

# CITY OF MOUNT VERNON

## Shoreline Management Master Program



Adopted 2011



CITY OF MOUNT VERNON  
SHORELINE MASTER PROGRAM

**I. INTRODUCTION**

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The Shoreline Management Act (SMA) was adopted in 1971 and in the following year the Washington Department of Ecology (DOE) formally adopted a set of shoreline management guidelines. The SMA set out several overarching policies to guide the development and use of the State's shorelines. They are:

- **Encourage water-dependent uses:** "uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the states' shorelines..."
- **Protect shoreline natural resources,** including "...the land and its vegetation and wildlife, and the water of the state and their aquatic life..."
- **Promote public access:** "To the greatest extent feasible, consistent with the overall best interest of the state and the people generally, protect the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including views of the water." (WAC 173-26-221 (4)(b)(iii))

The Shoreline Master Program Guidelines are standards adopted by the DOE that local governments must follow in drafting their local Shoreline Master Programs (SMPs). These guidelines translate the broad and varied policies of the SMA into standards for locally regulating shoreline use. In 1995, the State Legislature directed the DOE to update the state's guidelines to ensure consistency with the SMA and the Washington State Growth Management Act (GMA). The guidelines had not been updated since their original adoption in 1972. In December 2003, DOE adopted revised Shoreline Master Program Guidelines.

The amended DOE guidelines provide a greater level of specificity in what local SMPs should include in the development of goals, policies, and regulations; they offer a broader range of possible shoreline designations for local jurisdictions to characterize local conditions; and identify specific issues to be included and reviewed in the SMP development. In addition to the overall goals articulated in the original SMA, local SMPs must now address a number of environmental considerations including, but not limited to the following:

- Restoration of impaired ecological function through comprehensive planning and voluntary implementation
- No net loss of ecological functions
- Critical areas
- Flood hazard reduction
- Shoreline vegetation conservation
- Water quality, stormwater, and nonpoint pollution

The Mount Vernon Shoreline Master Program (SMP or “Master Program”) consists of environmental designations for the shoreline segments and goals, policies, and regulations applicable to uses and modifications within the Shoreline Management Zone. Appendices to the SMP include an inventory of existing shoreline conditions; analysis and characterization of the shorelines of the City; a cumulative impacts report; a shorelines restoration planning report; shoreline wetland regulations; and a compilation of resources available.

Section IX contains definitions of words used within the SMP. These definitions are used to describe in detail the meaning of key words used to implement the regulations found in this SMP. The Community and Economic Development Department Director (Director) shall provide an administrative determination of a key word’s definition in the event that word is not defined within Section IX or elsewhere in the SMP or the City’s municipal code.

## **II. SHORELINE MASTER PROGRAM GOALS**

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The following Shoreline Master Program goals are based on the requirements in RCW 90.58.100(2), the City of Mount Vernon’s Comprehensive Plan, and Downtown and Waterfront Master Plan.

### **A. ECONOMIC DEVELOPMENT GOALS**

1. Ensure healthy, orderly economic growth by allowing development and/or redevelopment activities in the Shoreline Management Zone (SMZ) that will be an asset to the community and local economy, are consistent with life safety and measures to reduce flood damage, and result in the least possible adverse effect on the quality of the shoreline and surrounding environment.
2. Protect current economic activity and uses in the SMZ that are consistent with the objectives of the Comprehensive Plan and the City of Mount Vernon Downtown and Waterfront Master Plan, and provide environmentally sensitive redevelopment and new development.
3. Seek opportunities that use both economic and environmental analyses to reduce flood risk, support development within the SMZ, and where appropriate, provide improvement of environmental functions.
4. Ensure that economic activity in the SMZ does not harm the quality of the site's environment or adjacent shorelands.
5. Encourage mixed-use development with public access along Mount Vernon’s downtown waterfront and in those areas adjacent to the downtown waterfront that are suitable for compatible future redevelopment, consistent with the City’s Comprehensive Plan and the 2008 City of Mount Vernon Downtown and Waterfront Master Plan.

### **B. SHORELINE USE GOALS**

1. Identify and reserve shoreline and water areas with unique attributes for specific long-term uses, including commercial, industrial, residential, mixed-use, recreational, and open space.

2. Ensure that activities and facilities are located on shorelines in a manner so as to achieve flood damage reduction and support of flood risk management projects.
3. Encourage shoreline uses that maintain or improve and enhance the quality of the environment as it is designated for that area by employing innovative features for purposes consistent with this program.
4. Encourage joint-use activities in proposed shoreline developments.
5. Encourage mixed-use development with public access on Mount Vernon's downtown waterfront consistent with the 2008 City of Mount Vernon Downtown and Waterfront Master Plan and the City's Comprehensive Plan.
6. Ensure that planning, zoning, and other regulatory programs governing lands adjacent to areas of shoreline jurisdiction are consistent with Shoreline Management Act and Growth Management Act policies and regulations and the provisions of the SMP.
7. In determining use priorities in cases where (i) competing uses of the same property are possible, and (ii) such competing uses are consistent with the City's Comprehensive Plan, give preference to uses that protect and restore ecological functions (where such protection or restoration is technically and economically feasible) and to water-dependent and water-related uses where such new uses will not displace existing lawful, non-water-oriented uses.
8. Note that mixed-use projects combining two or more of the categories above are encouraged and should be evaluated with respect to the degree that they achieve a balance of the priorities above and the provisions of the Master Program.

**C. PUBLIC ACCESS GOALS**

1. 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.
2. Base public access on demand projections that take into account the interests of the citizens of the state to visit public shorelines with special scenic qualities or cultural or recreational opportunities.
3. Provide, protect, and enhance the public trail system that provides physical and visual access to shorelines, utilizing both private and public lands, increasing the amount and diversity of public access to the State's shorelines consistent with the natural shoreline character, private rights, and public safety.
4. To the extent feasible, construct a continuous pedestrian path along the Skagit River shoreline while providing protection of ecological functions.
5. Integrate public access to shorelines as a part of the City public trail system consistent with the adopted Park, Recreation & Open Space Plan.

**D. CIRCULATION GOALS**

1. Provide, protect, and enhance the existing public trail system that provides physical and visual access to shorelines, utilizing public lands as much as possible, and private lands only in those cases where public access requirements have not already been satisfied through the prior acquisition of private property for construction of flood risk management and related public access projects, all consistent with the character of the natural shoreline, protection of private property rights, and public safety.
2. To the extent feasible, site land circulation systems that are not shoreline dependent in a manner that will reduce or eliminate interference with either natural shoreline resources or other appropriate shoreline uses.

**E. CONSERVATION GOALS**

1. As a long-term goal, seek no further degradation of environmental functions.
2. Ensure that utilization of a natural resource takes place with minimum adverse impact to natural systems and quality of the shoreline environment.
3. Preserve the scenic quality of shoreline areas and vistas to the greatest extent feasible in areas outside of the urban core, within the Shoreline Residential, Urban Conservancy, Natural, and Aquatic environmental designations.
4. Minimize the loss of native vegetation and preserve tree cover in riparian areas by using conservation best management practices.
5. To the extent feasible, locate and design development to avoid impacts to shoreline natural resources and the functions provided by these resources. Shoreline development projects should follow best management practices that protect water quality. Encourage owners of shoreline property to control populations of invasive or noxious plants and animals as identified by the State of Washington Invasive Species Council.

**F. RESTORATION GOALS**

1. Achieve no net loss of ecological functions and strive to improve impaired shoreline ecological functions with the goal of achieving improvement over time, when compared to the status at the time of adoption of the Master Program.
2. Where appropriate, undertake the restoration of natural ecological functions within the SMZ and associated jurisdictional wetlands.
3. Reclaim and restore areas that are biologically degraded to the greatest extent feasible while maintaining appropriate use of the shoreline.
4. Support a comprehensive program of City-initiated ecological enhancements as identified in the Shoreline Restoration Report. (Appendix B)

**G. RECREATION GOALS**

1. Base recreational opportunities on demand projections consistent with the Mount Vernon Park, Recreation & Open Space Plan and the Countywide UGA Open Space Plan.
2. Increase opportunities in shoreline areas that can reasonably tolerate active or passive recreational uses without diminishing or degrading the integrity and character of the shoreline.
3. Coordinate with the City Department of Parks and Recreation to implement the goals of the Park, Recreation & Open Space Plan by optimizing opportunities for water-oriented recreation.
4. Integrate shoreline-related recreational elements into other regional trail systems and into federal, state, and local park and recreation planning.

**H. HISTORIC AND CULTURAL GOALS**

1. Identify, protect, preserve, and restore important archaeological, historical, and cultural sites located in the SMZ for educational and scientific purposes and enjoyment of the general public.
2. Encourage educational projects and programs that foster an appreciation of the importance of shoreline management, water-related activities, environmental conservation, and local history.

**I. FLOOD RISK MANAGEMENT GOALS**

1. Continue to work closely with the Dike Districts, Skagit County, and business and property owners in flood risk management planning.
2. Implement the flood risk management planning objectives and projects in the City of Mount Vernon Downtown and Waterfront Master Plan, approved Flood Protection Project, and approved engineering plans.
3. Participate in watershed-wide programs to reduce flood hazards and improve shoreline ecology.

**III. SHORELINE MASTER PROGRAM ADMINISTRATIVE PROVISIONS**

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**A. GENERAL**

1. All proposed uses and development occurring within the shoreline jurisdiction must conform to Chapter 90.58 RCW, the Shoreline Management Act and the provisions of this SMP, whether or not a permit is required.
2. The City will periodically review the cumulative effect of actions taken within the shoreline to ensure that the goal of no net loss of shoreline environmental functions is being met.

3. “The City,” for the purposes of making administrative decisions and processing permits as may be required by the SMP, means the Community and Economic Development Department and its Director or Administrator.
4. The process of reviewing proposals shall be designed to assure that regulatory or administrative actions do not unconstitutionally infringe upon private property rights in accordance with WAC 173-26-186(5).
5. As per RCW 36.70B.110(11), the City of Mount Vernon has adopted procedures for administrative interpretation of its development regulations (MVMC 14.05.060 and MVMC 17.09.080). Such procedures shall include Shoreline Master Program regulations. Administrative interpretations are Type I processes.
6. Substantial development applications are subject to Type II permit review; shoreline exemptions and substantial development permit revisions are Type I permits; and conditional use permits and variances require Type III review.
7. The regulations of the SMP shall be used in conjunction with the regulations contained in the Mount Vernon Municipal Code (MVMC). Where there is a conflict between the MVMC and the SMP, the SMP shall control.

**B. SHORELINE SUBSTANTIAL DEVELOPMENT PERMITS**

1. A shoreline substantial development permit shall be required for projects occurring within the City’s shoreline jurisdiction pursuant to the requirements and procedures contained in Chapter 173-27 WAC (Shoreline Management Permit and Enforcement Procedures); except that:
  - a. A substantial development permit is not required for projects that are below the threshold levels established in WAC 173-27-040(2), “Developments Exempt from Substantial Development Permit Requirement,” as follows:
    - i. Any development of which the total cost or fair market value, whichever is higher, does not exceed \$5,718, if such development does not materially interfere with the normal public use of the water or shorelines of the state. [Note: The State of Washington requires that every five years the dollar threshold for this exemption be adjusted for inflation by the Washington Office of Financial Management (OFM). The adjustment is based upon changes in the Consumer Price Index during that time period. (see Section IX, Definitions) The OFM 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. WAC 173-27-040(2)(a)] 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)(c). 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;

- ii. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "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;
- iii. 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 applicable chapter (Chapter 173-27 WAC);
- iv. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including, but not limited to head gates, pumping facilities, and irrigation channels. Provided, that a feedlot of any size; all process plants; other activities of a commercial nature; alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities;
- v. Construction or modification of navigational aids such as channel markers and anchor buoys;
- vi. Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to Chapter 90.58 RCW;

- vii. Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. This exception applies if the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter;
- viii. 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 from the irrigation of lands;
- ix. The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;
- x. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;
- xi. Any project with a certification from the governor pursuant to Chapter 80.50 RCW;
- xii. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization, if:
  - a) The activity 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;
  - 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; and
  - e) The activity is not subject to the permit requirements of RCW 90.58.550.

- xiii. 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;
  - xiv. Watershed restoration projects as defined within the SMP (Appendix B);
  - xv. A public or private project that is designed 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;
    - b) The project has received hydraulic project approval by the Department of Fish and Wildlife pursuant to Chapter 77.55 RCW; and
    - c) The project has been determined to be substantially consistent with the Shoreline Master Program.
  - xvi. Standard subdivisions and short plats; however, physical improvements being made as part of a plat's conditions of approval that meet the definition of substantial development, require a shoreline permit before any construction activities can occur.
- b. A substantial development permit is not required for those actions described in WAC 173-27-045 (Developments Not Subject to the Shoreline Management Act), as follows:
- i. Pursuant to RCW 90.58.485, regarding Environmental Excellence Program agreements, notwithstanding any other provision of law, any legal requirement under the Shoreline Management Act, including any standard, limitation, rule, or order is superseded and pre-placed in accordance with the terms and provisions of an Environmental Excellence Program agreement, entered into under Chapter 43.21K RCW.
  - ii. Pursuant to RCW 90.58.355 regarding hazardous substance remedial actions, the procedural requirements of the SMA shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to Chapter 70.105D RCW.
  - iii. The holder of a certification from the governor pursuant to Chapter 80.50 RCW shall not be required to obtain a permit under Chapter 90.58 RCW.
2. A shoreline substantial development permit application is a Type II permit, as per MVMC 14.05.060, "Permit Classifications."
3. All projects proposed within the SMZ require a Pre-Application Meeting in accordance with the requirements of MVMC 14.05.110.

4. Applications for Shoreline Substantial Development Permits, Conditional Use Permits, and/or Variances shall be accompanied by the materials listed in MVMC 14.05.210(B), unless waived by the Community and Economic Development Department (CEDD) according to the process outlined within MVMC 14.05.110(B)(6).
5. The “effective date of a Substantial Development Permit” is the date of receipt. The date of receipt is the date the Department of Ecology receives the City’s final decision. The date of receipt starts the two-year clock for beginning of construction and establishes the appeal period of the permit to the Shoreline Hearings Board. The effective date does not include periods of pendency for other related permits or legal actions.
6. The “effective date of variances and conditional use permits” is the date of the Department of Ecology’s decision letter.
7. Upon the review of materials submitted by an applicant the Director can, at their discretion, require peer review be completed by a consultant chosen by the Director, at the sole expense of the applicant.
8. Notification of the public shall be as required by MVMC 14.05.150, “Notice Requirements.”
9. Type II applications are those applications where a final decision is made by the Director or the Director’s designee after public notice, but without a public hearing. The decision may be appealed in an open record appeal hearing to the Hearing Examiner. (MVMC 14.05.180)
10. Time requirements for Substantial Development Permits are as follows (See WAC 173-27-090 for complete language.):
  - a. Construction activities shall commence, or where no construction activities are involved, the use or activity shall commence within two years of the effective date of a Substantial Development Permit.
  - b. The period for commencement of construction or use may be extended once for a one year period, if a request based on reasonable factors is filed before the expiration date and notice of the proposed extension is given to parties of record.
  - c. The authorization to conduct development activities shall terminate five years after the effective date of a Substantial Development Permit.
  - d. The authorization period to conduct development activities may be extended once for a one year period, if a request based on reasonable factors is filed before the expiration date and notice of the proposed extension is given to parties of record.
  - e. The time periods in sections (a) and (c), above, do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.

11. Permit Review Procedures shall be as follows:
  - a. The Community and Economic Development Department maintains records of project review actions resulting in issuance of permits, including shoreline substantial development permits.
  - b. Copies of Shoreline Management Act Permit Data Sheet and Transmittal Letters forwarded to the Department of Ecology shall be utilized for evaluation of the potential cumulative effects of previous and proposed actions in shoreline areas.
12. Appeals to the Shorelines Hearings Board, as per MVMC 14.05.190.C, shall be consistent with RCW 90.58.140.

**C. CONDITIONAL USE PERMITS**

1. The purpose of a conditional use permit is to allow greater flexibility in administering the use regulations of the Master Program in a manner consistent with the policies of the SMA. Conditional use permits may also be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in the SMA.
2. A shoreline conditional use permit is a Type III permit, as per MVMC 14.05.060.
3. The Hearing Examiner shall, following an open record public hearing, have the authority to make the final decision. The Hearing Examiner decision may be appealed in a closed record appeal to the City Council.
4. The application for a shoreline conditional use permit shall be processed pursuant to:
  - a. The legislative policies stated in the Shoreline Management Act, RCW 90.58.020 (Legislative Findings—State Policy Enunciated—Use Preference) and
  - b. The Shoreline Master Program of the City of Mount Vernon.
5. The criteria for approving conditional uses shall be consistent with WAC 173-27-160 (Review Criteria for Conditional Use Permits) and include the following:
  - a. That the proposed use is consistent with the policies of RCW 90.58.020, the Master Program, and the MVMC;
  - b. That the proposed use will not interfere with the normal public use of public shorelines;
  - c. That the proposed use of the site and 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 the SMP;
  - d. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
  - e. That the public interest suffers no substantial detrimental effect.

- f. Other uses that 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 and RCW 90.58.020, that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the permitted use regulations of the Master Program.
  - g. When reviewing conditional use permit applications, consideration shall be given to the cumulative impact of like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.
  - h. Uses which are specifically prohibited or not allowed by the Master Program may not be authorized pursuant to either subsections 'a' or 'b' of this section.
- 6. To ensure compliance with the applicable criteria stated in the Mount Vernon Municipal Code, the Hearing Examiner shall have the authority to require and approve a specific plan for a proposed use, to impose performance standards in the form of conditions of approval that make the use compatible with other permitted uses in the area, and to expand the requirements set forth in the Mount Vernon Municipal Code, by means of conditions that are applicable to the proposed use. In no case shall the City have the authority to decrease the requirements of the City's municipal code when considering an application for a conditional shoreline development permit; any such decrease shall only be granted upon the issuance of a variance.
  - 7. Where plans are required to be submitted and approved as part of the application for a shoreline conditional use permit, modifications of the original plans may be made only after a review has been conducted and approval granted by the Hearing Examiner.

**D. VARIANCES**

- 1. 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 property such that the strict implementation of the Master Program would impose unnecessary hardship on the applicant or thwart the policies set forth in the SMA.
- 2. Variances from the use regulations of the Master Program are prohibited.
- 3. Shoreline variances are Type III permits, as per MVMC 14.05.060.
- 4. The Hearing Examiner shall, following an open record public hearing, have the authority to make the final decision. The Hearing Examiner decision may be appealed to the City Council.
- 5. The criteria for granting shoreline variances shall be consistent with WAC 173-27-170 (Review Criteria for Variance Permits) 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. 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:
  - i. 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.
  - ii. 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.
  - iii. 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 environmental designation.
  - iv. That the 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.
  - v. That the public interest will suffer no substantial detrimental effect.
- c. Variances for development that will be located waterward of the OHWM may be authorized, provided the applicant can satisfy 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 variance, and that the strict application of the bulk, dimensional, or performance standards set forth in the 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.

**E. NONCONFORMING USE AND DEVELOPMENT**

1. The following definitions and standards shall apply to nonconforming structures and uses regulated by this Master Program:
  - a. "Nonconforming use or development" means a shoreline use or development that was lawfully constructed or established prior to the effective date of the City of Mount Vernon Shoreline Master Program or amendments thereto, but does not conform to current regulations or standards of the program.

- b. Structures that were legally established and are used for a conforming use, but are nonconforming with regard to shoreline setback requirements may be maintained and repaired and may be enlarged or expanded provided that any such enlargement or expansion:
  - i. will not extend the footprint of the structure any closer to the shoreline than the current design;
  - ii. will not interfere with, or obstruct dedicated public access routes to the shoreline, per applicable requirements set out herein;
  - iii. will meet any construction standards enacted by the City to protect adjacent flood risk management structures,
  - iv. will be consistent with the current, or another authorized, conforming use; and
  - v. will adhere to underlying Municipal Code and building regulations.
- c. Uses and development that were legally established and are nonconforming with regard to the use regulations of the Master Program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded unless otherwise permitted in Subsection E except that nonconforming single-family residences that are located landward of the OHWM may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040(2)(g), “Developments Exempt from Substantial Development Permit Requirement, Single-family Residence,” upon approval of a shoreline conditional use permit.
- d. A use that is listed as a shoreline conditional use, but existed prior to adoption of the Master Program or any relevant amendment and for which a conditional use permit has not been obtained shall be considered a nonconforming use.
- e. A use that is listed as a shoreline conditional use, but existed prior to the applicability of the Master Program to the site and for which a conditional use permit has not been obtained shall be considered a nonconforming use.
- f. A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.
- g. A structure that is being used, or has been used for a nonconforming use, may be used for a different nonconforming use only upon the approval of a shoreline conditional use permit. A shoreline conditional use permit for any such new nonconforming use may be approved only upon a finding that:
  - i. No reasonable alternative conforming use is practical; and
  - ii. The proposed use will be at least as consistent with the policies and provisions of the SMA and the Master Program and as compatible with the uses in the area as the preexisting use.

In addition, such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the Master Program and the Shoreline Management Act, and to assure that the use will not become a nuisance or a hazard.

- h. A nonconforming structure that is moved within the SMZ must be brought into conformance with the Master Program, unless such relocation has been expressly authorized through a previous shoreline permit.
- i. If a nonconforming structure is damaged or destroyed by fire, explosion, act of God or act of the public enemy, it may be reconstructed to the extent of 100 percent of the replacement cost of the building. (MVMC 17.102.020) Such damaged or destroyed building may be reconstructed to a size not to exceed the existing footprint at the time of the damage or destruction and within the height at the time of the damage or destruction, and except for the shoreline setback provision in section (b) above, must conform to those specifications required by the current building code and applicable zoning requirements for reconstruction of non conforming structures, provided that:
  - i. application is made for the permits necessary to restore the development within six months of the date the damage occurred,
  - ii. all permits are obtained, and
  - iii. the restoration is completed within two years of permit issuance, excluding any period during which reconstruction activities are prevented by *force majeure* events beyond the control of the owner,
- j. Excluding
  - i. the time necessary for acquisition of permits,
  - ii. the reconstruction of nonconforming structures pursuant to subsection (i) above, and
  - iii. any period during which continued use is prevented by *force majeure* events beyond the control of the owner, if a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the rights to such use shall expire and any subsequent use of such structure shall be conforming. A use authorized pursuant to subsection 'f' of this section shall be considered a legal nonconforming use for purposes of this section.
- k. An undeveloped lot, tract, parcel, site, or division of land located landward of the OHWM that was established in accordance with local and state subdivision requirements prior to the effective date of the City of Mount Vernon Shoreline Master Program, but does not conform to the present lot size standards or is not configured to allow for reasonable use that would meet current shoreline setback requirements, may be developed if permitted by other land use regulations of the MVMC and so long as such development conforms to all other requirements of the Master Program and the SMA. In this case, a SMP variance shall be required.

**F. REVISIONS TO PERMITS**

1. When an applicant seeks to revise a shoreline substantial development permit, conditional use permit, or variance, whether such permit or variance was granted under this SMP, or under the Skagit County SMP in effect prior to adoption of the Mount Vernon SMP, the Community and Economic Development Department shall request from the applicant detailed plans and text describing the proposed changes to the project. If the staff determines that the proposed changes are within the general scope and intent of the original substantial development permit, conditional use permit or variance, as the case may be, the revision may be approved by the CEDD Director, without the need for the applicant to file a new Substantial Development Permit application, provided the development is consistent with the SMA, WAC 173-27-100 (Revisions to Permits), and the Master Program.
2. “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 500 square feet or 10 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 the provisions of the original permit,
  - c. Additional or revised landscaping is 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 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 Master Program except as authorized under a variance granted as the original permit or a part thereof.
3. If the revision, or the sum of the revision and any previously approved revisions, will violate the criteria specified above, the Community and Economic Development Department shall require the applicant to apply for a new shoreline substantial development or conditional use permit or variance, as appropriate, in the manner provided for herein.
4. If proposed revisions to the original permit involve a conditional use or variance, the City shall submit the proposed revision to the DOE for review. The DOE shall respond with its final decision on the proposed revision request within 15 days of the date of receipt by the DOE. WAC 173-27-100(6)

**G. ENFORCEMENT**

1. In the event of failure to comply with the plans approved by the City or with any conditions imposed upon the shoreline development permit, the permit shall immediately become void and any continuation of the use activity shall be construed as being in violation of Mount Vernon Municipal Code and subject to the provisions of Title 19 MVMC, “Code Enforcement.”

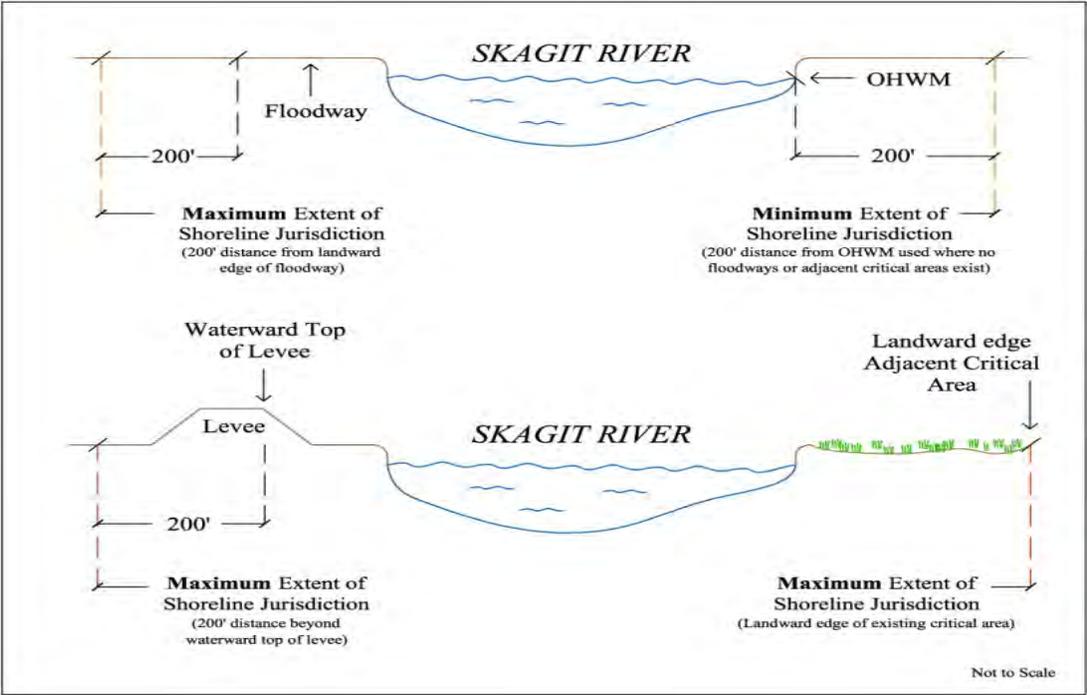
2. Any person failing to conform to the terms of a permit issued in accordance with the SMP or who undertakes development on the shorelines of the state without first obtaining any permit required by the SMP shall be subject to a civil penalty as per RCW 90.58.210 and WAC 173-27-280.

**IV. SHORELINE ENVIRONMENTAL DESIGNATIONS**

**A. Shoreline Environment - Applicability**

1. Mount Vernon’s shorelines under the Shoreline Master Program (SMP) [Figure 1] are limited to those portions of the Skagit River “Big Bend Reach” that occur within the City’s corporate limits. This encompasses approximately seven miles of the River’s shoreline.

The regulatory jurisdiction, the Shoreline Management Zone (SMZ), extends a minimum of 200 feet upland from the line of the ordinary high water mark (OHWM) of the Skagit River and includes contiguous land upon which flood waters may be carried during periods of flooding that can occur with reasonable regularity, although not necessarily annually. These areas prone to flooding have been identified, under normal conditions, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding. The SMZ includes associated wetlands, but not wetland buffers. Also excluded are lands that can reasonably be expected to be protected from flood waters by flood risk management devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state. (The SMZ is further identified in Section E.3, “Natural Environment,” below.)



**Figure 1 Shoreline Management Zone**

(Note: This is a conceptual diagram only, and not a specific description of particular river locations. True floodway and jurisdictional extent will be determined at the time of permitting.)

**B. Environmental Designations**

1. The Shoreline Management Act requires that each identified shoreline environment be given a designation, based on its physical condition and development pattern. The environmental designations provide a framework for implementing shoreline policies and regulations specific to each shoreline environment.
2. The Mount Vernon Shoreline Master Program has environmental designations based on the following:
  - a. Ecosystem characteristics and environmental functions;
  - b. Restoration potential;
  - c. Existing uses;
  - d. Development and redevelopment potential; and
  - e. Public and private plans.
3. Shorelines not found to be mapped or designated, such as through an annexation, will be assigned an Urban Conservancy environmental designation until such time that the SMP can be updated to include analysis and appropriate designation of those shorelines.

**C. Mapping**

1. An up-to-date and accurate map of the shoreline area, delineating the environmental designations, is maintained at the Community and Economic Development Department.
2. A list of shoreline properties, identified by Skagit County Tax Assessor Parcel Number, with their environmental designations, is maintained at the Community and Economic Development Department.
3. In the event of a mapping error, the designation criteria in conjunction with specific locational descriptions contained in this Section shall prevail. The environmental designation boundaries, physical features, explicit criteria, or "common" boundary descriptions that define and distinguish the environments are included in subsections D through H of this Section.

**D. Aquatic Environment**

1. Purpose

The purpose of the Aquatic Environment is to protect, restore, and manage the unique characteristics and resources of the area waterward of the ordinary high water mark (OHWM).

2. Designation Criteria

The Aquatic environment designation has been assigned to shoreline areas waterward of the OHWM.

3. Location of Environment

- a. In Mount Vernon the Aquatic Environment is applicable only to the main stem of the Skagit River waterward of the OHWM [Figures 2, 3, and 4].
  - b. The City's jurisdiction spans the River, except where the city limit line is coincident with the midpoint of the River.
  - c. Where the city limit line is the midpoint of the river, the Shoreline Management Zone shall extend to that line.
  - d. Where the city limit line is at the OHWM, per RCW 35.21.160, the City's jurisdiction shall extend to the midpoint of the river.
4. Management Guidelines
- a. New over-water structures should be prohibited except for water-dependent uses, recreation, public access, or ecological restoration.
  - b. The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.
  - c. Provisions for the Aquatic Environment should be directed towards maintaining and restoring habitat for priority aquatic species.
  - d. Uses that cause significant ecological impacts to Skagit River habitats should be discouraged.
  - e. Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of existing hydrographic conditions.
  - f. All developments and activities using navigable waters or their beds should be located and designed to minimize interference with surface navigation, to minimize adverse visual impacts, and to allow for the safe, unobstructed passage of fish whose life cycles are dependent on such migration.

## **E. Natural Environment**

### **1. Purpose**

The purpose of the Natural Environment is to protect those shoreline areas that either currently provide intact ecological functions or represent opportunities where these functions can be largely restored.

### **2. Designation Criteria**

The Natural Environment has been assigned to those shoreline areas that meet the following criteria:

- a. The shoreline is primarily free of dikes, or is waterward of dikes;
- b. The shoreline is relatively undeveloped with structures and roads;
- c. The shoreline has not historically been in recreation or urban uses, and;
- d. There is existing, or the potential for restoration of ecological functions and connectivity to the adjacent floodplain and associated wetlands.

### 3. Location of Environment

The Natural Environment applies to the following locations:

- a. At the Nookachamps Wetland Mitigation Bank between the north side of Lindegren Creek to the north City boundary [Figure 2];
- b. At Lions Park on the east side of the Skagit River, from the City limit line to the boundary between the 15.4 acre undeveloped Lions Park North and 1.6 acre developed Lions Park South [Figure 4];
- c. In West Mount Vernon, on the west side of the Skagit River in the vicinity of Young's Bar, east of the dike from the city limit line south to the north boundary of parcel P26432. [Figure 4]; and
- d. At the south portion of Edgewater Park, east of the dike to the OHWM and from the City limit line north to the south edge of the Edgewater Park boat launch area [Figure 4].

### 4. Management Guidelines

- a. Residential, commercial, industrial, and active recreation (sport fields) uses should not be allowed.
- b. Passive recreation uses such as trails and viewpoints and low-intensity water-dependent recreational access may be allowed where feasible and ecological impacts can be mitigated.
- c. Scientific, historical, cultural, educational, and research uses may be allowed, provided that no significant ecological impact on the area would result.

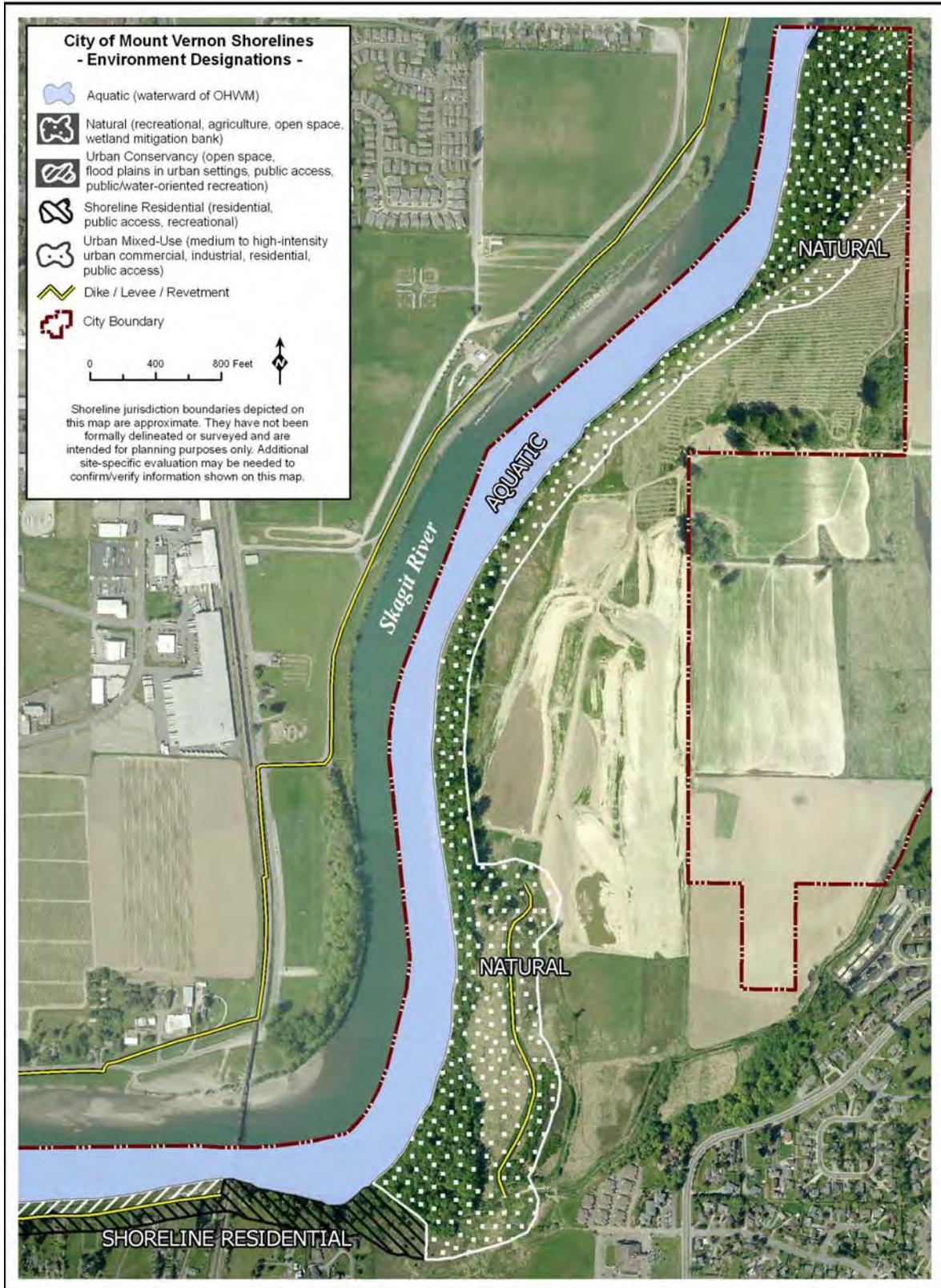


Figure 2 Northeast Mount Vernon Environmental Designations

## F. Urban Conservancy Environment

### 1. Purpose

The purpose of the Urban Conservancy Environment is to protect and restore ecological functions of open space, floodplain, and other sensitive lands where they exist in developed shoreline settings, while allowing for compatible uses and public access.

### 2. Designation Criteria

The Urban Conservancy environmental designation has been assigned to those shorelines where the levees are set back significant distance upland from the river's edge, creating open space within the floodplain. The Urban Conservancy Environment has the following characteristics:

- a. Existing open space within the floodplain;
- b. Existing and/or restored shoreline habitat;
- c. Potential for additional restoration; or
- d. Existing or potential for water-related recreation and public access.



**Figure 3 North Mount Vernon Environmental Designations**

### 3. Location of Environment

The Urban Conservancy environmental designation applies to the following areas:

- a. Between the OHWM and the landward toe of the dike running approximately parallel to Stewart and Hoag Roads from the west side of the railroad bridge to the west city limit line [Figure 3];
- b. East of the dike at Lions Park North southward including Lions Park South [Figure 4];
- c. On the west side of the Skagit River, east of the dike, south from the north boundary of parcel P26432 to the south edge of the Edgewater Park boat launch area, including the Edgewater Park sports fields ; [Figure 4] and
- d. On the east side of the River, from the city limit line west of the wastewater treatment plant generally to the east boundary of tax parcel P28974, north of the intersection of South First Street and West Hazel Street. At the wastewater treatment plant the Urban Conservancy Environment is on both sides of the dike [Figure 4].

### 4. Management Guidelines

- a. Uses that preserve the natural character of the area or promote preservation of open space, floodplain, or sensitive lands either directly or over the long term should be the primary allowed uses.
- b. Public utilities, including the Mount Vernon Wastewater Treatment Plant, are allowed in the Urban Conservancy environmental designation.
- c. Where dikes are located within the Urban Conservancy environmental designation, additional new flood risk reduction measures may be constructed.
- d. New residential, commercial, or industrial uses should not be allowed in the Urban Conservancy environmental designation.
- e. Public access and public recreation objectives should be implemented whenever feasible and where significant ecological impacts can be mitigated.
- f. During development and redevelopment, all reasonable efforts should be taken to restore ecological functions.

## **G. Shoreline Residential Environment**

### 1. Purpose

The purpose of the Shoreline Residential environmental designation is to accommodate residential development and appurtenant structures that are consistent with this SMP.

### 2. Designation Criteria

The Shoreline Residential Environment has been assigned to those shoreline areas that are characterized by existing residential development or platted lots that are wholly or partially located within the Shoreline Management Zone.

3. Location of Environment

The Shoreline Residential environmental designation applies:

- a. Between the south side of Lindegren Creek west to the west side of the railroad bridge [Figures 2 and 3];
- b. From the west side of the railroad bridge westward to the east property line of tax parcel P24206 (east of the Riverside Bridge) from the landward toe of the dike [Figure 3];
- c. In West Mount Vernon, landward of the dike from the north City limit line to Edgewater Park, except for the jurisdictional area landward of the dike on both sides of West Division Street, south of Cosgrove Street to the south side of P54832 [Figure 4]; and
- d. North of the Park, from the west boundary of parcel P26659, if extended north, to the City limit line [Figure 4].

4. Management Guidelines

- a. Densities and other development standards not specified within this SMP shall be based on the development standards of the underlying zoning district.
- b. Development standards for setbacks or buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality should be established to protect and, where feasible, restore ecological functions over time.
- c. Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.

**H. Urban Mixed-Use Environment**

1. Purpose

The purpose of the Urban Mixed-use environmental designation is to both acknowledge the historical presence and allow for the continuation of retail, commercial, office, and industrial uses that currently exist on the City's shoreline. This designation also recognizes that Mount Vernon no longer has water-dependent commercial, industrial, or transportation uses, or the water-related uses that characterized its "working waterfront" during the nineteenth and early twentieth centuries. Although the Downtown has changed significantly, as have similar riverfront towns, there are existing uses of an industrial nature that remain important to the economic vitality of the City that will continue to operate at their current locations for the foreseeable future.

## 2. Designation Criteria

An Urban Mixed-use Environment has been assigned to areas that are characterized primarily by a mix of retail, commercial, office, and industrial development, and/or areas with the potential for redevelopment to similar uses in the future. In addition, the presence of dikes, a revetment, and shoreline stabilization essentially precludes, or makes it unlikely, that new water-dependent or water-related commercial, transportation, or industrial development will occur in the SMZ.

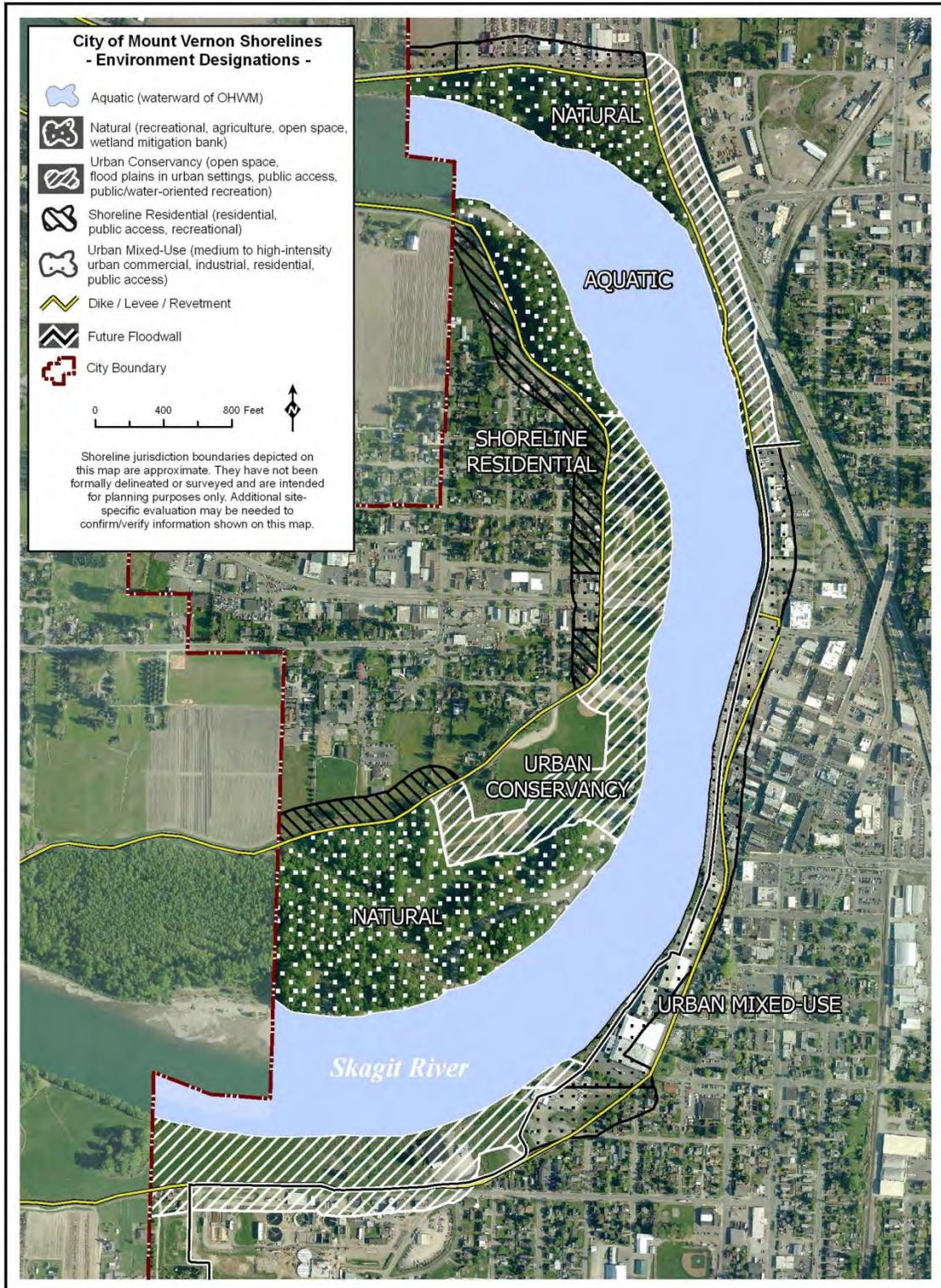
## 3. Location of Environment

The Urban Mixed-use environmental designation applies to the following shoreline:

- a. Landward from the landward toe of the dike that parallels Stewart Road, between the east boundary of tax parcel P24206 (east of the Riverside Bridge) and the west city limit [Figure 3].
- b. North of the dike at Lions Park North from the City limit line to the west side of Freeway Drive [Figure 4];
- c. From the south end of Lions Park South generally to the east boundary of tax parcel P28974, north of the intersection of South First Street and West Hazel Street. [Figure 4]; and
- d. In West Mount Vernon the area landward of the dike on both sides of West Division Street, south of Cosgrove Street to the south side of P54832.

## 4. Management Guidelines

- a. Policies and regulations should assure no net loss of shoreline ecological functions as a result of new development.
- b. Where applicable and feasible, development should include environmental cleanup and restoration of the shoreline to comply with any relevant state and federal law.
- c. Where feasible, visual and physical public access should be required as provided for in WAC 173-26-221(4)(d).
- d. Design objectives should be implemented by means such as sign regulations, appropriate scale and massing of buildings, architectural standards, landscaping, and maintenance of natural vegetative buffers.
- e. Development in the Urban Mixed-use Environment should be managed so that it enhances and maintains the shorelines for a variety of urban uses, with priority given to water-enjoyment uses and public access.
- f. New development and redevelopment within the area described in the City of Mount Vernon Downtown and Waterfront Master Plan shall be consistent with the objectives and implementation of the City of Mount Vernon Downtown and Waterfront Master Plan.



**Figure 4 Central Mount Vernon Environmental Designations**

**V. SHORELINE USE, MODIFICATION, AND DEVELOPMENT STANDARDS TABLES**

The following tables indicate the allowable shoreline uses, modifications, and development standards applicable to the environmental designations. Where there is a conflict between the tables and the written provisions of this Master Program, the written provisions shall apply. When determining if a use is allowed within an environmental designation, the permitted and prohibited uses of the underlying zoning of the property shall be considered.

The charts are coded according to the following legend:

P = May be permitted

C = May be permitted as a conditional use only

X = Prohibited; the use is not permitted nor is it eligible for a variance or conditional use permit

n/a = Not applicable

See also Notes to Tables following Table 3.

**TABLE 1, SHORELINE USE:**

SHORELINE USE ↓	Shoreline Designations:				
	Aquatic	Natural	Urban Conservancy	Shoreline Residential	Urban Mixed-use
<b>Agriculture</b> <sup>17</sup> ,	X	X	P	X	X
<b>Aquaculture</b>	X	X	X	X	X
<b>Boating Facilities</b> <sup>7</sup>	P <sup>1</sup>	X	C <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>
<b>Commercial:</b>					
Water-dependent	P	X	X	X	P
Water-related, Water-enjoyment	X	X	X	X	P
Non-water-oriented	X	X	X	X	P <sup>2</sup>
<b>Flood Hazard Reduction</b>	C	C <sup>3</sup>	P <sup>3</sup>	P	P
<b>Industrial:</b>					
Water-dependent	X	X	X	X	P <sup>2</sup>
Water-related, Water-enjoyment	X	X	X	X	P <sup>2</sup>
Non-water-oriented	X	X	X	X	P <sup>2</sup>
<b>Mining</b>	X	X	X	X	X
<b>Recreation:</b>					
Water-dependent	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>	P	P
Water-related, Water-enjoyment	P <sup>3</sup>	C	P <sup>3</sup>	P	P
Non-water-oriented	n/a	X	P	P	P

<b>Residential:</b>					
Single-family, Detached	X	X	X	P	X
Multi-family, Attached	X	X	X	X	P <sup>2, 15</sup>
<b>Transportation facilities:</b>					
Roads, highways, bikeways, and trails	n/a	X <sup>20</sup>	P <sup>20</sup> /C <sup>4</sup> ,	P <sup>4, 20</sup>	P <sup>4, 20</sup>
Bridges, causeways, railroad related	C	C	C	P <sup>4</sup>	P <sup>4</sup>
Parking - Accessory use	X	X	P	P	P
Primary use, including commercial	X	X	X	X	X
<b>Signs:</b>					
On-premises	X	P <sup>8</sup>	P <sup>8</sup>	P	P
Off-premises	X <sup>9</sup>	X	X <sup>9</sup>	X <sup>9</sup>	X <sup>9</sup>
<b>Utilities (primary)</b>	C <sup>4</sup>	C <sup>4</sup>	C <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>

**TABLE 2, SHORELINE MODIFICATIONS:**

SHORELINE MODIFICATIONS ↓	Shoreline Designations:				
	Aquatic	Natural	Urban Conservancy	Shoreline Residential	Urban Mixed-use
<b>Shoreline Stabilization:</b>					
Bioengineering	C <sup>5</sup>	C <sup>5</sup>	C <sup>5</sup>	P <sup>5</sup>	P <sup>5</sup>
Revetment	X	X	C <sup>5</sup>	P	P
Dikes/Levees	C	P	P	P	P
<b>Dredging</b>	C <sup>6</sup>	n/a	n/a	n/a	n/a
<b>Dredge material disposal</b>	C <sup>14</sup>	C <sup>14</sup>	C <sup>14</sup>	P	P
<b>Hazardous Waste Cleanup</b>	P	P	P	P	P
<b>Fill</b>	C <sup>5</sup>	C <sup>5</sup>	C <sup>5</sup>	P	P
<b>Piers and Docks</b>	P <sup>1</sup>	X	C	P	P
<b>Breakwaters, jetties, and weirs</b>	P <sup>13</sup> /C <sup>13</sup>	X	X	X	X

**TABLE 3, DEVELOPMENT STANDARDS:**

DEVELOPMENT STANDARDS ↓	Shoreline Designations:				
	Aquatic	Natural	Urban Conservancy	Shoreline Residential	Urban Mixed-use
<b>Boating Facilities:</b>					
Water-dependent Setback	n/a	n/a	0	0	0
Water-related Building Setback	n/a	n/a	50 feet	See note 10	See note 11
<b>Commercial Development:</b>					
Water-dependent Setback	n/a	n/a	n/a	n/a	0 <sup>11, 20</sup>
Water-related, Water-enjoyment Setback	n/a	n/a	n/a	n/a	See note 11
Non-water-oriented Setback	n/a	n/a	n/a	n/a	See note 11
Building Height	n/a	n/a	n/a	n/a	55 feet
<b>Flood Risk Reduction Measures:</b>					
Setback	n/a	See note 12	See note 12	See note 12	See note 12
<b>Industrial Development:</b>					
Water-dependent Setback	n/a	n/a	n/a	n/a	See note 11
Water-related, Water-enjoyment Setback	n/a	n/a	n/a	n/a	See note 11
Non-water-oriented Setback	n/a	n/a	n/a	n/a	See note 11
Building Height	n/a	n/a	n/a	n/a	35 feet
<b>Parking – Accessory:</b>					
Setback	n/a	n/a	See note 10	See note 10	See note 16
<b>Recreation:</b>					
Water-dependent setback	n/a	0	0	0	0
Water-related, water enjoyment setback	n/a	50 feet <sup>20</sup>	50 feet <sup>20</sup>	50 feet <sup>20</sup>	0
Non-water-oriented setback	n/a	n/a	50 feet	See note 10	See note 11
Height	n/a	15 feet	15 feet	35 feet	35 feet
<b>Residential Development:</b>					
Setback	n/a	n/a	n/a	See note 10	See note 11
Density (max. and min. determined by underlying zoning district <sup>20</sup> )	n/a	n/a	n/a	Max 1.24 to 7.26 du/a	See note 19
Building Height, single-family	n/a	n/a	n/a	35 feet	n/a
Building Height, multi-family	n/a	n/a	n/a	n/a	55 feet

**NOTES TO TABLES:**

1. The use or shoreline modification may be allowed in the Aquatic Environment if, and only if, permitted in the adjacent upland environment.
2. Public access, as approved by the City, is a condition of approval for development except (i) if such access requirement has already been satisfied pursuant to a prior transfer of property owned by the applicant (or applicant's predecessor in interest) where such property has been used by the City to provide public access as part of a flood risk reduction project or (ii) as provided in "Public Access" section of the SMP.
3. The use may be allowed provided it does not cause significant adverse ecological impacts.
4. Transportation facilities or utilities may be allowed providing there is no other feasible route or location.
5. The shoreline modification may be allowed for environmental restoration or if the City determines that there will be a net increase in desired shoreline ecological functions. Consistency with "Flood Hazard Reduction" provisions is also required.
6. Dredging may be allowed only in support of a water-dependent use or restoration when the City finds that the need is demonstrated. Dredging to establish, expand, relocate or reconfigure navigation channels allowed only where needed to accommodate existing navigational uses and then only when significant ecological impacts are minimized and when mitigation is provided.
7. Piers or docks may be allowed if significant adverse ecological impacts are avoided. Boating facilities may not be used for extended moorage and/or live aboard vessels.
8. Interpretive signs allowed only as part of a park or public access facility.
9. Off-premise, free-standing signs for community identification, information, or directional (way-finding) purposes are allowed and other non-commercial, off-premises signs may be allowed if they are displayed according to the sign regulations, Chapter 17.87 MVMC.
10. Setback shall be no less than 50 feet landward of the landward toe of dikes and levees, with the following exceptions (MVMC 15.36.270):
  - a. Minimum setback shall not apply to dikes and levees themselves, or improvements designed to aid in flood risk reduction;
  - b. Facilities intended for or likely to be used primarily as residential care for the elderly or the disabled, or other persons with a limited ability to evacuate quickly in an emergency, shall be prohibited between the riverward toe of dikes and levees along the Skagit River and a line 1,000 feet landward of the landward toe of said dikes and levees; and
  - c. Dike setbacks in the AO depth one-foot zone, as indicated on Flood Insurance Rate Maps (FIRM), shall be evaluated on an individual basis by the City of Mount Vernon building official and the city engineer. With their concurrence, zero dike setback may be allowed, however flood-fighting access must be provided.

11. For the Urban Mixed-use environmental designation at Stewart Road, at West Division Street in West Mount Vernon, and at parcels 26054, 26202, 26096, and 26095 abutting Riverbend Road, the setback shall be the same as is in Note 10 (above). In the Urban Mixed-use environmental designation from parcel 26644 to parcel P26505, inclusively, where a new flood risk reduction measure is to be constructed subject to engineering plans approved by FEMA on August 24, 2010, and utilized subject to receipt of a final Letter of Map Revision (LOMR) from the Federal Emergency Management Agency (FEMA), the minimum setback shall be 10 feet from the landward side of the new flood risk reduction measure *except* in those cases where the design of the flood risk reduction measure, as approved by FEMA pursuant to the LOMR granted to the City, provides for a setback of less than ten feet from:
  - a. Existing structures, and/or
  - b. Any new, replacement structures that have been authorized pursuant to a separate agreement between the property owner and the City to facilitate completion of the flood risk reduction measure.
  - c. Subject to “Mount Vernon Levee/Floodwall Riverbank Slope Encroachment Area Restrictions,” as follows:
    - A. **Floodwall Riverbank Slope Encroachment Area Established.** The provisions of this section shall apply to any land use application seeking approval of new structures, modifications to existing structures, the placement of fill, and/or new construction (collectively “improvements”) that will encroach within forty feet of the floodwall. This area shall extend from a line forty feet from the landward toe of identified levees or floodwalls as shown by official shoreline, zoning, or floodplain maps of the City, except that this section shall not apply to improvements to the levees and floodwalls themselves, or improvements designed to aid in flood proofing. No floodplain permit, shoreline permit, or building permit shall be issued until plans filed with the City show full compliance with this section and are approved by the City.
    - B. **Floodwall Riverbank Slope Encroachment Area Restrictions - Compliance with FEMA Standards.** A land use application shall not be approved nor permit issued until it is demonstrated by the applicant that the proposed improvement, including any cumulative impacts resulting there from, within the forty-foot floodwall riverbank slope encroachment area (as shown conceptually in Figure 5, below, and as verified in the field at the time of application) complies with all certification standards required for the Mount Vernon levee/floodwall from FEMA’s National Flood Insurance Program (NFIP) as set forth in Title 44 of the Federal Code of Regulations, “Emergency Management and Assistance,” which is hereby adopted now, or as hereafter amended by reference, as if set forth in full as mandatory supplemental design criteria. Demonstration of compliance with FEMA standards shall include, but is not limited to, the following:

- 1. Foundation, Embankment and Slope Stability.** The applicant must demonstrate through an engineering analysis by a licensed professional engineer evaluating levee embankment slope and foundation stability, that the proposed improvement will be designed and constructed in a manner that complies with FEMA's National Flood Insurance Program design criteria for embankment, slope, and foundation stability in effect at the time a legally sufficient application is submitted. As of the date of adoption of this SMP, FEMA's embankment, slope, and foundation stability criteria is currently specified in Title 44 CFR Section 65.10 as follows:

*“The analyses provided shall evaluate expected seepage during loading conditions associated with the base flood and shall demonstrate that seepage into or through the levee foundation and embankment will not jeopardize embankment or foundation stability. An alternative analysis demonstrating that the levee is designed and constructed for stability against loading conditions for Case IV, as defined in the U.S. Army Corps of Engineers (COE) manual, “Design and Construction of Levees” (EM 1110-2-1913, Chapter 6, Section II), may be used. The factors that shall be addressed in the analysis include: depth of flooding, duration of flooding, embankment geometry and length of seepage path at critical locations, embankment and foundation materials, embankment compaction, penetrations, other design factors affecting seepage (such as drainage layers), and other design factors affecting embankment and foundation stability (such as berms).”*

In addition to the required analysis set out above, a licensed professional engineer shall certify that any proposed improvement to be constructed within the forty-foot floodwall riverbank slope encroachment area will not compromise the foundation, slope, or embankment stability of the Mount Vernon levee/floodwall according to FEMA standards. Any reports or analysis completed by the City related to the Mount Vernon levee/floodwall embankment foundation or slope stability may be referenced or incorporated in the applicant's submittal. Unless otherwise prohibited or exempt by law, the City shall make those reports or analysis available to the applicant upon request.

- 2. Structural Integrity.** The applicant must demonstrate through an engineering analysis by a licensed professional engineer evaluating the Mount Vernon levee/floodwall structural integrity, that any proposed improvement will be designed and constructed in a manner that complies with FEMA's National Flood Insurance Program design criteria for structural integrity in effect at the time a legally sufficient application is submitted. As of the date of adoption of this SMP, FEMA's structural requirements and design criteria are currently detailed in Title 44 Section CFR 65.10(b) paragraphs (1) through (7) of the NFIP regulations. Such demonstration shall include, but not be limited to: a) certification by a licensed professional engineer that the proposed improvement will not compromise the structural integrity of the Mount Vernon levee/floodwall according to FEMA standards, and b) evidence of compliance with all other applicable development regulations of the City of Mount Vernon in effect at the time a legally sufficient application is submitted including all buildings codes adopted by the City of Mount Vernon that set forth standards for construction or improvements near foundations.
- 3. Exceptions - *de minimis* structures/activities.** Unless the City determines additional review is required under Section C, hereof, or determines that the FEMA certification standards required for the Mount Vernon levee/floodwall in place on the date of adoption of this SMP have materially changed requiring the improvements to meet different standards, the following improvements are exempt from the provisions of Sections B1 and B2 above, and shall be approved if the applicant provides certification from a licensed professional engineer that: a) the Skagit River bank geometry within the project area has not changed significantly from the conditions described in the *Report on Mt. Vernon Flood Protection Project, Geotechnical Assessment, Mount Vernon, Washington*, prepared by Golder Associates, dated January 9, 2009; b) the prevailing FEMA regulations setting out design criteria for structural integrity and river bank stability assessments have not materially changed from those in place on the date this SMP was adopted; c) that all relevant soils data have been examined and are sufficient with respect to site investigation and requirements of applicable building codes and that additional investigations are unwarranted; and d) the proposed improvement will meet the following applicable design standards:

  - i. sidewalks, pedestrian walkways and other paved areas (a) located at least ten feet from the flood wall or levee that (b) do not require excavation of more than two feet below existing grade for their construction and (c) utilize no more than twelve inches of rock fill/paving materials above existing grade for their construction (overlying existing pavements with new asphalt, or replacing existing on-grade sidewalks or walkways in kind may extend to the flood wall or levee);

- ii. buildings and other structural improvements (a) located at least ten feet from the flood wall or levee, (b) that otherwise meet the requirements of the Mount Vernon City Code, and (c) are constructed on drilled shafts, auger cast piles (as opposed to driven piles), helical piles, or micro-piles. The installation of these deep foundation elements shall be completed with cranes and other construction equipment that can be positioned outside the setback area itself or which do not exceed the weight limits set out in subsection (v) below, and which do not cause strong ground vibrations that could decrease the stability of the underlying soil;
- iii. the excavation, installation and backfilling of utility lines and related structures (a) located at least ten feet from the flood wall or levee, (b) completed during low river flow periods, and (c) utilizing backfill material that is of low permeability and requiring little or no compaction (e.g. crushed rock or control density fill (CDF)). Excavation shoring shall be provided to prevent trench wall instability for excavations of more than three feet within no less than a 2:1 (horizontal:vertical) zone of the flood wall or levee;
- iv. improvements that are constructed on existing building foundations located within the applicable setback that were in place prior to issuance of the Conditional Letter of Map Revision by FEMA, dated August 24, 2010, for the City's flood risk reduction system, provided that the load placed on such foundations does not exceed the loads for which such foundations were originally designed and certified;
- v. other activities/structural improvements that are (a) located at least ten feet from the flood wall or levee, (b) will not require excavation of more than two feet below existing grade, (c) are constructed during low flow conditions, (d) do not exert more than 150 pounds per square foot of vertical load on the existing soil, and (e) do not require construction equipment within the forty-foot setback area weighing more than 26,000 pounds, which is the average weight of a medium-sized track hoe (PC120 or equivalent); and
- vi. improvements to existing or replacement structures located within ten feet of the flood risk reduction structure where the design of the flood risk reduction structure, as approved by FEMA through the Conditional Letter of Map Revision ("CLOMR") granted to the City, provides for a setback of less than ten feet from (a) the existing structures and/or (b) any new, replacement structures that have been authorized pursuant to a separate agreement between the property owner and the City to facilitate completion of the flood risk reduction structure.

**C. Additional Engineering Review.**

1. All improvements subject to review under this section may be subject to additional review, at the option of the City and at the cost of the applicant, by a registered engineering professional retained by the City who is familiar with FEMA regulations and standards for the certification of flood projects designated by the City of Mount Vernon. As a condition of approval, the registered engineering professional shall determine there is: a) compliance with FEMA standards involving structural integrity of the floodwall/levee so as not to result in decertification; b) compliance with FEMA standards for slope, foundation, and embankment stability so as not to result in decertification; and c) the project overall is designed and proposed to be constructed in a manner that complies with all applicable development regulations of the City of Mount Vernon in effect at the time a legally sufficient application is submitted including compliance with FEMA's National Flood Insurance Program so as not to result in decertification of the Mount Vernon levee/floodwall from FEMA's National Flood Insurance Program as set forth in Title 44 of the Federal Code of Regulations.
2. In lieu of the additional review determination set forth above for those improvements subject to review under Section B3, the City may, at the option of the City, and at the cost of the applicant, require as a condition for approval a determination from a registered professional engineer retained by the City who is familiar with FEMA regulations that there is: a) compliance with the standards set forth in Section B3; and b) that those standards satisfy FEMA standards in effect at the time a legally sufficient application is submitted.
3. Any decision by the City to require additional engineering review under this Section C shall be neither arbitrary nor capricious.

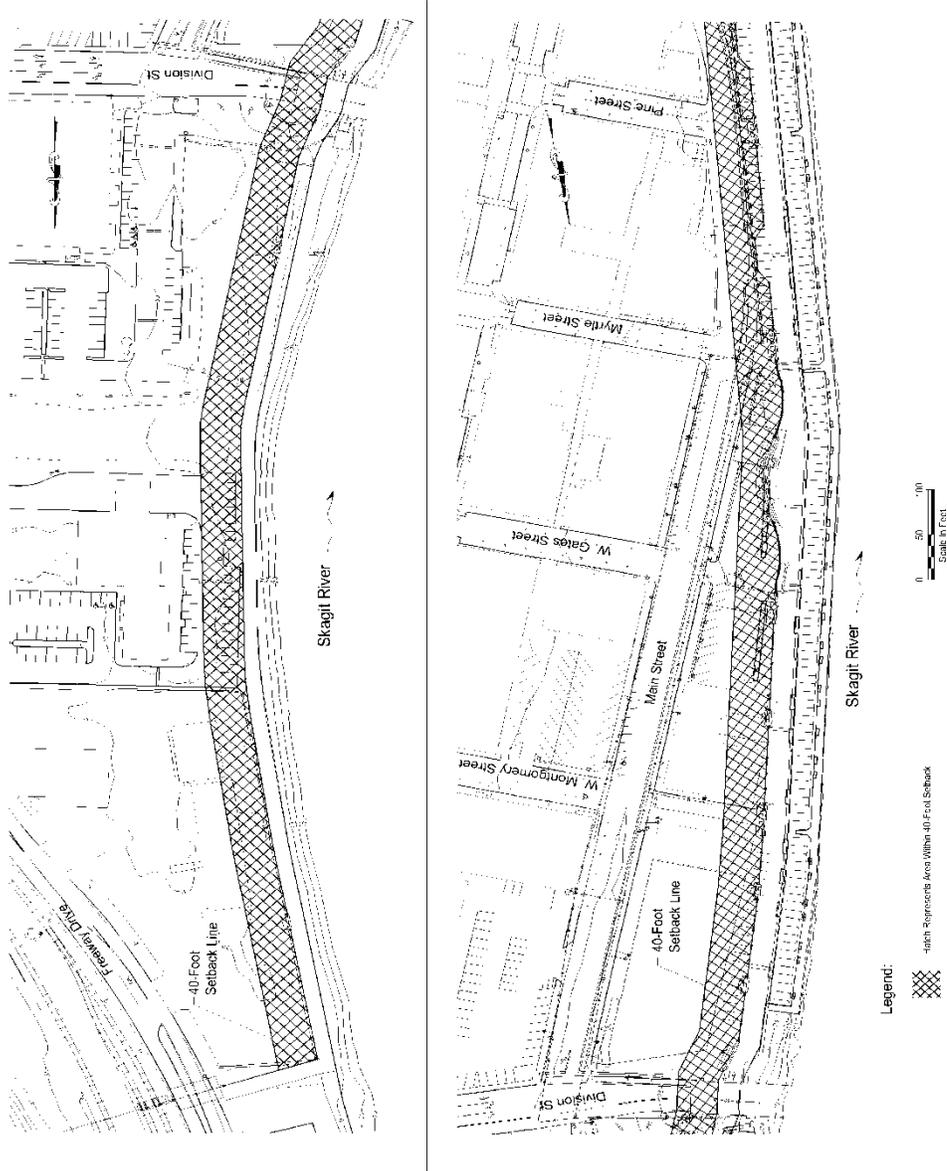
**D. Certification Defined.** Certifications by licensed engineers required under the provisions of this section shall be those required from FEMA's National Flood Insurance Program as set forth in Title 44 of the Federal Code of Regulations, as now or hereafter amended. As of the date of adoption of this SMP, certifications involving the identification and mapping of special hazard areas and the mapping of areas protected by levees are currently specified in Title 44 Section CFR 65.2 as follows:

*“For the purpose of this part [Part 65], a certification by a registered professional engineer or other party does not constitute a warranty or guarantee of performance, expressed or implied. ‘Certification of data’ is a statement that the data is accurate to the best of the certifier's knowledge. ‘Certification of analyses’ is a statement that the analyses have been performed correctly and in accordance with sound engineering practices. ‘Certification of structural works’ is a statement that the works are designed in accordance with sound engineering practices to provide protection from the base flood.*

*‘Certification of “as built” conditions’ is a statement that the structure(s) has/have been built according to the plans being certified, is/are in place, and is/are fully functioning.*

In the event the flood risk reduction measure is: i) not constructed or ii) does not receive a LOMR, the setback in this area shall be the same as in Note 10 (above). The setback at the Urban Mixed-use environmental designation at parcels P28950 and P28951 (approximately South First Street at Virginia Street) shall be the same as in Note 10 (above).

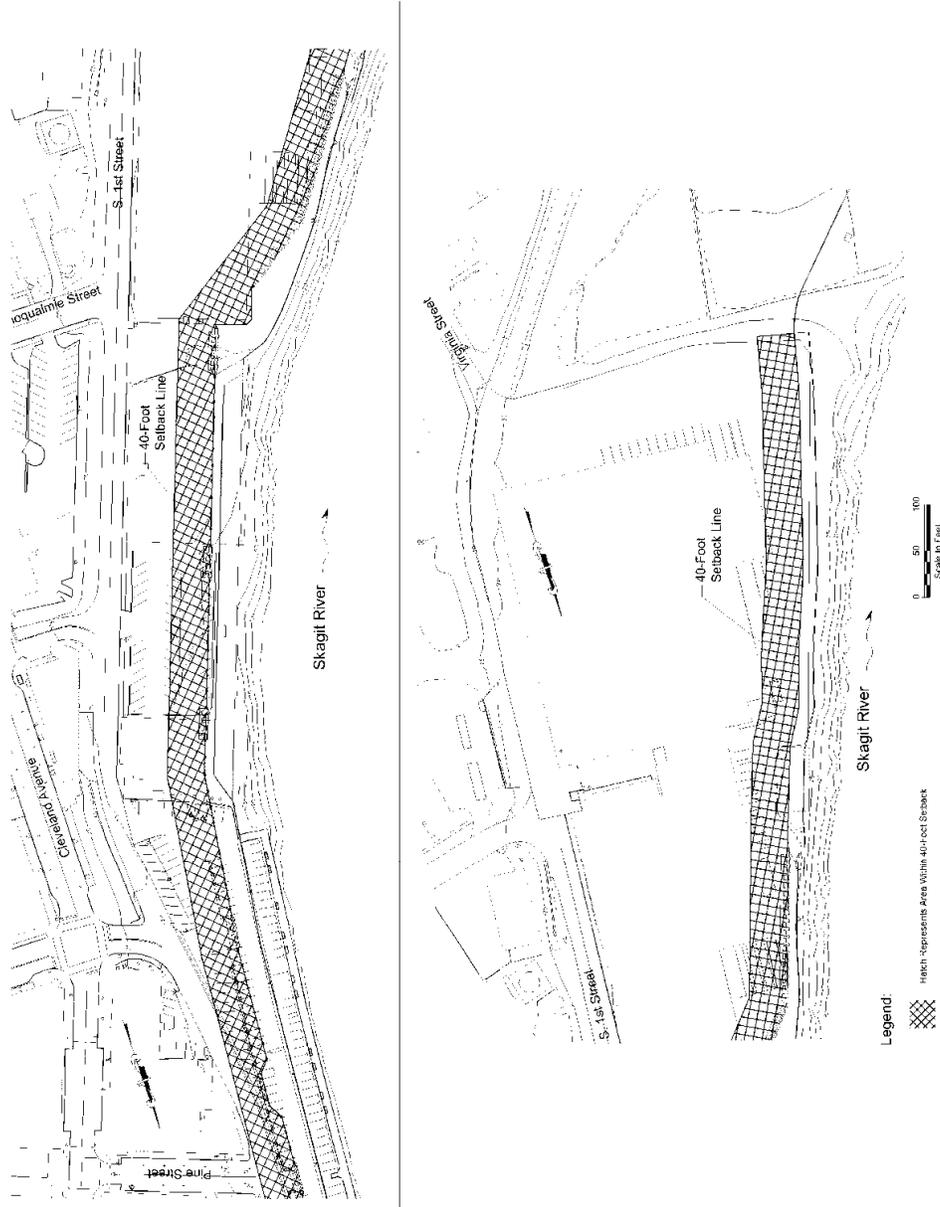
12. Determined by geotechnical analysis or Chapter 15.36 MVMC.
13. Breakwaters, jetties, groins, and weirs located waterward of the OHWM are allowed only where necessary to support water-dependent uses, public access, shoreline stabilization, or other specific public purpose, such as fish and wildlife habitat enhancement. A conditional use permit shall be required, except for those structures installed to protect or restore ecological functions, such as woody debris installed in streams. Breakwaters, jetties, groins, and weirs shall be designed to protect critical areas and shall provide for mitigation according to the sequence defined in WAC 173-26-201(2)(e).
14. Use of dredge materials may be allowed only in conjunction with an approved habitat restoration project.
15. Residential, multi-family is only allowed in the Urban Mixed-use designation between parcel 26644 and parcel P26505, inclusively (Downtown Mount Vernon) and in the Urban Mixed-use designation located in West Mount Vernon.
16. If parking is within a structure, refer to Note 11, if surface parking without an associated structure, the setback is 0 feet from the toe of the landward side of the dike.
17. Established agricultural use may be maintained as a legal, non-conforming use. Development on agricultural land that does not meet the definition of agricultural activities, and the conversion of agricultural land to nonagricultural uses, shall be consistent with the environment designation, and the general and specific use regulations applicable to the proposed use and shall not result in a net loss of ecological functions associated with the shoreline.
18. Multi-family allowed above ground or at ground level, if not visible from the street, at 76 or more units with a Conditional Use Permit (if in the C-1 District).
19. Residential density, minimum and maximum if applicable, measured per net acre (du/a), in the Shoreline Residential environmental designation is as follows: R-A zone: 1.24 du/a (min 35,000 lot size); R-1, 3.0: 3.23 du/a (min 9,000 sf lot); R-1, 4.0: 4.0 to 4.54 du/a (7,500 sf lot); R-1, 7.0: 4.0 to 7.26 du/a (4,500 sf lot).
20. Trails for pedestrians and non-motorized vehicles are permitted. There is no minimum setback for pedestrian and non-motorized vehicle trails.
21. For water-dependent commercial use in the Aquatic Environmental Designation, if an element of the project, i.e. pedestrian access, connects landward of the OHWM, Note 11 shall apply.



**Figure 5**

Forty-foot Setback Area from Floodwall (north)

A full size version of this map is available at the Community & Economic Development Department.



**Figure 6**  
Forty-foot Setback Area from Floodwall (south)  
A full size version of this map is available at the Community & Economic Development  
Department.

## **VI. GENERAL PROVISIONS**

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### **A. Policies and Regulations Applicable to all Shorelines**

1. Applicability
  - a. The goals listed in Section II of this Master Program provide broad guidance and direction and have been used by the City in developing the SMP policies.
  - b. The goals and policies, taken together, constitute the Shoreline Element of the Mount Vernon Comprehensive Plan.
  - c. The SMP policies are implemented by the regulations. The regulations describe the standards required for all shoreline uses and modifications in all environmental designations and are part of the Mount Vernon Municipal Code.
2. Policies
  - a. The Director of the Community and Economic Development Department will periodically initiate review of conditions on the shoreline and conduct appropriate analysis to determine whether or not other actions are necessary to protect and restore the ecology, protect human health and safety, upgrade visual qualities, and enhance residential, commercial, and recreational uses on the City's shorelines. Specific issues to address in such evaluations include, but are not limited to:
    - i. Water quality;
    - ii. Conservation of aquatic vegetation (control of noxious weeds and enhancement of vegetation that supports more desirable ecological and recreational conditions);
    - iii. Upland vegetation;
    - iv. Changing visual character as a result of new development, including redevelopment and individual vegetation conservation practices; and
    - v. Shoreline stabilization and modifications.
  - b. Where appropriate, the Community and Economic Development Department will implement the policies of this Master Program in all land use activities, such as development permitting, public construction, and public health and safety. Specifically, such activities include, but are not limited to:
    - i. Water quality and storm water management activities, including those outside shoreline jurisdiction, but affecting the shorelines of statewide significance;
    - ii. Aquatic vegetation management;
    - iii. Health and safety activities; and
    - iv. Public works and utilities development.

- c. The Community and Economic Development Department will notify affected federal, state, county, and tribal governments when shoreline development permit applications are submitted.
3. Regulations
    - a. All proposed shoreline uses and developments, including those uses and developments that do not require a shoreline permit, shall conform to the provisions of the Shoreline Management Act, Chapter 90.58 RCW, as such provisions are implemented by the specific regulations of the Master Program applicable to such uses, as more fully described herein.
    - b. All new shoreline modifications must be in support of an allowable shoreline use that conforms to the provisions of the Master Program. Except as otherwise noted herein, all proposed shoreline modifications not associated with a legally existing or an approved shoreline use are prohibited.
    - c. Shoreline uses, modifications, and conditions listed as "prohibited" shall not be eligible for consideration as a shoreline variance or for a shoreline conditional use permit.
    - d. Where regulations included in this Master Program appear to produce conflicting requirements, the shoreline regulations that are most consistent with the City's existing zoning requirements and its Comprehensive Plan shall be applied, absent clear and convincing evidence that application of such regulations would violate the provisions of the Shoreline Management Act, as expressed in RCW 90.58.020.
    - e. See Administrative Provisions (Section III, above) for regulations pertaining to shoreline exemptions, variances, conditional uses, and nonconforming uses.

## **B. Archaeological and Historic Resources**

### **1. Applicability**

The following provisions apply to archaeological and historic resources that are either recorded with the Washington State Department of Archaeology and Historic Preservation (DAHP) or are revealed during the course of development or modification activity within the SMZ.

### **2. Policies**

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 having historic, cultural, scientific, or educational value as identified by the appropriate authorities and deemed worthy of protection and preservation.

3. Regulations

- a. Archaeological sites located in the SMZ are subject to Chapter 27.44 RCW (Indian Graves and Records) and Chapter 27.53 RCW (Archaeological Sites and Resources) and shall comply with Chapter 25-48 WAC (Archaeological Excavation and Removal Permit), as well as the provisions of the Master Program.
- b. All shoreline permits shall contain provisions that require developers to immediately stop work and notify the Community and Economic Development Department if any sites or items of possible archaeological value are uncovered during excavation. In such cases, the developer shall be required to provide a site inspection and evaluation by a professional archaeologist to ensure that all possible valuable archaeological data are properly salvaged or mapped.
- c. All shoreline permits and exemptions issued in areas documented to contain archaeological resources require a site inspection or evaluation by a professional archaeologist in coordination with affected tribes.
- d. In the event that unforeseen factors constituting an emergency as defined in RCW 90.58.030 necessitate rapid action to retrieve or preserve artifacts or data identified above, the project may be exempted from the permit requirement of these regulations. The City shall notify the State Department of Ecology, the State Attorney General's Office, and the DAHP of such a waiver.
- e. Archaeological excavations may be permitted, subject to the provisions of this program.

**C. Critical Areas**

1. Applicability

- a. Wetlands occurring in the City's shoreline jurisdiction, [Note: The City is not opting for the expansion of the shoreline jurisdiction, as provided for in RCW 90.58.030(2)(d)(ii)];
- b. Delineated fish and wildlife habitat conservation areas are regulated by MVMC 15.40.080, "Fish and Wildlife Habitat Conservation Areas," has been incorporated into Appendix C – "Shoreline Critical Areas Regulations"[Note: MVMC 15.40.080, "Fish and Wildlife Habitat Conservation Areas," adopted by Ord. 3444 Critical Areas Ordinance, as codified August 4, 2010.] Within the Shoreline Management Zone, Lindegren Creek and Kulshan Creek, which are Type F streams; and,
- c. The main stem of the Skagit River, which is designated an Aquatic Environment in section IV.D of this SMP, and provides the critical ecological function of fish passage to upstream spawning and rearing habitats.
- d. The language adopted as part of this SMP has been reviewed and determined to meet the standard of no net loss of ecological functions.

## 2. Policies

In addition to the requirements of the General Provisions section, above, the following policies and regulations apply to all uses and development in areas of shoreline jurisdiction:

- a. In implementing this Master Program, the Community and Economic Development Department will take necessary steps to ensure compliance with Chapter 43.21C RCW, the Washington State Environmental Policy Act of 1971, and its implementing guidelines.
- b. All significant adverse impacts to the shoreline should follow recommended mitigation sequencing provided for in Appendix C – III. (G).
- c. Applicable sections of the Critical Area Ordinance (CAO) pertaining to wetlands have been incorporated into the SMP and have been included as Appendix C, Shoreline Wetland Regulations.
- d. If provisions of the Shoreline Wetland Regulations (Appendix C), and other parts of the Master Program seem to conflict, the regulations most directly implementing the objectives of the Shoreline Management Act, as determined by the Community and Economic Development Department, shall apply unless specifically stated otherwise.
- e. In as much as the main stem of the Skagit River serves the critical function of fish passage, the SMP shall be applicable for the purposes of protection of this function by minimizing and avoiding any adverse impacts waterward of the ordinary high water mark.

## 3. Regulations

- a. All project proposals that occur within the Shoreline Management Zone (see Figure 1), shall comply with Chapter 15.36 MVMC, Floodplain Management Standards and the provisions of this SMP.
- b. All project proposals that involve alteration of wetlands within the SMZ must comply with Appendix C of the SMP, “Shoreline Wetland Regulations.”
- c. All project proposals that may alter fish and wildlife conservation areas shall comply with MVMC 15.40.080, Fish and Wildlife Habitat Conservation Areas [Note: Ord. 3444 as codified August 4, 2010], and the provisions of this SMP.
- d. All project proposals shall comply with Chapter 43.21C RCW, the Washington State Environmental Policy Act.

## **D. Flood Hazard Reduction**

### 1. Applicability

- a. The provisions in this section apply to those areas within the SMZ lying along the Skagit River floodplain corridor and as identified on Federal Emergency Management Agency (FEMA) floodplain maps. The provisions in this section are intended to address two concerns especially relevant to river shorelines:

- i. Protecting human safety and minimizing flood hazard to human activities and property; and
- ii. Protecting and contributing to the restoration of ecosystem-wide processes and ecological functions found in the applicable watershed or sub-basin.

2. Policies

- a. Implement a comprehensive program to manage the City's floodplain corridor that integrates the following City ordinances and activities:
  - i. Regulations of the Master Program as codified in the MVMC;
  - ii. The Floodplain Management Standards, Chapter 15.36 MVMC;
  - iii. The development standards of the underlying zoning district;
  - iv. The City stormwater management plan and implementing regulations;
  - v. The City of Mount Vernon Downtown and Waterfront Master Plan;
  - vi. City, county, and Dike District approved flood risk reduction measures; and
  - vii. The City's participation in flood risk management programs, including the Federal Emergency Management Act and the Washington State Flood Control Assistance Account Program.
- b. In regulating development on shorelines within SMA jurisdiction, endeavor to achieve the following:
  - i. Maintenance of human safety;
  - ii. Protection and, where appropriate, the restoration of the physical integrity of the ecological system processes;
  - iii. Protection of water quality and natural groundwater movement;
  - iv. Protection of fish, vegetation, and other life forms and their habitat vital to the aquatic food chain;
  - v. Protection of existing legal uses unless the City determines, in the exercise of its reasonable discretion, that relocation of an existing, non-conforming use or structure is the only feasible option based on a written determination of the State Department of Ecology that such use presents a substantial and imminent hazard to the shoreline, and violates the requirements of the Shoreline Management Act; and
  - vi. Protection of recreational resources and scenic values.
- c. Continue to undertake flood risk management planning in a coordinated manner with affected property owners, dike districts, and public agencies.
- d. In designing publicly financed or subsidized works, give consideration to providing public pedestrian access to the shoreline, particularly along the City's downtown waterfront.

3. Regulations
  - a. New, structural, public flood risk management projects that are continuous in nature, such as dikes or levees, shall provide public access to the shoreline unless such access is not feasible or desirable according to the criteria in the Public Access section of the SMP.
  - b. Designs for flood hazard management and shoreline stabilization measures in river corridors must be prepared by qualified professional engineers, geologists, and/or hydrologists who have expertise in local riverine processes.
  - c. Existing hydrological connections to the floodplain and associated wetlands shall be maintained where feasible.
  - d. Removal of gravel from the Skagit River for purposes of flood risk reduction is not allowed.
  - e. Uses that may be appropriate and/or necessarily located in the channel migration zone or floodway include uses delineated in WAC 173-26-221(3)(c)(i) when consistent with language elsewhere in the SMP.

## **E. Public Access**

1. Applicability
  - a. Shoreline public access is the physical ability of the general public to reach and touch the water's edge and/or 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 platforms, boat launches, and improved street ends.
  - b. The City has prepared the City of Mount Vernon Downtown and Waterfront Master Plan that, in part, is intended to increase public access to the shoreline. Existing and proposed trails and public access points are also shown on the trail network maps in the Mount Vernon Park, Recreation & Open Space Plan.
2. Policies
  - a. Public access should be considered in the review of all private and public developments with the exception of the following:
    - i. Residential developments of four or fewer lots;
    - ii. Accessory use to a primary permitted use in the Urban Mixed-use Designation; or
    - iii. Where deemed inappropriate due to health, safety, and environmental concerns.
  - b. Developments, uses, and activities on or near the shoreline should not impair or detract from the public's right to access the water or the rights of navigation.
  - c. Public access should be provided as close as possible to the water's edge without causing significant ecological impacts and should be designed in accordance with the Americans with Disabilities Act.

- d. Opportunities for public access should be identified on publicly-owned shorelines.
  - e. Public access should be designed to provide for public safety and comfort and to ensure no adverse impacts on adjoining private property and the individual privacy of such property owners. Where public access is provided, a physical barrier or other means of separation should be utilized that clearly delineates public and private space, and which will discourage trespass onto adjoining private property.
  - f. Views from the upland areas adjacent to the shoreline should be enhanced and preserved to the extent practical and where they do not conflict with other goals and provisions of the Master Program. Enhancement of views should not be construed to mean excessive removal of existing native vegetation that partially impairs views.
  - g. Development projects should demonstrate that views from public properties, public streets, and/or a significant number of residences are not adversely impacted.
  - h. Public access and interpretive displays should be provided as part of publicly-funded restoration projects where significant adverse ecological impacts can be avoided.
  - i. Commercial and industrial waterfront development should be encouraged to provide a means for visual and pedestrian access to the shoreline area wherever feasible, except in those cases where such access has already been provided due to the prior acquisition by the City of property from the applicant (or the applicant's predecessor) to provide public access as part of the City's flood risk reduction project.
  - j. The acquisition of suitable upland properties to provide access to publicly-owned shorelands should be encouraged where feasible and practical.
3. Regulations
- a. Except as provided in regulations 'b' and 'c' below, shoreline substantial developments and/or shoreline conditional uses shall provide public access where any of the following conditions are present:
    - i. Where a development or use will create increased demand for public access to the shoreline, the development or use shall provide public access to mitigate this impact;
    - ii. Where a development or use will interfere with existing public access, the development or use shall provide public access to mitigate this impact. Impacts to public access may include blocking access or discouraging use of existing on-site or nearby accesses;
    - iii. Where a use that is not a priority shoreline use under the Shoreline Management Act locates on a shoreline of statewide significance, the use or development shall provide public access to mitigate this impact;

- iv. Where a use or development will interfere with a public use of lands or waters subject to the Public Trust Doctrine, the development shall provide public access to mitigate this impact; or
  - v. Where the development is proposed by a public entity or on public lands.
- b. An applicant need not provide public access where the Community and Economic Development Department determines that one or more of the following conditions apply:
- i. Residential developments of four or fewer lots;
  - ii. The new use is accessory to an existing primary permitted use
  - iii. The City's adopted Park, Recreation & Open Space Plan indicates that public access is not required;
  - iv. If access were provided, unavoidable health or safety hazards to the public would exist that cannot be prevented by any practical means;
  - v. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
  - vi. The cost, as determined by the Community and Economic Development Department, of providing the access, easement, or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development;
  - vii. Significant ecological impacts would result from the public access that cannot be mitigated;
  - viii. Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated; or
  - ix. Public access requirements have already been satisfied via prior transfer of property rights to the City by the applicant, or the applicant's predecessor in interest, which property rights have been or will be used, to provide public access to the Skagit River as part of the City's flood risk reduction project.
- c. In order to meet any of the conditions 'i' through 'ix' above, the applicant must first demonstrate, and the Community and Economic Development Department determine in its findings, that all reasonable alternatives have been exhausted, including, but not limited to:
- i. Regulating access by such means as maintaining a gate and/or limiting hours of use;
  - ii. Designing separation of uses and activities (e.g. fences, terracing, use of one-way glazing, hedges, landscaping, etc.); and
  - iii. Developing provisions for access at a site geographically separated from the proposal such as a street end, vista, or trail system.

- d. Public access provided by shoreline street ends, public utilities, and rights-of-way shall not be diminished.
- e. 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, where feasible.
- f. Public access easements and permit conditions shall be recorded on the deed of title and/or on the face of a plat or short plat as a condition of approval of the authorized land use, in perpetuity.
- g. Minimum width of public access easements shall be 20 feet, unless the City determines that undue hardship would result. In such cases, easement width may be reduced only to the minimum extent necessary to relieve the hardship.
- h. Approved signs that indicate the public's right of access and hours of access shall be 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.
- i. Future actions by the successors in interest or other parties shall not diminish the usefulness or value of the public access provided.
- j. Public access shall be required for all shoreline development by public entities, including the City of Mount Vernon, Port District, county and state agencies, and public utility districts, unless the public access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment.
- k. Public access improvements shall be designed to prevent interference with the Dike Districts' ability to prevent flooding.

**F. Signage**

1. Applicability

The following provisions apply to any commercial advertising or non-commercial information sign within the SMZ directing attention to a place, business, professional service, or community event to be held, conducted, or sold either on- or off-premises.

2. Policies

- a. Signs should be designed and placed so that they are compatible with the scenic quality of the existing shoreline and adjacent land and water uses.
- b. Signs should not block or otherwise interfere with visual access to the water or shore lands.

3. Regulations

- a. Regulations are to be used in conjunction with Chapter 17.87 MVMC, "Signs," however, the regulations outlined below shall control in the case of a conflict between the two.

- b. All signs shall be located and designed to avoid interference with vistas, viewpoints, and visual access to the shoreline.
- c. Lighted signs shall be hooded, shaded, or aimed so that direct light will not result in glare when viewed from surrounding properties or watercourses.
- d. Light from signs shall be directed to prevent light spillage onto water surfaces.
- e. Signs shall not exceed 32 square feet in surface area. On-site freestanding signs shall not exceed 6 feet in height, from existing average grade. When feasible, signs shall be flush-mounted against existing buildings.
- f. Temporary or obsolete signs shall be removed within 10 days of elections, closures of business, or termination of any other function.
- g. No signs shall be placed in a required view corridor.
- h. Allowable Signs: The following types of signs may be allowed in all shoreline environments and view corridors:
  - i. Water navigational signs and highway and railroad signs necessary for operation, safety, and direction.
  - ii. Public information signs directly relating to a shoreline use or activity.
  - iii. Off-premise, free-standing signs for community identification, information, or directional purposes.
  - iv. National, site, and institutional flags or temporary decorations customary for special holidays and similar events of a public nature.
  - v. Temporary directional signs to public or quasi-public events if removed within 10 days following the event.
- i. Prohibited Signs: The following types of signs are prohibited:
  - i. Commercial signs for products, services, or facilities located off-site, except way-finding signs as authorized by the City or state.
  - ii. Signs placed on trees or other natural features.
  - iii. Signs placed on utility poles or light standards, except as may be allowed under “h” above.
  - iv. Over-water signs and signs on floats or pilings, except those providing navigational information/safety, directional, and/or public information.

## **G. Accessory Utilities**

### **1. Applicability**

Accessory utilities that provide small-scale distribution services connected directly to uses along the shoreline. Accessory utilities concern all types of development and have the potential to impact the quality of the shoreline and its waters.

2. Policies
  - a. Accessory utilities should be properly installed so as to protect the shoreline and water from contamination and degradation.
  - b. Accessory utility facilities and rights-of-way should be located outside of the shoreline area to the maximum extent possible.
  - c. When utility lines require a shoreline location, they should be placed underground.
  - d. Accessory utility facilities should be designed and located in a manner that preserves the natural landscape and shoreline ecological processes and functions and minimizes conflicts with present and planned land uses.
3. Regulations
  - a. In shoreline areas, accessory utility transmission lines, pipelines, and cables shall be placed underground unless demonstrated to be infeasible. Further, such lines shall utilize existing rights-of-way, corridors and/or bridge crossings whenever possible. Proposals for new corridors in shoreline areas involving water crossings must fully substantiate the infeasibility of existing or alternate routes.
  - b. Accessory utility development shall, through coordination with government agencies, provide for compatible multiple use of sites and rights-of-way. Such uses include shoreline access points and trails and other forms of recreation and transportation systems, providing such uses will not unduly interfere with utility operations or endanger public health and safety.
  - c. 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.
  - d. Utility discharges and outfalls should be located, designed, constructed, and operated in accordance with best management practices to ensure degradation to water quality is kept to a minimum.

## **H. Vegetation Conservation**

1. Applicability
  - a. The following provisions apply to any activity that results in the removal of or impact to shoreline vegetation, whether or not that activity requires a shoreline permit, except as noted herein. Such activities include clearing, grading, grubbing, and trimming of vegetation. These provisions also apply to vegetation protection and enhancement activities.
  - b. Management of vegetation as a function of flood risk reduction structure maintenance shall comply with standards of the Rehabilitation and Inspection Program for non-federal levees conducted by the U.S. Army Corps of Engineers or other agencies with jurisdiction over such structures.

2. Policies

- a. Vegetation within the City shoreline areas, waterward of dikes and levees or where no such structures exist, should be enhanced over time to provide a greater level of ecological function, human safety, and property protection. To this end, shoreline management activities, including the provisions and implementation of the Master Program, should be based on a comprehensive approach that considers the ecological functions currently and potentially provided by vegetation on different sections of the shoreline, as described in the Shoreline Inventory and Characterization Report of the SMP (Appendix A).
- b. The Master Program, in conjunction with other City of Mount Vernon development regulations, should establish a coordinated and effective set of provisions and programs to protect and restore functions provided by shoreline vegetation.
- c. 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 weeds.

3. Regulations

- a. All development, including clearing and grading, shall minimize vegetation removal in areas of shoreline jurisdiction to that necessary to accommodate the proposed development. In order to implement this regulation, applicants proposing development that includes significant vegetation removal, clearing, or grading within areas of shoreline jurisdiction waterward of dikes and levees must provide, as a part of a Substantial Development Permit application or a shoreline exemption certificate application, a site plan drawn to scale, indicating existing and proposed land contours, dimensions and locations of all existing and proposed structures and improvements, a general indication of the character of vegetation found on the site, and the extent of proposed clearing and/or grading. (WAC173-27-180(9)) The City may require that the proposed development or extent of clearing and grading be modified to reduce the impacts to ecological functions. Note that this provision does not apply to the removal of noxious and invasive plant species.
- b. Vegetation restoration of disturbed shorelines waterward of dikes and levees shall use diverse native plant material similar to that which originally occurred on-site, unless the City finds that such material is not appropriate.
- c. A condition of all development shall be that those shorelands on the site not occupied by structures, landscaping, accessory uses, or other areas dedicated to human activities shall be revegetated with native vegetation, to the extent reasonably practicable given the applicable shoreline conditions and the likelihood of long term survival of such vegetation if it is reintroduced; except that such revegetation is not required landward of a flood risk reduction structure.

- d. The enhancement of vegetation shall be a condition of all development in the shoreline environments, except where the City finds that:
  - i. Vegetation enhancement is not feasible on the project site or necessary, due to location landward of dikes and levees.
  - ii. The restoration of ecological processes and functions can be better achieved through other measures.
  - iii. Sufficient native vegetation already exists
- e. 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.
- f. The control of aquatic weeds by hand pulling, mechanical harvesting, or placement of aqua screens shall be considered normal maintenance and repair and, therefore, exempt from the requirement to obtain a shoreline substantial development permit.
- g. Use of herbicides to control aquatic weeds shall be prohibited, except where no reasonable alternative exists and weed control is demonstrated to be in the public interest. A conditional use permit shall be required in such case.
- h. Selective pruning of trees for purposes of safety and protection of public views of the river is allowed, provided such pruning is the minimum necessary.

## **I. Water Quality**

### **1. Applicability**

The following section applies to all development and uses in areas of shoreline jurisdiction that may affect water quality.

### **2. Policies**

- a. All shoreline uses and activities should be located, designed, constructed, and maintained to avoid significant ecological impacts by alteration of water quality, quantity, or hydrology.
- b. The City should require reasonable setbacks, buffers, stormwater storage and, where appropriate, encourage low impact development techniques and materials to achieve the objective of lessening negative impacts on water quality.
- c. All measures for controlling erosion, stream flow rates, or flood waters through the use of flood risk reduction works should be located, designed, constructed, and maintained so that net off-site impacts related to water do not degrade existing water quality.
- d. As a general policy, the City should seek to improve water quality, quantity, and flow characteristics in order to protect and restore ecological functions and ecosystem-wide processes of shorelines within the SMZ.

- e. The City should implement the most recently adopted Washington Department of Ecology Stormwater Design Manual.
  - f. All measures for the treatment of runoff for the purpose of maintaining and/or enhancing water quality should be completed on-site before shoreline development impacts waters off-site.
3. Regulations
- a. All shoreline development, both during and after construction, shall avoid or minimize significant ecological impacts, including any increase in surface runoff, through control, treatment, and release of surface water runoff so that the receiving water quality and shoreline properties and features are not adversely affected. Control measures may include, but are not limited to, dikes, catch basins or settling ponds, oil interceptor drains, grassy swales, and planted buffers.
  - b. All development shall conform to local, state, and federal water quality regulations, provided the regulations do not conflict with the Master Program.

## **VII. SHORELINE USE POLICIES AND REGULATIONS**

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### **A. Introduction**

The provisions in this section apply to specific common uses and types of development to the extent they may occur within the SMZ. All uses and development must be consistent with the provisions of the environmental designation in which they are located and the general regulations of the Master Program.

### **B. General Use Policies**

1. The Community and Economic Development Department will give preference to those uses that control pollution and prevent damage to the natural environment, or are unique to or dependent upon uses of the state's shorelines.
2. The Community and Economic Development Department will ensure that all proposed shoreline development will not diminish the public health, safety, and welfare, as well as the land or its vegetation and wildlife, and will endeavor to protect property rights while implementing the policies of the Shoreline Management Act.
3. The City will reduce use conflicts by prohibiting or applying special conditions to those uses that are not consistent with the control of pollution and prevention of damage to the existing natural environment. In implementing this provision, preference will be given first to water-dependent uses then to water-related uses and water-enjoyment uses.
4. At the time of adoption of the SMP, there are no water-dependent or water-related commercial, transportation, or industrial land uses on the City's shorelines and the extensive nature of flood risk reduction structures, their location relative to the shoreline, and the limited navigability of the Skagit River essentially preclude the

development of such uses. It is the City's policy to continue to allow non-water-oriented uses landward of flood risk reduction structures within the Shoreline Residential and Urban Mixed-use environmental designation consistent with the Mount Vernon Comprehensive Plan, Downtown and Waterfront Master Plan, and the provisions of this SMP.

**C. Mixed-Use Development**

1. Applicability

For the purposes of this Master Program, mixed-use development means the combining of more than one use that might otherwise be separated by different zoning classifications, into a single development.

2. Policies

- a. Mixed-use commercial projects that include two or more business or residential uses, public access, open space, and recreation should be encouraged in the Urban Mixed-use Environment consistent with the City of Mount Vernon Comprehensive Plan and Downtown and Waterfront Master Plan.
- b. Public access, open space, and recreation should be encouraged in the Urban Mixed-use Environment consistent with the City of Mount Vernon Comprehensive Plan and Downtown and Waterfront Master Plan.
- c. Although direct physical access to the water may be limited in the Urban Mixed-use developments, water enjoyment in the form of views should be encouraged.

3. Regulations

- a. Uses may include retail and other commercial businesses, professional offices, hotels, restaurants, personal services, recreational uses, cultural resources, open space, and above ground level residential uses.
- b. Shared parking facilities are encouraged and parking may be off-site, as per Chapter 17.84 MVMC. Parking should be in multi-level structures as accessory uses.
- c. Circulation, outdoor storage, waste and recycling collection areas, and loading areas should be properly sized, located, and designed so that public safety and scenic values are not negatively impacted.

**D. Commercial Development**

1. Applicability

- a. Commercial development means those uses that are involved in business trade including, but are not limited to occupied building space used for the conducting of retail, office, artisan, restaurant, lodging, childcare, professional business, government services, entertainment, and privately operated recreational uses.

- b. Privately operated water-dependent uses for recreation or entertainment, such as sight-seeing boats or other passenger-carrying water craft, are considered commercial uses for the purposes of the SMP.
- c. At the time of adoption of the SMP, existing commercial uses in the SMZ consist of non-water-oriented uses.
- d. Piers and docks, bulkheads, shoreline stabilization, flood risk management measures, and other shoreline modifications are sometimes associated with commercial development and are subject to shoreline modification regulations, in addition to the standards for commercial development established herein.

2. Policies

- a. New commercial development on shorelines should be encouraged to locate in those areas with existing commercial uses and in a manner that will minimize sprawl and the inefficient use of shoreline areas.
- b. Commercial development should be encouraged to utilize existing transportation corridors and minimize the number of ingress/egress points. Ingress/egress should be designed to minimize potential conflicts with and impact on regular corridor traffic.
- c. Multiple use concepts, which include open space and recreation, should be encouraged in commercial developments.
- d. Commercial development should be visually compatible with the surrounding area.
- e. Structures should not significantly impact existing views of the aquatic zone from upland properties or from public roadways and other public areas.

3. Regulations

- a. The Community and Economic Development Department shall require and utilize the following information in its review of commercial development proposals:
  - i. The nature of the commercial activity (e.g., water-dependent, water-related, water-enjoyment, non-water-oriented), including an accounting of specific shoreline use components;
  - ii. The economic and land use justification for a shoreline location;
  - iii. Design measures to take advantage of the proposed location;
  - iv. Provisions for public visual and/or physical access to the shoreline;
  - v. Provisions to ensure that the development will not cause significant adverse environmental impacts;
  - vi. Layout, size, height, materials, colors, and general appearance, including massing, bulk, and relative scale of all proposed structures;
  - vii. Pedestrian and vehicular circulation, public access, site furniture and other features, pavement, landscaping, view corridors; and

- viii. For mixed-use proposals, the mix of water-oriented and non-water-oriented uses and activities, structure locations, site design, massing and bulk considerations, enhancements for physical and/or visual public access to the shoreline (both public and private space), and other design measures that address the goals and policies of the Master Program.
- b. Non-water-oriented commercial developments shall be permitted in accordance with the provisions of the Master Program, where at least two of the following three criteria are satisfied:
  - i. A water-oriented use is not reasonably expected to locate on the proposed site due to topography, applicable zoning code restrictions, incompatible surrounding land uses, physical features, or the site's separation from the water (such as separation by the City's proposed flood wall along the Skagit River);
  - ii. The proposed development does not displace existing, authorized water-oriented uses;
  - iii. The proposed development will be of appreciable public benefit by improving or providing public use, enjoyment, or access to the shoreline.
- c. Commercial development shall be designed to avoid or minimize ecological impacts, to protect human health and safety, and to avoid significant adverse impacts to surrounding uses and the area's visual qualities. To this end, the Community and Economic Development Department may adjust the project dimensions and/or prescribe operation intensity and screening standards as deemed appropriate. Need and special considerations for landscaping and buffer areas shall also be subject to review.
- d. Non-water-dependent commercial development shall be required to provide physical or visual access to the shoreline or other opportunities for the public to enjoy the shorelines of the state.
- e. All new commercial development and redevelopment proposals will be reviewed by the Community and Economic Development Department for ecological restoration and public access opportunities where practical and feasible. When restoration and/or public access plans indicate opportunities exist, the Community and Economic Development Department may require that those opportunities are either implemented as part of the development project or that the project design be altered so that those opportunities are not diminished.
- f. All commercial loading and service areas shall be located on the upland side of the commercial activities, or provisions must be made to set back and screen the loading and service area from the shoreline and water body.
- g. New commercial development is prohibited in all shoreline environments, except in the Urban Mixed-use environment and water-dependent uses in the Aquatic environment.

## **E. Industrial Development**

1. Applicability
  - a. The City believes that future industrial development is unlikely along the Skagit River shoreline and encourages the redevelopment of existing industrial sites to mixed-uses compatible with its Comprehensive Plan., The City acknowledges, however, that some non-water-oriented, limited light industrial-type reprocessing activities currently exist, and are likely to continue, and new water-dependent and/or water-oriented industrial uses may be proposed in the future.
  - b. Industrial uses include facilities for processing, manufacturing and storing finished or semi-finished goods.
2. Policies
  - a. Expansion, replacement, or redevelopment of existing legally established industrial uses, facilities, and services should be encouraged over the addition of new industrial facilities.
  - b. Joint use of parking and other accessory facilities among private or public entities should be required or strongly encouraged in waterfront industrial areas.
  - c. Ecological restoration should be a condition of redevelopment of existing industrial uses where practical.
3. Regulations
  - a. Existing non-water-oriented industrial uses may be repaired, reconstructed, or expanded, provided the Community and Economic Development Department determines that there will be no material further reduction in existing on-site ecological functions directly caused by such use. In the event the CEDD determines that (i) a material reduction in existing ecological functions may occur from the repair, reconstruction or expansion of existing industrial uses, and (ii) that it is not technically or economically feasible for the property owner to mitigate such losses, the property owner shall be given the opportunity to provide roughly commensurate, off-setting ecological function benefits at an alternate site along the affected shoreline, and thereby retain its existing industrial use rights.
  - b. The amount of impervious surface shall be the minimum necessary to provide for the intended use.
  - c. Water-oriented industry, should such use locate on the shoreline in the future, shall be located and designed to minimize the need for initial and/or continual dredging, filling, spoil disposal, and channel maintenance activities.
  - d. Storage and/or disposal of industrial wastes are prohibited within the SMZ.
  - e. At new or expanded industrial 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 and optimum means shall be employed for prompt and effective cleanup of those spills that do occur.

- f. Display and other exterior lighting shall be designed, shielded, and operated to minimize glare, avoid illuminating nearby properties, prevent light spillage onto water surfaces, and prevent hazards for public traffic.
- g. Stormwater BMPs shall be followed (see the City's stormwater management ordinance).
- h. New industrial development is prohibited in all shoreline environments except Urban Mixed-use.
- i. Where industrial development is allowed, it shall be located, designed, and constructed in a manner that assures no net loss of shoreline ecological functions such that it does not have significant adverse impacts to other shoreline resources and values.
- j. New and redeveloped industrial uses shall provide for shoreline public access, unless public access cannot be provided in a manner that does not result in significant interference with operations or hazards to life or property
- k. New non-water-oriented industrial development shall be prohibited within shoreline jurisdiction except when:
  - i. The use is located in the Urban Mixed-use environment, and
  - ii. The use provides a significant public benefit with respect to the Shoreline Management Act's objectives, such as providing public access and ecological restoration.

## **F. Recreational Development**

### **1. Applicability**

- a. Recreational development includes public and private (commercial) facilities for passive recreational activities such as hiking, fishing, photography, viewing, and bird-watching. It also includes facilities for active or more intensive uses, such as parks with sports facilities, and other outdoor recreation areas.
- b. This section applies to both public and privately-owned shoreline facilities intended for use by the public or private club, group, association or individual.

### **2. Policies**

- a. Shoreline recreational development should be given priority and should be primarily related to access, enjoyment, and use of the water and shorelines.
- b. The coordination of local, state, and federal recreation planning should meet projected demand by anticipating future levels of service. Shoreline recreational developments should be consistent with the City's Park, Recreation & Open Space Plan.
- c. Recreational developments and plans should promote the primacy of preserving the natural character, resources, and ecological functions and processes of shoreline environments.

- d. A variety of compatible recreational experiences and activities should be encouraged to satisfy diverse recreational needs.
  - e. Water-dependent recreational uses, such as fishing, boating, and swimming, should have priority over water-enjoyment uses, such as picnicking. Water-enjoyment uses should have priority over non-water-oriented recreational uses, such as baseball or soccer.
  - f. The linkage of shoreline parks, recreation areas, and public access points with linear systems, such as hiking trails, bicycle paths, and easements should be encouraged.
  - g. Recreational facilities should be integrated with public access systems.
3. Regulations
- a. Non-water-oriented recreational developments may be permitted only where it can be demonstrated that:
    - i. A water-oriented use is not reasonably expected to locate on the proposed site due to topography and/or other physical features, surrounding land uses, or the site's separation from the water.
    - ii. 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.
    - iii. The proposed use will be of appreciable public benefit by increasing ecological functions together with public use, enjoyment, or access to the shoreline.
  - b. Accessory structures and parking associated with recreational uses shall not be located in the SMZ unless the City determines there is no other feasible option.
  - c. All new recreational development proposals will be reviewed by the City for ecological restoration and public access opportunities. When restoration and/or public access plans indicate opportunities exist, the City may require that those opportunities are either implemented as part of the development project or that the project design be altered so that those opportunities are not diminished.
  - d. All new non-water-oriented recreational development, where allowed, shall be conditioned with the requirement to provide public access and ecological restoration where practical.
  - e. Recreation facilities shall demonstrate that they are located, designed and operated in a manner consistent with the purpose of the environmental designation in which they are located and will result in no net loss of shoreline ecological functions or ecosystem-wide processes.

## **G. Residential Development**

### **1. Applicability**

- a. The Shoreline Management Act identifies single-family residences as a priority use when (and only when) developed in a manner consistent with the control of pollution and prevention of damage to the natural environment. Although some owner-occupied, single-family residences are exempt from the substantial development permit process, they still must comply with all of the provisions of the Master Program. Subdivisions and short subdivisions must also comply with all of the provisions of this section and the Master Program. All development is subject to the variance and conditional use requirements and permit processes, when indicated.
- b. Existing single-family residential development along the shoreline is limited in extent and located only at the City's north end between the Riverside Bridge and Lindegren Creek. The majority of these residential lots, those between the Riverside and railroad bridges, are separated from the river by dikes.

### **2. Policies**

- a. Recognizing the single-purpose, irreversible, and space-consuming nature of single-family, detached residential development in the SMZ, new development of this type should provide adequate setbacks and natural buffers from the water and ample open space between structures to provide space for outdoor recreation, to protect and restore ecological functions and ecosystem-wide processes where feasible, to preserve views, and to minimize use conflicts.
- b. New residential development should be designed so as to not cause significant ecological impacts or significant adverse impacts to shoreline characteristics, public access and views, and to improve public use of the shoreline and the water.
- c. Multi-family and single-family attached residential development should be designed to take advantage of public access opportunities to the shoreline, including joint use for community recreation facilities, provided such access does not conflict with residential privacy, and does not present a life safety or security issue.
- d. Access, utilities, and public services shall be available and adequate to serve existing needs and/or planned future development.

### **3. Regulations**

- a. Over-water residences and floating homes are prohibited.
- b. Multi-family and single-family attached residential are allowed where identified as permitted uses in the underlying zoning district, providing public access shall be a requirement for new multi-family residential development and for subdivision of land for more than four parcels, except when there are demonstrated security and/or life safety issues consistent with the Public Access section of this Master Program.

- c. The creation of new lots shall be prohibited unless all of the following can be demonstrated.
  - i. A primary residence can be built on each new lot without any of the following being necessary:
    - a) New structural shoreline stabilization;
    - b) New structures in the required shoreline setback, geologically hazardous areas, wetland, required wetland buffer, critical habitat, or critical habitat buffer;
    - c) Causing significant erosion or reduction in slope stability; and
    - d) Causing increased flood risk or erosion in the new development or to other properties.
  - ii. Adequate sewer, water, access, and utilities can be provided.
  - iii. The intensity and type of development is consistent with the Comprehensive Plan and development regulations.
  - iv. Potential significant adverse environmental impacts (including significant ecological impacts) can be avoided or mitigated to achieve no net loss of ecological functions.

## **H. Utilities**

1. Applicability
  - a. Utilities are services and facilities that produce, transmit, carry, store, process, or dispose of electric power, natural gas, water, sewage, solid waste, telecommunications, etc.
  - b. The provisions in this section apply to primary uses and activities, such as solid waste handling and disposal, sewage treatment plants and outfalls, public high tension utility lines on public property or easements, power generating or transfer facilities, gas distribution lines and storage facilities, and wireless telecommunications.
2. Policies
  - a. New utility facilities should be located so as not to require extensive shoreline protection works.
  - b. 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.
  - c. Utility facilities and rights-of-way should be designed to preserve the natural landscape and to minimize conflicts with present and planned land uses.
3. Regulations
  - a. Applications for new or expanded utility facility development in areas of shoreline jurisdiction shall include the following:

- i. Demonstration of the need for the facility;
  - ii. An analysis of alternative alignments or routes including, where feasible, alignments or routes outside the SMZ;
  - iii. An analysis of potential impacts complying with the State Environmental Policy Act, including an analysis of comparative impacts of feasible alternative routes or locations;
  - iv. Description of construction, including location, construction type, and materials;
  - v. Location of other utility facilities in the vicinity of the proposed project and plans to include the facilities of other types of utilities in the project;
  - vi. Plans for reclamation of areas disturbed during construction;
  - vii. Plans for control of erosion and turbidity during construction and operation; and
  - viii. Identification of potential for locating the proposed facility at an existing utility facility site or within an existing utility right-of-way.
- b. 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 Community and Economic Development Department may require the relocation or redesign of proposed utility development in order to ensure no net loss of ecological functions.
  - c. 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 SMZ where feasible.
  - d. Utilities should be located in existing rights-of-way and corridors whenever possible.
  - e. Restoration of ecological functions shall be a condition of new and expanded non-water-dependent utility facilities.
  - f. Utility development shall, through coordination with local government agencies, provide for compatible, multiple use of sites and rights-of-way. Such uses include shoreline access points, trail systems, and other forms of recreation and transportation, providing such uses will not unduly interfere with utility operations, endanger public health and safety, or create a significant and disproportionate liability for the owner.
  - g. Existing above-ground lines shall be moved underground during normal replacement processes.
  - h. 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.

- i. 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 or better.
- j. Wireless telecommunication towers, such as radio and cell phone towers, are specifically prohibited in the SMZ.

## **I. In-Stream Structures**

### **1. Applicability**

- a. In-stream structures are constructed waterward of the OHWM and either cause or have the potential to cause water impoundment or diversion, obstruction, or modification of water flow.
- b. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood risk reduction, transportation, utility service transmission, fish habitat enhancement, or other purpose. (WAC 173-26-241(3)(g))
- c. This section is applicable to both the structures themselves and their support facilities and applies to their construction, operation, and maintenance, as well as the expansion of existing structures and facilities.

### **2. Policies**

- a. 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, hydrogeologic processes, and natural scenic vistas.
- b. Within the City of Mount Vernon, in-stream structures should be allowed only for the purposes of environmental restoration and maintaining the existing bridges crossing the Skagit River.

### **3. Regulations**

- a. Unless specifically allowed elsewhere in the SMP, in-stream structures are permitted only for the purposes of environmental restoration and bridge maintenance.
- b. In-stream structures may be required to provide public access, if public access improvements do not create significant ecological impacts or other adverse environmental impacts to and along the affected shoreline or create a safety hazard to the public.
- c. Public access provisions shall include, but not be limited to, any combination of trails, vistas, parking, and any necessary sanitation facilities.
- d. In-stream structures shall be designed and constructed to protect and preserve ecosystem-wide processes, ecological functions, and cultural resources, including, fish and fish passage, wildlife and water resources, hydrogeologic processes, and natural scenic vistas.

## **J. Agriculture**

### **1. Applicability**

- a. Agriculture includes, but is not limited to, the production of horticultural, vinicultural, floricultural, livestock, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, or Christmas trees; the operation and maintenance of farm and stock ponds, drainage ditches, or irrigation systems; normal crop rotation and crop change; and the normal maintenance and repair of existing structures, facilities, and lands currently under production or cultivation. Excluded are agricultural processing industries.
- b. Uses and shoreline modifications associated with agriculture that are identified as separate use activities in this program, such as industry, shoreline stabilization, and flood risk management, are subject to the regulations established for those uses in addition to the standards established in this section.

### **2. Policies**

- a. 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 risk, and maintain habitat for fish and wildlife.
- b. Animal feeding operations, retention and storage ponds associated with agricultural activities, and feedlot waste and manure storage should be located out of the SMZ and constructed to prevent contamination of water bodies and degradation of the adjacent shoreline environment.
- c. Appropriate farm management techniques and new development construction 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.
- d. Where ecological functions have been degraded, new development should be conditioned with the requirement for ecological restoration.

### **3. Regulations**

- a. Agricultural uses are allowed in the Urban Conservancy environment as a permitted use.
- b. Agricultural development shall conform to applicable state and federal policies and regulations, provided they are consistent with the Shoreline Management Act and this Master Program.
- c. New manure lagoons, confinement lots, feeding operations, lot wastes, stockpiles of manure solids, aerial spraying, and storage of noxious chemicals are prohibited within the SMZ.

- d. A buffer of natural or planted native vegetation shall be maintained between areas of new development for crops, grazing, or other agricultural activity and adjacent waters, channel migration zones, and marshes, bogs, and swamps. The City will determine the extent and composition of the buffer when the application for a permit or letter of exemption is submitted.
- e. Stream banks and water bodies shall be protected from damage due to concentration and overgrazing of livestock by providing the following:
  - i. Suitable bridges, culverts, or ramps for stock crossing.
  - ii. Ample supplies of clean fresh water in tanks on dry land for stock watering.
  - iii. Fencing or other grazing controls to prevent bank compaction, bank erosion, or the overgrazing of or damage to buffer vegetation.
- f. Agricultural practices shall prevent and control erosion of soils and bank materials within shoreline areas and minimize siltation, turbidity, pollution, and other environmental degradation of watercourses and wetlands.
- g. Agricultural chemicals shall be applied in a manner that prevents the direct runoff of chemical-laden waters into water bodies or aquifer recharge areas.
- h. The creation of new agricultural lands by diking, draining, or filling channel migration zones and associated wetlands shall be prohibited.

## **K. Transportation**

### **1. Applicability**

- a. 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, and railroad facilities.
- b. The policies and regulations identified in this section pertain to any project, within any environment, that proposes to change existing transportation facilities or introduce new such facilities.

### **2. Policies**

- a. Circulation routes to and on shorelands should include systems for pedestrian, bicycle, and public transportation where appropriate.
- b. Circulation systems should support existing and proposed shoreline uses that are consistent with the Master Program.
- c. 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.
- d. When existing transportation corridors are abandoned, they should be reused for water-dependent use or public access.
- e. Abandoned or unused road or railroad rights-of-way that offer opportunities for public access to the water should be acquired and/or retained for such use.

### 3. Regulations

- a. Applications for redevelopment of transportation facilities in the SMZ shall include the following information:
  - i. Demonstration of the need for the facility.
  - ii. An analysis of alternative alignments or routes including, where feasible, alignments or routes outside the SMZ.
  - iii. An analysis of potential impacts complying with the State Environmental Policy Act, including an analysis of comparative impacts of feasible alternative routes.
  - iv. Description of construction, including location, construction type, and materials.
  - v. If needed, description of mitigation and restoration measures.
- b. All new and expanded transportation facilities development shall be conditioned with the requirement to mitigate significant adverse impacts consistent with this Master Program.
- c. All redeveloped transportation facilities in the SMZ shall be consistent with the Comprehensive Plan and applicable Capital Improvement Plans.
- d. Redeveloped transportation facilities shall include provisions for pedestrian, bicycle, and public transportation where appropriate as determined by the City.
- e. Circulation planning and projects shall support existing and proposed shoreline uses that are consistent with the Master Program.
- f. Redeveloped transportation facilities shall not diminish, but may modify public access to the shoreline.
- g. Parking is only allowed in support of an allowed use.

## **VIII. SHORELINE MODIFICATION PROVISIONS**

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### **A. Introduction**

1. Shoreline modifications are structures or actions that permanently change the physical configuration or quality of the shoreline, particularly at the point where land and water meet.
2. Shoreline modification activities include, but are not limited to, structures such as revetments, bulkheads, levees, docks, and floats. Actions such as clearing, grading, land filling, and dredging are also considered shoreline modifications. Generally, shoreline modification activities are undertaken for the following reasons:
  - a. To prepare a site for a shoreline use
  - b. To provide shoreline stabilization or shoreline protection
  - c. To support developed upland areas.

3. The policies and regulations in this section 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, flood hazard reduction, piers and docks, dredging, fill, and shoreline restoration.

## **B. General Policies and Regulations**

### **1. Applicability**

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

### **2. Policies**

- a. Structural shoreline modifications should be limited in number and extent and allowed only where they are demonstrated to be necessary to support or protect existing development and uses that are in danger of loss or substantial damage or are necessary for reconfiguration of the shoreline for mitigation or enhancement purposes.
- b. The Community and Economic Development Department should ensure that shoreline modifications individually and cumulatively do not result in a net loss of ecological functions. This is to be achieved by giving preference to those types of shoreline modifications that have a lesser impact on ecological functions and by requiring mitigation of identified impacts resulting from shoreline modifications.
- c. Where applicable, the Community and Economic Development Department should require provisions be based on “best available science,” scientific and technical information, and a comprehensive analysis of site specific conditions for river and stream systems.
- d. Ecological functions impaired by development activities should be enhanced and/or restored where feasible and appropriate while accommodating permitted uses. As shoreline modifications occur, the Community and Economic Development Department should incorporate all feasible measures to protect ecological shoreline functions and ecosystem-wide processes.
- e. When shoreline modifications are necessary, they should be as compatible as possible with ecological shoreline processes and functions.

### **3. Regulations**

- a. In reviewing shoreline permits, the Community and Economic Development Department shall require steps to reduce significant ecological impacts according to the mitigation sequence in WAC 173-26-201(2)(e) (Environmental Impact Mitigation).

- b. In areas where the river system is not constrained by existing flood risk reduction structures, structural shoreline modification measures shall be permitted only if nonstructural measures are unable to achieve the same purpose. Nonstructural measures considered shall include alternative site designs, increased setbacks, drainage improvements, relocation, and vegetation enhancement.
- c. Proponents of shoreline modification projects shall obtain all applicable federal and state permits and shall meet all permit requirements.
- d. In addition to the permit information required by WAC 173-27-190 (Permits for Substantial Development, Conditional Use, or Variance), the City shall require and consider the following information when reviewing shoreline modification proposals:
  - i. Construction materials and methods;
  - ii. Project location relative to the ordinary high water mark;
  - iii. General direction and speed of prevailing winds;
  - iv. Profile rendition of beach and uplands;
  - v. Upland soil type, slope, and material;
  - vi. Physical or geologic stability of uplands; and
  - vii. Potential impact to natural shoreline processes, adjacent properties, and upland stability.
- e. Shoreline modification materials shall be only those approved by applicable state agencies. No toxic (e.g. creosote) or quickly degradable materials, or those that deteriorate under ultraviolet exposure (plastic or fiberglass) shall be used.
- f. Only shoreline activities that are appropriate to the specific type of shoreline and environmental conditions for which they are proposed shall be allowed.

**C. Shoreline Stabilization (Including Flood Hazard Reduction)**

- 1. Applicability
  - a. Shoreline stabilization includes actions taken to address erosion impacts to property, dwellings, or essential structures caused by natural processes, such as current, flood, wind, or wave action. These include both nonstructural and structural methods.
  - b. Nonstructural methods include building setbacks, relocation of the structure to be protected, groundwater management, and planning and regulatory measures to avoid the need for structural stabilization.

- c. In Mount Vernon dikes and levees are the primary form of structural shoreline stabilization. The dike system has been in place since the nineteenth century and will continue to be a permanent feature of the City's shoreline areas. These flood risk management structures are necessary for the protection of developed areas of the City and to further the goals and policies of the Mount Vernon Downtown and Waterfront Master Plan and the Comprehensive Plan.
- d. WAC 173-27-040(2)(b) (Developments Exempt from Substantial Development Permit Requirement) defines normal replacement and repair of existing structures and notes that normal maintenance and repair actions are not exempt from substantial development permits if they are anticipated to "cause substantial adverse effects to shoreline resources or the environment."

## 2. Policies

- a. Shoreline stabilization and flood risk management measures would be allowed only when adequate evidence is presented that one of the following conditions exist:
  - i. High water or erosion threatens public works and properties, including roads, bridges, railroads, and utility systems.
  - ii. High water or significant erosion damages or threatens existing homes and residential areas.
  - iii. High water or significant erosion damages or threatens to damage existing commercial and industrial uses and developments.
- b. Dikes, levees, revetments and other flood risk reduction structures should be designed and constructed primarily as a means to minimize damage to existing development. [Note: To effectively protect urban areas, a levee system must be far-reaching in its design and location. It is also important to protect major transportation corridors, i.e. railroad lines and the interstate highway system.]
- c. Ensure that publicly financed or subsidized shoreline erosion control measures do not restrict appropriate public access to the shoreline except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions.

## 3. Regulations

- a. New or replacement structural shoreline stabilization measures are allowed when part of approved flood risk management measures.
- b. Shoreline stabilization measures along the shoreline that incorporate ecological restoration through the placement of rocks, gravel or sand, and native shoreline vegetation may be allowed.
- c. Repair of existing shoreline stabilization measures is allowed.
- d. No work may commence without the responsible person or agency having obtained either a shoreline permit or statement of exemption from the Community and Economic Development Department.

- e. Flood risk reduction structures shall conform to all City, state, and federal policies and regulations including the U.S. Army Corps of Engineers criteria for design.
- f. The City may require and utilize the following information, in addition to the standard permit information required by WAC 173-27 (Shoreline Management Permit and Enforcement Procedures), in its review of all bioengineering projects:
  - i. Proposed construction timing;
  - ii. Hydrologic analysis, including predicted flood flows;
  - iii. Site vegetation, soil types, and slope stability analysis;
  - iv. Proposed project materials, including rock size, shape, and quantity; plant types; and soil preparation;
  - v. Existing and proposed slope profiles, including location of OHWM;
  - vi. Proposed designs for transition areas between the project site and adjacent properties; and
  - vii. Documentation (including photographs) of existing (preconstruction) shoreline characteristics.
- g. Bioengineering projects shall use native trees, shrubs, and/or grasses, unless such an approach is infeasible.
- h. Cleared areas shall be replanted within 30 days following completion of construction. Vegetation shall be fully reestablished within three years. The CEDD shall monitor such areas twice yearly in the early Spring and in Autumn at the end of the growing season. Areas that fail to adequately reestablish vegetation shall be replanted with approved plants until the plantings are viable.
- i. All bioengineering projects shall include a program for monitoring and maintenance.
- j. All stabilization projects must comply with the Clean Water Act and the Endangered Species Act.
- k. No structures will be permitted or constructed without consulting with all local flood agencies (i.e. City of Mount Vernon, Dike Districts, and Skagit County).
- l. An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need, although the structure shall be the minimum size necessary.

## **D. Boating Facilities - Piers and Docks**

1. Applicability
  - a. At the time of adoption of the SMP, boating facilities in Mount Vernon consist of piers and docks that abut the shoreline and are used as a landing or moorage place for small water craft. Piers are built on fixed platforms above the water, while docks float upon the water. In Mount Vernon, the few existing multiple slip piers and docks are utilized for recreational purposes (e.g. private angling club facilities).
  - b. The beds and shores (aquatic lands) of all navigable waters in the state, except those sold according to law, are under the ownership of the State of Washington. Prior authorization for their use must be obtained from the Department of Natural Resources.
2. Policies
  - a. Pier and dock construction should be restricted to the minimum size necessary to meet the needs of the proposed use.
  - b. Multiple-use and expansion of legally existing piers, wharves, and docks should be encouraged over the addition of new facilities. Joint-use facilities are preferred over new single-use piers, docks, and floats.
  - c. Piers and docks should be sited and designed to avoid or minimize potentially significant ecological impacts, including impacts on sediment movement, water circulation and quality, and fish and wildlife habitat.
  - d. The proposed size of the structure and intensity of use or uses of any pier or dock should be compatible with the surrounding environment and land and water uses.
  - e. Signage in the Aquatic Designation should be limited non-commercial, directional type signs.
3. Regulations
  - a. Proposals for piers or docks shall include, at a minimum, the following information:
    - i. Description of the proposed structure, including its size, location, design, and any shoreline stabilization or other modification required by the project;
    - ii. Ownership of shorelands and/or bedlands;
    - iii. Proposed location of piers or docks relative to property lines and the OHWM; and
    - iv. Location, width, height, and length of piers or docks on adjacent properties within 300 feet.

- b. Piers and docks shall not be allowed in critical freshwater aquatic habitats, unless it can be established that the dock or pier project, including auxiliary impacts and established mitigation measures, will not be detrimental to the natural habitat or species of concern, and will not result in loss of ecological function.
- c. Piers and docks shall not significantly interfere with use of navigable waters.
- d. Boating facilities may not be used for extended moorage and/or live aboard vessels.
- e. The length of piers and docks shall be limited in constricted water bodies to assure navigability and protect public use of the river. The Community and Economic Development Department may require reconfiguration of pier and dock proposals, where necessary, to protect navigation, public use, or ecological functions.
- f. New piers and docks shall be allowed only for water-dependent uses or public access. Water-related and water-enjoyment uses may be allowed as part of mixed-use development on over-water structures where they are clearly auxiliary to and in support of water-dependent uses, provided the minimum size requirement needed to meet the water-dependent use is not violated. New pier or dock construction shall be permitted only when the applicant has demonstrated that a specific need exists to support the intended water-dependent uses.
- g. New residential development of more than two dwellings shall provide joint use or community docks, rather than individual docks.
- h. Piers and docks shall use construction techniques and be constructed of materials and use coatings that conform to best management practices for the situation as recommended by the appropriate state and federal agencies, as well as conform to City of Mount Vernon building codes.
- i. All piers and docks shall be maintained in a safe and sound condition so as to not constitute a hazard to the public.
- j. Abandoned or unsafe piers and docks shall be removed or repaired promptly by the owner. No over-water field applications of paint, preservative treatment, or other chemical compounds shall be permitted, except in accordance with best management practices set forth by applicable state agencies.
- j. Pilings employed shall be installed so that the top elevation is at least one foot above extreme high water.
- k. When potentially toxic or hazardous materials are used in pier or dock construction, precautions shall be taken to ensure their containment.
- l. Overhead wiring or plumbing is not permitted on piers or docks.
- m. Signs on piers or docks shall be limited to water craft navigation information and directional and/or public safety information.

- n. Lighting shall be the minimum necessary to locate the dock at night. Lights shall be directed to prevent light spillage onto water surfaces.
- o. Other than safety railings and safety equipment and lighting, no structures are allowed on over-water portions of piers and docks.
- p. No piers or docks shall be designed or constructed without consulting with all local flood risk reduction authorities (City of Mount Vernon, Dike Districts, and Skagit County).
- q. Permit applications for new piers or docks shall demonstrate that no increase in potential flood damage would result from construction, use, or maintenance of the proposed structures, including during seasonal changes in stream flow.
- r. No piers or docks proposed on beds or shores owned by the State of Washington shall be designed or constructed without prior authorization of the Department of Natural Resources, which is the leasing authority. (RCW 79.105.210)
- s. All piers and docks must comply with the Clean Water Act and the Endangered Species Act.

## **E. Dredging**

### **1. Applicability**

Dredging is the removal or displacement of earth or sediment (gravel, sand, mud, silt and/or other material or debris) from a river, stream, or associated wetland.

### **2. Policies**

- a. Dredging operations should be planned and conducted to so as to avoid adverse impacts to other shoreline uses, properties, and values.
- b. When allowed, dredging and dredge material disposal within the SMZ should be limited to the minimum amount necessary.

### **3. Regulations**

- a. Dredging will only be permitted in the following situations:
  - i. In conjunction with a water-dependent use of water bodies or adjacent shorelands; and
  - ii. For projects associated with MTCA or CERCLA habitat restoration, or
  - iii. Any other significant restoration effort approved by a shoreline CUP.
- b. Dredging in wetlands is prohibited unless it is part of an approved habitat restoration or enhancement project.
- c. Dredged materials must be deposited on an approved upland site outside of the shoreline jurisdiction.
- d. Dredging and dredge disposal within the SMZ shall be permitted only where it is demonstrated that the proposed actions will not:

- i. Result in significant and/or ongoing damage to water quality, fish, and other essential aquatic biological elements;
  - ii. Adversely alter natural drainage and circulation patterns, currents, river and tidal flows or significantly reduce flood water capacities; or
  - iii. Cause other significant adverse ecological impacts.
- e. Dredging shall utilize techniques that cause minimum dispersal and broadcast of bottom material.
- f. When dredging is permitted, the dredging shall be the minimum necessary to accommodate the proposed use and unavoidable impacts shall be mitigated.
- g. Permit applications for shoreline dredging and dredge material disposal may be required to include the following information:
- i. Physical, chemical, and biological assessment of the proposed dredged material applicable to the particular dredging site.
  - ii. Specific data to be considered include:
    - a) Physical - Grain size, clay, silt, sand, or gravel as determined by sieve analysis;
    - b) Chemical - Including conventional parameters, metals, and organics;
    - c) Biological - Bioassays to determine the suitability of dredged material for a selected disposal option;
    - d) Dredging volumes, methods, schedule, frequency, hours of operation and procedures;
    - e) Method of disposal, including the location, size, capacity, and physical characteristics of the disposal site, transportation method and routes, hours of operation, schedule;
    - f) Stability of bedlands adjacent to proposed dredging area;
    - g) Hydraulic analyses, including tidal fluctuation, current flows, direction and projected impacts. Hydraulic modeling studies are required for large scale, extensive dredging projects, in order to identify existing hydrological and geological patterns and probable effects of dredging;
    - h) Assessment of water quality impacts; and
    - i) Biological assessment including migratory, seasonal, and spawning use areas.
- h. New development shall be located and designed to avoid or minimize the need for new or maintenance dredging where feasible.
- i. 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.
- j. Dredging of beds or shores of navigable waters owned by the State of Washington shall require prior authorization of the Washington Department of Natural Resources.

**F. Fill**

1. Applicability

- a. Fill is the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shore lands in a manner that raises the elevation or creates dry land.
- b. Any fill activity conducted within the SMZ must comply with the provisions herein.

2. Policies

Fills waterward of OHWM should be allowed only when necessary to facilitate water-dependent and/or public access uses, cleanup and disposal of contaminated sediments, consistent with this Master Program.

3. Regulations

- a. Applications for fill permits shall include the following:
  - i. Proposed use of the fill area;
  - ii. Physical, chemical and biological characteristics of the fill material;
  - iii. Source of fill material;
  - iv. Method of placement and compaction;
  - v. Location of fill relative to natural and/or existing drainage patterns and wetlands;
  - vi. Location of the fill perimeter relative to the OHWM;
  - vii. Perimeter erosion control or stabilization means; and
  - viii. Type of surfacing and runoff control devices.
- b. Fill waterward of OHWM may be permitted only when:
  - i. In conjunction with a water-dependent use or public access permitted by this Master Program;
  - ii. In conjunction with a bridge or navigational structure for which there is a demonstrated public need and where no feasible upland sites, design solutions, or routes exist; or
  - iii. As part of an approved shoreline restoration project.
- c. 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 infeasible.
- d. Fills are prohibited in floodways, except when approved by conditional use permit and where required in conjunction with a proposed water-dependent or other use, specified in regulation 'b' above.

- e. Fills landward of the OHWM should be allowed as part of the construction and reconstruction of dikes, levees, revetments and other flood risk reduction structures consistent with Dike District plans, the City of Mount Vernon Downtown and Waterfront Master Plan, and the City's Flood Protection Project.
- f. Fills landward of flood risk reduction measures may be permitted, subject to Section V, Notes 10 and 11, above.
- g. Shoreline fill shall be designed and located so there will be no significant ecological impacts and no alteration of local currents, surface water drainage, channel migration, or flood waters that would result in a hazard to adjacent life, property, and natural resource systems.
- h. Environmental cleanup action involving excavation/fill, as part of an interagency environmental clean-up plan, as authorized by the Community and Economic Development Department, may be permitted.
- i. Sanitary fills shall not be located in areas of shoreline jurisdiction.
- j. A shoreline conditional use permit is required for fill in the Aquatic, Natural, and Urban Conservancy shoreline environments.
- k. Proposed fills on beds and/or shores of navigable waters owned by the State of Washington shall require prior authorization of the Washington Department of Natural Resources.

## **G. Shoreline Restoration and Ecological Enhancement**

### **1. Applicability**

- a. Shoreline restoration and/or enhancement is the improvement of the natural character and ecological functions of the shoreline.
- b. Where appropriate, using native vegetation is encouraged. The materials used are dependent on the intended use of the restored or enhanced shoreline area.
- c. The Shoreline Restoration Report (Appendix B) identifies ecological enhancement and restoration measures. It notes that significant restoration has recently occurred on the shoreline and uplands of Edgewater Park and that the Nookachamps Wetlands Mitigation Bank is under construction. It also notes that opportunities for additional significant restoration actions are limited. The extensive flood risk reduction system and existing urban development will constrain both the type and extent of restoration and enhancement projects.

### **2. Policies**

- a. Shoreline enhancement and/or restoration should be considered as an alternative to structural shoreline stabilization and protection measures where feasible.
- b. All shoreline restoration and/or enhancement projects should protect the integrity of adjacent natural resources including aquatic habitats and water quality.
- c. Where possible, shoreline restoration and/or enhancement should use maintenance-free or low-maintenance designs.

- d. The recommendations of the Shoreline Restoration Report, prepared as part of the SMP, should be promoted wherever feasible.
  - e. Shoreline restoration and/or enhancement should not extend waterward more than necessary to achieve the intended results.
3. Regulations
- a. Shoreline enhancement may be permitted if the project proponent demonstrates that no significant change to sediment transport or river current will result that would adversely affect ecological processes, properties, or habitat.
  - b. Shoreline restoration and/or enhancement projects shall use best available science and best management practices.
  - c. Shoreline restoration and ecological enhancement projects may be permitted in all shoreline environments, provided:
    - i. The project's purpose is the restoration of natural character and ecological functions of the shoreline, and
    - ii. It is consistent with the implementation of an approved comprehensive restoration plan, or the project will provide a proven ecological benefit and is consistent with this Master Program.
  - d. Shoreline restoration and ecological enhancement must meet the U.S. Army Corps of Engineers PL8499 flood structure maintenance regulations.

## **IX. DEFINITIONS**

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**Accessory Use** is any structure or use incidental and subordinate to a primary use or development.

**Accessory Utility** (see Utility, Accessory).

**Agricultural activities** means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow (plowed and tilled, but left unseeded); allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation.

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

**Agricultural equipment and agricultural facilities** includes, but is not limited to:

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

**Agricultural land** means those specific land areas on which agriculture activities are conducted.

**Amendment** means a revision, update, addition, deletion, and/or reenactment to an existing shoreline master program.

**Aquaculture** is the culture or farming of food fish, shellfish, or other aquatic plants and animals. Potential locations for aquaculture are relatively restricted within the SMZ of Mount Vernon due to specific requirements for water quality, temperature, flows, oxygen content, adjacent land uses, wind protection, and commercial navigation. Aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, or significantly conflict with navigation and other water-dependent uses. Aquaculture facilities should be designed and located so as not to cause significant ecological impacts, or significantly impact the scenic qualities of the shoreline. Impacts to ecological functions shall be mitigated according to the mitigation sequence described in WAC 173-26-020.

**Associated jurisdictional wetlands** are those wetlands that are in proximity to and either influence or are influenced by shorelines of significance to the State and are, therefore, subject to the Shoreline Management Act.

**Average grade level** (see the definition of 'Grade' below).

**Batture** means the elevation of the bed of a river under the surface of the water; sometimes used to signify the same elevation when it has risen above the surface.

**Bioengineering** means 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.

**Boating facilities** for the purposes of this master program, boating facilities means publicly accessible launch sites for hand-carried watercraft (kayak, canoe, etc.) or boats hauled by trailers; piers and docks suitable for temporary moorage of small watercraft; boat storage or rental facilities; vehicle and trailer parking areas; accessory structures such as maintenance buildings and public restrooms. Such facilities may include auxiliary, related functions such as swimming, fishing, and observation of wildlife. May also include commercially run facilities for larger vessels, such as tour boats, cruise ships, ferries, and special-interest watercraft. Excludes docks serving four or fewer single-family, residential dwellings.

**Buffer** means an area adjacent to a wetland, river, or stream that, generally, functions to protect the public from loss suffered when the functions and values of the wetland, river, or stream are degraded. Specifically, a buffer may:

- a. Physically isolate the wetland, river, or stream from surrounding areas using distance, height, visual and/or sound barriers;
- b. Act to minimize risk to the public from loss of life, well-being or property damage resulting from natural disasters associated with the wetland, river, or stream;
- c. Protect the functions and values of the wetland, river, or stream from adverse impacts of adjacent activities;
- d. Provide shading, input of organic debris, and coarse sediments, room for variation and changes in natural wetland, river, or stream characteristics,
- e. Provide habitat for wildlife, and/or
- f. Provide protection from harmful intrusion.

**Building** is a structure having a roof supported by columns or walls, used or intended to be used for the shelter or enclosure of any use or occupancy.

**Building height** means the vertical distance between grade (see “Grade”) and the highest part of the coping of a flat roof, or the deck line of a mansard roof, or the average height of the highest gable of a pitched or hipped roof. The measurement may be taken from the highest adjoining sidewalk or ground surface within a five-foot horizontal distance of the exterior wall of the building when such sidewalk or ground surface is not more than 10 feet above grade. The height of a stepped or terraced building is the maximum height of any segment of the building. See also “Height,” below.

**Bulkhead** is a solid or open pile wall, usually constructed of poured-in-place concrete and located parallel to the shore, which has as its primary purpose to contain and prevent the loss of soil by erosion, wave, or current action.

**CEDD** means the Community and Economic Development Department of the City of Mount Vernon.

**Channel Migration Zone (CMZ)** means the area within which a river channel is likely to move over a period of time.

**Commercial development** means those uses that are involved in wholesale, retail, personal service, and business trade. Examples include hotels, motels, banking and other financial services, grocery stores, restaurants, shops, professional offices, and private or public indoor recreation facilities.

**Conditional use** is a use, development, or substantial development that is classified as a conditional use or is not classified within the Master Program.

**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.

**County** is Skagit County outside the city limits of Mount Vernon.

**Critical areas**, for the purposes of the SMP, are wetlands within the SMZ, delineated Fish and Wildlife Habitat Conservation Areas [as per MVMC 15.40.080, Ord. 3444 as codified on August 4, 2010]; Lindegren and Kulshan Creeks within the SMZ, and the main stem of the Skagit River.

**Cumulative impacts** are the results of incremental actions when added to past, present, and reasonably foreseeable future actions. Cumulative impacts can be deemed significant, even though they may be comprised of individual actions having relatively minor impacts.

**Date of receipt of a final decision involving approval or denial of a Substantial Development Permit** is the date the applicant receives written notice of the receipt by the Department of Ecology of the City's final decision on the permit.

**Date of receipt involving approval or denial of a variance or conditional use permit** is the date the applicant and the City both receive the Department of Ecology's final written decision on the applicant's request for a variance or conditional use permit, as the case may be.

**Development** is a use requiring the construction or exterior alteration of structures; dredging, drilling, dumping, filling, removal of sand, gravel, or minerals; placement of bulkheads, revetments, or similar in-water, over-water, or near-water containment systems; obstructions or any other project of a permanent or temporary nature.

**Development regulations** means the controls placed on development or land uses by the City, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of a shoreline master program other than goals and policies approved or adopted under Chapter 90.58 RCW, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto.

**Dredging** is the removal of earth, sand, gravel, silt, or debris from the bottom of a river, stream, wetland, or other water body.

**Dwelling** is any building or portion thereof designed or used primarily for residential occupancy, including single-family units, duplex, triplex, and fourplex units, and multi-family units, but not including hotels or motels (see also "Multi-family" and "Single-family").

**Ecological functions** (or shoreline functions) means 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** means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

**Emergency** is an unanticipated and/or imminent threat to public health, safety, or the environment that requires immediate action within a time too short to allow full compliance with the Master Program. Emergency construction is defined as that necessary to protect property and facilities from the elements. All emergency construction shall be consistent with the SMA and the Master Program (see RCW 90.58.030(3eiii)).

**Environmental Excellence Program [agreement]:** An environmental excellence program agreement (entered into under Chapter 43.21K RCW) must achieve more effective or efficient environmental results than the results that would be otherwise achieved.

**Exempt development** is development listed in WAC 173-27-040 as exempt from the definition of “substantial development,” and, therefore, exempt from the 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 Master Program. Conditional use and/or variance permits may still be required even though the activity does not need a substantial development permit (RCW 90.58.030(3e)).

**Exemption Certificate** is a letter issued by the Community and Economic Development Department verifying that a project has been deemed exempt from the substantial development permit requirements in accordance with the SMA and the Master Program.

**Fair market value** of a development is 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** means, for the purpose of this chapter, that an action, such as a development project, mitigation, or restoration requirement, meets all of the following conditions:

- a. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
- b. The action provides a reasonable likelihood of achieving its intended purpose; and
- c. The action does not physically preclude achieving the project's primary intended legal use.

In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the City may weigh the action's relative public costs and public benefits, considered in short- and long-term time frames.

**Fill** means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, an approved flood risk reduction structure (if applicable) on wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

**Final Decision** means an order or ruling on a Substantial Development Permit by the City of Mount Vernon, whether it is an approval or denial, established after all local administrative appeals related to the Substantial Development Permit have concluded or the opportunity to initiate such appeals has lapsed.

**Flood Risk Management** is a program intended to provide protection from encroachment by floodwaters by means of conveyance, control, and dispersal of floodwaters caused by abnormally high direct precipitation or stream/river overflow.

**Flood Hazard Reduction** is an action taken to reduce flood damage or hazard to uses, development, and shoreline modifications. Flood hazard reduction measures may consist of nonstructural measures such as setbacks, land use controls, wetland restoration, dike removal, use relocation, biotechnical measures, and storm water management programs. Structural measures may include dikes, levees, revetments, floodwalls, channel realignment, and elevation of structures consistent with the National Flood Insurance Program.

**Floodplain** is the hundred-year floodplain, meaning that land area susceptible to being inundated by stream-derived waters 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 that meets the objectives of the SMA.

**Floodway** means the area, as identified in a master program, that either: (i) has been established in Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) or floodway maps; or (ii) consists of those portions of a river valley lying waterward 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 conditions, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood risk reduction devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

**Force Majeure** means events or circumstances that prevent or delay compliance with the provisions of the Shoreline Master Program, where such events were (i) beyond that party's control, (ii) reasonably unforeseeable, and (iii) occurred without the fault or negligence of the affected person, including, but not necessarily limited to, acts of God, earthquakes, fires, lightning, floods and similar natural disasters.

**Geotechnical report** or geotechnical analysis means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, estimates of rate of erosion, urgency (damage within three years) for proposed project, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

**Grade** means an elevation determined by averaging the finished ground elevations within 6 feet of points situated every 10 feet along an imaginary line located between the building and the lot line; or where the lot line is more than 6 feet from the building, between the building and a point 6 feet from the building, this is also known as "Average Grade".

**Grading** or **Graded** means 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.

**Height** (as per WAC 173-27-030) is measured from average grade level to the highest point of a structure: provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines, or the applicable master program specifically requires that such appurtenances be included: provided further, that temporary construction equipment is excluded in this calculation.

**Hyporheic zone** is the area beneath and lateral to a stream bed, where shallow groundwater and surface water are mixed. The flow dynamics and behavior in this zone (termed hyporheic flow) are recognized to be important for surface water and groundwater interactions, as well as fish spawning.

**In-stream structures** are constructed waterward of the OHWM and either cause or have the potential to cause water impoundment or diversion, obstruction, or modification of water flow.

**Marinas** is defined as commercial or private docks or piers serving five or more vessels.

**Master Program** means the City of Mount Vernon Shoreline Master Program.

**May** means the action is acceptable, provided it conforms to the provisions of the SMP.

**Multi-family attached residential** is a building containing two or more residential units attached at common walls and located above or below similar units or other uses in a mixed-use development or in a stand-alone residential building without other uses.

**Must** means a mandate; the action is required.

**Non-water-oriented use** means those uses that are not water-dependent, water-related, or water-enjoyment.

**Ordinary High Water Mark (OHWM)** is that mark along the river or other bodies of water that can 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, or as it may naturally change thereafter; or as it may change thereafter in accordance with permits issued by the City of Mount Vernon, Skagit County, or the Washington State Department of Ecology; provided that in any area where the ordinary high water mark cannot be found, the ordinary high water mark shall be the line of mean high water.

**Permit** means any form of permission required under the SMA prior to undertaking activity on shorelines of the state, including substantial development permits, variances, conditional use permits, permits for oil or natural gas exploration activities, permission which may be required for selective commercial timber harvesting, and shoreline exemptions.

**Priority Shoreline Use** is a use given preference by the Shoreline Management Act and the Master Program. These uses are water-dependent or water-related, and provide public access and recreational use of the shoreline. Priority shoreline use includes single-family residential and other uses that provide an opportunity for substantial numbers of people to enjoy the shoreline.

**Priority species** means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed below.

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

- c. Criterion 3: Species of recreational, commercial, and/or tribal importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.
- d. Criterion 4: Species listed under the federal Endangered Species Act as proposed, threatened, or endangered.

**Provisions** mean policies, regulations, standards, guideline criteria, or environment designations.

**Public access** is a means of physical and/or visual approach to and along the shoreline available to the general public.

**Public interest** means 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 including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from a use or development.

**Public Trust Doctrine** is the principle that the waters of the state are a public resource owned by and available to all citizens equally for the purposes of navigation, conducting commerce, fishing, recreation and similar uses and that this trust is not invalidated by private ownership of the underlying land. The doctrine limits public and private use of tidelands and other shorelands to protect the public's right to use the waters of the state. The Public Trust Doctrine does not allow the public to trespass over privately owned uplands to access the tidelands. It does, however, protect public use of navigable water bodies below the ordinary high water mark. Protection of the trust is a duty of the State, and the Shoreline Management Act is one of the primary means by which that duty is carried out. The doctrine requires a careful evaluation of the public interest served by any action proposed. This requirement is fulfilled in major part by the planning and permitting requirements of the Shoreline Management Act.

**Recreational development** means commercial and public facilities designed and used to provide recreational opportunities to the public.

**Replacement stabilization measure** 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.

**Residential development** means one or more buildings, structures, lots, parcels or portions thereof that are designed for and used or intended to be used to provide a place of abode for human beings, including single-family residences, duplexes, other detached dwellings, multi-family residences, apartments, townhouses, mobile home parks, other similar attached dwellings, condominiums, subdivisions and short subdivisions, together with accessory uses and structures normally applicable to residential uses including, but not limited to garages, sheds, parking areas, fences, and guest cottages, Residential development does not include hotels, motels or any other type of overnight or transient housing, recreational vehicle parks, or camping facilities.

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

**SMA** is the Shoreline Management Act of 1971.

**SMP** is the City of Mount Vernon Shoreline Master Program.

**SMZ** is the Shoreline Management Zone.

**Setback** means a measured distance from the ordinary high water mark (OHWM) of the Skagit River, unless specifically indicated otherwise, i.e. a setback measured from the toe of the landward side of a dike or top of the waterward side of a dike.

**Shall** means a mandate; the action must be done.

**Shorelands** or **shoreland areas** means 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 and river deltas associated with the streams, lakes, and tidal waters that are subject to the provisions of RCW 90.58.030; the same as to location by the Department of Ecology.

**Shoreline areas** mean all "shorelines of the state" and "shorelands."

**Shoreline Management Act of 1971 (SMA)** is the state law codified as Chapter 90.58 RCW.

**Shoreline Management Zone (SMZ)** extends a minimum of 200 feet upland from the line of the ordinary high water mark (OHWM) of the Skagit River and includes contiguous land upon which flood waters may be carried during periods of flooding that can occur with reasonable regularity, although not necessarily annually. These areas prone to flooding have been identified, under normal conditions, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding. The SMZ includes associated wetlands, but not wetland buffers. Also excluded are lands that can reasonably be expected to be protected from flood waters by flood risk reduction devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

**Shoreline Master Program** or **Master Program** means the comprehensive use plan for a described area (see Shorelands), 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.

As provided in RCW 36.70A.480, the goals and policies of a shoreline master program approved under Chapter 90.58 RCW shall be considered an element of the city's comprehensive plan (City of Mount Vernon Comprehensive Plan). All other portions of the shoreline master program adopted under Chapter 90.58 RCW, including use regulations, shall be considered a part of the city's development regulations (Mount Vernon Municipal Code).

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

**Shoreline Setback Line** is the line that establishes the limits of all buildings, structures, and fencing along the shoreline.

**Shorelines of statewide significance** with respect to the City of Mount Vernon are identified as the Skagit River within the city limits, shorelands, and wetlands associated with the Skagit River (see RCW 90.58.030(2)(e)).

**Should** means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action. The Director, in consultation with the DOE, shall make the determination about whether or not an applicant has demonstrated that there is a compelling reason against taking an action.

**Sign** is a device of any material or medium, including structural component parts, that is used or intended to be used to attract attention to the subject matter for advertising, identification, or informative purposes. Examples of temporary signs include: real estate signs, directions to events, political advertisements, event or holiday signs, construction signs and signs advertising a sale or promotional event.

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

**Single-family attached residential units** are townhouses, attached at a common wall, but not above or below another unit (see Multi-family attached residential units).

**Single-family detached residential unit**, when considering shoreline exemptions, is a structure designed for and occupied exclusively by one family and the household employees of that family.

**State Master Program** means the cumulative total of all shoreline master programs and amendments thereto approved or adopted by rule by the department.

**Stormwater BMPs** are science-based “best management practices” for controlling surface water runoff.

**Structure** means 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.

**Transmit** means to send from one person or place to another by mail or hand delivery. The date of transmittal for mailed items is the date that the document is certified for mailing or, for hand-delivered items, is the date of receipt at the destination.

**Upland** is the area above and landward of the ordinary high water mark.

**Utility** means a public or private agency which provides a service that is utilized or available to the general public (or a location-specific population thereof) such services may include, but are not limited to, storm water detention and management, sewer, water, telecommunications, cable, electricity, and natural gas.

**Utility, Accessory** means utilities that are small-scale distribution services connected directly to the uses along the shoreline and are not carrying significant capacity to serve other users that are not located in the shoreline jurisdiction.

**Variance** is a means to grant relief from the specific bulk, dimensional or performance standards set forth in the applicable master program and not a means to vary a use of a shoreline.

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

**Water-dependent use** means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

**Water-enjoyment use** means 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 enjoyment or recreational use 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 visual and physical 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.

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

**Water Quality** means the physical characteristics of water within shoreline jurisdiction, including water quantity and hydrological, physical, chemical, esthetic, recreation-related, and biological characteristics. Where used in this master program, the term "water quantity" refers only to development and uses regulated under this chapter and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this master program, does not mean the withdrawal of groundwater or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

**Water-related use** means 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.

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

## APPENDIX A

# SHORELINE INVENTORY, CHARACTERIZATION, AND CUMULATIVE IMPACTS REPORT

## I. INTRODUCTION

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The Skagit River drains an area of 3,140 square miles and flows for 162 miles from its headwaters in the Cascade Mountains, through low-lying valleys, and finally through the broad Skagit Delta to Puget Sound. The Skagit River is the largest in the Puget Sound basin and possesses the most abundant and diverse populations of salmon, steelhead trout, and bull trout in the region. It is the sixth largest drainage on the west coast of the continental United States.

### A. EXTENT OF CITY SHORELINES

Mount Vernon's shorelines regulated by the Shoreline Master Program (SMP) are limited to those portions of the Skagit River "Big Bend Reach" that occur within the City's corporate limits. This encompasses approximately seven miles of the river's shoreline. Shoreline regulatory jurisdiction within Mount Vernon varies in width as shown in Figure A-1 dependent upon the proximity of wetlands within and adjacent to the Shoreline Management Act-mandated 200-foot jurisdiction area and flood-prone areas between the ordinary high water mark (OHWM) and topographic or manmade features that mark the landward edges of the 100-year floodplain.

Mount Vernon and the Skagit River are located on a large alluvial plain that was created by geological forces including glacial advance and retreat, hydrology, and periodic vulcanization. As such, the portions of the Skagit River within the City's jurisdiction are adjacent to floodplains. A comprehensive summary of flooding and flood history in the Mount Vernon area is provided on pages 9 through 13 of the Skagit River Big Bend Reach Habitat Restoration Feasibility Study, December 2004, prepared by the Skagit River System Cooperative. [Note: Information on current FEMA floodplain mapping is available from the Mount Vernon Community and Economic Development Department]

### B. SCIENTIFIC AND TECHNICAL INFORMATION

In preparing the SMP, the City identified and assembled the most current, accurate, and complete scientific and technical information available. Information was collected from a variety of sources including City plans and studies, Skagit River watershed plans and studies from the Washington Department of Ecology and local planning groups, Dike Districts, private plans, and aerial photographs. Prior to incorporation into the shoreline inventory, the context, scope, magnitude, significance, and potential limitations of the information was considered. For a complete list of resources, see Appendix D of the SMP.

During the public participation process, additional information was provided by property owners and the several Dike Districts having jurisdiction over shorelines within Mount Vernon (Dike Districts 1, 3, and 17).

Due to the amount of information available, the consistency of the data, and the contained nature of the shorelines within the City, it is assumed that the SMP provisions are based on analyses of accurate information that can be readily verified on a case-by-case basis at the time a land use action is proposed.



**Figure A-1**  
**Mount Vernon Shoreline Jurisdiction**

## **II. SHORELINE MASTER PROGRAM INFORMATION SOURCES**

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This Shoreline Master Program relies substantially on existing information that has been developed since the year 2000. Following is a list of the primary sources used in this Report. A complete list of the resources used in the SMP, with a description of the information provided, is provided in Appendix D.

- River Basin Analysis of the Skagit and Samish Basins: Tools for Salmon Habitat Restoration and Protection, February 2000
- Skagit River Shoreline Inventory & Restoration Plan, June 2003
- Edgewater Park Restoration Project – Phase I, September 2003
- Skagit River Big Bend Reach Habitat Restoration Feasibility Study, December 2004
- Mount Vernon Downtown Flood Protection Alternatives, Draft EIS, January 2007
- Final EIS: Mount Vernon Downtown Flood Protection Alternatives, July 2007
- Mount Vernon Downtown Flood Protection Biological Assessment, December 2007
- Downtown and Waterfront Master Plan, July 15, 2008
- City of Mount Vernon 2005 Comprehensive Plan (as amended)
- City of Mount Vernon 2008 Parks, Recreation & Open Space Plan
- Aerial Photographs, 2003, 2007, and 2009

There has been little change in the conditions of the Skagit River shoreline or in the level of development and land use mix in adjacent upland areas during the time these sources of information were being developed. This has been confirmed by a comparative review of the aerial photographs and discussions with staff and consultants familiar with the City's development. As a result, the assumption in this SMP is that these information sources remain valid for shoreline planning purposes.

In addition, the Big Bend Reach of the Skagit River has undergone extensive environmental study over the last decade by both public and private organizations, assessing existing conditions, restoration potential, and impacts from known plans and projects. At this time, there are no identified information gaps that would affect the development of SMP goals, policies, and regulations. Site specific information would be provided during the normal permitting of individual projects.

## **III. SHORELINE INVENTORY SUMMARY**

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The City's Skagit River shoreline has been divided into four geographic units for purposes of the shoreline inventory and characterization of conditions. The units represent locations where landscape processes, land use, river function, and habitat exhibit more or less similar attributes. These units are generally based on the six inventory areas defined in the 2003 Skagit River Shoreline Inventory & Restoration Plan (Inventory), prepared by Graham Bunting & Associates. Adjustments have been made in the width of the units of the inventory to include adjacent upland areas. While not necessarily part of the City's Shoreline Management Zone (SMZ), activities on adjacent uplands have potential for affecting shoreline conditions and functions.

Most of the information summarized below is from the Inventory. The Inventory was organized around three groups of categories: physical, biological, and man-made. Environmental baselines were determined for each category in each inventory unit. These, in turn, are based on an assessment of individual features that either provide or impact ecological functions within those categories. Individual features are discussed further in the Characterization of Ecological Functions section of this SMP.

What follows is a descriptive summary of the physical conditions found on and adjacent to the City's shorelines organized by inventory unit.

**A. INVENTORY UNIT #1:**

**Location:** East bank of the Skagit River from river mile (RM) 18 downstream to RM 16.25, from Mount Vernon's northerly limit south to the east edge of the railroad right-of-way at the railroad bridge. Included is the adjacent floodplain and upland between the river and Hoag Road. [Figure A-2]

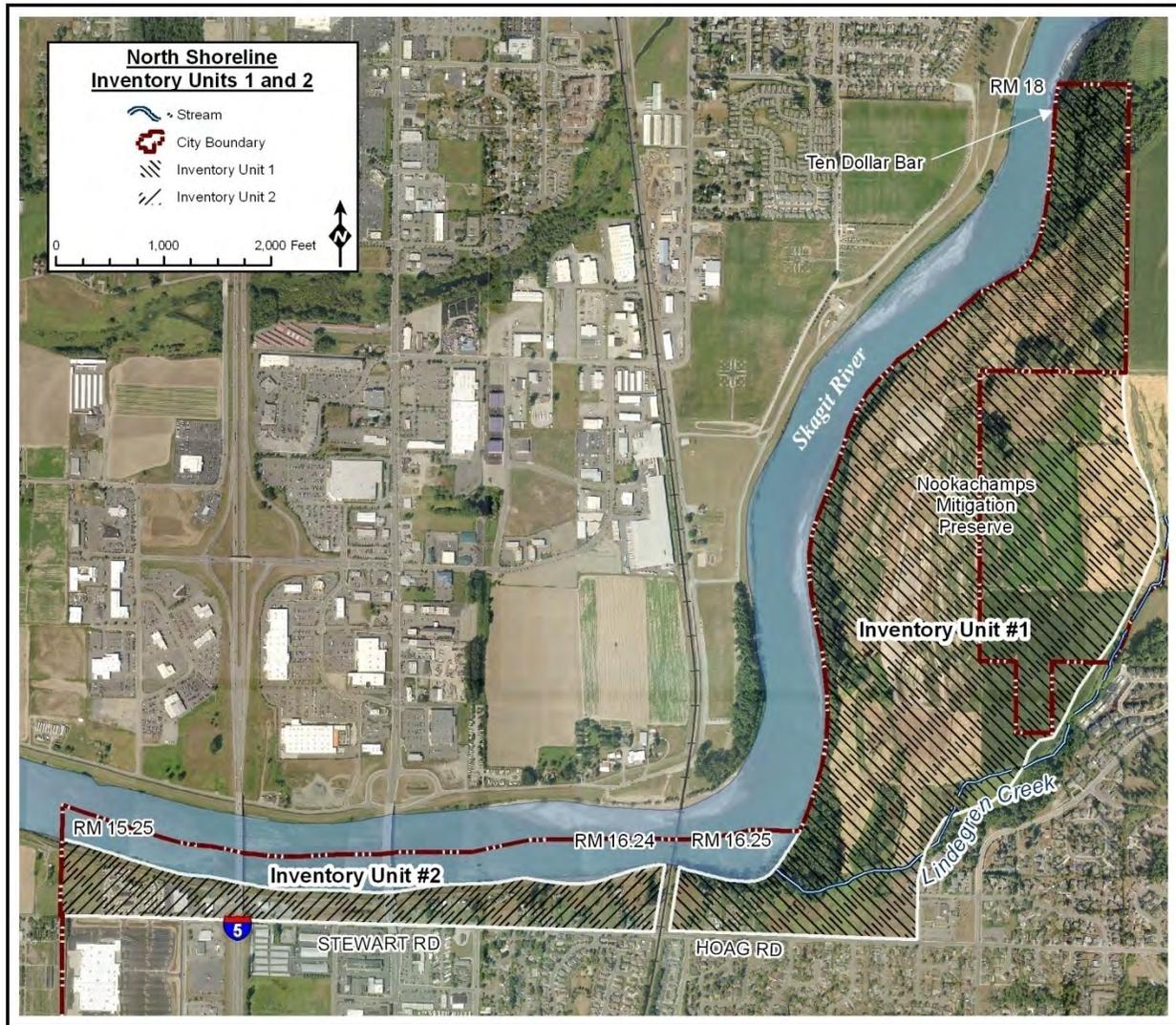
**Description:** This is the most significant section of the Skagit River shoreline within Mount Vernon where there is a direct connection between the river and adjacent floodplain (see also discussion of Lions Park North in Unit #4, below). There is a relatively intact band of trees and riparian vegetation at the shoreline that extends the entire length of this reach, widening at the north end, to form a significant stand of floodplain forest at the area known as Ten Dollar Bar. Several existing wetlands are located at the south end of this unit. Historically, this area had a more extensive complex of wetlands and back channels providing freshwater fish habitat. Lindegren Creek enters the Skagit at the south end of this inventory unit.

There has been little development within this unit. At the south end, immediately east of the railroad bridge between Hoag Road and the river, there are several single-family homes. Historic uses within the floodplain have been primarily agriculture and the seasonal flooding has discouraged conversion to other types of land uses. As a result, less than 5 percent of this unit is encumbered with impervious surfaces. There is an approximately 1,900 foot long segment of levee between the shoreline and Hoag Road.

The majority of the properties in this unit have been purchased by Nookachamps LLC, which has established a wetland mitigation bank (the Nookachamps Wetland Mitigation Bank) and is implementing a restoration plan at the site. This is discussed in more detail in the Appendix B of the SMP, "Shoreline Restoration Planning."

**B. INVENTORY UNIT #2:**

**Location:** Along the south bank of the river from RM 16.24 to RM 15.25, starting at the west edge of the railroad right-of-way at the railroad bridge and proceeding downstream to approximately 1,200 feet west of the Interstate 5 bridge. The inventory area includes the properties between the shoreline and Stewart/Hoag Road. [Figure A-2]



**Figure A-2**  
**Inventory Units 1 and 2**

**Description:** The bank of the Skagit River within Inventory Unit #2 is armored with riprap its entire length. A levee that prevents direct connection to the historic floodplain is located immediately adjacent to the shoreline. There are no tributaries or wetlands that connect to the river within this unit and no intact riparian vegetation.

The land between the levee and Stewart/Hoag Road has historically been an area of development. Ownership is private, Dike District, and City. There are three river crossings: at the railroad, at Riverside Drive, and at Interstate 5. Between the railroad and Riverside Drive, development consists primarily of single-family structures on large lots. There are, however, undeveloped lots between the developed parcels.

West of Riverside Drive, the City owns a large parcel of land that is used for stormwater control, a storage garage, and has paved surfaces for parking and access. West of I-5 to the City limit, development consists of an existing recreational vehicle park and a commercial establishment, which is surrounded by parking. Impervious surfaces within this unit currently account for approximately 50 percent of the land area.

**C. INVENTORY UNIT #3:**

**Location:** West bank of the river from approximately RM 12 to RM 10.5, starting at the City boundary at Dunbar Road and proceeding downstream past the Division Street bridge to the westerly City boundary at Edgewater Park. [Figure A-3]

**Description:** This unit contains a natural shoreline area known as Young's Bar, which is privately-owned land, and the City's Edgewater Park. The levee in this unit has been set back from the shoreline from 150 feet at the north end of the unit to approximately 1,000 feet at the south end of Edgewater Park at the City's west boundary. The levee setback in the vicinity of the Division Street Bridge ranges from 300 to 400 feet. During high flows, connectivity to the floodplain is restricted to the area waterward of the levee. There are no tributaries entering the river in this unit.

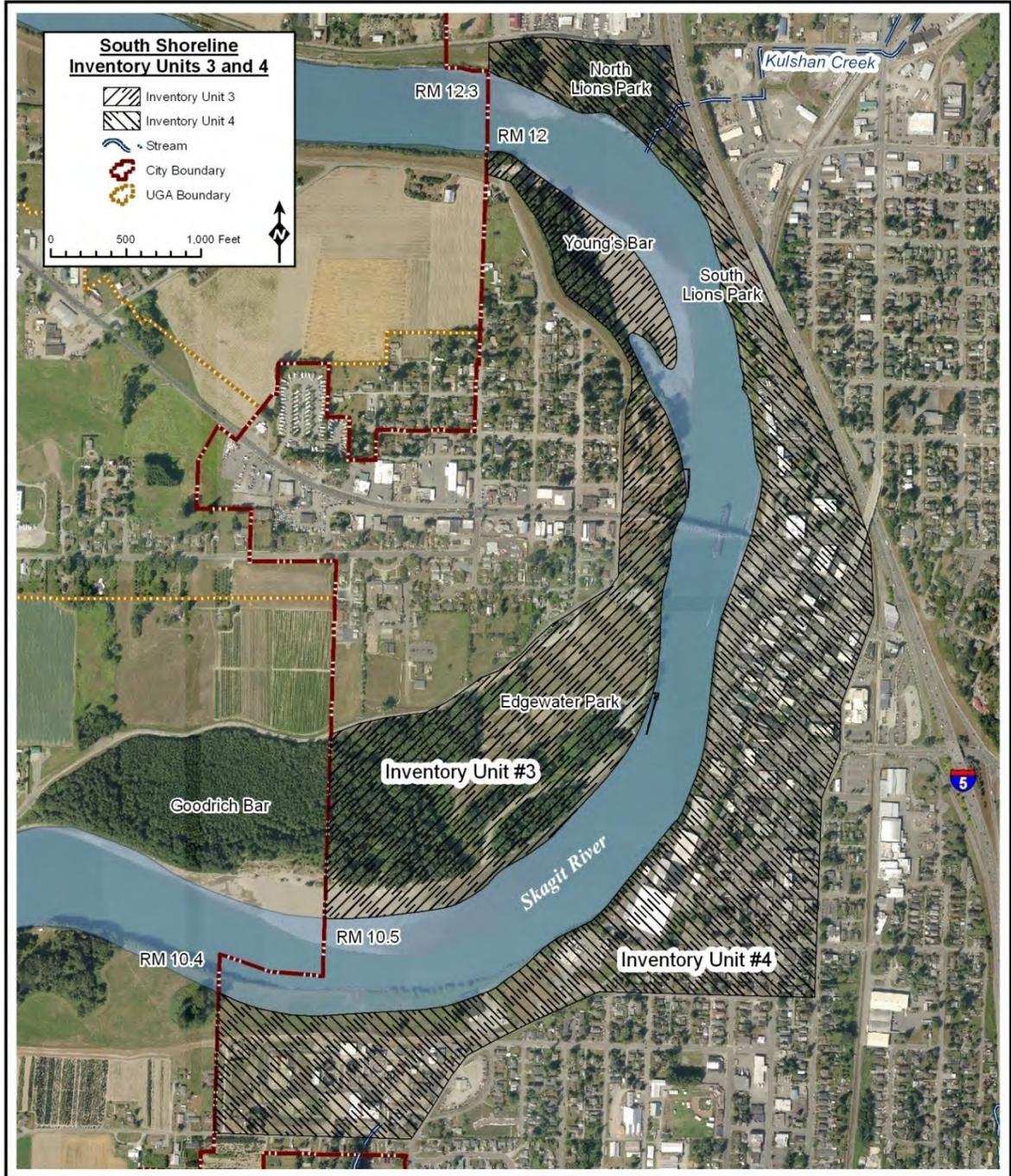
This unit offers a variety of habitats. There is large woody debris (LWD) at the upstream end of the unit adjacent to Young's Bar and accumulations of it south of the Division Street Bridge along the Edgewater Park shoreline. A large stand of trees is located at the north end of the unit and a well-established riparian zone extends south into Edgewater Park just north of the bridge. Approximately 800 feet south of the bridge another riparian zone begins that extends to the south end of the park and west beyond the City limits into the adjacent Goodrich Bar. A floodplain forest exists between the levee and the shoreline on Goodrich Bar and the southern portion of Edgewater Park.

A significant amount of the development in West Mount Vernon occurs immediately adjacent to and landward of the levees on either side of West Division Street. Land uses are retail and other commercial establishments along West Division Street, with residential uses located north and south of the commercial core.

Recreational use within this unit consists of both active and passive activities associated with Young's Bar and the Park. Young's Bar is an extensive sand bar located just north of the park along the shoreline. Although this is private property, it is regularly used by the community for fishing, sunbathing, and shoreline access.

Edgewater Park has been developed to provide both active recreational use and conservation of on-site riparian habitat. The active use portion of the park is approximately 28 acres and includes a playground, picnic area, covered stage, three multi-use ballfields, restrooms, and 150 parking spaces. A boat launch with 14 boat trailer parking stalls is located at the south end of the active use area. Primitive campsites that are used seasonally, usually in conjunction with special events, are also located at the south end of the Park. The park includes about 38 acres of wetland and woodland conservation area at the south end along the river. This area has been restored to include re-establishment of a historic back channel for salmon habitat enhancement.

The Mount Vernon 2008 Parks, Recreation & Open Space Plan notes that both Young's Bar and Goodrich Bar would be logical extensions of Edgewater Park. Both are characterized by having forested riparian habitat, natural shoreline, and sand bar accretion that could support additional off-channel salmon refuge and rearing habitat.



**Figure A-3**  
**Inventory Units 3 and 4**

**D. INVENTORY UNIT #4:**

**Location:** East bank of the river from RM 12.3 to RM 10.4, starting at the north end of Lions Park North and proceeding downstream past the Division Street Bridge to the City boundary just west of Riverview Lane. This unit includes the adjacent Downtown located between the river and Interstate 5 to the east and the areas waterward of Britt Road and Dike Road at the south end of the unit. [Figure A-3]

**Description:** North of Division Street this unit has a range of shoreline types. The portion just north of the Division Street Bridge is low in plant diversity and high in adjacent development. The upstream portion has a greater diversity of plants and includes a remnant of floodplain forest within the batture at Lions Park North. Kulshan Creek enters the Skagit River at Lions Park.

Immediately north of Division Street, there is a mixture of auto-oriented retail and office uses with on-site surface parking. Between these commercial uses and Lions Park South are auto-oriented businesses that have surface parking adjacent to the river, an armored riverbank, levee, and trail. The 1.6 acre Lions Park South is located on a high bank shoreline overlooking the river and Downtown. It has been developed with a kiosk, picnic shelters and tables, a multipurpose trail, playground and restrooms, RV dump station, and 33 parking spaces. The 15.4 acre triangular-shaped portion of the park, Lions Park North, has a low bank shoreline as one leg of the triangle, a levee along the north, and I-5 along the third side to the east. The site is dominated by a remnant floodplain forest within the batture. Old pilings and similar structural remnants, which date from when the Park was a site for loading goods and moorage, are visible along the riverfront. Lions Park North has been improved with dirt trails and a 2.5 acre open space, but sees relatively light use, except by day hikers.

South of Division Street, the area within the Shoreline Management Zone (SMZ) is dominated by a revetment, built over an armored, sloped bank that provides flood risk reduction to the City's Downtown and surface parking for 350 vehicles.

Moving south beyond the Downtown, the shoreline is protected by riprap and a levee from Kincaid Street south and west to the city limit. The levee setback from the river varies from approximately 150 feet at the north to between 300 and 400 feet at the south end of this unit.

The area south of Downtown is a mix of industrial and commercial uses, surface parking, and residential. South to Section Street is a neighborhood in transition that has a mix of auto-oriented commercial, institutions, residences converted to businesses, vacant land, surface parking, government offices, and multi-family and single-family residences. Between Section Street and Hazel Street, immediately east of First Street, land uses are primarily residential. South of Kincaid Street, a large cold storage facility is located between the river and the levee and farther south, the wastewater treatment plant is immediately landward of the levee.

## IV. CHARACTERIZATION OF ECOLOGICAL FUNCTIONS

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The concept of ecological functions recognizes that any ecological system is composed of a wide variety of interacting physical, chemical, and biological components that are interdependent to varying degrees and scales and that produce the landscape and habitats as they exist at any given time. Ecological functions are the work performed or role played individually or collectively within ecosystems by these individual components. Managing shorelines for protection of their natural resources depends on sustaining the functions provided by:

- **Ecosystem-wide processes**, such as those associated with the flow and movement of water, sediment and organic materials, the presence and movement of fish and wildlife, and the maintenance of water quality.
- **Localized individual components and processes**, such as those associated with shoreline vegetation, soils, water movement through the soil and across the land surface, and the composition and configuration of the beds and banks of water bodies.

The loss or degradation of the functions associated with ecosystem-wide processes and localized individual components and processes can significantly impact shoreline natural resources and may also adversely impact human health and safety. Shoreline master programs are required to address ecological functions associated with applicable ecosystem-wide processes, and localized individual components and processes identified in the ecological systems analysis described in WAC 173-26-201(3)(d)(i).

Most shoreline areas, even substantially developed or degraded ones, still retain some level or type of ecological function. For example, even though there is little off-channel habitat or spawning and rearing habitat along the City's shorelines, the Skagit main-stem is a critical fish migration corridor. Ecosystems are also interconnected. For example, the life cycle of anadromous fish depends upon the viability of freshwater, marine, and terrestrial shoreline ecosystems, and many wildlife species depend on the health of both terrestrial and aquatic environments. Therefore, the SMA policies for protecting and restoring ecological functions generally apply to all shoreline areas, not just those that remain relatively unaltered.

### A. BIG BEND REACH ECOSYSTEM CHARACTERISTICS

The Skagit River Big Bend Reach Habitat Restoration Feasibility Study was completed for the City in December 2004. The study examines the conditions and potential for restoring fish habitat from between the confluence of Nookachamps Creek downstream to the Skagit Forks. It includes characterizations of the Big Bend Reach as a whole and discussions of historical conditions, which provide information for examination of past/future shoreline cumulative impacts, discussed in this SMP. The Big Bend Reach is used here as the relevant geographic area for discussion of ecosystem-wide conditions and functions.

**B. REACH MORPHOLOGY**

Within this reach, the river occupies a single channel, with levees framing the shorelines. The reach has a sinuosity that has been maintained in place by the presence of levees for at least the last 60 years and, more likely, for the last 100. The right bank is lined continuously with riprap that forms the toe of the levees for the entire length of the study reach. The left bank is lined almost continuously downstream with riprap beginning just east of the railroad bridge.

The Skagit in this reach is in transition from a meandering river to a deltaic system. The river retains features of both systems in the study reach. The meandering river upstream is gravel-bedded, highly sinuous, and steep, while the river downstream is very low-gradient, distributary in nature, with mid-channel bars common, and with sand the predominant sediment size.

The area adjacent to the river channel has characteristics typical of two very different landforms. At the large bend in the river above downtown Mount Vernon, “ridge and swale” topography can be seen. This landform is characterized by numerous low ridges, which parallel meander bends. It represents previous locations of point bars and shows the lateral growth and accretion of the bars. This feature is part of a meandering stream system. The extent of the ridge and swale topography indicates a sustained pattern of point-bar accretion. The feature is approximately 1 mile wide, while in the direction of accretion it is at least 1.5 miles long.

Downstream at approximately Edgewater Park, the features of a delta become more evident. Multiple distributary channels are evident on topographic maps of the area, starting at about RM 12.5. Irregular topography immediately west of the study reach is indicative of overflow channels and former distributary channels. This topography consists of discontinuous depressions that both parallel the main channel and radiate away from it. These features have been highly modified by past agricultural activities.

Portions of the project reach are also tidally influenced. While the effect of tides has been reported to reach to Downtown Mount Vernon, the tidal influence in this reach is minimal, and probably only happens during extreme high-tide events. Tides have a much greater effect downstream from where the river splits into the North and South Forks.

**C. LARGE WOOD**

Large woody debris and logjams, once extremely common in the Lower Skagit River, had a significant effect on river morphology, flow conveyance, and flood inundation. Large wood fall into the river would have provided areas of refuge and rearing habitat. However, clearing and development has basically eliminated these structural habitat components from the river within this reach.

Due to the size of the river main-stem and force of the flows experienced through this section of the river, wood must be of extremely large diameter and length to be considered stable. It is estimated that any given tree would need to be at least 28 inches or greater in diameter to have any chance of remaining stable through this reach. Currently the reach has no significant accumulations of large woody debris. Individual pieces found at Young's Bar could be considered potential key members. Additionally, there are some accumulations of imbedded LWD in the vicinity of Goodrich Bar. These accumulations can be seen during low water conditions and may be remnants of the historic log jams once located at these sites.

Large woody debris does not play a significant role in the existing channel dynamics. It has not been present in quantities sufficient to affect channel formation since the early 20<sup>th</sup> century. Generally, LWD is only found piled against bridge abutments and buried in sediment on the few point bars present in the reach. There are only two small areas with recruitable LWD, both near Downtown Mount Vernon. However, the river channel averages about 500 feet wide in this reach and LWD is not expected to affect river processes significantly unless large logjams form.

#### **D. FLOODPLAIN FOREST**

Floodplain forests used to be present throughout the reach, but due to over a century of agriculture and other development they now exist only in patches between the levees and the river's edge. Floodplain forests in the study area are generally very similar and have an age range of 40 to 52 years, and are comprised of predominantly black cottonwood. The number of live overstory trees ranges from 130-160 stems per acre with a tree area of 200-250 square feet per acre, which is typical of a moderately aged forest. One notable exception was a mixed stand of conifer and hardwoods in the vicinity of Britt Slough. This mature stand had approximately 100 trees per acre, with a tree area of around 600 square feet per acre. In this case, a grove of mature red cedars contributed a significant portion of the tree volume. At the other end of the scale, the lowest density data was retrieved from a former clear-cut area at Goodrich Bar. Here the forest is less than 20 years old, has 775 trees per acre, and a tree area of only 103 square feet per acre.

There are no floodplain forest lands of long-term significance within the city boundaries of Mount Vernon. In determining whether forest land is primarily devoted to growing trees for long-term, commercial timber production on land that can be economically and practically managed for such production, the following factors are considered: (a) the proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses.

**E. EDGE CONDITIONS**

Of the almost 125,000 feet of edge habitat along the Skagit River in the Big Bend Reach study area, six condition classes are identified. Most of the edge habitat, over 78,000 ft, falls within a “modified edge” type. A “hardened bank” condition, which includes features such as large riprap, rubble, bridge pilings, and piers occurs on both sides of the river, with greater occurrence on the right bank. An additional modified feature, identified as “bar/riprap,” stretches 390 ft between two bar features on the left bank. “Bar” conditions along this stretch of the river compose about 24,300 ft with approximately half occurring on each bank. “Non-hardened bank” conditions cover 21,500 ft, most of which occurs on the left bank (14,500 ft). Lastly, “backwater” conditions are found in two locations along the right bank and cover approximately 550 ft of edge habitat.

**F. FLOODPLAIN**

It is estimated there are a total of 1,340 acres of available floodplain throughout the entire study area located between the river and existing levees. The study designates the floodplain by categories based on elevation above mean water level (MWL). Approximately 80 acres are Category One (0-5 feet relative to MWL, largely exposed bars), 475 acres are Category Two (5-10 feet relative to MWL), 125 acres are Category Three (10-15 feet relative to MWL), and 660 are Category Four (15-20 feet relative to MWL). The strongest relationship to off-channel habitat is found in Category Two.

**G. SHORELINE WETLANDS**

Wetlands associated with the floodway are limited to areas within the batture. Wetlands associated with the non-diked floodplain are within the Natural environmental designation at the Nookachamps Mitigation Bank.

**H. SUMMARY OF ECOSYSTEM CONDITIONS**

Natural functions on the Skagit Delta below Mount Vernon are estimated to be 69 percent degraded from historic levels. The Skagit Basin has also been identified as being limited for Coho winter habitat, with winter rearing habitat concentrated in the few remaining side-channel sloughs on the river floodplain. The largest loss in habitat area and juvenile production for Coho salmon has occurred in side channel and distributary sloughs, resulting in winter and summer production losses of up to 52 percent from historic levels. Many of these habitat areas were once located in the Big Bend Reach area, including at Mount Vernon.

Levee construction and upland habitat conversion have resulted in the loss of almost all floodplain wetlands in the Mount Vernon jurisdiction. Levees confine the river and have eliminated the majority of backwater and off-channel sloughs that provided key habitat for salmonids, cavity nesting ducks, dabbling ducks, swans, beavers, and other riparian fauna. In Mount Vernon nearly all of the agricultural uplands have been converted to housing and other urban land uses.

Modification of the Skagit River shoreline began in the 1860s and by the early 1900s nearly all of the river's shoreline from Sedro-Woolley downstream to Skagit Bay had been confined and stream banks hardened in some fashion, typically with levees and/or rip-rap. Consequently, at Mount Vernon, the river occupies a single channel, with levees framing the majority of the shorelines. The river channel has remained relatively stable since the turn of the last century. While the river does continue to occasionally flood adjacent lands, the presence of the levee system constrains any actual migration of the main-stem itself. For planning and policy purposes it is assumed that the river's main stem will continue to be confined within the limits of the existing levee system.

## I. CITY SHORELINE ECOLOGICAL FUNCTIONS

The Shoreline Inventory and Restoration Plan completed in 2003, provides a snapshot of the condition of ecological functions provided along the City's shorelines. As noted earlier, there has been little change in shoreline and near upland development since the inventory was prepared, so the results of the inventory are considered current for planning purposes.

As a whole, the portion of the Skagit River flowing through Mount Vernon serves an important function, acting as a migration corridor between the river estuary and up-river spawning habitats. Every salmonid must pass through the City twice over the course of its life, as a juvenile and as an adult. Along these lower reaches of the river there is only a limited amount of potential habitat, which is evident from looking at City maps and aeriels. These small areas are disproportionately significant as refuge places and are particularly valuable because of the overall habitat scarcity within this reach.

Table A-1 summarizes the ecological functional conditions of the City's shorelines by inventory unit. Ten features are presented in the table as being representative of the functions evaluated in the inventory. They are summarized below:

- **Stream bank:** refers to the relative stability of the shoreline, erosion potential, and whether it is hardened or natural.
- **Flood Plain Connectivity:** the degree to which the river has connectivity to adjacent floodplains.
- **Over-Wintering Habitat:** refers to features that allow juvenile salmon refuge from high river flows. Physical features include riparian zone vegetation, large angular riprap, and woody debris.
- **Large Woody Debris (LWD):** any large piece of relatively stable woody material having a diameter of over a foot and a length of about 10 feet that intrudes into the river channel.
- **Side Channel Restoration:** presence of a side channel and/or the degree to which there is potential for re-establishing off-channel rearing habitat and refuge.

- **Plant Diversity:** based on the relative mix and abundance of herbs, shrubs, and mixed deciduous and evergreen trees. Shoreline plant communities provide a variety of functions including input of organic material into the river, bank stability and erosion control, and recruitment of LWD.
- **Wetlands:** presence or absence of wetlands.
- **Open Space:** presence or absence of significant open space along the river, including parks, preserves, and private properties.
- **Physical Barriers:** refers to barriers to upstream migration into Skagit tributaries.
- **Riparian Reserve:** refers to the presence or absence of an intact riparian and adjacent upland plant community.

All of these features were rated into four categories:

- **Properly Functioning (PF):** indicates that, in general, the feature is providing acceptable levels of functions.
- **Function at Risk (FAR):** indicates the feature is degraded within the inventory unit and that restoration could improve functioning.
- **Not Properly Functioning (NPF):** typically indicates the feature is absent or that other features are negatively impacting the functional attributes.
- **Not Applicable (N/A):** Does not apply in the situation

These ratings are presented in the following **Table A-1**.

**Table A-1 Summary of City Shoreline Ecological Features and Functions**

FEATURE	INVENTORY UNIT			
	#1	#2	#3	#4
Stream Bank	PF – stable natural	PF – riprap bank is stable	PF – stable riprap and natural	PF – mostly stable riprap
Floodplain Connectivity	PF	NPF	PF – limited to within levee setbacks	NPF
Refuge	FAR → PF - currently poor access from river , but will become functional with restoration of Nookachamps Preserve.	FAR – minimal, only refuge is found in large riprap and vegetation zone	FAR/PF – only Edgewater Park has a functioning side channel, the result of restoration.	NPF – restoration constrained by presence of revetments; potential exists at Lions Park
Over-wintering Habitat	FAR – limited due to lack of access for fish	NPF – no habitat available for fish or terrestrial species	FAR – opportunities for habitat exist on Young’s and Goodrich Bars	NPF - restoration constrained by presence of revetments; potential exists at Lions Park
Large Woody Debris (LWD)	FAR → PF – current lack of LWD, but will be installed as part river bank restoration.	FAR – LWD accumulation is associated with two of the bridges located in the flow channel	FAR – accumulations not very complex	NPF – limited riparian zone
Side Channel Restoration	FAR for current conditions; high potential for side channel restoration	NPF – no potential for restoration	FAR – could be improved on Young’s and Goodrich Bars	NPF – no opportunity available due to adjacent development; limited potential at Lions Park.
Plant Diversity	PF – shoreline contains a significant strip of mature trees. Floodplain forest to be restored.	NPF – riparian zone is narrow and not complex	PF – Young’s Bar and Edgewater Park contain a mix of riparian vegetation.	FAR – north at Lions Park and south of the revetments may have potential
Wetlands	PF	NPF – no wetlands	FAR – wetland restoration potential exists near shore	NPF – no wetlands
Open Space	PF	None	PF	FAR
Physical Barriers	PF – restoration of historic back-channel fish habitat part of Nookachamps Wetland Mitigation Bank	N/A - no tributary	N/A – no tributary	PF – barrier removed at Kulshan Creek in Lions Park
Riparian Reserve	PF	NPF – no riparian reserve for LWD or trees on waterward side of levee	PF	NPF
Sand Bar Accretion	None	None	PF – Young’s Bar and a portion of Goodrich Bar.	None

## **V. CUMULATIVE IMPACTS REVIEW**

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The discussions below provide an overview and summary of historic shoreline conditions and activities that have impacted the shoreline over time, and the likely cumulative effects of SMP goals and regulations, along with known plans and development activities.

### **A. PRE-EUROPEAN SETTLEMENT**

Information regarding conditions in the lower Skagit Basin prior to European settlement comes from land surveys conducted by the Government Land Office. Early mapping of the lower river indicates that it was considerably more complex than it is today, consisting of numerous channels, immense accumulations of wood debris, and vast wetlands across its extensive floodplain. The 90,000+ acre floodplain was comprised primarily of forested floodplain and scrub-shrub wetlands and, along the lower reaches of the river, estuarine habitat. Prior to European settlement, the river frequently crested its banks and inundated the large wetlands that extended across the Skagit / Samish Valley.

Prior to European settlement, large wood debris and logjams were common in the Lower Skagit River and in the near vicinity of Mount Vernon. Logjams had a significant effect on river morphology, flow conveyance, and flood inundation. Logjams diverted flows and raised water elevations to create and sustain side channels and large areas of surrounding forested floodplain and wetlands. Snags, logjams, and beaver activity formed pools and provided complex cover and hydraulic refugia for the runs of Skagit River salmon.

### **B. EUROPEAN SETTLEMENT**

Large scale European settlement of the Skagit started in the mid 19<sup>th</sup> century with the arrival of permanent settlers on Fidalgo Island. The late 1800s brought homesteaders to the upper reaches of the Skagit with the first settlement at Mount Vernon in 1870 and in Burlington in 1890.

Logjam clearance by settlers began in about 1871. The removal of the logjams was said to have increased flows and flood heights in the Fir Island area while flood heights west of Mount Vernon were decreased with the removal of the logjams. With the opening of the river, large-scale steamboat navigation began on the Skagit. Piers were constructed at numerous locations on the river downstream from Sedro Woolley, remnants of which are still visible today. By the 1890s the river had been mostly cleared of wood debris and partially diked. Gold-seekers pushed up river in the 1890s and large-scale logging started at about the same time.

Up until the mid-1960s, federal “snag boats” were used on a regular basis to remove accumulated logs that got hung up on bridge pilings. More than 35,000 snags were removed from the Skagit River between 1881 and 1910. In addition, over 5,000 trees were cut from the river banks by 1910. The rate of snag removal and tree-cutting decreased dramatically after about 1910.

Channel and floodplain modifications have dramatically changed the land use pattern in the valley. Over several decades during the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, a system of levees and drainage systems continued to be constructed to make the cleared and drained land suitable for crop production. The rich soil has fostered an agricultural community of family farms known for flower bulbs, crop and dairy production, and vegetable seed.

**C. CURRENT ECOSYSTEM CONDITIONS**

The city's shorelines reflect the legacy of substantial modification over a period of more than a hundred years. The current landscape setting of the Mount Vernon shoreline is a result of the interaction of natural landscape processes and human interventions that have occurred in the Skagit River system as a whole. Anthropogenic changes to the river system such as land clearing and draining of the floodplain for agriculture and settlement, the removal of wood and large log jams, and regulation of water flow in the river have led to the need for local infrastructure such as levees, revetments, and other hydromodifications, to support and protect urbanization and other development.

In addition to modification by levees and similar structures, the Skagit shoreline at several locations in Mount Vernon is armored with rip-rap. To accommodate the levees and land-side development most, if not all, of the shoreline vegetation has been removed. Therefore most riverine shoreline ecological functions are either degraded from historic conditions or are absent altogether, resulting in the loss and isolation of large segments of riparian and wetland habitat critical to the various life stages of salmon.

**D. LEVEES AND REVETMENTS**

The dominant feature of the Skagit River shoreline in Mount Vernon is the presence of the extensive and nearly continuous system of dikes/levees and revetments. Flood risk reduction systems are a permanent feature of the City's shoreline and adjacent upland environments. Where they separate the upland portion of the SMZ from the river, development is typically backed up to the dike on its landward side. However, this condition only accounts for 24 percent of the City's total shoreline, and will be further reduced when the levee at the north end of the City is relocated inland.

There are three dike districts within Mount Vernon and their collective long-term goal is to rebuild and reconfigure the dike system such that much of the area within the City historically impacted by flooding will be protected. This will allow recertification of the affected areas and their removal from the FEMA 100-year floodplain maps.

Lands that are isolated between the river's edge and the levees/dikes or revetments are collectively called the "batture". A majority of the City's shorelines occur within the batture, as well a majority of the shoreline jurisdiction. In the three bridges area at the north end of the City and along the downtown waterfront, levees and revetments are located within the SMZ.

## **E. CRITICAL AREAS**

The City conducted three critical area inventories during the development and subsequent implementation of its Critical Areas Ordinance (CAO). These studies have been used to identify the type and location of critical areas within the shoreline environment. They include:

- “*Wetland and Stream Inventory*”, Shannon & Wilson, January 2000.
- “*Assessment of Waters/Wetland Ecosystem Conditions and Functions*” L.C. Lee et al, January, 2007.
- “*Mount Vernon Stream Study*”, WSP, 2008.

The result is that statutory critical areas on the City’s shorelines are limited by type, extent, and previous development. Within the SMP jurisdiction, critical areas consist of the main stem of the Skagit River, associated wetlands, and fish and wildlife habitat conservation areas. There are no known non-aquatic resource lands, geologically hazardous areas, or designated aquifer recharge areas. Floodplains are regulated under Chapter 15.36 MVMC, “Floodplain Management Standards.”

The Skagit River is designated as having shorelines of statewide significance and, as such, is a Type S stream under the Department of Natural Resources waters typing system. The river reaches that flow through the City provide fish passage as the primary ecological function.

The shoreline critical areas identified in the referenced studies all occur within the batture, or within the active floodplain at the north end of the City where there is no levee. No critical areas were identified within areas of the SMP jurisdiction landward of a levee or revetment. This is due to those lands having been developed with uses that back up to and abut the levees or revetments.

One wetland, at the south end of Edgewater Park, was part of the restoration of that segment of shoreline and adjacent upland. The restoration included re-establishment of an historic side-channel as a refuge for migrating fish. Other potential jurisdictional wetland areas are located outside of the SMZ within the river’s active floodplain. Of note is the Nookachamps Wetland Mitigation Preserve, the construction of which will result in restoration of historic wetlands and their hydrologic connection to the river. Wetlands are regulated under the provisions found in Appendix ‘C’ of the Shoreline Master Program.

Other locations identified as potential critical areas included the confluence of both Lindegren and Kulshan Creeks with the Skagit River, Young’s Bar north of Edgewater Park, and the recently restored side-channel fish habitat at the south end of Edgewater Park. These areas have been identified, respectively, on Figures B-7, B-3, B-4, and B-5 of Appendix B of the SMP.

**F. SHORELINE ACCESS AND VIEWS**

As noted above, the levees/dikes and revetments separate upland uses from the shoreline. This impacts both the ability to provide physical access to and views of the shoreline. In the three bridges area at the north end of the City the levee runs parallel to the shoreline and splits the SMZ between the batture and adjacent uplands. As a result, there is no direct physical access to the shoreline and because of the height of the levee there are no views from the adjacent upland uses.

In West Mount Vernon, the levee is setback considerable distances from the shoreline, with intense development occurring landward. The levee height eliminates views from these upland uses, but both access and views are provided for at Edgewater Park.

Along the downtown shoreline, the revetment parallel to the river and elevated above both the river and the downtown core along First Street, effectively blocks views from both the street and downtown buildings, with a few exceptions where there may be views available from taller buildings. Visual access, but not direct physical access, is available from the top of the revetment. During 2009, the City conducted a series of Downtown Design Guidelines workshops, which included a study of downtown views and the impacts of a range of building heights. Given the overall lack of existing views it was determined that the fifty-five foot height limit identified for downtown redevelopment would not adversely affect views of the shoreline. The redevelopment of the downtown shoreline will result in improved public visual access to the river, including removing the existing parking atop the revetments and developing a waterfront pedestrian promenade, a public plaza, open spaces at street ends and other public amenities. Private redevelopment will be required to modulate structures to reduce impacts of massing and provide for water-enjoyment via pedestrian access, where practical.

**G. SHORELINE USE ANALYSIS**

Future new shoreline development potential is extremely limited since there are few vacant parcels within the Shoreline Management Zone. These consist of parcels, primarily zoned for residential or commercial use, located between Lindegren Creek and the I-5 Bridge along Hoag and Stewart Roads. Virtually every other shoreline parcel has been developed to an urban or recreational use, with the exception of the shoreline north of Lindegren Creek adjacent to the Nookachamps Wetland Mitigation Bank. This means that the majority of future development activities will be in the form of redevelopment of existing lots and structures. Streets and roads have been constructed and major utilities installed, limiting future infrastructure-related activities in the shoreline to primarily maintenance and upgrade.

There are approximately 29,850 lineal feet of Skagit River shoreline within the City's corporate boundaries. Uses on the shoreline can be grouped into four general categories and are briefly described below.

1. Areas where there is no dike/levee or revetment on or near the shoreline or in the adjacent upland and where there are no significant structures, roads and other infrastructure: This condition is found in north Mount Vernon, where there is an approximately 7,300 foot reach of shoreline adjacent to the active floodplain that comprises the Nookachamps Wetland Mitigation Bank. This reach accounts for 24 percent of the City's shorelines. This area will be kept in preserve and will allow for limited passive recreation use and public access to the shoreline.
2. Areas of significant open space within the batture: These include the entire shoreline on the west side of the river across from Downtown; Lions Park North; and the vacant/undeveloped properties south of the Dairy Valley plant to the City boundary. Uses include both active and passive recreation consistent with a shoreline location (e.g. small craft launch) in Edgewater Park, Lions Park, and informal use of Young's Bar, which is private ownership. The Washington Department of Fish and Wildlife has land and a boat launch immediately north of Young's Bar and additional property south of Edgewater Park. The properties south of Dairy Valley are vacant and unlikely to develop to an intense use since they are in the floodplain between the river and levee. Taken together, these areas account for 40 percent of the City's shorelines.
3. Area of single-family residential development: This is found only in north Mount Vernon, between Lindegren Creek and the Riverside Drive Bridge. This 3,450 foot reach accounts for 12 percent of the City's shorelines. Between the railroad bridge and Riverside Drive bridge all but a few of the residences are separated from the river by a levee. About half of these properties have been acquired by Dike District #17, which is pursuing a long term plan to acquire the rest of these residential properties, so the levee can be relocated upland closer to the Hoag/Stewart Roads right-of-way.
4. Areas of more intense urban development, characterized by a mix of uses including residential, retail, commercial, office, and industrial: These areas are found from the Riverside Drive Bridge west to the City limits in north Mount Vernon, and the shoreline adjacent to Downtown from Lions Park south to the Dairy Valley property. In the Downtown area, dikes and levees are typically located near the river's edge, with development backed up to them. As noted above, the levee along Stewart/Hoag Roads will probably be relocated, but at present it separates existing uses from the shoreline. Urban mixed-use accounts for approximately 24 percent of the City's shoreline.

As noted above, large segments of the shoreline are in some type of open space use, characterized by having connectivity to at least part of the adjacent floodplain. They account for approximately 76 percent of existing shoreline land use. The nature of the ownerships (much of it public) and uses on these shorelines, their connectivity to the floodplain, underlying zoning restrictions, and restoration potential preclude intense urban uses from developing in these shoreline areas.

When Dike District #17 is able to acquire the land to relocate the levee farther from the river along Stewart/Hoag Roads, open space uses would account for a higher percentage of the City's shorelines. This would also result in a corresponding reduction of both residential uses and more intense urban uses along the City's shorelines.

There are no water-dependent or water-related businesses or transportation facilities located on the City's shoreline. In addition, there is no viable potential for such uses to develop in Mount Vernon. This is due to the following factors:

1. Currently, 76 percent of the City's shorelines are areas where commercial, industrial, and transportation facilities would be prohibited from development, due to the underlying zoning. That figure will increase to 82 percent in the future when the levee at the north end of the City is relocated further upland.
2. In those areas of the shoreline where water-dependent commercial, industrial, and transportation uses would be allowed, dikes, levees, and revetments separate such uses from the shoreline. These flood risk reduction structures have been in place for much of the City's history, and current plans for the downtown and waterfront include removing revetments and relocating portions of levees closer to the shoreline to protect downtown properties. Flood risk reduction measures represent a significant investment and will continue to be a permanent feature of the City's shorelines.

Since water-dependent and water-related commercial, industrial, and transportation uses are unlikely to develop in the future, the City is pursuing policies and regulations that provide for non-water oriented uses to remain and encourage redevelopment in the shoreline areas where such uses are allowed. Development or redevelopment will be required to provide facilities for water-enjoyment such as boardwalks and viewpoints.

Given decades of conversion and use along much of the City's shoreline and the substantial investments made over time to those uses, particularly Downtown, the development pattern, general mix of land uses, and infrastructure are essentially established and in place. While this has had significant cumulative impacts to the City's shoreline functions up to this point, the limited new development potential that remains suggests there is, in general, a reduced potential for future significant impacts.

## **H. ENSURING NO NET LOSS**

SMP goals, policies, and regulations have been developed to ensure a no net loss goal. Public and private restoration projects have and will continue to improve the ecological functions along significant sections of the Skagit shoreline. Provisions for restoration, improved stormwater controls, and enhancement during development and redevelopment should, over time, provide an incremental lift in shoreline functions. Below is a brief description of the environmental designations and general statements about SMP goals and regulations contributing to the goal of "no net loss." (For a complete discussion about environmental designations and designation maps, see the Shoreline Master Program Section IV, "Shoreline Environmental Designations.")

## 1. **Natural Environment**

This designation is primarily located between Lindegren Creek and the north City/County boundary, adjacent to the Nookachamps Wetland Mitigation Bank. The Wetland Bank construction will restore historic back-channels and wetlands in the floodplain and restore hydraulic connectivity to the river. Although a trail for public access is planned, SMP goals, polices, and regulations prohibit higher intensity development or use in this area. Restoration of this area will provide a significant lift in ecosystem-wide shoreline functions.

Areas at Young's Bar, the Kulshan Creek confluence at Lions Park North, the Lindegren Creek confluence, and the south shoreline edge of Edgewater Park are also designated Natural Environment. Past and future restoration of the riparian environment and ecological functions in these areas, including re-establishing an historic forested wetland and associated back-channel at Edgewater Park, will increase ecosystem-wide shoreline functions.

## 2. **Urban Conservancy**

This designation includes portions of Lions Park South, Edgewater Park and adjacent parcels on the west side, those shoreline areas located between the ordinary high water mark and the levee in the three bridges area to the north, and those parcels that are south of the Dairy Valley plant to the City boundary in the southwest. All these locations exist between a levee and the river. SMP goals, policies, and regulations prohibit higher intensity uses within this designation. Active recreation is allowed provided that shoreline impacts are mitigated and/or provide for restoration/enhancement of ecological functions.

## 3. **Shoreline Residential**

Residential development on the City's shoreline is limited to a stretch of the river less than  $\frac{3}{4}$  mile in length, between Lindegren Creek and the Riverside Drive Bridge. Between the railroad bridge and Riverside Drive Bridge residential lots are functionally separated from the river's edge by levees. East of the railroad bridge, residential development is at a higher elevation and not at risk from flooding. Land west of the railroad bridge may be acquired by the Dike District in the future, for levee relocation. SMP goals, policies, and regulations limit more intense uses.

## 4. **Urban Mixed-use**

At the north end of the City this designation occurs between the Riverside Drive Bridge and the City boundary to the west. Uses in this area are functionally separated from the river by a levee. It is intent of Dike District #17 to also acquire these properties for future levee relocation.

This designation also occurs north of the levee at Lions Park North, from Lions Park South along the Downtown waterfront to south of the Dairy Valley plant and City-owned land immediately to the south. In these locations ecological functions are severely limited due to past development. The designation also reflects the existing conditions and built nature of this shoreline area and is consistent with the Comprehensive Plan and Downtown and Waterfront Master Plan.

Existing and allowed uses include residential, retail, commercial, and industrial. SMP goals, policies, and regulations allow for the continuation of these uses. These properties may redevelop to mixed-use in the future and provide for water-enjoyment use (e.g. boardwalk, trail) to increase public access. Redevelopment may require upgrades to on-site stormwater facilities.

## **I. CUMULATIVE IMPACTS CONCLUSION**

The Skagit River shorelines located within the City's corporate boundaries are characterized by significant modifications that have occurred since European settlement in the area began in the late-1800s. Most of the adjacent floodplain that historically contained complex waters/wetland systems and habitats was drained and filled for agricultural purposes early in the City's history and later converted to urban uses. A system of levees/dikes and revetments has been constructed to protect adjacent properties from seasonal flooding. This flood risk reduction system is a dominant physical feature effecting shoreline functions, visual and physical access, restoration potential, and planning.

Historic activities along the City's shorelines have resulted in cumulative impacts that have significantly impacted ecological functions. Most of these functions have been degraded to varying degrees, with many absent altogether along certain segments of the City's shoreline. The existing development pattern and land uses are unlikely to change significantly, but controlling how redevelopment occurs on the shorelines will reduce the potential for continued impact to shoreline functions.

As noted, over 76 percent of the City's shoreline environments are in some form of open space, and are designated as either Natural or Urban Conservancy. Intense urban development and uses are prohibited within these designations, and there is additional restoration potential within these environments (see Appendix B).

The remaining 24 percent of the shorelines contain a mix of urban uses and are essentially fully developed. Future relocation of the levee along Stewart/Hoag Roads will reduce that down to approximately 12 percent, and add more lands to the batture and Urban Conservancy designation, with potential for additional restoration of some shoreline functions.

As with many cities founded during the nineteenth century along rivers, Mount Vernon's downtown does not focus on its waterfront. The redevelopment of the waterfront, anticipated to occur in tandem with the introduction of more effective flood risk reduction measures, provides the opportunity to rectify this situation by expanding public accessibility to the shoreline. The Downtown and Waterfront Master Plan will improve public access to the river the full length of Downtown Mount Vernon. The shoreline, from north of the Division Street bridge south beyond the Commercial Cold Storage industrial area, will eventually be accessible to the community by means of a public walkway between the floodwall and the Skagit River.

The facilities that will make this feasible and the amenities that will make it attractive to the public will be provided during the course of waterfront and downtown redevelopment. Although the flood risk reduction element will be financed with public funds, private investment will make the vision of a "public waterfront" a reality.

The Downtown and Waterfront Master Plan, the Shoreline Master Program and its associated development standards, and the Downtown Design Guidelines each serve a purpose with the underlying single goal of ensuring that future development enhances the quality of life for the Mount Vernon community.

Based on the analyses and discussions above it is anticipated that the cumulative impacts of implementation of the SMP will result in an improved shoreline environment, both from the standpoint of providing greater public access and enjoyment, and achieving the goal of no net loss of ecological functions.

## APPENDIX B

### SHORELINE RESTORATION REPORT

#### **I. SHORELINE MANAGEMENT ACT RESTORATION PRINCIPLES**

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The Shoreline Management Act (Act) makes protection of shoreline environments an essential statewide goal, with an emphasis on maintenance, protection, restoration, and preservation. The Act requires local master programs include goals and policies for restoration of impaired shoreline ecological functions that are consistent with the principles embodied in WAC 173-26-186(8)(c). These principles include the following:

- Master program provisions shall identify existing policies and programs that contribute to planned restoration goals and identify any additional policies and programs that local government will implement to achieve its goals;
- Master program elements regarding restoration should make real and meaningful use of established or funded non-regulatory policies and programs that contribute to restoration of ecological functions;
- Restoration efforts should appropriately consider the direct or indirect effects of other regulatory or non-regulatory programs under other local, state, and federal laws, as well as any restoration effects that may flow indirectly from shoreline development regulations and mitigation standards;
- Utilize a process that identifies, inventories, and ensures meaningful understanding of existing and potential ecological functions of affected shorelines;
- Develop policies and regulations designed to achieve no net loss of those ecological functions;
- In jurisdictions containing shorelines with impaired ecological functions, develop goals and policies that provide for restoration of those functions; and
- Evaluate and consider cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions.

The Act also recognizes that restoration planning can vary dramatically between jurisdictions based on the jurisdiction's size, extent and condition of its shorelines, availability of funding and restoration tools, and the nature of the ecological functions to be restored.

In Mount Vernon, where there is an extensive dike system, potential areas of meaningful restoration are organized as follows:

- Locations where there is a significant open space within the batture between a levee and the river's edge;
- Future locations where the Dike Districts plan to relocate levees farther from the shoreline, thereby expanding and creating new restoration opportunities within the batture; and
- Those shoreline segments that do not have an immediately adjacent dike/levee or revetment.

**A. SHORELINE MANAGEMENT PROGRAM RESTORATION AND ENHANCEMENT GOALS**

1. Reestablish, rehabilitate, and/or otherwise improve impaired shoreline ecological functions and/or processes through actions that are consistent with this Master Program and guidelines provided in other local and regional restoration plans.
2. Encourage and facilitate cooperative restoration and enhancement programs between the City and state and federal public agencies, tribes, non-profit organizations, developers, and landowners to address shorelines with impaired ecological functions and/or processes.
3. Restore and enhance shoreline ecological functions and processes as well as shoreline features through voluntary and incentive-based public and private programs.
4. Target restoration and enhancement with the goal of improving habitat requirements of priority and/or locally important wildlife species.
5. Ensure restoration and enhancement is consistent with and, where practicable, prioritized based on the biological recovery goals for salmon populations and other species and/or populations for which a recovery plan is available.
6. Integrate restoration and enhancement with parallel natural resource management efforts such as the 2005 *Skagit Chinook Recovery Plan* and Department of Ecology Water Resource Inventory Area #3 watershed planning activities.

**B. RESTORATION AND ENHANCEMENT POLICIES**

1. The City of Mount Vernon should determine priority restoration sites.
2. This Master Program recognizes the importance of restoration of shoreline ecological functions and processes and encourages cooperative restoration efforts and programs between the City, county, state, and federal public agencies, tribes, non-profit organizations, and landowners to address shorelines with impaired ecological functions and/or processes.
3. Not restoration *per se*, but as a strategy for improving shoreline ecological systems, Mount Vernon plans to correct degraded conditions along the Downtown shoreline by removing the revetment that parallels the Skagit River (within 5 years from the date of the SMP).
4. The City intends to remove existing pilings from the main stem of the Skagit River as part of the redevelopment of the Downtown Waterfront project (within 5 years of the date of the SMP).
5. Additional opportunities for restoration would be created when Dike Districts complete plans to set back existing dikes greater distances from the OHWM of the Skagit River in the three bridge area of North Mount Vernon (ten to twenty years from the date of the SMP).
6. Restoration actions should restore shoreline ecological functions and processes as well as shoreline features and should be targeted towards meeting the needs of sensitive and/or locally important plant, fish, and wildlife species as well as the biological recovery goals for early Chinook, bull trout populations, and other salmonid species and populations.
7. Restoration should be integrated with other natural resource management efforts such as the 2005 *Skagit Chinook Recovery Plan*.

8. Priority should be given to restoration actions that:
  - i. Create dynamic and sustainable ecosystems.
  - ii. Restore connectivity between river channels, floodplains, and hyporheic zones.
  - iii. Restore historic back-channels to create refugia for migrating fish.
  - iv. Mitigate peak flows and associated impacts caused by high stormwater runoff volume.
  - v. Reduce sediment input to the Skagit River and associated impacts.
  - vi. Improve Skagit River water quality through stormwater facility upgrades.
  - vii. Restore native vegetation and natural hydrologic functions of degraded and former wetlands to the extent practical.
  - viii. Replant native vegetation in shoreline areas to restore functions where such actions are meaningful and consistent with this SMP and Dike District guidelines.
  - ix. Where practical restore riverine ecosystem processes, such as sediment transport and creation of sand bars and accumulation of large woody debris that create and sustain fish habitat.

The Skagit is the only river system in Washington that supports all five species of salmon, containing some of the largest and healthiest wild Chinook salmon runs in Puget Sound and the largest pink salmon stock in the state. In all, there are ten species of salmonids within the Skagit River basin. These include six Chinook stocks (spring, summer, and fall), pink salmon, chum salmon, sockeye salmon, summer and winter run steelhead, sea run cutthroat trout, Dolly Varden, and bull trout. Three of these, Puget Sound Chinook salmon, Puget Sound steelhead, and Coastal Puget Sound bull trout, are Endangered Species Act (ESA) listed.

As a result, restoration planning in the Skagit River watershed has had a focus on policies and actions intended to aid in the recovery of migratory fish populations, in particular ESA listed species.

## **II. WATERSHED PLANNING**

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In 1998, the State legislature passed Chapter 90.82 RCW, which sets forth a framework for developing local solutions to water resource issues on a watershed basis. Chapter 90.82 RCW states:

*“The legislature finds that the local development of watershed plans for managing water resources and for protecting existing water rights is vital to both state and local interests. ... The development of such plans serves the state’s vital interests by ensuring that the state’s water resources are used wisely, by protecting existing water rights, by protecting in-stream flows for fish and by providing for the economic well-being of the state’s citizenry and communities.”*

RCW 90.82 recognizes that watersheds are the logical planning unit for addressing water resource issues and the protection and restoration of fish and wildlife habitats. The RCW establishes general criteria and guidelines for state agencies and local jurisdictions to follow in developing and implementing watershed plans. The primary purpose of these plans is to equitably manage water resources between the competing demands of human use, protection of existing water rights, and the maintenance of in-stream flows for resident fish.

Habitat restoration is an optional element in the development of local watershed plans under the RCW. However, given the requirements of the GMA relative to the SMA for shorelines, restoration would be an expected component for those watersheds that have experienced significant development and historically supported significant fish populations and riparian habitats.

Watershed planning is necessarily hierarchical in nature. Each major watershed is composed of smaller sub-basins that may differ substantially in the intensity of development, level of water resource use, types and extent of habitats, and functional characteristics. Federal and state agencies, tribes, and local governments have varying degrees of authority over watershed issues, resulting in a hierarchy of plans and regulations. Major watershed boundaries and tributaries also cross jurisdictional boundaries, requiring coordination between local communities, tribes, and private parties engaged in planning and restoration activities.

**A. WATERSHED RESOURCE INVENTORY AREA #3**

The State's major watersheds have been mapped into sixty-two Water Resource Inventory Areas (WRIA), with each further divided into sub-basins based on the physical extent of primary tributaries. Mount Vernon is located within WRIA #3 – Lower Skagit River. As a planning unit, the boundaries of WRIA #3 represent the upper tier of the watershed hierarchy for the Lower Skagit.

The Department of Ecology (DOE) is the agency responsible for coordinating and overseeing the development of watershed plans under RCW 90.82. The DOE further supports these efforts by conducting research and preparing studies on specific watershed issues, reporting on watershed planning activities, and maintaining a database of information specific to each WRIA.

**B. SKAGIT CHINOOK RECOVERY PLAN 2005**

The *Skagit Chinook Recovery Plan* (Plan) was completed in 2005 as a joint effort between the Skagit River System Cooperative (SRSC) and the Washington Department of Fish and Wildlife (WDFW). The process began in 1994, in response to the listing of Puget Sound Chinook salmon as threatened under the Endangered Species Act and during its development included the involvement of a variety of interested and affected parties. The Plan document is intended to provide the basis for the Skagit Basin chapter of the Greater Puget Sound Chinook recovery effort.

While not all of the parties involved have expressly issued their support, it remains the one watershed level plan currently in place for the Skagit.

The purposes of the Plan are to:

- Define biologically-based recovery goals.
- Identify what is known or assumed about factors that limit production of Skagit River Chinook.
- Propose scientifically-based actions that will restore Skagit River Chinook to optimum levels, including fisheries management, artificial production, habitat protection, habitat restoration, effectiveness monitoring, and applied research.

The Plan is built around the identification of four different juvenile Chinook salmon life history strategies in the Skagit: yearlings, parr migrants, tidal delta rearing migrants, and fry migrants. Due to the differences in habitat use, yearlings and parr migrants depend more on freshwater habitat, while tidal delta rearing migrants and fry migrants depend more on estuarine habitats.

This difference in habitat utilization by individual life history strategies shapes the habitat recovery actions proposed in the Plan. Habitat recovery actions are recommended that benefit each life history strategy in an effort to maintain and strengthen Chinook population diversity and ensure spatial connectivity and abundance. The restoration strategy for the Plan is based on an understanding of the limiting factors for each of the Skagit Chinook salmon stocks and the specific location of existing or potentially restorable habitat.

Relevant to Mount Vernon, are the Plan's recommended restoration actions for freshwater rearing habitat in large river floodplains, tributaries, and non-tidal deltas. Large river floodplain restoration actions in the Plan seek to improve freshwater conditions for all Chinook salmon fry, but in particular for those life history strategies that depend on freshwater habitat for extended rearing. Intact floodplain areas are especially important for freshwater rearing because the availability of complex main-stem edge habitat, backwaters, and off-channel habitat is essential for the foraging and refugia of all phases of freshwater life history. For example, stream type Chinook salmon spend over one year in freshwater habitat before migrating further downstream.

- C. MOUNT VERNON SKAGIT TRIBUTARIES AND WATERS/WETLANDS RESERVE PROGRAM**  
Skagit River tributaries in Mount Vernon are regulated under the City's Critical Areas Ordinance (CAO) and are not a part of the Shoreline Master Program, except at their confluence with the Skagit River. However, the City recognizes that planning and development activities occurring within these tributary sub-basins can have impacts on the quality of shoreline environments downstream in the Skagit River.

The City has been involved with local watershed planning in the context of updating its CAO to comply with the Growth Management Act (GMA) requirement to include best available science (BAS). Beginning in 2005, and continuing through 2008, city staff, consultants, and student volunteers inventoried and evaluated the City's water and wetland resources. Mount Vernon has developed studies and maps that document location, extent, and conditions of the tributaries within the City's seven sub-basins. Information includes whether a stream is fish-bearing, stream gradient, type, location of blockages to fish passage, stream crossings, and riparian habitat.

This information has been used as the foundation for implementing the City's Waters/Wetlands Reserve program that is a part of its Critical Areas Ordinance (CAO). The program is founded on the principle that site specific impacts (both good and bad) have incremental and cumulative effects on ecological functions elsewhere within the ecosystem's landscape. In practice, the CAO provides an alternative whereby property owners may choose a program that requires both off-site mitigation via a contribution to a restoration fund and on-site enhancement/restoration of remaining on-site ecological functions (including stormwater upgrades), for which they are allowed a reduced buffer to a BAS supported minimum. Funds collected in this program are expended restoring ecological functions elsewhere in the waters/wetland system. The program is administered by the City's Stormwater Utility.

As a part of developing the CAO, the City identified ten city-owned properties totaling approximately 100 acres that have restoration potential and designated them as receiving sites for collected restoration funds. Two of these sites are on the Skagit River shoreline:

- Edgewater Park - approximately 9.0 additional acres of batture
- Lions Park North (the confluence of Kulshan Creek) - approximately 11.0 acres of degraded floodplain forest

Funding for restoration of these and other sites will occur as the program is implemented. Timelines will be dependent upon contributions to the program.

### **III. RESTORATION OPPORTUNITIES AND ACTIONS**

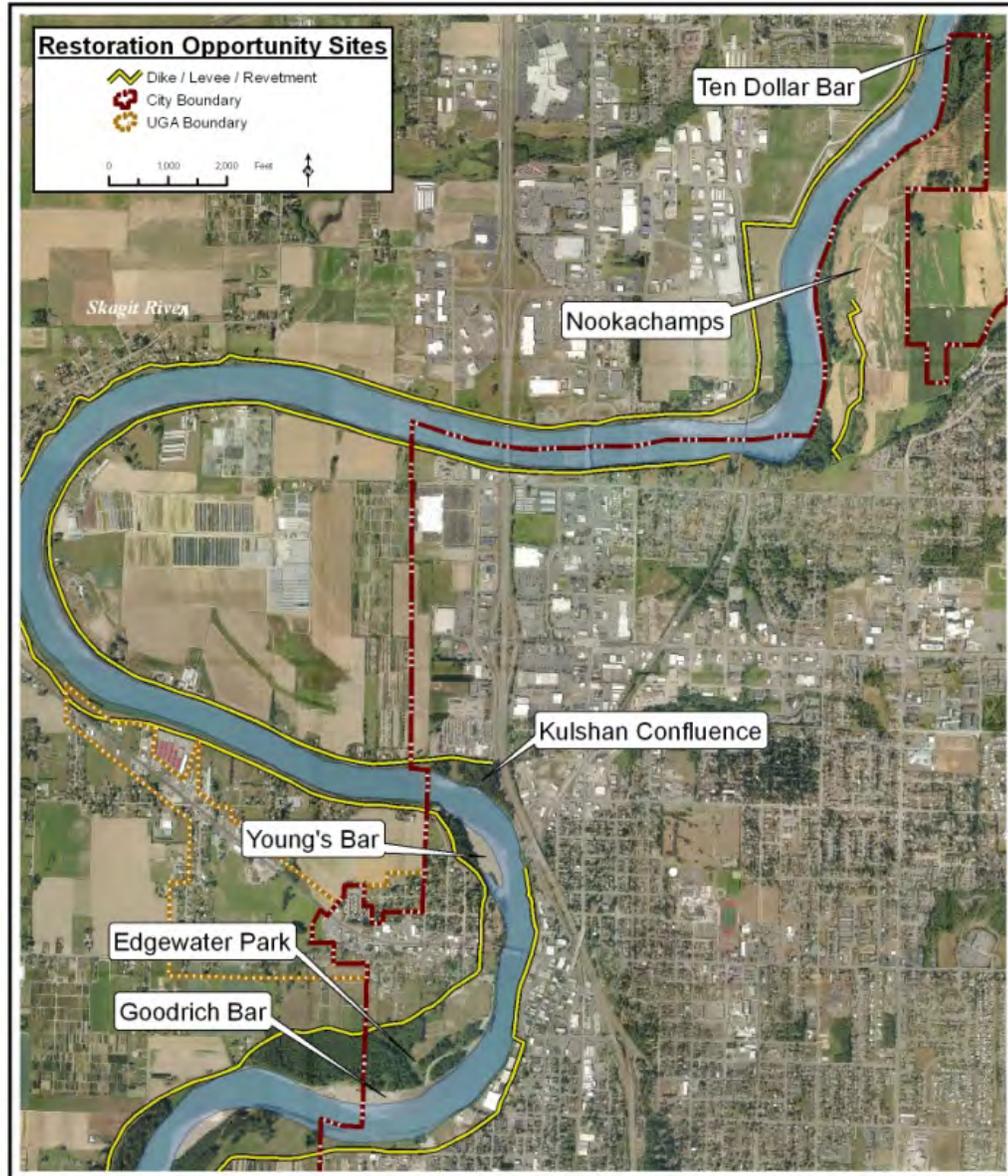
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#### **A. BIG BEND REACH HABITAT RESTORATION FEASIBILITY STUDY, 2004**

The primary goal of the *Skagit River Big Bend Reach Habitat Restoration Feasibility Study* (Study) was to identify opportunities for improving the quality and quantity of rearing habitat available to juvenile salmon at various opportunity sites located in the Big Bend Reach of the Skagit River. There are remnant pockets of habitat to be found between the river and the existing levees. Some of these are actively engaged with the river. Most are currently isolated from river actions, except during high water events.

Thirteen opportunity sites were identified and analyzed for their existing habitat values and their ability to provide additional habitat benefits. Several of the sites displayed little or no opportunity for restoration activities and several were not in close proximity to the City of Mount Vernon. Six sites from the Study have been included in this SMP Restoration Report.

The Study resulted in recommendations for appropriate restoration actions based on several factors, including geomorphic sustainability, habitat and fish benefits, and the feasibility of requirements to implement a restoration action. At several of the sites, combinations of restoration alternatives were determined to best meet the needs of a site and the objectives of the project. The opportunity sites have the potential to become the backbone for larger restoration efforts. Not all of the sites identified in the study area are in Mount Vernon and some are only partially within City jurisdiction (Ten Dollar Bar and Goodrich Bar). This Report includes those wholly or partially within the City's jurisdiction.

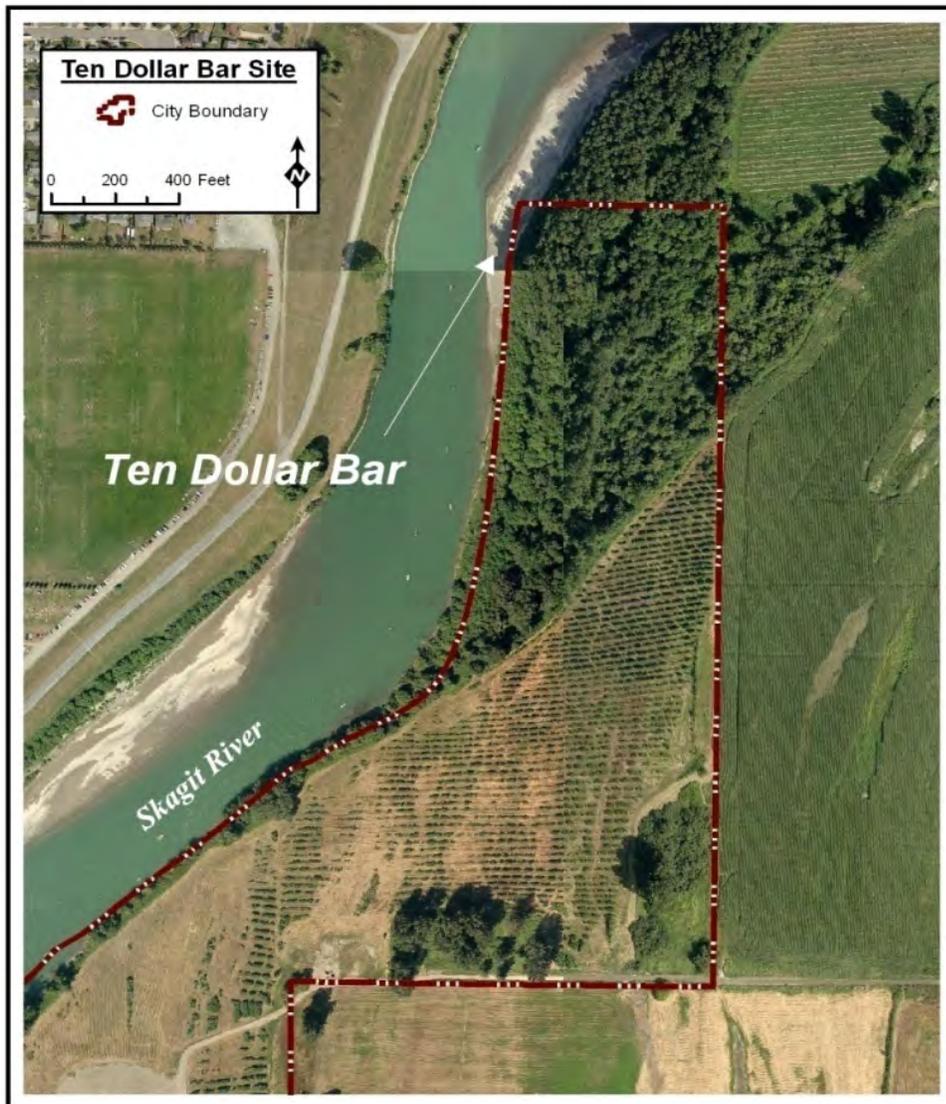


**Figure B-1**  
**Shoreline Restoration Opportunities**

**B. TEN DOLLAR BAR:**

**Location:** This site, on the south side of the river (left bank) opposite Johnson Bar at the north end of the Nookachamps Wetland Mitigation Bank site, is approximately 90.5 acres. The area is privately owned and only partially within the City's jurisdiction. The gravel point bar (Ten Dollar Bar) consisting of about 3 acres along the downstream one-third of the site, is directly opposite the Burlington boat ramp.

**Restoration Potential:** The upstream portion of this site, between the Nookachamps confluence and the forested zone, is heavily armored with rip rap. Removal of this rock would likely increase the hydrologic connectivity between identified ephemeral channels and the outside bend of the river flowing past the Johnson Bar location. This could result in deeper and more frequently connected off-channels as well as increased point bar accretion.

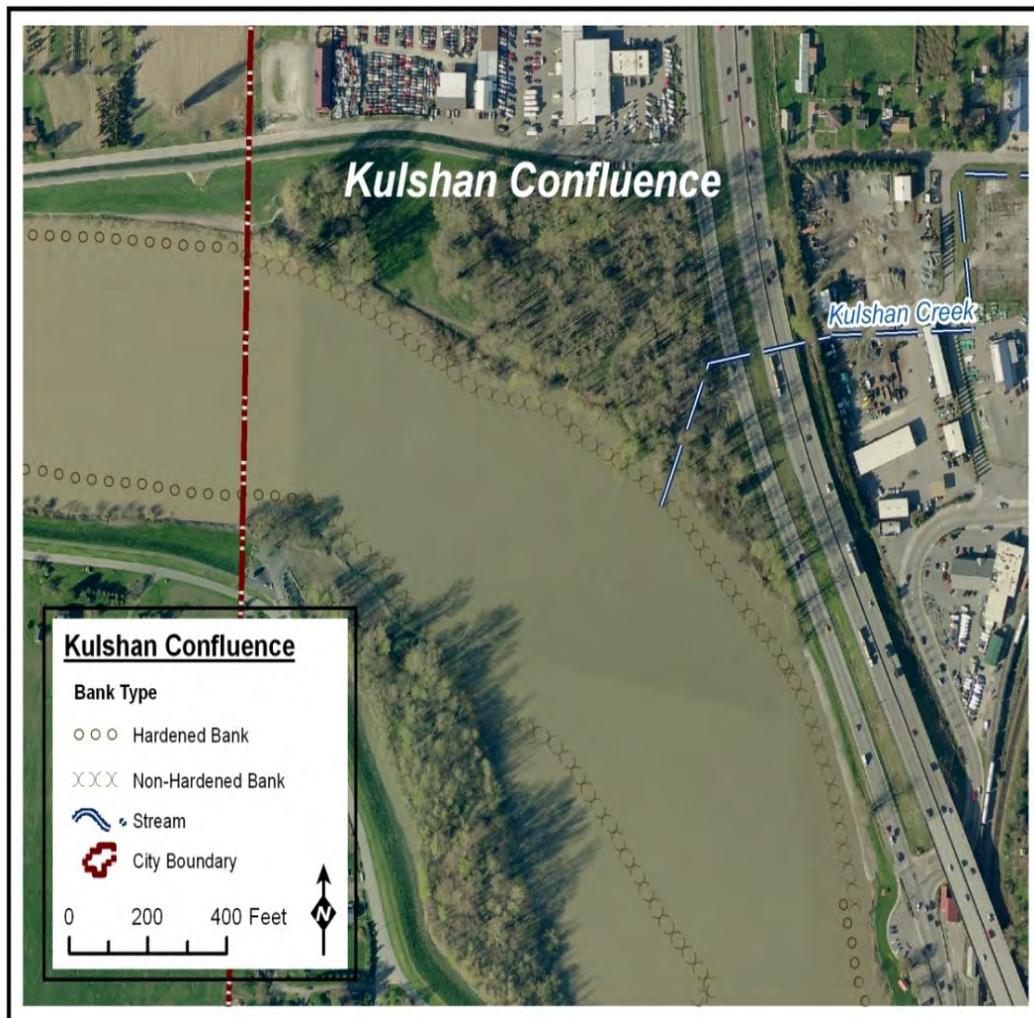


**Figure B-2  
Ten Dollar Bar**

**C. KULSHAN CONFLUENCE AT LIONS PARK NORTH:**

**Location:** This 15 acre site is located on the outside of a bend and adjacent to the I-5 corridor at Lions Park North, a City park located north of Downtown of Mount Vernon at river mile (RM) 13.4. A Dike District 17 levee is located to the north.

**Restoration Potential:** Due to the stream confluence, in addition to being on the outside bend of the river, this site has unique restoration potential. Unfortunately, surrounding constraints severely limit the site's ability to realize its restoration potential without a high cost. Constraints such as Freeway Drive, the I-5 corridor, and heavily industrial and commercial land uses, make this site problematic for significant restoration. Modest efforts could include providing a complex of large wood and restoration of riparian vegetation for increased plant community diversity. Lions Park North has been identified as a potential restoration site for the City's CAO program that could include 11 acres of degraded forest.

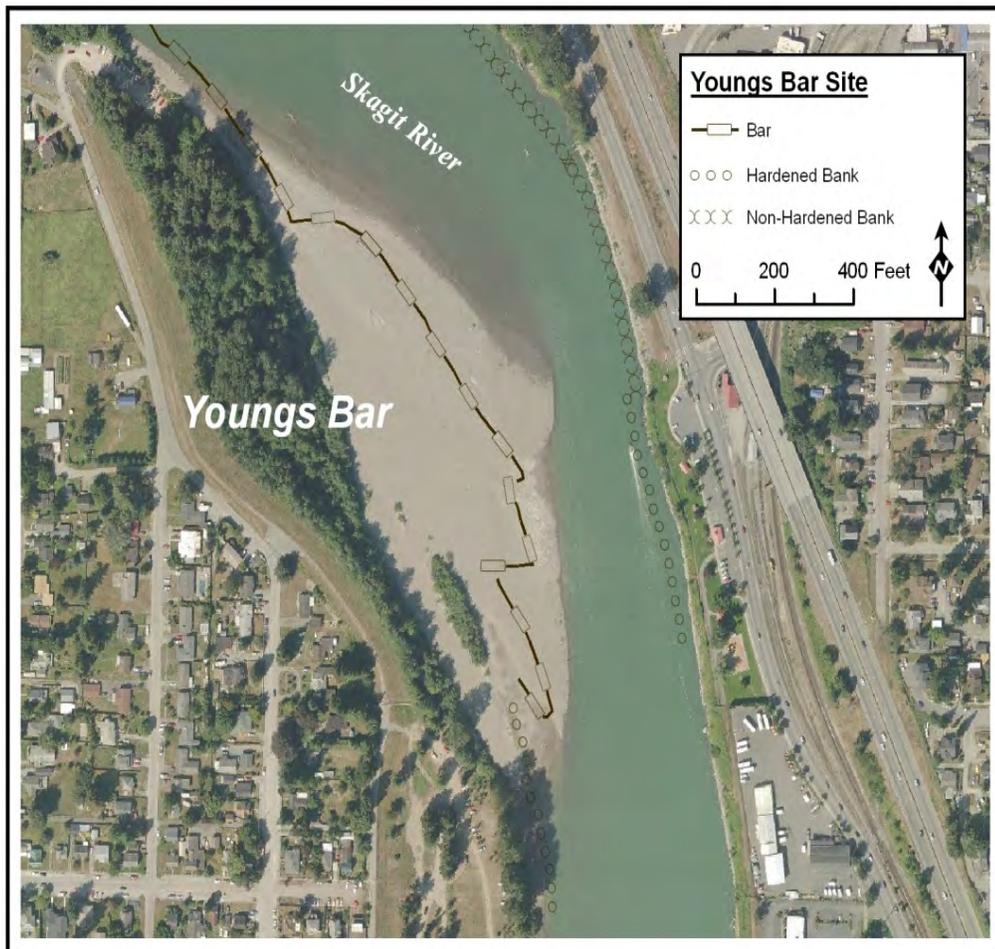


**Figure B-3**  
**Kulshan Confluence at Lions Park**

**D. YOUNG’S BAR:**

**Location:** This is a major point bar in the Lower Skagit River system of about 19.7 acres located at RM 11.2, across from Lions Park and abutting the north end of Edgewater Park. The sand bar is owned by the Department of Natural Resources, a portion on the north part of the site, developed for fishing access, is owned by the Washington State Department of Fish and Wildlife, and uplands are privately owned. The area is bordered by a levee on its west side.

**Restoration Potential:** Without a more significant dike setback through this reach of the river, this site appears to have little potential for restoration given the extensive infrastructure immediately west. The predominant value missing from the site is LWD accumulation. Given large enough pieces, it would be possible to see some significant accumulation of large wood over time. It does not appear that a stable back-channel could be created on this site. Other actions could include increasing riparian plant diversity.



**Figure B-4  
Young’s Bar**

**E. EDGEWATER PARK**

**Location:** This 68 acre public park is located in West Mount Vernon, along the right bank of the Skagit River.

**Restoration Potential:** The Park includes over 4,700 feet of shoreline. A Master Plan was adopted by the City Council in 2000 and since then several elements of the plan have been implemented. Habitat enhancement is an integral part of the plan. Over half the park is open space and natural area. The river shoreline has been and will continue to be enhanced with the removal of invasive, non-native plants and landscaped with native plants to create a range of habitats, edge conditions, and food and shelter supply for mammals and birds. Existing native trees and snags have been retained. Approximately 3 acres of shoreline have been restored with over 9,000 shrubs and 300 deciduous and evergreen trees. A key feature of the plan has been the restoration and enhancement of a historic off-channel habitat. The result will be a strong riparian edge along the river. The functioning riparian zone will stabilize the river bank, provide shade and control water temperature, and eventually contribute woody debris to the river that will provide refuge and habitat for migrating adult and juvenile salmon. As noted earlier, there are an additional 11 acres of batture that could be restored within the park.



**Figure B-5**  
**Edgewater Park**

**F. GOODRICH BAR**

**Location:** This site, at RM 12, is located immediately downstream of and adjacent to Edgewater Park in West Mount Vernon at the downstream edge of a major point bar. The bar is owned by the Washington Department of Natural Resources and adjacent land is privately owned. The majority owner (75 percent) has enrolled the land in the Skagit County Farmland Legacy Program. Although it is not completely within the City's jurisdiction, it does have potential for future restoration activities.

**Restoration Potential:** The site was compromised by the development of a land fill at the upstream end of Edgewater Park during the late 1950's and 60's. This floodplain fill has impeded hydrology such that limited sustainable channel development has been possible through this site. However, restoration actions that have occurred in the adjacent Edgewater Park have opened hydrologic connectivity opportunities that may allow channels to be established over time. Increasing riparian plant diversity would also be a potential at this site.



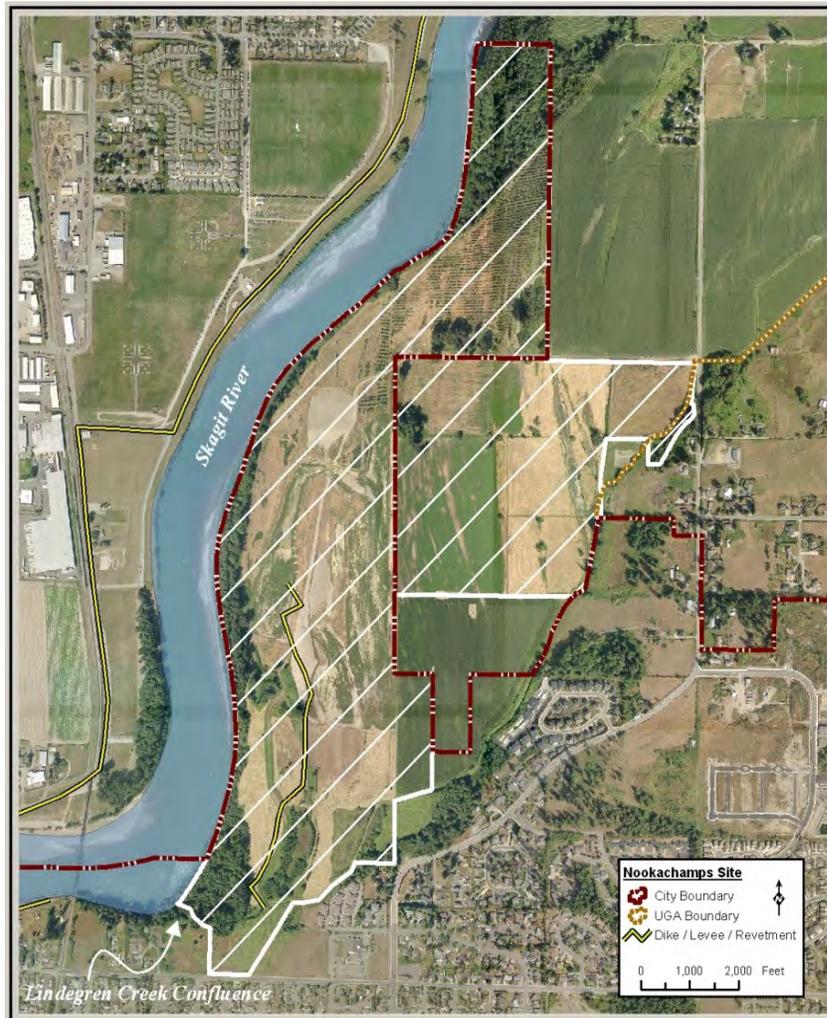
**Figure B-6  
Goodrich Bar**

**G. NOOKACHAMPS WETLAND MITIGATION BANK**

**Location:** The Nookachamps Wetland Mitigation Bank is located adjacent to the Skagit River in northeast Mount Vernon, between the river’s confluence with Lindegren Creek and Ten Dollar Bar.

**Restoration Potential:** This site, owned by Nookachamps LLC (identified as “Salem LC” in the Study) is being developed as a wetland mitigation bank. While the Study did not rate the site high for re-establishing additional back-channels, it did suggest that the historic complex of wetlands could likely be restored. The Mitigation Bank plan is to establish a more complex system of back-channels that will restore the direct connection of this portion of the floodplain to the river.

The site encompasses approximately 291 acres and includes a portion of the bar and forested floodplain associated with the Ten Dollar Bar site to the north. The purpose of the preserve is to develop a bank for projects that require mitigation credits to off-set project site impacts.



**Figure B-7**  
**Nookachamps Wetland Mitigation Bank**

The plan is to excavate a channel network to restore the hydrogeomorphic character of the site. These channels will be constructed in what are believed to be historic locations of back channels prior to site conversion to agriculture. A significant portion of the site will be planted with a riparian forest, providing shade and other benefits for the back channels and the Skagit main-stem, as well as habitat for terrestrial species. One of the channels will have a direct connection to the river allowing water to inundate the back channels when the Skagit exceeds its mean annual flow. The constructed channels will be sloped to ensure their drainage after waters recede so fish will not be stranded.

Key features of the restoration plan include the following:

- Re-create the natural geomorphic character of the site.
- Create backwater sloughs for off-channel habitat.
- Create habitat along the slough channels.
- Enhance existing emergent wetlands.
- Increase riparian buffer along the Skagit River.
- Provide benefit to the ESA listed species and fish in general.
- Provide benefit to migratory waterfowl and other terrestrial species.
- Perform wetland function such as reducing erosion and attenuating floodwaters.

#### **IV. RESTORATION SUMMARY**

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As noted in Appendix A, past development actions have resulted in significant and material changes in the City's shorelines. Historic riparian, floodplain and wetland habitats have been converted to urban uses within the City's jurisdiction. As a result, a majority of the shoreline areas occur within a batture created by a nearly continuous system of levees/dikes and revetments.

Direct City restoration actions are limited to those sites actually owned by the City. Shorelines having restoration potential that are within City jurisdiction and also owned by the City include Edgewater Park and Lions Park North. The south portion of Edgewater Park was recently restored in conjunction with redevelopment of the park as a whole. There are also approximately 9 acres of batture within the park that have been identified for restoration under the City's CAO program. The confluence of Kulshan Creek with the Skagit River at Lion Park North has also been identified as having potential, with approximately 11 acres of degraded floodplain forest.

Areas identified as having restoration potential wholly or partially within the City's jurisdiction, owned by state agencies or private parties, include Ten Dollar Bar, Nookachamps Wetland Mitigation Bank, Young's Bar, and Goodrich Bar. In addition to reestablishing historic off-channel habitats and wetlands, the shoreline adjacent to the Wetland Mitigation Bank is planned to provide a pedestrian trail in conjunction with construction of the Bank.

Restoration of the City-owned sites will occur as funds become available, either through the City's CAO program or other sources that may become available. At this time no benchmarks or timelines have been established. Preservation of existing ecological functions on privately-owned lands will be accomplished through the goals, policies and regulations within the SMP.

## APPENDIX C

# SHORELINE CRITICAL AREA REGULATIONS

## I. REGULATION OF CRITICAL AREAS

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### A. APPLICABILITY

1. For the purposes of the Shoreline Master Program, “Shoreline Critical Areas,” include regulated wetlands, shorelands, native growth protection areas, and fish and wildlife habitat conservation areas located within the Shoreline Management Zone (SMZ).
2. All proposed development activities in regulated critical areas and associated buffers located within the SMZ shall comply with the requirements of the Shoreline Master Plan (SMP) which include critical area regulations.
3. For wetlands and their buffers located outside of or not abutting the SMZ, see MVMC 15.40.090, “Wetlands,” as amended by Ordinance 3509, dated December 1, 2010.
4. For fish and wildlife habitat conservation areas located outside of or not abutting the SMZ, see MVMC 15.40.080, “Fish and Wildlife Habitat Conservation Areas,” as amended by Ordinance 3509, dated December 1, 2010.
5. Expansion or alteration of existing uses in proximity to jurisdictional critical areas and associated buffers within the SMZ shall also comply with the requirements of these regulations.
6. Any person seeking to determine whether a proposed development activity or land area is subject to these regulations may request a determination from the Director of the Community and Economic Development Department.

### B. DEVELOPMENT PERMIT REQUIRED

Prior to any alteration of a property containing or adjacent to critical areas in or adjacent to the SMZ, the property owner or designee must obtain a development permit, consistent with the requirements of the SMP.

1. No separate critical areas permit is required for a development proposal that requires a development permit(s).
2. Permitted activities under Section C (below): The Director shall determine whether to grant or deny a separate permit based upon compliance with applicable standards and regulations of the SMP.
3. If a Notice of Application is required for a development permit associated with a permitted activity in section C.4, the notice shall describe the critical area-related activity.

**C. ACTIVITIES EXEMPT FROM SUBSTANTIAL SHORELINE DEVELOPMENT PERMIT REQUIREMENTS**

1. Section III B. (1) of the SMP lists activities exempt from shoreline substantial development permits but may require a shoreline exemption (“exemption certificate”). Except in the case of public emergencies, existing and ongoing agricultural activities, and existing structures, surfaces, and activities, all activities in subsection ‘4’ of this section, require that a letter of administrative approval (“letter of approval”) be obtained from the Director prior to construction or initiation of activities. When appropriate, a letter of approval may act as an exemption certificate.
2. Development activities provided with a letter of approval may intrude into the critical area and associated buffer, subject to listed conditions, related permits, and in conformance with other provisions of the MVMC.
3. In determining whether to issue a letter of approval for activities listed in subsection ‘4’ of this section, the Director shall find that:
  - a. The activity is not prohibited by this or any other chapter of the MVMC or state or federal law or regulation;
  - b. The activity will be conducted using best management practices as determined by the City, using applicable federal and state agency requirements, or scientific principles;
  - c. Where wetland or habitat disturbance has occurred in accordance with an activity pursuant to a letter of approval, restoration of affected ecosystem functions shall be required within the relevant waters / wetlands system / habitat in accordance with the guidelines established in the Critical Area Ordinance (CAO) Guidebook; and,
  - d. The Director shall require a mitigation plan where permitted activity under a letter of approval is determined to have a potentially material negative effect on wetland system or habitat function, to assure such functions are adequately restored within the critical area.
4. The following activities are permitted in critical areas and associated buffers, subject to listed criteria:
  - a. Natural resource / habitat conservation or preservation: Conservation or preservation of soil, water, vegetation, fish and other wildlife. This includes any wetland or habitat restoration or other mitigation activities that have been approved by the City.
  - b. 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 and associated buffer shall be minimized and disturbed areas shall be immediately restored.

- c. Dead or diseased trees: Removal of dead, terminally diseased, damaged, or hazard trees that have been certified as such by a forester, registered landscape architect, or certified arborist, selection of whom to be approved by the City based on the type of information required, or the City prior to their removal. Such hazard trees shall be retained as large woody debris in the SMZ or in wetlands where feasible.
- d. Operation, maintenance, or repair: Operation, maintenance, or repair of dikes, levees, or drainage systems. Repair of existing structures, infrastructure improvements, utilities, and public or private roads, if the activity does not further alter or increase the impact to or encroach further within the critical area and associated buffer.
- e. Routine vegetation management and removal of non-native invasive vegetation or weeds listed by Skagit County or other government agency, for public and private utilities, road rights-of-way and easements, and parks.
- f. 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. Replacement shall be consistent with the Chapter 17.102 MVMC, “Nonconforming Buildings or Uses,” and subject the procedural requirements in Chapter 14.05 MVMC.
- g. 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 storm water; exempt activities are subject to retention and replanting of native vegetation, where feasible, along the right-of-way improvement and resulting disturbance.
- h. Emergency activities: 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 these regulations, provided that the following criteria are met at the time of or following the immediate emergency action:
  - i. Time limits: The emergency shall be limited in duration to the time required to complete the authorized emergency activity; provided, that no emergency permit be granted for a period exceeding ninety (90) days except as specified in subsection (ii).

- ii. Restoration required: Require, within the ninety (90) day period, the restoration of or mitigation for any critical area or associated buffer altered as a result of the emergency activity (when not storm-related damage), except that if more than ninety (90) days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration. For the purposes of this paragraph, “restoration” means returning the affected area to its state prior to the performance of the emergency activity.
- iii. Expiration of emergency authorization: The emergency exemption authorization may be terminated at any time without process upon a determination by the Director that the action was not or is no longer necessary to protect human health or the environment.
- iv. Notice of the emergency action shall be given to the City within 10 days of the end of the emergency condition (e.g. flood waters have receded to non-flood conditions).
- i. Existing structures, surfaces and activities where lawfully constructed and maintained in accordance with all other laws in effect as of the date of adoption of these regulations.

## **II. GENERAL PERFORMANCE STANDARDS**

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### **A. PERFORMANCE STANDARDS**

Following are general performance standards that shall be applied in addition to the performance standards found within the SMP.

### **B. PROTECTION OF WETLANDS**

Development within wetlands shall be avoided, and alterations prohibited unless permitted in accordance with the requirements of these regulations and other SMP provisions.

### **C. PROTECTION OF FISH AND WILDLIFE HABITAT AREAS**

Development within fish and wildlife habitat areas and associated buffers shall be avoided, and alterations prohibited unless permitted in accordance with the requirements of these regulations and other SMP provisions.

### **D. ALLOWED ALTERATIONS**

Critical areas and associated buffers may be altered by authorized, permitted or exempt activities as indicated herein, or through approval of a shoreline variance if applicable.

### **E. LAND DIVISIONS AND LAND USE PERMITS**

All proposed divisions of land and land uses (including, but not limited to long and short subdivisions, conditional use permits, special use permits, site plan reviews, and binding site plans) that include critical areas shall comply with the following procedures and development standards:

1. The open water area shall not be included when calculating the maximum density or minimum lot area;
2. The subdivision of land in wetlands is subject to the following:
  - a. Land that is located wholly within a wetland may not be subdivided.
  - b. Land that is located partially within a wetland may be subdivided; provided, that an accessible and contiguous portion of each new lot is located outside of the wetland.
  - c. Access roads and utilities serving the proposed subdivision may be permitted within the wetland only if the City determines that no other feasible alternative exists and when consistent with these regulations.
3. After preliminary approval and prior to final land division approval, the Director may require the common boundary between a wetland and the adjacent lands be identified using permanent signs. In lieu of signs, alternative methods of wetland identification may be approved when such methods are determined by the Director to provide adequate protection to the wetland.

**F. ROAD/STREET REPAIR AND CONSTRUCTION**

Any private or public road or street expansion or construction that is allowed in a critical area or its buffer shall comply with the following minimum development standards:

1. No other reasonable or feasible alternative exists and the road or street crossing serves multiple properties whenever possible;
2. Expansion or construction of any private or public road shall only be allowed when adverse impacts can be avoided;
3. Public and private roads should provide for other purposes, such as utility crossings, pedestrian or bicycle trails, viewing points, etc.;
4. Public trails across private property should be within recorded easements;
5. The road or street construction is the minimum necessary, as required by the Department of Public Works, and shall comply with City engineering standards; and,
6. Construction time limits shall be determined in consultation with the Washington Department of Fish and Wildlife and/or the Department of Ecology as appropriate, in order to avoid adverse impacts to habitat areas.

**G. UTILITIES**

Placement of utilities within designated critical areas and associated buffers may be allowed pursuant to the following standards:

1. Utilities maintenance activities involving no material change in size or function shall be allowed within a critical area and associated buffer, subject to best management practices;

2. Construction of utilities may be permitted in critical areas or associated buffer, only when no feasible or reasonable alternative location is available and the utility corridor meets the requirements for installation, replacement of vegetation, and maintenance, as outlined below;
3. Construction of sewer lines may be permitted in critical areas or associated buffer when the applicant demonstrates it is necessary to meet state and/or local health requirements, there are no other feasible alternatives available, and construction meets the requirements of this section. Joint use of a sewer utility corridor by other utilities may be allowed;
4. New utility corridors shall not be allowed in critical areas or associated buffers with known locations of federal or state-listed endangered, threatened, or sensitive species, heron rookeries, or nesting sites of raptors that are listed as state candidate species, except in those circumstances where an approved Habitat Management Plan (HMP) indicates that the utility corridor will not significantly impact the habitat area;
5. New utility corridor construction and maintenance shall protect critical areas and their buffers by the following:
  - a. New utility facilities, improvements, or upgrades to existing utility facilities should take place within existing improved rights-of-way or existing impervious surfaces so that they do not increase the amount of impervious surfaces within the critical area and buffer;
  - b. New utility corridors shall be aligned when possible to avoid cutting or root damage to trees greater than 12 inches in diameter at breast height (dbh, 4-1/2 feet) measured on the uphill side;
  - c. New utility corridors shall be re-vegetated with appropriate native or similar vegetation at not less than preconstruction vegetation densities or greater, immediately upon completion of construction, or as soon thereafter as possible, based on seasonal growing constraints. The utility shall ensure that such vegetation is maintained and survives or is replaced as necessary; and,
  - d. Any additional corridor access for maintenance shall be provided wherever possible at specific points rather than by parallel roads. If parallel roads are necessary, they shall be of a minimum width, but no greater than 15 feet and shall be contiguous to the location of the utility corridor on the side away from the critical area.
6. Utility corridor maintenance shall include the following measure to protect critical areas: Utility towers should be painted with brush, pad, or roller and should not be sandblasted or spray-painted, nor should lead-based paints be used.

## **H. PESTICIDES, FERTILIZERS AND HERBICIDES**

No pesticides, herbicides, or fertilizers may be used in critical areas, except those approved by the Environmental Protection Agency and approved under a Department of Ecology water quality modification permit for use in critical areas and associated buffers. Where approved, herbicides must be applied by a licensed applicator in accordance with the safe application practices on the label.

## **III. NATIVE GROWTH PROTECTION AREAS**

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### **A. APPLICABILITY**

1. A Native Growth Protection Area shall be instituted when determined through permit review to be necessary to protect wetlands, consistent with Section IV, "Wetlands," below.
2. A Native Growth Protection Areas may be required for protection of habitat conservation areas consistent with Section V, "Fish and Wildlife Habitat Conservation Areas," below.

### **B. STANDARDS**

1. Trees and ground cover shall be retained in designated Native Growth Protection Areas.
2. Activities allowed in Native Growth Protection Areas shall be consistent with applicable critical area regulations.
3. The City may require enhancement of Native Growth Protection Areas to improve functions and values of critical areas.

### **C. METHOD OF CREATION**

1. Native Growth Protection Areas may be established by one of the following methods, or alternative approved by the Director, to reliably achieve the required protection:
  - a. Conservation Easement: The permit holder shall, subject to the City's approval, convey to the City or other public or nonprofit entity specified by the City, a recorded easement for the protection of the critical area.
  - b. Protective Easement: The permit holder shall establish and record a permanent and irrevocable easement on the property title of a parcel or tract of land containing a critical area when the easement has been created as a condition of a permit. Such protective easement shall be held by the current and future property owner, shall run with the land, and shall prohibit development, alteration, or disturbance within the easement except for purposes of habitat enhancement as part of an enhancement project that has received prior written approval from the City or from another agency with jurisdiction over such activity.

- c. **Tract and Deed Restriction:** The permit holder shall establish and record a permanent and irrevocable deed restriction on the property title of any wetland management tract or tracts created as a condition of a permit. Such deed restriction(s) shall prohibit development, alteration, or disturbance within the tract except for purposes of habitat enhancement as part of an enhancement project that has received prior written approval from the City or from another agency with jurisdiction over such activity. A covenant shall be placed on the tract restricting its separate sale. Each abutting lot owner or the homeowners' association shall have an undivided interest in the tract.
2. **Fencing:** The City may require permanent fencing of the Native Growth Protection Area containing critical areas when the Director determines there is a substantial likelihood of adverse impact through intrusion, and such fencing will not adversely impact habitat connectivity.
3. **Signage required:** The common boundary between a Native Growth Protection Area and the abutting land must be permanently identified. One sign shall be posted per lot, or every 150 feet, or as determined by the Director. Suggested wording is as follows: "Protection of this natural area is in your care. Alteration or disturbance is prohibited by law."
4. **Responsibility for maintenance:** Responsibility for maintaining the Native Growth Protection Area easements or tracts shall be held by a homeowners' association, abutting lot owners, the permit applicant or designee, or other appropriate entity as approved by the City.
5. **Maintenance covenant and note required:** The following note shall appear on the face of all plats, short plats, planned unit developments, or other approved site plans containing separate Native Growth Protection Area easements or tracts, and shall also be recorded as a covenant running with the land on the title of record for all affected lots on the title:

"MAINTENANCE RESPONSIBILITY: All owners of lots created by or benefiting from this City action abutting or including a native growth protection area easement [tract] are responsible for maintenance and protection of the easement [tract]. Maintenance includes ensuring that no alterations occur within the tract and that all vegetation remains undisturbed unless the express written authorization of the City has been received in advance."
6. **Marking During Construction:** The location of the outer extent of the critical areas not to be disturbed pursuant to an approved permit, shall be marked with barrier fencing, approved by the Community and Economic Development Department and easily visible in the field, to prevent unnecessary disturbance by individuals and equipment during the development or construction of the approved activity.

**D. PERMANENT SIGNS AND FENCING**

1. Permanent Signs

- a. As a condition of any permit or authorization issued pursuant to these regulations, the Director may require the applicant to install permanent signs along the boundary of critical area and associated buffer not to be disturbed.
- b. Permanent signs shall be made of an enamel-coated metal face and attached to a metal post, or another non-treated material of equal durability. 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. The sign shall be worded as follows, or with alternative language approved by the Director, and will identify the critical area:

Protected Critical Area  
Do Not Disturb  
Contact City of Mount Vernon  
Department of Community & Economic Development  
Regarding Uses and Restrictions

2. Fencing

- a. The Director shall determine if fencing is necessary to protect the functions and values of the critical area. If found to be necessary, any permit or authorization issued pursuant to these regulations shall be conditioned to require the applicant to install a permanent fence at the edge of the critical area when fencing will prevent future impacts to the critical area.
- b. Fencing installed as part of a proposed activity shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the critical area and associated buffer.

**E. DISCRETIONARY – BUILDING OR DEVELOPMENT SETBACKS**

The Director may require an additional building or activity setback from a critical area to ensure adequate protection of the wetland during construction and on-going maintenance of the activity. A requirement for an additional setback shall be based on the findings of a critical report or a peer review required for the activity based upon a unique impact of the project or need of the adjoining critical area not otherwise protected by this regulation.

**F. MITIGATION MONITORING**

A monitoring program shall be implemented to determine the success of mitigation projects required under these regulations. The monitoring program shall determine if the original goals and objectives are being met. The City reserves the right to select the consultant, at the applicant's expense, to perform the required monitoring. Monitoring shall be undertaken pursuant to the guidelines in section MVMC 15.40.120.H.

**G. CRITICAL AREA DEVELOPMENT STANDARDS**

Restoration, enhancement and development activities involving critical areas regulated under this section shall generally conform to the preferred standards found in the Critical Area Ordinance (CAO) Guidebook identified in MVMC 15.40.030.F.4. These standards shall be followed unless the Director determines that a proposed alternative achieves the equivalent performance and better serves the objectives of this section.

**IV. WETLAND STANDARDS**

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**A. DESCRIPTION**

1. Wetlands are those areas, designated in accordance with the "Washington State Wetland Identification and Delineation Manual" as required by RCW 36.70A.175, 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.
2. Wetlands help to maintain water quality; store and convey stormwater and floodwater; recharge ground water; provide important fish and wildlife habitat; and serve as areas for recreation, education, scientific study and aesthetic appreciation.
3. The City's overall goal is to achieve no net loss of wetlands. This goal shall be implemented through retention and restoration of the function and value of wetlands within the City.
4. Wetlands serve to moderate runoff volume and flow rates; reduce sediment, chemical nutrient and toxic pollutants; provide shading to maintain desirable water temperatures; provide habitat for wildlife; protect wetland resources from harmful intrusion; and generally preserve the ecological integrity of the wetland area.

**B. PURPOSE**

The purposes of the wetland regulations are to:

1. Ensure that development activities in or affecting wetlands do not threaten public safety, cause nuisances, or destroy or degrade natural wetland functions and values;
2. Protect wetlands by regulating development activities within and around them;
3. Protect the public from costs associated with repair of downstream properties resulting from erosion and flooding due to the loss of water storage capacity provided by wetlands; and,
4. Prevent the net loss of wetland acreage and functions.

**C. CLASSIFICATION AND DESIGNATION**

Wetland ratings: Wetlands shall be rated according to the Washington State Department of Ecology wetland rating system found in the "Washington State Wetland Rating System for Western Washington" (Department of Ecology Publication No. 04-06-025) or as amended. These documents contain the definitions and methods for determining if the criteria below are met.

1. Wetland Rating Categories.

- a. Category I: Category I wetlands are those that meet any of the following criteria:
  - i. Represent a unique or rare wetland type;
  - ii. Are more sensitive to disturbance than most wetlands;
  - iii. Are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime;
  - iv. Are providing a high level of functions, scoring seventy (70) points or more out of one hundred (100) (DOE Wetlands Rating System, 2004);
  - v. Are characterized as a national heritage wetland;
  - vi. Are characterized as a bog; or
  - vii. Are over one (1) acre and characterized as a mature and old-growth forested wetland.
- b. Category II: Category II wetlands are those wetlands that are not Category I wetlands and that meet any of the following criteria:
  - i. Provide high levels of some functions, being difficult, though not impossible to replace; or
  - ii. Perform most functions relatively well; scoring fifty-one (51) through sixty-nine (69) out of one hundred (100) points (DOE Wetlands Rating System, 2004).
- c. Category III: Category III wetlands are those wetlands that are not Category I or II wetlands, and that meet the criterion to provide moderate levels of functions, scoring between thirty (30) through fifty (50) out of one hundred (100) points (DOE Wetlands Rating System, 2004).
- d. Category IV: Category IV wetlands are those that provide low levels of functions, scoring less than thirty (30) out of one hundred (100) points (DOE Wetlands Rating System, 2004).

2. Date of Wetland Rating

Wetland rating categories shall be applied as the wetland exists on the date of adoption of the rating system by the City, as the wetland naturally changes thereafter, or as the wetland changes in accordance with permitted activities. Wetland rating categories shall not change due to illegal modifications.

**D. WETLAND REPORTS**

1. Report required: Subject to the provisions of section (D)(3) below, a wetland report pursuant to the guidelines in MVMC 15.40.120.G addressing a wetland's classification and delineation shall be prepared by an applicant as follows:

- a. Wetland report identifying classification: An applicant shall be required to conduct a study to determine the classification of the wetland if the subject property or project area is both within the SMZ and within 150 feet of a wetland, even if the wetland is not located on the subject property, but it is determined that alterations of the subject property are likely to impact the wetland in question or its buffer. Wetland classification shall be performed as described in MVMC 15.40.090(C), and the report shall include a completed wetland rating form. If there is a potential Category I or II wetland within 300 feet of a proposed project, the City may require an applicant to conduct a study, even if the wetland is not located on the subject property, but it is determined that alterations of the subject property are likely to impact the wetland in question or its buffer. A wetland report shall be prepared by a certified professional at the applicant's expense.
  - b. Wetland report identifying delineation: A wetland delineation is required for any portion of a wetland on the subject property that will be impacted by the permitted activities. For the purpose of regulation, the exact location of the wetland edge shall be determined by the wetlands specialist hired at the expense of the applicant through the performance of a field investigation using the procedures provided in the Hydrogeomorphic (HGM) manual.
2. Wetland mitigation plan required: The applicant shall be required to prepare a wetland mitigation plan per MVMC 15.40.120(H), if impacts are identified within a wetland classification or delineation report, or if a wetland buffer alteration is proposed. The approval of the wetland mitigation plan by the Director shall be based on the criteria located in MVMC 15.40.040, 15.40.080, 15.40.110, and 15.40.120(H).
3. Report waived:
- a. A wetland classification or delineation report may only be waived by the Director when the applicant provides satisfactory evidence that:
    - i. A public road, building or other physical barrier exists between the wetland and the proposed activity;
    - ii. The wetland does not intrude on the site of the proposed project, and based on evidence submitted, the proposal will not result in significant adverse impacts to nearby wetlands regulated under this section; or
    - iii. Applicable data and analysis appropriate to the project proposed exists and an additional study is not necessary, consistent with current rating system and mitigation standards.
  - b. The wetland mitigation plan may only be waived by the Director when applicable data and analysis appropriate to the project proposed exists and an additional report is not necessary, consistent with current rating system and mitigation standards.
  - c. Period of validity for wetland reports: Reports submitted and reviewed are valid for up to five (5) years from date of study completion as approved by the City unless the Director determines that conditions have changed significantly and a new or amended study is required.

- d. Independent secondary review: Peer review of the wetland report may be required by the City at the applicant's expense.

**E. DEVELOPMENT STANDARDS**

1. Activities may only be permitted in a wetland if the applicant can show that the proposed activity will not degrade the functions and functional performance of the wetland.
2. Activities and uses shall be prohibited in wetlands, except as provided for herein.
3. Category I wetlands: Activities and uses shall be prohibited from Category I wetlands, except as provided for in the public agency and utility exception, reasonable use exception, and variance sections of the MVMC.
4. Category II and III wetlands: With respect to activities proposed in Category II and III wetlands, the following standards shall apply:
  - a. Water-dependent activities may be allowed where there are no feasible alternatives that would have a less adverse impact on the wetland, its buffers, and other wetlands.
  - b. Where non-water-dependent activities are proposed, it shall be presumed that alternative locations are available, and activities and uses shall be prohibited, unless the applicant demonstrates that:
    - i. The basic project purpose cannot reasonably be accomplished by successfully avoiding the wetland, or result in less adverse impact on a wetland on another site or sites in the general region;
    - ii. All alternative designs of the project as proposed that would avoid or result in less of an adverse impact on a wetland or its buffer, such as a reduction in the size, scope, configuration, or density of the project, are not feasible; and
    - iii. Full compensation for the acreage and loss functions will be provided under the terms established under sections (G)(6) and (G)(7) below.
5. Category IV wetlands: Activities and uses that result in unavoidable and necessary impacts may be permitted in Category IV wetlands and associated buffers in accordance with an approved wetland report and mitigation plan, if the proposed activity is the only reasonable alternative that will accomplish the applicant's objectives. Full compensation for the acreage and loss functions will be provided under the terms established under sections (G)(6) and (G)(7) below.

**F. STANDARD WETLAND BUFFERS**

1. Standard buffer widths: 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. Required standard wetland buffers, based on wetland category, are as follows:

<b>Wetland Category</b>	<b>Standard Buffer</b>
I	200 ft.
II	100 ft.
III	75 ft.
IV	50 ft.

2. Measurement of wetland buffers: All buffers shall be measured horizontally from a perpendicular line established at the wetland edge as surveyed in the field. The width of the wetland buffer shall be determined according to the wetland category. 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. Only fully vegetated buffers will be considered. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers.
  
3. Increased wetland buffer widths: The Director shall require increased buffer widths in accordance with the recommendations of an experienced, certified professional wetland scientist, and the best available science on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values based on site-specific characteristics. This determination shall be based on one or more of the following criteria:
  - a. A larger buffer is needed to protect other wetlands;
  - b. The buffer or adjacent uplands has a slope greater than 15 percent or is susceptible to erosion and standard erosion-control measures will not prevent adverse impacts to the wetland;
  - c. The buffer area has minimal vegetative cover. In lieu of increasing the buffer width where existing buffer vegetation is inadequate to protect the wetland functions and values, implementation of a buffer planting plan may substitute. Where a buffer planting plan is proposed, it shall include plant densities that are in conformance with the recommendations of the Critical Area Ordinance (CAO) Guidebook and CAO Guidebook requirements for monitoring and maintenance to ensure success.
  - d. Existing buffer vegetation is considered "inadequate" and will need to be enhanced through additional native plantings and (if appropriate) removal of nonnative plants when:
    - i. Nonnative or invasive plant species provide the dominant cover,
    - ii. Vegetation is lacking due to disturbance and wetland resources could be adversely affected, or

- iii. Enhancement plantings in the buffer could significantly improve buffer functions.
  - e. An increase in buffer width onsite or restoration of existing buffer required under this section shall be directed to modifications reasonably necessary to mitigate impacts created by the proposed development and roughly proportional to the scope and scale of the impacts created by the proposed development.
4. Wetland buffer width averaging: The Director may allow modification of the standard wetland buffer width in accordance with an approved wetland report and the best available science on a case-by-case basis by averaging buffer widths. Averaging of buffer widths may only be allowed where the applicant and a certified professional wetland scientist demonstrates that:
- a. No feasible site design exists without buffer averaging;
  - b. It will not reduce wetland functions or functional performance;
  - c. 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;
  - d. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and,
  - e. The buffer width is not reduced to less than 75 percent of the standard buffer width, applicable to Category I, II, or III wetlands or 35 feet for Category IV wetlands.
5. Buffer consistency: All mitigation sites shall have buffers consistent with the buffer requirements of these regulations.
6. Buffer maintenance: Except as otherwise specified or allowed in accordance with this title, wetland buffers shall be retained in an undisturbed or enhanced condition. Removal of invasive non-native weeds is required for the duration of the mitigation bond.

**G. STANDARD MITIGATION REQUIREMENTS – WETLANDS**

Compensatory mitigation for alterations to wetlands shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with the State Department of Ecology publication "Wetland Mitigation in Washington State," 2006 (Publication Nos. 06-06-011a and 06-06-011b), or as revised.

1. Mitigation includes the following alternatives. The priority shall be as follows, but may be modified where functions and values are retained, restored, or enhanced by alternate systems:
- 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.
2. Mitigation for lost or affected functions: Compensatory mitigation actions shall address functions affected by the alteration to achieve functional equivalency or improvement and shall provide similar wetland functions as those lost, except when:
    - a. The lost wetland provides minimal functions as determined by a site-specific function assessment, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington State watershed assessment plan or protocol; or
    - b. Out-of-kind replacement will best meet formally identified watershed goals, such as replacement of historically diminished wetland types.
  3. Preference of mitigation actions: Mitigation actions that require compensation by replacing, enhancing, or substitution shall occur in the following order of preference:
    - a. Restoring wetlands on upland sites that were formerly wetlands.
    - b. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of non-native introduced species. This should only be attempted when there is a consistent source of hydrology and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is being designed.
    - c. Enhancing significantly degraded wetlands in combination with restoration or creation. Such enhancement should be part of a mitigation package that includes replacing the impacted area and meeting appropriate ratio requirements.
  4. Type and location of mitigation: Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach, compensatory mitigation for ecological functions shall be either in-kind and on-site, or in-kind and within the same stream reach or sub-basin. Mitigation actions shall be conducted within the same sub-basin and on the site as the alteration, except when all of the following apply:
    - a. There are no reasonable on-site or sub-basin opportunities or the on-site and sub-basin opportunities do not have a high likelihood of success, after a determination of the natural capacity of the site to mitigate for the impacts. Consideration should include: anticipated wetland mitigation replacement ratios, buffer conditions and proposed widths, hydrogeomorphic classes of on-site wetlands when restored, proposed flood storage capacity, proposed water quality improvements, potential to mitigate riparian fish and wildlife impacts (such as connectivity);

- b. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and,
  - c. Off-site locations shall be in the same sub-basin unless:
    - i. Established watershed goals for water quality, flood or conveyance, habitat, or other wetland functions have been established and strongly justify location of mitigation at another site; or
    - ii. Credits from a state-certified wetland mitigation bank are used as mitigation and the use of credits is consistent with the terms of the bank's certification.
5. Mitigation timing: Mitigation and monitoring plans shall be approved prior to initiation of activities that will disturb wetlands. 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 existing fisheries, wildlife, and flora.
- a. The Director may authorize a one-time temporary delay, up to 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.
  - b. 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.
6. Mitigation Ratios:
- a. Acreage replacement ratios: The following ratios shall apply to creation or restoration that is in-kind, within the same drainage basin, is the same category, is timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply in those cases. These ratios do not apply to the use of credits from a state-certified wetland mitigation bank. When credits from a certified bank are used, replacement ratios should be consistent with the requirements of the bank's certification. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

Category I	6-to-1
Category II	3-to-1
Category III	2-to-1
Category IV	1.5-to-1

- b. Increased replacement ratio. The Director may increase the ratios under the following circumstances:
    - i. Uncertainty exists as to the probable success of the proposed restoration or creation;
    - ii. A significant period of time will elapse between impact and replication of wetland functions;
    - iii. Proposed mitigation, without increase, will result in a lower category wetland or reduced functions relative to the wetland being impacted; or
    - iv. The impact was an unauthorized impact.
7. Wetlands Enhancement as Mitigation:
- a. Impacts to wetland functions may be mitigated by enhancement of existing significantly degraded wetlands, but must be used in conjunction with restoration and/or creation. Applicants proposing to enhance wetlands must produce a wetland 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.
  - b. At a minimum, enhancement acreage shall be double the acreage required for creation or restoration under subsection G.6 of this section. The ratios shall be greater than double the required acreage where the enhancement proposal would result in minimal gain in the performance of wetland functions and/or result in the reduction of other wetland functions currently being provided in the wetland.
  - c. Mitigation ratios for enhancement in combination with other forms of mitigation shall range from 6:1 to 3:1 and be limited to Class III and Class IV wetlands.
  - d. Any approval under subsections (b) and (c) above shall be consistent with Table 1a of “Wetland Mitigation in Washington State, Part I” (Ecology, et al., 2006)
8. Wetland Mitigation Banks:
- a. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands (but not wetland buffers) when:
    - i. The bank is certified under Chapter 173-700 WAC;
    - ii. The Director determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and,
    - iii. The proposed use of credits is consistent with the terms and conditions of the bank's certification.
  - b. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification.
  - c. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, bank service areas may include portions of more than one adjacent drainage basin for specific wetland functions.

## **V. FISH AND WILDLIFE HABITAT CONSERVATION AREAS**

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### **A. DESCRIPTION AND PURPOSE:**

The intent of these regulations is to protect functions and values for waters, riparian habitat, resident and anadromous fish, and wildlife conservation areas. The primary purpose of this section is to minimize development impacts to habitat conservation areas in the Shoreline Management Zone and to:

1. Protect federal and state listed habitats and species and give special attention to protection or enhancement of anadromous fish populations; and,
2. Maintain a diversity of species and habitat within the City; and,
3. Coordinate habitat protection to maintain and provide habitat connections; and,
4. Help maintain air and water quality, and control erosion.

These standards, guidelines, criteria, and requirements intended to identify, evaluate and mitigate potential impacts to habitat conservation areas within the Shoreline Management Zone and associated critical areas and to provide guidelines to enhance degraded habitat and streams where feasible. In such circumstances, impacts resulting from regulated activities may be minimized, rectified, reduced and/or compensated for, consistent with these regulations. The intent of these regulations is to manage land so as to maintain fish and wildlife species in suitable habitats according to their natural geographic distribution so that isolated sub-populations are not created and achieve no net loss in fish or wildlife habitat or stream functions. Interpretations of these regulations shall be made to conform to the requirements of WAC 365-190-080.

### **B. CLASSIFICATION AND DESIGNATION OF FISH AND WILDLIFE HABITAT CONSERVATION AREAS:**

Classification and designation of fish and wildlife habitat conservation areas is an ongoing process; while not all of the following critical habitat conservation areas are known to exist in the SMZ, their designation here allows for future categorization for protection. The following categories shall be used for relevant development standards of this chapter.

1. Streams: All streams that meet the criteria for F, Np or Ns waters as set forth in WAC 222-16-030 of the Department of Natural Resources Water Typing System. (The City classification system is consistent with the definitions as provided in WAC 222-16-030.)
2. Class I Fish and Wildlife Conservation Areas, other than streams:
  - a. Habitats and species recognized by federal or state agencies for federal and/or state-listed endangered, threatened and sensitive species that have primary association documented in maps or databases available to the City and that, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

- b. Areas targeted for preservation by the federal, state, and/or local government that provide fish and wildlife habitat benefits, such as the shared strategy process for Puget Sound; and areas of primary association for anadromous fish and important waterfowl areas identified by the U.S. Fish and Wildlife Service.
  - c. Areas that contain habitats and species of local importance. These critical areas are identified by the City, including but not limited to those habitats and species that, due to their population status or sensitivity to habitat manipulation, warrant protection. Habitats may include a seasonal range or habitat element with which a species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. Habitats of local importance can include attributes such as comparatively high wildlife density, high wildlife species richness, significant wildlife breeding habitat, seasonal ranges or movement corridors of limited availability and/or high vulnerability. These habitats may include snag-rich mitigation sites and urban natural open spaces.
3. Class II Fish and Wildlife Conservation Areas, other than streams:
- a. Habitats for state-listed candidate and monitored species documented in maps or databases available to the City, which if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.
  - b. Habitats that have been identified through maps, databases, reports, or studies that include attributes such as comparatively high wildlife density, high wildlife species richness, significant wildlife breeding habitat, seasonal ranges or movement corridors of limited availability and/or high vulnerability. These habitats may include snag-rich mitigation sites, and urban natural open space.
4. Habitats and Species of Local Importance: The City should accept and consider nominations for habitat areas and species to be designated as locally important.
- a. Habitats and species to be designated shall exhibit the following characteristics:
    - i. Local populations of native species are in danger of extirpation based on existing trends;
    - ii. Local populations of native species that are likely to become endangered; or,
    - iii. Local populations of native species that are vulnerable or declining.
  - b. The species or habitat has recreation, commercial, game, tribal, or other special value.
  - c. Long-term persistence of a species locally is dependent on the protection, maintenance, and/or restoration of the nominated habitat.
  - d. Protection by other county, state, or federal policies, laws, regulations, or non-regulatory tools is not adequate to prevent degradation of the species or habitat in the City.
  - e. Without protection, there is likelihood that the species or habitat will be diminished locally over the long term.

- f. Areas nominated to protect a particular habitat or species must represent either high-quality native habitat or habitat that has a high potential to recover to a suitable condition and which is of limited availability, highly vulnerable to alteration, or provides landscape connectivity that contributes to the integrity of the surrounding landscape.
- g. Habitats and species may be nominated for designation by any person in accordance with the process in Chapter 15.40 MVMC, Appendix A.

**C. PERFORMANCE STANDARDS - GENERAL:**

A designated fish and wildlife habitat conservation area with its buffer is a critical area. Regulated uses identified within designated fish and wildlife habitat conservation areas shall comply with the performance standards outlined in this section.

1. **Habitat Management Plan Required:** If the City determines that impacts to habitats may occur as a result of a development project, a habitat management plan (HMP) shall be required in conformance with MVMC 15.40.120.D. The project proponent may choose to complete an HMP for a site-specific analysis to better determine the impact to habitat and to determine the appropriate buffer width and associated building setbacks for the project based on the site-specific analysis. The preparation and submission of this report is the responsibility of the applicant. The report shall rely on “best available science” as defined in WAC 365-195-900 through 365-195-925 and shall be prepared by a certified professional who is a biologist with five (5) years of experience preparing reports for the relevant type of habitat. The City may retain a qualified consultant at the applicant's expense to review and confirm the applicant's reports, studies and plans. The HMP shall clearly demonstrate that greater protection of the functions and values of critical areas can be achieved through the HMP than could be achieved through providing the prescribed habitat buffers and building setbacks. An applicant may propose to implement an HMP as a means to protect habitat buffers associated with streams and/or fish and wildlife conservation areas. Approval for an HMP shall not occur prior to the consultation with the appropriate federal or state agencies.
  - a. **Intent:** HMPs are primarily intended as a means to restore or improve buffers that have been degraded by past activity, and should preserve, and not reduce, existing high-quality habitat buffers. While not primarily intended as a means to reduce buffers, the HMP may propose a reduction of the habitat buffer width where it is shown that the HMP will comply with the other requirements of this section.
  - b. **Effect of Buffers:** An HMP shall provide habitat functions and values that are greater than would be provided by the prescribed habitat buffers. When habitat buffers are a component of an HMP, they shall be at least the minimum size necessary to accomplish the objectives of the HMP. The HMP may propose, but the City shall not require, a habitat buffer containing a greater area than is required by the prescribed habitat buffer.

- c. Impact Mitigation: The HMP shall encompass an area large enough to provide mitigation for buffer reduction below the standard required buffers, and shall identify how the development impacts resulting from the proposed project will be mitigated as defined in section (E) below. The developer of the plan shall use the best available science in all facets of the analyses. The Washington Department of Fish and Wildlife priority habitat and species management recommendations, and/or bald eagle protection rules outlined in WAC 232-12-292, as amended, may serve as guidance for this report.
2. Endangered, Threatened, and Sensitive Species:
    - a. No development shall be allowed within a habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a habitat management plan (HMP) consistent with a habitat report identifying BMPs consistent with management guidelines recommended by state and federal agencies where present and otherwise consistent with best available science as established in the scientific literature for similar circumstances. Such plans shall identify the source of the recommendations and the key metrics by which success of the plan is to be measured and enforced.
    - b. Whenever activities are proposed adjacent to a habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with an HMP prepared by a certified professional and approved by the City. Approval for alteration of land adjacent to the habitat conservation area or its buffer shall not occur prior to consultation with the Washington Department of Fish and Wildlife for animal species, the Washington State Department of Natural Resources for plant species, and other appropriate federal or state agencies.
    - c. Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292). Whenever activities are proposed adjacent to a verified nest, territory, or communal roost and, activities that are adjacent to bald eagle sites within 800 feet or within one-half mile (2,640 feet) and in a shoreline foraging area shall require an approved HMP. The City shall verify the location of eagle management areas for each proposed activity. Approval of the activity shall not occur prior to approval of the HMP by the Washington Department of Fish and Wildlife.
  3. Anadromous Fish:
    - a. 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 give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:
      - i. Activities shall be timed to occur only during the allowable work window as designated by the Washington Department of Fish and Wildlife for the applicable species;

- ii. If alternative alignment or location for the activity is not feasible, then activities shall be designed so that it will replace any affected functions and values with equivalent systems to avoid overall degradation to the functions and values of the fish habitat or other critical areas;
      - iii. Shoreline erosion control measures shall be designed to use bioengineering methods or soft armoring techniques where such approaches are reasonably effective, according to an approved critical area report; and
      - iv. Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved habitat management plan.
    - b. 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 or downstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed, or otherwise adversely affect the overall lifecycle of such fish.
    - c. Fills, when authorized by the 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.
  4. Wetland Habitats: All proposed activities within or adjacent to habitat conservation areas containing wetlands shall conform to the wetland development performance standards set forth above, in Section III. If non-wetlands habitat and wetlands are present at the same location, the provisions of this section or the wetlands section, whichever provides greater protection to the habitat, apply. Where a wetland is divided by a right of way or other improvement, but functions as a single system, the system shall be scored as a whole and not in pieces.
  5. Buffers and Associated Building Setback Areas: The distance shall be measured from the ordinary high water mark (OHWM) or from the top of the bank where the OHWM cannot be identified.
    - a. Buffers shall remain undisturbed natural beach or vegetation areas except where the buffer can be enhanced to improve its functional attributes, as approved by the Director. Buffers shall be maintained along the perimeter of fish and wildlife habitat conservation areas, as listed below in Tables A and B of this section. Refuse shall not be placed in buffers. Alteration of buffer areas and building setbacks may be allowed for water-dependent and water-related activities and for other property development authorized by the Shoreline Master Program, through an HMP, shoreline exemptions, standards for existing (nonconforming) development, and shoreline variances; provided, however, in each instance mitigation shall be required to replace affected functions and values within the affected zone.



8. **Class II Fish and Wildlife Conservation Area:** All new development within Class II fish and wildlife conservation areas may require the submittal of an HMP as specified in section C.1 above if the Director determines that the activity is within a critical distance of a protected species for an activity which the species has a primary association. An HMP shall consider measures to retain and protect the wildlife habitat and shall consider effects of land use intensity, buffers, setbacks, impervious surfaces, erosion control and retention of native vegetation. The requirement for an HMP shall be determined during the SEPA/critical areas review on the project. No project falling within a Class II fish and wildlife habitat conservation area shall be exempt from SEPA review.

<b>Table A, Wildlife Habitat Conservation Areas</b>	
Class I	All developments within 200 ft. of a designated Class I wildlife habitat conservation area shall have buffer widths determined by a mandatory wildlife habitat management plan.
Class II	All development within a Class II wildlife habitat conservation area shall have the buffer widths be determined by the SEPA/critical area review on the project and may require a habitat management plan.

9. **Other Allowed Uses in Fish and Wildlife Habitat Conservation Areas:** Other activities may be allowed using the standard for a Category II wetland buffer.

**D. PERFORMANCE STANDARDS – STREAMS:**

1. The purposes of the stream regulations are to:
  - a. Protect riparian habitat to provide bank and channel stability; sustained water supply; flood storage; recruitment of woody debris; leaf litter; nutrients; sediment and pollutant filtering; shade; shelter; and other functions that are important to both fish and wildlife; and,
  - b. Prevent the loss of riparian acreage and functions and strive to achieve properly functioning conditions within a given stream segment where feasible; and,
  - c. Designate and protect aquatic habitat for salmonid species; and,
  - d. Give special attention to the protection or enhancement of anadromous fish.
2. Stream Studies:
  - a. **When Standard Stream Study Is Required:** Subject to the provisions below, the applicant or project sponsors for activities requiring City approval shall be required to conduct a Standard Stream Study per MVMC 15.40.120(E) if a site contains a regulated stream or the project area is within 200 feet of a stream even if the stream is not located on the subject property. Such a report shall be prepared by a certified professional at the applicant's expense.

- b. When Supplemental Stream Study is Required: The applicant shall be required to conduct a Supplemental Stream Study per MVMC 15.40.120(F) if a site contains a stream or riparian management zone and alterations of the stream or alterations to management zones are proposed, either administratively or via a variance request. Such a report shall be prepared by a certified professional at the applicant's expense.
  - c. When Stream Mitigation Plan is Required: The applicant shall be required to conduct a Stream Mitigation Plan per MVMC 15.40.120(H) if impacts are identified within a Supplemental Stream Study. Such a report shall be prepared by a certified professional at the applicant's expense. The approval of the Mitigation Plan by the Director shall be based on the criteria located in MVMC 15.40.040, .080, .110, and .120.
  - d. Studies Waived:
    - i. Standard Stream Study: May only be waived by the Director when the applicant provides satisfactory evidence that:
      - (a) A public road, building or other long-term barrier exists between the stream and the proposed development activity; or,
      - (b) The stream or riparian management zone does not intrude on the applicant's property, and based on evidence submitted, the proposal will not result in significant adverse impacts to nearby streams regulated under this Chapter; or ,
      - (c) Applicable data and analysis appropriate to the project proposed exists and an additional study is not necessary.
    - ii. Supplemental Stream Study or Stream Mitigation Plan: May only be waived by the Director when applicable data and analysis appropriate to the project proposed exists and an additional report is not necessary.
  - e. Period of Validity for Stream Studies: Studies submitted and reviewed are valid for up to five (5) years from date of study completion as approved by the City, unless the Director determines that conditions have changed significantly and a new or amended study is required.
3. Stream Buffer Measurement. Streams shall be classified according to the stream type system as provided in WAC 222-16-031, Interim water typing system. Stream buffer areas are defined by these classifications, as shown in Table B of this section. Buffers shall be measured from the ordinary high water mark (OHWM) or from the top of the bank when the OHWM cannot be identified. The buffer width shall be increased to include streamside wetlands, which provide overflow storage for stormwater, feed water back to the stream during low flows, or provide shelter and food for fish. In braided channels, the OHWM or top of bank shall be defined so as to include the entire stream feature.

<b>Table B, Water Type Standard Buffer Widths</b>			
<b>Water Types</b>	<b>Attributes</b>	<b>Minimum Building Setback</b>	<b>Buffer Width Standard</b>
F	Fish habitat waters	15 feet beyond buffer	150 feet
Np	Year-round, non-fish habitat	15 feet beyond buffer	50 feet
Ns	Seasonal, non-fish habitat	15 feet beyond buffer	35 feet

4. Buffer Conditions. Where existing buffer area plantings provide minimal vegetative cover and cannot meet the City's water quality standards or provide habitat functions (per the requirements of the Departments of Ecology and Fish and Wildlife), buffer enhancement shall be required. An increase in buffer width onsite or restoration of existing buffer required under this section shall be directed to modifications reasonably necessary to mitigate impacts created by the proposed development and roughly proportional to the scope and scale of the impacts created by the proposed development. Where buffer enhancement is required, a plan shall be prepared that includes plant densities that are in conformance with the recommendations in the CAO Guidebook. Monitoring and maintenance of plants shall be required in accordance with 15.40.120(H), Mitigation and Monitoring Plans. Existing buffer vegetation is considered "inadequate" and will require enhancement through additional native plantings and removal of nonnative plants when:
  - a. Nonnative or invasive plant species provide the dominant cover;
  - b. Vegetation is lacking due to disturbance and marine, stream, or habitat resources could be adversely affected; or,
  - c. Enhancement plantings in the buffer could significantly improve buffer functions.
  
5. Buffer Averaging. Buffer widths may be modified by averaging, as long as the total area contained within the buffer after averaging is no less than the required buffer prior to averaging, and as set forth below. A buffer enhancement plan shall be required for any request for buffer averaging. The enhancement plan shall be similar to a mitigation plan, and include provisions for mitigation monitoring and contingency plans. Buffer width averaging shall be allowed only where the applicant demonstrates, through a report prepared by a qualified biologist or habitat specialist with five years experience, that:
  - a. Buffer averaging is necessary to avoid a hardship caused by circumstances related to the property;
  - b. The habitat contains variations in sensitivity due to existing physical characteristics, or the buffer varies in characteristics and it would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;

- c. Lower intensity land uses would be located adjacent to areas where the buffer width is reduced;
  - d. The widest portion of the buffer shall be the area where the habitat is most sensitive;
  - e. Buffer width averaging will not adversely impact fish and wildlife habitat conservation areas; and,
  - f. The buffer width may be reduced by 35 percent of the standard buffer, but not less than 35 feet unless provided for by a habitat management plan.
6. Buffer Reduction. Buffers and associated building setbacks may be reduced where the applicant demonstrates through an approved HMP, relying on best available science and prepared by a qualified specialist with five years experience, that through buffer enhancement the smaller buffer would provide equal or better protection than the larger buffer. Enhancement techniques can include, but are not limited to:
- a. Planting of native trees or shrubs, increasing the diversity of plant cover types, replacing exotic species with native species, or reestablishing fish areas adjacent to a marine shoreline or stream where one currently does not exist will result in improved function of the fish habitat;
  - b. Fish barrier removal to restore accessibility to resident or anadromous fish;
  - c. Fish habitat enhancement using log structures incorporated as part of a fish habitat enhancement plan;
  - d. Stream and/or retention/detention pond improvements:
    - i. Removal or modification of existing stream culverts (such as at road crossings) to improve fish passage and flow capabilities, or
    - ii. Upgrade of retention/detention facilities or other drainage facilities beyond required levels to provide a more naturalized habitat.
  - e. Removal of existing bulkheads to improve fish spawning and habitat areas;
  - f. Daylighting a stream that was previously culverted or piped, or daylighting box culverts or trestles.

**E. STANDARD MITIGATION REQUIREMENTS AND CRITERIA:**

1. The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas. Unless otherwise provided herein, if alteration to the critical area is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a development proposal or alteration shall be mitigated using the best available science in accordance with an approved habitat management plan and SEPA documents, so as to result in no net loss of critical area functions and values.
2. Mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.

3. Mitigation shall not be implemented until after the City's approval of an HMP that includes a mitigation plan and mitigation shall be in accordance with the provisions of the approved HMP.
4. Mitigation Sequencing: Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following sequential order of preference:
  - 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, such as project redesign, relocation, or timing, to avoid or reduce impacts;
  - c. Rectifying the impact to 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;
  - d. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
  - e. Compensating for the impact to habitat conservation areas by replacing, enhancing, or providing substitute resources or environments;
  - f. Monitoring the hazard or other required mitigation and taking remedial action when necessary; and,
  - g. Mitigation for individual actions may include a combination of the above measures.
5. Mitigation Plan: Mitigation Plans required under this section shall be prepared in conformance to the guidelines in Chapter 15.40.120(H).
6. Innovative Mitigation:
  - a. The City may encourage, facilitate, and approve innovative mitigation projects that are based on the best available science. Advance mitigation or mitigation banking are examples of alternative mitigation projects allowed under the provisions of this section wherein a group of one or more applicants or an organization with demonstrated capability may undertake a mitigation project together if it is demonstrated that all of the following circumstances exist:
    - i. Creation or enhancement of a larger system of critical areas and open space is preferable to the preservation of many individual habitat areas;
    - ii. The group or organization demonstrates the organizational and fiscal capability to act cooperatively;
    - iii. The group or organization demonstrates that long-term management of the habitat area will be provided; and,
    - iv. There is a clear potential for success of the proposed mitigation at the identified mitigation site.

## APPENDIX D

### RESOURCES

This Shoreline Master Program (SMP) relies substantially on existing information that has been developed since the year 2000. Information has been collected from a variety of sources including City plans and studies, Skagit River watershed plans and studies from DOE and local planning groups, private plans, and aerial photographs. Following is a list of the primary sources used in this inventory and characterization, and a brief description of the information provided.

- **River Basin Analysis of the Skagit and Samish Basins: Tools for Salmon Habitat Restoration and Protection**

This February 2000 study was undertaken by the Skagit Watershed Council to meet two major objectives: 1) identify where and to what extent the landscape processes that form and sustain salmon habitat are degraded in the Skagit and Samish River basins; and 2) identify specific actions to restore and protect salmon habitat in these basins, focusing on efforts to address the causes of habitat degradation. It contains information regarding the system of levees and ecosystem functions provided by the river and associated floodplains.

- **Skagit River Shoreline Inventory & Restoration Plan**

The Skagit River Shoreline Inventory & Restoration Plan, June 2003, by Graham Bunting & Associates, was part of the overall program to rehabilitate Skagit River basin habitats and increase fish production. It provides a detailed analysis of environmental conditions of the Skagit River shoreline, including shorelines within Mount Vernon's jurisdiction, particularly as those conditions may affect or relate to fish population recovery. The inventory divides the shoreline into six geographic "survey units" and rates each unit based on variables relating to physical features, biological features, and land use/man-made features.

- **Edgewater Park Restoration Project – Phase I**

Edgewater Park is located in West Mount Vernon across the Skagit River from Downtown Mount Vernon. A restoration project was completed in 2005 at the south end of the Park that restored an historic off-channel habitat and associated riparian vegetation.

- **Skagit River Big Bend Reach Habitat Restoration Feasibility Study**

The primary goal of this December 2004 study was to identify opportunities for improving the quality and quantity of rearing habitat available to juvenile salmon at various opportunity sites located between the Skagit River and the levees in the Big Bend Reach. The study was intended to help implement the Skagit Watershed Council's (SWC) Restoration and Protection Strategy by following the guiding principles outlined in the SWC's Strategic Approach. The study identifies several sites within Mount Vernon that may be suitable for restoration actions.

- **Biological Assessment of the Nookachamps Wetland Mitigation Bank Preserve**  
Fairbanks Environmental Services, Inc. July 2004; as Amended March 2005 and June 2006.
- **Assessment of Waters/Wetland Ecosystem Conditions & Functions**  
City of Mount Vernon, January 2007. Dr. L. C. Lee, Ph.D., PWS.
- **Lower Skagit Tributaries Riparian Vegetation Change: Analysis Results**  
Washington Department of Ecology, Publication #07-03-050, November 2007 (Revised April 2008).
- **Skagit Chinook Recovery Plan – 2005**  
Skagit River System Cooperative and Washington Department of Fish and Wildlife.
- **Draft EIS: Mount Vernon Downtown Flood Protection Alternatives**  
The Draft EIS (January 2007) was prepared to compare alternatives for permanent flood risk reduction as part of the City’s Downtown and Waterfront Revitalization Master Plan. Included are discussions of land use and identification of opportunities for increasing public access to the Skagit River shoreline.
- **Final EIS: Mount Vernon Downtown Flood Protection Alternatives**  
The Final EIS (July 2007) included the preferred alternative, responses to Draft EIS comments, and proposed mitigation for potential impacts from the flood risk reduction project.
- **Mount Vernon Downtown Flood Protection Biological Assessment**  
This biological assessment was conducted under Section 7 of the Endangered Species Act (ESA), which requires federal agencies to ensure that their actions, including providing funding, do not jeopardize listed species or their habitat. The December 2007 assessment provides descriptions of the Skagit River reach immediately adjacent to Downtown Mount Vernon.
- **Master Plan: Downtown and Waterfront Master Plan Project**  
This Master Plan, completed in July 2008, is the third of three phases that commenced in 2005. It follows the preparation of an EIS (noted above) and focuses on redevelopment and flood risk reduction opportunities for the City’s downtown and waterfront area. It outlines future actions, provides targets and actions for redevelopment, and contains discussions regarding land use and downtown characterization.

- **City of Mount Vernon 2005 Comprehensive Plan (as amended)**

The City of Mount Vernon Comprehensive Plan, 2005, is the comprehensive plan for the city and contains policies and recommendations to direct public and private decisions affecting future growth and development. The purpose of a comprehensive plan is to translate community values and goals into a framework for decisions on growth and land use, housing, transportation, utilities, public facilities and services, and parks and open space. It expresses a long-range, twenty-year vision of how citizens want Mount Vernon to look and function in the future. It also provides a strategy for achieving that vision. Mount Vernon's Comprehensive Plan is revisited annually.

- **City of Mount Vernon Parks, Recreation & Open Space Plan**

The Parks, Recreation & Open Space Plan, adopted in 2008, is based on analysis of supply, demand, and need for public and private park and recreation facilities and services within the Mount Vernon corporate limits and urban growth area. It includes goals and objectives, plan and program elements, and implementation measures. The Plan is Chapter 4 of the City of Mount Vernon Comprehensive Plan.

- **Aerial Photographs**

City has multiple sets of high resolution aerial photographs containing oblique and orthographic images of most of Skagit County, including the main stem of the Skagit River, taken April of 2007, April of 2009, and August of 2009.

There has been little change in the conditions of the Skagit shoreline or in the level of development and land use mix in adjacent upland areas during the time these sources of information were being developed. This has been confirmed by a comparative review of the aerial photographs and discussions with staff and consultants familiar with the city's development. As a result, the assumption in this SMP is that these information sources remain valid for shoreline planning purposes.

In addition to the above-referenced sources, specific to the Skagit River and Mount Vernon, the Shoreline Master Program is based on the guidelines within Chapter 173-26 Washington Administrative Code.