and discussed solutions into the draft which was submitted to the Planning Commission for review.
Oct 26, 2011	The planning team presented the changes required by Ecology. The Planning Commission gave staff direction on changes pursuant to review by Ecology.
Dec 14, 2011	The planning team conducted open house #3 to explain the changes proposed and take comments. After the open house, the Planning Commission directed the planning team to make further refinements to the draft that will be presented to the City Council.
April 16, 2011	The City Council held the final public hearing on the proposed Shoreline Master Program.

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2 Shoreline Environment Designation Provisions

2.A. INTRODUCTION

The Shoreline Management Act (Chapter 90.58 RCW) and Shoreline Guidelines (Chapter 173-26 WAC) provide for shoreline environment designations to serve as a tool for applying and tailoring the general policies of the SMA to local shorelines of the state. Shoreline Environment designations provide a means of adapting broad policies to shoreline sub-units while recognizing different conditions and valuable shoreline resources, and a way to integrate comprehensive planning into SMP regulations. In accordance with WAC 173-26-211, each shoreline environment designation has a description of purpose, designation criteria, and management policies.

All areas not specifically assigned a shoreline environment designation shall be designated "Urban Conservancy" (UC).

2.B. SHORELINE ENVIRONMENT DESIGNATIONS

The Shoreline Environment Designation Map can be found in Appendix A. Pursuant to RCW 90.58.040, the map illustrates the shoreline environment designations that apply to all shorelines of the state within the City of Milton's jurisdiction. The lateral extent of the Shoreline Jurisdiction shall be determined for specific cases based on the location of the ordinary high water mark (OHWM), floodway, and presence of associated wetlands. The map should be used in conjunction with the locational descriptions in the specific environment designation in Section C below.

2.C. POLICIES AND REGULATIONS

2.C.1. Urban Conservancy (UC) Environment Designation

2.C.1.a. Purpose

The purpose of the Urban Conservancy designation is to protect those shoreline areas that are relatively free of human influence, that are a portion of an ecologically significant water body and offer the potential for restoration . In some cases a UC may be assigned to restrict further adverse impacts to the ecology by adjacent uses. Consistent with the policies of the designation, the

City should include planning for restoration of degraded shorelines within this environment.

2.C.1.b. Designation Criteria

An Urban Conservancy designation is assigned to the City of Milton shorelands that are relatively ecologically intact and therefore currently performing an important, irreplaceable function or ecosystem-wide process that would be damaged by human activity, including those wetland complexes in Shoreline Jurisdiction. For the Urban Conservancy areas that extend beyond 200 feet from OHWM, the exact location of the wetland boundary will be determined at the time of project application.

2.C.1.c. Management Policies

Uses

1. Any use that would substantially degrade the ecological functions or natural character of the designated wetland area should be prohibited.
2. New land division, development, or shoreline modification that would reduce the capability of the wetlands to perform normal ecological functions should not be allowed.
3. Uses that are consumptive of physical, visual, and biological resources should be prohibited.
4. Existing commercial and industrial uses should be allowed to remain and expand provided that there is no further intrusion toward the shoreline and that there are no unmitigated adverse impacts to the ecology.

Access and Improvements

5. Access may be permitted for scientific, historical, cultural, educational, and low-intensity water-oriented recreational purposes such as nature study that do not impact ecological functions, provided that no unmitigated adverse impacts to the ecology will result.
6. Physical alterations should only be considered when they include measures to protect or enhance a significant, unique, or highly valued feature that might otherwise be degraded or destroyed, or in the case of public access where no unmitigated adverse impacts to the ecology would occur.

7. Ecological restoration should be required in accordance with the Restoration Plan as a condition of development on sections of Hylebos Creek in the UC environment.

Implementing Regulations

8. The ecological resources in the Urban Conservancy environment should be protected through the provisions in the Critical Areas section of this SMP.

2.C.1.d. Specific Environment Designations

Shorelines and wetland complexes associated with Hylebos Creek upland of the OHWM are designated as Urban Conservancy. See also the attached map in Appendix A, however the exact location of the wetland boundary will be determined at the time of project application.

2.C.1.e Conditional Uses and Modifications

The following uses and modifications require a conditional use permit in the Urban Conservancy Designation.

1. In-stream structures
2. Nonwater-dependent transportation
3. Placement of dredge spoil
4. Bioengineering shoreline ~~stablization~~stabilization measures

2.C.1.f Prohibited Uses and Modifications

The following uses and modifications are prohibited in the Urban Conservancy Designation

1. Agriculture
2. Aquaculture
3. Boating facilities
4. Forest practices
5. Mining
6. Primary parking
7. Residential
8. Off-premises sign
9. Solid waste disposal facilities
10. Shoreline stabilization measures

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a. Revetments

b. Bulkheads

c. Breakwaters/jetties/rock weirs/groins

d. Dikes & Levees

11. Piers and Docks

12. Moorage piles and mooring buoys

2.C.2. Residential (R) Environment Designation

2.C.2.a. Purpose

The purpose of the Residential designation is to accommodate residential development and appurtenant structures that are consistent with this chapter. An additional purpose is to provide appropriate community access and recreational uses.

2.C.2.b. Designation Criteria

A Residential designation is assigned to City of Milton shorelands if they are predominantly single-family residential, multifamily residential, or private residential uses, or are planned or zoned for residential development.

2.C.2.c. Management Policies

Uses

1. New residential development should be supported by adequate land area and services.
2. Land division and development should be permitted only 1) when adequate setbacks or buffers are provided to protect ecological functions and 2) where there is adequate access, water, sewage disposal, utilities systems, and public services available and 3) where the environment can support the proposed use in a manner which protects or restores the ecological functions.
3. Development standards for setbacks, shoreline stabilization, vegetation conservation, critical area protection, and water quality should be established to protect and, where significant ecological degradation has occurred, restore ecological functions over time.
4. New multi-family development and new subdivisions, of land into more than four parcels, should provide public access unless the access would be

infeasible due to reasons of incompatible uses, safety, security or impact to the shoreline environment or due to constitutional or other legal limitations that may be applicable.

5. New residential development should be located and designed so that future shoreline stabilization is not needed.

2.C.2.d. Specific Environment Designations

The entire area within Shoreline Jurisdiction around Surprise Lake is designated as Residential. See also the attached maps in Appendix A.

2.C.2.e Conditional Uses and Modifications

The following uses and modifications require a conditional use permit in the Residential Environment Designations:

1. In stream structures.
2. Nonwater-dependent transportation.
3. Placement of dredge spoil

2.C.2.f Prohibited Uses and Modifications

The following uses and modifications are prohibited in the Residential Environment Designation

1. Aquaculture
2. Boating Facilities
3. Nonwater-oriented Commercial
4. Forest Practice
5. All Industrial uses
6. Mining
7. Primary Parking
8. Nonwater-oriented recreation
9. Signs
10. Solid waste disposal facilities
11. Water-dependent transportation
12. Breakwaters/jetties/rock weirs/groins
13. Dikes & levees
14. Moorage piles and buoys

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2.C.3. Aquatic (A) Environment

2.C.3.a. Purpose

The purpose of the Aquatic designation is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high water mark.

2.C.3.b. Designation Criteria

An Aquatic designation will be assigned to shoreline areas waterward of the ordinary high-water mark.

2.C.3.c. Management Policies

1. New over-water structures should be prohibited except for water-dependent uses, public access, or ecological restoration.
2. The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.
3. In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple uses of over-water facilities should be encouraged.
4. Provisions for the Aquatic designation should be directed towards maintaining and restoring habitat for aquatic species.
5. Uses that cause adverse impacts to freshwater habitats should not be allowed. Where those uses are necessary to achieve Shoreline Management Act objectives, their impacts shall be mitigated according to the sequence defined in Chapter 3 Section B.4.
6. Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

2.C.3.d. Specific Environment Designations

All areas waterward of the ordinary high water mark are designated as Aquatic. See also the attached Shoreline Environment Designation Map (Appendix A).

2.C.3.e Conditional uses and Modifications

The following uses and modifications require a conditional use permit in the Aquatic Environment Designation:

1. In-stream structures
2. Nonwater dependent transportation
3. Roads & Railroads
4. Shoreline stabilization measures:
    a. Bioengineering
    b. Revetments
    c. Bulkheads
5. Dredging
6. Fill

2.C.3.f Prohibited Uses and Modifications

The following uses and modifications are prohibited in the Aquatic Environment Designation:

1. Agriculture
2. Aquaculture
3. Boating Facilities
4. Commercial
5. Forest Practice
6. Industrial
7. Mining
8. Parking (primary and accessory)

~~9.~~

~~10.~~9. Nonwater-oriented recreation

~~11.~~10. Residential

~~12.~~11. Signs

~~13.~~12. Solid Waste Disposal

~~14.~~13. Water-dependent transportation

~~15.~~14. Breakwaters/jetties/rock weirs/groins

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~~16.~~15. Dikes & levees

~~17.~~16. Moorage piles and buoys

3 General Provisions

3.A. INTRODUCTION

General policies and regulations are applicable to all uses and activities (regardless of shoreline environment designation) that may occur along the City's shorelines.

This chapter is divided into eleven different topic headings. Each topic begins with a discussion of background SMP issues and considerations, followed by general policy statements and regulations. The intent of these provisions is to be inclusive, making them applicable over a wide range of environments as well as particular uses and activities.

3.B. POLICIES AND REGULATIONS

3.B.1. Universally Applicable Policies and Regulations

3.B.1.a. Applicability

The following regulations describe the requirements for all shoreline uses and modifications in all shoreline environment designations.

3.B.1.b. Policies

1. The City should periodically review conditions on the shoreline and conduct appropriate analysis to determine whether or not other actions are necessary to protect and restore the ecology to ensure no net loss of ecological functions, protect human health and safety, upgrade the visual qualities, and enhance residential and recreational uses on the City's shorelines. Specific issues to address in such evaluations include, but are not limited to:
    a. Water quality.
    b. Conservation of aquatic vegetation (control of noxious weeds and enhancement of vegetation that supports more desirable ecological and recreational conditions).
    c. Upland vegetation.
    d. Changing visual character as a result of new development, especially residential development, including additions and individual vegetation conservation practices.

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e. Shoreline stabilization and modifications.

2. The City should keep records of all project review actions within Shoreline Jurisdiction, including shoreline permits and letters of exemption.

3. Where appropriate, the City should pursue the policies of this SMP in other land use, development permitting, public construction, and public health and safety activities. Specifically, such activities include, but are not limited to:

   a. Water quality and stormwater management activities, including those outside Shoreline Jurisdiction but affecting the shorelines of the state.

   b. Aquatic vegetation management.

   c. Health and safety activities, especially those related to sanitary sewage.

   d. Public works and utilities development.

4. The City should involve affected federal, state, and tribal governments in the review process of shoreline applications.

5. The City should attempt to make all policies and regulations related to the shoreline consistent, but if there is a difference between the SMP and a related document, the provision that is most protective of ecological function shall apply.

3.B.1.c. Regulations

1. All proposed shoreline uses and development, including those that do not require a shoreline permit, must conform to the Shoreline Management Act, Chapter 90.58 RCW, and to the policies and regulations of this SMP.

2. All new shoreline modifications must be in support of an allowable shoreline use that conforms to the provisions of this SMP. Except as otherwise noted, all shoreline modifications not associated with a legally existing or an approved shoreline use are prohibited.

3. Shoreline uses, modifications, and conditions listed as "prohibited" shall not be eligible for consideration as a Shoreline Variance or Shoreline Conditional Use Permit.

4. The policies listed in this SMP will provide broad guidance and direction and will be used by the City in applying the regulations. The policies, taken together, constitute the Shoreline Element of the City of Milton Comprehensive Plan.

5. Where provisions of this SMP conflict, the provision that is most protective of ecological function shall apply.
6. If there is a difference between the SMP and a related document, the provision that is most protective of ecological function shall apply.

3.B.2. Archaeological and Historic Resources

3.B.2.a. Applicability

The following provisions apply to archaeological and historic resources that are either recorded at the Washington State Department of Archaeology and Historic Preservation and/or by local jurisdictions or have been inadvertently uncovered. Archaeological sites are subject to Chapter 27.44 RCW (Indian Graves and Records), Chapter 27.53 RCW (Archaeological Sites and Records) and shall also comply with Chapter 25-48 WAC as well as the provisions of this SMP.

3.B.2.b. Policies

1. Due to the limited and irreplaceable nature of the resource, public or private uses, activities, and development should be prevented from destroying or damaging any site, structure, building, dristrict, or object having historic, cultural, scientific or educational value as identified by the appropriate authorities and deemed worthy of protection under applicable law and preservation.

3.B.2.c. Regulations

1. All shoreline permits shall contain provisions which require developers to immediately stop work and notify the City, the Washington State Department of Archaeology and Historic Preservation , and affected Indian tribes if archaeological resources are uncovered during the course of development, and particularly durring the actual excevation and construction. In such cases, the developer shall be required to provide for a site inspection and evaluation by a professional archaeologist to ensure that all possible valuable archaeological data are properly salvaged or mapped. If human remains are encountered, the projec should be immediately halted and local law enforcement and the County medical examiner, must be notified in the most expedious manner possible.
2. Permits issued in areas known to contain archaeological artifacts and data shall include the requirement that the developer consult with the

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Department of Archaeology and Historic ~~Preservaction~~Preservation and affected -Tribes.

3. Significant archaeological and historic resources shall be permanently preserved for scientific study, education and public observation.
4. When the City determines that a site has significant archaeological, natural, scientific or historical value, any shoreline permit shall be conditioned with provisions to protect the archaeological resource as described in Chapter 27.44 RCW (Indian Graves and Records) and Chapter 27.53 RCW (Archaeological Sites and Records).
5. Archaeological sites located both in and outside the Shoreline Jurisdiction are subject to Chapter 27.44 RCW (Indian Graves and Records) and Chapter 27.53 RCW (Archaeological Sites and Records) and shall comply with Chapter 25-48 WAC as well as the provisions of this SMP.
6. Archaeological excavations may be permitted subject to the provisions of this program.
7. Identified historical or archaeological resources shall be included in park, open space, public access and site planning, with access to such areas designed and managed so as to give maximum protection to the resource and surrounding environment.
8. Clear interpretation of historical and archaeological features and natural areas shall be provided when appropriate.
9. The City will work with affected tribes and other agencies to protect Native American artifacts and sites of significance and other archaeological and cultural resources as mandated by Chapter 27.53 RCW.

3.B.3. Critical Areas

3.B.3.a. Applicability

The following policies and regulations apply to all critical areas, as defined in the City's critical areas regulations. The critical areas regulations applicable to critical areas within shoreline jurisdiction can be found in Appendix C.

3.B.3.b. Policies

1. Protect unique, rare, and fragile environments, including wetlands and fish and wildlife habitat areas, from impacts associated with development.

2. Locate and design development to minimize risks to people, property, and other critical areas associated with geologically hazardous areas and frequently flooded areas.

3. Provide a level of protection to shoreline-specific critical areas that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources.

3.B.3.c. Regulations

Critical areas in the Shoreline Jurisdiction are regulated by the ~~City's~~ Shoreline Critical Areas Regulations~~, codified under Chapter 18.16 MMC (Ordinance 1671 9/1/08~~ included in this SMP as Appendix C~~), which is herein incorporated into this SMP, except as noted below~~. If provisions of the critical area regulations and other parts of the SMP conflict, the provisions most protective of the ecological resource shall apply, as determined by the City.

~~Provisions of the critical areas regulations that are not consistent with the Shoreline Management Act (Chapter 90.58 RCW) and supporting Washington Administrative Code chapters shall not apply in Shoreline Jurisdiction. Exceptions to the applicability of critical area regulations in Shoreline Jurisdiction are provided below.~~

~~1. Critical area regulations do not extend Shoreline Jurisdiction beyond the limits specified in this SMP. For regulations addressing critical area buffers that are outside Shoreline Jurisdiction, see Critical Areas Regulations, Chapter 18.16 MMC.~~

~~2. Provisions of the Critical Area Regulations that include a reasonable use determination shall not apply within Shoreline Jurisdiction. Specifically, MMC 18.16.110, does not apply.~~

~~3. Provisions of the critical areas regulations relating to variance procedures and criteria do not apply in Shoreline Jurisdiction. Within Shoreline Jurisdiction, the purpose of a Shoreline Variance Permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in this SMP, where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the SMP will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. Shoreline Variance procedures and criteria for projects within critical areas and~~

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~~Shoreline Jurisdiction have been established in Chapter 7 Section C of this SMP.~~

~~4. Provisions of the critical areas regulations related to Partial Exemptions do not apply in Shoreline Jurisdiction. Specifically sections 18.16.090 (A) & (B) MMC.~~

~~5. Section 18.16.310 MMC regarding Wetland Designations is not applicable to wetlands in Shoreline Jurisdiction. Instead, identification of wetlands and delineation of their boundaries pursuant to this SMP shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. All areas within the City's Shoreline Jurisdiction meeting the wetland designation criteria in that procedure are hereby designated critical area and are subject to the provisions of this section.~~

~~"Corps of Engineers Wetlands Delineation Manual" technical report Y-87-1~~

~~US Army Corp of Engineers. 2010 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region.~~

~~6. Section 18.16.320 (C) (7) MMC regarding reduction of buffers is amended for wetlands in Shoreline Jurisdiction as follows;~~

- ~~Buffer reduction shall not reduce the required buffer by more than 25% except by variance~~

~~7. Section 18.16.320 (C) (6) MMC regarding buffer averaging is amended for wetlands in Shoreline Jurisdiction as follows:~~

- ~~The buffer cannot be reduced by more than 25% except by variance.~~
- ~~Averaging cannot be utilized in conjunction with buffer reduction incentives.~~

~~8. Provisions in the Critical Areas regulations related to Review Criteria, specifically section 18.16.130 (A) (1-5) MMC is replaced with the following criteria:~~

~~(1) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;~~

~~(2) That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular~~

~~lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;~~

~~(3) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;~~

~~(4) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;~~

~~(5) That the variance requested is the minimum necessary to afford relief; and~~

~~(6) That the public interest will suffer no substantial detrimental effect.~~

~~9. Subsection E is hereby added to Section 18.16.185 MMC:~~

~~E. All critical areas, regardless of size or type, and associated buffer shall be shown on proposals and recoding documents for subdivisions, short subdivisions, planned unit developments, and binding site plans.~~

~~10. Section 18.16.320 (C) (1) MMC is hereby replaced with the following:~~

~~1. Buffer Requirements. The standard buffer widths in Table A (below) have been established in accordance with the best available science. 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.~~

~~a. The use of the standard buffer widths **requires** the implementation of the measures in Table B, where applicable, to minimize the impacts of the adjacent land uses.~~

~~b. If an applicant chooses not to apply the mitigation measures in Table B, then a 33% 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.~~

~~c. The standard buffer widths 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~~

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~~appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.~~

~~d. Additional buffer widths are added to the standard buffer widths. For example, a Category I wetland scoring 32 points for habitat function would require a buffer of 225 feet (75 + 150).~~

~~Table A. Wetland Buffer Requirements~~

~~**Wetland Category**~~	~~**Standard Buffer Width**~~	~~**Additional buffer width if wetland scores 21-25 habitat points**~~	~~**Additional buffer width if wetland scores 26-29 habitat points**~~	~~**Additional buffer width if wetland scores 30-36 habitat points**~~
~~Category I: Based on total score~~	~~75ft~~	~~Add 30 ft~~	~~Add 90 ft~~	~~Add 150 ft~~
~~Category I: Bogs~~	~~190 ft~~	~~NA~~	~~NA~~	~~Add 35 ft~~
~~Category I: Natural Heritage Wetlands~~	~~190 ft~~	~~N/A~~	~~NA~~	~~Add 35 ft~~
~~Category I: Forested~~	~~75ft~~	~~Add 30 ft~~	~~Add 90 ft~~	~~Add 150 ft~~
~~Category II: Based on score~~	~~75 ft~~	~~Add 30 ft~~	~~Add 90 ft~~	~~Add 150 ft~~
~~Category II: Interdunal Wetlands~~	~~110 ft~~	~~NA~~	~~Add 55 ft~~	~~Add 115 ft~~
~~Category III (all)~~	~~60 ft~~	~~Add 45 ft~~	~~Add 105 ft~~	~~NA~~
~~Category IV (all)~~	~~40 ft~~	~~NA~~	~~NA~~	~~NA~~

~~***Table B. Required measures to minimize impacts to wetlands***~~

~~**Disturbance**~~	~~**Required Measures to Minimize Impacts**~~
~~Lights~~	~~• Direct lights away from wetland~~
~~Noise~~	~~• Locate activity that generates noise away from wetland~~ ~~• If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source~~ ~~• 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~~
~~Toxic runoff~~	~~• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered~~ ~~• Establish covenants limiting use of pesticides within 150 ft of wetland~~ ~~• Apply integrated pest management~~
~~Stormwater runoff~~	~~• Retrofit stormwater detention and treatment for roads and existing adjacent development~~ ~~• Prevent channelized flow from lawns that directly enters the buffer~~ ~~• Use Low Intensity Development techniques (per PSAT publication on LID techniques)~~
~~Change in water regime~~	~~• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns~~

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~~Pets and human disturbance~~	~~• Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion~~ ~~• Place wetland and its buffer in a separate tract or protect with a conservation easement~~
~~Dust~~	~~• Use best management practices to control dust~~
~~Disruption of corridors or connections~~	~~• Maintain connections to offsite areas that are undisturbed~~ ~~• Restore corridors or connections to offsite habitats by replanting~~

3.B.4. Environmental Impact Mitigation

3.B.4.a. Applicability

The following policies and regulations apply to all uses and development in Shoreline Jurisdiction.

3.B.4.b. Policies

1. In implementing this SMP, the City should take necessary steps to ensure compliance with the Washington State Environmental Policy Act (SEPA) (Chapter 43.21C RCW), and its implementing guidelines.
2. All adverse impacts to the shoreline should be avoided or, if that is not possible, minimized to the extent feasible and provide mitigation to ensure no net loss of ecological function.

3.B.4.c. Regulations

1. All project proposals, including those for which a shoreline permit is not required, shall comply with the Washington State Environmental Policy Act (SEPA), Chapter 43.21C RCW.

2. Projects that cause adverse impacts are not allowed unless mitigated to avoid reduction or damage to ecosystem-wide processes and ecological functions.
3. Projects that cause adverse environmental impact, shall be mitigated according to the sequence in section 3.B.4.c.5 below.
4. The City will set mitigation requirements or permit conditions based on impacts identified in this SMP. In order to determine acceptable mitigation, the City Shoreline Administrator may require the applicant to provide the necessary environmental information and analysis, including a description of existing conditions/ecological functions, anticipated shoreline impacts, and a restoration plan outlining how proposed mitigation measures would result in (at a minimum) no net loss of shoreline ecological functions. The permit applicant shall be responsible for implementing all mitigation techniques over time.
5. When applying mitigation to avoid or minimize adverse effects, the City will apply the following sequence of steps in order of priority, with (a) being top priority:
    a. Avoiding the impact altogether 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 (from subsection (e) above) and taking appropriate corrective measures.
6. Compensatory mitigation measures described in 3.B.4.c.5e above shall be accomplished at locations in the following order of preference:
    a. On the site where impacts occur (first preference).

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b. If (a) is not feasible or beneficial in terms of ecological functions, then within or adjacent to the same water body.

c. If (b) is not feasible or beneficial in terms of ecological functions, then within the City of Milton.

d. If (c) is not feasible or beneficial in terms of ecological functions, then within the UGA.

7. As an exception to 3.B.4.c.(6) above, the City may provide for or allow mitigation of an environmental impact through a comprehensive mitigation program such as a mitigation banking program if such mitigation measures will result in a greater benefit in terms of ecological functions and values. Such a program can only be used after completing step (a) avoiding and step (b) minimizing discussed above. A mitigation banking program must be based on a comprehensive analysis of ecological systems such as provided by the analysis and restoration plan accomplished as part of this SMP.

8. All shoreline development shall be located and constructed to avoid locally-specific adverse impacts to human health and safety.

3.B.5. Flood Hazard Reduction and Stream Corridor Management

3.B.5.a. Applicability

The provisions in this section apply to those areas within Shoreline Jurisdiction lying along a floodplain corridor, including streams and associated wetlands in the floodplain.

The provisions in this section are intended to address two concerns especially relevant to stream shorelines:

1. Protecting human safety and minimizing flood hazard to human activities and development.

2. Protecting and contributing to the restoration of ecosystem-wide processes and ecological functions found in the applicable watershed or sub-basin.

3.B.5.b. Policies

1. The City should implement a comprehensive program to manage the City's riparian corridors that integrates the following City ordinances and activities:

   a. Policies and regulations in this SMP.

   b. The City's critical area regulations (Chapter 18.16 MMC).

c. The City's Zoning code (Title 17 MMC).

d. The City's storm water management regulations (Chapter 13.26 MMC).

e. The City's participation in the National Flood Insurance Program and compliance with the State's floodplain management law (Chapter 86.16. RCW and Chapter 15.20 MMC).

f. The construction or improvement of new public facilities, including roads, dikes, utilities, bridges, and other structures.

g. The ecological restoration of selected shoreline areas.

2. In regulating development on shorelines within Shoreline Jurisdiction, the City should endeavor to achieve the following:

   a. Maintenance of human safety.

   b. Protection and, where appropriate, the restoration of the physical integrity of the ecological system processes, including water and sediment transport and natural channel movement.

   c. Protection of water quality and natural groundwater movement.

   d. Protection of fish, vegetation, and other life forms and their habitat vital to the aquatic food chain.

   e. Protection of existing legal uses and legal development of property (including legal nonconforming development).

   f. Protection of recreation resources and aesthetic values, such as point and channel bars, and other shore features and scenery.

   g. When consistent with the provisions (a) through (f) above, provide for public access and recreation, consistent with Chapter 3 Section B.7 Public Access.

3. The City should undertake flood hazard planning, where practical, in a coordinated manner among affected property owners and public agencies and consider entire drainage systems or sizable stretches of streams, creeks, or lakes. This planning should consider the off-site erosion and accretion or flood damage that might occur as a result of stabilization or protection structures or activities. Flood hazard management planning should fully employ nonstructural approaches to minimizing flood hazard to the extent feasible.

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4. The City will give preference to nonstructural solutions over structural flood control devices wherever feasible. Nonstructural solutions include prohibiting or limiting development in historically flood-prone areas, regulating structural design and limiting increases in peak stormwater runoff from new upland development, educating the public, and acquiring land for additional flood storage. Structural solutions to reduce shoreline hazard should be allowed only after it is demonstrated that nonstructural solutions would not be able to reduce the hazard.
5. Where structural solutions are rebuilt, fish-friendly structures such as setback levees should be used.
6. In designing publicly financed or subsidized works, the City should provide public pedestrian access to the shoreline for low-impact outdoor recreation.
7. The City should encourage the removal or breaching of dikes to provide greater wetland area for flood water storage and habitat; provided, such an action does not increase the risk of flood damage to existing human development.

3.B.5.c. Regulations

1. New development must be consistent with (a) through (d) below in addition to the provisions of this SMP. In cases of inconsistency, the provisions most protective of shoreline ecological functions and processes shall apply.
   a. The City's flood damage prevention regulations, Chapter 15.20 MMC.
   b. FEMA's "The Flood Insurance Study for the City of Milton," dated February 17, 1982.
   c. The City's storm water management regulations, Chapter 13.26 MMC.

d. Conditions of Hydraulic Project Approval, issued by Washington State Department of Fish and Wildlife, which may be incorporated into permits issued for flood protection.

2. New structural flood hazard reduction measures may be allowed only when:
   a. It can be demonstrated by a scientific and engineering analysis that the measure is necessary to protect existing development,
   b. Nonstructural measures are not feasible,
   c. Impacts to ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss,

d. Shoreline vegetation necessary to provide ecological functions is protected or restored,

e. It is consistent with Chapter 15.20 MMC,

a. The project doess not further restrict natural channel movement, except that flood hazard reduction measures that protect an existing building, roadway, bridge, or utility line may be installed, provided the measure is placed as close to the existing structure as possible.

3. Shoreline modifications allowed in the 100-year floodplain and flood hazard reduction measures shall employ the type of construction or measure that causes the least adverse impacts. When authorizing development within the 100-year floodplain, the City will require that the construction method with the least adverse impacts be used. For example, the City will not allow rock revetments to be used for erosion control if a "softer" approach using vegetation plantings and engineered woody debris placement is possible.

4. Existing hydrological connections into and between water bodies, such as streams, tributaries, wetlands, and dry channels, shall be maintained.

5. Where feasible, native vegetation should be planted when new structural flood hazard reduction measures are installed. The City Shoreline Administrator may require this vegetation to be planted waterward, on, and/or landward of the structure if it is determined such vegetation is necessary to protect and restore ecological functions.

6. Designs for flood hazard reduction measures and shoreline stabilization measures in stream corridors must be prepared by qualified professional engineers (or geologists or hydrologists) who have expertise in local riverine processes.

7. Structural flood hazard reduction projects that are linear in nature, such as dikes or levees, shall provide for public access unless the City determines that such access is not feasible or desirable according to the criteria in Chapter 3 Section B.7. Public Access.

8. Shoreline modification and development standards shall be as outlined in the tables in Chapter 4 and Chapter 5 for allowable uses and modification and development standards, such as setbacks and clearing and grading within each shoreline environment designation.

9. Bridges, culverts, and other stream and waterway crossings shall be designed and constructed so they do not restrict flood flows such that flood elevations

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are increased. Where a bridge, culvert, or other waterway crossing replaces an existing crossing, the replacement structure shall not increase flood heights over those caused by the original structure.

10. The removal of gravel for flood control may be allowed only if a biological and geomorphological study demonstrates a long-term benefit to flood hazard reduction, no net loss of ecological functions, and the extraction is part of a comprehensive flood management solution.

3.B.6. Parking (Accessory)

3.B.6.a. Applicability

Parking is the temporary storage of automobiles or other motorized vehicles. The following provisions apply only to parking that is accessory to a permitted shoreline use, except parking associated with single-family dwellings. Parking related to single-family residential uses is regulated in Chapter 5 Section 7 Residential Development. Parking as a primary use and parking which serves a use that is not permitted in Shoreline Jurisdiction is prohibited.

3.B.6.b. Policies

1. Where feasible, parking for shoreline uses should be provided in areas outside Shoreline Jurisdiction.
2. Where possible, parking should serve more than one use (e.g. serving recreational use on weekends, commercial uses on weekdays).

3.B.6.c. Regulations

1. Parking in Shoreline Jurisdiction must directly serve an allowed shoreline use.
2. Parking as a primary use or that serves a use not allowed in the applicable shoreline environment designation shall be prohibited within Shoreline Jurisdiction.
3. Parking is prohibited over water.
4. Where feasible, buildings shall be located between the shoreline and parking facilities.
5. Parking facilities shall be designed and landscaped to minimize adverse visual impacts upon the adjacent shoreline and abutting properties. A minimum of 10 feet of landscape screening shall be provided directly adjacent to the parking on the waterward side of the parking facility. The 10 foot

landscaping strip should run parallel to the parking facility for the entire length of the parking facility, unless there is a building between the parking and the shoreline. Landscaping shall consist of a mixture of native trees, shrubs, and groundcover. Applicants shall demonstrate to the City Shoreline Administrator's satisfaction that the selected plants and configuration will provide an effective screen, at least four (4) feet tall, within three years of planting.

6. Parking facilities for shoreline activities shall provide safe and convenient pedestrian circulation within the parking area and to the shorelines.
7. Parking facilities shall provide adequate facilities to prevent surface water runoff from contaminating water bodies, as regulated in City's locally adopted storm water management regulations, Chapter 13.26 MMC.
8. Lighting associated with parking lots shall be beamed, hooded, or directed to minimize and avoid illumination of the water, setback areas, wetlands, and other wildlife habitat areas.
9. See Chapter 5 Section B Development Standards Table, for setback requirements.

3.B.7. Public Access

3.B.7.a. Applicability

Shoreline public access is the physical ability of the general public to reach and touch the water's edge and the ability to have a view of the water and the shoreline from upland locations. Public access facilities may include picnic areas, pathways and trails, floats and docks, promenades, viewing towers, bridges, boat launches, and improved street ends.

Surprise Lake and Hylebos Creek do not currently have public access or recreation sites within the City's Shoreline Jurisdiction. However, as mentioned in Chapter 6 of the *Shoreline Analysis Report for City of Milton*, Surprise Lake does include private community shoreline access at Surprise Lake Village. Access to Hylebos Creek is available in areas upstream of Shoreline Jurisdiction. These include:

- Hylebos Creek/Interurban Trail
- West Milton Nature Preserve
- Hylebos Overlook
- West Hylebos Osaka Property

The City of Milton Comprehensive Plan identifies, through two specific goals listed below, the intent of providing public access and accessible open space along the City's Shoreline areas. However, there is no current acquisition or development plan for creation of public access.

Pol. OS 1.4: In recognition of the important open space and environmental values related to the wetland areas associated with Hylebos Creek, the City shall investigate and pursue appropriate public grant and private methods of financing the acquisition of these areas.

Pol. OS 1.5: The City shall promote the addition of public access along Surprise Lake. (City of Milton Comprehensive Plan, adopted 2003).

3.B.7.b. Policies

1. Public access should be considered in the review of all private and public developments with the exception of the following:
   a. For individual single-family residences not part of a development planned for more than four parcels; or
   b. Where deemed inappropriate due to health, safety and environmental concerns; or
   c. Where the City's public access planning process provided by the City of Milton Comprehensive Plan, the Shoreline Analysis Report for the City of Milton, and this SMP provides more effective public access than individual project requirements for public access, as provided for in WAC 173-26-221(4)(c).
2. Developments, uses, and activities on or near the shoreline should not impair or detract from the public's access to the water or the rights of navigation.
3. Public access should be provided as close as possible to the water's edge without causing adverse impacts and should be designed in accordance with the Americans with Disabilities Act.
4. Opportunities for public access should be identified on publicly owned shorelines. Public access afforded by shoreline street ends, public utilities and rights-of-way should be preserved, maintained and enhanced.
5. Public access should be designed to provide for public safety and comfort, and to minimize potential impacts to private property and individual privacy. There should be a physical separation or other means of clearly delineating public and private space in order to avoid unnecessary user conflict.

6. Public views from the shoreline upland areas should be enhanced and preserved. Enhancement of views should not be construed to mean excessive removal of existing native vegetation that partially impairs views.
7. Public access and interpretive displays should be provided as part of publicly funded restoration projects, where adverse impacts can be avoided.
8. City parks, trails and public access facilities adjacent to shorelines should be maintained and enhanced in accordance with City and County plans.
9. Commercial and industrial development on shorelands should be encouraged to provide a means for visual and pedestrian access to the shoreline area, wherever feasible.
10. The acquisition of suitable upland shoreline properties to provide access to publicly owned shorelands should be encouraged.
11. The City should acquire and develop waterfront property on Surprise Lake to provide public access to the shoreline. Acquisition of said park should be dependent on availability of land and funding, and should be an appropriate site for a park. The future use of such a park should be compatible with adjacent uses. Development of such a park should retain and enhance native vegetation while preserving the natural characteristics of the shoreline. The design and location of the public access point should minimize disruption to current residents.
12. The City should pursue opportunities to provide public access on Hylebos Creek when property becomes available and funding is available. The future public access should allow only passive uses and should be consistent with preservation of ecological functions. Development of such a park should retain and enhance native vegetation while preserving the natural characteristics of the shoreline. The design and location of the public access point should minimize disruption to current residents.

3.B.7.c. Regulations

1. The dedication and improvement of public access is required for the following development or use unless the conditions stated in 2, immediately below, apply.
   a. Land division into more than four lots
   b. Nonwater-oriented uses (including industrial, commercial and multifamily development)

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c. Water-related and water-enjoyment commercial uses

d. Development by public entities or on public land, including the City and public utility districts

e. Development or use that will interfere with an existing public access way. Impacts to public access may include blocking access or discouraging use of existing on-site or nearby accesses.

2. Public access is not required as part of development if any of the following conditions apply:

   a. The development is a single family residence (including duplexes) not part of a development planned for more than 4 parcels or the development is accessory to a single family residence

   b. Public access is demonstrated to be infeasible or undesirable due to reasons of incompatible uses, safety, security or impact to the shoreline environment, as determined by the Shoreline Administrator. In determining infeasibility or undesirability, the City shall evaluate alternative means of providing public access such as:

      i. Restricting the hours of public access to avoid conflicts.

      ii. Designing separation of uses and activities, with such means as fences, terracing, hedges, and landscaping.

      iii. Providing access that is physically separated from the proposal, such as a nearby street end, an offsite viewpoint, or a trail system.

   c. Constitutional or other legal limitations prevent public access.

   d. The Shoreline Administrator determines that more effective public access can be provided through public access planning and other compensatory off-site public access improvements provided as part of the development.

3. Mitigation for impacts to public access shall be in accordance with the mitigation sequencing in Chapter 3 Section B.4 Environmental Impact Mitigation. The shoreline permit shall describe the impact, the required public access conditions, and how the conditions address the impact.

4. All shoreline development shall minimize impact to public views of shoreline waterbodies from public land or substantial numbers of residences.

5. Public access provided by shoreline street ends, public utilities and rights-of-way shall not be diminished.

6. Public access sites shall be connected directly to the nearest public street or public right-of-way and shall include provisions for physically impaired persons.
7. Required public access sites shall be fully developed and available for public use at the time of occupancy of the use or activity.
8. Public access easements and permit conditions shall be recorded on the deed where applicable or on the face of a plat or short plat as a condition running in perpetuity with the land. Recording with the County Assessor's Office shall occur prior to permit approval.
9. Minimum width of public access easements shall be sufficient to provide clear, safe access to the shoreline. At a minimum, an 8-foot-wide pathway shall be provided, and the Shoreline Administrator may require that the proposed public access improvements be modified to take advantage of special opportunities or to prevent impacts to adjacent sites (especially single-family residences).
10. The standard state approved logo or other approved signs that indicate the public's right of access and hours of access shall be constructed, installed, and maintained by the applicant in conspicuous locations at public access sites. Signs may control or restrict public access as a condition of permit approval.
11. Future actions by the applicant, successors in interest, or other parties shall not diminish the usefulness or value of the public access provided.
12. Public access facilities may be developed over water provided that all ecological impacts are mitigated to achieve no net loss of ecological functions.
13. Public access improvements shall not result in a net loss of shoreline ecological functions.

3.B.8. Signage

3.B.8.a. Applicability

A sign is defined as a any object, device, display, structure or part thereof that is used to advertise, identify, direct, or attract attention to a product, business, activity, place, person, institution, or event using words, letters, figures, designs, symbols, fixtures, colors, illumination, or projected images. Directional and incidental signs are considered signs for the purpose of this SMP.

Signs in Shoreline Jurisdiction shall also adhere to all regulations in Chapter 17.50 MMC in effect at the time of the adoption of this SMP. In the case of overlapping or conflicting regulations, the most stringent regulation shall apply. Political signs shall be authorized within the Shoreline Jurisdiction as authorized by the MMC.

3.B.8.b. Policies

1. Signs should be designed and placed so that they are compatible with the aesthetic quality of the existing shoreline and adjacent land and water uses.
2. Signs should not block or otherwise interfere with visual access to the water or shorelands.

3.B.8.c. Regulations

1. Prohibited Signs: The following types of signs are prohibited:
    a. Off-premises detached outdoor advertising signs.
    b. Commercial signs for products, services, or facilities located off-site.
    c. Spinners, streamers, pennants, flashing lights and other animated signs used for commercial purposes. Highway and railroad signs are exceptions.
    d. Signs placed on trees or other natural features, unless the City's Shoreline Administrator finds that these signs are necessary for reasons of public safety.
2. Allowable Signs: The following types of signs may be allowed in all shoreline environments:
    a. Water navigational signs, and highway and railroad signs necessary for operation, safety and direction.
    b. Public information signs directly relating to a shoreline use or activity. Public information signs shall include public park signs, public access identification signs, and warning signs.
    c. Off-premise, free-standing signs for community identification, information, or directional purposes.
    d. National, site and institutional flags or temporary decorations customary for special holidays and similar events of a public nature.

3. The following signs are allowed only in the Urban Conservancy district and are considered structures for the purpose of determining setbacks.
    a. Freeway signs
    b. Monument signs
    c. Pole signs
4. All signs shall be located and designed to avoid interference with vistas, viewpoints and visual access to the shoreline.
5. Over-water signs, signs on floats or pilings, and signs for goods, services, or businesses not located directly on the site proposed for a sign are prohibited.
6. Lighted signs shall be hooded, shaded, or aimed so that direct light will not result in glare when viewed from surrounding properties or watercourses.

3.B.9. Utilities (Accessory)

3.B.9.a. Applicability

Accessory utilities are on-site utility features serving a primary use, such as a water, sewer or gas line connecting to a residence. Accessory utilities do not carry capacity to serve other users and are considered a part of the primary use. They are addressed in this section because they concern all types of development and have the potential to impact the quality of the shoreline and its waters.

3.B.9.b. Policies

1. Accessory utilities should be properly installed so as to protect the shoreline and water from contamination and degradation to ensure no net loss of ecological functions.
2. Accessory utility facilities and the associated rights-of-way should be located outside of the shoreline area to the maximum extent possible. When utility lines require a shoreline location, they should be placed underground.
3. Accessory utility facilities should be designed and located in a manner which preserves the natural landscape and shoreline ecological processes and functions and minimizes conflicts with present and planned land uses.

3.B.9.c. Regulations

1. In shoreline areas, accessory utility transmission lines, pipelines and cables shall be placed underground unless demonstrated to be infeasible. Further,

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such lines shall utilize existing rights-of-way and/or bridge crossings whenever possible. Proposals for new corridors in shoreline areas involving water crossings must fully substantiate the infeasibility of existing routes.

2. Accessory utility development shall, through coordination with government agencies, provide for compatible multiple uses of sites and rights-of-way. Such uses include shoreline access points, trails and other forms of recreation and transportation systems, provided that such uses will not unduly interfere with utility operations or endanger public health and safety.
3. Sites disturbed for utility installation shall be stabilized during and following construction to avoid adverse impacts from erosion and, where feasible, restored to pre-project configuration and replanted with native vegetation.
4. Utility discharges and outfalls shall be located, designed, constructed, and operated in accordance with best management practices to ensure degradation of water quality is kept to a minimum.
5. Utilities that need water crossings shall be placed deep enough to avoid the need for bank stabilization and fill below the OHWM both during construction and in the future due to flooding and bank erosion that may occur over time. Boring is a preferred method of utility water crossing over open trenching.
6. Stormwater management systems shall conform to applicable Milton stormwater regulations, Chapter 13.26 MMC. Any conveyance pipes, detention tanks, or retention facilities shall be placed as far upland away from the shoreline as is feasible.

3.B.10. Vegetation Conservation

3.B.10.a. Applicability

The following provisions apply to any activity that results in the removal of or impact to shoreline vegetation (including aquatic vegetation), whether or not that activity requires a shoreline permit. Such activities include clearing, grading, grubbing, and trimming of vegetation. These provisions also apply to vegetation protection and enhancement activities. They do not apply to forest practices managed under the Washington State Forest Practices Act, Chapter 76.09 RCW. See Chapter 6 for definitions of significant vegetation removal, ecological functions, clearing, grading, and restore.

3.B.10.b. Policies

1. Vegetation within the City shoreline areas should be enhanced over time to provide a greater level of ecological functions, human safety, and property protection. To this end, shoreline management activities, including the provisions and implementation of this SMP, should be based on a comprehensive approach that considers the current and potential ecological functions provided by vegetation on different sections of the shoreline, as described in Chapter 5 of the Draft Shoreline Analysis Report for the City of Milton.
2. This SMP, in conjunction with other City development regulations and the City of Milton Comprehensive Plan, should establish a coordinated and effective set of provisions and programs to protect and restore those functions provided by shoreline vegetation.
3. Aquatic weed management should stress prevention first. Where active removal or destruction is necessary, it should be the minimum to allow water-dependent activities to continue, minimize negative impacts to native plant communities, and include appropriate handling or disposal of weed materials.
4. The removal of invasive or noxious weeds and replacement with native vegetation should be encouraged. Removal of noxious or invasive weeds should be conducted using the least-impacting method feasible, with a preference for mechanical rather than chemical means.

3.B.10.c. Regulations

1. In order to create a new lot partially or wholly within Shoreline Jurisdiction, the applicant must demonstrate that development can be accomplished without significant vegetation removal within the required SMP buffer area.
2. New development, including clearing and grading, shall minimize significant vegetation removal in Shoreline Jurisdiction to the minimum necessary to accommodate the proposed need. In no case shall more than 50% of the native vegetation be removed from the site. Applicants proposing development that includes significant vegetation removal, clearing, or grading within Shoreline Jurisdiction must provide a site plan drawn to scale, indicating the extent of proposed clearing and/or grading.

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3. The impacts due to significant vegetation removal shall be mitigated according to the sequence described in Chapter 3 Section B.4. Environmental Impact Mitigation.

4. Areas within the required SMP buffer area that have been cleared or where significant vegetation removal has occurred, and that are not otherwise occupied by approved structures or uses, shall be revegetated with native vegetation. The City's Shoreline Administrator may require replanting of previously cleared areas or removal of invasive or noxious weeds and replanting with native vegetation as part of mitigation of ecological impacts. If replanting is required, a shoreline vegetation plan shall be provided in accordance with Chapter 3 Section B.10.c.5. below.

5. Where shoreline vegetation planting is required (as summarized in Table ~~1~~1), property owners must prepare, and agree to adhere to, a shoreline vegetation plan that adheres to the following requirements:

   a. For non-single family development, the plan shall be prepared by a qualified professional (Washington State registered landscape architect, a nursery professional certified pursuant to the Washington Certified Nursery Professional program, or a Washington State certified landscape technician), approved by the Shoreline Administrator, recorded with the Pierce County Assessor's Office as a covenant against the real property, and a copy shall be provided to the Shoreline Administrator.

   b. For single-family development, the plan shall be recorded as a covenant against the property after approval by the Shoreline Administrator. A copy of the recorded covenant shall be provided to the Shoreline Administrator.

   c. The native vegetation shall consist of a mixture of trees, shrubs and groundcover and be designed to improve habitat functions (see Appendix B for an appropriate list of native vegetation). The following general planting regulations shall apply to all landscaped areas that require a shoreline vegetation plan.

      i. Trees. A minimum of one native tree per 300 square feet of required vegetated area shall be provided (or preserved). For non-single family development, a minimum of 30% of the required trees shall be native evergreen trees.

         a) Deciduous trees shall be a minimum two-inch diameter at breast height (dbh) at the time of planting.

b) Evergreen trees shall be at least 6 feet high at the time of planting.

ii. Shrubs. A minimum of one shrub per 20 square feet of landscape area shall be provided. The minimum size of the shrub at the time of planting shall be no less than a 2-gallon container, with the plant covering the dimensions of the container.

iii. Vegetative Groundcover. Living groundcover plants shall be planted and maintained beneath trees in all vegetated areas. Ground covers shall be planted and spaced to result in total coverage of the required vegetated area within three years.

iv. Vegetation shall be fully established within three years. Areas which fail to adequately reestablish vegetation shall be replanted with approved plants until the plantings are viable.

Other planting specifications may be approved by the Shoreline Administrator if a Washington State registered landscape architect, a nursery professional certified pursuant to the Washington Certified Nursery Professional program, or a Washington State certified landscape technician can prove that the alternative planting plan provides more effective shoreline restoration.

d. When measuring vegetation depth from the OHWM, the depth may be averaged, provided no area has a depth less than 5 feet.

e. If the vegetation is required for the entire length of the shoreline, 25 percent of the required vegetated area can be cleared or thinned for view maintenance and waterfront access, provided that 75 percent of the area remains vegetated. Invasive species may be removed, vegetation trimmed, and trees “limbed up” from the ground to provide views. In the 25 percent cleared area, pathways for access to the water are allowed.

f. The plan shall include appropriate limitations on the use of fertilizer, herbicides and pesticides as needed to protect water quality.

g. The plan shall include a monitoring and maintenance program.

6. For new development, the first priority shall be the conservation of existing native vegetation. However, new development on lots that do not contain intact native vegetation shall provide shoreline restoration as part of mitigation for the new development by planting native vegetation along the

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shoreline according to the requirements in Chapter 5 Shoreline Uses, summarized in the table below.

Table ~~1~~1. Shoreline Vegetation Planting Requirements[1]

New Shoreline Development	Environment Designations: **Urban Conservancy**	**Residential**	**Aquatic**
Commercial	165’	40’	N/A
Industrial	165’	N/A	N/A
Recreation	165’	30’	N/A
Residential on Lakes – Single-Family	N/A	15’	N/A
Residential on Lakes– Multi-Family	N/A	30’	N/A
Residential on Streams or Creeks	165’	N/A	N/A
Transportation Facilities	20’	20’	N/A

Shoreline Vegetation Planting Requirements Table Notes:

1. *New development within Shoreline Jurisdiction shall provide shoreline vegetation according to the standards in the table above. The above matrix identifies the basic buffer requirements for new development according to the proposed use, within shoreline jurisdiction. Detailed regulations and applicable allowed adjustments can be found in the associated use section in chapter 5. The shoreline vegetation planting area shall be measured landward from the OHWM and shall be provided for the entire length of the shoreline, in accordance with Chapter 3 Section B.10.c.5. above, unless allowed otherwise in this SMP.*

7. Living trees and snags over 3 inch dbh (diameter of the trunk measured at breast height which is 4.5ft above grade) shall not be removed within the required SMP setback area, or the Aquatic Environment, unless they are determined to be extreme hazards and likely to fall into an occupied area, or unless removal is part of an approved development that includes mitigation for impacts to ecological functions. For properties that are not single-family residential, an arborist shall determine if they are considered an extreme hazard. Single-family properties must receive approval from the Shoreline Administrator. Snags and living trees over 3 inch dbh within the setback which do not present an extreme hazard shall be retained. Selective pruning

of trees for safety and view protection is allowed. The City may make exceptions to this standard where the City determines that the removal of such vegetation is in the public interest and is consistent with the goals of the Shoreline Management Act as stated in RCW 90.58.020. In order to achieve no net loss of ecological functions, a new tree must be planted that will, at maturity, perform the same functions as the living tree to be removed.

9. Aquatic weed 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 weed control shall occur in compliance with all other applicable laws and standards.
10. The control of aquatic weeds by hand pulling, mechanical harvesting, or placement of aqua screens, if proposed to maintain existing water depth for navigation, may be allowed.
11. The control of aquatic weeds by derooting, rotovating or other method which disturbs the bottom sediment or benthos shall be considered development for which a Shoreline Substantial Development Permit is required.
12. Where large quantities of plant material are generated by control measures, they shall be collected and disposed of in an appropriate, identified upland location, in accordance with all applicable laws and standards
13. Use of herbicides to control aquatic weeds shall be prohibited except for those chemicals specifically approved by the Department of Ecology for use in aquatic situations and where no reasonable alternative exists and weed control is demonstrated to be in the public's interest. Application of herbicides for the control of aquatic weeds requires approval from the Department of Ecology. The City's Shoreline Administrator must be notified of all herbicide usage in aquatic areas and supplied with proof of approval from the Department of Ecology. Additionally, all herbicides shall be applied by a licensed professional.

3.B.11. Water Quality and Quantity

3.B.11.a. Applicability

The following section applies to all development and uses in Shoreline Jurisdiction that affect water quality, as defined below.

1. As used in this SMP, water quality means the physical characteristics of water within Shoreline Jurisdiction, including water quantity and hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics.
2. Where used in this SMP, the term water quantity refers only to development and uses regulated under this chapter and affecting water quantity, such as impermeable surfaces and stormwater handling practices. Water quantity, for purposes of this SMP, does not mean the withdrawal of groundwater or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

Because the policies of this SMP are also policies of the City's Comprehensive Plan, the policies also apply to activities outside Shoreline Jurisdiction that affect water quality within Shoreline Jurisdiction, as determined by the City's Shoreline Administrator. However, the regulations apply only within Shoreline Jurisdiction.

3.B.11.b. Policies

1. All shoreline uses and activities should be located, designed, constructed, and maintained to achieve no net loss of ecological functions and avoidance of all adverse impacts.
2. The City should require reasonable setbacks, buffers, and stormwater storage basins and encourage low-impact development techniques and materials within City limits to achieve the objective of lessening negative impacts on water quality.
3. All measures for controlling erosion, stream flow rates, or flood waters through the use of stream control works within City limits should be located, designed, constructed, and maintained so that net off-site impacts related to water do not degrade the existing water quality and quantity.
4. As a general policy, the City should seek to improve water quality, quantity (the amount of water in a given system, with the objective of providing for ecological functions and human use), and flow characteristics in order to protect and restore ecological functions and ecosystem-wide processes of shorelines within City limits and especially in Shoreline Jurisdiction. The City should implement this policy through the regulation of development and activities, through the design of new public works, such as roads, drainage, and water treatment facilities, and through coordination with other local, state, and federal water quality regulations and programs. The City should

implement the locally adopted stormwater management regulations, Chapter 13.26 MMC.

5. Shoreline use and development shall incorporate all known, available, and reasonable methods of preventing, controlling, and treating stormwater to protect and maintain surface and ground water quantity and quality.
6. For sites within Shoreline Jurisdiction and also upland sites outside Shoreline Jurisdiction that drain directly into Shoreline Jurisdiction, low impact development (LID) techniques and best management practices (BMPs) should be used to ensure stormwater runoff is treated on-site in order to maintain or improve water quality before being released.
7. The City should monitor stormwater discharge from upland sites into Shorelines of the State. The City should strictly enforce stormwater regulations, particularly for outfalls that discharge pollutants and other water quality inhibitors into Surprise Lake.
8. To improve water quality standards on Surprise Lake and the Hylebos Creek, non-conforming stormwater outfall systems discharging into Shorelines of the State should be retrofitted to bring them up to current water quality standards whenever possible.
9. Shoreline use and development should minimize the need for chemical fertilizers, pesticides or other similar chemical treatments to prevent contamination of surface and groundwater and/or soils, and adverse effects on shoreline ecological functions and values.
10. The City should create a public education campaign to educate shoreline property owners about best management practices for shorelines. This could include specific information about landscaping, fertilizers, herbicides, and pesticides.

3.B.11.c. Regulations

1. All shoreline development, both during and after construction, shall avoid or minimize adverse impacts, including any increase in surface runoff, through control, treatment, and release of surface water runoff so that water quality and quantity are not adversely affected. Control measures include, but are not limited to, low impact development techniques, catch basins or settling ponds, oil interceptor drains, grassy swales, planted buffers, and fugitive dust controls.

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2. All development shall conform to local, state, and federal water quality regulations, provided the regulations do not conflict with this SMP. In the case of a conflict, the more stringent regulation shall apply.
3. All stormwater outfalls discharging into Shorelines of the State shall adhere to the locally adopted stormwater management regulations, Chapter 13.26 MMC.
4. Uses and development that require the application of pesticides, herbicides, fertilizers and other chemicals that could adversely affect water quality (except for those chemicals specifically approved by the Department of Ecology for use in aquatic situations) are prohibited in Shoreline Jurisdiction.
5. The application of pesticides or herbicides in Shoreline Jurisdiction is prohibited except for those products specifically approved for use by the Department of Ecology in aquatic situations, and then only if used according to approved methods of and standards for application.

4 Shoreline Modification Provisions

4.A. INTRODUCTION AND APPLICABILITY

Shoreline modifications are structures or actions which permanently change the physical configuration or quality of the shoreline, particularly at the point where land and water meet. Shoreline modification activities include, but are not limited to, structures such as revetments, bulkheads, levees, breakwaters, docks, and floats. Actions such as clearing, grading, landfilling, and dredging are also considered shoreline modifications.

Generally, shoreline modification activities are undertaken for the following reasons:

1. To prepare a site for a shoreline use
2. To provide shoreline stabilization or shoreline protection
3. To support an upland use

The policies and regulations in this chapter are intended to prevent or mitigate the adverse environmental impacts of proposed shoreline modifications. General provisions, which apply to all shoreline modification activities, are followed by provisions tailored to specific shoreline modification activities. This chapter provides policies and regulations for shoreline modification features including shoreline stabilization measures and docks and floats.

If a shoreline development entails more than one shoreline modification, then all of the regulations pertaining to each type of modification apply.

Even though a shoreline modification may not require a Shoreline Substantial Development Permit, it must still conform to the regulations and standards in this SMP. The City requires that a property owner contemplating a shoreline modification contact the City's Shoreline Administrator and apply for a "letter of exemption". No shoreline modification shall be undertaken without either a shoreline permit (Substantial Development Permit, Shoreline Variance, or Shoreline Conditional Use) or a letter of exemption.

4.B. SHORELINE MODIFICATION TABLE

The following table (Table ~~2~~2) is the shoreline modification table. The table provides the permitted, conditional, and prohibited uses in all shoreline environmental designations. The numbers in the table refer to footnotes which may be found immediately following the table. These footnotes provide additional clarification or

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conditions applicable to the associated modification. Where there is a conflict between the table and the written provisions in this Chapter, the written provisions shall apply.

Table ~~2~~2. Shoreline Modification Table

P = Permitted C = May be permitted as a conditional use only X = Prohibited; the use is not eligible for a Shoreline Variance or Shoreline Conditional Use Permit N/A = Not applicable	**Urban Conservancy**	**Residential**	**Aquatic**
Environmental restoration/enhancement	P	P	P
Shoreline stabilization:			
Bioengineering	C	P	C
Revetments	X	P	C
Bulkheads	X	P	C
Breakwaters/jetties/rock weirs/groins	X	X	X
Dikes, levees	X	X	X
Clearing and Grading	P[5]	P	P
Dredging[3]	N/A	N/A	C
Hazardous waste cleanup	P	P	P
Fill[1,4, 5]	P[5]	P	C[2]
Piers, docks	X	P	P
Moorage piles and mooring buoys	X	X	X

All shoreline modifications are subject to other provisions in this SMP. See, especially, Section C "Policies and Regulations" below.

1. *Fill in the floodplain must meet all federal, state, and local flood hazard reduction regulations.*
2. *Fill in aquatic areas for the purposes of shoreline ecological restoration may be allowed as a permitted use if the Shoreline Administrator determines that there will be an increase in desired ecological functions.*
3. *Disposal of dredge material within a channel migration zone shall require a Shoreline Conditional Use Permit.*

4. *Fill material shall not contain organic or inorganic material that would be detrimental to water quality or existing habitat, or create any other adverse impacts to the environment.*
5. *Only allowed for environmental restoration/enhancement OR for permitted uses provided, fill is limited to the minimum extent necessary for the intended permitted use. Speculative fill is not permitted.*

4.C. POLICIES AND REGULATIONS

4.C.1. General Policies and Regulations

4.C.1.a. Applicability

The following provisions apply to all shoreline modification activities whether such proposals address a single property or multiple properties.

4.C.1.b. Policies

1. In order to assure that shoreline modifications individually and cumulatively do not result in a net loss of ecological functions, preference will be given to those shoreline modifications that have a lesser impact on ecological functions and mitigation of impacts should be required, according to the sequence in Chapter 3 Section B.4, Environmental Impacts.
2. Structural shoreline modifications should be allowed only where they are demonstrated to be necessary:
   a. To support or protect an allowed primary structure or a legally existing shoreline use that is in danger of loss or substantial damage, or;
   b. For reconfiguration of the shoreline to mitigate impacts or enhance the shoreline ecology.

   Additionally, structural shoreline modifications will only be allowed where non-structural methods have been demonstrated to be infeasible.
3. The adverse effects of shoreline modifications should be reduced, as much as possible, and shoreline modifications should be limited in number and extent.
4. Allowed shoreline modifications should be appropriate to the specific type of shoreline and environmental conditions in which they are proposed.
5. The City should take steps to assure that shoreline modifications individually and cumulatively do not result in a net loss of ecological functions, as stated in WAC 173-26-231. This is to be achieved by preventing unnecessary shoreline modifications, by giving preference to those types of shoreline

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modifications that have a lesser impact on ecological functions, and by requiring mitigation of identified impacts resulting from shoreline modifications.

6. Where applicable, the City should base decisions on available scientific and technical information and a comprehensive analysis of site-specific conditions provided by the applicant, as stated in WAC 173-26-231
7. Impaired ecological functions should be enhanced where feasible and appropriate while accommodating permitted uses, as stated in WAC 173-26-231. As shoreline modifications occur, the City will incorporate all feasible measures to protect ecological shoreline functions and ecosystem-wide processes.
8. In reviewing shoreline permits, the City should require steps to avoid, or if that is not possible, minimize adverse impacts according to the mitigation sequence in section 3.B.4 Environmental Impacts

4.C.1.c. Regulations

1. All shoreline modification activities must be in support of a permitted shoreline use or to provide for human health and safety. Shoreline modification activities which do not support a permitted shoreline use are considered speculative and are prohibited by this SMP, unless it can be demonstrated that such activities are necessary to protect human health and safety, ecological functions, and the public interest.
2. Structural shoreline modification measures shall be permitted only if nonstructural measures are unable to achieve the same purpose or are not feasible. Nonstructural measures considered shall include alternative site designs, increased setbacks, drainage improvements, relocation of proposed structures, and vegetation enhancement.
3. Stream channel modification (i.e., realignment) shall be prohibited as a means of shoreline stabilization or shoreline protection, unless it is the only feasible alternative and includes environmental enhancement.
4. All new shoreline development shall be located and designed to prevent or minimize the need for shoreline modification activities.
5. Shoreline modification materials shall be only those approved by the City and applicable state agencies. No toxic (e.g.: creosote) or quickly degradable

materials (e.g., plastic or fiberglass that deteriorates under ultraviolet exposure) shall be used.

6. In channel migration zones, natural geomorphic and hydrologic processes shall not be limited and new development shall not be established where future shoreline modifications will be required and shall include appropriate protection of ecological function.

4.C.2. Shoreline Stabilization (Including Bulkheads)

4.C.2.a. Applicability

Shoreline stabilization includes actions taken to address erosion impacts to property, dwellings, businesses, or essential structures caused by natural processes, such as current, flood, wind, or wave action. These include structural and nonstructural methods.

Nonstructural methods include building setbacks, relocation of the structure to be protected, erosion and ground water management, planning and regulatory measures to avoid the need for structural stabilization.

Structural methods include "hard" and "soft" structural stabilization measures.

Hard Structural Shoreline Stabilization means erosion control practices using hardened structures that armor and stabilize the shoreline from further erosion. Hard structural shoreline stabilization typically uses concrete, boulders, dimensional lumber or other materials to construct linear, vertical or near-vertical faces. These include bulkheads, rip-rap, groins, and similar structures.

Soft Structural Shoreline Stabilization means erosion control methods that rely on less rigid materials. Soft shoreline stabilization typically includes a mix of gravels, cobbles, boulders, logs and native vegetation placed to provide stability in a non-linear, sloping arrangement. On lakes such as Surprise Lake, non-structural and "soft" structural stabilization measures can be cost-effective and practical solutions.

Generally, the harder the construction measure, the greater the impact on shoreline processes, including sediment transport, geomorphology, and biological functions.

Further description of the most common types of shoreline stabilization follows.

Bulkheads

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Bulkheads are shoreline structures, either sloped or vertical, usually constructed parallel to the shore. The primary purpose they serve is to contain and prevent the loss of soil caused by erosion or wave action.

Bulkheads have historically been constructed of poured-in-place or precast concrete, concrete blocks, steel or aluminum sheet piling, wood or wood and structural steel combinations, and boulders. Bulkheads may be either thin structures penetrating deep into the ground or more massive structures resting on the surface.

Uses and activities related to bulkheads which are identified as separate use activities in this program, such as Fill and Residential Development, are subject to the regulations for those uses in addition to the standards for bulkheads established in this section.

Soil Bioengineering

Soil bioengineering is the term given to the practice of using natural vegetative materials to stabilize shorelines and prevent erosion. This may include use of bundles of stems, root systems, or other living plant material; fabric or other soil stabilization techniques; and limited rock toe protection, where appropriate. Soil bioengineering projects often include fisheries habitat enhancement measures such as anchored logs or root wads, in project design. Soil bioengineering techniques may be applied to shoreline areas and the upland areas away from the immediate shoreline.

The use of soil bioengineering as a shoreline stabilization technique is a viable and proven alternative to riprap, concrete and other structural solutions. It provides habitat while maintaining and preserving the natural character of the shoreline. Soil bioengineering is the preferred "best practices" choice when considering shoreline stabilization.

Beach Restoration or Enhancement

Beach enhancement is the alteration of exposed and submerged shorelines for the purpose of stabilization, recreational enhancement, and or/aquatic habitat creation or restoration using native or similar material. The materials used are dependent on the intended use. For recreation purposes, various grades of clean sand or pea gravel are often used to create a beach above the ordinary high water mark. Restoration or re-creation of a shore feature may require a rock and gravel matrix and/or creation of other materials appropriate for the intended use.

Maintenance, Repair, and Replacement.

WAC 173-27-040(2)(b) defines normal maintenance and repair of existing structures and notes that many maintenance and repair activities are exempt from the requirement for a Shoreline Substantial Development Permit, but shall still comply with the provisions of this SMP. As indicated in that section, normal maintenance and repair actions are not exempt from Shoreline Substantial Development Permits if they "cause substantial adverse effects to shoreline resources or the environment." Specifically WAC 173-27-040(2)(b) reads as follows: "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means 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 causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;

4.C.2.b. Policies

1. Non-structural stabilization measures are preferred over "soft" structural measures. "Soft" structural shoreline stabilization measures are strongly preferred over hard structural shoreline stabilization. Proposals for hard and soft structural solutions, including bulkheads, should be allowed only when it is demonstrated that nonstructural methods are not feasible.
2. Bulkheads and other structural stabilizations should be located, designed, and constructed to prevent damage to existing primary structure and minimize adverse impacts to ecological functions.
3. New development requiring structural shoreline stabilization measures such as bulkheads and/or similar protection should not be allowed. Shoreline uses should be located in a manner so that bulkheads and other structural stabilization are not likely to become necessary in the future.
4. Shoreline modifications individually and cumulatively shall not result in a net loss of ecological functions. This is to be achieved by giving preference to

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those types of shoreline modifications that have a lesser impact on ecological functions and requiring mitigation of identified impacts resulting from shoreline modifications.

4.C.2.c. Regulations

New Development

1. All new shoreline development, including the division of land into new parcels, shall be located and designed to prevent the need for shoreline stabilization activities based on geotechnical analysis.
2. New structural shoreline stabilization will not be allowed unless all of the conditions below are met:
   a. The need to protect the primary structure from damage due to erosion caused by natural processes, such as currents or waves, is demonstrated through a geotechnical report.
   b. The erosion is not being caused by upland conditions, such as loss of vegetation and drainage.
   c. Nonstructural measures, such as placing the primary structure farther from the shoreline, planting vegetation, low impact development measures, or installing on-site drainage improvements, are not feasible or not sufficient.
   d. The structure will not result in a net loss of shoreline ecological functions.
3. New development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization will not be needed during the life of the structure, as demonstrated by a geotechnical analysis by a geotechnical engineer or related professional licensed and in good standing in the State of Washington.

New or expanded shoreline stabilization measures

4. New stabilization measures are not allowed except to protect or support an existing or approved primary structure, as necessary for human safety, for the restoration of ecological functions, or for hazardous substance remediation pursuant to Chapter 70.105D RCW. The construction of a bulkhead or other structural shoreline stabilization measure for the primary purpose of retaining or creating dry land is prohibited.

5. New or enlarged structural shoreline stabilization measures for an existing development or residence shall not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, that the structure is in danger from shoreline erosion caused by currents, or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis by a licensed geotechnical engineer or related licensed professional, is not demonstration of need. The geotechnical report must include estimates of erosion rates and damage within three years and must evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization. The project design and analysis must also evaluate vegetation enhancement and low impact development measures as a means of reducing undesirable erosion.
6. "Hard" structural shoreline stabilization measures, such as bulkheads, are not allowed unless the applicant can demonstrate through a geotechnical analysis that "soft" structural measures such as vegetation or beach enhancement, and nonstructural measures, such as additional building setbacks, are not sufficient to protect the primary structure.
7. Where structural shoreline stabilization measures are demonstrated to be necessary, as described in subsections c.5 and 6 above, the size of stabilization measures shall be limited to the minimum necessary. The City's Shoreline Administrator may require that the proposed structure be altered in size or design or impacts otherwise mitigated. Impacts to sediment transport shall be avoided or minimized.
8. Shoreline stabilization projects shall first avoid and then minimize adverse impacts to the environment to the greatest extent feasible, and where such impacts cannot be avoided, mitigation shall be provided to achieve no net loss of shoreline ecological functions in accordance with the mitigation sequence defined in Chapter 3 Section B.4 Environmental Impact Mitigation. If vegetation conservation or vegetation restoration is required as part of the mitigation sequence, a native vegetation plan shall be provided as described in Chapter 3 Section B.10.c.5 Vegetation Conservation
9. Shoreline stabilization measures that incorporate ecological restoration through the placement of rocks, gravel or sand, and native shoreline vegetation may be allowed. Soft shoreline stabilization that restores ecological functions may be permitted waterward of the OHWM.

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10. New or expanded shoreline stabilization measures in channel migration zones require a thorough analysis performed by a licensed geologist with an appropriate specialty license and fluvial geomorphic experience, in addition to a professional engineer, to ensure that the measure does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions.

Replacement and Repair

11. An existing shoreline stabilization structure shall not be replaced with a similar structure unless there is need to protect primary structures from erosion caused by currents or waves and a nonstructural measure is not feasible. At the discretion of the City's Shoreline Administrator, the demonstration of need does not necessarily require a geotechnical report by a geotechnical engineer or related professional licensed. The replacement structure shall be designed, located, sized, and constructed to assure no net loss of ecological function.

    Replacement walls, armoring or bulkheads shall not encroach waterward of the OHWM or existing structures unless the residence was occupied prior to January 1, 1992 and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure. When an existing bulkhead is being repaired or replaced by construction of a vertical wall fronting the existing wall (as noted in the exception for residences occupied prior to 1992, above), it shall be constructed no farther waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an OHWM has been established by the presence and action of water landward of the bulkhead, then the replacement bulkhead must be located at or near the actual OHWM.

    For purposes of standards on shoreline stabilization measures, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.

Bulkheads

12. Bulkhead development will be permitted through ~~corrdination~~coordination with applicable state agencies to ensure compatible site and design

standards. Applicable agencies include, but are not limited to WDFW and the Department of Ecology.

13. Gabions (wire mesh filled with concrete or rocks) are prohibited, except as a Shoreline Conditional Use where it is determined that gabions are the least environmentally disruptive method of shoreline stabilization.
14. Stairs and other allowed structures may be built as integral to a bulkhead but shall not extend waterward of the bulkhead or structure unless stairway construction that does not extend waterward beyond the face of the bulkhead is demonstrated to be infeasible.
15. Bulkheads shall be designed to permit the passage of surface or ground water without causing ponding or over-saturation of retained soil/materials of lands above the OHWM.
16. Adequate toe protection and proper footings shall be provided to ensure bulkhead stability without relying on additional riprap.
17. While structural materials are not the preferred method of shoreline stabilization, if structural shoreline measures are allowed according to subsections c.5 and 6 above, the following are examples of acceptable and unacceptable materials for shoreline stabilization structures.
    a. Acceptable materials, listed in order of preference from top to bottom:
        i. Large stones, with vegetation planted in the gaps. Stones should not be stacked steeper than 2 horizontal to 1 vertical slope.
        ii. Timbers or logs. Note the prohibition against toxic wood treatments.
        iii. Stacked masonry units (e.g., interlocking cinder block wall units).
        iv. Cast-in-place reinforced concrete.
    b. Unacceptable materials for shoreline stabilization structures:
        i. Degradable plastics and other nonpermanent synthetic materials.
        ii. Sheet materials, including metal, plywood, fiberglass, or plastic.
        iii. Broken concrete, asphalt, or rubble.
        iv. Car bodies, tires or discarded equipment.
        v. Solid waste
18. Fill behind bulkheads and other structural shoreline stabilization measures shall be limited to the minimum level necessary to fill the terrain behind the bulkhead to match the existing grade. Any filling in excess of this amount

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shall be considered landfill and shall be subject to the provisions for fill for the purpose of compliance with this SMP.

Bioengineering

19. Bioengineering projects shall use native trees, shrubs, and grasses or ground cover, unless such an approach is not feasible.
20. All bioengineering projects shall include a program for monitoring and maintenance.

Beach/Bank Enhancement and Restoration

21. Bank restoration and enhancement along Hylebos Creek shall be subject to Critical Areas Regulations found in appendix C.
22. Beach enhancement along Surprise Lake may be permitted when the applicant has demonstrated that the project will not detrimentally interrupt littoral processes, redirect waves, current, or sediment to other shorelines, or adversely affect adjacent properties or habitat.
23. Design Standards. Natural beach restoration/enhancement shall not:
    a. Extend waterward more than the minimum amount necessary to achieve the desired stabilization;
    b. Disturb significant amounts of valuable shallow water fish/wildlife habitat without appropriate mitigation of the impacts.
24. Natural Beach Restoration Construction Standards:
    a. The size and/or mix of new materials to be added to a beach shall be as similar as possible to that of the natural beach sediment, but large enough to resist normal current, or wave action at the site.
    b. The restored beach shall approximate, and may slightly exceed, the natural beach width, height, bulk or profile (but not as much as to obviously create additional dry land).
25. Beach enhancement is prohibited within fish and/or wildlife spawning, nesting, or breeding habitat that would be adversely affected by it and also where littoral drift of the enhancement materials would adversely affect adjacent spawning grounds or other areas of biological significance.

4.C.3. Over-Water Structures - Including Piers and Docks, Floats, and Boardwalks

4.C.3.a. Applicability

Over-water structures for moorage, boat-related, and other direct water-dependent uses or development, including docks, piers, boat launches, and swimming/diving platforms, inflatable recreational equipment, as well as public access boardwalks, fishing piers, and viewpoints, in shoreline areas shall be subject to the following policies and regulations.

For the purposes of this SMP, docks shall be the general term that refers to over-water structures used for accessing watercraft, including piers, floats, ramps, ells, and fingers. Piers are the portion of the dock that is elevated above the water and supported by piles. Floats are the portion of the dock that float on the water. Ramps connect piers to floats.

4.C.3.b. Policies

1. Moorage associated with a single-family residence is considered a water-dependent use provided that it is designed and used as a facility to access watercraft.
2. New moorage, excluding docks accessory to single family residences, should be permitted only when the applicant/proponent has demonstrated that a specific need exists to support the intended water-dependent or public access use. To demonstrate "need", the applicant shall provide a statement of intent that clearly shows the intent to provide for a water-dependent or public access use as well as the provision of all other services and support (e.g.: utilities, access, etc.) needed for the intended use.
3. To minimize continued proliferation of individual private moorage, reduce the amount of over-water and in-water structures, and reduce potential long-term impacts associated with those structures, shared moorage facilities are preferred over single-user moorage. New subdivisions of more than two (2) lots and new multifamily development should provide shared moorage.
4. Docks, piers, and other water-dependent use developments including those accessory to single family residences, should be sited and designed to avoid adversely impacting shoreline ecological functions or processes, and should mitigate for any unavoidable impacts to ecological functions.
5. Moorage and other water-dependent use developments should be spaced and oriented in a manner that minimizes hazards and obstructions to public

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navigation rights and corollary rights thereto such as, but not limited to, fishing, swimming and pleasure boating.

6. Moorage and other water-dependent use developments should be restricted to the minimum size necessary to meet the needs of the proposed use. The length, width and height of over-water structures and other developments regulated by this section should be no greater than that required for safety and practicality for the primary use.
7. Moorage and other water-dependent use developments should be constructed of materials that will not adversely affect water quality or aquatic plants and animals in the long term.
8. New docks should be sited and designed to avoid the need for maintenance dredging.

4.C.3.c. Regulations

General Regulations for Private and Public Over-Water Structures

1. Over-water structures are not allowed on Hylebos Creek.
2. All new, reconstructed, repaired, or modified over-water structures shall be allowed only in support of an allowed water dependent use.
3. All moorage and other over-water structures shall be designed and located so as not to constitute a hazard to navigation or other public uses of the water.
4. Proposed over-water structures which do not comply with the dimensional standards contained in this chapter may only be approved if they obtain a Shoreline Variance.
5. No portion of the deck of a pier shall, during the course of the normal fluctuations of the elevation of the waterbody, protrude more than three (3) feet above the OHWM.
6. Docks, piers, and other over-water structures shall be located at least ten (10) feet from all property lines, except for joint-use structures which may abut property lines provided the adjacent property owners have mutually agreed to the structure location in a contract recorded with the Pierce County Recorder's Office and provided to the City of Milton with the appropriate applications for the structure.

7. No residential use may occur over water, including houseboats, live-aboards, or other single- or multi-family dwelling units.
8. Only piers and ramps are permitted in the first 30 feet of the OHWM.
9. All pier and dock dimensions shall be minimized to the maximum extent feasible. The proposed length must be the minimum necessary to support the intended water dependent use.
10. No skirting is permitted on any structure except to contain or protect floatation material.
11. All piers, docks, floats, and similar structures shall at no time rest on the lake substrate.
12. All over-water structures and other water-dependent use developments shall be constructed and maintained in a safe and sound condition. Abandoned or unsafe structures shall be removed or repaired promptly by the owner.
13. Lighting associated with overwater structures shall be beamed, hooded or directed to avoid causing glare on adjacent properties or waterbodies. Illumination levels shall be the minimum necessary for safety.
14. Piles, floats and other over water structures that are in direct contact with water or over water shall not be treated or coated with herbicides, fungicides, paint, or pentachlorophenol. Use of wood members treated with arsenate compounds or creosote is prohibited.
15. Temporary moorages shall be permitted for vessels used in the construction of shoreline facilities. The design and construction of temporary moorages shall be such that upon termination of the project, the aquatic habitat in the affected area can be returned to its original (pre-construction) condition within one (1) year at no cost to the environment or the public.
16. Covered moorage, boathouses, or other walled covered moorage are prohibited, except those allowed pursuant to Chapter 4 Section C.3.c.25.
17. If a dock is provided with a safety railing, such railing shall not exceed 36 inches in height and shall be an open framework that does not unreasonably interfere with shoreline views of adjoining properties.
18. Moorage facilities shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Exterior finish shall be generally non-reflective.

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19. A new private dock may be permitted on lots owned for residential or for private recreational use, provided:

    a. The applicant has demonstrated a specific need exists to support the intended water dependant use.

    b. The applicant has demonstrated to the satisfaction of the Shoreline Administrator that a shared or joint-use pier is not feasible.

        i. On lots with less than fifty (50) feet of waterfront, joint-use piers shall be required, except when both lots abutting the subject lot have legal pre-existing piers or docks and the applicant provides written verification from the owners of the adjacent lots that they will not consent to a shared use agreement. Only in this case may the lot with less than fifty (50) feet of waterfront be permitted an individual pier.

        ii. On waterfront lots subdivided to create additional waterfront lots, upland lots with waterfront access rights, or lots with waterfront multifamily development, joint-use piers shall be required. One joint-use pier is allowed per 60 feet of shoreline frontage.

    c. No more than one (1) pier for each single-family residence or private recreational lot is permitted.

20. A new, joint-use dock may be permitted on a community recreation lot shared by a number of waterfront or upland lots provided the applicant has demonstrated a need for moorage or other allowed water-dependent use.

21. New floating docks located within the first 30 feet of shoreline, measured waterward of the OHWM, are prohibited. Piers that terminate in a waterward float are allowed provided that the landward edge of the float is at least 30 feet waterward of the OHWM. All float tubs shall be fully encapsulated.

<u>Development Standards for New Docks.</u>

22. All piers and docks shall be minimized to the maximum extent feasible and comply with regulations as stipulated by State and Federal agencies, local Tribes, or others that have jurisdiction.

    a. Length.

        i. For single family residences the maximum length of a dock shall be that distance necessary to provide 4 feet of water depth measured on

August 31 (generally the low water date for the year) at the end of the dock, to a maximum length of 50'

ii. For a joint use dock serving more than one residence or for docks serving multiple units of a multi-family property, the dock may extend to achieve 6' of water depth measured on August 31 (generally the low water date for the year) up to a maximum length of 100'.

iii. No "ell"s (dock extensions running generally parallel to the shoreline) or finger piers are permitted.

b. Width. For all private non-commercial docks, the maximum width is 6 feet.

Additions to Private Dock

23. Additions to existing private residential docks shall not result in a dock that exceeds the maximum square footage, width, or length allowances described in c.22 above.

Replacement and Repair of Existing Private Docks

24. Existing docks may be replaced or repaired within the same footprint (size, water converage and configuration) as the existing dock.

Boatlifts and Boatlift Canopies

25. Boatlifts and boatlift canopies may be permitted as an accessory to residential development provided that:

a. Boatlifts are movable equipment employed to lift boats above the water for protection and storage. Residential piers may have one boatlift per single-family lot.

b. All lifts are placed as far waterward as feasible and safe, within the limits of the dimensional standards for docks in this chapter.

c. Boatlift canopies must be made of translucent fabric material.

d. The lifts and canopies comply with all other regulations as stipulated by State and Federal agencies.

e. Legally created joint use docks are allowed one boat lift for each single-family residence, legally authorized to utilize said joint-use dock.

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Boat Launches

26. The installation of impervious surfaces or dredging for the sole purpose of creating a boat launch is prohibited.

Recreational Floats/Swim Platforms

27. One recreational platform or swim float may be provided for each single family residence without a dock or for each property with multiple residences (multi-family complex). Swim floats for single family residences may only be permitted if they are sized and designed for access to watercraft. Swim floats for multi-family may only be permitted upon demonstration of a need for water a water dependent use.

28. All new recreational floats on Surprise Lake are subject to the following:

    a. New recreational floats/platforms shall be a maximum of 150 square feet.

    b. New recreational floats shall be located:

        i. In water with a depth of eight (8) feet or more (measured on August 31st) measured at the landward end of the float. The recreational float shall be located a maximum of twenty (20) feet waterward from the average of the two most adjacent legally existing docks on either side of the proposed float.

        ii. So as not to constitute a hazard to navigation or other public use of the water.

    c. Floats/platforms shall be designed and intended for swim use or other non-motorized, but water-dependant, use.

    d. Floats/platforms must be built so that the deck surface is one (1) foot above the water's surface and they must have reflectors for nighttime visibility.

    e. Retrieval lines shall not float at or near the surface of the water.

    f. All float tubs shall be fully encapsulated.

    g. Anchoring of all recreational floats, platforms and inflatable equipment must be done in a manner that does not cause adverse impacts to ecological functions.

29. Existing recreational floats/swim platforms on Surprise Lake may be repaired and/or replaced subject to the standards in 28.a – f. above.

30. Temporary inflatable recreational equipment (e.g.: floating trampolines) may be allowed from May 1 through September 30. Temporary inflatable recreational equipment shall be located in water with a depth of eight (8) feet or more (measured on August 31st) measured at the landward end of the float and may be located up to a maximum of twenty (20) feet waterward from the end of the associated dock. If there is no associated dock, the temporary inflatable recreational equipment shall be located a maximum of twenty (20) feet waterward from the average of the two most adjacent legally existing docks on either side of the proposed equipment.

Publicly Owned Public Access Structures

31. New publicly owned over-water structures such as docks, piers, or boardwalks may be constructed up to 100' in length and 12' wide.
32. Publicly owned over-water structures must conform to the following standards:
    a. The existing structure must be large enough to support the intended use and meet safety and applicable accessibility standards.
    b. The applicant must remove any in-water structures rendered obsolete by the new dock.
    c. New piles shall be a maximum 6-inch-diameter, be spaced a minimum of 8 feet apart except when shown not to be feasible for site-specific engineering or design considerations, and be made of materials that will not be detrimental to water quality or existing habitat, or create any other adverse impacts to the environment.

4.C.4. Fill

4.C.4.a. Applicability

Fill is the addition of soil, sand, rock, gravel, sediment, earth retaining structures, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land. Any fill activity conducted within Shoreline Jurisdiction must comply with the following policies and regulations.

4.C.4.b. Policies

1. Fills waterward of the OHWM should be allowed only when necessary to support allowed water-dependent or public access uses, cleanup and

disposal of contaminated sediments, and other water-dependent uses that are consistent with this SMP.

2. Shoreline fill should be designed and located so there will be no adverse impacts and no alteration of local currents, surface water drainage, channel migration, or flood waters which would result in a hazard to adjacent life, property, and natural resource systems.

4.C. 4.c. Regulations

1. Fill waterward of OHWM requires a Shoreline Conditional Use Permit and may be permitted only when:
   a. In conjunction with a water-dependent or public use permitted by this SMP;
   b. As part of an expansion or alteration of transportation facilities of statewide significance currently located on the shoreline and then only upon demonstration that alternatives to fill are not feasible; or
   c. As part of an approved shoreline restoration project.
2. Waterward of OHWM, pile or pier supports shall be utilized whenever feasible in preference to fills. Fills for approved road development in floodways or wetlands shall be permitted only if pile or pier supports are proven not feasible.
3. Fills are **prohibited** in floodplains where they would alter the hydrologic characteristics, flood storage capacity, or inhibit channel migration that would, in turn, increase flood hazard or other damage to life or property. Fills are **prohibited** in floodway, except when approved by Shoreline Conditional Use Permit and where required in conjunction with a proposed water-dependent or other use authorized by this SMP.
4. Fill shall be permitted only where it is demonstrated that the proposed action will not:
   a. Result in significant ecological damage to water quality, fish, and/or wildlife habitat; or
   b. Adversely alter natural drainage and circulation patterns, currents, stream flows or significantly reduce flood water capacities.
   c. Alter channel migration, geomorphic, or hydrologic processes.

5. Environmental cleanup action involving excavation/fill, as authorized by the City's Shoreline Administrator, may be permitted.
6. Sanitary fills shall not be located in Shoreline Jurisdiction.
7. Fill material shall not contain organic or inorganic material that would be detrimental to water quality or existing habitat, or create any other adverse impacts to the environment.

4.C.5. Dredging and Disposal

4.C.5.a. Applicability

Dredging is the removal or displacement of earth or sediment (gravel, sand, mud, silt and/or other material or debris) from a stream, creek, river, lake, marine water body, or associated marsh, bog or swamp. Activities which may require dredging include the construction and maintenance of , levee construction, recreation facilities, and ecological restoration. Dredging for the sole purpose of creating a boat launch is not allowed.

Dredge material disposal is the depositing of dredged materials on land or into water bodies for the purpose of either creating new or additional lands for other uses or disposing of the by-products of dredging.

4.C.5.b. Policies

1. Dredging operations should be planned and conducted to minimize interference with navigation and adverse impacts to other shoreline uses, properties, and values.
2. When allowed, dredging and dredge material disposal should be done in a manner which avoids or minimizes impacts to ecological function. Impacts that cannot be avoided should be mitigated in a manner that assures no net loss of shoreline ecological function.
3. Disposal of dredge material within a channel migration zone shall be discouraged.

4.C.5.c. Regulations

General

1. New development shall be located and designed to avoid or, if that is not possible, to minimize the need for new or maintenance dredging.

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2. Dredging and dredge disposal shall be permitted only where it is demonstrated that the proposed actions will not:
    a. Result in significant or ongoing damage to water quality, fish, and shoreline habitat;
    b. Adversely alter natural drainage and circulation patterns, currents, stream flows, channel migration processes or significantly reduce flood water capacities; or
    c. Cause other adverse impacts.
3. Dredging shall be permitted only when adverse impacts are minimized, when mitigation is provided, and:
    a. As part of an approved habitat improvement project;
    b. To clean up contaminated sediments.
4. When dredging is permitted, the dredging shall be the minimum necessary to accommodate the proposed use.
5. Dredging and dredge disposal shall not occur in wetlands, except as authorized by Shoreline Conditional Use Permit as a shoreline restoration project.
6. Dredging and dredge disposal shall be carefully scheduled to protect biological productivity (e.g. fish runs, spawning, benthic productivity, etc.) and to minimize interference with fishing activities.
7. Dredging and dredge disposal shall be prohibited on or in archaeological sites that are listed in, or determined eligible for listing in on the Washington State Register of Historic Places and/or the Washington Heritage Register until such time that they have been released by the State Archaeologist.
8. Dredging shall utilize techniques which cause minimum dispersal and broadcast of bottom material.
9. Dredging for the primary purpose of obtaining material for landfill is prohibited.
10. Maintenance dredging of established navigation channels, public access facilities and basins is restricted to maintaining previously dredged and/or existing authorized location, depth, and width.

11. Dredging for remedial actions necessary for compliance with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Model Toxics Control Act (MTCA) are authorized.

Regulations - Dredge Material Disposal

12. Depositing clean dredge materials in within Shoreline Jurisdiction shall be allowed only by Shoreline Conditional Use Permit for one or more of the following reasons:
    a. For wildlife habitat improvement or shoreline restoration; or
    b. To correct problems of material distribution adversely affecting fish and wildlife resources.
13. Where the City's Shoreline Administrator requires revegetation of land disposal sites, revegetation shall occur as soon as feasible in order to retard wind and water erosion and to restore the wildlife habitat value of the site. Native species and other compatible plants shall be used in the revegetation.
14. Proposals for disposal of dredge material in Shoreline Jurisdiction must show that the site will ultimately be suitable for a use permitted by this SMP.
15. The City's Shoreline Administrator may impose reasonable limitations on dredge disposal operating periods and hours and may require provision for buffers at land disposal or transfer sites in order to protect the public safety and other lawful interests from unnecessary adverse impacts.
16. Disposal of dredge material within a channel migration zone shall require a Shoreline Conditional Use Permit.
17. Temporary stockpiling of dredge material within Shoreline Jurisdiction is prohibited unless specifically approved as a condition of a permit to dredge and it is demonstrated that it will not cause adverse impacts.
18. Dredge material from CERCLA or MTCA actions shall be disposed of in an appropriate upland site.

4.C.6. Shoreline Restoration and Ecological Enhancement

4.C.6.a. Applicability

Shoreline restoration and ecological enhancement are the improvement of the natural characteristics of upland or submerged shoreline using native materials. The provisions of this section apply to proposed projects to restore shoreline ecological functions but not necessarily to mitigation measures applied to other

shoreline development. The materials used are dependent on the intended use of the restored or enhanced shoreline area. A restoration plan accompanies this SMP and recommends ecological enhancement and restoration measures.

4.C.6.b. Policies

1. The City should consider shoreline restoration and ecological enhancement as an alternative to structural shoreline stabilization and protection measures where feasible.
2. All shoreline restoration and ecological enhancement projects should protect the integrity of adjacent natural resources including aquatic habitats and water quality.
3. Where possible, shoreline restoration should use maintenance-free or low-maintenance designs.
4. The City should pursue the recommendations in the shoreline restoration plan prepared as part of this SMP update. The City should give priority to projects consistent with this plan.
5. Shoreline restoration and enhancement should not extend waterward more than necessary to achieve the intended results.

4.C.6.c. Regulations

1. Shoreline restoration and ecological enhancement may be permitted if the project proponent demonstrates that no significant change to sediment transport or stream current will result and that the enhancement will not adversely affect ecological processes, properties, or habitat.
2. Shoreline restoration and enhancement projects shall use best available science and management practices.
3. Shoreline restoration and enhancement shall not significantly interfere with the normal public use of the navigable waters of the state without appropriate mitigation.
4. Shoreline restoration and ecological enhancement projects may be permitted in all shoreline environments, provided:
    a. The project's purpose is the restoration of natural character and ecological functions of the shoreline, and
    b. It is consistent with the implementation of a comprehensive restoration plan approved by the City's Shoreline Administrator, or the City's

Shoreline Administrator finds that the project provides an ecological benefit and is consistent with this SMP

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5 Shoreline Use Provisions

5.A. INTRODUCTION

The provisions in this section apply to specific common uses and types of development to the extent they occur within Shoreline Jurisdiction.

5.B. SHORELINE USE AND DEVELOPMENT STANDARDS TABLE

The following tables (Table ~~5~~3 and Table ~~6~~4) indicate the allowable uses and some of the standards applicable to those uses and modifications. Where there is a conflict between the tables and the written provisions in Chapters 3, 4, or 5 of this SMP, the written provisions shall apply. The numbers in the tables refer to footnotes which may be found immediately following the table. These footnotes provide additional clarification or conditions applicable to the associated use or shoreline environment designation. Table ~~5~~3 does not supersede Title 17 MMC. The use is only allowed if it is allowed in the underlying zone.

Table ~~5~~3. Shoreline Use Table

P = Permitted

C = May be permitted as a conditional use only

X = Prohibited; the use is not eligible for a Shoreline Variance or Conditional Use Permit[1]

N/A = Not applicable

SHORELINE USE	Urban Conservancy[2]	Residential	Aquatic[3]
Agriculture	X	P	X
Aquaculture	X	X	X
Boating facilities	X	X	X
Commercial:			
Water-dependent	P	P[4]	X
Water-related, water-enjoyment	P	P[4]	X
Nonwater-oriented	P	X	X
Forest practices	X	X	X

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P = Permitted

C = May be permitted as a conditional use only

X = Prohibited; the use is not eligible for a Shoreline Variance or Conditional Use Permit[1]

N/A = Not applicable

SHORELINE USE	Urban Conservancy[2]	Residential	Aquatic[3]
Industrial:			
Water-dependent	P	X	X
Water-related, water-enjoyment	P	X	X
Nonwater-oriented	P	X	X
In-stream structures	C	C	C
Mining	X	X	X
Parking (accessory)	P[5]	P[5]	X
Parking (primary, including paid)	X	X	X
Recreation:			
Water-dependent	P	P[6]	P
Water-enjoyment	P[6]	P[6]	X
Nonwater-oriented	P[6]	X	X
Residential			
Single-family residential	X	P	X
Duplex	X	P	X
Accessory Dwelling Unit	X	P	X
Multi-family residential	X	P	X
Land subdivision	P	P	P
Signs:			
On premise	P	X	X
Off premise	X	X	X
Freeway Signs	P	X	X
Solid waste disposal	X	X	X

P = Permitted C = May be permitted as a conditional use only X = Prohibited; the use is not eligible for a Shoreline Variance or Conditional Use Permit[1] N/A = Not applicable **SHORELINE USE**	**Urban Conservancy[2]**	**Residential**	**Aquatic[3]**
Transportation:			
Water-dependent	NA	X	X
Nonwater-dependent[7]	C	C	C
Roads, railroads[7]	P	P	C
Utilities (primary) [7]	P	P	C

1. *For the treatment of existing nonconforming development, see Chapter 7 Section E, titled Nonconforming Uses.*
2. *Development in channel migration zones is allowed only by Shoreline Conditional Use Permit where it can be shown that such development would not prevent natural channel migration.*
3. *Uses noted as allowed in the Aquatic environment are allowed only if allowed in the adjacent upland environment.*
4. *The only commercial uses allowed in the residential district, are those allowed by the underlying zoning.*
5. *Accessory parking is allowed in Shoreline Jurisdiction only if there is no other feasible option, as determined by the Shoreline Administrator.*
6. *Passive activities, such as nature watching and trails, that require little development with no adverse impacts may be allowed in the setback area.*
7. *Roadways and public utilities are allowed if there is no other feasible alternative, as determined by the Shoreline Administrator, and adverse impacts are mitigated.*

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Table ~~6~~4. Shoreline Development Standards Table

DEVELOPMENT STANDARDS[2, 3 and 4] *(See also section cited in parentheses)*	**Urban Conservancy**	**Residential**	**Aquatic**
Commercial Development *(Ch. 5 Sec. C.3)*			
Water-dependent setback[4]	0	0’	N/A
Water-related, water-enjoyment setback[4]	180’[3]	100’	N/A
Nonwater-oriented setback[4]	180’[3]	N/A	N/A
Structure height	40’	35’	N/A
Industrial Development *(Ch. 5 Sec. C.4)*			
Water-dependent setback[4]	0	N/A	N/A
Water-related and water-enjoyment setback[4]	180’[3]	N/A	N/A
Nonwater-oriented setback[4]	180’[3]	N/A	N/A
Structure height	40’	35’	N/A
Accessory Parking *(Ch. 3 Sec. B.6)*			
Setbacks[4]	180’	100’[1]	N/A
Recreational Development *(Ch. 5 Sec. C.6)*			
Water-dependent park structures setback	0	0’	N/A
Water-related, water enjoyment park structures setback[4]	180’[3]	40’	N/A
Nonwater-oriented park structures setback *(Ch. 5 Sec. C.6.c.7)*	180’[3]	80’	N/A
Structure height	40’	35’	NA
Miscellaneous			
New agricultural activities setback [2] *(Ch. 5 Sec. C.2.c.4)*	N/A	N/A	N/A
Residential Development *(Ch. 5 Sec. C.7)*			

Structure height	40’	35’	NA

Other provisions in this SMP also apply.

1. *See regulation 5.C.7 for residential development standards.*
2. *Setbacks from the shoreline do not apply to development separated from the shoreline by a public roadway.*
3. *Setbacks are measured from the Ordinary High Water Mark (OHWM) and perpendicular to the shoreline*
4. *See exceptions to setback requirements in the UC environment for commercial and industrial redevelopment (sections 5.C.3.c.10 and 5.C.4.c.10)*

5.C. SHORELINE USE POLICIES AND REGULATIONS

5.C.1. General Policies and Regulations

5.C.1.a. Applicability

The following provisions apply to all uses in Shoreline Jurisdiction.

5.C.1.b. Policy

1. The City should give preference to those uses that are consistent with the control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon uses of the state's shoreline areas.
2. The City should ensure that all proposed shoreline uses will not diminish the public's health, safety, and welfare, as well as the land or its vegetation and wildlife, and should endeavor to protect property rights while implementing the policies of the Shoreline Management Act.
3. The City should reduce use conflicts by prohibiting or applying special conditions to those uses which are not consistent with the control of pollution and prevention of damage to the natural environment or are not unique to or dependent upon use of the state's shoreline. In implementing this provision, preference should be given first to water-dependent uses, then to water-related uses and water-enjoyment uses.
4. The City should encourage the full use of existing urban areas before expansion of intensive development is allowed.

5.C.1.c. Regulations

1. Developments that include a mix of water-dependent and nonwater-dependent uses may be considered water-dependent provided the Shoreline

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Administrator finds that the proposed development gives preference to those uses that are consistent with the control of pollution and prevention of damage to the natural environment, are dependent on a shoreline location, or enhance the public's ability to enjoy the shoreline.

2. All uses not explicitly covered in the SMP require a Shoreline Conditional Use Permit. The City's Shoreline Administrator should impose conditions to ensure that the proposed uses meets the policies of this SMP.
3. All uses and development and uses must conform to all of the provisions in the SMP.
4. All development and uses shall conform to the Shoreline Use Table and the Development Standards table in Section B of this chapter unless otherwise stated in this chapter.
5. In channel migration zones, natural geomorphic and hydrologic processes shall not be limited and new development shall not be established where future stabilization will be required.

5.C.2. Agriculture

5.C.2.a. Applicability

Agriculture includes, but is not limited to, the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, or Christmas trees (not subject to the excise tax imposed by RCW 84.33.100 thorough 84.33.140; or livestock), that has long-term commercial significance.

Uses and shoreline modifications associated with agriculture that are identified as separate activities in this SMP, such as industry, shoreline stabilization, and flood hazard management, are subject to the regulations established for those activities in addition to the standards established in this section.

5.C.2.b. Policies

1. The creation of new agricultural lands by diking, draining, or filling marshes, channel migration zones, and associated marshes, bogs, and swamps is prohibited.
2. A vegetative buffer should be maintained between agricultural lands and water bodies or wetlands in order to reduce harmful bank erosion and

resulting sedimentation, enhance water quality, reduce flood hazard, and maintain habitat for fish and wildlife.

3. Animal feeding operations, retention and storage ponds, and feedlot waste and manure storage should be located out of Shoreline Jurisdiction and constructed to prevent contamination of water bodies and degradation of the adjacent shoreline environment.
4. Appropriate farm management techniques should be utilized to prevent contamination of nearby water bodies and adverse effects on valuable plant, fish, and animal life from fertilizer and pesticide use and application.
5. Where ecological functions have been degraded, new development and uses should be conditioned with the requirement for ecological restoration to ensure no net loss of ecological functions.

   The Shoreline Administrator will consult the provisions of this SMP and determine the applicability and extent of ecological restoration. The extent of ecological restoration shall be that which is reasonable given the specific circumstances of an agricultural use.

5.C.2.c. Regulations

1. Agriculture uses and development are limited to those activities existing at the date of adoption of this SMP.
2. The conversion of agricultural lands to a different use are subject to the policies and regulations of the proposed new use found in this SMP.

5.C.3. Commercial Uses and Development

5.C.3.a. Applicability

For the purposes of this SMP, the definitions for commercial development and uses are more general and encompassing than the definition in the Milton Municipal Code. Commercial uses are those uses that are involved in wholesale, retail, service, and business trade. Examples include hotels, motels, grocery markets, shopping centers, restaurants, shops, offices, and private or public indoor recreation facilities. Commercial nonwater-dependent recreational facilities, such as sports clubs and amusement parks, are also considered commercial uses. This category also applies to institutional and public uses such as hospitals, libraries, schools, churches and government facilities.

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Uses and activities associated with commercial development that are identified as separate uses in this SMP include Mining, Industry, Boating Facilities, Transportation Facilities, Utilities (accessory), and Solid Waste Disposal. Piers and docks, bulkheads, shoreline stabilization, flood protection, and other shoreline modifications are sometimes associated with commercial development. These uses and modifications are subject to those shoreline modification regulations in Chapter 4, in addition to the standards for commercial development and uses established herein.

5.C.3.b. Policies

1. Water-dependent and water-oriented commercial uses are not likely to locate in the Urban Conservancy Environment, so new commercial development should provide ecological restoration and public access.
2. Water-dependent and water-oriented commercial uses are permitted on Surprise Lake if the underlying zoning permits the use. New commercial development should provide ecological restoration and public access.
3. Where possible, commercial developments are encouraged to incorporate Low Impact Development techniques into new and existing projects.

5.C.3.c. Regulations

1. Water-oriented commercial uses may be allowed as indicated in Chapter 5 Section B, "Shoreline Use and Development Standards Tables."
2. Nonwater-oriented commercial uses and developments may be permitted only where they are separated from the shoreline and there is no opportunity for water-oriented uses, such as on on-navigable Hylebos Creek.
3. Nonwater-oriented uses may be allowed as part of a mixed-use facility that includes water-dependent uses.
4. Commercial uses shall be designed to avoid or minimize ecological impacts, to protect human health and safety, and to avoid adverse impacts to surrounding uses and the shoreline's visual qualities, such as views to the waterfront and the natural appearance of the shoreline. To this end, the Shoreline Administrator may adjust the project dimensions and setbacks (so long as they are not relaxed below minimum standards without a Shoreline Variance) or prescribe operation intensity and screening standards as deemed appropriate.

5. All new commercial use proposals shall be conditioned with the requirement for ecological restoration unless it is demonstrated to not be feasible.

   a. All new non-water-oriented commercial development in the Urban Conservancy designation shall provide 165 feet of native vegetation from the Ordinary High Water Mark (OHWM) for the entire length of the shoreline. Native vegetation shall consist of a mixture of trees, shrubs and groundcover and be designed to improve habitat functions (see Appendix B for an appropriate list of native vegetation). Property owners must prepare, and agree to adhere to, a shoreline vegetation plan approved by the Shoreline Administrator, as described in Chapter 3 Section B.10.c.5. Exception: this provision does not apply for projects with reduced setbacks in accordance with footnote 4 in Table ~~6~~4: Shoreline Development Standards

   b. All new commercial uses and development in the Residential designation shall provide 40 feet of native vegetation from the OHWM for the entire length of the shoreline. Native vegetation shall consist of a mixture of trees, shrubs and groundcover and be designed to improve habitat functions (see Appendix B for a list of appropriate native vegetation). Property owners must prepare, and agree to adhere to, a shoreline vegetation management plan approved by the Shoreline Administrator, as described in Chapter 3 Section B.10.c.5.

6. All new non-water-oriented commercial use proposals shall be conditioned with the requirement for providing public access unless it is demonstrated to not be feasible.

7. All commercial loading and service areas shall be located or screened to minimize adverse impacts to the shoreline environment.

8. Commercial uses and development and their accessory uses must conform to the setback and height standards established in Section B "Development Standards Table" in this Chapter.

9. Low Impact Development (LID) techniques shall be incorporated where appropriate.

10. For shorelines along the Hylebos Creek where existing development has encroached within 50 feet of the OHWM, development setbacks may be reduced to 50 feet provided that within the 50 foot setback, subject to all of the following provisions;

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a. All flood control and shoreline stabilization measures are removed, except for those necessary for the streambed restoration

b. The streambed and channel are restored to a natural condition with sinuosity, off-channel habitats and other features typical of natural streams with a similar context.

c. The uplands are planted with native plants as approved by the Shoreline Administrator. Planting shall include shrubs and ground cover to provide habitat and shade to the creek, as well trees that will provide adequate canopy cover upon maturity.

d. The entire setback area landward of the OHWM shall be planted.

e. A program for monitoring the effectiveness of shoreline restoration measures is provided in compliance with the Mitigation Requirements identified in the Critical Areas section of this SMP. Namely section 18.16.160 of Ordinance 1671 adopted by this SMP.

f. Other recommendations of the Shoreline Restoration Plan appended to this Master Program are followed.

    i. The setback reductions of this provision are subject to approval of and special conditions placed by the Shoreline Administrator.

5.C.4. Industrial Uses and Development

5.C.4.a. Applicability

Industrial developments and uses are facilities for processing, manufacturing, and storing of finished or semi-finished goods. Included in industrial are such activities as log storage, log rafting, petroleum storage, hazardous waste generation, transport and storage, ship building, concrete and asphalt batching, construction, manufacturing, and warehousing. Excluded from this category and covered under other sections of the SMP are boating facilities, piers and docks, mining (including on-site processing of raw materials), utilities, solid waste disposal, and transportation facilities.

Shoreline modifications and other uses associated with industrial uses and development are described separately in this SMP. These include dredging, fill, transportation facilities, utilities, piers and docks, bulkheads, breakwaters, jetties and groins, shoreline stabilization and flood protection, and signs. They are

subject to their own regulations in Chapter 4 in addition to the provisions in this chapter.

5.C.4.b. Policies

1. Because Hylebos Creek is a non-navigable waterway, new nonwater-oriented industrial development should be allowed if public access and ecological restoration is provided as a significant public benefit and such measures are feasible.
2. Industrial uses and development should be located, designed, constructed, and managed in a manner that assures no net loss of shoreline ecological functions and no adverse impacts to other shoreline resources and values.
3. Where possible, industrial developments are encouraged to incorporate Low Impact Development techniques into new and existing projects.

5.C.4.c. Regulations

1. All new non-water-oriented industrial development shall be conditioned with the requirement for ecological restoration and public access unless those activities are demonstrated to not be feasible.
2. All new non-water-oriented industrial development shall provide 165 feet of native vegetation measured from the OHWM for the length of the shoreline. Native vegetation shall consist of a mixture of trees, shrubs and groundcover and be designed to improve habitat functions (see Appendix B for an appropriate list of native vegetation). Property owners must prepare, and agree to adhere to, a shoreline vegetation plan approved by the Shoreline Administrator, as described in Chapter 3 Section B.10.c.5. Exception: this provision does not apply for projects with reduced setbacks in accordance with note 4 in Table ~~6~~4: Shoreline Development Standards
3. The amount of impervious surface shall be the minimum necessary to provide for the intended use.
4. Water-dependent industrial uses shall be located and designed to minimize the need for initial and/or continual dredging, filling, spoil disposal, and other channel maintenance activities. Water-dependent industry, however, is not likely to locate on Hylebos Creek because it is a non-navigable waterway.
5. Storage and disposal of industrial wastes is prohibited within Shoreline Jurisdiction; EXCEPT, that wastewater treatment systems may be allowed in

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Shoreline Jurisdiction if alternate, inland areas have been adequately proven infeasible.

6. At new or expanded industrial uses and developments, the best available facilities practices and procedures shall be employed for the safe handling of fuels and toxic or hazardous materials to prevent them from entering the water. Optimum means shall be employed for prompt and effective cleanup of those spills that do occur. The City's Shoreline Administrator may require specific facilities to support those activities as well as demonstration of a cleanup/spill prevention program.
7. Display and other exterior lighting shall be designed, shielded, and operated to avoid illuminating the water surface.
8. All industrial loading and service areas shall be located or screened to minimize adverse impacts (including visual impacts) to the shoreline environment and public access facilities.
9. Low Impact Development (LID) techniques shall be incorporated where appropriate.
10. For shorelines along the Hylebos Creek, where existing development has encroached within 50 feet of the OHWM, development setbacks may be reduced to 50 feet provided that within the 50 foot setback, subject to the following provisions;
    a) All flood control and shoreline stabilization measures are removed, except for those necessary for the streambed restoration
    b) The streambed and channel are restored to a natural condition with sinuosity, off-channel habitats and other features typical of natural streams with a similar context.
    c) The uplands are planted with native plants as approved by the Shoreline Administrator. Planting shall include shrubs and ground cover to provide habitat and shade to the creek, as well trees that will provide adequate canopy cover upon maturity.
    d) The entire setback area landward of the OHWM shall be planted.
    e) A program for monitoring of the effectiveness of shoreline restoration measures is provided in compliance with the Mitigation Requirements identified in the Critical Areas section of this SMP. Namely section 18.16.160 of Ordinance 1671 adopted by this SMP.

f) Other recommendations of the Shoreline Restoration Plan appended to this Master Program are followed.

i. The setback reductions of this provision are subject to approval of and special conditions placed by the Shoreline Administrator.

5.C.5. In-Stream Structures

5.C.5.a. Applicability

In-stream structures are structures constructed waterward of the OHWM and either cause or have the potential to cause water impoundment or diversion, obstruction, modification of water levels, or modification of water flow. They typically are constructed for hydroelectric generation and transmission (including both public and private facilities), flood control, irrigation, water supply (both domestic and industrial), recreational, or fisheries enhancement.

The outfall from Surprise Lake is an example of an in-stream structure.

5.C.5.b. Policies

1. In-stream structures should provide for the protection, preservation, and restoration of ecosystem-wide processes, ecological functions, and cultural resources, including, but not limited to, fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas. Within the City of Milton, in-stream structures should be allowed only for the purposes of environmental restoration, maintenance of water levels, or water quality treatment.

5.C.5.c. Regulations

1. In-stream structures are permitted only for the purposes of environmental restoration, water quality management, fish passage, or maintenance of water levels.
2. The Shoreline Administrator may require that projects with in-stream structures include public access, provided public access improvements do not create adverse environmental impacts or create a safety hazard.

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5.C.6. Recreational Uses and Development

5.C.6.a. Applicability

Recreational uses and development includes public and commercial facilities for recreational activities such as hiking, photography, viewing, fishing, boating, swimming, bicycling, picnicking, and playing. It also includes facilities for active or more intensive uses, such as parks, campgrounds, golf courses, and other outdoor recreation areas. This section applies to both publicly and privately owned shoreline facilities intended for use by the public or a private club, group, association or individual.

Recreational uses and development can be part of a larger mixed-use project. For example, a resort may contain characteristics of, and be reviewed under, both the Commercial Uses and Development and the Recreational Uses and Development sections. Primary activities such as boating facilities, resorts, subdivisions, and hotels are not addressed directly in this category.

Uses and activities associated with recreational developments that are identified as separate use activities in this SMP, such as boating facilities, piers and docks, residential uses and development, and commercial uses and development, are subject to the regulations established for those uses in addition to the standards for recreation established in this section.

Commercial indoor nonwater-oriented recreation facilities, such as bowling alleys and fitness clubs, are addressed as commercial uses.

5.C.6.b. Policies

1. The coordination of local, state, and federal recreation planning should be encouraged to satisfy recreational needs. Shoreline recreational uses and developments should be consistent with all adopted park, recreation, and open space plans.
2. Recreational developments and plans should incorporate shoreline restoration and promote the conservation of the shoreline's natural character, ecological functions, and processes.
3. A variety of compatible recreational experiences and activities should be encouraged to satisfy diverse recreational needs.
4. Where feasible and appropriate, water-dependent recreational uses, such as angling, boating, and swimming, should have priority over water-enjoyment

uses, such as picnicking and golf. Water-enjoyment uses should have priority over nonwater-oriented recreational uses, such as field sports.

5. Recreation facilities should be integrated and linked with linear systems, such as hiking paths, bicycle paths, easements, and scenic drives.
6. Where appropriate, non-intensive recreational uses may be permitted in floodplain areas. Non-intensive recreational uses include those that do not do any of the following:
    a. Adversely affect the natural hydrology of aquatic systems.
    b. Create any flood hazards.
    c. Damage the shoreline environment through modifications such as structural shoreline stabilization or vegetation removal.
7. New passive recreational opportunities should be pursued on Surprise Lake and Hylebos Creek. Any new recreational opportunities on Surprise Lake, either public or private, should be compatible with surround uses. The design and location of the public access point should minimize disruption to current residents.

5.C.6.c. Regulations

1. Water-oriented recreational uses and developments and mixed-use developments with water-oriented recreational activities may be permitted as indicated in Chapter 5 Section B, "Shoreline Use and Development Standard Tables." In accordance with these tables and other provisions of this SMP, nonwater-oriented recreational uses and developments may be permitted only where it can be demonstrated that all of the following apply:
    a. A water-oriented use is not reasonably expected to locate on the proposed site due to topography, surrounding land uses, physical features, or the site's separation from the water.
    b. The proposed use does not usurp or displace land currently occupied by a water-oriented use and will not interfere with adjacent water-oriented uses.
    c. The proposed use and development will appreciably increase ecological functions or, in the case of public projects, public access.
2. Accessory parking shall not be located in Shoreline Jurisdiction unless all of the following conditions are met:

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a. The Shoreline Administrator determines there is no other feasible option,

b. The parking supports a water-oriented use, and

c. All adverse impacts from the parking in the Shoreline Jurisdiction are mitigated.

3. All new recreational development in the Urban Conservancy Environment shall provide 165 feet of native vegetation from the OHWM for the entire length of the shoreline. Native vegetation shall consist of a mixture of trees, shrubs and groundcover and be designed to improve habitat functions (see Appendix B for a list of appropriate native vegetation). Property owners must prepare, and agree to adhere to, a shoreline vegetation plan approved by the Shoreline Administrator, as described in Chapter 3 Section B.10.c.5. Water dependent recreational uses and passive activities such as trails and viewing areas shall be allowed in the required vegetated area. Exception: this provision does not apply for projects with reduced setbacks in accordance with footnote 4 in Table ~~6~~4: Shoreline Development Standards

4. All new recreational development in the Residential Environment designation shall provide 30 feet of native vegetation from the OHWM for the entire length of the shoreline. Native vegetation shall consist of a mixture of trees, shrubs and groundcover and be designed to improve habitat functions (see Appendix B for a list of appropriate native vegetation). Property owners must prepare, and agree to adhere to, a shoreline vegetation plan approved by the Shoreline Administrator, as described in Chapter 3 Section B.10.c.5. Water-dependent recreational uses and passive activities such as trails and viewing areas may be allowed in the required vegetated area provided they do no comprise more than 20% of the total native vegetation area and that trails aligned roughly parallel to the shoreline are set back at least 15 feet.

5. All new recreational development proposals will be reviewed by the Shoreline Administrator for ecological restoration (beyond the vegetation planting required above) and public access opportunities. When restoration or public access plans indicate opportunities exist for these improvements, the Shoreline Administrator may require that those opportunities are either implemented as part of the proposed use or development project or that the project design be altered so that those opportunities are not diminished.

6. All new nonwater-oriented recreational uses and development, where allowed, shall be conditioned with the requirement to provide ecological

restoration (beyond the vegetation planting required above) and, in the case of public developments, public access. The Shoreline Administrator shall consult the provisions of this SMP and determine the applicability and extent of ecological restoration and public access required.

7. Nonwater-oriented structures, such as restrooms, recreation halls and gymnasiums, recreational buildings and fields, access roads, and parking areas, shall be set back from the OHWM at least 180 feet in the Urban Conservancy Environment and 80 feet in the Residential Environment unless it can be shown that there is no feasible alternative.

5.C.7. Residential Uses and Development

5.C.7.a. Applicability

Residential uses and development means one or more buildings, structures, lots, parcels or portions thereof which are designed for and used or intended to be used to provide a place of abode, including single-family residences, duplexes, other detached dwellings, multi-family residences, mobile home parks, residential subdivisions, and residential short subdivisions. This section also applies to "appurtenances." An appurtenance is a structure or development which is necessarily connected to the use and enjoyment of a single-family residence. On a state-wide basis, normal appurtenances include garages, decks, driveways, utilities, fences, and grading which does not exceed two hundred fifty cubic yards and does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Residential uses and development do not include hotels, motels, or any other type of overnight or transient housing or camping facilities.

Single-family residences are a preferred use under the Shoreline Management Act when developed in a manner consistent with this Shoreline Master Program.

For the purposes of this SMP duplexes are treated as single family residences.

5.C.7.b. Policies

1. Residential uses and development should be prohibited in critical areas and associated buffers including, but not limited to, wetlands, steep slopes, and floodways.
2. The overall density of development, lot coverage, and height of structures should be appropriate to the physical capabilities of the site and consistent with the City's Comprehensive Plan and the City's Municipal Code.

3. Recognizing the single-purpose, irreversible, and space consumptive nature of shoreline residential uses and development, new uses and development should provide adequate setbacks from the water to provide space for use of the shoreline and the water, to protect or restore ecological functions and ecosystem-wide processes, to preserve views, to preserve shoreline aesthetic characteristics, to protect the privacy of nearby residences, and to minimize use conflicts.
4. While setback widths based on science are necessary to protect ecological functions, using them is not possible in developed areas, such as Milton. Therefore, smaller setbacks should be established that are based on the existing development pattern, in combination with mitigation requirements for new development that provide enhancement of the smaller setback and other degraded features to address impacts of new development and achieve no net loss of ecological function.
4. Adequate provisions should be made for protection of groundwater supplies, erosion control, stormwater drainage systems, aquatic and wildlife habitat, ecosystem-wide processes, and open space.
5. Sewage disposal facilities, as well as water supply facilities, shall be provided in accordance with appropriate state and local health regulations.
6. New residential development and uses, including the sub-division of lots, should be designed and located so that shoreline armoring will not be necessary to protect the structure. The creation of new residential lots should not be allowed unless it is demonstrated the lots can be developed without:
    a. Constructing shoreline stabilization structures (such as bulkheads).
    b. Causing significant erosion or slope instability.
    c. Removing existing native vegetation within 20 feet of the shoreline.

5.C.7.c. Regulations

1. The creation of new residential lots within Shoreline Jurisdiction shall be prohibited unless the applicant demonstrates that all of the provisions of this SMP, including setback and size restrictions, can be met on the proposed lot. Specifically, it must be demonstrated that:
    a. The residence can be built in conformance with all applicable setbacks and development standards in this SMP.

b. Adequate water, sewer, road access, and utilities can be provided.

c. The intensity of uses and development is consistent with the City's Comprehensive Plan.

d. The development will not cause flood or geological hazard to itself or other properties.

In addition, new residential development on new lots that contain intact native vegetation shall conform to the regulations of 6.d and 7.d below. (See also Chapter 3 Section B.10. Vegetation Conservation).

2. The stormwater runoff for all new or expanded pavements or other impervious surfaces shall be in accordance with the City's storm water regulations, Chapter 13.26 MMC.

3. See Chapter 3 Section B.10 for regulations related to clearing, grading, and conservation of vegetation.

4. See regulations for Shoreline Stabilization and Docks and Floats in Chapter 4.

Regulations for Residential Properties within Shoreline Jurisdiction on Lakes

5. A summary of regulations for residential properties within Shoreline Jurisdiction is presented in Table ~~7~~5 below. Refer to written provisions within this section for exceptions and more detailed explanations.

Table ~~7~~5. Shoreline Regulations for Residential Properties on Lakes

	Single-Family Regulation (including duplexes)	**Multi-Family Regulation**
Minimum Building Setback from OHWM	80 feet[1]	100 feet[1]
Minimum Deck Setback from OHWM	65 feet [2]	85 feet [2]
Maximum Impervious Surface of Lot Area	35%[3]	40%[3]

1. The averaging of the setbacks of adjacent dwelling units with a minimum setback of 80 feet for single-family and 100 feet for multi-family development.

2. Decks can extend a maximum of 15 feet into the building setback, with a minimum setback of 65 feet for single-family and 85 feet for multi-family development.

3. For those lots that are partially in Shoreline Jurisdiction, the impervious surface limits shall apply to the entire lot.

Regulations for Single-family Residential Uses and Development on Lakes

6. New single-family residential development, including new structures, new pavement, and additions, within Shoreline Jurisdiction on lakes shall adhere to the following standards:

   a. Single-family Residential Setbacks on Lakes:

      i. Primary Buildings: All covered or enclosed structures shall be setback the average of the setbacks of existing houses on adjacent or nearest lots on both sides of the subject parcel, with a minimum setback of 80 feet from the OHWM. Where an existing site does not provide sufficient area to locate the residence entirely landward of this setback, variance procedures shall be applied.

      ii. Accessory Uses, Accessory Structures, and Appurtenances:

      (a) Patios and decks: Uncovered patios or decks that are no higher than 2 feet above grade may extend a maximum of 15 feet into the building setback, up to within 65 feet of the OHWM.

      (b) Garages and pavements for motorized vehicles: Garages and pavements for motorized vehicles (driveways and parking areas including unpaved driveways and parking lots) shall be set back at least 100 feet from the OHWM, unless the project applicant demonstrates to the Shoreline Administrator's satisfaction that such a configuration is not feasible.

      (c) Auxiliary structures: Auxiliary structures such as storage sheds and gazebos may encroach a maximum of 15 feet into the building setback, up to within 65 feet of the OHWM. The auxiliary structure may not be more than 200 square feet in building footprint or more than 10 feet in height.

      (d) Fences: Fences located within the required building setback shall be no more than 4 feet high. Fences shall be set back at least 25 feet from the OHWM.

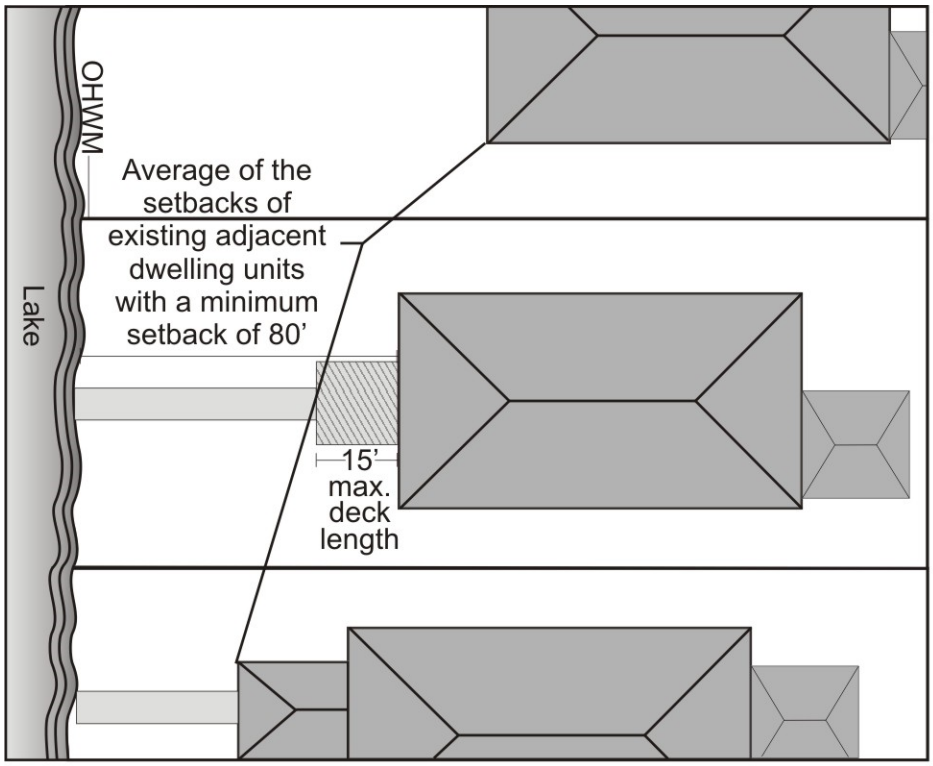

Figure 1. Single-family residential setback requirements.

b. Primary Building Height: Maximum 35 feet.

c. <u>Maximum amount of impervious surface:</u> The maximum amount of impervious surface for each lot, including structures and pavement shall be no greater than 35 percent of the total lot area above OHWM.

   In calculating impervious surface, pavers on a sand bed may be counted as 50 percent impervious and wood decks with gaps between deck boards may be counted as permeable if over bare soil or loose gravel (such as pea gravel). Pervious concrete and asphalt shall be counted as per manufacturer's specifications. To calculate the net impervious surface, multiply the area of the pavement by the percentage of imperviousness.

   The City may determine the percentage of imperviousness for pavements that are not specified here.

d. <u>Vegetation:</u> All new single-family development, excluding modifications and appurtenances to existing residences shall provide (or preserve) native vegetation for an average of 15 feet from the OHWM for the entire length of the shoreline. Native vegetation shall consist of a

mixture of trees, shrubs and groundcover and be designed to improve habitat functions (see Appendix B for an appropriate list of native vegetation). Cleared pathways to the shoreline may be allowed. Property owners must prepare, and agree to adhere to, a shoreline vegetation plan approved by the Shoreline Administrator, as described in Chapter 3 Section B.10.c.5 Vegetation Conservation.

Property owners who provide more native vegetation than the minimum required can apply any additional vegetation over 15 feet to take advantage of the incentives described in subsection c.8 below. For example, if 25 feet of vegetation is provided, 10 feet can be applied to the calculations described in subsection c.8 below.

Regulations for Multi-family Residential Uses and Development on Lakes

7. New multi-family residential development, including new structures, new pavement, and additions, within Shoreline Jurisdiction on lakes shall adhere to the following standards:

   a. Multi-family Setbacks:

      i. Primary Structures: All covered or enclosed structures shall be setback the average of the setbacks of existing houses or multi-family structures on adjacent or nearest lots on both sides of the subject parcel, with a minimum setback of 100 feet from the OHWM. Where the Shoreline Administrator finds that an existing site does not provide sufficient area to locate the residence entirely landward of this setback, the Shoreline Administrator may allow the residence to be located closer to the OHWM, provided all other provisions of this SMP are met and impacts are mitigated.

      ii. Accessory Uses and Accessory Structures:

         (a) Patios and decks: Uncovered patios or decks which are no higher than 2 feet above grade may extend a maximum of 15 feet into the building setback, up to within 85 feet of the OHWM.

         (b) Garages and pavements for motorized vehicles: Garages and pavements for motorized vehicles (driveways and parking areas) shall be set back at least 100 feet from the OHWM, unless the Shoreline Administrator determines that such a configuration is not feasible.

         (c) Auxiliary structures: Auxiliary structures such as storage sheds and gazebos may encroach a maximum of 15 feet into the building

setback, up to within 85 feet of the OHWM. The auxiliary structure(s) partially or completely within setbacks may not be more than 200 square feet in total building footprint or more than 10 feet in height.

(d) Fences: Fences located within the required setback shall be no more than 4 feet high. Fences that run parallel to the shoreline are prohibited. Fences that run perpendicular to the shoreline may extend to the OHWM.

b. Primary Building Height: Maximum 35 feet.

c. Maximum amount of impervious surface: The maximum amount of impervious surface for each lot, including structures and pavement shall be no greater than 40 percent of the total lot area above OHWM.

In calculating impervious surface, pavers on a sand bed may be counted as 50 percent impervious and wood decks with gaps between deck boards may be counted as permeable if over bare soil or loose gravel (such as pea gravel). Pervious concrete and asphalt may be counted as per manufacturer's specifications. To calculate the net impervious surface, multiply the area of the pavement by the percentage of imperviousness.

The City may determine the percentage of imperviousness for pavements that are not specified here.

d. Vegetation: All new multifamily development shall provide (or preserve) native vegetation an average of 30 feet from the OHWM for the entire length of the shoreline. Native vegetation shall consist of a mixture of trees, shrubs and groundcover and be designed to improve habitat functions (see Appendix B for an appropriate list of native vegetation). Property owners must prepare, and agree to adhere to, a shoreline vegetation management plan approved by the Shoreline Administrator, as described in Chapter 3 Section B.10.c.5.

Incentives for Shoreline Vegetation for Single Family Residential Uses and Development on Lakes

8. In order to encourage vegetation along the shoreline, single family residential uses and development can take advantage of the incentives described in a.- d. below:

a. Setback reduction for shoreline vegetation: The residential building setback can be reduced by 5 feet for every 300 square feet of native

shoreline vegetation provided along the shoreline. Property owners must prepare, and agree to adhere to, a shoreline vegetation management plan approved by the Shoreline Administrator, as described in Chapter 3 Section B.10.c.5. The maximum amount of setback reduction is 15 feet.

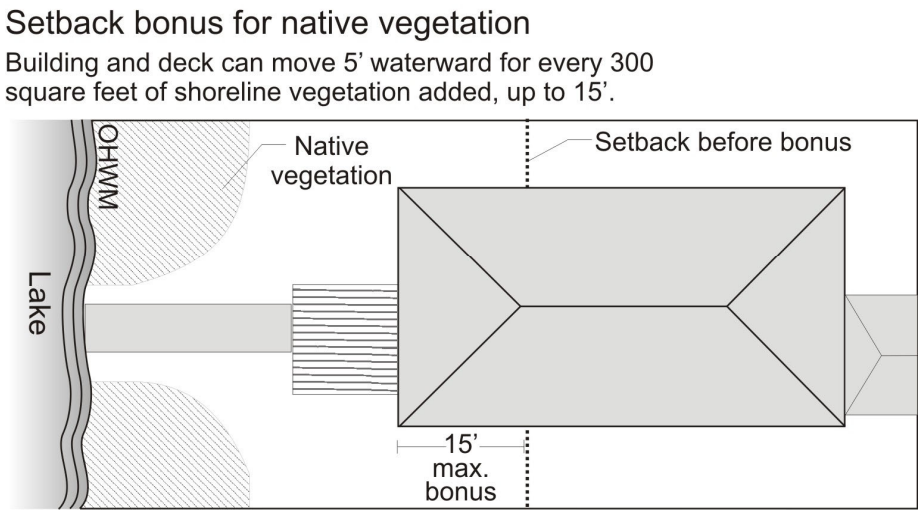

Figure 2. Setback bonus for shoreline vegetation.

b. <u>Increased impervious surface area for shoreline vegetation:</u> The maximum amount of impervious surface area can be increased if native vegetation is included along the shoreline. For every five feet of vegetation depth (measured perpendicular to the shoreline) added along the OHWM, the percentage of total impervious surface area can increase by 2 percent, up to a maximum increase of 10 percent. Property owners must prepare, and agree to adhere to, a shoreline vegetation management plan approved by the Shoreline Administrator, as described in Chapter 3 Section B.10.c.5.

c. <u>Waterfront deck for shoreline stabilization measure (such as a bulkhead) removal and shoreline vegetation:</u> If there is no structural shoreline stabilization or bulkhead, or if a bulkhead is removed, a small waterfront deck or patio can be placed along the shoreline provided:

   i. Waterfront deck or patio covers less than 25 percent of the shoreline frontage (width of lot measured along shoreline) and native vegetation covers a minimum of 75 percent of the shoreline frontage.

   ii. Within 25 feet of the shoreline, for every 1 square foot of waterfront deck or patio, 3 square feet of native vegetated area (not lawn) shall be provided along the shoreline.

iii. The total area of the waterfront deck or patio along the shoreline shall not exceed 400 square feet.

iv. The deck or patio is set back 5 feet from the OHWM.

v. The deck or patio is no more than 2 feet above grade and is not covered.

vi. There are no permanent structures above the level of the deck (except for railings).

vii. Property owners must prepare, and agree to adhere to, a shoreline vegetation management plan approved by the Shoreline Administrator, as described in Chapter 3 Section B.10.c.5.

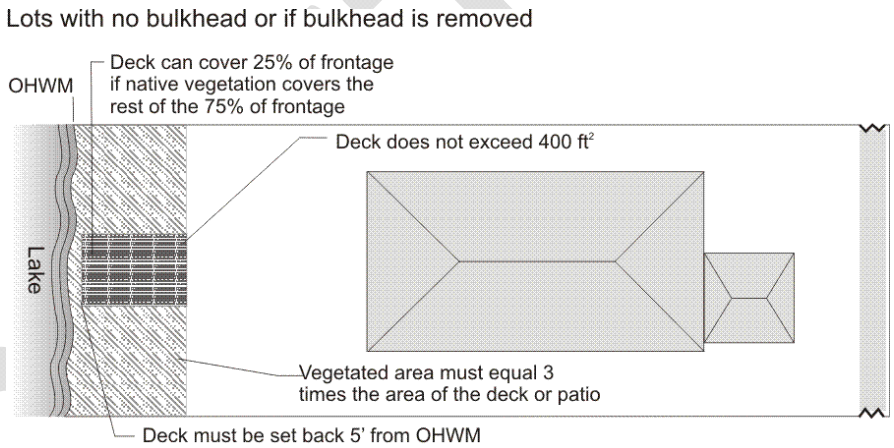

Figure 3. Waterfront deck bonus for lots with no structural stabilization or bulkhead or if bulkhead is removed.

d. Setback reduction for auxiliary structures for structural shoreline stabilization measure (e.g.: bulkhead) removal and native shoreline vegetation: If there is no bulkhead, or if a bulkhead is removed, the required setback for a small auxiliary structure (such as a storage shed or gazebo) can be reduced, provided:

i. The auxiliary structure does not exceed a footprint of 100 square feet and does not exceed a height of 10 feet.

ii. The setback can be reduced by 5 feet for every 100 square feet of native shoreline vegetation provided along the shoreline, up to within 10 feet of the OHWM. Property owners must prepare, and agree to adhere to, a shoreline vegetation management plan approved by the Shoreline Administrator, as described in Chapter 3 Section B.10.c.5.

Regulations for Residential Properties within Shoreline Jurisdiction on Streams or Creeks

9. Table ~~8~~6 below is a summary of regulations for Residential Properties (both single-family and multi-family) within Shoreline Jurisdiction on streams or creeks:

Table ~~8~~6. Shoreline Regulations for Residential Properties on Streams or Creeks

	Regulation:
Standard Minimum Building Setback	180'
Standard Minimum Deck Setback	165'
Maximum Impervious Surface	35%

10. New residential uses and development within Shoreline Jurisdiction on streams and creeks shall adhere to the following standards:

    a. Residential Setbacks on Streams or Creeks:

        i. Primary Buildings: All covered or enclosed structures shall be set back a minimum of 180 feet.

        ii. Accessory Uses, Accessory Structures, and Appurtenances:

        (a) Patios and decks: Uncovered patios or decks that are no higher than 2 feet above grade may extend a maximum of 15 feet into the building setback, up to within 165 feet of the OHWM.

        (b). Garages and pavements for motorized vehicles: Garages and pavements for motorized vehicles (driveways and parking areas) shall be set back at least 180 feet from the OHWM, unless the Shoreline Administrator determines that such a configuration is not feasible.

        (c) Auxiliary structures: Auxiliary structures such as storage sheds and gazebos may encroach a maximum of 15 feet into the building setback, up to within 165 feet of the OHWM. Auxiliary structure(s) partially or completely within setbacks may not be more than 200 square feet in total building footprint or more than 10 feet in height.

        (d) Fences: Fences located within the required setback shall be no more than 4 feet high. Fences that run parallel to the shoreline shall be set back at least 25 feet from the OHWM. Fences that run perpendicular to the shoreline may extend to the OHWM.

    b. Primary Building Height: Maximum 35 feet.

c. Maximum amount of impervious surface: The maximum amount of impervious surface for each lot, including structures and pavement shall be no greater than 35 percent of the total lot area above OHWM.

In calculating impervious surface, pavers on a sand bed may be counted as 50 percent impervious and wood decks with gaps between deck boards may be counted as permeable if over bare soil or loose gravel (such as pea gravel). Pervious concrete and asphalt may be counted as per manufacturer's specifications. To calculate the net impervious surface, multiply the area of the pavement by the percentage of imperviousness.

The City may determine the percentage of imperviousness for pavements that are not specified here.

d. Vegetation: All new single-family development on streams or creeks shall provide (or preserve) native vegetation for an average of 165 feet from the OHWM for the entire length of the shoreline. Native vegetation shall consist of a mixture of trees, shrubs and groundcover and be designed to improve habitat functions (see Appendix B for an appropriate list of native vegetation). Property owners must prepare, and agree to adhere to, a shoreline vegetation plan approved by the Shoreline Administrator, as described in Chapter 3 Section B.10.c.5.

5.C.8. Transportation

5.C.8.a. Applicability

Transportation facilities are those structures and developments that aid in land and water surface movement of people, goods, and services. They include roads and highways, bridges and causeways, bikeways, trails, railroad facilities, airports, heliports, ferries, and other related facilities. Recreational boating facilities are not covered under this section.

The various transport facilities that can impact the shoreline cut across all environmental designations and all specific use categories. The policies and regulations identified in this section pertain to any project, within any environment, that is effecting some change in present transportation facilities.

5.C.8.b. Policies

1. Circulation system planning on shorelands should include systems for pedestrian, bicycle, and public transportation where appropriate. Circulation

planning and projects should support existing and proposed shoreline uses that are consistent with the SMP.

2. Trail and bicycle paths should be encouraged along shorelines and should be constructed in a manner compatible with the natural character, resources, and ecology of the shoreline.
3. When existing transportation corridors are abandoned, they should be reused for water-dependent uses or public access.

5.C.8.c. Regulations

General

1. Development of all new and expanded transportation facilities in Shoreline Jurisdiction shall be consistent with the City's Comprehensive Plan and applicable capital improvement plans.
2. All development of new and expanded transportation facilities shall be conditioned with the requirement to mitigate adverse impacts consistent with Chapter 3 Section B.4 of this SMP. Development of new or expanded transportation facilities that cause adverse impacts shall not be allowed unless the development includes shoreline mitigation/restoration that increases the ecological functions being impacted to the point where:
   a. Short- and long-term risks to the shoreline ecology from the use or development are eliminated.
   b. Long-term opportunities to increase the natural ecological functions and processes are not diminished.

   If physically feasible, the mitigation/restoration shall be in place and functioning prior to project impacts. The mitigation/restoration shall include a monitoring and adaptive management program that describes monitoring and enhancement measures to ensure the viability of the mitigation over time.

Location

3. New nonwater-dependent transportation facilities shall be located outside Shoreline Jurisdiction, if feasible. In determining the feasibility of a non-shoreline location, the Shoreline Administrator will apply the definition of "feasible" in Chapter 6 and weigh the action's relative public costs and benefits, considered in the short- and long-term time frames.

4. New transportation facilities shall be located and designed to prevent or to minimize the need for shoreline protective measures such as riprap or other bank stabilization, fill, bulkheads, groins, jetties, or substantial site grading. Transportation facilities allowed to cross over water bodies and wetlands shall utilize elevated, open pile, or pier structures whenever feasible. All bridges must be built high enough to allow the passage of debris and provide three feet of freeboard above the 100-year flood level. Transportation projects in Shoreline Jurisdiction must provide at least a 20' wide vegetative buffer between the development and the shoreline, or if that is not feasible, then other ecological restoration measure with at least as much benefit in terms of ecological function (with top priority to those functions associated with improving water quality.)
5. Roads and railroads shall be located to minimize the need for routing surface waters into and through culverts. Culverts and similar devices shall be designed with regard to the 100-year storm frequencies and allow continuous fish passage. Culverts shall be located so as to avoid relocation of the stream channel. Where feasible, all new culverts shall be bottomless.
6. Bridge abutments and necessary approach fills shall be located landward of wetlands or the OHWM for water bodies without wetlands; provided, bridge piers may be permitted in a water body or wetland as a conditional use.

<u>Design/Construction/Maintenance</u>

7. All roads and railroads, if permitted parallel to shoreline areas, shall provide buffer areas of compatible, self-sustaining vegetation. Shoreline scenic drives and viewpoints may provide breaks periodically in the vegetative buffer to allow open views of the water.
8. Development of new and expanded transportation facilities shall include provisions for pedestrian, bicycle, and public transportation where appropriate as determined by the Shoreline Administrator. Circulation planning and projects shall support existing and proposed shoreline uses that are consistent with the SMP.
9. Transportation and primary utility facilities shall be required to make joint use of rights-of-way and to consolidate crossings of water bodies if feasible, where adverse impact to the shoreline can be minimized by doing so.
10. Fills for development of transportation facilities are prohibited in water bodies and wetlands; except, such fill may be permitted as a conditional use

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when all structural and upland alternatives have been proven infeasible and the transportation facilities are necessary to support uses consistent with this SMP.

11. Development of new and expanded transportation facilities shall not diminish but may modify public access to the shoreline.
12. Waterway crossings shall be designed to provide minimal disturbance to banks.
13. All transportation facilities shall be designed, constructed, and maintained to contain and control all debris, overburden, runoff, erosion, and sediment generated from the affected areas. Relief culverts and diversion ditches shall not discharge onto erodible soils, fills, or sidecast materials without appropriate BMPs, as determined by the Shoreline Administrator.
14. All shoreline areas disturbed by construction and maintenance of transportation facilities shall be replanted and stabilized with native, drought-tolerant, self-sustaining vegetation by seeding, mulching, or other effective means immediately upon completion of the construction or maintenance activity. Such vegetation shall be maintained by the agency or developer constructing or maintaining the road until established. The vegetation restoration/replanting plans shall be as approved by the Shoreline Administrator.

5.C.9. Utilities

5.C.9.a. Applicability

Utilities are services and facilities that produce, transmit, carry, store, process, or dispose of electric power, gas, water, sewage, communications, oil, and the like. The provisions in this section apply to primary uses and activities, such as solid waste handling and disposal, sewage treatment plants, pipelines and outfalls, public high-tension utility lines on public property or easements, power generating or transfer facilities, and gas distribution lines and storage facilities. See Chapter 3 Section B.9, "Utilities (Accessory)," for on-site accessory use utilities.

Solid waste disposal means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste on any land area or in the water.

Solid waste includes solid and semisolid wastes, including garbage, rubbish, ashes, industrial wastes, wood wastes and sort yard wastes associated with commercial logging activities, swill, demolition and construction wastes, abandoned vehicles and parts of vehicles, household appliances and other discarded commodities. Solid waste does not include sewage, dredge material, agricultural wastes, auto wrecking yards with salvage and reuse activities, or wastes not specifically listed above.

5.C.9.b. Policies

1. New utility facilities should be located so as not to require extensive shoreline protection works.
2. Utility facilities and corridors should be located so as to protect scenic views. Whenever possible, such facilities should be placed underground, or alongside or under bridges.
3. Utility facilities and rights-of-way should be designed to preserve the natural landscape and to minimize conflicts with present and planned land uses.

5.C.9.c. Regulations

1. All utility facilities shall be designed and located to minimize harm to shoreline ecological functions, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses while meeting the needs of future populations in areas planned to accommodate growth. The Shoreline Administrator may require the relocation or redesign of proposed utility development in order to avoid adverse impacts.
2. Utility production and processing facilities, such as power plants or parts of those facilities that are nonwater-oriented shall not be allowed in shoreline areas unless it can be demonstrated that no other feasible option is available. In such cases, adverse impacts shall be avoided.
3. Transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, shall be located to cause minimum harm to the shoreline and shall be located outside of the shoreline area where feasible. Utilities shall be located in existing rights-of-way and utility easements whenever possible.
4. Development of pipelines and cables on shorelines, particularly those running roughly parallel to the shoreline, and development of facilities that may require periodic maintenance or that cause adverse impacts shall not be

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allowed unless no other feasible option exists. When permitted, those facilities shall include adequate provisions to protect against adverse impacts.

5. Restoration of ecological functions shall be a condition of new and expanded nonwater-dependent utility facilities as part of mitigation for adverse impacts.

The Shoreline Administrator will consult the provisions of this SMP and determine the applicability and extent of ecological restoration required. The extent of ecological restoration shall be that which is reasonable given the specific circumstances of utility development.

6. On Hylebos Creek, utility uses and development shall, through coordination with local government agencies, provide for compatible, multiple uses of sites and rights-of-way where feasible. Such uses include shoreline access points, trail systems and other forms of recreation and transportation provided; such uses will not unduly interfere with utility operations, endanger public health and safety or create a significant liability for the owner.
7. New solid waste disposal sites and facilities are prohibited. Existing solid waste disposal and transfer facilities in Shoreline Jurisdiction shall not be expanded.
8. New electricity, communications and fuel lines shall be located underground, except where the presence of bedrock or other obstructions make such placement infeasible or if it is demonstrated that above-ground lines would have a lesser impact. Existing aboveground lines shall be moved underground during normal replacement processes.
9. Transmission and distribution facilities shall cross areas of Shoreline Jurisdiction by the shortest, most direct route feasible, unless such route would cause significant environmental damage.
10. Utility uses and developments shall be located and designated so as to avoid or minimize the use of any structural or artificial shoreline stabilization or flood protection works.
11. Utility production and processing facilities shall be located outside Shoreline Jurisdiction unless no other feasible option exists. Where major facilities must be placed in a shoreline area, the location and design shall be chosen so as not to destroy or obstruct scenic views, and shall avoid adverse impacts.

12. All underwater pipelines transporting liquids intrinsically harmful to aquatic life or potentially injurious to water quality are prohibited, unless no other feasible alternative exists, and then only by approval of a conditional use permit. In those limited instances when permitted by conditional use, automatic shut-off valves shall be provided on both sides of the water body.
13. Filling in Shoreline Jurisdiction for development of utility facility or line purposes is prohibited, except where no other feasible option exists and the proposal would avoid or minimize adverse impacts more completely than other methods. Permitted crossings shall utilize pier or open pile techniques.
14. Power-generating facilities shall require a Shoreline Conditional Use Permit.
15. Clearing of vegetation for the installation or maintenance of utilities shall be kept to a minimum and upon project completion any disturbed areas shall be restored to their pre-project condition.
16. Telecommunication towers, such as radio and cell phone towers, are specifically prohibited in Shoreline Jurisdiction.
17. Utilities that need water crossings shall be placed deep enough to avoid the need for bank stabilization and stream bed filling both during construction and in the future due to flooding and bank erosion that may occur over time. Boring, rather than open trenching, is the preferred method of utility water crossing.
18. Publicly owned and operated aerators are allowed in the aquatic environment for water quality purposes.

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6 Definitions

Accessory use. Any structure or use that is incidental and subordinate to a primary use or development.

Accessory dwelling unit. A dwelling unit that has been added onto, or created within, a single-family house where the owner occupies the principal dwelling. Such dwelling unit shall contain not more than one bedroom, and its floor area shall not exceed 60 percent of the floor area of the principal dwelling.

Adjacent lands. Lands adjacent to the shorelines of the state (outside of Shoreline Jurisdiction).

Administrator. See Shoreline Administrator.

Anadromous. Fish species, such as salmon, which are born in fresh water, spend a large part of their lives in the sea, and return to freshwater rivers and streams to spawn.

Appurtenance. A structure or development which is necessarily connected to the use and enjoyment of a single-family residence. On a state-wide basis, normal appurtenances include a garage, deck, driveway, utilities, fences and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. (WAC 173-27-040(2)(g))

Aquatic. Pertaining to those areas waterward of the ordinary high water mark.

Aquaculture. The cultivation of fish, shellfish, and other aquatic animals or plants, including the incidental preparation of these products for human use.

Archaeological. Having to do with the scientific study of material remains of past human life and activities.

Associated wetlands. Wetlands that are in proximity to and either influence, or are influenced by tidal waters, a lake, stream, or the 100-year floodplain subject to the Shoreline Management Act. (WAC 173-22-030(1)).

Auxiliary structure. An accessory use structure that is incidental and subordinate to a primary use or development, such as gazebos and storage sheds.

Average grade level. See “base elevation.”

Base elevation. The average elevation of the ground measured at the four corners of the smallest rectangle that fits around the footprint of the building, prior to any development activity taking place.

Beach. The zone of unconsolidated material that is moved by waves and wind currents, extending landward to the shoreline.

Beach enhancement/restoration. Process of restoring a beach to a state more closely resembling a natural beach, using beach feeding, vegetation, drift sills and other nonintrusive means as applicable.

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Berm. A linear mound or series of mounds of sand and/or gravel generally paralleling the water at or landward of the ordinary high water mark. Also, a linear mound used to screen an adjacent activity, such as a parking lot, from transmitting excess noise and glare.

Bioengineering. The use of biological elements, such as the planting of vegetation, often in conjunction with engineered systems, to provide a structural shoreline stabilization measure with minimal negative impact to the shoreline ecology.

Biofiltration system. A stormwater or other drainage treatment system that utilizes as a primary feature the ability of plant life to screen out and metabolize sediment and pollutants. Typically, biofiltration systems are designed to include grassy swales, retention ponds and other vegetative features.

Buffer or buffer area. Areas that are contiguous to and protect a critical area and are required for continued maintenance, functioning, and/or structural stability of a critical area.

Building height. the vertical distance from the smallest rectangle that fits around the footprint of the building, measured from the average existing elevation of that rectangle to (A) the midpoint elevation of the highest ridgeline of a sloped roof and the highest eave of the roof pitch that is attached to the highest ridge, (B) the highest point of a flat roof, or (C) the highest point on a deck of a mansard roof. Average existing elevation is the average of the ground elevation measured at the four corners of the rectangle, prior to any development activity taking place.

On sloping lots, residential single-family, duplex, multifamily developments or commercial or industrial developments where the ground floor elevation (A) is stepped or segmented, and (B) the building roof also reflects the change, each building segment may be computed for height independently.

Church steeples, chimneys, elevator penthouses, vents and similar enclosures or screening for rooftop mounted equipment, or parapets or pitched parapets designed for screening of equipment shall not be considered for the purpose of determining building or structure height.

Building setback. The required minimal distance a structure can be built from the ordinary high water mark. The setback, as specified in this Shoreline Master Program, is measured on a horizontal plain perpendicular to the OHWM**.**

Bulkhead. A solid wall erected generally parallel to and near the ordinary high water mark for the purpose of protecting primary structures from waves or current action.

Buoy. An anchored float for the purpose of mooring vessels.

Channel. An open conduit for water, either naturally or artificially created; does not include artificially created irrigation, return flow, or stockwatering channels.

Channel bar. A landform in a stream that forms when water flow is low. Water flows in locations of lowest elevation and, over time, the channel bar becomes a higher elevation than the surrounding areas.

*Channel Migration Zone (CMZ)***.** The area along a river or stream within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring

hydrological and related processes when considered with the characteristics of the river or stream and its surroundings.

City. The City of Milton, Washington.

Clearing. The destruction or removal of vegetation, root material, or topsoil.

*Compensatory mitigation***.** See City of Milton's critical areas regulations, Chapter 18.16 MMC.

Comprehensive Plan. (The City of Milton Comprehensive Plan, adopted 2003). The document, including maps, prepared under the Growth Management Act and adopted by the City Council, that outlines the City's goals and policies related to management of growth, and prepared in accordance with Chapter 36.70A RCW. The term also includes adopted subarea plans prepared in accordance with Chapter 36.70A RCW.

Conditional use. Conditional use means a use, development, or substantial development which is classified as a conditional use or is not classified within the applicable master program

Covered moorage. Boat moorage, with or without walls, that has a roof to protect the vessel.

Critical Areas Regulations. Refers to the City of Milton's Critical Areas Regulations, Chapter 18.16 MMC, adopted herein by section 3.B.3.c and attached as appendix C.

Current deflector. An angled stub-dike, groin, or sheet-pile structure which projects into a stream channel to divert flood currents from specific areas, or to control downstream current alignment.

Date of Filing: Any shoreline permit whether it is an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be filed with the department and the attorney general. This shall be accomplished by return receipt requested mail. A petition for review of such a decision must be commenced within twenty-one days from the date of filing of the decision.

(a)With regard to Shoreline Substantial Development Permits, "date of filing" as refers to the date of actual receipt by the department of the local government's decision.

(b)With regard to a shoreline variance permit or a shoreline conditional use permit, "date of filing" means the date the decision of the department is transmitted by the department to the local government, whether it be an approval, denial, or approval with conditions.

When a local government simultaneously transmits to the department its decision on a shoreline substantial development with its approval of either a shoreline conditional use permit or variance, or both, "date of filing" has the same meaning as defined in (b) above.

The department shall notify in writing the local government and the applicant of the date of filing by telephone or electronic means, followed by written communication as necessary, to ensure that the applicant has received the full written decision.

Department of Ecology. The Washington State Department of Ecology.

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

Development regulations. The controls in the Milton Municipal Code placed on development or land use by the City of Milton including, but not limited to, zoning ordinances, critical area regulations, and all portions of the shoreline master program (other than goals and policies approved or adopted under Chapter 90.58 RCW), together with any amendments thereto.

Dock. The general term for an overwater structure which abuts the shoreline and is used as a landing or moorage place for watercraft. Docks consist of piers, which are pile supported, and/or floats, which float on the water. Docks may be configured to include ells and fingers (see definitions).

Dredging. The excavation or displacement of sediment or materials from below the ordinary high water mark of a shoreline waterbody, or within a wetland.

Duplex. A building which encloses 2 separate dwelling units.

Ecological functions (or shoreline functions). The work performed or 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.

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.

EIS. "EIS" means environmental impact statement. The term "detailed statement" in RCW 43.21C.030 (2)(c) refers to a final EIS. The term "EIS" as used in these rules refers to draft, final, or supplemental EISs (WAC 197-11-405).

Ells. Ells are extensions of docks, often in an 'L' shape, that provide additional watercraft moorage.

Emergency. An unanticipated and imminent threat to public health, safety, or the environment which requires 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 and facilities from the elements. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the Shoreline Administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to Chapter 90.58 RCW or this SMP, shall be obtained. All emergency construction shall be consistent with the policies of Chapter 90.58 RCW and this SMP. As a general matter, flooding

or seasonal events that can be anticipated and may occur but that are not imminent are not an emergency. (RCW 90.58.030(3)(e)iii).)

Enhancement. Alteration of an existing resource to improve or increase its characteristics, functions, or processes without degrading other existing ecological functions.

Environment designation(s). See "shoreline environment designation(s)."

Erosion. The wearing away of land by the action of natural forces.

Exemption. Certain specific developments listed in WAC 173-27-040 are exempt from the definition of substantial developments and are therefore exempt from the Shoreline Substantial Development Permit process of the SMA. An 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 local SMP. Shoreline Conditional Use and Shoreline Variance Permits may also still be required even though the activity does not need a Shoreline Substantial Development Permit. (RCW 90.58.030(3)(e); WAC 173-27-040.) (See also "development" and "substantial development.")

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 any donated, contributed, or found labor, equipment, or materials.

Feasible. An action, such as a development project, mitigation, or preservation requirement, is feasible when it meets all of the following conditions:

(a) The action can be accomplished with technologies and methods that have been used in the past, or studies or tests have demonstrated 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.

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

In cases where these regulations 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. The addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the ordinary high water mark, in wetlands, or on shorelands in a manner that raises base elevation or creates dry land.

Fingers. Fingers are extensions of docks that provide additional watercraft moorage.

Floats. A floating platform either detached from the shore and anchored or buoyed to the benthos, or connected to the shore as the waterward most element of a dock structure.

Floodplain. A term that is synonymous with the one hundred-year floodplain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the SMA.

Floodway. Those portions of the area of a stream valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative groundcover condition. The floodway shall not include those 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.

Freeway Sign. A pole or monument sign that is allowed by code for those properties that are located along the Interstate 5 (I-5) right-of-way as defined in this chapter. "Freeway signs" are specifically oriented to the traffic on the interstate rather than other state or local roadways.

Gabions. Structures composed of masses of rocks, rubble or masonry held tightly together usually by wire mesh so as to form blocks or walls. Sometimes used on heavy erosion areas to retard wave action or as foundations for breakwaters or jetties.

Geologically hazardous areas. Lands or areas characterized by geologic, hydrologic, and topographic conditions that render them susceptible to varying degrees of potential risk of landslides, erosion, or seismic or volcanic activity; and areas characterized by geologic and hydrologic conditions that make them vulnerable to contamination of groundwater supplies through infiltration of contaminants to aquifers.

Geotechnical report (or geotechnical analysis). A scientific study or evaluation conducted by a qualified expert 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 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 engineers or geologists who are knowledgeable about the regional and local shoreline geology and processes. If the project is in a Channel Migration Zone, then the report must be prepared by a professional with specialized experience in fluvial geomorphology in addition to a professional engineer.

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.

Grassy swale. A vegetated drainage channel that is designed to remove various pollutants from stormwater runoff through biofiltration.

Guidelines. Those standards adopted by the Department of Ecology in the Washington Administrative Code (WAC) to implement the policy of Chapter 90.58 RCW for regulation of use of the shorelines of the state prior to adoption of shoreline master programs. Such standards also provide criteria for local governments and the Department of Ecology in developing and amending shoreline master programs. The Guidelines may be found under WAC 173-18, 173-20, 173-22, 173-26, and 173-27.

Habitat. The place or type of site where a plant or animal naturally or normally lives and grows.

Hydrological. Referring to the science related to the waters of the earth including surface and groundwater movement, evaporation and precipitation. Hydrological functions in shoreline include, water movement, storage, flow variability, channel movement and reconfiguration, recruitment and transport of sediment and large wood, and nutrient and pollutant transport, removal and deposition.

Impervious Surface. Impervious surface means hard-surfaced areas that prevent or retard the entry of water into the soil mantle and/or cause water to run off the surface in greater quantities or at an increased rate of flow than under natural conditions. Common impervious surfaces include, but are not limited to, rooftops, concrete or asphalt roads, sidewalks and paving, walkways, patio areas, driveways, parking lots or storage areas and gravel, hard-packed dirt, oiled or other surfaces that similarly impede the natural infiltration of surface water or runoff patterns existent prior to development.

Letter of exemption. A written letter or other official certificate issued by the City to indicate that a proposed development is exempted from the requirement to obtain a shoreline permit as provided in WAC 173-27-050. Letters of exemption may include conditions or other provisions placed on the proposal in order to ensure consistency with the Shoreline Management Act and this SMP.

Littoral. Living on, or occurring on, the shore.

Littoral drift. The mud, sand, or gravel material moved parallel to the shoreline in the nearshore zone by waves and currents.

Low Impact Development (LID) technique. A stormwater management and land development strategy applied at the parcel and subdivision scale that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic pre-development hydrologic functions. Additional information may be found in the City of Milton storm water regulations, Chapter 13.26 MMC, in addition to the 2005 State Department of Ecology Storm Water Management Manual for Western Washington, as amended by Sections 1 through 6 of Appendix 1 of the NPDES Phase II Municipal Stormwater Permit, as now or hereafter amended, as amended.

MMC. Milton Municipal Code, Dated August 21. 2001

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May. Refers to actions that are acceptable, provided they conform to the provisions of this SMP and the SMA.

Mitigation sequencing. The process of avoiding, reducing, or compensating for the environmental impact(s) of a proposal, including the following, which are listed in the order of sequence priority, with (a) being top priority.

(a) Avoiding the impact altogether 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.

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

Monument sign. A ground-mounted, fixed sign with a height ranging from five to 12 feet above the average ground elevation. The base (not included in the sign surface area calculation) is attached to the ground as a wide base of solid construction. In no instance shall the bottom of the sign be more than six inches above the base.

Moorage facility. Any device or structure used to secure a boat or a vessel, including piers, docks, piles, lift stations or buoys.

Moorage pile. A permanent mooring generally located in open waters in which the vessel is tied up to a vertical column to prevent it from swinging with change of wind.

Multi-family dwelling (or residence). A building designed exclusively for occupancy by three or more families living separately from each other and containing three or more dwelling units. (MMC 17.08.260 dated March 24th, 1999

Must. A mandate; the action is required.

Native plants or native vegetation. Plant species indigenous to the Puget Sound region. A list of recommended plants can be found in Appendix B.

Nonconforming use or development. M<u>eans a shoreline use or development which was lawfully constructed or established prior to the effective date of the act or the applicable master program, or amendments thereto, but which does not conform to present regulations or standards of the program.</u>

Nonpoint pollution. Pollution that enters any waters of the state from any dispersed land-based or water-based activities, including, but not limited to, atmospheric deposition, surface water runoff from agricultural lands, urban areas, or forest lands, subsurface or underground

sources, or discharges from boats or marine vessels not otherwise regulated under the National Pollutant Discharge Elimination System program.

Nonwater-oriented uses. Those uses that are not water-dependent, water-related, or water-enjoyment.

Normal maintenance. Those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. See also "normal repair."

Normal protective bulkhead. Those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion.

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 causes substantial adverse effects to shoreline resource or environment. (WAC 173-27-040) See also "normal maintenance" and "development."

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.

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 the Department of Ecology. (RCW 90.58.030(2)(b))

Over-water structure. Structures that extend over the water that are used for moorage, boat-related, and other direct water-dependent uses or development, including docks, piers, boat launches, and swimming/diving platforms, inflatable recreational equipment, as well as public access boardwalks, fishing piers, and viewpoints.

Periodic. Occurring at regular intervals.

Person. An individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated. (RCW 90.58.030(1)(d))

Pier. An over-water structure, generally used to moor vessels or for public access, that is supported by piles and sits above the OHWM. A pier may be all or a portion of a dock.

Pole sign. Any sign, electric or otherwise, hung, supported or cantilevered from one or more supports constructed of structural steel, pipe, other materials or combinations of same.

Provisions. Policies, regulations, standards, guideline criteria or designations.

Public Access. Public access is the ability of the general 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. (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.

RCW. Revised Code of Washington, as amended.

Residential development. Development which is primarily devoted to, or designed for use as, a dwelling(s).

Restore. To significantly re-establish or upgrade shoreline ecological functions through measures such as revegetation, removal of intrusive shoreline structures, and removal or treatment of toxic sediments. To restore does not mean returning the shoreline area to aboriginal or pre-European settlement condition.

Revetment. Facing of stone, concrete, etc., built to protect a scarp, embankment, or shore structure against erosion by waves or currents.

Riparian. Of, on, or pertaining to the banks of a river, stream, or creek.

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.

River. A naturally occurring body of periodic or continuously flowing water where: a) the mean annual flow is greater than twenty cubic feet per second and b) the water is contained within a channel. See also "channel." Small rivers may also be called stream, creek, brook, rivulet, tributary, or rill.

Riverbank. The upland areas immediately adjacent to the floodway, which confine and conduct flowing water during non-flooding events. The riverbank, together with the floodway, represents the river channel capacity at any given point along the river.

Runoff. Water that is not absorbed into the soil but rather flows along the surface of the ground following the topography.

Sediment. The fine grained material deposited by water or wind.

SEPA (State Environmental Policy Act). SEPA requires state agencies, local governments and other lead agencies to consider environmental factors when making most types of permit decisions, especially for development proposals of a significant scale. As part of the SEPA process an EIS may be required to be prepared and public comments solicited.

Setback. See building setback.

Shall. A mandate; the action must be done.

Shorelands. Those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands associated with the streams and lakes which are subject to the provisions of this chapter; the same to be designated as to location by the Department of Ecology.

Shoreline Administrator. City of Milton Planning Director or his/her designee charged with the responsibility of administering the Shoreline Master Program.

Shoreline areas (and Shoreline Jurisdiction). The same as "shorelines of the state" and "shorelands" as defined in RCW 90.58.030.

Shoreline environment designation(s). The categories of shorelines established to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas. Shoreline environment designations include: Aquatic (A), Urban Conservancy (UC), and Residential (R).

Shoreline functions. See "ecological functions."

Shoreline Jurisdiction. The term describing all of the geographic areas covered by the SMA, related rules and this SMP. See definitions of shorelines, shorelines of the state, shorelines of state-wide significance and wetlands.

Shoreline Management Act (SMA). The Shoreline Management Act of 1971, Chapter 90.58 RCW, as amended.

Shoreline Master Program, *Master Program*, or *SMP.* This Shoreline Master Program as adopted by the City of Milton and approved by the Washington Department of Ecology. The SMP is a comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020.

Shoreline modifications. 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, dock, weir, dredged basin, fill, bulkhead, or other shoreline structures. They can include other actions, such as clearing, grading, or application of chemicals.

Shoreline permit. A written permit that includes Shoreline Substantial Development, Shoreline Conditional Use, Shoreline Revision, or Shoreline Variance Permit or any combination thereof.

Shoreline property. An individual property wholly or partially within Shoreline Jurisdiction.

Shoreline restoration or *ecological restoration*. The re-establishment 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. Shoreline restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

Shorelines. All of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; **except** (i) shorelines of state-wide significance; (ii) shorelines on areas of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream areas; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes.

Shorelines of the state. The total of all shorelines and shorelines of state-wide significance within the state.

Shorelines Hearings Board (SHB). A six member quasi-judicial body, created by the SMA, which hears appeals by any aggrieved party on the issuance of a shoreline permit, enforcement penalty and appeals by local government or Department of Ecology approval of shoreline master programs, rules, regulations, guidelines or designations under the SMA.

Shorelines of state-wide significance. A select category of shorelines of the state, defined in RCW 90.58.030(2)(e), where special policies apply.

Should. The particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this SMP, against taking the action.

Sign. Any object, device, display, structure or part thereof that is used to advertise, identify, direct, or attract attention to a product, business, activity, place, person, institution, or event using words, letters, figures, designs, symbols, fixtures, colors, illumination, or projected images. Directional and incidental signs are considered signs for the purpose of this chapter. Excluded from this definition are signs required by law and the flags of national and state governments.

Significant, adverse environmental impact. (1) "Significant" as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental quality. (2) Significance involves context and intensity (WAC 197-11-330) and does not lend itself to a formula or quantifiable test. The context may vary with the physical setting. Intensity depends on the magnitude and duration of an impact. The severity of an impact should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred. (3) WAC 197-11-330 specifies a process, including criteria and procedures, for determining whether a proposal is likely to have a significant adverse environmental impact. (As defined in WAC 197-11-794)

Significant vegetation removal. The removal or alteration of native trees, shrubs, or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes adverse impacts to functions provided by such vegetation. The removal of invasive, non-native, 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.

Single-family dwelling or residence. A detached building designed exclusively for occupancy by one family and containing one dwelling unit, including those structures and developments within a contiguous ownership which are a normal appurtenance. A duplex is considered a single family for the purposes of development regulation in this SMP.

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

SMP. See Shoreline Master Program.

Stormwater. That portion of precipitation that does not normally percolate into the ground or evaporate but flows via overland flow, interflow, channels, or pipes into a defined surface water channel or constructed infiltration facility.

Stream. A naturally occurring body of periodic or continuously flowing water where: a) the mean annual flow is greater than twenty cubic feet per second and b) the water is contained within a channel. See also "channel."

Stream bank. The upland areas immediately adjacent to the floodway, which confine and conduct flowing water during non-flooding events. The stream bank, together with the floodway, represents the stream channel capacity at any given point along the stream.

Structure. A permanent or temporary edifice or building, or any 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.

Subdivision. The division or redivision of land, including short subdivision for the purpose of sale, lease or conveyance.

Substantial development. Any development of which the total cost or fair market value exceeds ~~five thousand~~seven thousand forty-seven dollars (~~$5,000~~$7,047), 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 subsection (3)(e) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any 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. Under the Shoreline Management Act, some development is not considered "substantial development" These categories are listed in Section 7.A.1.b of this SMP.

Substantially degrade. Substantially degrade means to cause damage or harm to an area's ecological functions. An action is considered to substantially degrade the environment if:

(a) The damaged ecological function or functions significantly affect other related functions or the viability of the larger ecosystem; or

(b) The degrading action may cause damage or harm to shoreline ecological functions under foreseeable conditions; or

(c) Scientific evidence indicates the action may contribute to damage or harm to ecological functions as part of cumulative impacts.

Terrestrial. Of or relating to land as distinct from air or water.

Transportation facilities. A structure or development(s), which aids in the movement of people, goods or cargo by land, water, air or rail. They include but are not limited to highways, bridges, causeways, bikeways, trails, railroad facilities, ferry terminals, float plane – airport or heliport terminals, and other related facilities.

Upland. Generally described as the dry land area above and landward of the ordinary high water mark.

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Utility. Service and 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 a water, sewer or gas line to a residence, are "accessory utilities".

Utilities (Accessory). Accessory utilities are on-site utility features serving a primary use, such as a water, sewer or gas line connecting to a residence. Accessory utilities do not carry significant capacity to serve other users.

Variance. A means to grant relief from the specific bulk, dimensional, or performance standards set forth in this SMP and not a means to vary a use of a shoreline. Shoreline Variances must be specifically approved, approved with conditions, or denied by the City's Hearing Examiner and the Department of Ecology.

Vessel. Ships, boats, barges, or any other floating craft which are designed and used for navigation and do not interfere with normal public use of the water.

Visual access. Access that provides a view of the shoreline or water, but does not allow physical access to the shoreline.

WAC. Washington Administrative Code, as amended.

Water-dependent use. A use or a portion of a use which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. Examples of water-dependent uses may include fishing, boat launching, swimming, and stormwater discharges.

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 general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment. Primary water-enjoyment uses may include, but are not limited to:

- Parks with activities enhanced by proximity to the water.
- Docks, trails, and other improvements that facilitate public access to shorelines of the state.
- Restaurants with water views and public access improvements.
- Museums with an orientation to shoreline topics.
- Scientific/ecological reserves.
- Resorts with uses open to the public and public access to the shoreline; and
- Any combination of those uses listed above.

Water-oriented use. A use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

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 this SMP, the term "water quantity" refers only to development and uses regulated under SMA and affecting water quantity, such as impervious surfaces and stormwater handling practices. Water quantity, for purposes of this SMP, does not mean the withdrawal of groundwater or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

Water quantity. See “water quality”.

Water-related use. A use or 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) The use has 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 uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

Weir: A structure generally built perpendicular to the shoreline for the purpose of diverting water or trapping sediment or other moving objects transported by water.

Wetland or wetlands. Defined in ~~the City of Milton’s critical areas regulations, Chapter 18.16 MMC (Ordinance 1671)~~Appendix C.

Wetland category. Defined in ~~the City of Milton’s critical areas regulations, Chapter 18.16 MMC (Ordinance 1671)~~Appendix C.

Wetland delineation. Identification of a wetland boundary pursuant to approved federal wetlands delineation manual and applicable regional supplement~~the Washington State Wetland Identification and Delineation Manual (1997, as amended)~~.

Wetlands Rating System. Wetlands shall be rated according to the Washington State Wetland Rating System for Western Washington – 2014 update (Department of Ecology Publication No. 14-06-029, October 2014 – Effective January 2015, or as revised)~~(Washington Department of Ecology 2004, as revised)~~.

Zoning. The system of land use and development regulations and related provisions of the Milton City Code, codified under Title 17 MMC.

In addition, the definitions and concepts set forth in RCW 90.58.030, and WAC 173-26-020, as amended, and implementing rules shall also apply as used herein. The definitions of RCW 90.58.030 and WAC 173,0-26-020, as amended, shall supersede any conflicting definitions in this SMP

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7 Administrative Provisions

7.A STATEMENT OF APPLICABILITY

The provisions of the Shoreline Management Act are intended to provide for the management of all development and uses within its jurisdiction, whether or not a shoreline permit is required. Many activities that may not require a Shoreline Substantial Development Permit, such as clearing vegetation or construction of a residential bulkhead, can, individually or cumulatively, adversely impact adjacent properties and natural resources, including those held in public trust. Local governments have the authority and responsibility to enforce master program regulations on all uses and development in the shoreline area.

Except and to the extent specifically excluded by statute and WAC 173-27-045, all proposed uses and development occurring within Shoreline Jurisdiction must conform to Chapter 90.58 RCW, the Shoreline Management Act, and this master program.

7.A.1 Development excluded from a Shoreline Substantial Development Permit.

a. Application and interpretation of exemptions.
    1. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the Shoreline Substantial Development Permit process.
    2. An exemption from the Shoreline Substantial Development Permit process is not an exemption from compliance with the Shoreline Management Act or The City of Milton Shoreline Master Program, nor from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of the applicable master program and the Shoreline Management Act. A development or use that is listed as a conditional use pursuant to the local master program or is an unlisted use, must obtain a Shoreline Conditional Use Permit even though the development or use does not require a Shoreline Substantial Development Permit. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the master program, such development or use can only be authorized by approval of a Shoreline Variance.
    3. The burden of proof that a development or use is exempt from the permit process is on the applicant.

4. 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.
5. Local government may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the act and this SMP.

b. The following shall not be considered substantial developments for the purpose of this Master Program;

1. Any development of which the total cost or fair market value, whichever is higher, ~~Does~~ does not exceed ~~five thousand~~seven thousand forty-seven dollars, if such development ~~Does~~ does not materially interfere with the normal public use of the water or shorelines of the state. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(d). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.
2. Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or other natural occurring events. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair causes substantial adverse effects to the shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;
3. Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or

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reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the department of fish and wildlife;

4. Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with the Act or this Master Program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;
5. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. However, a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the area by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities;
6. Construction or expansion by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his family, which residence Does not have a building height that exceeds of thirty five (35) feet and meets all requirements of the state agency with jurisdiction and the City of Milton;
7. Construction of a dock, including community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of a single family residence or multi-family residences. The fair market value of the dock shall not exceed twenty thousand dollars for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced or ten thousand

($10,000) dollars for all other docks~~,~~. However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified in this subsection, ~~but any subsequent construction having a fair market value exceeding two thousand five hundred ($2,500) dollars occurs within five years of completing of the prior construction~~, a Substantial Development Permit is required;

8. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water for the irrigation of lands;
9. The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with the normal public use of the surface waters;
10. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on June 4, 1975, which were created, developed or utilized primarily as part of an agricultural drainage or diking system;
11. Any project with certification from the Governor pursuant to Chapter 80.50 RCW;
12. Watershed restoration projects as defined in WAC 173-27-040. Local government shall review the projects for consistency with the Shoreline Master Program in an expeditious manner and shall issue its decision along with any conditions within forty-five (45) days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration;
13. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:
    a. The activity ~~Does~~ does not interfere with the normal public use of the surface waters;
    b. The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

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c. The activity Does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

d. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions.

14. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department of ecology jointly with other state agencies under chapter 43.21C RCW.

15. Watershed restoration projects as defined herein. Pursuant to RCW 77.55.181, as amended, local government shall review the projects for consistency with the shoreline master program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section.

    a. "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:

        i. A project that involves less than ten miles of stream reach, in which less than twenty-five cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;

        ii. A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

    b. A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery

resource available for use by all of the citizens of the state, provided that any structure, other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than two hundred square feet in floor area and is located above the ordinary high water mark of the stream.

i. "Watershed restoration plan" means a plan, developed or sponsored by the department of fish and wildlife, the department of ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to 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 pursuant to chapter 43.21C RCW, the State Environmental Policy Act;

16. A public or private project, the primary purpose of which is to improve fish or wildlife habitat or fish passage, when all of the following apply:
    a. The project has been approved in writing by the department of fish and wildlife as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose;
    b. The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 75.20 RCW; and
    c. The local government has determined that the project is consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

17. The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.

c. The following shall not be considered substantial developments for the purpose of this Master Program and shall not require a shoreline letter of exemption; however they shall be consistent with the provisions of this Shoreline Master Program:

1. Remedial actions, pursuant to RCW 90.58.355. Persons conducting remedial actions 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.

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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. The department must ensure compliance with the substantive requirements of this chapter through the review of engineering reports, site plans, and other documents related to the installation of boatyard storm water treatment facilities.

3. WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, department of transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review conducted by a local government to implement the Shoreline Management Act, chapter 90.58 RCW.

d. The following are exempt from the provisions within this Shoreline Master Program and shall not require a letter of exemption or local review:

1. Pursuant to RCW 90.58.045, an environmental excellence program agreement entered into under chapter 43.21K RCW, shall supersede and replace any legal requirement under this Shoreline Master Program.

7.B. SHORELINE CONDITIONAL USE PERMITS

7.B.1. Shoreline Conditional Use Permit Criteria

The purpose of a Shoreline Conditional Use Permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of the SMA. In authorizing a conditional use, special conditions may be attached to the permit by local government, or the hearing examiner to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program. The criteria for granting Shoreline Conditional Use Permits is defined in WAC 173-26-160 and reads as follows:

a. The uses which are classified or set forth in the master program as conditional uses may be authorized, provided the applicant can demonstrate all of the following:

1. That the proposed use will be consistent with the policies of the SMA and the policies of the master program.

2. That the proposed use will not interfere with the normal public use of public shorelines.

3. That the proposed use of this site and design of the project will be compatible with other permitted uses within the area, and for uses planned for the area under the comprehensive plan and the SMP.
4. That the proposed use will not cause adverse impacts to the shoreline environment in which it is to be located.
5. That the public interest suffers no substantial detrimental effect.

b. Other uses which are not classified or set forth in the master program may be authorized as conditional uses provided that the applicant can demonstrate, in addition to the criteria set forth in subsection (a) of this section, that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of the master program.

c. Uses which are specifically prohibited by this SMP may not be authorized pursuant to either subsection (a) or (b)

d. In the granting of all Shoreline Conditional Use Permits, consideration shall be given to the cumulative impact of additional requests or like actions in the area.

7.B.2. Conditional Shoreline Use Permits

The Hearing Examiner shall have the authority to hear, make findings, conclusions, and to grant, in appropriate cases and subject to appropriate conditions and safeguards, conditional shoreline development permits as authorized by Chapter 18.12 of the Milton Municipal Code (MMC), as consistent with the SMA (RCW 90.58.100(5)) and WAC 173-27-160. The application for a conditional shoreline development permit shall be made on forms prescribed by the Planning Department and shall be processed pursuant to the MMC. Review will be for purposes of determining consistency with:

- The legislative policies stated in the Shoreline Management Act, RCW 90.58.020 (SMA).
- The City of Milton Shoreline Master Program

Notice of public hearings shall be published in the same manner as provided in the Milton Municipal Code for a process type IV permit.

7.B.3. Imposition of Conditions

To ensure compliance with the criteria stated in the Milton Municipal Code, the Hearing Examiner shall have the authority to require and approve, a specific plan for a proposed use, to impose performance standards that make the use compatible with other permitted uses within the area, and to increase the requirements set forth in this SMP which are applicable to the proposed use. In no case shall the hearing examiner have the authority to decrease the requirements of this SMP when

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considering an application for a conditional shoreline development permit; any such decrease shall only be granted upon the issuance of a Shoreline Variance.

All final decisions for shoreline conditional use permits shall be filed with the Department of Ecology as defined under date of filing of this SMP. Ecology has the final authority to approve, conditionally approve, or deny such decisions.

7.B.4. Compliance with Conditions

In the event of failure to comply with the plans approved by the City or with any conditions imposed upon the conditional shoreline development permit, the permit shall immediately become void and any continuation of the use activity shall be construed as being in violation of Chapter 18.12 MMC and subject to the enforcement provisions of Section 18.12.

7.C. SHORELINE VARIANCE

7.C.1. Shoreline Variance Criteria

The purpose of a Shoreline Variance is strictly limited to granting relief to specific bulk, dimensional, or performance standards set forth in the master program where there are extraordinary or unique circumstances relating to the properties such that the strict implementation of the master program would impose unnecessary hardships on the applicant or thwart the policies set forth in the SMA. The criteria for granting a Shoreline Variance shall be consistent with WAC 173-27-170 and include the following:

a. Shoreline Variances should be granted in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in the SMA. In all instances, extraordinary circumstances should be shown, and the public interest shall suffer no substantial detrimental effect.

b. Shoreline Variances for development that will be located landward of the ordinary high-water mark may be authorized provided the applicant can demonstrate all of the following:

    1. That the strict application of the bulk, dimensional, or performance standards as set forth in the master program precludes or significantly interferes with a reasonable permitted use of the property.

    2. That the hardship is specifically related to the property and is the result of unique conditions, such as irregular lot shape, size, or natural features, in the application of the master program and not, for example, from deed restrictions or the applicant's own actions.

3. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation.
4. That the Shoreline Variance authorized Does not constitute a grant of special privilege not enjoyed by other properties in the area, and will be the minimum necessary to afford relief.
5. That the public interest will suffer no substantial detrimental effect.

c. Shoreline Variances for development that will be located waterward of the ordinary high-water mark may be authorized provided the applicant can demonstrate all of the criteria specified in Subsection (b) of this section. The applicant must also demonstrate that the public rights of navigation and use of the shorelines will not be adversely affected by the granting of the Shoreline Variance, and that the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property.

d. In granting of all Shoreline Variances, consideration shall be given to the cumulative impact of additional requests or like actions in the area.

7.C.2. Shoreline Variances

The Hearing Examiner shall have authority to grant Shoreline Variance from the substantive requirements of this SMP. The application for a Shoreline Variance shall be made on forms prescribed by the City and shall be processed and acted upon in the same manner as is provided for conditional shoreline development permits. If a Shoreline Variance application is not merged with a pending Shoreline Substantial Development Permit application, the applicant shall pay the City a fee for a Shoreline Variance as defined in the adopted fee schedule.

All final decisions for shoreline conditional use permits shall be filed with the Department of Ecology as defined under date of filing of this SMP. Ecology has the final authority to approve, conditionally approve, or deny such decisions.

7.D REVISIONS TO PERMITS (SEE ALSO WAC 173-27-100)

When an applicant seeks to revise a Shoreline Substantial Development, Shoreline Conditional Use, or Shoreline Variance permit, the City Planning Department shall request from the applicant detailed plans and text describing the proposed changes in the permit. If the planning staff determines that the proposed changes are within the scope and intent of the original permit, the revision may be approved, provided it is

consistent with Chapter 173-27 WAC, the SMA, and this master program. "Within the scope and intent of the original permit" means the following:

a. No additional over-water construction will be involved Except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less.
b. Lot coverage and height may be increased a maximum of 10 percent from provisions of the original permit, provided that revisions involving new structures not shown on the original site plan shall require a new permit.
c. Landscaping may be added to a project without necessitating an application for a new permit if consistent with the conditions attached to the original permit and with the shoreline master program.
d. The use authorized pursuant to the original permit is not changed.
e. No additional adverse environmental impact will be caused by the project revision.
f. The revised permit shall not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a Shoreline Variance granted as the original permit or a part thereof.

If the revision, or the sum of the revision and any previously approved revisions, will violate the criteria specified above, the City shall require the applicant to apply for a new Shoreline Substantial Development, Shoreline Conditional Use, or Shoreline Variance Permit, as appropriate, in the manner provided for herein.

7.E. NONCONFORMING BUILDINGS USES AND STRUCTURES

7.E.1 Continuing existing uses

Any lawful use of land and/or building or structure existing or under construction, or for which a building or use permit has been granted, and is still in force at the time this code becomes effective, may be continued, although such use does not conform to the provisions of the zone in which it is located, subject to the provisions of this chapter.

7.E.2 Single Family Residential Dwelling units

The bulk and dimensional requirements of this SMP shall apply to any alterations to legally nonconforming single-family detached residences that are nonconforming due to residential use. Accessory uses and structures and alterations thereto are also allowed to the extent consistent with this SMP; provided, that if any alterations involve a change in use or increase in density the alterations shall be subject to this

SMP. Alterations to lot lines are permitted so long as the alterations do not increase nonconformity with the requirements of this SMP

7.E.3 Alterations and enlargements

a. Any nonconforming use may be extended throughout an existing building or structure.
b. Unless otherwise specifically provided in this code, nonconforming buildings may not be enlarged or structurally altered, unless the enlargement or structural alteration makes the building more conforming or is required by law. However, where a building or buildings and customary accessory buildings are nonconforming only by reason of substandard yards or open spaces, the provisions of this code prohibiting structural alterations or enlargements of an existing building shall not apply; provided such alterations or enlargements do not increase the degree of nonconformity of yards or open spaces. Any enlargements or new buildings and structures shall observe the yard and open spaces required on the lot by this code.
c. Structural alterations or enlargements may be permitted if necessary to adapt a nonconforming building or buildings to new technologies, or equipment pertaining to the uses housed in the building or buildings, or to improve the appearance, functionality, or safety of the building or buildings, in a manner which will bring them into greater conformity with the surrounding area. The alterations or enlargements shall be authorized only by a variance processed in the manner prescribed by this code.
d. Normal upkeep, repair, and maintenance of nonconforming buildings is permitted; provided such activities shall not increase the nonconformity of the building or buildings.
e. Except as otherwise provided in this chapter, no nonconforming use shall be enlarged or increased, nor shall any such nonconforming use be extended to occupy a greater area of land than that occupied by such use at the time this code becomes effective, nor shall any such nonconforming use be moved, in whole or in part, to any other portion of the lot or parcel of land occupied by the nonconforming use at the time of the adoption of this code

7.E.4 ~~Resconstruction~~Reconstruction

Any nonconforming building or structure which has been damaged by fire, earthquake, flood, wind, or other disaster to not more than 75 percent of its value at the time of its destruction may be rebuilt for the same nonconforming use only, but the restoring of any such nonconforming building shall not serve to extend or increase the nonconformance of the original building or use.

7.E.5 Abandonment

If any nonconforming use of land and/or building or structure is abandoned and/or ceases for any reason whatsoever, including destruction of the building, for a period of one year or more, any future use of such land and/or building or structure shall be in conformity to the regulations of the zoning district in which it is located, as specified by this code.

7.F. DOCUMENTATION OF PROJECT REVIEW ACTIONS AND CHANGING CONDITIONS IN SHORELINE AREAS

The City will keep on file documentation of all project review actions, including applicant submissions and records of decisions, relating to shoreline management provisions in this SMP.

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Appendix ~~A~~1:
Shoreline Environment Designation Map

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MILTON
CITY OF MILTON
SHORELINE MASTER PROGRAM
Figure. 14
ENVIRONMENT
DESIGNATION
0 500 1,000
Feet
MAP LEGEND
Environment Designation
Residential (R)
Urban Conservancy (UC)
Aquatic (A)
SMP Streams
Other Streams
Roads
City Boundary
THE WATERSHED COMPANY
Data: Pierce County
City of Milton, TWC
November 16, 2007
AREA OF INTEREST IN RED
PIERCE COUNTY
KING COUNTY
WEST HYLEBOS CREEK
INTERURBAN TRAIL
HYLEBOS CREEK
SURPRISE LAKE
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Appendix ~~B~~2:
Native Plant List

Category	Common Name	Scientific Name
TREE	Alaska Yellow Cedar*	Chamaecyparis Nootkatensis*
TREE	Bigleaf Maple	Acer macrophyllum
TREE	Bitter Cherry	Prunus emarginata
TREE	Black Cottonwood	Populus trichocarpa
TREE	Cascara	Rhamnus purshiana
TREE	Douglas-fir	Pseudotsuga menziesii
TREE	Garry Oak	Quercus garryana*
TREE	Geyer's willow	Salix geyeriana
TREE	Grand Fir*	Abies grandis*
TREE	Hooker's Willow	Salix hookeriana
TREE	Madrone	Arbutus menziesii
TREE	Noble Fir*	Abies procera*
TREE	Oregon Ash	Fraxinus latifolia
TREE	Pacific Crabapple	Malus fusca
TREE	Pacific Willow	Salix lucida ssp lasiandra
TREE	Pacific Yew	Taxus brevifolia
TREE	Paper Birch*	Betula papyrifera*
TREE	Quaking Aspen*	Populus tremuloides*
TREE	Red Alder	Alnus rubra
TREE	Scouler's Willow	Salix scouleriana
TREE	Shore Pine*	Pinus contorta var. contorta*
TREE	Sitka Spruce	Picea sitchensis
TREE	Sitka Willow	Salix sitchensis
TREE	Western Hemlock	Tsuga heterophylla
TREE	Western Red Cedar	Thuja plicata
SHRUB	Baldhip Rose	Rosa gymnocarpa
SHRUB	Beaked Hazelnut	Corylus cornuta
SHRUB	Black Hawthorn	Crataegus douglasii
SHRUB	Black Swamp Gooseberry	Ribes lacustre
SHRUB	Cinquefoil	Potentilla fruticosa
SHRUB	Cluster Rose	Rosa pisocarpa
SHRUB	Dull (low) Oregon Grape	Berberis nervosa (Mahonia)

SHRUB	Evergreen Huckleberry*	Vaccinium ovatum*
SHRUB	Hardhack	Spiraea douglasii
SHRUB	High bush-Cranberry	Viburnum edule
SHRUB	Indian Plum	Oemleria cerasiformis
SHRUB	Mock-Orange	Philadelphus lewisii
SHRUB	Mountain-ash*	Sorbus sitchensis*
SHRUB	Nootka Rose	Rosa nutkana
SHRUB	Oceanspray	Holodiscus discolor
SHRUB	Orange Honeysuckle	Lonicera ciliosa
SHRUB	Pacific Ninebark	Physocarpus capitatus
SHRUB	Pacific Rhododendron*	Rhododendron macrophyllum*
SHRUB	Pacific Wax Myrtle*	Myrica californica*
SHRUB	Red Elderberry	Sambucus racemosa
SHRUB	Red Huckleberry	Vaccinium parvifolium
SHRUB	Red-flowering Currant	Ribes sanguineum
SHRUB	Red-osier Dogwood	Cornus sericea (stolonifera)
SHRUB	Salal	Gaultheria shallon
SHRUB	Salmonberry	Rubus spectabilis
SHRUB	Snowberry	Symphoricarpos albus
SHRUB	Stink currant	Ribes bracteosum
SHRUB	Sweet Gale*	Myrica gale*
SHRUB	Tall Oregon Grape	Berberis aquifolium (Mahonia)
SHRUB	Thimbleberry	Rubus parviflorus
SHRUB	Twinberry	Lonicera involucrata
SHRUB	Vine Maple	Acer circinatum
SHRUB	Western Serviceberry	Amelanchier alnifolia
SEDGE/RUSH	Black-spiked Wool Grass	Scirpus atrocinctus
SEDGE/RUSH	Common Spikerush	Eleocharis palustris
SEDGE/RUSH	Dagger-leaved Rush	Juncus ensifolius
SEDGE/RUSH	Hardstem Bulrush	Scirpus acutus
SEDGE/RUSH	Narrow-leaved Bur-reed	Sparganium emersum ssp. emersum
SEDGE/RUSH	Sawbeak Sedge	Carex stipata
SEDGE/RUSH	Slough Sedge	Carex obnupta
SEDGE/RUSH	Small-fruited Bulrush	Scirpus microcarpus
SEDGE/RUSH	Softrush	Juncus effusus
SEDGE/RUSH	Tapertip Rush	Juncus acuminatus

SEDGE/RUSH	Wooly Sedge	Carex lanuginosa
PERENNIAL	American Brooklime	Veronica americana
PERENNIAL	Beach Strawberry	Fragaria chiloensis
PERENNIAL	Bunchberry	Cornus canadensis
PERENNIAL	Clasping twisted stalk	Streptopus amplexifolius
PERENNIAL	Coast penstemon	Penstemon serrulatus
PERENNIAL	Common Camas*	Camassia quamash*
PERENNIAL	Cooley’s Hedge Nettle	Stachys cooleyae
PERENNIAL	Devil’s Club	Oplopanax horridum
PERENNIAL	Douglas' Aster	Aster subspicatus
PERENNIAL	False Lily-of-the-valley	Maianthemum dilatatum
PERENNIAL	False Solomon's-seal	Smilacina racemosa
PERENNIAL	Fendler’s waterleaf	Hydrophyllum fendleri
PERENNIAL	Fireweed	Epilobium angustifolium
PERENNIAL	Foamflower	Tiarella trifoliata
PERENNIAL	Fringecup	Tellima grandiflora
PERENNIAL	Goat’s Beard	Aruncus dioicus
PERENNIAL	Henderson's Checker Mallow*	Sidalacea hendersonii*
PERENNIAL	Hooker’s Fairybells	Disporum hookeri
PERENNIAL	Inside-out Flower	Vancouveria hexandra
PERENNIAL	Kinnikinnick	Arctostaphylos uva-ursi
PERENNIAL	Large-leaved avens	Geum macrophyllum
PERENNIAL	Large-leaved Lupine	Lupinus polyphyllus
PERENNIAL	Many-flowered Woodrush	Luzula campestris
PERENNIAL	Pacific bleeding heart	Dicentra formosa
PERENNIAL	Pacific waterleaf	Hydrophyllum tenuipes
PERENNIAL	Pacific Water-parsley	Oenanthe sarmentosa
PERENNIAL	Pearly Everlasting	Anaphalis margaritacea
PERENNIAL	Piggy-back plant	Tolmiea menziesii
PERENNIAL	Redwood Sorrel	Oxalis oregana
PERENNIAL	Rosy twisted stalk	Streptopus roseus
PERENNIAL	Scouler’s Corydalis	Corydalis scouleri
PERENNIAL	Silverweed	Potentilla anserina
PERENNIAL	Skunk Cabbage	Lysichiton americanum
PERENNIAL	Small-flowered Woodrush	Luzula parviflora
PERENNIAL	Starflower	Trientalis latifolia
PERENNIAL	Star-flowered Solomon's Seal	Smilacina stellata
PERENNIAL	Stream Violet	Viola glabella
PERENNIAL	Sweet Coltsfoot	Petasites frigidus var. palmatus
PERENNIAL	Twinflower	Linnaea borealis

PERENNIAL	Vanilla-leaf	Achlys triphylla
PERENNIAL	Wapato, Arrowhead	Sagittaria latifolia
PERENNIAL	Water Plantain	Alisma plantago-aquatica
PERENNIAL	Watson's Willowherb	Epilobium ciliatum
PERENNIAL	Western Columbine	Aquilegia formosa
PERENNIAL	Western Iris*	Iris tenax*
PERENNIAL	Western White Trillium	Trillium ovatum
PERENNIAL	White Fawn Lily*	Erythronium oregonum*
PERENNIAL	Wild Ginger	Asarum caudatum
PERENNIAL	Wild Strawberry*	Fragaria virginiana*
PERENNIAL	Wintergreen	Gaultheria ovatifolia
PERENNIAL	Yarrow	Achillea millefolium
PERENNIAL	Yellow Marsh-marigold	Caltha palustris
PERENNIAL	Yellow Monkey-flower	Mimulus guttatus
PERENNIAL	Yellow Pond-lily	Nuphar polysepalum
GRASS	Blue Wildrye	Elymus glaucus
GRASS	Idaho Fescue	Festuca idahoensis
GRASS	Northern Mannagrass	Glyceria borealis
GRASS	Tall Mannagrass	Glyceria elata
GRASS	Tufted Hairgrass	Deschampsia caespitosa
GRASS	Wood Reed	Cinna latifolia
FERN	Deer Fern	Blechnum spicant
FERN	Lady Fern	Athyrium filix-femina
FERN	Maidenhair Fern	Adiantum pedatum
FERN	Oak Fern	Gymnocarpium dryopteris
FERN	Spiny Wood Fern	Dryopteris expansa
FERN	Sword Fern	Polystichum munitum
Key:	* Semi-native: Plants that are regionally native	
	D = Deciduous; E = Evergreen; H = Hard to establish; P = Proven performer	

Appendix ~~C~~3: ~~Milton~~ Shoreline Critical Area Regulations: ~~(Ordinance 1671 9/1/08)~~

~~18.06.020~~ A3.A Definitions:

In addition to those definitions contained within WAC 197-11-700 through 197-11-799, when used in ~~Title 18~~this Appendix, the following terms shall have the following meanings, unless the context indicates otherwise. Words and phrases used in this ~~title~~ Appendix shall be interpreted as defined below. Where ambiguity exists, words or phrases shall be interpreted so as to give this ~~title~~ Appendix its most consistent and reasonable application in carrying out its regulatory purpose.

"Adjacent" means immediately adjoining (in contact with the boundary of the critical area) or within a distance that is less than that needed to separate activities from critical areas to ensure protection of the functions and values of the critical areas. Adjacent shall mean any activity or development located a distance equal to or less than the required critical area buffer width and building setback.

"Alteration" means any human-induced activity that changes the existing condition of a critical area. Alterations include, but are not limited to, grading; filling; dredging; draining; channelizing; clearing or removing vegetation; discharging pollutants; paving; construction; or any other human activity that changes the existing landforms, vegetation, hydrology, fish, wildlife, or wildlife habitat of a critical area.

"Anadromous fish" means species, such as salmon, which are born in fresh water, spend a large part of their lives in the sea, and return to fresh water rivers and streams to procreate.

"Applicant" means the person, party, firm, corporation, or other entity that proposes any activity that could affect a critical area.

"Aquifer" means a saturated geologic formation that will yield a sufficient quantity of water to serve as a private or public water supply.

"Aquifer recharge areas" means areas where the prevailing geologic conditions allow infiltration rates which create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water. Aquifer recharge areas are classified as follows:

A. High Significance Aquifer Recharge Areas. Areas with slopes of less than 15 percent that are underlain by coarse alluvium or sand and gravel, and overlain by soils with moderate to rapid permeability, as classified by the U.S. Department of Agriculture Soil Conservation Service;

B. Moderate Significance Aquifer Recharge Areas.

1. Areas with slopes of less than 15 percent that are underlain by fine alluvium, silt, clay, or glacial till, and overlain by soils with moderate to rapid permeability as classified by the U.S. Department of Agriculture Soil Conservation Service; and

2. Areas with slopes of 15 to 30 percent that are underlain by coarse alluvium, sand or gravel, and overlain by soils with moderate to rapid permeability, as classified by the U.S. Department of Agriculture Soil Conservation Service;

C. Low Significance Aquifer Recharge Areas.

1. Areas with slopes of 15 to 30 percent that are underlain by silt, clay, or glacial till; and

2. Areas with slopes greater than 30 percent.

"Aquifer susceptibility" means the ease with which contaminants can move from the land surface to the aquifer based solely on the types of surface and subsurface materials in the area.

"Base flood" means a flood having a one percent chance of being equaled or exceeded in any given year, also referred to as the 100-year flood.

"Best available science" means the current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 925.

"Best management practices (BMPs)" means the 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, and sediment;

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

C. Protect trees and vegetation designated to be retained during and following site construction; and

D. Provide standards for proper use of chemical herbicides within critical areas.

The City shall monitor the application of best management practices to ensure that the standards and policies of this Ordinance are adhered to.

"Buffer" or "buffer area" means a naturally vegetated and undisturbed or revegetated zone surrounding a critical area that protects the critical area from adverse impacts to its integrity and value, or is an integral part of the resource's ecosystem.

"City" means the city of Milton, including any department, official, board or body thereof with jurisdiction over the subject of this chapter.

"Clearing" means the removal of timber, brush, grass, ground cover, or other vegetative matter from a site that exposes the earth's surface of the site or any actions that disturb the existing ground surface.

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

“Creation” means bringing a wetland or stream corridor into existence at a site in which a wetland or stream corridor did not formerly exist.

“Critical aquifer recharge area” are areas designated by WAC 365-190-080(2) that are determined to have a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2).

“Critical areas” include any of the following areas or ecosystems: Aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, and wetlands, as defined in RCW 36.70A and this Ordinance.

“Critical ecosystems” means environmentally sensitive areas subject to natural hazards or those landform features which in their natural state carry, hold or purify water and support unique, fragile or valuable natural resources such as fish, wildlife and other organisms. These areas also provide flood protection, shoreline stability and aid in recharging valuable ground water resources. These critical ecosystems include aquifer recharge areas, fish and wildlife habitat conservation and open space areas, frequently flooded areas, geologically hazardous areas, natural resource areas, stream corridors, wetlands and their associative transitional buffer zones.

“Critical facility” means a facility for which even a slight chance of flooding, inundation, or impact from a hazard event might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, and installations that produce, use or store hazardous materials or hazardous waste.

“Critical geologic hazard areas” means lands or areas subject to high or severe risks of geologic hazard.

“Critical habitats” means those habitat areas which meet any of the following criteria:

A. Areas with which species listed by the federal government or state of Washington as endangered, threatened, or sensitive have a primary association;

B. Those streams identified as Type I or Type II streams as defined in Chapter 18.14 MMC;

C. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;

D. Those wetlands identified as Category I or II wetlands, as defined in Chapter 18.14 MMC;

E. Open space wetlands, river and stream banks, ravines, wooded areas and any other upland areas that provide essential habitat for sensitive and locally important plant or wildlife species;

F. Areas with which priority species (as determined by the Washington Department of Fish and Wildlife) have a primary association;

G. Priority habitats as identified by the Washington Department of Fish and Wildlife. Priority habitats are areas with one or more of the following attributes: comparatively high wildlife density, high wildlife species richness, significant wildlife species richness, significant wildlife breeding habitat, significant wildlife seasonal ranges, significant movement corridors for wildlife, limited availability, and/or high vulnerability;

H. Habitats or species of local importance.

"Critical species" are all animal and plant species listed by the state or federal government as threatened or endangered.

"Cumulative impacts or effects" are the combined, incremental effects of human activity on ecological or critical areas functions and values. Cumulative impacts result when the effects of an action are added to or interact with other effects in a particular place and within a particular time. It is the combination of these effects, and any resulting environmental degradation, that should be the focus of cumulative impact analysis and changes to policies and permitting decisions.

"DBH" or "Diameter at Breast Height" means the diameter of a tree as measured at breast height (54 inches above the ground).

"Degraded wetland" means a wetland in which the vegetation, soils and/or hydrology have been adversely altered, resulting in lost or reduced functional value.

"Department" means any division, subdivision or organizational unit of the city established by resolution, rule or order.

"Department of Ecology" means the State Department of Ecology.

"Development" means a use consisting of the construction or exterior alteration of structures, dredging, drilling, dumping, filling, removal of any sand, gravel or minerals, stockpiling of materials, bulkheading, driving of piling, paving, placing of obstructions, or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the provisions of this chapter at any state of water level.

"Developable area" means a site or portion of a site that may be utilized as the location of development, in accordance with the rules of this Ordinance.

"DNS" means determination of nonsignificance.

"DS" means determination of significance.

"Dredging" means the removal of earth from the bottom of a navigational channel, berthing area or to obtain bottom materials for landfill.

"Early notice" means city's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated determination of nonsignificance (DNS) procedures).

"Enhancement" means an action that increases the functions and values of a stream, wetland, or other critical area or buffer.

“Emergent wetland” means a wetland with at least 30 percent of its surface covered by erect, rooted, herbaceous vegetation at the uppermost vegetative strata.

“Epicenter” means the location on the surface of the earth directly above the place where an earthquake originates.

“Erosion” means wearing away of earth’s surface as a result of movement of wind, water, ice or any means.

“Erosion hazard areas” means those lands susceptible to the wearing away of their surface by water, wind or gravitational creep. Erosion hazard areas are classified as low, moderate or high risk based on slope inclination and soil types as identified by the U.S. Department of Agriculture Soil Conservation Service:

A. Low. All sites classified with soil types designated by the U.S. Department of Agriculture Soil Conservation Service as having no or slight erosion hazard.

B. Moderate. All sites classified with soil types designated as moderate hazard.

C. High. All sites classified with soil types designated as severe or very severe erosion hazard.

“Existing and ongoing agriculture” means those activities conducted on lands defined in RCW 84.34.020(2), and those existing activities involved in the production of crops or livestock. Activities may include the operation and maintenance of farm and stock ponds or drainage ditches; operation and maintenance of existing ditches or irrigation systems; changes from one type of agricultural activity to another agricultural activity; and normal maintenance, repair, and operation of existing serviceable structures, facilities, or improved areas. Activities which bring a nonagricultural area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five years.

“Exotic” means any species of plants or animals, which are foreign to the planning area.

“Extraordinary hardship” means the prevention of all reasonable economic use of a site by strict application of this chapter and/or procedures adopted to implement this chapter.

“Fish and wildlife habitat conservation areas” are areas necessary for maintaining fish and wildlife species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created as designated by WAC 365-190-080(5). Fish and wildlife habitat areas do not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.~~“Fish and wildlife habitat conservation areas” are areas necessary for maintaining fish and wildlife species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created as designated by WAC 365-190-080(5).~~

“Fish habitat” means habitat that is used by fish at any life stage at any time of the year, including potential habitat likely to be used by fish that could be recovered by restoration or management and includes off-channel habitat.

“Fill” means dumping or placing, by any means, any material from, to or on any soil or sediment surface including temporary stockpiling of material.

“Flood hazard areas” means those areas subject to inundation by the base flood. These areas consist of the following components, as determined by the city:

A. Floodplain. The total area subject to inundation by the base flood.

B. Flood Fringe. That portion of the floodplain outside the floodway which is generally covered by floodwaters during the base flood. It is generally associated with standing water rather than rapidly flowing water.

C. Floodway. The channel of the stream and that portion of the adjoining floodplain that is necessary to contain and discharge the base flood flow without increasing the base flood elevation more than one foot.

“Forested wetland” means a wetland with at least 20 percent of the surface area covered by woody vegetation greater than 20 feet in height.

“Frequently flooded areas” are lands in the floodplain subject to a one percent (1%) or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance and attenuation functions, as determined by the City in accordance with WAC 365-190-080(3). Classifications of frequently flooded areas include, at a minimum, the 100-year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

“Functional value” means the beneficial role streams and wetlands serve including, but not limited to, fish and wildlife habitat, ground water recharge/discharge, water quality protection, storm water storage, conveyance, floodwater and storm water retention, provision of erosion and sediment controls and recreation and aesthetic value.

“Geologic hazard areas” means lands or areas characterized by geologic, hydrologic, and topographic conditions that render them susceptible to potentially significant or severe risk of landslides, erosion, or seismic activity.

“Grading” means any excavating, filling, clearing, leveling, or contouring of the ground surface by human or mechanical means.

“Ground water” means all water found beneath the ground surface, including slow moving subsurface water present in aquifers and recharge areas.

“Ground water management area” means a specific geographic area or subarea designated pursuant to Chapter 173-100 WAC for which a ground water management program is required.

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

“Growth Management Act” is RCW 36.70A and 36.70B, as amended.

“Habitat” means the specific area or environment in which a particular type of plant or animal lives.

“Habitat conservation areas” are areas designated as fish and wildlife habitat conservation areas.

“Hazard areas” are areas designated as frequently flooded areas or geologically hazardous areas due to potential for erosion, landslide, seismic activity, mine collapse, or other geological condition.

“Hazardous substance” means any substance defined as a “hazardous substance” pursuant to RCW 70.105D.020(5), which subsection is adopted by reference as though set forth herein in full.

“Hazardous substance processing or handling” means the use, storage, manufacture or other land use activity involving, hazardous substances, but does not include individually packaged household consumer products or quantities of hazardous substances of less than five gallons in volume per container.

“Hazardous waste” means all dangerous waste and extremely hazardous waste as designated pursuant to Chapter 70.105 RCW and Chapter 173-303 WAC.

A. “Dangerous waste” means any discarded, useless, unwanted, or abandoned substances including, but not limited to, certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:

1. Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

2. Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

B. “Extremely hazardous waste” means any waste which:

1. Will persist in a hazardous form for several years or more at a disposal site and which in its persistent form presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of humans or wildlife; and

2. Is disposed of at a disposal site in such quantities as would present an extreme hazard to humans or the environment.

“Hazardous waste treatment and storage facility” means a facility that treats and stores hazardous waste and is authorized pursuant to Chapter 70.105 RCW and Chapter 173-303 WAC. It includes all contiguous land and structures used for recycling, reusing, reclaiming, transferring, storing, treating, or disposing of hazardous waste.

“Height” means the vertical distance measured from the average grade level to the highest point of the roof surface of a flat roof, to the deck line of a mansard roof, and to one-half the vertical distance between the eaves and ridge of a gable, hip or gambrel roof; provided, however, that where buildings are set back from the street line, the height of the buildings may

be measured from the average elevation of the finished yard grade along the front of the building.

“High intensity land use” means a use associated with high levels of human or structural activity. These uses include:

A. Residential buildings and structures;

B. Active recreational areas and facilities;

C. Commercial or industrial uses and structures; or

D. Similar activities.

“Hydric soil” means soil that is saturated or flooded long enough during the growing season to develop anaerobic (oxygen deficient) conditions in the upper part. In order to develop these characteristics, the soil must be covered or saturated by water for at least seven days during the normal growing season for at least two or more years.

“Hydroperiod” means the seasonal occurrence of flooding and/or soil saturation which encompasses the depth, frequency, duration and seasonal pattern of inundation.

“Hydrophyte” means an aquatic plant growing in water or on a substrate (hydric soil) that is at least periodically deficient in oxygen where the water or waterlogged soil is too wet for most plants to survive. Examples of these plants can include:

A. Cattails;

B. Sedges;

C. Bulrush;

D. Alder;

E. Salmonberry.

“Hyporheic zone” is the saturated zone located beneath and adjacent to streams that contains some portion of surface waters, serves as a filter for nutrients, and maintains water quality.

“Impervious surface” means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development or that causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, 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” means to replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement "in-category."

“Isolated wetlands” are 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.

“Infiltration” is the downward entry of water into the immediate surface of soil.

“Injection well(s)” are as follows:

A. Class I – A well used to inject industrial, commercial, or municipal waste fluids beneath the lowermost formation containing, within one quarter (1/4) mile of the well bore, an underground source of drinking water.

B. Class II – A well used to inject fluids:

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

2. For enhanced recovery of oil or natural gas; or

3. For storage of hydrocarbons that are liquid at standard temperature and pressure.

C. Class III – A well used for extraction of minerals, including but not limited to the injection of fluids for:

1. In-situ production of uranium or other metals that have not been conventionally mined;

2. Mining of sulfur by Frasch process; or

3. Solution mining of salts or potash.

D. Class IV – A well used to inject dangerous or radioactive waste fluids.

E. Class V – All injection wells not included in Classes I, II, III, or IV.

“Inter-rill” are areas subject to sheetwash.

“Lahars” are mudflows and debris flows originating from the slopes of a volcano.

Land Use Administrator. The planning/building director of the city shall serve as land use administrator as said position was established pursuant to MMC 18.14.030(A). The mayor may also designate an acting land use administrator who shall have all of the duties and powers of the land use administrator in the absence of or inability of the land use administrator to act.

“Landslide” means episodic downslope movement of a mass of soil or rock.

“Landslide hazard areas” means areas that, due to a combination of slope inclination, relative soil permeability and hydrologic factors, are susceptible to varying risks of landsliding.

“Liquefaction” means a process by which a water-saturated granular (sandy) soil layer loses strength because of ground shaking commonly caused by an earthquake.

“Lot slope” means a measurement by which the average slope of the lot is calculated as a percentage. The lowest elevation of the lot is subtracted from the highest elevation, and the resulting number is divided by the horizontal distance between these two points. The resulting product is multiplied by 100.

“Magnitude” means a quantity characteristic of the total energy released by an earthquake. Commonly, earthquakes are recorded with magnitudes from 0 to 8.

“Maintenance dredging” means the removal of earth from the bottom of a stream, river, lake, bay or other water body for the purpose of maintaining a prescribed minimum depth of any specific waterway project.

“Marsh” means a wetland which is permanently submerged or has intermittent aquatic plant life where dominant vegetation is nonwoody plants such as grasses and sedges.

“Mass wasting” is a general term for a variety of processes by which large masses of rock or earth material are moved downslope by gravity, either slowly or quickly.

“Mineral extraction” means the removal of naturally occurring materials from the earth, excluding dredging as defined in this chapter.

“Mineral resource lands” means any area presently operating under a valid Washington State Department of Natural Resources (DNR) surface mining permit. Other areas shall be classified as mineral resource lands when a surface mining permit is granted by DNR.

“Minerals” means gravel, sand and valuable metallic substances.

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

“Native growth protection area (NGPA)” is an area where native vegetation is preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering and protecting plants and animal habitat and removal of invasive species;

“Native vegetation” means plant species that are indigenous and naturalized to the city’s region and which can be expected to naturally occur on a site. Native vegetation does not include noxious weeds.

“Non-conformity” means a legally established existing use or legally constructed structure that is not in compliance with current regulations.

“Non-indigenous” See “exotic.”

“Noxious weed” means any plant which, when established, is highly destructive, competitive, or difficult to control by cultural or chemical practices. Any plant designated as a noxious weed in the state noxious weed list, as defined and referenced at RCW 17.10.010, shall be presumed to be a noxious weed for purposes of this chapter.

“Ordinance” means the ordinance or other procedure used by the city to adopt regulatory requirements.

“Ordinary high water mark” (OHWM) on all lakes, streams and tidal water, means that mark that will be found by examining the bed and banks and ascertaining where the presence and action of water 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, or as it may naturally change thereafter; provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining saltwater shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water.

“Out-of-kind compensation” means to replace critical areas with substitute critical areas whose characteristics do not closely approximate those destroyed or degraded. It does not refer to replacement "out-of-category."

“Palustrine wetland” means a freshwater wetland, emergent herbaceous vegetation, scrub-shrub vegetation and/or trees that is isolated from a larger water body.

“Permeability” is the capacity of an aquifer or confining bed to transmit water. It is a property of the aquifer or confining bed and is independent of the force causing movement.

“Person” means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation or agency of the state or local government unit however designated.

“Ponds” means naturally occurring impoundments of open water less than 20 acres and more than 2,500 square feet which maintain standing water throughout the year.

“Porous soil types” are soils, as identified by the National Resources Conservation Service, U.S. Department of Agriculture, that contain voids, pores, interstices or other openings which allow the passing of water.

“Potable water” means water that is safe and palatable for human use.

“Practicable alternatives” means alternatives to the proposed project which shall accomplish essentially the same objective and avoid or have less adverse impacts than the proposed project.

“Primary association area” is the area used on a regular basis by, or is in close association with, or is necessary for the proper functioning of the habitat of a critical species. Regular basis means that the habitat area is normally, or usually known to contain a critical species, or based on known habitat requirements of the species, the area is likely to contain the critical species. Regular basis is species and population dependent. Species that exist in low numbers may be present infrequently yet rely on certain habitat types.

“Priority habitats” means seasonal range or habitat element with which a given species is primarily associated and which, if altered, may reduce survival potential of that species over the long-term. These may include habitat areas of:

A. High relative density or species richness;

B. Breeding habitat;

C. Winter range and movement corridors;

D. Limited availability; or

E. High vulnerability to alteration.

“Priority species” means plant or animal species which are of concern due to their population status and sensitivity to habitat alteration. Priority species include those which are listed by the state as endangered, threatened or sensitive as well as other species of concern and game species.

“Project area” means all areas within fifty (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.

“Protection” (Preservation) means removing a threat to, or preventing the decline of, conditions by an action in or near a critical area or buffer.

“Qualified professional” is 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 a minimum of 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 engineer or geologist, licensed in the state of Washington.

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

“Rare, threatened or endangered species” means plant or animal species that are regionally relatively uncommon, are nearing endangered status or whose existence is in immediate jeopardy and that are usually restricted to highly specific habitats.

“Reasonable alternative” is 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, and having less impacts to critical areas.

“Reasonable use” means alternatives to the proposal which will result in minimum feasible alteration or impairment of the functional characteristics including contours, vegetation, fish and wildlife resources, ground water and hydrological conditions.

“Recessional outwash geologic unit” means sand and gravel materials deposited by melt-water streams from receding glaciers.

“Recharge” means the process involved in the absorption and addition of water to ground water.

“Reclaimed water” is municipal wastewater effluent that has been adequately and reliability treated so that it is suitable for beneficial use. Following treatment it is no longer considered

wastewater (treatment levels and water quality requirements are given in the water reclamation and reuse standards adopted by the state Departments of Ecology and Health).

“Recreation” means the refreshment of body and mind through forms of play, amusement or relaxation. The recreational experience may be active, such as boating and swimming, or may be passive such as enjoying the natural beauty of the shoreline or its wildlife through nature walks, wildlife observation, fishing and hiking.

“Regulated activities” means any act which would destroy natural vegetation; result in significant change in water temperature, physical or chemical characteristics; substantially alter existing pattern of tidal flow; obstruct the flow of sediment or alter the natural contours of a site.

“Repair or maintenance” means 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.

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

A. Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and

B. Actions performed to reestablish structural and functional characteristics of the critical area that have been lost by alteration, past management activities, or catastrophic events.

“Rills” are steep-sided channels resulting from accelerated erosion. A rill is generally a few inches deep and not wide enough to be an obstacle to farm machinery. Rill erosion tends to occur on slopes, particularly steep slopes with poor vegetative cover.

“Riparian habitat” means wetland habitat bordering a stream which is occasionally flooded and periodically supports predominantly hydrophytes.

“Scrub-shrub wetlands” means a wetland with at least 30 percent of its surface area covered with woody vegetation less than 20 feet in height.

“Seeps” is a spot where water oozes from the earth, often forming the source of a small stream.

“Seismic hazard areas” means areas that, due to a combination of soil and ground water conditions, are subject to severe risk of ground shaking, subsidence, or liquefaction of soils during earthquakes. These areas are typically underlain by soft or loose saturated soils (such as alluvium), have a shallow ground water table and are typically located on the floors of river valleys. Geologic material is weighted most heavily in the following classification of seismic risk:

A. Class I – High. All areas with lands designated as alluvium and recessional outwash surficial geologic units (as identified in Groundwater Occurrence and Stratigraphy of Unconsolidated Deposits, Central Pierce County, WA, Water Supply Bulletin #22, Plates One and Two, U.S. Department of Interior, Geological Survey, Water Resources Division), or high risk slopes.

B. Class H – Low. All other sites with a lower risk geological classification.

“SEPA rules” means Chapter 197-11 WAC adopted by the Department of Ecology.

“Shoreline Environmental Designation” There is one shoreline environment defined and designated to exist on the shorelines within the city. This shoreline environmental designation is defined as: Rural-residential. The rural-residential designation is designed to insure medium intensity residential, commercial and multifamily development and to allow for a natural transitional area between the highly intensified land use of urban areas and the surrounding minimal agricultural uses, recreational uses and open space found in the rural environment.

“Sheetwash” is overland flow of water in thin sheets.

“Shorelines” means all the water areas, including the streams, lakes, and ponds of the city including Surprise Lake and its associated wetlands, together with the lands underlying it.

“Shorelines of the city” means the total of all “shorelines” and “shorelines of statewide significance” within the city.

“Shorelines of the state” are the total of all “shorelines,” as defined in RCW 90.58.030(2)(d), and “shorelines of statewide significance” within the state, as defined in RCW 90.58.030(2)(c).

“Shorelines of statewide significance” are those areas defined in RCW 90.58.030(2)(e).

“Shorelands or shoreland areas” are those lands extending landward for two hundred feet (200 ft) in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred (200) feet from such floodways; and all wetlands and river deltas associated with the streams, lakes and tidal waters which are subject to the provisions of Chapter 90.58 RCW.

“Significant portion of its range” means that portion of a species range likely to be essential to the long-term survival of the population in Washington.

“Slope” means an inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance.

“Sludge” means a semisolid substance consisting of settled solids combined with varying amounts of water and dissolved materials generated from a wastewater treatment plant or system or other sources, including septage sludge, sewage sludge, or industrial sludge.

“Sludge land application site” means a site where stabilized sludge, septage, and other organic wastes are applied to the surface of the land in accordance with established agronomic rates for fertilization or soil conditioning.

“Soil survey” means the most recent soil survey for the local area or county by the National Resources Conservation Service, U.S. Department of Agriculture.

“Solid waste” means all putrescible and nonputrescible solid and semisolid wastes including garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles and parts thereof, discarded commodities and any other discarded materials which may be deemed to be worthless for any use or purpose.

“Special protection areas” are aquifer recharge areas defined by WAC 173-200-090 that require special consideration or increased protection because of unique characteristics, including, but not limited to:

A. Ground waters that support an ecological system requiring more stringent criteria than drinking water standards;

B. Ground water recharge areas and wellhead protection areas, that are vulnerable to pollution because of hydrogeologic characteristics; and

C. Sole source aquifer status.

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

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

“Species, priority” means any fish or wildlife species requiring protective measures and/or management guidelines to ensure their persistence as genetically viable population levels as classified by the Department of Fish and Wildlife, including endangered, threatened, sensitive, candidate and monitor species, and those of recreational, commercial, or tribal importance.

“Species, threatened” means any fish or wildlife species that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range without cooperative management or removal of threats, and is listed by the state or federal government as a threatened species.

“Stockpiling of materials” means the accumulation and storage of raw materials, equipment, apparatus and/or supplies by an individual, business or organization. Stockpiling of materials as a primary use activity is subject to all applicable shoreline permits. Stockpiling of materials as a secondary use activity pursuant to a valid shoreline permit is considered a permitted use activity.

“Stream corridor” means perennial, intermittent or ephemeral waters included within a channel of land, and its adjacent riparian zones, which serve as a transitional zone between the aquatic and terrestrial upland ecosystems.

“Streams” means those areas where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is an area which demonstrates clear evidence of the passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds and defined channel swales. The channel or bed need not contain water year-round.

“Swamp” means wetland where the dominant vegetation is composed of woody plants and trees.

“Temporary erosion control” means on-site and off-site control measures that are needed to control conveyance or deposition of earth, turbidity, or pollutants during development, construction, or restoration.

“Transitional zones” means an area of land adjacent to a sensitive ecosystem which serves as an integral component of that ecosystem and can help to minimize or reduce the impacts to the ecosystem.

“Unavoidable and necessary impacts” means impacts to regulated streams or wetlands and their associated buffer zones that will remain after it has been demonstrated that no practicable alternatives exist.

“Underground utilities” means services which produce and carry electric power, gas, sewage, communications, oil, water and storm drains below the surface of the ground.

“Upland” means landward of the ordinary high water mark.

“Utility line” means pipe, conduit, cable or other similar facility by which services are conveyed to the public or individual recipients. Such services shall include, but are not limited to, water supply, electric power, gas, communications and sanitary sewers.

“Vadose Zone” is the zone between land surface and the water table within which the moisture content is less than saturation (except in the capillary fringe) and pressure is less than atmospheric.

“Volcanic hazard areas” are areas that are subject to pyroclastic flows, lava flows, debris avalanche, or inundation by debris flows, mudflows, or related flooding resulting from volcanic activity.

“Vulnerability” means the combined effect of susceptibility to contamination and the presence of potential contaminants.

“Water dependent activity” means activity or use that requires the use of surface water to fulfill the basic purpose of the proposed project.

“Water dependent use” means a use which cannot logically exist in any other location but on the shoreline and is dependent on the water by reason of the intrinsic nature of its operation. Examples would include, but not be limited to, the following:

A. Marinas and boat launch facilities;

B. Dockside fishing facilities;

C. Moorage facilities – permanent/transient.

“Water related use” means a use which is not intrinsically dependent on a waterfront location but whose location on or near the waterfront will either facilitate its operation or will provide increased opportunity for general public use and enjoyment of shorelines and shoreline areas. Examples would include, but not be limited to, the following:

A. Commercial. Other commercial uses which provide increased opportunity for general public use and enjoyment of shorelines and shoreline areas.

B. Marine recreation.

1. View and observation areas;

2. Trails and pathways;

3. Clubhouses, meeting areas and related uses.

C. Marine related educational or scientific uses.

"Water table" is that surface in an unconfined aquifer at which the pressure is atmospheric. It is defined by the levels at which water stands in wells that penetrate the aquifer just far enough to hold standing water.

"Watercourse" is any portion of a channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the state including areas in which fish may spawn, reside, or through which they may pass, and tributary waters with defined beds or banks, which influence the quality of fish habitat downstream. This includes watercourses that flow on an intermittent basis or which fluctuate in level during the year and applies to the entire bed of such watercourse whether or not the water is at peak level. This definition does not include irrigation ditches, canals, storm water run-off devices, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.

"Well" is a bored, drilled or driven shaft, or a dug hole whose depth is greater than the largest surface dimension for the purpose of withdrawing or injecting water or other liquids.

"Wellhead protection area (WHPA)" is the portion of a zone of contribution for a well, wellfield or spring, as defined using criteria established by the state Department of Ecology.

"Wetlands" are those 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 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. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands. For identifying and delineating a wetland, local government shall use the approved federal wetlands delineation manual and applicable regional supplement~~Washington State Wetland Identification and Delineation Manual~~.

"Wetland edge" is the boundary of a wetland as delineated based on the definitions contained in this Ordinance.

"Wetland edge" means a line dividing uplands from water habitat. The line can be identified through procedures in the 1987 Federal Manual for Identifying and Delineating Jurisdictional Wetlands by examining the presence or absence of aquatic plants (hydrophytes), hydric soils and/or water table at or near the surface.

Wetlands.

A. "Regulatory wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include small lakes, ponds, streams, swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally

created from nonwetland sites, including but not limited to irrigation and drainage ditches, grass-lined swales, canals, detention facilities, farm ponds and landscape amenities if routinely maintained for those purposes. The applicant shall bear the burden of proving that the site was not previously wetlands. However, wetlands do include those artificial wetlands intentionally created to mitigate conversion of wetlands.

B. For inventory, incentives and nonregulatory purposes, wetlands are those lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For the purposes of this definition, wetlands must have one or more of the following attributes:

1. At least periodically, the land supports predominantly hydrophytes;

2. The substrate is predominately un-drained hydric soil; or

3. The substrate is nonsoil arid is saturated with water or covered by shallow water at some time during the growing season of the year.

"Wetlands biologist" means a person who has earned a degree in biological sciences from an accredited college or university and has demonstrated experience in delineating wetland boundaries, analyzing wetland functions and values, and has experience in developing wetland mitigation plans. A professional person who has had equivalent education and training or with equivalent experience may also qualify as a wetlands biologist for the purpose of performing wetland delineations, analysis of functions and values and determination of possible mitigation subject to the approval of the land use administrator.

"Zone of contribution" means the area surrounding a well or spring that encompasses all areas or features that supply ground water recharge to the well or spring.

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A3.B General Provisions

A3.B.1 ~~18.16.010~~ Purpose

~~A.~~ The purpose of this ~~Ordinance~~ Appendix is to designate and protect ecologically sensitive and hazardous areas in accordance with the Growth Management Act, while also allowing for reasonable use of private property.

~~B.~~ By limiting and regulating development and alteration of critical areas, this ~~Ordinance~~ Appendix seeks to:

- ~~1.~~ Protect members of the public and public resources and facilities from injury, loss of life, or property damage due to landslides and steep slope failures, erosion, seismic events, volcanic eruptions, or flooding;
- ~~2.~~ Maintain healthy, functioning ecosystems through the protection of unique, fragile, and valuable elements of the environment, including ground and surface waters, wetlands, and fish and wildlife and their habitats, and to conserve the biodiversity of plants and animal species;
- ~~3.~~ Direct activities not dependent on critical areas resources to less ecologically sensitive sites and mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to critical areas; and
- ~~4.~~ Prevent cumulative adverse environmental impacts to water quality, wetlands, and fish and wildlife habitat, and the overall net loss of wetlands, frequently flooded areas and habitat conservation areas so that there will be no net loss of wetlands, and our goal is to increase the quality and vitality of wetland acreage.

~~C.~~ This ~~Ordinance~~Appendix is to be administered with flexibility and attention to site-specific characteristics. It is not the intent of this ~~Ordinance~~Appendix to make a parcel of property unusable by denying its owner reasonable use of the property or to prevent the provision of public facilities and services necessary to support existing development and that planned for by the community.

A3.B.2 ~~18.16.020~~ Authority

~~A.~~ As provided herein, the Land Use Administrator, or his or her designee, is given the authority to interpret and apply, and the responsibility to enforce this ~~Ordinance~~Appendix to accomplish the stated purpose. The Land Use Administrator or his or her designee is authorized to adopt administrative rules as necessary and appropriate to implement this ~~Ordinance~~Appendix and to prepare and require the use of such forms as necessary for its administration.

~~B.~~ The City Council may withhold, condition, or deny development permits or activity approvals to ensure that the proposed action is consistent with this ~~Ordinance~~Appendix.

A3.B.3 ~~18.16.030~~ Abrogation and Greater Restrictions

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

A3.B.4 ~~18.16.040~~ Severability.

If any clause, sentence, paragraph, section, or part of this ~~Ordinance~~Appendix or the application thereof to any person or circumstances shall be judged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered. The decision shall not affect or invalidate the remainder of any part thereof and to this end the provisions of each clause, sentence, paragraph, section, or part of this law are hereby declared to be severable.

A3.B.5 ~~18.16.050~~ Applicability

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

~~B.~~ Approval of a permit or development proposal pursuant to the provisions of this ~~Ordinance~~Appendix does not discharge the obligation of the applicant to comply with the provisions of this ~~Ordinance~~Appendix.

~~C.~~ The approximate location and extent of critical areas may be shown on City maps and on maps prepared by county, state, federal and other agencies. These maps are to be used as a guide for the City, project applicants and/or property owners, and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical areas designation.

A3.B.6 ~~18.16.060~~ Fees.

Unless otherwise indicated in this ~~Ordinance~~Appendix, the applicant shall be responsible for the initiation, preparation, submission, and expense of all required reports, assessment(s), studies, plans, reconnaissance(s), peer review(s) by qualified consultants, and other work prepared in support of or necessary to review the application.

A3.B.7 ~~18.16.070~~ Appeals

Any decision to approve, condition, or deny a development proposal or other activity based on the requirements of this ~~Ordinance~~Appendix may be appealed to the Hearing Examiner according to, and as part of, the appeal procedure for the permit or approval involved.

A3.B.8 ~~18.16.080~~ Exemptions

All exempted activities shall use reasonable methods to avoid potential impacts to critical areas. To be exempt from this ~~Ordinance~~Appendix does not give permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense. The following developments, activities, and associated uses shall be exempt from the provisions of this ~~Ordinance~~Appendix:

~~A.~~ **Emergencies.** Emergency activities are those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of this ~~Ordinance~~Appendix.

~~1.~~ Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. The person or agency undertaking such action shall notify the City within one (1) working day following commencement of the emergency activity. Within thirty (30) days, the Land Use Administrator shall determine if the action taken was within the scope of the emergency actions allowed in this Subsection. If the City determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions of Section 18.16.210 shall apply.

~~2.~~ After the emergency, the person or agency undertaking the action shall fully restore and/or mitigate any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved critical areas report and mitigation plan. The person or agency

undertaking the action shall apply for review, and the alteration, critical areas report, and mitigation plan shall be reviewed by the City in accordance with the review procedures contained herein. Restoration and/or mitigation activities must be initiated within one (1) year of the date of the emergency, and completed in a timely manner;

~~B.~~ **Operation, maintenance or repair.** Operation, maintenance or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees or drainage systems, that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair. Operation and maintenance includes vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities, provided that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species;

~~C.~~ **Maintenance or repair of single family residence.** Maintenance or repair of existing single family residences including infrastructure, driveways and landscaping that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed maintenance or repair;

~~D.~~ **Passive outdoor activities.** Recreation, education, and scientific research activities that do not degrade the critical area, including fishing, hiking, and bird watching. Trails must be constructed pursuant to Section 18.16.090.D; and

~~E.~~ **Forest practices.** Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practices regulations, ~~Ordinance~~ Chapter 222 WAC, and those that are exempt from City's jurisdiction, provided that forest practice conversions are not exempt.

A3.B.9 ~~A3.B.8~~ Partial Exemptions

Partial exemptions shall be consistent with the purpose and provisions of this ~~Ordinance~~Appendix, but do not require critical areas review or the submittal of a critical areas report. The City may apply conditions to the underlying permit or approval, such as a building permit, to ensure that the proposal is consistent with the provisions of this ~~Ordinance~~ Appendix to protect critical areas. The following activities and associated uses shall be exempt from the provisions of this ~~Ordinance~~ Appendix provided they meet the associated conditions:

~~A. **Permit requests subsequent to previous critical areas review.** Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits), and construction approvals (such as building permits) if all of the following conditions have been met:~~

~~1. The provisions of this Ordinance have been previously addressed as part of another approval;~~

~~2. There have been no material changes in the potential impact to the critical area or buffer since the prior review;~~

~~3. There is no new information available that is applicable to any critical areas review of the site or particular critical area;~~

~~4. The permit or approval has not expired or, if no expiration date, no more than [five years] has elapsed since the issuance of that permit or approval; and~~

~~5. Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured;~~

~~B. **Modification to existing structures.** Structural modification of, addition to, or replacement of an existing legally constructed structure that does not further alter or increase the impact to the critical area or buffer and there is no increased risk to life or property as a result of the proposed modification or replacement, provided that restoration of structures substantially damaged by fire, flood, or act of nature must be initiated within one (1) year of the date of such damage, as evidenced by the issuance of a valid building permit, and diligently pursued to completion;~~

~~C.~~ **Activities within the improved right-of-way.** Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a City authorized private roadway except those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater;

~~D.~~ **Public and private non-motorized trails.** Public and private non-motorized trails, except in wetlands, fish and wildlife habitat conservation areas, subject to the following:

- ~~1.~~ Trails in wetland buffers or fish and wildlife habitat conservation area buffers shall be located in the outer 25% of the buffer where feasible;
- ~~2.~~ The trail surface shall meet all other requirements including water quality standards set forth in the storm water management regulations (MMC 13.26);
- ~~3.~~ Critical area and/or buffer widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas; and
- ~~4.~~ Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report~~;~~.

~~E.~~ **Select vegetation removal activities.** The following vegetation removal activities, provided that no vegetation shall be removed from a critical area or its buffer without approval from the City:

- ~~1.~~ The removal of the following vegetation with hand labor and light equipment:
  - ~~a.~~ Invasive and noxious weeds;
  - ~~b.~~ English Ivy (Hedera helix);

- ~~c.~~ Himalayan blackberry (Rubus discolor, R. procerus);
- ~~d.~~ Evergreen blackberry (Rubus laciniatus);
- ~~e. c~~Canary grass; and
- ~~f.~~ Other commonly found invasive species.

- ~~2.~~ The removal of trees from critical areas and buffers that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property, provided that:
  - ~~a.~~ The applicant submits a report from a certified arborist, registered landscape architect, or professional forester that documents the hazard and provides a replanting schedule for the replacement trees;
  - ~~b.~~ Where trimming is not sufficient to address the hazard, trees should be removed or converted to wildlife snags;
  - ~~c.~~ All vegetation cut (tree stems, branches, etc.) shall be left within the critical area or buffer unless removal is warranted due to the potential for disease or pest transmittal to other healthy vegetation;
  - ~~d.~~ Coniferous trees shall be replaced by coniferous trees native to Washington and deciduous trees shall be replaced by deciduous trees native to Washington;
  - ~~e.~~ Replacement coniferous trees shall be at least eight (8) feet in height. Replacement deciduous trees shall be at least one and one-half (1.5) inches in diameter (DBH); and
  - ~~f.~~ Trees shall be replaced subject to the following replacement ratios:
    - ~~i.~~ Removed trees with a DBH greater than nine (9) inches up to twelve (12) inches shall be replaced by four (4) trees;
    - ~~ii.~~ Removed trees with a DBH greater than twelve (12) inches up to sixteen (16) inches shall be replaced by six (6) trees; and
    - ~~iii.~~ Removed trees with a DBH of sixteen (16) inches or more shall be replaced by eight (8) trees;
  - ~~g.~~ If a tree to be removed provides critical habitat, such as an eagle perch, a qualified wildlife biologist shall be consulted to determine timing and methods or removal that will minimize impacts; and
  - ~~h.~~ Hazard trees determined to pose an imminent threat or danger to public health or safety, to public or private property, or of serious environmental degradation may be removed or pruned by the landowner prior to receiving written approval from City provided that within fourteen (14) days following such action, the landowner shall submit a restoration plan that demonstrates compliance with the provisions of this Title.
  - ~~i.~~ Financial guarantees for replacement trees may be required consistent with the provisions of MMC 18.16.220

- ~~3.~~ Measures to control a fire or halt the spread of disease or damaging insects consistent with the State Forest Practices Act; Chapter 76.09 RCW, provided that the removed vegetation shall be replaced in-kind or with similar native species within one (1) year in accordance with an approved restoration plan.
- ~~4.~~ The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the critical area by changing existing topography, water conditions, or water sources.
- ~~5.~~ Unless otherwise provided, or as a necessary part of an approved alteration, removal of any vegetation or woody debris from a habitat conservation area or wetland shall be prohibited~~;~~.

~~F.~~ **Minor site investigative work.** Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored; and

~~G.~~ **Boundary markers.** Installation or modification of boundary markers.

A3.B.10 ~~18.16.100~~ Single Family Residence Administrative Exception

The Land Use Administrator may approve the construction, addition to or modification of a single family residence on an existing legal lot, provided:

~~A.~~ The applicant shall submit any critical areas report and a mitigation plan following a preapplication review meeting as well as such other documents or studies, as requested by the City.

~~B.~~ The proposal meets the following requirements.

- ~~1.~~ The proposal is the minimum necessary to accommodate the building footprint and access. In no case shall the total impervious surface exceed 5,000 square feet.
- ~~2.~~ Access is located so as to have the least impact on the critical area and its buffer.
- ~~3.~~ The proposal preserves the functions and values of wetlands and streams to the maximum extent possible.
- ~~4.~~ Adverse impacts resulting from alterations of steep slopes are minimized.
- ~~5.~~ The proposal includes on-site mitigation to the maximum extent possible.
- ~~6.~~ The proposal will not significantly affect drainage capabilities, flood potential, and steep slopes and landslide hazards on neighboring properties; and

- ~~7.~~ The proposal first develops noncritical area land, then the critical areas buffer before the critical area itself is developed.

~~C.~~ The Land Use Administrator may require on-site or off-site mitigation measures to compensate for the loss of the functions and values of the critical areas and buffers and may impose mitigating conditions to the modification or waiver in order to meet the standards of this chapter.

~~D.~~ This section shall not apply to the following critical areas:

- ~~1.~~ Landslide hazard areas that are unmitigatable;
- ~~2.~~ Slopes of greater than 70 percent where either the lot or slope are abutting and above a Type S and Type F streams or Category I and Category II wetlands , and associated buffer, or an open stormwater conveyance system;
- ~~3.~~ Type S and Type F streams; or
- ~~4.~~ Category I and Category II wetlands.

~~*18.16.110 Reasonable Use Permit*~~

~~*A. If the application of this Ordinance would deny all reasonable use of the subject property, the property owner may apply for an exception pursuant to this Section.*~~

~~*B. An application for a reasonable use exception shall include a critical areas report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW) (SEPA documents).*~~

~~*C. The city council shall review the application and conduct a public hearing pursuant to the hearing provisions of the development code. The city council shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use permit criteria in Subsection (D).*~~

~~*D. Reasonable use permit criteria. All of the following criteria must be met:*~~

~~*1. The application of this Ordinance would deny all reasonable use of the property;*~~

~~*2. No other reasonable use of the property has less impact on the critical area or its buffer;*~~

~~*3. The impact to the critical area or its buffer is the minimum necessary to allow for reasonable use of the property;*~~

~~*4. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;*~~

~~*5. The proposal protects and mitigates impacts to the critical area functions and values consistent with the best available science;*~~

~~*E. Burden of proof. The applicant has the burden of proving that the application meets the stated reasonable use permit criteria.*~~

A3.B.11 ~~18.16.120~~ Critical Areas Review Process

~~A.~~ **Pre-application consultation.** Any person preparing to submit an application for development or use of land where the proposal is located within 300 feet of a critical area or its buffer, or is likely to impact a critical area, shall meet with the Land Use Administrator prior to submitting an application for development or other approval. At this meeting, the Land Use Administrator shall discuss the requirements of this ~~Ordinance~~Appendix; provide a critical areas checklist, available critical areas maps, scientific information, and other materials; outline the review process; and, work with the applicant to identify any potential concerns that might arise during the review process, in addition to discussing other permit procedures and requirements.

~~B.~~ **Initial review.** Following submittal of an application for development or use of land, the Land Use Administrator or his or her designee shall review the application, site conditions, and other information available pertaining to the site and the proposal and make a determination as to whether any critical areas may be affected by the proposal.

~~C.~~ **Site inspection.** The property owner shall provide the City with reasonable access to the site for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period.

~~D.~~ **Critical areas report required.** If the information available indicates that the project area is within or adjacent to a critical area or buffer, or that the proposed activity is likely to degrade a critical area or buffer, then the applicant shall be required to submit a critical areas report prior to further review of the project.

A3.B.12 ~~18.16.130~~ Review Criteria

~~A.~~ Any permit or approval that includes an alteration to a critical area or its buffer, unless otherwise provided for in this ~~Ordinance~~Appendix, may be approved, approved with conditions, or denied based on the proposal's ability to comply with all of the following criteria:

- That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;
- That the hardship described in (1) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;
- That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and

shoreline master program and will not cause adverse impacts to the shoreline environment;

- That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
- That the variance requested is the minimum necessary to afford relief; and
- That the public interest will suffer no substantial detrimental effect.

~~1. The proposal minimizes the impact on critical areas in accordance with Mitigation sequencing MMC 18.16.150;~~

~~2. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;~~

~~3. The proposal is consistent with the general purposes of this Ordinance and the public interest;~~

~~4. Any alterations permitted to the critical area are mitigated in accordance with Mitigation requirements MMC 18.16.160;~~

~~5. The proposal is consistent with other applicable regulations and standards. A favorable critical areas review should not be construed as endorsement or approval of any underlying permit or approval.~~

~~B.~~ The City may condition the underlying permit or approval as necessary to mitigate impacts to critical areas and to conform to the standards required by this ~~Ordinance~~Appendix. Any conditions of approval shall be attached to the underlying permit or approval.

~~C.~~ The applicant has the burden of proving that a proposal complies with the standards set forth in this ~~Ordinance~~Appendix.

A3.B.13 ~~18.16.140~~ Critical Areas Report

~~A.~~ The critical areas report shall use scientifically valid methods and studies in the analysis of critical areas data and field reconnaissance and reference the source of science used. The critical areas report shall evaluate the proposal and all probable impacts to critical areas. The critical areas report shall be prepared by a qualified professional.

~~B.~~ At a minimum, the report shall contain the following:

- ~~1.~~ The name and contact information of the applicant, the project area, a description of the proposal, and identification of the permit requested;
- ~~2.~~ The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;

- ~~4.~~ Identification and characterization of all critical areas and water bodies within three hundred (300) feet of the proposed project area;
- ~~5.~~ A statement specifying the accuracy of the report, and all assumptions made and relied upon;
- ~~6.~~ An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;
- ~~7.~~ An analysis of site development alternatives;
- ~~8.~~ A description of reasonable efforts made to avoid, minimize, and mitigate impacts to critical areas consistent with MMC 18.16.150;
- ~~9.~~ Plans for adequate mitigation, as needed, to offset any impacts;
- ~~10.~~ A discussion of the performance standards applicable to the critical area and proposed activity;
- ~~11.~~ Financial guarantees to ensure compliance; and
- ~~12.~~ Any additional information required for the critical area as specified in the corresponding chapter.

~~C.~~ Unless otherwise provided, a critical areas report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the City.

~~D.~~ The required geographic area of the critical areas report may be limited as appropriate if:

- ~~1.~~ The applicant, with assistance from the City, cannot obtain permission to access properties adjacent to the project area; or
- ~~2.~~ The proposed activity will affect only a limited part of the subject site.

~~E.~~ The City may require additional information to be included in the critical areas report when determined to be necessary to the review of the proposed activity in accordance with this ~~Ordinance~~Appendix.

A3.B.14 ~~18.16.150~~ Mitigation Sequencing.

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

1. ~~A.~~ Avoiding the impact altogether by not taking a certain action or parts of an action;
2. ~~B.~~ Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;

3. ~~C.~~ Rectifying the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;
4. ~~D.~~ Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;
5. ~~E.~~ Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
6. ~~F.~~ Compensating for the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
7. ~~G.~~ Monitoring the hazard or other required mitigation and taking remedial action when necessary.

A3.B.15 ~~18.16.160~~ Mitigation Requirements

~~A.~~ Unless otherwise provided in this ~~Ordinance~~Appendix, if alteration to the critical area or buffer is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a development proposal or alteration shall be mitigated in accordance with an approved critical areas report.

~~B.~~ Mitigation shall be sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.

~~C.~~ Mitigation shall not be implemented until after City review of a critical areas report that includes a mitigation plan, and mitigation shall be in accordance with the provisions of the approved critical areas report.

~~D.~~ Where feasible, mitigation projects shall be completed prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to fish, wildlife and flora.

~~E.~~ The City may authorize a one-time temporary delay, up to one-hundred-twenty (120) days, in completing minor construction and landscaping when environmental conditions could produce a high probability of failure or significant construction difficulties. 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 the 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 City, and include a financial guarantee.

~~F.~~ **Mitigation plan**. When mitigation is required, the applicant shall submit for approval by city a mitigation plan as part of the critical areas report. The mitigation plan shall include:

- ~~1.~~ **Environmental goals and objectives.** The mitigation plan shall include a written report identifying environmental goals and objectives of the compensation proposed and including:
  - ~~a.~~ A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area;
  - ~~b.~~ A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed; and
  - ~~c.~~ An analysis of the likelihood of success of the compensation project.
- ~~2.~~ **Performance standards.** The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of this ~~Ordinance~~Appendix have been met.
- ~~3.~~ **Detailed construction plans.** The mitigation plan shall include written specifications and descriptions of the mitigation proposed, such as:
  - ~~a.~~ The proposed construction sequence, timing, and duration;
  - ~~b.~~ Grading and excavation details;
  - ~~c.~~ Erosion and sediment control features;
  - ~~d.~~ A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
  - ~~e.~~ Measures to protect and maintain plants until established.
- ~~4.~~ Written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.
- ~~5.~~ **Monitoring program.** The mitigation plan shall include a program for monitoring construction of the compensation project, and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring (for example, monitoring shall occur in years 1, 3, 5 and 7 after site construction), and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The

compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five (5) years.

- ~~6.~~ **Contingency plan.** The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.

A3.B.16 ~~18.16.170~~ Notice on Title

~~A.~~ In order to inform subsequent purchasers of real property of the existence of critical areas, the owner of any property containing a critical area or buffer on which a development proposal is submitted shall file a notice with the county records and elections division. The notice shall state the presence of the critical area or buffer on the property, of the application of this ~~Ordinance~~Appendix to the property, and the fact that limitations on actions in or affecting the critical area or buffer may exist. The notice shall run with the land.

~~B.~~ The applicant shall submit proof that the notice has been filed for public record before the City approves any site development or construction for the property or, in the case of subdivisions, short subdivisions, planned unit developments, and binding site plans, at or before recording.

A3.B.17 ~~18.16.180~~ Native Growth Protection Areas

~~A.~~ Unless otherwise required in this ~~Ordinance~~Appendix, native growth protection areas (NGPA) shall be used in development proposals for subdivisions, short subdivisions, planned unit developments, and binding site plans to delineate and protect those contiguous critical areas and buffers listed below:

- ~~1.~~ All landslide hazard areas and buffers;
- ~~2.~~ All wetlands and buffers;
- ~~3.~~ All habitat conservation areas; and
- ~~4.~~ All other lands to be protected from alterations as conditioned by project approval.

~~B.~~ Native growth protection areas shall be recorded on all documents of title of record for all affected lots.

~~C.~~ Native growth protection areas shall be designated on the face of the plat or recorded drawing in a format approved by the City attorney. The designation shall include the following restrictions:

- ~~1.~~ An assurance that native vegetation will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and
- ~~2.~~ The right of the City to enforce the terms of the restriction.

A3.B.18 ~~18.16.185~~ Critical Areas Tracts

~~A.~~ Critical areas tracts shall be used in development proposals for subdivisions, short subdivisions, planned unit developments, and binding site plans to delineate and protect those contiguous critical areas and buffers listed below that total five thousand (5,000) or more square feet:

- ~~1.~~ All landslide hazard areas and buffers;
- ~~2.~~ All wetlands and buffers;
- ~~3.~~ All habitat conservation areas; and
- ~~4.~~ All other lands to be protected from alterations as conditioned by project approval.

~~B.~~ Critical areas tracts shall be recorded on all documents of title of record for all affected lots.

~~C.~~ Critical areas tracts shall be designated on the face of the plat or recorded drawing in a format approved by the city attorney. The designation shall include the following restriction:

- ~~1.~~ An assurance that native vegetation will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants, fish, and animal habitat; and
- ~~2.~~ The right of the city to enforce the terms of the restriction.

~~D.~~ The city may require that any critical areas tract be dedicated to the city, held in an undivided interest by each owner of a building lot within the development with the ownership interest passing with the ownership of the lot, or held by an incorporated homeowner's association or other legal entity (such as a land trust, which ensures the ownership, maintenance, and protection of the tract).

All critical areas, regardless of size or type, and associated buffer shall be shown on proposals and recoding documents for subdivisions, short subdivisions, planned unit developments, and binding site plans.

A3.B.19 ~~18.16.190~~ Building Setbacks.

Unless otherwise provided, buildings and other structures shall be set back a distance of fifteen (15) feet from the edges of all critical areas buffers. The following may be allowed in the building setback area:

- ~~A.~~ Landscaping;
- ~~B.~~ Uncovered decks;
- ~~C.~~ Building overhangs if such overhangs do not extend more than eighteen (18) inches into the setback area; and

A3.B.20 ~~18.16.200~~ Security to Ensure Mitigation, Maintenance, and Monitoring

~~A.~~ When mitigation required pursuant to a development proposal is not completed prior to the City final permit approval, such as final plat approval or final building inspection, the City shall require of the applicant an assignment of funds or post a performance bond or other security in a form and amount deemed acceptable by the City. If the development proposal is subject to mitigation, the applicant shall post mitigation security in a form and amount deemed acceptable by the City to ensure mitigation is fully functional.

~~B.~~ The security shall be in the amount of one hundred and fifty percent (150%) of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater.

~~C.~~ The security shall be in the form of assignment of funds, a surety bond, performance bond, assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the City attorney.

~~D.~~ Security authorized by this Section shall remain in effect until the City determines, in writing, that the standards bonded for have been met. Security shall be held by the City for a minimum of five (5) years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.

~~E.~~ Depletion, failure, or collection of security funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.

~~F.~~ Public development proposals shall be relieved from having to comply with the security requirements of this Section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.

~~G.~~ Any failure to satisfy critical areas requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within thirty (30) days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default,

and the City may demand payment of any financial guarantees or require other action authorized by the City code or any other law.

~~H.~~ Any funds recovered pursuant to this Section shall be used to complete the required mitigation.

A3.B.21 ~~18.16.210~~ Unauthorized Critical Areas Alterations and Enforcement

~~A.~~ **Unauthorized alteration.** When a critical area or its buffer has been altered in violation of this ~~Ordinance~~Appendix, all ongoing development work shall stop and the critical area shall be restored.

- ~~1.~~ The City shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation or replacement measures at the responsible party's expense to compensate for violation of provisions of this ~~Ordinance~~Appendix. At a minimum, the structural and functional values of the critical area shall be restored and any hazard shall be reduced to a level equal to, or less than, the pre-development conditions.
- ~~2.~~ All development work shall remain stopped until a restoration plan has been approved by the City. Such a plan shall be prepared by a qualified professional. The City may, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

~~B.~~ **Site inspections.** The Land Use Administrator, or his or her designee, is authorized to make site inspections and take such actions as necessary to enforce this ~~Ordinance~~Appendix. The Land Use Administrator shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.

~~C.~~ **Penalties.** Any person, party, firm, corporation, or other legal entity convicted of violating any of the provisions of this ~~Ordinance~~Appendix shall be guilty of a misdemeanor. Each day or portion of a day during which a violation of this ~~Ordinance~~Appendix is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of this ~~Ordinance~~Appendix shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington. The City may levy civil penalties against any person, party, firm, corporation, or other legal entity for violation of any of the provisions of this ~~Ordinance~~Appendix. The civil penalty shall be assessed at a maximum rate of $1000 dollars per day per violation.

A3.C WETLANDS

A3.C.1 ~~18.16.310~~ Wetlands Designation and Classification.

~~A.~~ **Wetlands Designation**. Wetlands are designated in accordance with the the approved federal wetlands delineation manual and applicable regional supplement~~currently adopted~~

~~*Washington State Wetlands Identification and Delineation Manual* (1997 or as revised)~~. Wetlands are 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.

- ~~1.~~ 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.
- ~~2.~~ Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

~~B.~~ **Wetlands Classification**. Wetlands shall be rated according to the *Washington State Wetland Rating System for Western Washington* – 2014 update (Department of Ecology Publication #14-06-029, October 2014 – Effective January 2015, or as revised)~~*Washington State Wetland Rating System for Western Washington* (Department of Ecology 2004, or as revised)~~. This document contains the definitions, methods and a rating form for determining the categorization of wetlands described below:

Category I wetlands include those that receive a score of 23 through 27~~greater than or equal to 70~~ based on functions, or those that are rated Category I based on Special Characteristics as defined in the rating form.

Category II wetlands include those that receive a score of 20 through 22~~51 through 69~~ based on functions, or those that are rated Category II based on Special Characteristics as defined in the rating form.

Category III wetlands include those that receive a score of 16 through 19~~30 through 50~~ based on functions.

Category IV wetlands score less than ~~30~~ 16 points based on functions.

A3.C.2 ~~18.16.320~~ Performance Standards

~~A.~~ Activities and uses shall be prohibited from wetlands and wetland buffers, except as provided for in this ~~Ordinance~~Appendix. Activities may only be permitted in a wetland or wetland buffer if the applicant can show that the proposed activity will not degrade the functions and values of the wetland and other critical areas, or that the impacts to the functions and values will be fully mitigated.

~~B.~~ Category III and IV wetlands less than 4,000 square feet may be exempted or partially exempted from the provisions of this chapter and may be altered by filling or dredging as outlined below.

- ~~1.~~ Category III and IV wetlands less than 1,000 square feet are exempt where:
  - ~~a.~~ The wetland is isolated;
  - ~~b.~~ The wetland is not associated with a riparian corridor;
  - ~~c.~~ The wetland is not part of a wetland mosaic, as defined by the Washington Department of Ecology;
  - ~~d.~~ The wetland does not contain Washington Department of Fish and Wildlife-designated priority species or habitat identified as essential for local populations of priority species .
- ~~2.~~ Category III and IV wetlands between 1,000 and 4,000 square feet may be exempted from the mitigation sequencing requirement to first avoid impacts where:
  - ~~a.~~ A critical areas report is performed in accordance with MMC 18.16.140; and
  - ~~b.~~ The wetland meets the criteria listed in MMC 18.16.320.B.1; and
  - ~~c.~~ The proposed plan includes full mitigation.

~~C.~~ **Wetland buffers**

~~1. **Standard buffer widths.**~~Buffer Requirements. The standard buffer widths in Table 1 – "Wetland Buffers" have been established in accordance with the best available science. 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.

- ~~a.~~ The use of the standard buffer widths requires the implementation of the measures in Table 2, where applicable, to minimize the impacts of the adjacent land uses.~~The standard buffer widths presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. If the vegetation is inadequate then the buffer width shall be increased or the buffer should be planted to maintain the standard width.~~
- ~~b.~~ If an applicant chooses not to apply the mitigation measures in Table 2 – "Required measures to minimize impacts to wetlands", then a 33% 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.~~Wetland buffers widths, based on wetland category, habitat score and land use intensity, are shown in the table below~~
- ~~.~~ The standard buffer widths 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.
- If the wetland is a Category I or II wetland with a habitat score greater than 5 points and it is located within 300 feet of a priority habitat area as defined by the Washington State

Department of Fish and Wildlife, the applicant shall provide a relatively undisturbed vegetated corridor at least 100 feet wide between the wetland and the priority habitat area. The corridor shall be protected for the entire distance between the wetland and the priority habitat through a conservation easement, native growth protection easement or the equivalent.

- Additional buffer widths are added to the standard buffer widths. For example, a Category I wetland scoring 8 points for habitat function would require a buffer of 225 feet (75 + 150).

Table 1 Wetland Buffer Requirements

Wetland Category	**Standard Buffer Width**	**Additional buffer width if wetland scores 3-4 habitat points**	**Additional buffer width if wetland scores 5-7 habitat points**	**Additional buffer width if wetland scores 8-9 habitat points**
Category I: Based on total score	75ft	Add 30 ft	Add 90 ft	Add 150 ft
Category I: Bogs and wetlands of high conservati on value	190 ft	NA	NA	Add 35 ft
Category I: Forested	75ft	Add 30 ft	Add 90 ft	Add 150 ft
Category I: Estuarine	150 ft (habitat scores not applicable	NA	NA	NA
Category II: Based on score	75 ft	Add 30 ft	Add 90 ft	Add 150 ft
Category III (all)	60 ft	Add 45 ft	Add 105 ft	Add 165 ft
Category IV (all)	40 ft	NA	NA	NA

Table 2 – Required Measures to Minimize Impacts to Wetlands

Examples of Disturbance	Examples of Activities That Cause the Disturbance	Examples of Measures to Minimize Impacts
Lights	Parking lots Warehouses Manufacturing Residential	• Direct lights away from wetland
Noise	Manufacturing Residential	• Place activity that generates noise away from the wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • 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
Toxic runoff	Parking lots Roads Manufacturing Residential areas Application of agricultural pesticides, herbicides, fungicides, fertilizers Landscaping	• Route all new untreated runoff away from wetland while ensuring the wetland is not dewatered. • Utilize and require covenants limiting use of pesticides within 150 feet of wetland • Apply Integrated Pest Management programs
Change in water regime	Any impermeable surface Lawns Tilling	• Infiltrate or treat, detain and disperse into buffer new runoff from impervious surfaces and new lawns.
Pets and human disturbance	Residential areas	• Use privacy fence OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion.

Examples of Disturbance	Examples of Activities That Cause the Disturbance	Examples of Measures to Minimize Impacts
		• Place wetland and its buffer in a separate tract or protect with a conservation easement.
Dust	Tilled fields	• Use best management practices to control dust
Disruption of corridors or connections		• Maintain connections to offsite areas that are undisturbed. • Restore corridors or connections to offsite habitats by replanting.
Storm water runoff	Stormwater ponds Other stormwater facilities	• Retrofit stormwater detention and treatment for roads and existing adjacent development. • Prevent channelized flow from lawns that directly enters the buffer. • Use Low Intensity Development techniques (per PSAT publication on LID techniques).

~~Category I, II & III~~	~~Buffers~~	
~~Habitat score~~	~~Standard~~	~~High Intensity~~
~~31 or higher~~	~~225~~	~~300~~
~~30~~	~~200~~	~~270~~
~~29~~	~~175~~	~~240~~
~~28~~	~~155~~	~~210~~
~~27~~	~~135~~	~~180~~
~~26~~	~~115~~	~~150~~
~~25~~	~~105~~	~~136~~
~~24~~	~~95~~	~~124~~
~~23~~	~~85~~	~~112~~

~~22~~	~~75~~	~~100~~
~~21~~	~~70~~	~~92~~
~~20~~	~~65~~	~~85~~
~~19 or lower~~	~~60~~	~~80~~
~~**Category IV**~~	~~40~~	~~50~~

~~c. Standard buffer widths apply if the following conditions are met, otherwise High Intensity buffer widths apply:~~

~~i. If the wetland is a Category I or II wetland with a habitat score greater than twenty points and it is located within three hundred feet of a priority habitat area as defined by the Washington state Department of Fish and Wildlife, the applicant shall provide a relatively undisturbed vegetated corridor at least one hundred feet wide between the wetland and the priority habitat area. The corridor shall be protected for the entire distance between the wetland and the priority habitat through a conservation easement, native growth protection easement or the equivalent; and~~

~~ii. The following measures shall be implemented to the extent reasonably possible to minimize impacts from high intensity land uses:~~

~~**Examples of Disturbance**~~	~~**Examples of Activities that Cause the Disturbance**~~	~~**Examples of Measures to Minimize Impacts**~~
~~Lights~~	~~Parking Lots~~ ~~Warehouses~~ ~~Manufacturing~~ ~~Residential~~	~~Direct lights away from wetland~~
~~Noise~~	~~Manufacturing~~ ~~Residential~~	~~Place activity that generates noise away from the wetland.~~
~~Toxic runoff~~	~~Parking Lots~~ ~~Roads~~ ~~Manufacturing~~ ~~Residential Areas~~ ~~Application of Agricultural Pesticides, herbicides, fungicides, fertilizers~~ ~~Landscaping~~	~~Route all new untreated runoff away from wetland~~ ~~Covenants limiting use of pesticides within 150 feet of wetland~~ ~~Integrated pest management programs~~

~~Change in water regime~~	~~Any impermeable surface~~ ~~Lawns~~ ~~Tilling~~	~~Infiltrate or treat, detain and disperse into buffer new runoff from surfaces~~
~~Pets and Human disturbance~~	~~Residential areas~~	~~Fence around buffer~~ ~~Plant buffer with "impenetrable" natural vegetation appropriate for region~~
~~Dust~~	~~Tilled fields~~	~~Use best management practices to control dust~~

~~2.~~ **Measurement of wetland buffers.** Buffers shall be measured from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland.

~~3.~~ Where a legally established and constructed public roadway transects a wetland buffer, the department may approve a modification of the standard buffer width to the edge of the roadway provided:

- ~~a.~~ The isolated part of the buffer does not provide additional protection of the wetland; and
- ~~b.~~ The isolated part of the buffer provides insignificant biological, geological or hydrological buffer functions relating to the wetland; and
- ~~c.~~ The resulting buffer distance is less than 50% of the standard or optional buffer for the applicable wetland category, no further reduction shall be allowed.

~~4.~~ Where a buffer has been previously established after 1996, through a City development review and is permanently recorded on title or placed within a separate tract, the buffer shall be as previously established.

~~5.~~ **Buffer width increasing**. The Land Use Administrator may require the standard buffer to be increased by the greater of 50 feet or a distance necessary to protect wetland functions and provide connectivity to other wetland and habitat areas for one of the following:

- ~~a.~~ To maintain viable populations of existing species listed by the Federal or State government as endangered, threatened or sensitive; or
- ~~b.~~ To protect wetlands against severe erosion that standard erosion control measures will not effectively address; or

- ~~c.~~ When a category I, II or III wetland is located within 300 feet of:
  - ~~i.~~ Another category I, II, or III wetland;
  - ~~ii.~~ A fish and wildlife habitat conservation area; or
  - ~~iii.~~ A type S or F stream as defined in MMC 18.16.620;

The increased buffer distance may be limited to those areas that provide connectivity or are necessary to protect wetland and habitat functions. If the wetland contains variations in sensitivity, increasing the buffer widths will only be done where necessary to preserve the structure, function and value of the wetland.

~~6.~~ **Wetland buffer width averaging.** Buffer averaging. Buffer width averaging may be allowed by the Land Use Administrator if all of the following criteria are met:

- ~~a.~~ It will provide additional protection to wetlands or enhance their functions, as long as the total area contained in the buffer on the development proposal site does not decrease;
- ~~b.~~ The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;
- ~~c.~~ The buffer width is not reduced to less than ~~50~~25% of the standard buffer width at any location except by variance; and
- ~~d.~~ Buffer width averaging may not be used in conjunction with buffer reduction options in this section~~, provided the total combined reduction does not reduce the buffer to less than 50% of standard buffer width at any location~~.

~~7.~~ **Reduction of wetland buffer widths.** Standard buffer widths may be reduced up to ~~50~~25% when buffer width reduction impacts are mitigated and result in equal or greater protection of the wetland functions. Buffer reduction shall not reduce the required buffer by more than 25% except by variance. Prior to considering buffer reductions, the applicant shall demonstrate application of mitigation sequencing as required in MMC 18.16.150. A plan for mitigating buffer-reduction impacts must be prepared using selected incentive-based mitigation options from the list below. The following incentive options for reducing standard buffer widths shall be considered cumulative up to a maximum reduction of ~~50~~25% of the standard buffer width. In all circumstances where a substantial portion of the remaining buffer is degraded, the buffer reduction plan shall include replanting with native vegetation in the degraded portions of the remaining buffer area and shall include a five (5) year monitoring and maintenance plan.

a. Installation of biofiltration/infiltration mechanisms: up to twenty percent (20%) reduction in the standard buffer width may be allowed for the installation of bioswales, created and/or enhanced wetlands, or ponds supplemental to existing storm drainage and water quality requirements in accordance with MMC 13.26.

b. Removal of existing impervious surfaces:

i. Up to ten percent (10%) reduction in standard buffer width if impervious surfaces within the to-be-remaining buffer area are reduced by at least fifty percent (50%); or

ii. Up to twenty percent (20%) reduction in standard buffer width if the to-be-remaining buffer area is presently more than fifty percent (50%) impervious AND all of it is to be removed.

c. Removal of invasive, non-native vegetation: up to ten percent (10%) reduction in standard buffer width for the removal and extended (minimum 5 year) monitoring and continued-removal maintenance of relatively dense stands of invasive, non-native vegetation from significant portions of the remaining buffer area.

d. If not already required under an existing development proposal, installation of oil/water separators for storm water quality control: up to ten percent (10%) reduction in standard buffer width.

e. Use of pervious material for driveway/road construction: up to ten percent (10%) reduction in standard buffer width.

f. Restoration of off-site area if no on-site area is possible:

i. Up to ten percent (10%) reduction in standard buffer width if restoration area is at a 2:1 ratio or greater; Or

ii. Up to twenty percent (20%) reduction in standard buffer width if restoration area is at a 4:1 ratio or greater.

g. Removal of significant refuse or sources of toxic material: up to ten percent (10%) reduction in standard buffer width.

8. The Land Use Administrator may also consider buffer reductions for decreasing impacts to buffers using methods such as Low Impact Development (LID).

~~9.~~ **Buffer conditions shall be maintained.** Except as otherwise specified or allowed in accordance with this ~~Ordinance~~Appendix, wetland buffers shall be retained in an undisturbed condition.

~~D.~~ **Signs and fencing of wetlands**

~~1.~~ **Temporary markers**. The outer perimeter of the wetland or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that no unauthorized intrusion will occur, and inspected by the Land Use Administrator prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction, and shall not be removed until permanent signs, if required, are in place.

~~2.~~ **Permanent signs**. As a condition of any permit or authorization issued pursuant to this Chapter, the Land Use Administrator may require the applicant to install permanent signs along the boundary of a wetland or buffer.

- ~~a.~~ Permanent signs shall be made of a metal face and attached to a metal post, or another material of equal durability.
- ~~b.~~ Signs must be posted at an interval of one per lot or every 50 feet, whichever is less, and must be maintained by the property owner in perpetuity.
- ~~c.~~ The sign shall be worded as follows or with alternative language approved by the Land Use Administrator:

"Protected Wetland Area"

Do Not Disturb

Contact [local contact information]

Regarding Uses and Restriction"

~~3.~~ **Fencing**

~~a.~~ The City shall condition any permit or authorization to require the applicant to install a permanent fence at the edge of the wetland buffer, when fencing will prevent future impacts to the wetland.

~~b.~~ Fencing installed as part of a proposed activity or as required in this Subsection shall be design so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

A3.C.3 ~~18.16.330~~ Wetland Mitigation Requirements

~~A.~~ Mitigation and mitigation plans shall be developed consistent with the Department of Ecology *Wetland Mitigation in Washington State Part 2: Developing Mitigation Plans, 2006*, or as revised.

~~B.~~ **Compensatory Mitigation General Provisions.**

- ~~1.~~ Replace wetland impacts with the same or higher category of wetland.

- ~~2.~~ Compensatory mitigation shall be conducted on property which shall be protected and managed to avoid further loss or degradation. The Applicant or violator shall provide for long term preservation of the compensation area.
- ~~3.~~ Compensatory mitigation shall follow an approved Mitigation Plan.
- ~~4.~~ Enhancement of existing wetlands, other than Category I and Category II wetlands, may be considered for compensation.
- ~~5.~~ Compensation shall be completed prior to, or concurrently with, wetland loss, or, in the case of an enforcement action, prior to further development of the site.

~~C.~~ **Mitigation Ratios**.

~~1.~~ Any person who alters or proposes to alter regulated wetlands shall restore or create areas of wetland in order to compensate for wetland losses. The wetlands to be created or restored shall be in-kind (i.e., the same type of wetland) and accomplished prior to or concurrently with loss. The ratio of lost wetlands to newly created or restored shall be determined in accordance with Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance, March 2006 or as revised.

~~2.~~ Mitigation ratios shall be as follows:

Category of Wetland Impacts	Re-establishment or Creation	Rehabilitation Only[4]	Re-establishment or Creation (R/C) and Rehabilitation (RH)	Re-establishment or Creation (R/C) and Enhancement (E)	Enhancement Only[4]
Category I	6:1	12:1	1:1 (R/C) and 10:1 (RH)	1:1 (R/C) and 20:1 (E)	24:1
Category II	3:1	6:1	1:1 (R/C) and 4:1 (RH)	1:1 (R/C) and 8:1 (E)	12:1
Category III	2:1	4:1	1:1 (R/C) and 2:1 (RH)	1:1 (R/C) and 4:1 (E)	8:1
Category IV	1.5:1	3:1	1:1 (R/C) and 1:1 (RH)	1:1 (R/C) and 2:1 (E)	6:1

~~3.~~ Decreased replacement ratio**.** The City may decrease these ratios under the following circumstances:

- ~~a.~~ Documentation by a qualified professional demonstrates that the proposed mitigation actions have a very high likelihood of success;

- ~~b.~~ Documentation by a qualified professional demonstrates that the proposed mitigation actions will provide functions and values that are significantly greater than the wetland being impacted; or
- ~~c.~~ The proposed mitigation actions are conducted in advance of the impact and have been shown to be successful.

~~D.~~ On-site compensation is generally preferred over off-site compensation. Off-site compensation allows replacement of wetlands away from the site on which the wetland has been impacted by a regulated activity. The following conditions apply to off-site compensation:

- ~~1.~~ Off-site compensation shall occur within the same drainage basin of the same watershed where the wetland loss occurs, provided that Category IV wetlands may be replaced outside of the watershed if there is no reasonable alternative. In such instances, the stormwater storage function provided by Category IV Wetlands must be provided for within the design of the development project.
- ~~2.~~ Off-site compensation can be allowed only under one or more of the following circumstances:
  - ~~a.~~ On-site compensation is not feasible due to hydrology, soils, or other factors;
  - ~~b.~~ On-site compensation is not practical due to probable adverse impacts from surrounding land uses or would conflict with a Federal, State or local public safety directive;
  - ~~c.~~ Potential functions and value at the site of the proposed restoration are greater than the lost wetland functions and value;
  - ~~d.~~ When the wetland to be altered is of a limited function and value and is degraded, compensation shall be of the wetland community types needed most in the location of compensation and those most likely to succeed with the highest functional value possible.

~~E.~~ Out-of-kind compensation can be allowed when out-of-kind replacement will best meet the provisions of this Section and the mitigation sequence outlined in MMC 18.16.150.

~~F.~~ **Selecting Compensation Sites.**

~~1.~~ Except in the case of cooperative compensation projects in selecting compensation sites, Applicants shall pursue locations in the following order of preference:

- ~~a.~~ Filled, drained, or cleared sites which were formerly wetlands and where appropriate hydrology exists;
- ~~b.~~ Upland sites, adjacent to wetlands, if the upland is significantly disturbed and does not contain a mature forested or shrub community of native species, and where the appropriate natural hydrology exists.

~~2.~~ Where out-of-kind replacement is accepted, greater restoration/creation ratios may be required.

~~G.~~ **Timing**. Construction of compensation projects shall be timed to reduce impacts to existing wildlife and plants. Construction shall be timed to assure that grading and soil movement occurs during the dry season and planting of vegetation shall be specifically timed to needs of the target species.

~~H.~~ **Alternative Compensation Projects**. The Land Use Administrator may encourage, facilitate and approve innovative wetland mitigation projects. Advance compensation or mitigation banking are examples of alternative compensation projects allowed under the provisions of this Section wherein one or more Applicant(s), or an organization with demonstrated capability, may undertake a compensation project together if it is demonstrated that all of the following circumstances exist:

- ~~1.~~ Creation of one or several larger wetlands may be preferable to many small wetlands;
- ~~2.~~ The group demonstrates the organizational and fiscal capability to act cooperatively;
- ~~3.~~ The group demonstrates that long term management of the compensation area will be provided;
- ~~4.~~ There is a clear potential for success of the proposed compensation at the identified compensation site;
- ~~5.~~ Conducting compensation as part of a cooperative process does not reduce or eliminate the required replacement ratios outlined above. Exception: where a compensatory mitigation plan including a 5 year monitoring agreement is included as a condition of approval, such plan shall allow for 1:1 replacement ratios upon successful completion of the monitoring agreement;

~~I.~~ **Wetlands enhancement as mitigation**

Impacts to wetlands may be mitigated by enhancement of existing significantly degraded wetlands. Applicants proposing to enhance wetlands must produce a critical areas report that identifies how enhancement will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site. An enhancement proposal must also show whether existing wetland functions will be reduced by the enhancement actions.

A3.C.4 ~~18.16.340~~ Subdivisions.

The subdivision and short subdivision of land in wetlands and associated buffers is subject to the following:

- ~~A.~~ Land that is located wholly within a wetland or its buffer may not be subdivided.
- ~~B.~~ 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:
  - ~~1.~~ Located outside of the wetland and its buffer; and
  - ~~2.~~ Meets the minimum lot size requirements.

- ~~C.~~ Access roads and utilities serving the proposed subdivision may be permitted within the wetland and associated buffers only if the City determines that no other feasible alternative exists in and when consistent with this ~~Ordinance~~Appendix.

A3.D CRITICAL AQUIFER RECHARGE AREAS

A.3.D.1 ~~18.16.410~~ Critical Aquifer Recharge Areas Designation.

Critical aquifer recharge areas (CARA) are those areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2). CARA include:

- ~~A.~~ Those aquifer recharge areas that have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water.
- ~~B.~~ Wellhead protection areas defined by the boundaries of the ten (10) year time of ground water travel, or boundaries established using alternate criteria approved by the Department of Health in those settings where ground water time of travel is not a reasonable delineation criterion, in accordance with WAC 246-290-135.
- ~~C.~~ Those critical aquifer recharge areas delineated by a hydrogeologic study prepared in accordance with the state Department of Ecology guidelines.
- ~~D.~~ Susceptible ground water management areas as designated pursuant to Chapters 173-100 WAC.
- ~~E.~~ Special protection areas as defined by WAC 173-200-090.
- ~~F.~~ Those aquifer recharge areas meeting the criteria for susceptibility or vulnerability established by the state Department of Ecology

A.3.D.2 ~~18.16.430~~ Performance Standards

Development on or adjacent to a critical aquifer recharge area shall meet the following requirements:

~~A.~~ For projects where the construction of structures and improvements, including additions, results in more than thirty percent (30%) total site impervious surface area, the applicant shall provide surface water infiltration according to the following:

- ~~1.~~ Seventy-five percent of onsite stormwater volume generated from the proposed development shall be infiltrated, provided that a lesser standard may apply or onsite infiltration may be waived when:

- ~~a.~~ The applicant demonstrates that infiltration is not a reasonable alternative due to site-specific soil and/or geologic conditions;
- ~~b.~~ It is determined that increased saturation of soils would result in an increased risk to existing facilities and/or adjacent properties;
- ~~c.~~ Infiltration would result in significant unavoidable impacts to other critical areas or result in an excessive loss of native vegetation; or
- ~~d.~~ The applicant proposes an addition of no more than 700 square feet of total new impervious surface compared cumulatively to 2005 levels.

- ~~2.~~ If infiltration is not feasible or required, then stormwater facilities shall be constructed in accordance with City standards.
- ~~3.~~ The design and implementation of infiltration facilities shall follow the Ecology infiltration guidelines specified in the Western Washington Stormwater Manual (2005), referenced in MMC 13.26 or other technical guidance as approved by the City.
- ~~4.~~ To prevent groundwater contamination, stormwater infiltration may be prohibited for all or a portion of a site that includes use of hazardous substances.

~~B.~~ **Critical aquifer recharge areas.** Land use and development activities within critical aquifer recharge areas are exempt from the critical areas review requirements related to critical aquifer recharge areas where all of the below criteria apply. This does not exempt activities from critical areas review required due to the presence of other critical areas.

- ~~1.~~ The construction of structures and improvements, including additions, results in less than thirty percent (30%) total site impervious surface area;
- ~~2.~~ The land use or development does not:
  - ~~a.~~ Result in an increase the use of a hazardous substances, other than household chemicals used according to the directions specified on the packaging for domestic applications; or
  - ~~b.~~ Divert, alter, or reduce the flow of surface or ground waters, or otherwise reduce the recharging of the aquifer;
- ~~3.~~ On-site septic systems comply with health district requirements;
- ~~4.~~ The land use and development is consistent with the critical aquifer recharge area performance standard in Section 18.16.440; and
- ~~5.~~ The land use and development does not include those prohibited activities listed in Section 18.16.440.

~~C.~~ For development that includes hazardous substance processing or handling, or significant diversion, alteration or reduction to the flow of surface or ground waters, or otherwise significantly reduces the recharging of the aquifer, the development must be designed and constructed in accordance with a critical areas report that includes a hydrogeologic assessment of ground water vulnerability. In addition to the general critical areas report requirements of

Section 18.16.210, a hydrogeologic assessment shall include the following site and proposal related information at a minimum:

- ~~1.~~ Available information regarding geologic and hydrogeologic characteristics of the site including the surface location of all critical aquifer recharge areas located on site or immediately adjacent to the site, and permeability of the unsaturated zone;
- ~~2.~~ Ground water depth, flow direction and gradient based on available information;
- ~~3.~~ Currently available data on wells and springs within 1,300 feet of the project area;
- ~~4.~~ Location of other critical areas, including surface waters, within 1,300 feet of the project area;
- ~~5.~~ Best management practices proposed to be utilized.
- ~~6.~~ Historic water quality data for the area to be affected by the proposed activity compiled for at least the previous five (5) year period;
- ~~7.~~ Ground water monitoring plan provisions; and
- ~~8.~~ Discussion of the effects of the proposed project on the ground water quality and quantity, including:
  - ~~a.~~ Predictive evaluation of ground water withdrawal effects on nearby wells and surface water features; and
  - ~~b.~~ Predictive evaluation of contaminant transport based on potential releases to ground water; and
- ~~9.~~ A spill plan that identifies equipment and/or structures that could fail, resulting in an impact. Spill plans shall include provisions for regular inspection, repair, and replacement of structures and equipment that could fail.

~~D.~~ The proposed activity must comply with the water source protection requirements and recommendations of the federal Environmental Protection Agency, state Department of Health, Seattle-King County Public Health and Pierce County Public Health.

~~E.~~ Applications for development that will significantly affect groundwater recharge or quality shall be denied, if such impacts cannot be adequately mitigated.

~~F.~~ **Storage Tanks.** All storage tanks proposed to be located in a critical aquifer recharge area must comply with local building code requirements and must conform to the following requirements:

- ~~1.~~ **Underground Tanks.** All new underground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:
  - ~~a.~~ Prevent releases due to corrosion or structural failure for the operational life of the tank;
  - ~~b.~~ Be protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed to include a secondary

containment system to prevent the release or threatened release of any stored substances; and,

- ~~c.~~ Use material in the construction or lining of the tank that is compatible with the substance to be stored.

- ~~2.~~ **Aboveground Tanks.** All new aboveground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:
  - ~~a.~~ Not allow the release of a hazardous substance to the ground, ground waters, or surface waters;
  - ~~b.~~ Have a primary containment area enclosing or underlying the tank or part thereof; and
  - ~~c.~~ A secondary containment system either built into the tank structure or a dike system built outside the tank for all tanks.

~~G.~~ **Vehicle repair and servicing**

- ~~1.~~ Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.
- ~~2.~~ No dry wells shall be allowed in critical aquifer recharge areas on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by the state Department of Ecology prior to commencement of the proposed activity.

~~H.~~ **Spreading or injection of reclaimed water.** Water reuse projects for reclaimed water must be in accordance with the adopted water or sewer comprehensive plans that have been approved by the departments of Ecology and Health.

- ~~1.~~ Surface spreading must meet the ground water recharge criteria given in Chapter 90.46.080 RCW and Chapter 90.46.010(10).
- ~~2.~~ Direct injection must be in accordance with the standards developed by authority of Chapter 90.46.042 RCW.

~~I.~~ **State and federal regulations.** The uses listed below shall be conditioned as necessary to protect critical aquifer recharge areas in accordance with the applicable state and federal regulations.

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

Activity	Statute - Regulation - Guidance

Activity	Statute - Regulation - Guidance
Above Ground Storage Tanks	Chapter 173-303 -640 WAC
Animal Feedlots	Chapter 173-216 WAC, Chapter 173-220 WAC
Automobile Washers	Chapter 173-216 WAC, Best Management Practices for Vehicle and Equipment Discharges (WDOE WQ-R-95-56)
Below Ground Storage Tanks	Chapter 173-360 WAC
Chemical Treatment Storage and Disposal Facilities	Chapter 173-303-182 WAC
Hazardous Waste Generator (*Boat Repair Shops, Biological Research Facility, Dry Cleaners, Furniture Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, etc.)*	Chapter 173-303 WAC
Injection Wells	Federal 40 CFR Parts 144 and 146, Chapter 173-218 WAC
Junk Yards and Salvage Yards	Chapter 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Vehicles Recycler Facilities (WDOE 94-146)
Oil and Gas Drilling	Chapter 332-12-450 WAC, WAC , Chapter 173-218 WAC
On-Site Sewage Systems (Large Scale)	Chapter 173-240 WAC
On-Site Sewage Systems (< 14,500 gal/day)	Chapter 246-272 WAC, Local Health Ordinances
Pesticide Storage and Use	Chapter 15.54 RCW, Chapter 17.21 RCW
Sawmills	Chapter 173-303 WAC, 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Log Yards (WDOE 95-53)
Solid Waste Handling and Recycling Facilities	Chapter 173-304 WAC
Surface Mining	Chapter 332-18-015 WAC
Waste Water Application to Land Surface	Chapter 173-216 WAC, Chapter 173-200 WAC, WDOE Land Application Guidelines, Best Management Practices for Irrigated Agriculture

A.3.D.3 ~~18.16.440~~ Uses prohibited from critical aquifer recharge areas.

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

~~A.~~ **Landfills.** Landfills, including hazardous or dangerous waste, municipal solid waste, special waste, woodwaste, and inert and demolition waste landfills;

~~B.~~ **Underground injection wells.** Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells;

~~C.~~ **Mining**

- ~~1.~~ Metals and hard rock mining.
- ~~2.~~ Sand and gravel mining is prohibited from critical aquifer recharge areas determined to be highly susceptible or vulnerable.

~~D.~~ **Wood treatment facilities.** Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);

~~E.~~ **Storage, processing, or disposal of radioactive substances.** Facilities that store, process, or dispose of radioactive substances; and

~~F.~~ **Other**

- ~~1.~~ Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source;
- ~~2.~~ Activities that would significantly reduce the recharge to aquifers that are a source of significant baseflow to a regulated stream;
- ~~3.~~ Activities that are not connected to an available sanitary sewer system are prohibited from critical aquifer recharge areas associated with sole source aquifers.

A.3.E GEOLOGICALLY HAZARDOUS AREAS

A.3.E.1 ~~18.16.510~~ Geologically Hazardous Areas Designation.

Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible development is sited in areas of significant hazard. Such incompatible development may not only place itself at risk, but also may increase the hazard to surrounding development and use. Areas susceptible to one or more of the following types of hazards shall be designated as a geologically hazardous area:

~~A.~~ **Erosion hazard areas.** Erosion hazard areas are at least those areas identified by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "moderate to severe," "severe," or "very severe" rill and inter-rill erosion hazard.

~~B.~~ **Landslide hazard areas.** Landslide hazard areas are areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect,

structure, hydrology, or other factors. Example of these may include, but are not limited to the following:

- ~~1.~~ Areas of historic failures, such as:
- ~~a.~~ Those areas delineated by the U.S. Department of Agriculture's Natural Resources Conservation Service as having a "severe" limitation for building site development;
- ~~b.~~ Those areas mapped by the Department of Ecology (Coastal Zone Atlas) or the Department of Natural Resources (slope stability mapping) as unstable ("U" or class 3), unstable old slides ("UOS" or class 4), or unstable recent slides ("URS" or class 5); or
- ~~c.~~ Areas designated as quaternary slumps, earthflows, mudflows, lahars, or landslides on maps published by the U.S. Geological Survey or Department of Natural Resources;
- ~~2.~~ Areas with all three of the following characteristics:
  - ~~a.~~ Slopes steeper than fifteen percent (15%); and
  - ~~b.~~ Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
  - ~~c.~~ Springs or ground water seepage;
- ~~3.~~ Areas that have shown movement during the Holocene epoch (from ten thousand years ago to the present) or that are underlain or covered by mass wastage debris of that epoch;
- ~~4.~~ Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;
- ~~5.~~ Slopes having gradients steeper than eighty percent (80%) subject to rock fall during seismic shaking;
- ~~6.~~ Areas potentially unstable because of rapid stream incision, stream bank erosion, and undercutting by wave action;
- ~~7.~~ Areas that show evidence of, or are at risk from snow avalanches;
- ~~8.~~ Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and
- ~~9.~~ Any area with a slope of forty percent (40%) or steeper and with a vertical relief of ten (10) or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten (10) feet of vertical relief.

~~C.~~ **Seismic hazard areas.** Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, or surface faulting. One indicator of potential for future earthquake damage is a record of earthquake damage in the past. Ground shaking is the primary cause of earthquake damage in Washington. Settlement and soil liquefaction conditions occur in areas underlain by cohesionless, loose, or soft-saturated soils of low density, typically in association with a shallow ground water table.

~~D.~~ **Mine hazard.** Mine hazard areas are those areas underlain by or affected by mine workings such as adits, gangways, tunnels, drifts, or airshafts, and those areas of probable sink holes, gas releases, or subsidence due to mine workings. Factors that should be considered include: proximity to development, depth from ground surface to the mine working, and geologic material.

~~E.~~ **Volcanic hazard areas.** Volcanic hazard areas are areas subject to pyroclastic flows, lava flows, debris avalanche, inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

~~F.~~ **Other hazard areas.** Geologically hazardous areas shall also include areas determined by the Land Use Administrator to be susceptible to other geological events including mass wasting, debris flows, rock falls, and differential settlement.

A.3.E.2 ~~18.16.520~~ Additional Critical Areas Report Requirements

In addition to the general critical areas report requirements of Section 18.16.140, critical areas reports for geologically hazardous areas must comply with the provisions of this section.

~~A.~~ **General requirements.** All critical areas reports for a geologically hazardous area shall contain the following general requirements:

- ~~1.~~ **Assessment of geological characteristics.** The report shall include an assessment of the geologic characteristics of the soils, sediments, and/or rock of the project area and potentially affected adjacent properties, and a review of the site history regarding landslides, erosion, and prior grading. Soils analysis shall be accomplished in accordance with accepted classification systems in use in the region. The assessment shall include, but not be limited to:
  - ~~a.~~ A description of the surface and subsurface geology, hydrology, soils, and vegetation found in the project area and in all hazard areas addressed in the report;
  - ~~b.~~ A detailed overview of the field investigations, published data and references; data and conclusions from past assessments of the site; and site specific measurements, test, investigations, or studies that support the identification of geologically hazardous areas; and
  - ~~c.~~ A description of the vulnerability of the site to geologic events;
- ~~2.~~ **Analysis of proposal.** The report shall contain a hazards analysis including a detailed description of the project, its relationship to the geologic hazard(s), and its potential impact upon the hazard area, the subject property and affected adjacent properties; and
- ~~3.~~ **Minimum buffer and building setback.** The report shall make a recommendation for the minimum no-disturbance buffer and minimum building setback from any geologic hazard based upon the geotechnical analysis.

- ~~4.~~ **Mitigation of long-term impacts.** When hazard mitigation is required, the mitigation plan shall specifically address how the activity maintains or reduces the pre-existing level of risk to the site and adjacent properties on a long-term basis (equal to or exceeding the projected lifespan of the activity or occupation). Proposed mitigation techniques shall be considered to provide long-term hazard reduction only if they do not require regular maintenance or other actions to maintain their function. Mitigation may also be required to avoid any increase in risk above the pre-existing conditions following abandonment of the activity.

~~B.~~ **Landslide hazard areas.** In addition to the basic critical areas report requirements, the technical information for a landslide hazard area shall include the following information at a minimum:

- ~~1.~~ **Site plan.** The critical areas report shall include a copy of the site plan for the proposal showing:
  - ~~a.~~ The height of slope, slope gradient, and cross section of the project area;
  - ~~b.~~ The location of springs, seeps, or other surface expressions of ground water on or within two hundred (200) feet of the project area or that have potential to be affected by the proposal; and
  - ~~c.~~ The location and description of surface water runoff features;
- ~~2.~~ **Hazards analysis.** The hazards analysis component of the critical areas report shall specifically include:
  - ~~a.~~ A description of the extent and type of vegetative cover;
  - ~~b.~~ A description of subsurface conditions based on data from site-specific explorations;
  - ~~c.~~ Descriptions of surface and ground water conditions, public and private sewage disposal systems, fills and excavations and all structural improvements;
  - ~~d.~~ An estimate of slope stability and the effect construction and placement of structures will have on the slope over the estimated life of the structure;
  - ~~e.~~ An estimate of the bluff retreat rate that recognizes and reflects potential catastrophic events such as seismic activity or a one hundred year storm event;
  - ~~f.~~ Consideration of the run-out hazard of landslide debris and/or the impacts of landslide run-out on down slope properties.
  - ~~g.~~ A study of slope stability including an analysis of proposed cuts, fills, and other site grading;
  - ~~h.~~ Recommendations for building siting limitations;
  - ~~i.~~ An analysis of proposed surface and subsurface drainage, and the vulnerability of the site to erosion;
- ~~3.~~ **Geotechnical engineering report**. The technical information for a project within a landslide hazard area shall include a geotechnical engineering report prepared by qualified professional that presents engineering recommendations for the following:

- ~~a.~~ Parameters for design of site improvements including appropriate foundations and retaining structures. These should include allowable load and resistance capacities for bearing and lateral loads, installation considerations and estimates of settlement performance;
- ~~b.~~ Recommendations for drainage and subdrainage improvements;
- ~~c.~~ Earthwork recommendations including clearing and site preparation criteria, fill placement and compaction criteria, temporary and permanent slope inclinations and protection, and temporary excavation support, if necessary; and
- ~~d.~~ Mitigation of adverse site conditions including slope stabilization measures and seismically unstable soils, if appropriate.

- ~~4.~~ **Drainage plan.** The technical information shall include a drainage plan for the collection, transport, treatment, discharge and/or recycle of water prepared in accordance MMC 13.26. The drainage plan should consider on-site septic system disposal volumes where the additional volume will affect the landslide hazard area.
- ~~5.~~ **Mitigation plans.** Hazard and environmental mitigation plans for erosion and landslide hazard areas shall include the location and methods of drainage, surface water management, locations and methods of erosion control, a vegetation management and/or replanting plan and/or other means for maintaining long term soil stability.
- ~~6.~~ **Monitoring surface waters.** If the Land Use Administrator determines that there is a significant risk of damage to downstream receiving waters due to potential erosion from the site, based on the size of the project, the proximity to the receiving waters, or the sensitivity of the receiving waters, the technical information shall include a plan to monitor the surface water discharge from the site. The monitoring plan shall include a recommended schedule for submitting monitoring reports to the City.

~~C.~~ **Erosion hazard areas.** In addition to the basic report requirements, a critical areas report for an erosion hazard area shall also meet the following requirements:

- ~~1.~~ **Erosion and sediment control plan.** For any development proposal on a site containing an erosion hazard area, an erosion and sediment control plan shall be required. The erosion and sediment control plan shall be prepared in compliance with requirements set forth in the locally adopted stormwater management regulations, MMC 13.26;
- ~~2.~~ **Drainage plan.** The technical information shall include a drainage plan for the collection, transport, treatment, discharge and/or recycle of water prepared in accordance with the locally adopted surface water management plan. The drainage plan should consider on-site septic system disposal volumes where the additional volume will affect the erosion hazard area.

- ~~3.~~ **Monitoring surface waters.** If the Land Use Administrator determines that there is a significant risk of damage to downstream receiving waters due to potential erosion from the site, based on the size of the project, the proximity to the receiving waters, or the sensitivity of the receiving waters, the technical information shall include a plan to monitor the surface water discharge from the site. The monitoring plan shall include a recommended schedule for submitting monitoring reports to the City.

~~D.~~ **Seismic hazard areas.** In addition to the basic report requirements, a critical areas report for a seismic hazard area shall also meet the following requirements:

- ~~1.~~ The site map shall show all known and mapped faults within two hundred (200) feet of the project area or that have potential to be affected by the proposal.
- ~~2.~~ The hazards analysis shall include a complete discussion of the potential impacts of seismic activity on the site (for example, forces generated and fault displacement).
- ~~3.~~ A geotechnical engineering report shall evaluate the physical properties of the subsurface soils, especially the thickness of unconsolidated deposits, and their liquefaction potential. If it is determined that the site is subject to liquefaction, mitigation measures appropriate to the scale of the development shall be recommended and implemented.

~~E.~~ **Other geologically hazardous areas.** In addition to the basic requirements, the Land Use Administrator may require additional technical information to be submitted when determined to be necessary to the review the proposed activity and the subject hazard. Additional technical information that may be required, includes, but is not limited to:

- ~~1.~~ **Site plan.** The site plan shall show all hazard areas located within two hundred (200) feet of the project area or that have potential to be affected by the proposal; and
- ~~2.~~ **Hazards analysis.** The hazards analysis shall include a complete discussion of the potential impacts of the hazard on the project area and of the proposal on the hazard.

A.3.E.3 ~~18.16.530~~ Performance Standards

A. The following apply to all geologically hazardous areas

- ~~1.~~ Alterations of geologically hazardous areas or associated buffers may only occur for activities that:
  - ~~a.~~ Will not increase the threat of the geological hazard to adjacent properties beyond pre-development conditions;
  - ~~b.~~ Will not adversely impact other critical areas;

- ~~c.~~ Are designed so that the hazard to the project is eliminated or mitigated to a level equal to or less than pre-development conditions; and
- ~~d.~~ Are certified as safe as designed and under anticipated conditions by a qualified professional, licensed in the state of Washington.

- ~~2.~~ **Critical facilities prohibited.** Critical facilities shall not be sited within geologically hazardous areas unless there is no other practical alternative.

~~B.~~ **Erosion and landslide hazard areas.** Activities on sites containing erosion or landslide hazards shall meet the standards of Section 18.16.530.A and the specific following requirements:

- ~~1.~~ **Buffer required.** A buffer shall be established from all edges of landslide hazard areas. The size of the buffer shall be determined by the Land Use Administrator to eliminate or minimize the risk of property damage, death or injury resulting from landslides caused in whole or part by the development, based upon review of and concurrence with a critical areas report prepared by a qualified professional.
  - ~~a.~~ **Minimum buffer.** The minimum buffer shall be equal to the height of the slope or fifty (50) feet, whichever is greater.
  - ~~b.~~ **Buffer reduction.** The buffer may be reduced to a minimum of ten (10) feet when a qualified professional demonstrates to the City's satisfaction that the reduction will adequately protect the proposed development, adjacent developments and uses and the subject critical area.
  - ~~c.~~ **Increased buffer.** The buffer may be increased where the City determines a larger buffer is necessary to prevent risk of damage to proposed and existing development;
- ~~2.~~ **Alterations.** Alterations of an erosion or landslide hazard area and/or buffer may only occur for activities for which a hazards analysis is submitted and certifies that:
  - ~~a.~~ The development will not increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions;
  - ~~b.~~ The development will not decrease slope stability on adjacent properties; and
  - ~~c.~~ Such alterations will not adversely impact other critical areas;
- ~~3.~~ **Design standards.** Development within an erosion or landslide hazard area and/or buffer shall be designed to meet the following basic requirements unless it can be demonstrated that an alternative design that deviates from one or more of these standards provides greater long-term slope stability while meeting all other provisions of this ~~Ordinance~~Appendix. The requirement for long-term slope stability shall exclude designs that require regular and periodic maintenance to maintain their level of function. The basic development design standards are:

- ~~a.~~ The proposed development shall not decrease the factor of safety for landslide occurrences below the limits of 1.5 for static conditions and 1.2 for dynamic conditions. Analysis of dynamic conditions shall be based on a minimum horizontal acceleration as established by the current version Building Code as specified in MMC 15.05.
- ~~b.~~ Structures and improvements shall be clustered to avoid geologically hazardous areas and other critical areas;
- ~~c.~~ Structures and improvements shall minimize alterations to the natural contour of the slope and foundations shall be tiered where possible to conform to existing topography;
- ~~d.~~ Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation;
- ~~e.~~ The proposed development shall not result in greater risk or a need for increased buffers on neighboring properties;
- ~~f.~~ The use of retaining walls that allow the maintenance of existing natural slope area is preferred over graded artificial slopes;
- ~~g.~~ Development shall be designed to minimize impervious lot coverage;

- ~~4.~~ **Vegetation shall be retained.** Unless otherwise provided or as part of an approved alteration, removal of vegetation from an erosion or landslide hazard area or related buffer shall be prohibited;
- ~~5.~~ **Seasonal restriction.** Clearing shall be allowed only from May 1st to October 1st of each year provided that the City may extend or shorten the dry season on a case-by-case basis depending on actual weather conditions, except that timber harvest, not including brush clearing or stump removal, may be allowed pursuant to an approved forest practice permit issued by the City or the Department of Natural Resources;
- ~~6.~~ **Utility lines and pipes.** Utility lines and pipes shall be permitted in erosion and landslide hazard areas only when the applicant demonstrates that no other practical alternative is available. The line or pipe shall be located above ground and properly anchored and/or designed so that it will continue to function in the event of an underlying slide. Stormwater conveyance shall be allowed only through a high-density polyethylene pipe with fuse-welded joints, or similar product that is technically equal or superior.
- ~~7.~~ **Point discharges.** Point discharges from surface water facilities and roof drains onto or upstream from an erosion or landslide hazard area shall be prohibited except as follows:
  - ~~a.~~ Conveyed via continuous storm pipe downslope to a point where there are no erosion hazards areas downstream from the discharge;

- ~~b.~~ Discharged at flow durations matching predevelopment conditions, with adequate energy dissipation, into existing channels that previously conveyed stormwater runoff in the predeveloped state; or
- ~~c.~~ Dispersed discharge upslope of the steep slope onto a low-gradient undisturbed buffer demonstrated to be adequate to infiltrate all surface and stormwater runoff, and where it can be demonstrated that such discharge will not increase the saturation of the slope;

- ~~8.~~ **Subdivisions.** The division of land in landslide hazard areas and associated buffers is subject to the following:
  - ~~a.~~ Land that is located wholly within a landslide hazard area or its buffer may not be subdivided. Land that is located partially within a landslide hazard area or its buffer may be divided provided that each resulting lot has sufficient buildable area outside of, and will not affect, the landslide hazard or its buffer.
  - ~~b.~~ Access roads and utilities may be permitted within the landslide hazard area and associated buffers if the City determines that no other feasible alternative exists.
- ~~9.~~ **Prohibited development.** On-site sewage disposal systems, including drain fields, shall be prohibited within erosion and landslide hazard areas and related buffers.

~~C.~~ **Other hazard areas.** Activities on sites containing or adjacent to other geologically hazardous areas, shall meet the standards of this section.

A3.F FISH AND WILDLIFE HABITAT CONSERVATION AREAS

A.3.F.1 18.16.610 Fish And Wildlife Habitat Conservation Areas Designation.

All of the following habitat areas are designated habitat conservation areas:

- ~~A.~~ Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association.
- ~~B.~~ **Habitats and species of local importance**. Habitats and species of local importance are those designated by the City, including those habitats and species that, due to their population status or sensitivity to habitat manipulation, warrant protection through possible retention or recovery of connectivity of habitat features. The following steps shall be taken to nominate habitats or species of local importance:
  - ~~1.~~ Demonstrate a need for special consideration based on:
    - ~~a.~~ Declining population,
    - ~~b.~~ Sensitivity to habitat manipulation, or
    - ~~c.~~ Commercial or game value or other special value, such as public appeal;
  - ~~2.~~ Propose relevant management strategies considered effective and within the scope of this Chapter;

- ~~3.~~ Provide species habitat location(s) on a map (scale 1:24,000). Submitted proposals will be reviewed by the Land Use Administrator and forwarded to the Departments of Fish and Wildlife, Natural Resources and other local and State agencies or experts for comments and recommendations regarding accuracy of data and effectiveness of proposed management strategies. The City will hold a public hearing for proposals found to be complete, accurate, potentially effective and within the scope of this Chapter. Approved nominations will become designated "Habitats or Species of Local Importance" and will be subject to the provisions of this Chapter.

- ~~C.~~ **Waters of the state.** Waters of the state includes lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in WAC 222-16-030.

A.3.F.2 18.16.620 Water Type Classification.

Water types shall be classified according to *WAC 222-16-030*. Water types are described generally below:

Type S waters are all waters inventoried as "Shorelines of the state" under chapter 90.58 RCW.

Type F waters means segments of natural waters other than Type S Waters, which contain fish habitat.

Type Np waters include those which are Perennial during a year of normal rainfall and do not have the potential to be used by fish. Type Np waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow. If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations then the point of perennial flow should be determined using the best professional judgment of a qualified professional.

Type Ns waters which are Seasonal or ephemeral during a year of normal rainfall and do not have the potential to be used by fish.

A.3.F.3 18.16.630 Additional Critical Areas Report Requirements.

In addition to the general critical areas report requirements of Section 18.16.140, critical areas reports for habitat conservation areas must meet the requirements of this Section. Critical areas reports for two or more types of critical areas must meet the report requirements for each relevant type of critical areas.

~~A.~~ **Habitat assessment.** A habitat assessment is an investigation of the project area to evaluate the potential presence or absence of designated critical fish or wildlife species or habitat. A critical areas report for a habitat conservation area shall contain an assessment of habitats including the following site- and proposal-related information at a minimum:

- ~~1.~~ Detailed description of vegetation on and adjacent to the project area and its associated buffer;
- ~~2.~~ Identification of any species of local importance, priority species, or endangered, threatened, sensitive or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;
- ~~3.~~ A discussion of any federal, state, or local special management recommendations, including Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;
- ~~4.~~ A detailed discussion of the direct and indirect potential impacts on habitat by the project, including potential impacts to water quality;
- ~~5.~~ A discussion of measures, including avoidance, minimization and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity and to be conducted in accordance with *Mitigation sequencing* MMC 18.16.160; and
- ~~6.~~ A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.

~~B.~~ **Additional information may be required.** When appropriate due to the type of habitat or species present or the project area conditions, the City may also require the habitat management plan to include:

- ~~1.~~ An evaluation by a qualified professional regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate;
- ~~2.~~ A request for consultation with the Department of Fish and Wildlife or the local Native American Indian Tribe or other appropriate agency; and
- ~~3.~~ Detailed surface and subsurface hydrologic features both on and adjacent to the site.

A.3.F.4 18.16.640 Performance Standards

~~A.~~ **Alterations prohibited.** Land development and use shall be prohibited from habitat conservation areas and their buffers, except in accordance with this ~~Ordinance~~Appendix.

~~B.~~ **Mitigation shall result in contiguous corridors.** When mitigation is required to offset impacts, mitigation sites shall be located to preserve or achieve contiguous wildlife habitat corridors to minimize the isolating effects of development on habitat areas, so long as mitigation of aquatic habitat is located within the same aquatic ecosystem as the area disturbed.

~~C.~~ **Approvals of activities may be conditioned.** The City shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary, to minimize or mitigate any potential adverse impacts. Conditions may include, but are not limited to, the following:

- ~~1.~~ Establishment of buffer zones;
- ~~2.~~ Preservation of critically important vegetation;
- ~~3.~~ Limitation of access to the habitat area, including fencing to deter unauthorized access;
- ~~4.~~ Seasonal restriction of construction activities;
- ~~5.~~ Establishment of a duration and timetable for periodic review of mitigation activities; and
- ~~6.~~ Requirement of a performance security in accordance with 18.16.200, when necessary, to ensure completion and success of proposed mitigation.

~~D.~~ **Buffers**

~~1.~~ **Establishment of buffers.** The City shall require the establishment of buffer areas for activities adjacent to habitat conservation areas when needed to protect the habitat conservation areas. Required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby.

~~2.~~ **Riparian habitat buffers.** A riparian habitat buffer shall have the following width, unless a lesser width is allowed pursuant to Subsection 4. Widths shall be measured outward in each direction, on the horizontal plane, from the ordinary high water mark or from the outer edge of the floodway, whichever is greater.

Water Type	Riparian Buffer
S	165 feet
F	150 feet
Np	115 feet
Ns	65 feet

~~3.~~ **Increasing Buffer Widths**. The Land Use Administrator has the authority to increase the standard buffer widths when such buffers are necessary for one of the following:

- ~~a.~~ To protect priority fish or wildlife using the habitat conservation areas. This determination shall be supported by appropriate documentation from the Departments of Ecology and Fish and Wildlife, showing that the increased buffer width is reasonably related to the protection of the fish and/or wildlife using the HCA.
- ~~b.~~ To provide connectivity when a type S or F waterbody is located within 300 feet of:
  - ~~i.~~ Another Type S or F waterbody;

- ~~ii.~~ A fish and wildlife habitat conservation area; or
- ~~iii.~~ A Category I, II, or III wetland;

- ~~c.~~ When the frequently flooded area exceeds the recommended riparian habitat area width, the riparian habitat area shall extend to the outer edge of the frequently flooded area;

The increased buffer distance may be limited to those areas that provide connectivity or are necessary to protect habitat functions. Increasing the buffer widths will only be done where necessary to preserve the structure, function and value of the habitat.

~~4.~~ **Buffer averaging**. Buffer width averaging may be allowed by the City if:

- ~~a.~~ It will provide additional natural resource protection, as long as the total area contained in the buffer on the development proposal site does not decrease;
- ~~b.~~ The stream contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the stream would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places; and
- ~~c.~~ The buffer width is not reduced to less than 50% of the standard buffer;

~~5.~~ **Buffer reduction**. Buffers may be reduced when buffer reduction impacts are mitigated and result in equal or greater protection of the stream functions. Prior to considering buffer reductions, the applicant shall demonstrate application of mitigation sequencing as required in MMC 18.16.160. A plan for mitigating buffer-reduction impacts must be prepared using selected incentive-based mitigation options from the list below, and is subject to approval by the city. The following incentive options for reducing standard buffer widths shall be considered cumulative up to a maximum reduction of fifty percent (50%) of the standard buffer width. In all circumstances where a substantial portion of the remaining buffer is degraded, the buffer reduction plan shall include replanting with native vegetation in the degraded portions of the remaining buffer area and shall include a five (5) year monitoring and maintenance plan.

- ~~a.~~ Installation of biofiltration/infiltration mechanisms: up to twenty percent (20%) reduction in standard buffer width for the installation of bioswales, created and/or enhanced wetlands, or ponds supplemental to existing storm drainage and water quality requirements.
- ~~b.~~ Removal of existing impervious surfaces:
  - ~~i.~~ Up to ten percent (10%) reduction in standard buffer width if impervious surfaces within the to-be-remaining buffer area are reduced by at least fifty percent (50%); or
  - ~~ii.~~ Up to twenty percent (20%) reduction in standard buffer width if the to-be-remaining buffer area is presently more than fifty percent (50%) impervious AND all of it is to be removed.

- ~~c.~~ Removal of invasive, non-native vegetation: up to ten percent (10%) reduction in standard buffer width for the removal and extended (minimum 5 year) monitoring and continued-removal maintenance of relatively dense stands of invasive, non-native vegetation from significant portions of the remaining buffer area.
- ~~d.~~ In-stream habitat enhancement:
  - ~~i.~~ Up to twenty percent (20%) reduction in standard buffer width for log structure placement, bioengineered bank stabilization, or culvert removal; or
  - ~~ii.~~ Up to thirty percent (30%) reduction in standard buffer width for improving fish passage and/or creation of side channel or backwater areas.
- ~~e.~~ If not already required under an existing development proposal, installation of oil/water separators for storm water quality control: up to ten percent (10%) reduction in standard buffer width.
- ~~f.~~ Use of pervious material such as pervious interlocking concrete paving blocks, concrete grid pavers, perforated brick pavers, and compacted gravel for driveway/road construction: up to ten percent (10%) reduction in standard buffer width.
- ~~g.~~ Restoration of off-site area if no on-site area is possible:
  - ~~i.~~ Up to ten percent (10%) reduction in standard buffer width if restoration area is at a 2:1 ratio or greater; or
  - ~~ii.~~ Up to twenty percent (20%) reduction in standard buffer width if restoration area is at a 4:1 or greater.
- ~~h.~~ Removal of significant refuse or sources of toxic material: up to ten percent (10%) reduction in standard buffer width.
- ~~i.~~ 10 % for preparation of, and agreement to adhere to, a vegetation management plan that includes appropriate limitations on the site use of fertilizer, herbicides, and pesticides as needed to protect water quality; and
- ~~j.~~ 10 % for limiting lawn area to no greater than 20% of the lot area. Landscaped areas outside of the lawn and buffer areas shall be maintained or planted in non-invasive vegetation.

The Land Use Administrator may also consider buffer reductions for decreasing impacts to buffers using methods such as Low Impact Development (LID).

~~E.~~ **Signs and fencing of habitat conservation areas.** In accordance with MMC 18.16.320D

~~F.~~ **Subdivisions.** In accordance with MMC 18.16.340

~~G.~~ **Anadromous fish**

- ~~1.~~ All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall adhere to the following standards:

- ~~a.~~ Activities shall be timed to occur only during the allowable work window as designated by the Department of Fish and Wildlife for the applicable species;
- ~~b.~~ Shoreline erosion control measures shall be designed to use bioengineering methods or soft armoring techniques according to an approved critical areas report, and;

- ~~2.~~ Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.
- ~~3.~~ Fills, when authorized by the adopted shoreline master program, shall not adversely impact anadromous fish or their habitat or shall mitigate any unavoidable impacts, and shall only be allowed for a water-dependent use.

~~H.~~ **Allowed Uses.** The following specific activities may be permitted within a riparian habitat area, pond, lake, water of the state, or associated buffer when the activity complies with the following standards and the adopted shoreline master program.

~~1~~ **Roads, trails, bridges, and rights-of-way.** Construction of trails, roadways, and minor road bridging, less than or equal to thirty (30) feet wide, may be permitted in accordance with an approved critical areas report subject to the following standards:

- ~~a.~~ There is no other feasible alternative route with less impact on the environment;
- ~~b.~~ The crossing minimizes interruption of downstream movement of wood and gravel;
- ~~c.~~ Roads in riparian habitat areas or their buffers shall not run parallel to the water body;
- ~~d.~~ Trails shall be located on the outer edge of the riparian area or buffer, except for limited viewing platforms and crossings;
- ~~e.~~ Crossings, where necessary, shall only occur as near to perpendicular with the water body as possible;
- ~~f.~~ Mitigation for impacts is provided pursuant to a mitigation plan of an approved critical areas report;
- ~~g.~~ Road bridges are designed according to the currently adopted versions of the Department of Fish and Wildlife *Fish Passage Design at Road Culverts*, March 1999, and the National Marine Fisheries Service *Guidelines for Salmonid Passage at Stream Crossings*, 2000 or as revised; and
- ~~h.~~ Trails and associated viewing platforms shall not be made of continuous impervious materials.

~~2.~~ **Utility Facilities.** New utility lines and facilities may be permitted to cross watercourses in accordance with an approved critical areas report if they comply with the following standards:

- ~~a.~~ Fish and wildlife habitat areas shall be avoided to the maximum extent possible;
- ~~b.~~ Installation shall be accomplished by boring below the maximum depth of scour for the base flood predicted by a qualified professional and hyporheic zone of the water body and channel migration zone, where feasible;
- ~~c.~~ The utilities shall cross at an angle greater than sixty (60) degrees to the centerline of the channel in streams or perpendicular to the channel centerline whenever boring under the channel is not feasible;
- ~~d.~~ Crossings shall be contained within the footprint of an existing road or utility crossing where possible;
- ~~e.~~ The utility route shall avoid paralleling the stream or following a down-valley course near the channel; and
- ~~f.~~ The utility installation shall not increase or decrease the natural rate of shore migration or channel migration.

~~3.~~ **Public flood protection measures.** New public flood protection measures and expansion of existing ones may be permitted, subject to the City's review and approval of a critical areas report and the approval of a Federal Biological Assessment by the federal agency responsible for reviewing actions related to a federally listed species.

~~4.~~ **Instream structures.** Instream structures, such as, but not limited to, high flow bypasses, sediment ponds, instream ponds, retention and detention facilities, tide gates, dams, and weirs, shall be allowed only as part of an approved watershed basin restoration project approved by the City and upon acquisition of any required state or federal permits. The structure shall be designed to avoid modifying flows and water quality in ways that may adversely affect habitat conservation areas.

~~5.~~ **Stormwater conveyance facilities.** Conveyance structures may be permitted in accordance with an approved critical areas report subject to the following standards:

- ~~a.~~ No other feasible alternatives with less impact exist;
- ~~b.~~ Mitigation for impacts is provided;
- ~~c.~~ Stormwater conveyance facilities shall incorporate fish habitat features; and
- ~~d.~~ Vegetation shall be maintained and, if necessary, added adjacent to all open channels and ponds in order to retard erosion, filter out sediments, and shade the water.

A.3.G FREQUENTLY FLOODED AREAS

A.3.G.1 ~~18.16.710~~ Frequently Flooded Areas

Development sites within frequently flooded areas shall be subject to the provisions of Chapter 15.20 MMC, Flood Damage Prevention.

Periodic Review Checklist

Introduction

This document is intended for use by counties, cities and towns conducting the "periodic review" of their Shoreline Master Programs (SMPs). This review is intended to keep SMPs current with amendments to state laws or rules, changes to local plans and regulations, and changes to address local circumstances, new information or improved data. The review is required under the Shoreline Management Act (SMA) at RCW 90.58.080(4). Ecology's rule outlining procedures for conducting these reviews is at WAC 173-26-090.

This checklist summarizes amendments to state law, rules and applicable updated guidance adopted between 2007 and 2017 that may trigger the need for local SMP amendments during periodic reviews.

How to use this checklist

See Section 2 of Ecology's *Periodic Review Checklist Guidance* document for a description of each item, relevant links, review considerations, and example language.

At the beginning: Use the review column to document review considerations and determine if local amendments are needed to maintain compliance. See WAC 173-26-090(3)(b)(i).

At the end: Use the checklist as a final summary identifying your final action, indicating where the SMP addresses applicable amended laws, or indicate where no action is needed. See WAC 173-26-090(3)(d)(ii)(D), and WAC 173-26-110(9)(b).

Local governments should coordinate with their assigned Ecology regional planner for more information on how to use this checklist and conduct the periodic review.

Row	Summary of change	Review	Action
2017			
a.	OFM adjusted the **cost threshold for substantial development** to $7,047.	*SMP needs amending*	Page 125 of 1/10/19 Amended SMP: *Substantial development*. Any development of which the total cost or fair market value exceeds ~~five thousand~~seven thousand forty-seven dollars (~~$5,000~~$7,047), 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 subsection (3)(e) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any 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. Under the Shoreline Management Act, some development is not considered "substantial development" These categories are listed in Section 7.A.1.b of this SMP. Page 129 of 1/10/19 Amended SMP: b. The following shall not be considered substantial developments for the purpose of this Master Program; 1. Any development of which the total cost or fair market value, whichever is higher, ~~Does~~ does not exceed ~~five thousand~~seven thousand forty-seven dollars, if such development ~~Does~~ does not materially interfere with the

Row	Summary of change	Review	Action
			normal public use of the water or shorelines of the state. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(d). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.
b.	Ecology amended rules to clarify that the **definition of "development"** does not include dismantling or removing structures.	*SMP needs amending*	Page 116 of 1/10/19 Amended SMP: *Development*. A use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters of the state subject to Chapter 90.58 RCW at any stage of water level. Development does not include dismantling or removing structures if there is no other associated development or redevelopment. (RCW 90.58.030(3)(d).)
c.	Ecology adopted rules that clarify **exceptions to local review under the SMA.**	*SMP needs amending*	Page 133 of 1/10/19 Amended SMP: b. The following shall not be considered substantial developments for the purpose of this Master Program; … c. The following shall not be considered substantial developments for the purpose of this Master Program and shall not require a shoreline letter of exemption; however

Row	Summary of change	Review	Action
			they shall be consistent with the provisions of this Shoreline Master Program: 1. Remedial actions, pursuant to RCW 90.58.355. Persons conducting remedial actions 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. The department must ensure compliance with the substantive requirements of this chapter through the review of engineering reports, site plans, and other documents related to the installation of boatyard storm water treatment facilities. 3. WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, department of transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review conducted by a local government to implement the Shoreline Management Act, chapter 90.58 RCW. d. The following are exempt from the provisions within this Shoreline Master Program and shall not require a letter of exemption or local review: 1. Pursuant to RCW 90.58.045, an environmental excellence

Row	Summary of change	Review	Action
			program agreement entered into under chapter 43.21K RCW, shall supersede and replace any legal requirement under this Shoreline Master Program.
d.	Ecology amended rules that clarify **permit filing procedures** consistent with a 2011 statute.	*Code needs amending*	**18.12.195 Department of Ecology review.** After the examiner's approval of a conditional use or variance permit, the administrator shall submit the permit to the Department of Ecology by return receipt requested mail for its approval, approval with conditions, or denial. Upon receipt of Ecology's decision, the administrator shall notify those interested persons having requested notification of such decision. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).
e.	Ecology amended **forestry use regulations** to clarify that forest practices that only involves timber cutting are not SMA "developments" and do not require SDPs.	*No amendments necessary*	No action necessary as forest practices are prohibited within the shoreline jurisdiction.
f.	Ecology clarified the SMA does not apply to lands under **exclusive federal jurisdiction**	*No amendments necessary*	No action necessary per revised WAC 173-22-070, see WSR 17-17-016. The SMP is silent to this and as there are no lands under federal jurisdiction in the City, this clarification seems unnecessary.
g.	Ecology clarified "default" provisions for **nonconforming uses and development**.	*No amendments necessary*	No action necessary per revised WAC 173-27-080, see WSR 17-17-016. These are default nonconforming building/use standards for SMPs that are silent to nonconforming development.
h.	Ecology adopted rule amendments to clarify the scope and process for conducting **periodic reviews**.	*No amendments necessary*	No action necessary per revised WAC 173-26-09 and WAC 173-26-110, see WSR 17-17-016. This is procedural in nature as to how reviews of the SMP are to occur.
i.	Ecology adopted a new rule creating an **optional SMP amendment process** that allows for a shared local/state public	*No amendments necessary*	No action necessary per revised WAC 173-26-090 and WAC 173-26-100, see WSR 17-17-016.

Row	Summary of change	Review	Action
	comment period.		
j.	**Submittal** to Ecology of proposed SMP amendments.	*No amendments necessary*	
2016			
a.	The Legislature created a new shoreline permit exemption for retrofitting existing structures to comply with the **Americans with Disabilities Act**.	*SMP needs amending*	Page 133 of 1/10/19 Amended SMP: b. The following shall not be considered substantial developments for the purpose of this Master Program; … 17. The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.
b.	Ecology updated **wetlands critical areas guidance** including implementation guidance for the 2014 wetlands rating system.	*SMP needs amending*	Page 127 of 1/10/19 Amended SMP: *Wetland delineation*. Identification of a wetland boundary pursuant to approved federal wetlands delineation manual and applicable regional supplement~~the Washington State Wetland Identification and Delineation Manual (1997, as amended)~~. *Wetlands Rating System*. Wetlands shall be rated according to the Washington State Wetland Rating System for Western Washington – 2014 update (Department of Ecology Publication No. 14-06-029, October 2014 – Effective January 2015, or as revised)~~(Washington Department of Ecology 2004, as revised)~~. Page 186 of 1/10/19 Amended SMP: ***A3.C.1*** ***~~18.16.310~~ Wetlands Designation and Classification.*** ~~B.~~ **Wetlands Classification**. Wetlands shall be rated according to

Row	Summary of change	Review	Action
			the *Washington State Wetland Rating System for Western Washington* – 2014 update (Department of Ecology Publication #14-06-029, October 2014 – Effective January 2015, or as revised)~~*Washington State Wetland Rating System for Western Washington* (Department of Ecology 2004, or as revised)~~. This document contains the definitions, methods and a rating form for determining the categorization of wetlands described below: **Category I** wetlands include those that receive a score of 23 through 27~~greater than or equal to 70~~ based on functions, or those that are rated Category I based on Special Characteristics as defined in the rating form. **Category II** wetlands include those that receive a score of 20 through 22~~51 through 69~~ based on functions, or those that are rated Category II based on Special Characteristics as defined in the rating form. **Category III** wetlands include those that receive a score of 16 through 19~~30 through 50~~ based on functions. **Category IV** wetlands score less than ~~30~~ 16 points based on functions. ***A3.C.2*** ~~***18.16.320***~~ ***Performance Standards*** ~~C.~~ **Wetland buffers** ~~1. **Standard buffer widths.**~~Buffer Requirements. The standard buffer widths in Table 1 – "Wetland Buffers" have been established in accordance with the best available science. 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. • ~~a.~~ The use of the standard buffer widths requires the

Row	Summary of change	Review	Action
			implementation of the measures in Table 2, where applicable, to minimize the impacts of the adjacent land uses.~~The standard buffer widths presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. If the vegetation is inadequate then the buffer width shall be increased or the buffer should be planted to maintain the standard width.~~ • ~~b.~~ If an applicant chooses not to apply the mitigation measures in Table 2 – "Required measures to minimize impacts to wetlands", then a 33% 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.~~Wetland buffers widths, based on wetland category, habitat score and land use intensity, are shown in the table below~~ • ~~.~~The standard buffer widths 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. • If the wetland is a Category I or II wetland with a habitat score greater than 5 points and it is located within 300 feet of a priority habitat area as defined by the Washington

Row	Summary of change	Review	Action
			State Department of Fish and Wildlife, the applicant shall provide a relatively undisturbed vegetated corridor at least 100 feet wide between the wetland and the priority habitat area. The corridor shall be protected for the entire distance between the wetland and the priority habitat through a conservation easement, native growth protection easement or the equivalent. • Additional buffer widths are added to the standard buffer widths. For example, a Category I wetland scoring 8 points for habitat function would require a buffer of 225 feet (75 + 150). ***Table 1 Wetland Buffer Requirements*** **This table is updated to be consistent with City's last CAO update in 2014.** ***Table 2 – Required Measures to Minimize Impacts to Wetlands*** **This table is updated to be consistent with City's last CAO update in 2014.**
2015			
a.	The Legislature adopted a **90-day target** for local review of Washington State Department of Transportation (WSDOT) projects.	*Code needs amending*	**18.12.110 Permit process.** B. Application Review – Administrator Action. The administrator shall make recommendation in the case of variance and conditional use permits and decisions in the case of substantial development permits, based upon whether or not the proposed development and/or use is consistent with the laws, policies and procedures of the Act, related WACs as amended, and this master program as amended. Pursuant to RCW 47.01.485, the permit review time for projects on a state highway shall be ninety days.

Row	Summary of change	Review	Action
2014			
a.	The Legislature raised the cost threshold for requiring a Substantial Development Permit (SDP) for **replacement docks on lakes and rivers** to $20,000 (from $10,000).	*SMP needs amending*	Page 130 of 1/10/19 Amended SMP: 7. Construction of a dock, including community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of a single family residence or multi-family residences. The fair market value of the dock shall not exceed twenty thousand dollars for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced or ten thousand ($10,000) dollars for all other docks~~,~~. However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified in this subsection, ~~but any subsequent construction having a fair market value exceeding two thousand five hundred ($2,500) dollars occurs within five years of completing of the prior construction~~, a Substantial Development Permit is required;
b.	The Legislature created a new definition and policy for **floating on-water residences** legally established before 7/1/2014.	*No amendments necessary*	No action necessary per revised WAC 173-26-020, see WSR 17-17-016. The City of Milton does not have any legally established floating on-water residences.
2012			
a.	The Legislature amended the SMA to clarify **SMP appeal procedures**.	*No amendments necessary*	No action necessary per revised RCW 90.58.190, see House Bill 2671. This is procedural in nature as it relates to the appeal of the Department of Ecology's decision to adopt a Shoreline Master Program.

Row	Summary of change	Review	Action
2011			
a.	Ecology adopted a rule requiring that wetlands be delineated in accordance with the approved **federal wetland delineation manual**.	*SMP needs amending*	Page 127 of 1/10/19 Amended SMP: *Wetland delineation*. Identification of a wetland boundary pursuant to approved federal wetlands delineation manual and applicable regional supplement~~the Washington State Wetland Identification and Delineation Manual (1997, as amended)~~. Page 165 of 1/10/19 Amended SMP: "Wetlands" are those 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 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. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands. For identifying and delineating a wetland, local government shall use the approved federal wetlands delineation manual and applicable regional supplement~~Washington State Wetland Identification and Delineation Manual~~. Page 185 of 1/10/19 Amended SMP: ***A3.C.3*** ***~~18.16.310~~ Wetlands Designation and***

Row	Summary of change	Review	Action
			Classification. ~~A.~~ **Wetlands Designation**. Wetlands are designated in accordance with the the approved federal wetlands delineation manual and applicable regional supplement~~currently adopted *Washington State Wetlands Identification and Delineation Manual* (1997 or as revised)~~. Wetlands are 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.
b.	Ecology adopted rules for new commercial **geoduck aquaculture**.	*No amendments necessary*	No action necessary per revised WAC 173-26-241, see WSR 11-05-064.No geoduck aquaculture present in the City of Milton.
c.	The Legislature created a new definition and policy for **floating homes** permitted or legally established prior to January 1, 2011.	*No amendments necessary*	No action necessary per revised RCW 90.58.270, see House Bill 1783. The City of Milton does not have any legally established floating on-water residences.
d.	The Legislature authorized a new **option to classify existing structures as conforming**.	*No amendments necessary*	No action necessary. The City of Milton has opted not to classify existing structures as conforming per revised RCW 90.58.620, see Senate Bill 5451
2010			
a.	The Legislature adopted **Growth Management Act – Shoreline Management Act clarifications**.	*No amendments necessary*	*N/A*
2009			
a.	The Legislature created new "relief" procedures for instances in which a **shoreline restoration**	*No amendments necessary*	*N/A*

Row	Summary of change	Review	Action
	project within a UGA creates a shift in Ordinary High Water Mark.		
b.	Ecology adopted a rule for certifying **wetland mitigation banks**.	*No amendments necessary*	*N/A*
c.	The Legislature added **moratoria authority** and procedures to the SMA.	*No amendments necessary*	*N/A*
2007			
a.	The Legislature clarified **options for defining "floodway"** as either the area that has been established in FEMA maps, or the floodway criteria set in the SMA.	*No amendments necessary*	*N/A*
b.	Ecology amended rules to clarify that comprehensively updated SMPs shall include a **list and map of streams and lakes** that are in shoreline jurisdiction.	*No amendments necessary*	*N/A*
c.	Ecology's rule listing statutory exemptions from the requirement for an SDP was amended to include **fish habitat enhancement projects** that conform to the provisions of RCW 77.55.181.	*No amendments necessary*	*N/A*

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Chapter 18.12

SHORELINE MASTER PROGRAM

Sections:

18.12.005 Adoption.
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18.12.060 Applicability to shoreline substantial development permit.
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18.12.180 Shoreline variances and conditional use permits.
18.12.190 Unclassified uses.
18.12.195 Department of Ecology review.
18.12.210 Enforcement and penalties.
18.12.220 Development and building permits.
18.12.230 Master program review.
18.12.240 Amendments to master program.

18.12.005 Adoption.

The city of Milton shoreline master program, adopted by Section 2 of Ordinance No. 1803, is adopted by reference as though set forth herein in full. (Ord. 1803 § 3, 2012; Ord. 1290 § 3, 1996).

18.12.010 Purpose.

There is hereby established an administrative system designed to assign responsibilities for implementation of the master program and shoreline permit review, to prescribe an orderly process by which to review proposals and permit applications, and to ensure that all persons affected by this master program are treated in a fair and equitable manner. “Master program” as used in this chapter refers to the shoreline master program adopted at MMC 18.12.005. “Act” as used herein refers to the Shoreline Management Act, Chapter 90.58 RCW. The administrative provisions of this chapter are intended to integrate the requirements of Chapter 173-27 WAC, as now or hereafter amended. Chapter 173-27 WAC, as now or hereafter amended, shall supersede any conflicting provisions in this chapter. (Ord. 1803 § 3, 2012; Ord. 1290 § 4,1996).

18.12.020 Program administrator.

A. The land use administrator or designee, hereinafter known as the administrator, is vested with:

1. Overall administrative responsibility of this master program;

2. Authority to approve, approve with conditions or deny shoreline substantial development permits and permit revisions in accordance with the policies and provisions of this master program;

3. Authority to grant letters of exemption from shoreline substantial development permit.

B. The duties and responsibilities of the administrator shall include:

1. Establishing the procedures and preparing forms deemed essential for the administration of this program;

2. Making administrative decisions and interpretations of the policies and regulations of this program and the Shoreline Management Act;

3. Collecting applicable fees;

4. Determining that all applicable applications and necessary information and materials are provided;

5. Making site inspections;

6. Determining if a shoreline substantial development permit is required;

7. Conducting a thorough review and analysis of shoreline substantial development applications, and approving, approving with conditions, or denying such permit applications;

8. Submitting reports and/or testimony to the hearing examiner in response to an application submission, a variance or conditional use permit for their consideration and official action;

9. Assuring that proper notice is given to appropriate persons and the public for all procedures before the administrator;

10. Posting the notice of permit applications in a conspicuous manner on the project site, pursuant to MMC Title 17;

11. Proposing amendments to this program as deemed necessary to more effectively and equitably achieve its goals and policies;

12. Coordination of information as appropriate with affected agencies;

13. Representing the city's position in proceedings before the hearing examiner. (Ord. 1803 § 3, 2012; Ord. 1663 § 32, 2006; Ord. 1484 § 9, 2001; Ord. 1290 § 4, 1996).

18.12.030 Hearing examiner.

A. The hearing examiner, hereinafter known as the examiner, is vested with authority to:

1. Approve, approve with conditions, or deny shoreline variance and shoreline conditional use permits; provided, that any decisions on this matter made by the examiner may be further appealed to the State Shoreline Hearings Board as provided for in the Act;

2. Decide local administrative appeals of decisions of the administrator.

B. The duties and responsibilities of the examiner shall include:

1. As authorized in MMC Title 17, the examiner shall review and consider shoreline variance and shoreline conditional use permits, and administrative appeals of the administrator's actions;

2. Approval, approval with conditions, or denial of shoreline variance and conditional use permits;

3. Conducting hearings on appeals of the administrator's decisions, including appeals of decisions on shoreline substantial development permits;

4. Basing all decisions on shoreline permits or administrative appeals on the criteria established in this master program;

5. At the discretion of the examiner, requiring any applicant granted a shoreline permit to post a bond or other acceptable security with the city conditioned to assure that the applicant and/or his successors in interest shall adhere to the approved plans and all conditions attached to the shoreline permit. Such bonds or securities shall have a face value of at least 150 percent of the estimated development cost including attached conditions. Such bonds or securities shall be approved as to form by the city attorney. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

18.12.040 City council.
The city council shall have the authority in its discretion to approve any revisions or amendments to the master program in accordance with the requirements of the Act and related WACs. Proposed revisions or amendments may be submitted by any interested party. To become effective any amendments to the program must be reviewed and approved by the Department of Ecology, pursuant to RCW 90.58.190 and Chapter 173-26 WAC. The city council will approve any revisions or amendments to the master program in accordance with the requirements of the Act and related WACs. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

18.12.060 Applicability to shoreline substantial development permit.
Any person wishing to undertake substantial development or exempt development on shorelines shall apply to the administrator for a shoreline substantial development permit (SSDP) or a letter of exemption.

Whenever a development falls within the exemption criteria outlined below and the development is subject to a U.S. Army Corps of Engineers Section 10 or Section 404 permit, the administrator shall prepare a letter of exemption and transmit a copy to the applicant and the Washington State Department of Ecology. Exempt development as defined herein shall not require a substantial development permit, but may require a conditional use permit, variance, and/or a letter of exemption (WAC 173-27-050).

Before determining that a proposal is exempt, the administrator may conduct a site inspection to ensure that the proposal meets the exemption criteria. The exemption granted may be conditioned to ensure that the activity is consistent with the master program and the Shoreline Management Act. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

18.12.070 Exemptions.
Exemptions to the shoreline master program are found in Chapter 7 of the shoreline master program. Said exemptions are an exemption from the requirements for a shoreline substantial development permit, but may still require letter of exemption as discussed in MMC 18.12.080. (Ord. 1803 § 3, 2012; Ord. 1290 § 4,1996).

18.12.080 Letter of exemption.
Applicants for all nonshoreline permits or approvals within the shoreline area may be required (pursuant to WAC 173-27-050) to obtain a written “letter of exemption.” Said exemption is an exemption from the requirement for a shoreline substantial development permit, and not from the policies and regulations of the master program. This process verifies that the action is exempt and offers the applicant an itemization of master program policies and regulations along with other requirements applicable to the proposed project. In the case of development subject to the policies and regulations of this master program but exempt from the shoreline substantial development permit process, the city may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Shoreline Management Act and the master program. For example, the approval of a building permit for a single-family residence can be conditioned with provisions from the master program. Other permit approvals may be conditioned on the basis of the master program policy and use regulations as well. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

18.12.090 Fees.
A filing fee or fees in an amount established at MMC 3.48.010 shall be paid to the city at the time of application. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

18.12.100 Permit application.

The administrator shall provide the necessary application forms for shoreline substantial development, conditional use and variance permits. Pursuant to WAC 173-27-180, the applicant shall provide, at a minimum, the following information:

A. The name, address and phone number of the applicant. The applicant should be the owner of the property or the primary proponent of the project and not the representative of the owner or primary proponent.

B. The name, address and phone number of the applicant's representative if other than the applicant. The name, address and phone number of the property owner, if other than the applicant.

C. Location of the Property. This shall, at a minimum, include the property address, parcel number, and identification of the section, township and range to the nearest quarter, quarter section or latitude and longitude to the nearest minute. All applications for projects located in open water areas away from land shall provide a longitude and latitude location.

D. Identification of the name of the shoreline (water body) that the site of the proposal is associated with.

E. A general description of the proposed project that includes the proposed use or uses and the activities necessary to accomplish the project.

F. A general description of the property as it now exists including its current use, physical characteristics, improvements and structures.

G. A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical characteristics.

H. A site development plan consisting of maps and elevation drawings, drawn to an appropriate scale to depict clearly all required information, photographs and text which shall include:

1. The boundary of the parcel(s) of land upon which the development is proposed.

2. The ordinary high water mark of all water bodies located adjacent to or within the boundary of the project. This may be an approximate location; provided, that for any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark the mark shall be located precisely and the biological and hydrological basis for the location as indicated on the plans shall be included in the development plan. Where the ordinary high water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline.

3. Existing and proposed land contours. The contours shall be at intervals sufficient to accurately determine the existing character of the property and the extent of proposed change to the land that is necessary for the development. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.

4. A delineation of all wetland areas that will be altered or used as a part of the development.

5. A general indication of the character of vegetation found on the site.

6. The dimensions and locations of all existing and proposed structures and improvements including but not limited to buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.

7. Where applicable, a landscaping plan for the project.

8. Where applicable, plans for development of areas on or off the site as mitigation for impacts associated with the proposed project shall be included and contain information consistent with the requirements of this section.

9. Quantity, source and composition of any fill material that is placed on the site whether temporary or permanent.

10. Quantity, composition and destination of any excavated or dredged material.

11. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.

12. Where applicable, a depiction of the impacts to views from existing residential uses and public areas.

13. On all variance applications the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

18.12.110 Permit process.

A. Notices and Scheduling of Hearings. When a complete application and associated information have been received by the administrator, the administrator shall cause a notice to be posted in a conspicuous manner on the property upon which the project is to be constructed in accordance with Chapter 17.71 MMC. The administrator shall also be responsible for delivering legal notice to the public within the area in which the development is proposed. Advertising costs will be the responsibility of the applicant, and will be included in the permit fee. Further, the burden of proving that a proposed development is consistent with the approval criteria and master program policies and regulations shall be the applicant's.

The applicant shall be responsible for applying for a variance or conditional use permit. The examiner shall schedule a public hearing in the case of a conditional use or variance permit. No public hearing is required for shoreline substantial development permits. Any interested person may submit his/her written views upon the application to the city within 30 days of notice of application or notify the city of his/her desire to receive a copy of the action taken upon the application. All persons who so submit their views shall be notified in a timely manner of the action taken upon the application.

B. Application Review – Administrator Action. The administrator shall make recommendation in the case of variance and conditional use permits and decisions in the case of substantial development permits, based upon whether or not the proposed development and/or use is consistent with the laws, policies and procedures of the Act, related WACs as amended, and this master program as amended. Pursuant to RCW 47.01.485, the permit review time for projects on a state highway shall be ninety days.

C. Public Hearings. One public hearing shall be held by the examiner regarding application for shoreline conditional use permits and shoreline variances.

The examiner or administrator shall review an application for a permit based upon the application, applicable SEPA documents (if required), evidence presented at the public hearing, written or oral comments from interested persons, and the findings, conclusions and recommendations of the administrator. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

18.12.120 Action by the hearing examiner.

The examiner shall either approve, conditionally approve, or deny the application. Scheduling of the required hearing shall be in accordance with the timing considerations identified in MMC Title 17.

The examiner shall review the application and make decisions regarding permits based upon whether the proposed development and/or use is consistent with the master program, policies and procedures of Chapter

90.58 RCW, the Shoreline Management Act and its supporting WACs, written and oral comments from interested persons, and the comments and findings of the administrator.

A written notice of the public hearing at which the examiner considers the application shall be mailed or delivered to the applicant and all interested parties of record a minimum of 15 days prior to hearing.

The decision of the examiner shall be the final decision of the city on all applications and the city shall render a written decision including findings, conclusions, and a final order, and transmit copies of the decision within five days of the examiner's final decision to the applicant, State Department of Ecology, Attorney General, and interested parties of record. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

18.12.130 Commencement of construction.
Development pursuant to a shoreline substantial development permit shall not begin and is not authorized until 21 days from the date the administrator files the approved permit with the Department of Ecology and the Attorney General or the conclusion of all review and appeal proceedings, whichever is later, unless otherwise authorized by RCW 90.58.140 as now or hereafter amended. Development pursuant to a shoreline variance or shoreline conditional use permit shall not commence and is not authorized until 21 days from the date the final decision is transmitted to the city or the conclusion of all review and appeal proceedings, whichever is later, unless otherwise authorized by RCW 98.58.140, as now or hereafter amended. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

18.12.140 Duration of permits.
The city may issue permits with termination dates of up to five years. If a permit does not specify a termination date, the following requirements apply, consistent with WAC 173-27-090:

A. Time Limit for Substantial Progress. Construction, or substantial progress toward completion, must begin within two years after approval of the permits.

B. Extension for Substantial Progress. The city may at its discretion, with prior notice to parties of record and the Department, extend the two-year time period for the substantial progress for a reasonable time up to one year based on factors including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of construction.

C. Five-Year Permit Authorization. If construction has not been completed within five years of approval, the city will review the permit and, upon showing of good cause, will either extend the permit for one year or terminate the permit. Only one single-year extension is permitted. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

18.12.150 Revision of permits.
When an applicant desires to revise a permit, the applicant must submit detailed plans and text describing the proposed changes. 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 original permit approval. 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 master program and/or the policies and provisions of Chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision. If the city determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the master program and the Shoreline Management Act, the city may approve a revision. "Within scope and intent of the original permit" means all of the following:

A. No additional over-water construction is involved, except that pier, dock or float construction may be increased by 500 square feet or 10 percent, whichever is less;

B. Ground area coverage and height is not increased more than 10 percent;

C. Additional structures do not exceed a total of 250 square feet;

D. The revision does not authorize development to exceed height, setback, lot coverage, or any other requirement of this master program;

E. Additional landscaping is consistent with conditions (if any) attached to the original permit;

F. The use authorized pursuant to the original permit is not changed; and

G. No substantial adverse environmental impact will be caused by the project revision.

If the sum of the proposed revision and any previously approved revisions do not meet the criteria above, an application for a new shoreline permit must be submitted. If the revision involves a conditional use or variance which was conditioned by the Department of Ecology, the revision also must be reviewed and approved by the Department of Ecology (see WAC 173-27-100).

A city or department decision on revision to the permit may be appealed to the Shorelines Hearings Board within 21 days of such decision, in accordance with RCW 90.58.180 and WAC 173-27-100.

Construction allowed by the revised permit that is not authorized under the original permit is undertaken at the applicant's own risk until the expiration of the appeals deadline. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

18.12.160 Local appeals.
Any decision made by the administrator on a substantial development permit, master program policy or regulation interpretation, permit revision, or other action within the purview and responsibility of the administrator may be appealed to the examiner under the procedures prescribed in Chapter 17.71 MMC. The examiner, using the applicable decision making criteria established in the master program, shall affirm, modify, or reverse the decision subject to appeal. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

18.12.170 Appeal to State Shorelines Hearings Board.
Any person aggrieved by the granting, denying, rescission or modification of a shoreline permit may seek review from the State Shorelines Hearings Board within 21 days of receipt of the final decision by the final decision maker of the city. Said request shall be in the form required by the rules for practice and procedure before the Shorelines Hearings Board, and the person seeking review shall file a copy of the request for review with the State Department of Ecology and the Attorney General. Shorelines Hearings Board regulations are contained in WAC Title 461. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

18.12.180 Shoreline variances and conditional use permits.
Provisions for shoreline conditional use permits and variances are found in Chapter 7 of the shoreline master program. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

18.12.190 Unclassified uses.
Other uses, categorized as "unclassified uses," which are not classified in Table 3 of the master program, may be authorized as conditional uses; provided the applicant can demonstrate, in addition to the criteria set forth above, that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of the master program. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

18.12.195 Department of Ecology review.
After the examiner's approval of a conditional use or variance permit, the administrator shall submit the permit to the Department of Ecology by return receipt requested mail for its approval, approval with conditions, or denial. Upon receipt of Ecology's decision, the administrator shall notify those interested persons having requested notification of such decision. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

18.12.210 Enforcement and penalties.
The choice of enforcement action and the severity of any penalty will 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.

A. Civil Penalty.

1. Action. The city attorney, as authorized by the mayor with council approval, shall bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the shorelines of the state in conflict with the provisions of the Act and this master program and to otherwise enforce the provisions of the Act and the master program.

2. Noncompliance. Any person who fails to conform to the terms of a permit issued under the master program or who undertakes a development or use on the shorelines of the state without first obtaining any permit under the master program 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 procedures, 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, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the city. The notice shall include the “content of order” specified in subsection (A)(6) of this section, “Cease and Desist Order.”

5. Remission and Order. Within 30 days after the notice is received, the person incurring the penalty may apply in writing to the city for remission or mitigation of such penalty. Upon receipt of the application, the city 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 solely by the city shall be subject to review by the city council pursuant to RCW 90.58.210(4). In accordance with RCW 90.58.050 and 90.58.210(4), any penalty jointly imposed by the city and the Department of Ecology shall be appealed to the Shorelines Hearings Board. When a penalty is imposed jointly by the city and the Department of Ecology, it may be remitted or mitigated only upon such terms as both the city and the Department agree.

6. Cease and Desist Order. Content of order shall set forth and contain:

a. A description of the specific nature, location, extent, and time of violation and the damage or potential damage; 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 same 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, but not limited to, the issuance of a civil penalty.

B. Delinquent Permit Penalty. Permittees applying for a permit after commencement of a use or activity may at the discretion of the city be required, in addition, to pay a delinquent permit penalty not to exceed three times the appropriate permit fee paid by the permittee. 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 the Department against

said person may be subject to a delinquent permit penalty not to exceed 10 times the appropriate permit fee paid by the permittee. Delinquent permit penalties shall be paid in full prior to resuming the use or activity.

C. 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 such time as the penalty is paid in full. The city attorney shall, upon authorization by the mayor and city council, file said lien against the affected property at the office of the county assessor.

D. Mandatory Civil Penalties. Issuance of civil penalties is mandatory 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 shorelines of the state as determined by the city.

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 against said person.

E. Minimum Penalty Levels.

1. Regarding all violations that are mandatory penalties, the minimum penalty is $250.00.

2. For all other penalties, the minimum penalty is $100.00.

F. General Criminal Penalty. In addition to incurring civil liability under the civil penalty section, any person found to have willfully engaged in activities on the shorelines of the state in violation of the provisions of the Act or master program shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than $100.00 nor more than $1,000 or by imprisonment in the county jail for not more than 90 days 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 be not less than $500.00 nor more than $10,000.

G. Violator Liabilities – Damages, Attorney's Fees/Costs. Any person subject to the regulatory program of the Act or the master program who violates any provision thereof or permit issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected areas to their condition prior to violation. The city attorney shall, as authorized by the mayor and city council, bring suit for damages under this section on behalf of the city. Private persons shall have the right to bring suit for damages under this section on their own behalf and on the behalf of all persons similarly situated. If liability has been established for the cost of restoring any areas affected by a violation, the court shall make provisions to assure that restoration will be accomplished within reasonable time at the expense of the violator. In addition to such relief, including money damages, the court in its discretion may award attorney's fees and costs of the suit to the prevailing party. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

18.12.220 Development and building permits.
No building permit, or other development permit, shall be issued for any parcel of land developed or divided in violation of the master program. All purchasers or transferees of property shall comply with provisions of the Act and the master program. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

18.12.230 Master program review.
The master program shall be periodically reviewed and adjustments shall be made as are necessary to reflect changing local circumstances, new information or improved data, and changes in state statutes and regulations. This review process shall be consistent with Chapter 173-26 WAC requirements and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

18.12.240 Amendments to master program.

Any of the provisions of the master program may be amended as provided for in RCW 90.58.120 and 90.58.200 and Chapter 173-26 WAC. Amendments or revisions to the master program, as provided by law, do not become effective until approved by the Washington State Department of Ecology.

Proposals for shoreline environment redesignations (i.e., amendments to the shoreline maps and descriptions) must demonstrate consistency with the criteria set forth in shoreline environment designation criteria. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

Milton Planning Commission
Findings of Fact
Shoreline Master Program Update
March 13, 2019

This matter came before the Planning Commission on 9/26/18, 11/14/18 and at a public hearing held at Milton City Hall on March 13, 2019 after public notice was issued, as required by law. On March 13, 2019 the Commission, after considering the staff reports, City files, records with the staff reports, and written and spoken testimony at the Public Hearing, now makes and enters the findings of fact set forth below.

Findings of Fact
In support of Amendments to the Shoreline Master Program

The City is the proponent of the Shoreline Master Program amendments, and is required to review and amend the Shoreline Master Program pursuant to RCW 90.58.080.

The City received a grant from the Department of Ecology to update the Shoreline Master Program. Part of this grant required the submittal of a public participation plan.

On November 7, 2018 City staff held a public open house in accordance with the public participation plan to solicit input from the Citizens regarding the Shoreline Master Program Update.

The Planning Commission utilized the outcome of the open house in developing the Shoreline Master Program.

The proposal is supported by the following Comprehensive Plan policies:

- Pol. OS 1.6 Promote the addition of public access to Surprise Lake.
- Pol. SL 1.2 The City shall prohibit the unnecessary disturbance of natural vegetation and wooded areas in new development, in accordance with the critical areas ordinance.
- Pol. EV 1.4 Retain and protect wetlands, river and stream banks, ravines, and any other areas that provide essential habitat for sensitive and locally important plant or wildlife species.
- Pol. EV 2.5 Achieve responsible shoreline use and development, through the City's Shoreline Master Program, which is incorporated by reference and adopted fully herein, as amended, into the Comprehensive Plan.
- Pol. SL 1.6 Identify the impacts of new development on water quality and require any appropriate mitigating measures. Impacts on fish resources should be a priority concern in such reviews.

On March 13, 2019 the Planning Commission held a public hearing, after public notice was issued as required by the Milton Municipal Code.

Chair Date

Recording Secretary Date

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DETERMINATION OF NON-SIGNIFICANCE (DNS)

STATE ENVIRONMENTAL PROTECTION ACT (SEPA)

DESCRIPTION OF PROPOSAL:	***City of Milton 2019 Shoreline Master Program Periodic Review Amendments*** The City proposes to amend its SMP consistent with requirements under the Shoreline Management Act (SMA) to review, and if necessary, revise its SMP at least once every eight years. RCW 90.58.080 specifies the deadline for the City to review, amend and adopt an amended SMP by June 30, 2019. These amendments are intended to ensure consistency between the City's SMP and laws and guidelines that may have changed since the City last updated its SMP.
PROPONENT:	City of Milton
LOCATION OF PROPOSAL:	Applies within the City's shoreline jurisdiction, which includes waters of statewide significance and land areas within 200' of their ordinary high water mark. In Milton, this includes Surprise Lake and portions of the Hylebos Creek (from the City's southern border to approximately Comet Street).
LEAD AGENCY:	City of Milton

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment and an environmental impact statement (EIS) is not required under RCW 43.21C.030 (2) (c), provided the mitigation measures are conducted concurrent with the project. This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

☐ There is no comment period for this DNS.

☐ This DNS is issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the DNS.

☒ This DNS is issued under WAC 197-11-340; the lead agency will not act on this proposal for 14 days from the date below.

Responsible Official:	Mark Howlett, PE		
Position/Title:	Public Works Director	Phone:	(253) 213-3248
Address:	1000 Laurel St., Milton, WA 98354		
Date:	February 21, 2019		
Signature:			

☒ You may appeal this determination to: City of Milton Public Works Director

At (address): Milton City Hall, 1000 Laurel St., Milton, WA 98354

No later than (date): March 14, 2019

By (method): Written statement

You should be prepared to make specific factual objections. Contact the Washington State Department of Ecology to read or ask about the procedures for SEPA appeals.

Agenda Item #: 7A

To: Chair LaVergne and Planning Commission Members

From: Trisha Summers, City Clerk

Date: March 27, 2019

Re: **Vacant Buildings Ordinance**

ATTACHMENTS: **Draft Ordinance**

TYPE OF ACTION:

☐ Information Only ☒ Discussion ☐ Action ☐ Public Hearing ☐ Expenditure

Recommended Action: None

Issue: One component of the Planning Commission's 2018 & 2019 Work Plan was to "*consider possible land use regulations that would incentivize a lower vacancy rate in commercial buildings.*"

Attached is a draft ordinance that addresses this issue. Revisions were started at the January 9, 2019 meeting.

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Ordinance: Register/Establish Fees for Vacant Buildings in ~~Up Town and Business District~~ the city of Milton, Washington

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY OF MILTON, WASHINGTON, TO CREATE A POLICY TO IDENTIFY AND REGISTER VACANT BUILDINGS; TO ESTABLISH A PROCESS TO IMPROVE COMMUNITY SAFETY AND PROMOTE THE WELL BEING OF AREA BUSINESS; TO REPEAL ANY ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND TO DECLARE AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MILTON, WASHINGTON:

____ PURPOSE

The purpose of this article is to protect the public health, safety and welfare of Milton by establishing a program for identification and registration of vacant commercial buildings, determining the responsibilities of owners of vacant commercial buildings and structures, and providing for administration, enforcement, and penalties.

____ ADMINISTRATION

This chapter will be administered by the building official, who may adopt administrative rules and regulations consistent with its terms. The building official (and his/her designee), or code enforcement officer, or both are authorized to enforce this chapter. (Ord. _____)

____ DEFINITIONS

"City" means the city of Milton, its officers, employees, and agents.

"Commercial activity" means having the objective of supplying commodities (goods and services) and ancillary business functions.

"Commercial building" means a building with more than fifty (50) percent of its floor space used for commercial activity. For the purposes of this section, floor space shall be designated as the area on the main or street level of the building.

"Commercial space" means any portion of a structure in the City of Milton that is not intended for residential use.

"Dangerous structure" means a structure that is potentially hazardous to persons or property, including, but not limited to: (a) a structure that is in danger of partial or complete collapse; (b) a structure with any exterior parts that are loose or in danger of falling; or (c) a structure with any parts, such as floors, porches, railings, stairs, ramps, balconies or roofs, that are accessible and that are either collapsed, in danger of collapsing or unable to support the weight of normally imposed loads.

"Occupied" means a permitted, nonresidential use that is physically located and lawfully operating in a commercial space for at least six consecutive months.

"Owner" means the person, persons, or entity shown to be the owner of record on the records of the Pierce County or King County Register of Deeds, those identified as the owner or owners on a vacant building registration form, holder of an unrecorded contract for deed, a mortgage or vendor in possession, assignee of rents, receiver, executor, trustee, lessee, other person, firm or corporation in control of the freehold of the premises or lessor state therein. Any such person, person's or entity, shall have a joint and several obligations for compliance with the provisions of this article.

"Responsible person" means any person, firm, association, corporation or any agent ~~thereof, owning, leasing, renting or having lawful possession of a structure in the City of Milton.~~ of the owner.

"Secured by other than normal means" means a building secured by means other than those used in the design of the building.

"Unoccupied" means a building which is not being used for a legal occupancy. The storage of products and materials does not constitute occupancy unless authorized by the zoning ordinance of the city.

(Still in question and request this to be looked at by city attorney)

"Unsecured" means a building or portion of the building that is open to entry by unauthorized persons without the use of tools.

"Vacant commercial building" means a ~~building~~ structure or portion of a ~~building~~ structure that is:

(1) Unoccupied and secured;
(2) Unoccupied and unsecured;
(3) Unoccupied and secured by other than normal means;
(4) Unoccupied and a dangerous structure;
(5) Unoccupied and condemned;
(6) Unoccupied and has city code violations; or
(7) Condemned and illegally occupied.

VACANT COMMERCIAL BUILDING does not mean any structure being constructed pursuant to a valid permit to the city building code.

(street level removed)

"Vacant commercial space" means any portion of a commercial space that, on or after (date of ordinance), is not occupied and has not been occupied during the preceding ninety days.

_____ GENERAL MINIMUM MAINTENANCE REQUIREMENTS

All responsible persons shall perform the following with respect to each structure they own, lease, rent, or lawfully possess:

A. Maintain all exterior surfaces, including but not limited to doors, windows, door and window frames, cornices, porches, trim, balconies, decks, and fences, in good condition.
B. Protect exterior wood surfaces, other than decay-resistant woods, from the elements and decay with paint or other protective covering or treatment. If protection of the surface is compromised, restore adequate protection within a reasonable time; for example, remove peeling, flaking or chipped paint and repaint the compromised surface.

C. Cause all siding and masonry joints and joints between the building envelope and the perimeter of windows, doors, and skylights to be weather-resistant and watertight.
D. Coat all metal surfaces subject to rust or corrosion, except those designed to be stabilized by oxidation, to inhibit rust and corrosion, after first stabilizing any existing rust and corrosion. Remove oxidation stains from exterior surfaces.
E. Maintain all exterior walls free from moss, algae, dirt, grime, holes, breaks and loose or decaying materials. Weatherproof and properly coat the surface of all exterior walls when required to prevent deterioration.
F. Maintain the roof and flashing of all structures so that they are sound, tight, free of moss, algae or defects that admit rain, attract pests or create a public nuisance. Maintain adequate roof drainage to prevent dampness and deterioration in the walls and inside the structure. Maintain roof drains, gutters, and downspouts in good repair and free from obstructions.

____ VACANT COMMERCIAL SPACE REGISTRATION

A. At least one responsible person for each vacant commercial space must register that space with the city within 10 calendar days of the date the space becomes vacant commercial space, as that term is defined in section __, unless:

1. The space is the subject of a current, valid building permit for repair or rehabilitation and the responsible person provides proof, such as receipts, invoices or executed contracts, that the repair or rehabilitation is proceeding without significant delay; or

2. The space meets all applicable codes and regulations that apply to a permitted nonresidential use, and the responsible person is actively attempting to sell, lease, or rent the property (which is evidenced, in part, by appropriate signage and not over pricing the property from the going rate in that particular area); or

3. The property the commercial space is located on is the subject of a land use application for redevelopment for which approval has been granted but building permits have yet to be issued.

B. A space will be considered registered on the date the city receives, on a form provided by the building official and properly completed and signed by a responsible person, the following information:

1. The street address and parcel number of the vacant commercial space;

2. The name, address, daytime and evening telephone numbers of each responsible person for the vacant commercial space, including any owner or tenant;

3. The period of time the vacant commercial space is expected to remain vacant;

4. Any other information requested by the building official for the administration of this chapter.

C. For every registered vacant commercial space, a responsible person must record a notice that the space is registered with the city as a vacant commercial space with the Pierce County or King County Auditor. The notice must be approved by the building official, and a copy of the recorded notice must be received by the city no later than thirty days from the date the space is registered.

D. A responsible person must post the following notice inside every vacant commercial space, to be clearly visible to all potential tenants, lessees, renters or buyers upon entering the space but not visible from outside the space:

1. This Vacant Commercial Space is registered with the City of Milton.

2. This Vacant Commercial Space may not meet all applicable codes and regulations, which may include codes and regulations required to occupy the space for a permitted use in the City of Milton.

3. The Vacant Commercial Space was registered on (date).

E. A responsible person must renew the registration of each vacant commercial space on or before January 1st of each year that the space remains vacant. A responsible person must submit the renewal application to the city on forms provided by the building official.

F. Upon satisfactory proof to the building official that the vacant commercial space is occupied as defined in Section __, the vacant commercial space will be unregistered. Proof of physical occupation may include, but is not limited to, usable furniture, office equipment, retail inventory or other equipment and inventory in the space that are consistent with the unit's intended use, and persons regularly present at and using the space for its intended use. Proof of physical occupancy must also include documentation, which may include, but is not limited to, a current, executed lease agreement, paid utility receipts reflecting payments for six consecutive months from the month the space is occupied, or valid state and local business licenses, federal income tax or city business and occupation tax statements indication the subject space is the official business address of the person or business claiming occupancy.

G. The determination of the number of vacant commercial spaces a structure contains will be at the reasonable discretion of the building official.

____ WINDOW DISPLAYS FOR COMMERCIAL SPACES NOT OCCUPIED FOR THIRTY DAYS

When commercial space is unoccupied for more than thirty days, a responsible person must take steps to maintain a vibrant streetscape and avoid adverse impacts on neighborhood character by applying at least one of the following measures to all ground-floor windows that face sidewalks, streets, or public open space:

A. Paint windows with visually appealing scenes depicting or suggesting business or cultural activities;

B. Display works of art or provide other displays of cultural or educational value, using background panels or other methods to screen views from the street of the unoccupied space;

C. Other measures consistent with these examples approved by the building official.

____ FEES (not taxes) FOR VACANT COMMERCIAL SPACE REGISTRATION

A. At least one responsible person shall pay an annual registration fee of $100.00 for each registered vacant commercial space. At least one responsible person must pay the fee to the city at the time the space is registered and on January 1st of each year that the space remains vacant.

B. Registration waivers may be granted if the owner provides satisfactory proof that the vacancy is temporary and may be due to illness of the owner, active military service or some other reasonable explanation believed to be short-term in nature and documentable as necessary.

C. After a vacant commercial building is placed on the registry, the city will inspect the property to ensure it is secure and safe from water damage. The owner of the building will be required to pay a $40.00 fee for the inspection. The legal department will notify the property owner of any maintenance issues, and citations will be issued if the property is not brought into compliance.

D. The commercial building must be occupied for 11 consecutive months for it to be taken off the vacant commercial building registry. The city will require the property owner to pay a fee if his or her building has been on the registry for one year.

E. Vacant commercial buildings must be registered with the City of Milton that have been 100% vacant for 30 days or more.

F. Failure to comply a notification from the City of Milton will be sent to the business owner. If they still do not comply, the city will register the building for him or her and will levy a fine of at least $100.00.

G. The purpose of this is to keep unoccupied buildings in a safe, well-maintained condition and prevent them from becoming a safety hazard and lowering values of surrounding properties.

H. The fee will be based on the duration of the vacancy as determined by the following scale:

(Option 1)

1. The fee will be based on the building's square footage. $.40 per square foot in the Uptown District and $.20 per square foot in all other areas. This fee will increase incrementally each year.

(Example: Hometown Hardware has 21,058 sq. ft on the interior and 1,000 sq. ft on the exterior. Total sq. ft is 22,058, leasing at $13.00 per sq. ft is $286,754.00 per month with a 10 year lease. The fee charged would be $8,823.20 per month with an annual fee of $105,878.00.

2. Fees will be billed annually. The legal department will file lawsuits against those who do not pay the fee and place liens on their property.

3. Violation of the Milton Sign Code Definition 17.50.020 Abandon Sign (a sign that has not been changed or removed within 180 days of ceasing to be relevant) and fall under 17.50.200 of the sign code Penalty for Violations which fall under MMC 9.04.040.

(Option 2)

1. Two hundred fifty dollars for each space vacant for less than one year;

2. Five hundred dollars for each space vacant for at least one year but less than two years;

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3. Seven hundred dollars for each space vacant for at least two years but less than three years;

4. One thousand dollars for each space vacant for at least three years and for each year thereafter until the building is occupied.

_____ DELINQUENT REGISTRATION FEES-COLLECTION

If a responsible person fails to pay the registration fee by the due date, the city is authorized to take action to collect the registration fee, including filling civil actions or turning the matter over to collection, in which case costs incurred by the city as a result of the collection process will be assessed to the responsible person or responsible persons in addition to the registration fee.

_____ DUTY TO AMEND REGISTRATION STATEMENT

Responsible persons for any registered vacant commercial space shall advise the building official, in writing, of any changes to the information on the registration form within thirty days of the occurrence of the change.

_____ INSPECTIONS

The building official (and his designee), or code enforcement officers, or both are authorized to conduct inspections to enforce the provisions of this chapter.

_____ ENFORCEMENT

A. Enforcement of the provisions of this chapter will be performed in accordance _____

_____

B. No responsible person may violate or fail to comply with any provisions of this chapter. Each responsible person commits a separate offense for each day they commit, continue or permit a violation of any provision of this chapter.

C. All responsible persons for a commercial space are jointly and severally responsible with respect to that commercial space for compliance with the provisions of this chapter and for any payments that they may be required to make to the city under this chapter. If the commercial space is subject to a lease, the city shall have discretion to determine whether to enforce this chapter against the commercial space owner, the tenant or both. The city shall consider in this determination whether the lease provides that the compliance with this chapter is the responsibility of the commercial space owner or the tenant.

_____ ANNUAL REPORT

The building official shall make a report to the city council in January of every odd year on the status of the vacant commercial space registration program.

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References:

Huntington, West Virginia

Weeping Water, Nebraska

Everett, WA

Tucson, AZ

Drafted by: Jim Gillespie

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