ORDINANCE NO. 1983-21

AN ORDINANCE OF THE CITY OF SEDRO-WOOLLEY, WASHINGTON, ADOPTING AMENDMENTS TO THE SHORELINE MASTER PROGRAM**.**

WHEREAS, the Washington State Shoreline Management Act (SMA) requires that local jurisdictions develop master plans that constitute use regulations for shorelines of statewide significance, and

WHEREAS, in accordance with the SMA, the City adopted major amendments to the city Shoreline Master Program (SMP) through Ordinance 1847-16 in 2016, and

WHEREAS, the City of Sedro-Woolley is required to update its Shoreline Master Program pursuant to the SMA in 2021; and

WHEREAS, the Growth Management Act (GMA) mandates that the City maintain a Comprehensive Plan including goals directed at management of the City shorelines; and

WHEREAS, the Planning Commission, acting as the Shorelines Citizens Advisory Committee, held one public visioning meeting on January 19, 2021 and two public hearings (February 16 and March 16, 2021) and has reviewed and recommended that the City Council approve updated SMP documents; and

WHEREAS, the requirements for public participation in the development of this amendment as required by the GMA, SMA and SWMC have all been met; and

WHEREAS, pursuant to RCW 36.70A.106, a notice of intent to adopt amendments to the city development regulations was sent to the Washington State Department of Commerce on March 11, 2021; and

WHEREAS, in compliance with the terms, conditions and procedures of the State Environmental Policy Act (SEPA) and Chapter 2.88 SWMC, an environmental assessment of the proposed amendments to the SMP was performed and a determination of non-significance (DNS) was issued March 31, 2021 and no appeals were filed prior to the close of the appeal period on April 14, 2021; and

WHEREAS, City Council concludes that the amendments to the SMP will result in no net loss in shoreline ecological function relative to the baseline due to its implementation and will ultimately produce a net improvement in shoreline ecological function; and

WHEREAS, the Sedro-Woolley City Council concludes that the amendments to the SMP are consistent with and meets the Guidelines established under WAC 173.26, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and the Department of Ecology; and

WHEREAS, the Sedro-Woolley City Council's adoption of the amendments to the SMP will be determined to be final by the Department of Ecology following the Department of Ecology's required review and appeal period; and

WHEREAS, the Sedro-Woolley City Council concludes that the amendments to the SMP are consistent with and meets the Guidelines established under WAC 173.26, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and the Department of Ecology; and

WHEREAS, the Sedro-Woolley City Council concludes that the SMP is consistent with and implements the SMA (RCW 90.28) and the Growth Management Act (RCW 36.70A); and

WHEREAS, the City Council has concluded that it is in the best interest of the public health, safety and welfare to adopt this ordinance; and

WHEREAS, the City Council adopts the forgoing as its findings of fact justifying its adoption of this Ordinance; now, therefore,

THE CITY COUNCIL OF THE CITY OF SEDRO-WOOLLEY, WASHINGTON, DO HEREBY ORDAIN AS FOLLOWS:

Section 1. Exhibit 1 attached hereto and incorporated herein in its entirety by this reference is hereby adopted as the City of Sedro-Woolley Shoreline Master Program and shall be codified under Chapter 17.96 of the Sedro-Woolley Municipal Code. SWMC 17.96.010 is amended to read as follows:

> The city of Sedro-Woolley shoreline master program is set forth in Exhibit 1 attached to ~~Ordinance No. 1847-16~~ Ordinance No. 1983-21. A copy of the Sedro-Woolley shoreline master program (and any amendments thereto) is available at the office of the Sedro-Woolley planning department.

Section 2. Upon adoption of this ordinance, staff is directed to submit the SMP amendments for final Department of Ecology approval as outlined in WAC 173-26-110.

Section 3. This ordinance shall be in force and take effect five (5) days after its publication according to law.

Section 4. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

By: _____
JULIA JOHNSON, Mayor

Attest: _____
DOUG MERRIMAN, Finance Director

Approved as to form:

_____
NIKKI THOMPSON, City Attorney

Published: June 2, 2021

Exhibit 1
To Ordinance
No.1983-21

City of Sedro-Woolley
Shoreline Management Program Update

Shoreline Management Program

~~SEPTEMBER 2013~~FEBRUARY 2021

City of Sedro-Woolley
Department of Ecology Grant No. 1921-CiSedr-00052~~G1100233~~

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Chapter 1 – Introduction

Washington's Shoreline Management Act (SMA) was passed by the State Legislature in 1971 and adopted by the public in a referendum. The SMA was created in response to a growing concern among residents of the state that serious and permanent damage was being done to shorelines by unplanned and uncoordinated development. The goal of the SMA was "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." While protecting shoreline resources by regulating development, the SMA is also intended to provide for appropriate shoreline use by encouraging land uses that enhance and conserve shoreline functions and values.

The SMA has three broad policies:

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

Under the SMA, the shoreline jurisdiction includes water areas that have been designated as either "shorelines of statewide significance" or "shorelines" and their adjacent shorelands, defined as the upland area within 200 feet of the OHWM and floodways and contiguous floodplain areas landward two hundred feet from such floodways, as well as any associated wetlands (RCW 90.58.030). The Skagit River is regulated under the SMA and the City's Shoreline Master Program (SMP). The Skagit River is also designated as "shoreline of statewide significance" under the SMA.

The primary responsibility for administering the SMA is assigned to local governments through the mechanism of local shoreline master programs, adopted under guidelines established by Ecology. The guidelines (WAC 173-26) establish goals and policies that provide a framework for development standards and use regulations in the shoreline. The SMP is based on state guidelines but tailored to the specific conditions and needs of individual communities. The SMP is also meant to be a comprehensive vision of how the shoreline area will be managed over time.

The SMP provides both policies and regulations to govern development and other activities in the City's shorelines. The 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

(SMZ – synonymous with shoreline jurisdiction). Appendices to the SMP include an inventory of existing shoreline conditions; analysis and characterization of the shorelines of the City; a shorelines restoration planning report; and shoreline critical area regulations. The restoration plan and critical area regulations are considered part of the officially adopted SMP.

In 2003, the state legislature established funding, timelines, and guidelines requiring all cities and counties to update their SMP. The City of Sedro-Woolley has developed a comprehensive SMP update with the assistance of a grant administered by the Washington State Department of Ecology. The document has been prepared consistent with the SMA and its implementing guidelines. The City's SMP provides goals, policies, development regulations, and permitting procedures for "shorelines of the state" in the city of Sedro-Woolley. RCW 36.70A.480 governs the relationship between shoreline master programs and development regulations to protect critical areas that are adopted under Chapter 36.70A RCW.

Consistent with state guidelines (WAC 173-26-201, Comprehensive Process to Prepare or Amend Shoreline Master Programs) a first step in the comprehensive Master Program update process is development of a shoreline inventory and characterization. The inventory and characterization documents current shoreline conditions and provides a basis for updating the City's Master Program goals, policies, and regulations. The characterization identifies existing conditions, evaluates existing functions and values of shoreline resources, and explores opportunities for conservation and restoration of ecological functions.

State guidelines also require that local governments develop Master Program policies that promote "restoration" of damaged shoreline ecological functions and develop a "real and meaningful" strategy to implement restoration objectives. Planning for shoreline restoration includes identifying opportunities (both programmatic and site-specific), establishing goals and policies, working cooperatively with other regional entities, and supporting restoration through other regulatory and non-regulatory programs.

This document has been reviewed to ensure that property rights shall not be infringed upon (as demonstrated by the use of such techniques as administrative reductions and variances) and meets the principals of the SMA (WAC173.26-186(5)).

During the development of the SMP update the City worked with a Citizen's Advisory Committee for several months. Special thanks go out to Committee members Pat Huggins, Rick Judd, Jim Johnson, Stephanie Lokkebo, Jennifer Aylor, Eric Johnson, and Joe Franett.

Chapter 2 – Definitions

"**Accessory structure**" means a structure, either attached or detached, from a principal or main building and located on the same lot and which is customarily incidental and subordinate to the principal building or use.

"**Act**" or "**SMA**" means the Washington State Shoreline Management Act, Chapter 90.58 RCW.

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

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

"**Agricultural equipment**" and "**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 agricultural activities are conducted as of the date of adoption of a local master program pursuant to these guidelines as evidenced by aerial photography or other documentation. After the

effective date of the master program, land converted to agricultural use is subject to compliance with the requirements of the master program.

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

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

"**Associated wetlands**" means those wetlands which are in proximity to and either influence or are influenced by a lake or stream subject to the Shoreline Management Act.

"**Best available science**" refers to information gathered, analyzed and presented based on professional experience, expertise, and judgment, and established scientific principles and practices. Such principles and practices include peer review, use of scientific methodology, logical analysis and reasonable inference, statistical analysis, rigorous referencing within the scientific literature, and conclusions drawn from within an accepted scientific framework and placed in an appropriate scientific context.

"**Best management practices (BMPs)**" refer to physical, structural, and/or managerial practices, that when used singly or in combination, prevent or reduce water pollution. Source control BMPs include those which keep the pollutant from ever coming in contact with stormwater, and stormwater treatment BMPs include those which consist of various methods of treating stormwater. See also Chapters 13.36 and 13.40 SWMC (Stormwater Management).

"**Bioengineering**" means project designs or construction methods which use live woody vegetation or a combination of live woody vegetation and specially developed natural or synthetic materials to establish a complex root grid within the existing bank which is resistant to erosion, provides bank stability, and maintains a healthy riparian environment with habitat features important to fish life. Use of wood structures or limited use of clean angular rock may be allowable to provide stability for establishment of the vegetation.

"**Channel migration zone (CMZ)**" means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings.
"**Channelization**" means the straightening, deepening, or widening of a stream channel for the purpose of increasing the stream's carrying capacity.

"**City**" means the city of Sedro-Woolley.

“**Community pier**” or “**community dock**" means a pier or dock including a gangway and/or float which is intended for use in common by lot owners or residents of a subdivision or residential planned development district.

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 Sedro-Woolley.

"**Critical areas**" as defined under chapter 36.70A RCW includes the following areas and ecosystems:

(a) Wetlands;

(b) Areas with a critical recharging effect on aquifers used for potable waters;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

"**Development**" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the act at any stage of water level.

"**Development regulations**" means the controls placed on development or land uses by a county or 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.

“**Director**” means the city of Sedro-Woolley Planning Director or his/her designee.

“**Dock**” means a structure that abuts the shoreline and floats upon the water and is used as a landing or moorage place for recreational purposes.

"**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.

"**Ecology**" means the Washington State Department of Ecology.

"**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.

"**Exempt**" developments are those set forth in WAC 173-27-040 and RCW 90.58.030 (3)(e), 90.58.140(9), 90.58.147,90.58.355 , and 90.58.515 which are not required to obtain a substantial development permit but which must otherwise comply with applicable provisions of the act and the local 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 preservation 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 reviewing agency may weigh the action's relative public costs and public benefits, considered in the 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, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

“**Flood hazard reduction**” activities include actions taken to reduce flood damage or hazards. Flood hazard reduction measures may consist of nonstructural or indirect measures, such as setbacks, land use controls, wetland restoration, dike removal, use relocation, bioengineering measures, and storm water management programs; and of structural measures, such as dikes, levees, and floodwalls intended to contain flow within the channel, channel realignment, and elevation of structures consistent with the National Flood Insurance Program.

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

"**Floodway**" means the area, as identified in this Master Program, that has been established in the most current federal emergency management agency flood insurance rate maps (FIRM) or floodway maps.

"**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, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

"**Grading**" 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.

“**Hazardous substances**” means those wastes designated by WAC 173-340-200, and regulated as hazardous substances by the Department of Ecology.

"**Hearings board**" means the shorelines hearings board established by Chapter 90.58 RCW.

"**Height**" means a measurement 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 master program specifically requires that such appurtenances be included: provided further, that temporary construction equipment is excluded in this calculation.

"**In-stream structural uses**" means a structure placed by humans within a stream or river waterward of the ordinary high-water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. Instream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.

"**Master Program**," "**shoreline master program"** or "**SMP**" means the City of Sedro-Woolley's Shoreline Master Program.

"**May**" means the action is acceptable, provided it conforms to the provisions of this chapter.

"**Mineral resource lands**" means lands primarily devoted to the extraction of minerals or that have known or potential long-term commercial significance for the extraction of minerals.

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

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

"**Nonconforming use and development**" means a shoreline use or development which was lawfully constructed or established prior to the effective date of the SMA or the applicable master program or amendments thereto, but which do not confirm to present regulations or standards of the program.

"**Ordinary high water mark**" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining freshwater shall be the line of mean high water.

"**Permit**" means a Substantial Development Permit, shoreline conditional use permit, or shoreline variance issued in compliance with the SMA and the Sedro-Woolley Shoreline Master Program.

“**Pier**” means a structure that abuts the shoreline and is built over the water on pilings and is used as a landing or moorage place for recreational purposes.

“**Primary association**” means the use of a habitat area by a species for breeding, nesting, rearing young, roosting, feeding, or foraging on a regular basis.

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

- Comparatively high fish or wildlife density;
- Comparatively high fish or wildlife species diversity;
- Fish spawning habitat;
- Important wildlife habitat;
- Important fish or wildlife seasonal range;
- Important fish or wildlife movement corridor;
- Rearing and foraging habitat;
- Important marine mammal haul-out;
- Refugia habitat;
- Limited availability;
- High vulnerability to habitat alteration;
- Unique or dependent species; or
- Shellfish bed.

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

"**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 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 either proposed, threatened, or endangered.

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

"**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 facilities**" mean and include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreation facilities, and schools.

"**Qualified expert**" means a person having substantially demonstrated experience as a practicing specialist with a minimum of five years experience working full time in the profession and who has a degree in a related field from an accredited college or university or who has equivalent training.

"**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, revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

"**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**" and "**shoreline jurisdiction**" is synonymous with "**Shorelines Management Zone**" (SMZ) as defined in this master program.

"**Shorelines of the state**" are the total of all "shorelines" and "shorelines of statewide significance" within the state.

"**Shorelines of statewide significance**" in Sedro-Woolley 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)).

"**Shoreline Management Zone (SMZ)**" as used in this document, is meant to define the area of the City's shoreline jurisdiction as allowed by RCW 90.58.030. The SMZ extends a minimum of 200 feet upland from the line of the ordinary high water mark (OHWM) of the Skagit River and floodways and contiguous floodplain areas landward two hundred feet from such floodways. The floodplain and floodway are defined by the current effective US Army Corps of Engineers Flood Insurance Rate Maps (FIRM). The SMZ includes associated wetlands, but not wetland buffers. The SMZ extends waterward of the OHWM to mid-channel of the Skagit River.

"**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.

"**Should**" means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the SMA, against taking the action.

"**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.

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

"**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.

"**Substantially degrade**" means to cause significant ecological impact.

"**Substantial development**" shall mean any development of which the total cost or fair market value exceeds ~~six~~ seven thousand ~~four hundred~~ and ~~sixteen~~ forty-seven dollars (or the value as amended or adjusted for inflation per RCW 90.58.030 (3) (e)), or any development which materially interferes with the normal public use of the water or

shorelines of the state. As further defined in Chapter 6, Section B, the following shall not be considered substantial developments for the purpose of this chapter:

(a) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;

(b) Construction of the normal protective bulkhead common to single-family residences;

(c) Emergency construction necessary to protect property from damage by the elements;

(d) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing 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. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(e) Construction or modification of navigational aids such as channel markers and anchor buoys;

(f) Construction on shorelands by an owner, lessee, or contract purchaser of a single-family residence for his own use or for the use of his or her 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 this chapter;

(g) 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 and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities, or other appurtenances. This exception applies in freshwaters, if the fair market value of the dock does not exceed twenty-two~~ten~~ thousand, five hundred dollars ($22,500) for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced or eleven thousand two hundred dollars ($11,200) for all other docks constructed in fresh waters.~~, but if~~However, if subsequent construction ~~having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction~~occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified above , the subsequent construction shall be considered a substantial development for the purpose of this chapter;

(h) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater for the irrigation of lands;

(i) 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;

(j) 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;

(k) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(i) The activity does not interfere with the normal public use of the surface waters;

(ii) 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;

(iii) The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(iv) 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

(v) The activity is not subject to the permit requirements of RCW 90.58.550;

(l) The process of removing or controlling an aquatic noxious weed, 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 jointly with other state agencies under chapter 43.21C RCW.

"**Unavoidable impacts**" refer to affecting critical areas where site conditions preclude avoidance because of density requirements, critical areas that bisect parcels such as streams or linear wetlands, or parcels that contain many small wetlands.

"**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 recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the

general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

"**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, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in this Master Program, the term "water quantity" refers only to development and uses regulated under this Master Program and affecting water quantity, such as impermeable surfaces and storm water handling practices. **Water quantity**, for purposes of this chapter, does not mean the withdrawal of ground water 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.

“**Wetland**” or “**wetlands**” means 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 nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July l, 1990, that were unintentionally created as a result of the construction of a road, street or highway. However, wetlands may include these artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands, if permitted by the City.

Chapter 3 – Shoreline Management Goals

A. INTRODUCTION

The Shoreline Management Act recognizes that the shorelines and the waters they encompass are valuable for economically productive industrial and commercial uses, recreation, navigation, residential amenity, scientific research and education. The SMA also recognizes that they are fragile in that they depend upon balanced physical, biological, and chemical systems that may be adversely altered by natural forces (earthquakes, volcanic eruptions, landslides, storms, droughts, floods) and human conduct. Sedro-Woolley's Shoreline Goals are intended to acknowledge and balance the conflicting nature of the shoreline use.

The SMA identifies eight program elements that must be addressed (if applicable) to effectuate the policies of the Act: Economic Development, Public Access, Recreational, Shoreline Land Use, Conservation, Circulation, Historic / Cultural / Scientific / Educational and Flood Hazard Management (RCW90.58.100(2)). For each of those program elements, the City of Sedro-Woolley has identified shoreline goals. These goals establish the basis from which the environmental designations, policies, regulations, and administrative procedures of the Shoreline Master Program are developed. The goal statements are listed below under their corresponding shoreline elements and have been reviewed for consistency with the Goals of the Comprehensive~~ssive~~ Plan.

B. SPECIFIC SHORELINE GOALS

1. Economic Development Element

Per RCW 90.58.100(2)(a) master programs shall include "an economic development element for the location and design of industries, projects of statewide significance, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state." The city owns the majority of the land within the SMZ. The Sedro-Woolley SMZ does not contain any commercial or industrial development. However, there are a few residential parcels at the edge of the SMZ and a couple industrially zoned parcels that are adjacent to wetlands in the flood plain that may be jurisdictional.

Shoreline Economic Development Goals:

SED1: Promote tourism through park-oriented recreational opportunities in those shoreline areas that can reasonably tolerate such uses during peak use periods without destroying the integrity and character of the shoreline.

SED2: Increase economic opportunities in Sedro-Woolley by encouraging compatible recreational opportunities within the SMZ as a means to support local businesses.

SED3: Support the continued use of industrial properties for such purposes.

2. Public Access Element

Per RCW 90.58.100(2)(b) master programs shall include “a public access element making provision for public access to publicly owned areas.” The majority of the Sedro-Woolley SMZ is publicly owned. Public access is a major part of the shoreline plan.

Shoreline Public Access Goals:

SPA1: Increase and enhance public access to publicly-owned shoreline areas so the public may enjoy the amenities of the shoreline, consistent with the natural shoreline character, private rights, and public safety.
SPA2: Integrate public access to shorelines as a part of a public recreational system throughout Sedro-Woolley and Skagit County.
SPA3: Maintain the existing water access such as the boat launch and develop additional pedestrian-only river access.

3. Recreation Element

Per RCW 90.58.100(2)(c) master programs shall include “a recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas.”

Shoreline Recreation Goals:

SR1: Encourage diverse, water-oriented recreational opportunities in those shoreline areas that can reasonably tolerate such uses during peak use periods without destroying the integrity and character of the shoreline.
SR2: Maintain and improve Riverfront Park and adjacent recreational lands as a regional recreational destination.
SR3: Create public access to the Skagit River through the park and trail system that will not endanger life or property, nor impair the rights of owners of private property in the SMZ.

4. Circulation Element

Per RCW 90.58.100(2)(d) master programs shall include “a circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element.”

Shoreline Circulation Goals:

SC1: Encourage routes for non-motorized transportation to and throughout the city-owned shoreline resources.
SC2: Maintain safe, reasonable, and adequate vehicular, bicycle, and pedestrian circulation systems to shoreline.
SC3: Maintain the existing circulation system through the SMZ while ensuring that routes accessing the SMZ will have the least possible adverse effect on unique or fragile shoreline features and existing ecological systems, and, when possible, contribute to the functional and visual enhancement of the shoreline.

5. Shoreline Land Use Element

Per RCW 90.58.100(2)(e) master programs shall include “a use element which considers the proposed general distribution and general location and extent of the use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land.”

Shoreline Land Use Goals:

SLU1: Promote land and water uses that will honor the existing and ongoing human uses and protect the natural environment as intended by the Shoreline Management Act.
SLU2: Promote land and water uses consistent with the SMA, the Sedro-Woolley Comprehensive Plan, and Sedro-Woolley Zoning Code.

6. Conservation Element

Per RCW 90.58.100(2)(f) master programs shall include “a conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection.”

Shoreline Conservation Goals:

SCO1: Comply with SMA rules regarding restoration of areas which are biologically and aesthetically degraded to the greatest extent feasible while maintaining appropriate use of the shoreline.
SCO2: Protect and preserve the unique and nonrenewable resources and amenities of the shoreline for the use and enjoyment of present and future generations.

7. Historic/Cultural/Scientific/Educational Element

Per RCW 90.58.100(2)(g) master programs shall include "a~~n~~ historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values."

Shoreline Historical/Cultural/Scientific/Educational Goals:

SH1: Identify, protect, preserve, and restore important archaeological, historical, and cultural sites located in the city's SMZ for their educational and scientific value, as well as for the recreational enjoyment of the general public.
SH2: Encourage organized educational projects and programs that use the city-owned shoreline resources.

8. Flood Hazard Management Element

Per RCW 90.58.100(2)(h) master programs shall include "an element that gives consideration to the statewide interest in the prevention and minimization of flood damages."

Flood Hazard Management Goals:

FHM1: Comply with and complement the city's Flood Damage Prevention regulations found in Chapter 17.66 SWMC.
FHM2: To safely accommodate compatible uses in the flood plain and flood way while protecting integrity and character of the shoreline.

Chapter 4 – Shoreline Environment Designations

I. General

Under the SMA, all shorelines of the state meeting the criteria established are categorized into a shoreline environment designation. These designations are used to plan and manage shoreline resources through the development of the SMP. This system applies appropriate policies and regulations to distinctively different shoreline areas.

The purpose of shoreline environment designations is to differentiate between areas whose geographical, hydrological, topographical, or other features imply differing objectives for the use and future development of the city's shorelines.

The assignment of each geographical area into an environmental category is based on, and is reflective of, the existing use pattern; the biological and physical character of the shoreline; the goals and aspirations of the local citizenry; and the criteria in the SMA guidelines (WAC 173-26-211).

Each environment designation represents a particular emphasis in the type of uses and development that should be allowed. The environment designation system is designed to encourage uses in each environment that enhance or are compatible with the character of the environment, while at the same time requiring reasonable standards and restrictions on development so that the character of the environment is not adversely impacted.

Each environment designation category includes: (1) a purpose statement which clarifies the meaning and intent of the designation; (2) criteria to be used as a basis for classifying a specific shoreline area with that environment designation; and (3) general management policies designed to guide management decisions and development consistent with the character of the environment.

The state recommends six basic environmental designations in WAC 173-26-211(5). Those designations are "high-intensity," "shoreline residential," "urban conservancy," "rural conservancy," "natural," and "aquatic."

There is only one reach of shoreline in the Sedro-Woolley SMZ. That reach is used almost entirely for park purposes and is shown in Figure 1- SMZ. Therefore the most appropriate designation for the terrestrial lands in this reach is urban conservancy. The regulatory jurisdiction, referred to herein as 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 floodways and contiguous floodplain areas landward two hundred feet from such floodways. The floodplain and floodway are defined by the

US Army Corps of Engineers 1989 Flood Insurance Rate Maps (Firm). The SMZ includes associated wetlands within the flood plain, but not wetland buffers. Wetland buffers in the floodplain will be regulated under the city's critical areas ordinance and not the SMP. The City of Sedro-Woolley's SMZ extends beyond the ordinary high water mark to the approximately to the middle of the Skagit River. The submerged land waterward of the ordinary water mark shall be assigned the aquatic environment designation. WAC 173-26-211(5)(e) defines the urban conservancy environment designation. WAC 173-26-211(5)(c) defines the aquatic designation. Both of those designations are detailed below.

II. "Urban Conservancy" environment

A. Purpose. The purpose of the "urban conservancy" environment is to protect and restore ecological functions of open space, flood plain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses such as urban parks.

B. Management policies.

(1) Uses that preserve the natural character of the area or promote preservation of open space, flood plain or sensitive lands either directly or over the long term should be the primary allowed uses. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.

(2) Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the "urban conservancy" designation. These standards shall ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.

(3) Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.

(4) Water-oriented uses should be given priority over nonwater-oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses should be given highest priority.

C. Designation criteria. Assign an "urban conservancy" environment designation to shoreline areas appropriate and planned for development that is compatible with maintaining or restoring of the ecological functions of the area, that are not generally suitable for water-dependent uses and that lie in incorporated municipalities, urban growth areas, or commercial or industrial "limited areas of more intensive rural development" if any of the following characteristics apply:

(1) They are suitable for water-related or water-enjoyment uses;

(2) They are open space, flood plain or other sensitive areas that should not be more intensively developed;

(3) They have potential for ecological restoration;

(4) They retain important ecological functions, even though partially developed; or

(5) They have the potential for development that is compatible with ecological restoration.

Lands that may otherwise qualify for designation as urban conservancy and which are designated as "mineral resource lands" pursuant to RCW 36.70A.170 and WAC 365-190-070 may be assigned a designation within the "urban conservancy" environment that allows mining and associated uses in addition to other uses consistent with the urban conservancy environment.

D. Designated Area. The entirety of the Sedro-Woolley SMZ landward of the ordinary high water mark.

III. “Aquatic” Environment

A. Purpose. The purpose of the "aquatic" environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark.

B. Management policies.

(1) New over-water structures allowed only for water-dependent uses, public access, or ecological restoration.

(2) The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.

(3) In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of over-water facilities should be encouraged.

(4) All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.

(5) Uses that adversely impact the ecological functions of critical freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and then only when their impacts are mitigated according to the sequence described in WAC 173-26-201 (2)(e) as necessary to assure no net loss of ecological

functions.

(6) Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

(7) Shoreline space should be reserved primarily for shoreline preferred uses. Such planning should consider upland and in-water uses, water quality, navigation, presence of aquatic vegetation, existing shellfish protection districts and critical habitats, aesthetics, public access and views.

C. Designation criteria. Assign an "aquatic" environment designation to lands waterward of the ordinary high-water mark.

D. Designated Area. The stretch of the Skagit River adjacent to the City of Sedro-Woolley, waterward of the ordinary high water mark extending half-way across the width of the river.

IV. Shoreline Environment Designation Maps

The City of Sedro-Woolley Shoreline Environment Designations Map (Map 4.1) indicates the location of both the Urban Conservancy and the Aquatic Environments under the jurisdiction of this SMP. The official copy of this map shall be kept by the Planning Department. This official copy shall be available for public inspection at all times during normal business hours. Unofficial copies shall be included as part of all distributed copies of this SMP.
Per WAC 173-27-211(2)(e), all areas within SMZ that are not mapped and/or designated are automatically assigned a "urban conservancy" designation if within a municipality or urban growth area, or the comparable environment designation of the applicable master program until the shoreline can be re-designated through a master program amendment.

V. Consistency with Comprehensive Plan

RCW 90.58.340 requires that policies for lands adjacent to the shorelines be consistent with the SMA, implementing rules, and the city's SMP. Conversely, local comprehensive plans constitute the underlying framework within which master program provisions should fit. The Growth Management Act, where applicable, designates shoreline master program policies as an element of the comprehensive plan and requires that all elements be internally consistent. The GMA also requires development regulations to be consistent with the comprehensive plan.
The Shoreline Guidelines identify three criteria for use in evaluating the consistency between master program environment designation provisions and the corresponding comprehensive plan elements and development regulations. In order for shoreline designation provisions, local comprehensive plan land use designations, and

development regulations to be internally consistent, all three of the conditions below should be met:

A. Provisions not precluding one another.

Comprehensive plan provisions and shoreline environment designation provisions should not preclude one another. To meet this criterion, the provisions of both the comprehensive plan and the master program must be able to be met. Further, when considered together and applied to any one piece of property, the master program use policies and regulations and the local zoning or other use regulations should not conflict in a manner that all viable uses of the property are precluded.

B. Use compatibility.

Land use policies and regulations should protect preferred shoreline uses from being impacted by incompatible uses. The intent is to prevent water oriented uses, especially water dependent uses, from being restricted on shoreline areas because of impacts to nearby non-water-oriented uses. To be consistent, master programs, comprehensive plans, and development regulations should prevent new uses that are not compatible with preferred uses from locating where they may restrict preferred uses or development.

C. Sufficient infrastructure.

Infrastructure and services provided in the comprehensive plan should be sufficient to support allowed shoreline uses. Shoreline uses should not be allowed where the comprehensive plan does not provide sufficient roads, utilities, and other services to support them. Infrastructure plans must also be mutually consistent with shoreline designations. Where they do exist, utility services routed through shoreline areas shall not be a sole justification for more intense development.

VI. Preferred Uses

The SMA establishes policy that preference be given to uses that are unique to or dependent upon a shoreline location. Consistent with this policy, these guidelines use the terms "water-dependent," "water-related," and "water-enjoyment," (see WAC 173-26-020), when discussing appropriate uses for various shoreline areas.

Shoreline areas, being a limited ecological and economic resource, are the setting for competing uses and ecological protection and restoration activities. Consistent with RCW 90.58.020 and WAC 173-26-171 through 173-26-186, local governments shall, when determining allowable uses and resolving use conflicts on shorelines within their jurisdiction, apply the following preferences and priorities in the order listed below:

A. Reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health. In reserving areas, local governments should consider areas that are ecologically intact from the uplands through the aquatic zone of the area, aquatic areas that adjoin permanently protected uplands, and tidelands in public ownership. Local governments should ensure that these areas are reserved consistent with constitutional limits.

B. Reserve shoreline areas for water-dependent and associated water-related uses. Harbor areas, established pursuant to Article XV of the state Constitution, and other areas that have reasonable commercial navigational accessibility and necessary support facilities such as transportation and utilities should be reserved for water-dependent and water-related uses that are associated with commercial navigation unless the local governments can demonstrate that adequate shoreline is reserved for future water-dependent and water-related uses and unless protection of the existing natural resource values of such areas preclude such uses. Local governments may prepare master program provisions to allow mixed-use developments that include and support water-dependent uses and address specific conditions that affect water-dependent uses.

C. Reserve shoreline areas for other water-related and water-enjoyment uses that are compatible with ecological protection and restoration objectives.

D. Locate single-family residential uses where they are appropriate and can be developed without significant impact to ecological functions or displacement of water-dependent uses.

E. Limit nonwater-oriented uses to those locations where the above described uses are inappropriate or where nonwater-oriented uses demonstrably contribute to the objectives of the Shoreline Management Act.

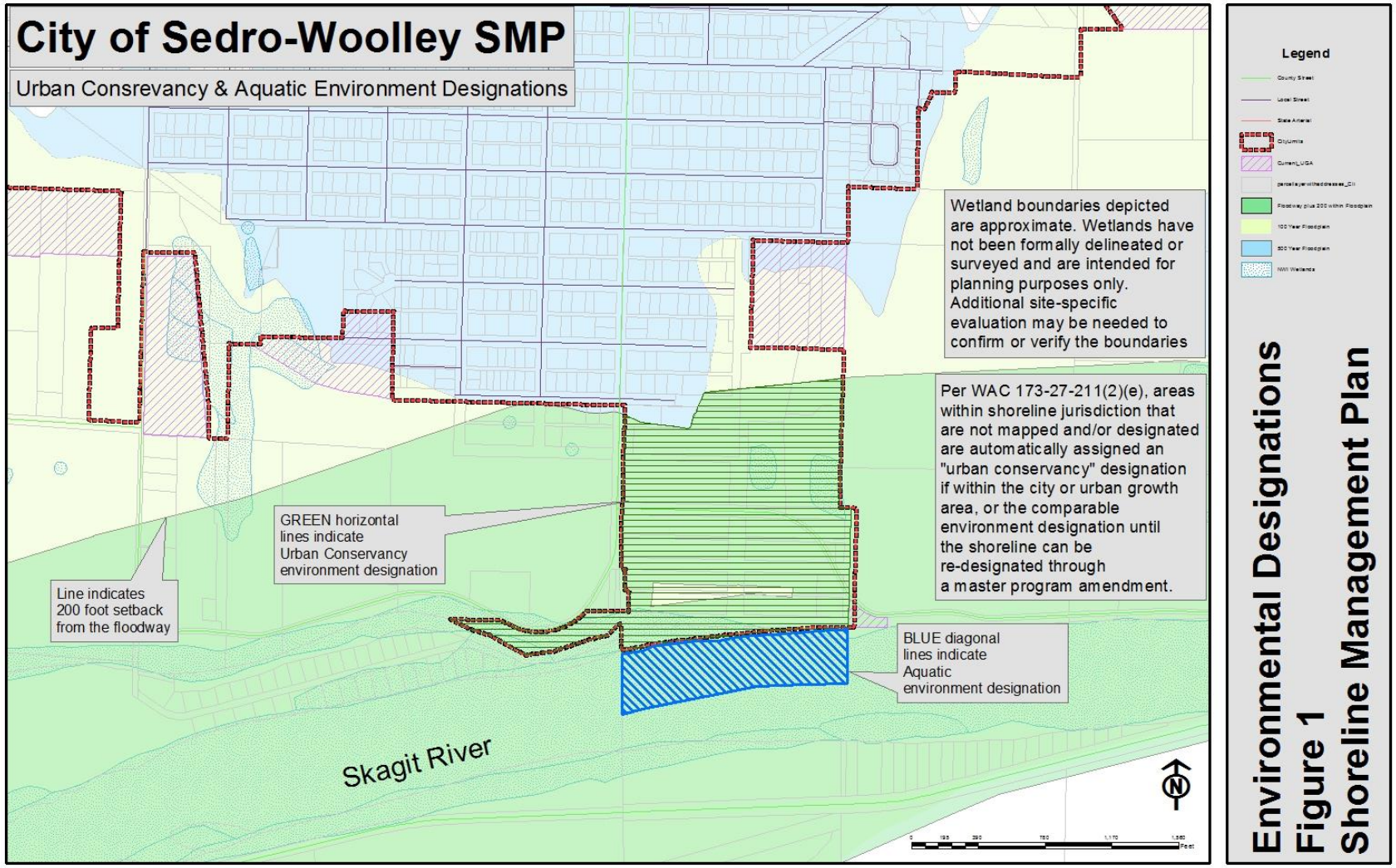
Evaluation pursuant to the above criteria, local economic and land use conditions, and policies and regulations that assure protection of shoreline resources, may result in determination that other uses are considered as necessary or appropriate and may be accommodated provided that the preferred uses are reasonably provided for in the jurisdiction (WAC 173-26-201(2)(d).

VII. Shoreline Use Preferences and Shorelines of Statewide Significance

In addition to the preferences above, RCW 90.58.020 and WAC 173-26-181 also require that in developing master programs for shorelines of statewide significance, the local jurisdiction give preferences to uses in the following order:

A. Recognize and protect the statewide interest over local interest;
B. Preserve the natural character of the shoreline;
C. Result in long term over short term benefit;
D. Protect the resources and ecology of the shoreline;
E. Increase public access to publicly owned areas of the shorelines;
F. Increase recreational opportunities for the public in the shoreline;
G. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary. (WAC 173-26-251(2))

Shoreline ecological resources are linked to other environments, thus implementation of ecological objectives requires effective management of whole ecosystems. The SMA requires adherence to the concept of “optimum implementation;” an imperative to identify, understand, and manage ecosystem-wide processes and ecological functions that sustain resources of statewide importance. Sedro-Woolley SMP provides for optimum implementation of the statewide interest as set forth in the policy of RCW 90.58.020 and the applicable guidelines.


City of Sedro-Woolley SMP
Urban Consrevancy & Aquatic Environment Designations
Wetland boundaries depicted are approximate. Wetlands have not been formally delineated or surveyed and are intended for planning purposes only. Additional site-specific evaluation may be needed to confirm or verify the boundaries
Per WAC 173-27-211(2)(e), areas within shoreline jurisdiction that are not mapped and/or designated are automatically assigned an "urban conservancy" designation if within the city or urban growth area, or the comparable environment designation until the shoreline can be re-designated through a master program amendment.
GREEN horizontal lines indicate Urban Conservancy environment designation
Line indicates 200 foot setback from the floodway
BLUE diagonal lines indicate Aquatic environment designation
Skagit River
Legend
County Street
Local Street
State Arterial
CityLimits
Current_UGA
parcellayerwithaddresses_CU
Floodway plus 200 within Floodplain
100 Year Floodplain
500 Year Floodplain
NWI Wetlands
Environmental Designations
Figure 1
Shoreline Management Plan

Chapter 5 – Policies and Regulations

5.1 – General Policies and Regulations

A. Policies and Regulations Applicable to all Shorelines

1. Applicability

a. The goals listed in Section III of this Master Program provide broad guidance and direction and have been used by the City in developing the following SMP policies.

b. The goals and policies, taken together, constitute the Shoreline Element of the Sedro-Woolley Comprehensive Plan.

c. It is through the regulations that the SMP policies are implemented. The regulations describe the standards required for all shoreline uses and modifications in the City's two environmental designations and are part of the Municipal Code.

2. Policies

a. The Director of the Planning Department (Director) 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. Upland vegetation;

ii. Conservation of aquatic vegetation (control of noxious weeds and enhancement of vegetation that supports more desirable ecological and recreational conditions);

iii. Water quality;

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 Planning 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 SMZ, 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 Planning 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 VI of SMP) 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 Sedro-Woolley 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. All shoreline permits shall contain provisions that require developers to immediately stop work and notify the Planning 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.
b. Archaeological sites located in the Sedro-Woolley 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.
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 SMZ, [Note: The City is not opting for the expansion of the SMZ, as provided for in RCW 90.58.030(2)(d)(ii)].
b. Fish and wildlife habitat conservation areas are regulated by SWMC 17.65.500-530, "Article V. Fish and Wildlife Habitat Conservation Areas," which has been incorporated into Appendix C – "Shoreline Critical Areas Regulations."
c. The main stem of the Skagit River, which is designated an Aquatic Environment in 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
a. In implementing this Master Program, the Planning 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.
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.
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 Planning 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 17.66 SWMC, Flood Damage Prevention and the provisions of this SMP.
b. All project proposals that involve alteration of wetlands within the SMZ must comply with the wetland regulations in Appendix C of the SMP.

c. All project proposals that may alter fish and wildlife conservation areas shall comply with Fish and Wildlife Habitat Conservation Areas regulations in Appendix C 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 SWMC;
ii. The Floodplain Management Prevention, Chapter 17.66 SWMC;
iii. The development standards of the underlying zoning district;
iv. The City stormwater management plan and implementing regulations; 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 and public agencies.
d. In designing publicly financed or subsidized works, give consideration to providing public pedestrian access to the shoreline, particularly in the City-owned park properties.

3. Regulations
a. 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.
b. New structural flood hazard reduction measures shall be allowed only where demonstrated to be necessary, and when non-structural methods are infeasible and mitigation is accomplished.
c. New structural flood hazard reduction measures shall be allowed only landward of associated wetlands and buffer areas except where no alternative exists as documented in a geotechnical analysis per WAC 173-26-221(3)(c)(ii) & (iii).
d. 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.
e. Existing hydrological connections to the floodplain and associated wetlands shall be maintained where feasible.
f. New publicly funded dikes or levees are required to dedicate and improve public access per WAC-173-26-221(3)(c)(iv).
g. Removal of gravel from the Skagit River for purposes of flood risk reduction is not allowed unless a biological and geomorphological study demonstrates a long-term benefit to flood hazard reduction, no net loss of ecological functions, and extraction is part of a comprehensive flood management solution.

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 owns most of the river’s edge property in the SMZ. Public access to the shoreline is of high priority when and where access can be safely accommodated. The stretch of Skagit River through the SMZ is fast moving, cold and varies in bank height and volume. The bank is typically steep in the SMZ. These factors make recreation on the shores of or in the waters of the river perilous at times, thus direct access to the river should be carefully managed.

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; or
ii. 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 or placing users in harms-way 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. 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 based on nexus and proportionality 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 Planning 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. If access were provided, unavoidable health or safety hazards to the public would exist that cannot be prevented by any practical means;
iv. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;

v. The cost, as determined by the Planning Department, of providing the access, easement, or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development;
vi. Significant ecological impacts would result from the public access that cannot be mitigated;
vii. Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated; or
viii. 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.
c. In order to meet any of the conditions 'i' through 'viii' above, the applicant must first demonstrate, and the Planning 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. Building heights shall be limited to protect view corridors where applicable and shall be consistent with bulk restrictions of the underlying zoning designation; 35 feet is the standard maximum height in all zoning designations.
h. Public access shall be required for all shoreline development by public entities, including the City, 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.

F. 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.

2. Policies

a. Vegetation within the City shoreline areas 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 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 SMZ 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 SMZ 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 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, city park-uses, 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 when such enhancement will impede views of the river from city parks or will impede the recreational uses of city parks.
ii. The restoration of ecological processes and functions can be better achieved through other measures.
iii. Sufficient native vegetation already exists.
e. Selective pruning and removal of trees for purposes of safety and protection of public views of the river is allowed, provided such pruning is the minimum necessary.
f. 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.
g. 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.
h. 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.

G. Water Quality

1. Applicability

The following section applies to all development and uses in areas of SMZ 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. 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.

5.2 – Shoreline Use and Modification Tables

A. Permitted Use and Modification Table

Shoreline Use	**Shoreline Environment Designations**	
	Aquatic	**Urban Conservancy**
Agriculture	N/A	Permitted
Aquaculture	Not Permitted	Not Permitted
Boating Facilities	Permitted	Permitted
Commercial Development	Permitted	Permitted
Forest Practices	N/A	Not Permitted
Industry	Not Permitted	Not Permitted
In-Stream Structural Uses	Permitted	N/A
Mining	Not Permitted	Not Permitted
Recreational Development	Permitted	Permitted
Residential Development	Not Permitted	Permitted
Transportation and Parking	Permitted	Permitted
Utilities	Permitted	Permitted

B. Shoreline Modification Table

Shoreline Modifications	Shoreline Environment Designations	
	Aquatic	**Urban Conservancy**
Piers and Docks	Permitted	Permitted
Shoreline Stabilization	Conditional	Permitted
Fill	Conditional	Conditional
Breakwaters, Jetties and Weirs	Conditional	Not Applicable
Dredging	Conditional	Not Applicable
Dredge Material Disposal	Not Permitted	Conditional
Enhancement Projects	Permitted	Permitted

5.3 – Specific Shoreline Use Policies and Regulations

A. Introduction

Shoreline use activities are developments or activities that exist or are anticipated to occupy shoreline locations. Regulations are developed on the premise that all appropriate shoreline uses require some degree of control to minimize adverse effects to the shoreline environment and adjoining properties. Each proposed development within the Shoreline Management Act's jurisdiction will be evaluated to determine its conformance with the use activity policies and regulations, as well as the Shoreline Management Element goals and policies, the SMA, and the SMP.
Even uses and activities that are exempt from the requirements for a shoreline substantial development permit must be consistent with the policies and regulations of the SMP, the SMA, and its provisions.

B. Prohibited Uses

The following uses are prohibited in all shoreline environments unless addressed separately in this shoreline master program under another use.

1. Aquaculture. There are no aquaculture activities in the SMZ. Per zoning regulations on the lands within the SMZ, aquaculture is not a permitted use, therefore aquaculture is not allowed in the SMZ;
2. Mining. There are no mining activities or mining lands in the SMZ, therefore mining is not allowed in the SMZ;
3. Forest Practices. There are no forestry lands in the SMZ, therefore forest practices are not allowed in the SMZ; and
4. Industrial development. There is no industrially zoned property in the SMZ, therefore there are no industrial activities allowed in the SMZ.

C. 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.

c. new agricultural uses shall be located and designed to assure no net loss of ecological functions and not have a significant adverse impact on other shoreline resources and values.
d. Conversion of agricultural land to non-agricultural uses is consistent with the environment designation, and regulations applicable to the proposed use do not result in a net loss of ecological functions.

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 wetlands. The City’s critical areas regulations (Appendix C) will be used to 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.
i. 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 do not result in a net loss of ecological functions associated with the shoreline per WAC 173-26-241(3)(a)(iv).

D. Boating Facilities

1. Applicability
a. Existing boat launches and future piers, docks and boat launches.
b. For the purposes of this section, the term “boating facilities” excludes docks serving four or fewer single-family residences. Shoreline master programs shall contain provisions to assure no net loss of ecological functions as a result of development of boating facilities while providing the boating public recreational opportunities on waters of the state.

2. Policies
a. Boating facilities should be located only at sites with suitable environmental conditions, shoreline configuration, access, and neighboring uses.
b. Boating facilities should meet health, safety, and welfare requirements.
c. Boating facilities 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 boating facility 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.
f. Public access is required for new boating facilities.

3. Regulations
a. Proposals for boating facilities 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. Regulations specific to piers and docks are found in Section 5.4(D) of this chapter.
d. Boating facilities may not be used for extended moorage and/or live aboard vessels.
e. Boating facilities shall not significantly interfere with use of navigable waters.

f. Boating facilities shall be allowed only for water-dependent uses or public access.
g. Boating facilities 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 building codes.
h. All boating facilities shall be maintained in a safe and sound condition so as to not constitute a hazard to the public.
i. Pilings employed shall be installed so that the top elevation is at least one foot above extreme high water.
j. When potentially toxic or hazardous materials are used in boating facilities construction, precautions shall be taken to ensure their containment.
k. Signs on boating facilities shall be limited to water craft navigation information and directional and/or public safety information.
l. Lighting shall be the minimum necessary to locate the boating facilities at night. Lights shall be directed to prevent light spillage onto water surfaces.
m. No boating facilities shall be designed or constructed without consulting with all local flood risk reduction authorities.
m. Permit applications for boating facilities 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.
n. No boating facilities 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)
o. All boating facilities must comply with the Clean Water Act and the Endangered Species Act.

E. 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. Because current access to the Skagit River within Sedro-Woolley is publicly owned, commercial activities on the water may include public-private partnerships between the public entity and private commercial entity.
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.
e. Temporary activities such as events, fairs and shows (and activities associated with such events) are not considered commercial development for the purposes of this section.

2. Policies
a. New commercial development, either private of public/private partnerships, on shorelines should be reviewed and permitted by the City of Sedro-Woolley.
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. Preference should be given first to water-dependent uses, then to water-oriented commercial uses.

3. Regulations
a. The Planning 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; and
vii. Pedestrian and vehicular circulation, public access, site furniture and other features, such as pavement, landscaping, view corridors.
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;
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 Planning 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 Planning Department for ecological restoration and public access opportunities where practical and feasible. When restoration and/or public access plans indicate opportunities exist, the Planning 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.

F. 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

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.

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.

G. 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. Recreational developments and plans should promote the primacy of preserving the natural character, resources, and ecological functions and processes of shoreline environments.
c. A variety of compatible recreational experiences and activities should be encouraged to satisfy diverse recreational needs.
d. Water-dependent recreational uses (such as fishing and boating) and water-enjoyment uses (such as viewing and picnicking) should have priority over non-water-oriented recreational uses, such as baseball or soccer.
e. 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.
f. Recreational facilities should be integrated with public access systems.
g. Due to steep banks and swift currents in the stretch of the Skagit River in Sedro-Woolley, in-water recreation such as swimming and wading should be discouraged.

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 maintaining 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 practical 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 (WAC 173-26-241(3)(i)).

H. 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..

2. Policies
a. Recognizing the single-purpose, irreversible, and space-consumptive 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 uses are allowed where identified as permitted uses in the underlying zoning district. Community and/or public access shall be provided for new multi-family residential development and for subdivision of land for more than four parcels 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.

I. Transportation Facilities

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.

J. 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 Planning 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.

5.4 Shoreline Modification Provisions

A. Introduction

1. Shoreline modifications are actions that modify the physical configuration or qualities of the shoreline area. They are typically construction activities such as building a dike or dredging a basin, but they can include other actions such as clearing, grading, or application of chemicals.
2. Shoreline modifications are undertaken in support of or in preparation for shoreline uses. Shoreline uses generally are ongoing and the policies and regulations related to them must deal with functional relationships inherent in the individual uses, and pertain to long term management. Modifications represent a physical alteration of the shoreline so the regulations related to them must deal with more immediate, time-limited physical impacts. Shoreline modifications usually are undertaken in support of or in preparation for a shoreline use; for example, fill (shoreline modification) required for a cargo terminal (industrial use) or dredging (shoreline modification) to allow for a marina (boating facility use). 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 that apply to all shoreline modifications within shoreline jurisdiction including shoreline stabilization measures, piers and docks, fill, breakwaters, jetties and weirs, dredging and dredging material disposal and SMZ.

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 an allowed primary structure or 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 Planning 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 Planning 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 Planning 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 Planning 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

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. New stabilization measures include the enlargement of existing stabilization structures. 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 the minimum size necessary and be designed and constructed primarily as a means to minimize damage to existing development.
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.
d. Structural or “hard” shoreline stabilization techniques and structures should be allowed only after it is demonstrated that non-structural or “soft” shoreline protection measures are not feasible.
e. New development (including newly created parcels) is to be designed and located to prevent the need for future shoreline stabilization, based upon geotechnical analysis.
f. Impacts to sediment transport should be avoided or minimized.

3. Regulations
a. 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.
b. New or enlarged structural shoreline stabilization measures for an existing development shall not be allowed unless there is conclusive evidence, documented by a geotechnical analysis that the structure is in danger from shoreline erosion. The

geotechnical report must include estimates of erosion rates and damage within three years and must evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization. The project design and analysis must also evaluate vegetation enhancement as a means of reducing erosion and promoting bank stability. The report must demonstrate that “soft” shoreline protection measures or bioengineering erosion control designs will not provide adequate upland protection of existing structures or would pose a threat or risk to adjacent property.

c. An existing shoreline stabilization structure shall not be replaced with a similar structure unless there is need to protect primary structures from erosion caused by currents or waves. At the discretion of the City Engineer, the demonstration of need does not necessarily require a geotechnical report by a licensed geotechnical engineer or related licensed professional. The replacement structure shall be designed, located, sized, and constructed to minimize harm to ecological functions. Replacement walls or bulkheads shall not encroach waterward of the OHWM or existing structures unless the residence was occupied prior to January 1, 1992 and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure and be the minimum size necessary. Soft shoreline stabilization that restores ecological functions may be permitted waterward of the OHWM.

d. Provided that regulation #3c above has been met, the replacement of lawfully established, existing bulkheads or revetments shall be allowed, subject to the following priority system:

i. First priority. The first priority for replacement of bulkheads or revetments shall be to install “soft” shoreline protection measures or bioengineering erosion control designs.

ii. Second priority. The second priority for replacement of existing bulkheads or revetments shall be to install “hard” shoreline protection measures only when “soft” measures would not provide adequate upland protection of existing structures or would pose a threat or risk to adjacent property.

iii. Third priority. The third priority for replacement of bulkheads or revetments shall be landward of the existing bulkhead.

iv. Fourth Priority. The fourth priority for replacement of existing bulkheads or revetments shall be to replace in place (at the bulkhead’s existing location).

v. Fifth Priority. The fifth and last priority for replacement of existing bulkheads shall be a one-time replacement no greater than three feet waterward of the existing bulkhead. Under this fifth priority, documentation must be provided that habitat will not be adversely impacted and habitat friendly materials shall be used. The property owner shall also demonstrate that removing the existing structure would either cause irreversible environmental damages, or undermine and damage the residential structure on the property.

e. When evaluating a proposal against the above priority system, at a minimum the following criteria shall be considered:

i. Existing topography;

ii. Existing development;

iii. Location of abutting bulkheads; and

iv. Impact to habitat.

g. Whenever feasible, trees and vegetation shading streams and rivers shall be retained when riprap is placed.
h. No work may commence without the responsible person or agency having obtained either a shoreline permit or statement of exemption from the Planning Department.
i. 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.
j. Bulkheads or revetments shall be designed, constructed and maintained in a manner that does not degrade ecological function including fish habitat, and shall conform to the requirements of the Washington State Department of Fish and Wildlife criteria and guidelines.
k. 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.
l. Bioengineering projects shall use native trees, shrubs, and/or grasses, unless such an approach is infeasible.
m. All bioengineering projects shall include a program for monitoring and maintenance.
n. No structures will be permitted or constructed without consulting with all local flood agencies (i.e. City of Sedro-Woolley, Dike Districts, and Skagit County).

D. Piers and Docks

1. Applicability
a. Piers are built on fixed platforms above the water, while docks float upon the water.
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.

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 Planning 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 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. Lighting shall be the minimum necessary to locate the dock at night. Lights shall be directed to prevent light spillage onto water surfaces.
n. Other than safety railings and safety equipment and lighting, no structures are allowed on over-water portions of piers and docks.
o. No piers or docks shall be designed or constructed without consulting with all local flood risk reduction authorities (City of Sedro-Woolley, Dike Districts, and Skagit County).
p. 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.
q. 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)
r. All piers and docks must comply with the Clean Water Act and the Endangered Species Act.

E. 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 landward of the OHWM should be allowed as part of the construction and reconstruction of public recreational uses in the Urban Conservancy environment.
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 plans approved by the Dike District and the City of Sedro-Woolley SMP.
f. Fills landward of flood risk reduction measures may be permitted.
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 Planning Department, may be permitted.
i. Sanitary fills shall not be located in areas of the SMZ.
j. A shoreline conditional use permit is required for fill in the Urban Conservancy shoreline environment. Fill is not permitted in the Aquatic environment.
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.

F. Breakwaters, Jetties and Weirs

1. Applicability

a. Jetties are structures that are generally perpendicular to shore extending through or past the intertidal zone. They are built singly or in pairs at harbor entrances or river mouths mainly to prevent shoaling or accretion from littoral drift in entrance channels, which may or may not be dredged. Jetties also serve to protect channels from storm waves or cross currents, and stabilize inlets through barrier beaches.
b. Breakwaters are an offshore structure that is generally built parallel to shore that may or may not be connected to land, and may be floating or stationary. Their primary purpose is to protect harbors, moorages and navigation activity from wave and wind action by creating stillwater areas along shore. A secondary purpose is to protect shorelines from wave caused erosion.
c. Groins are a barrier type structure extending from back shore into the water, the purpose of which is to interrupt sediment movement along the shore.

2. Policies

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.

3. Regulations
a. 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.
b. 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).

G. Dredging and Dredge Material Disposal

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. New development siting and design shall avoid the need for new and maintenance dredging; 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.
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 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 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.
k. Disposal of dredge material in the Urban Conservancy requires a shoreline conditional use permit.

H. Shoreline Habitat and Natural Systems Enhancement Projects

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 Plan (Appendix B) identifies ecological enhancement and restoration measures.

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.

Chapter 6 – Administrative Provisions

A. General

1. All proposed uses and development occurring within the SMZ 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 Planning 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 Sedro-Woolley has adopted procedures for administrative interpretation of its development regulations (SWMC 2.90.070 and SWMC 17.04.040). 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 Sedro-Woolley Municipal Code (SWMC). Where there is a conflict between the SWMC 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 $7,047~~6,416~~, 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 Chapter 2, 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 (See Sedro-Woolley Restoration Plan);

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 Sedro-Woolley 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 SWMC 2.90.070, "Permit Classifications."
3. All projects proposed within the SMZ require a pre-application meeting in accordance with the requirements of SWMC 2.90.070.
4. Applications for Shoreline Substantial Development Permits shall be accompanied by the materials listed in SWMC 2.90.100, unless waived by the Planning Department according to the process outlined within SWMC 2.90.050.
5. The "effective date of a Substantial Development Permit" is the date of filing~~receipt~~. The date of filing~~receipt~~ is the date the Department of Ecology receives the City's final decision. The date of filing~~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. Upon the review of materials submitted by an applicant, the Director can, at his or her discretion, require peer review be completed by a consultant chosen by the Director, at the sole expense of the applicant.
7. Notification of the public shall be as required by SWMC 2.90.075, "Public notice requirements."

8. 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. (SWMC 2.90.090)
9. 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.

10. Permit Review Procedures shall be as follows:
    a) The Planning 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.
11. Appeals to the Shorelines Hearings Board, as per SWMC 2.90.090(G), 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 SWMC 2.90.070.

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 Sedro-Woolley
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 SWMC;
    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.

6. To ensure compliance with the applicable criteria stated in the Sedro-Woolley 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 Sedro-Woolley 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.
8. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for 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.
9. Other uses which are not classified or set forth in the Master Program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of WAC 173-27-160 and the requirements for conditional uses contained in the Master Program.

10. After approval of a conditional use permit, the Planning Department shall submit the permit to Ecology for the Ecology's approval, approval with conditions, or denial. Ecology shall render and transmit to the Planning Department and the applicant its final decision approving, approving with conditions, or disapproving the permit within thirty days of the date of submittal by local government pursuant to WAC 173-27-110.
11. The “effective date of variances and conditional use permits” is the date of the Ecology’s decision letter.
12. The Planning Department shall provide notification of the Ecology's final decision to those interested persons having requested notification.

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 physical character or configuration of 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 SWMC 2.90.070.
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 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, and 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 is 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.

v. That the variance requested will be the minimum necessary to afford relief.

vi. 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.

6. After approval of a variance permit, the Planning Department shall submit the permit to Ecology for the Ecology's approval, approval with conditions, or denial. Ecology shall render and transmit to the Planning Department and the applicant its final decision approving, approving with conditions, or disapproving the permit within thirty days of the date of submittal by local government pursuant to WAC 173-27-110.
7. The “effective date of variances and conditional use permits” is the date of the Ecology’s decision letter.
8. The Planning Department shall provide notification of the Ecology's final decision to those interested persons having requested notification.

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 Sedro-Woolley 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 ordinary high water mark 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 any distance 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 development in the SMZ is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within six months of the date the damage occurred, all

permits are obtained and the restoration is completed within two years of permit issuance.

j) 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 Sedro-Woolley 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 SWMC 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, shoreline conditional use permit, or shoreline variance, whether such permit or variance was granted under this SMP, or under the Skagit County SMP utilized prior to adoption of the Sedro-Woolley SMP, the Planning 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 Planning 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) 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.
    d) Additional or revised landscaping is consistent with the conditions attached to the original permit and with the Shoreline Master Program.
    e) The use authorized pursuant to the original permit is not changed.
    f) No adverse environmental impact will be caused by the project revision.
3. If the revision, or the sum of the revision and any previously approved revisions, will violate the criteria specified above, the Planning 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 Planning Department shall submit the proposed revision to the Ecology for review.

The Planning Department shall indicate that the revision is being submitted under the requirements of WAC 173-27-100. Ecology shall respond with its final decision on the proposed revision request within 15 days of the date of ~~receipt~~ filing by the DOE. WAC 173-27-100(6).

G. ENFORCEMENT

1. In the event of failure to comply with the plans approved by the Planning Department 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 Sedro-Woolley Municipal Code and subject to the provisions of Title 18 SWMC, “Code Enforcement.”

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.

City of Sedro-Woolley
Grant No. 1921-CiSedr-00052 ~~G1100233~~

City of Sedro-Woolley
Shoreline Management Program Update

Restoration Plan
Appendix B to SMP
October 2013

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Introduction – Restoration Plan

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.
The City of Sedro-Woolley's frontage along a qualifying water of the state (Skagit River – a water of statewide significance) is relatively small compared to other jurisdictions; there are roughly 1,400 linear feet of Skagit River waterfront adjacent to the southern boundary of Sedro-Woolley. However, due of the extent of the floodway landward from the river, there are about 44.75 acres of shoreline jurisdiction. There is a moderate opportunity for restoration within this area.

Shoreline Inventory and Specific Local Conditions

The Sedro-Woolley jurisdictional shorelands are contained within the 100 year FEMA flood plain. Maps 1.1 and 1.2 indicate the preliminary shoreline jurisdiction as determined in the Sedro-Woolley *Preliminary Assessment of Shoreline Jurisdiction* report. These maps show the entire city for perspective of the Skagit River's influence on the City and the region. Maps 1.1 and 1.2 also show wetlands in the vicinity of Sedro-Woolley. Any wetlands that are adjacent to or within City limits and the 100 year flood plain are also under SMP jurisdiction. The shoreline reach is depicted in Maps 2.1 and 2.2; these maps offer a closer view to aid in the detailed examination of existing or baseline conditions upon which the development of shoreline master program provisions will be examined.

The City of Sedro-Woolley falls within Ecology's Water Resource Inventory Area (WRIA) #3, which is encompasses the lower portion of the Skagit River watershed. There are roughly 1,400 linear feet of Skagit River adjacent to the southern boundary of Sedro-Woolley. Through this section, the river is highly channelized, despite being in the lower floodplain of the river. The current is typically swift moving and the river bank mostly steep, though not armored. Some areas of low-bank exist in the jurisdiction, though those areas are very small. There are no man made dikes on the Skagit River in the Sedro-Woolley area.

<u>Land Use</u>

There are 34 acres of Public Zoning, 5 acres of Open Space and 3.5 acres of Residential 7 zoning in the preliminary shoreline jurisdiction.

The 3.5 acres of Residential zoned land contains no structures. This area does include parking facilities and landscaping for an assisted living facility. However, the facility building itself lies outside the 100 year floodplain, thus outside the shoreline jurisdiction.

The 5 acres of Open Space Zoning contains two little league baseball fields and a pump house that belongs to Skagit Public Utility District #1 (PUD). PUD provides water to the City of Sedro-Woolley and other Skagit County municipalities.

34 acres of shoreline jurisdiction are in the Public Zone. On this land is Riverfront Park a large City park adjacent to the Skagit River, south of River Road. The River typically runs fast through this stretch, so public access to the river is severely restricted. A public boat launch exists at the eastern edge of the park. The boat launch is catalogued by the Washington State Recreation and Conservation Office as the Sedro-Woolley (WDFW) - Skagit River boat launch, having a gravel parking lot and vault-style restroom.

Riverfront Park has children's play areas, roughly 10 acres of open fields, several more acres of treed river bank area, and a RV park. There are five permanent structures in this area of Public zone: a caretaker's residence (manufactured home); two picnic shelters with restroom facilities; one pole building style picnic shelter; and a band shell (amphitheater), which is also an open structure (roof on four poles). With the exception of the amphitheater, all the structures are on a high area in the park that may be above the floodway, but within the floodplain. To the knowledge of longtime City employees, these structures have not flooded. The 100 year floodplain map may be inaccurate, as anecdotal information suggests that the raised area in the park where these four structures are located is actually above 100 year floodplain elevation. Floodplain and floodway data was retrieved from the US Army Corps of Engineers GIS database. The FEMA floodway GIS information also excludes a large "island" in the shape of a city parcel from the floodway. Though it is likely that much of that island is not in the floodway, the shape of that island is likely not to be accurate. FEMA will be consulted to remedy this mapping irregularity and fill in the gap in the existing data. The amphitheater in this island area, but is likely in the floodway. It has been constructed as on open structure so as not to impede flowing water (and to withstand flowing water and accompanying floating debris).

To the west of the main park area is a narrow tract of treed, undeveloped land between River Road and a housing development. In this area there is a channel that is dry for much of the area. Although it is not an approved City park use, this area is frequented by BMX and mountain bike riders.

North of River Road the Public zone contains a dog park and another approximately 10 acres of unused area containing a non-fish bearing, intermittent stream. The vegetation in this area is a mix of field weeds (blackberry, thistle, grasses, etc.), scrub brush and alder trees.

The City's development regulations (zoning (Title 17 SWMC), subdivision (Title 16 SWMC) and building (Title 15 SWMC) codes) apply to land use and development within City limits. Both the development regulations and the City Comprehensive Plan are growth management compliant. Therefore, the goals, policies and regulations of the Washington State Growth Management Act (RCW 36.70A), including the critical areas requirements have been satisfied.

The City provides sewer services to all areas located within the City, collecting and treating wastewater at the Wastewater Treatment Plant located at the edge of the 100 year floodplain but well outside shoreline jurisdiction. The shoreline jurisdiction is not served by the City sewer system, therefore there is no sewer infrastructure in the jurisdiction. The Sedro-Woolley wastewater plant discharges into Skagit River West of the shoreline jurisdiction. Discharge has received primary and secondary treatments before being released to the river. Discharges from the plant are regulated by the Washington Department of Ecology under NPDES permits, which includes performance standards and monitoring requirements. The Sedro-Woolley Wastewater treatment plant has been awarded

the Outstanding Performance Award from Ecology 11 of the past 13 years, including the past 5 years consecutively.

Impervious surfaces have the potential to affect shorelines, hydrology and water quality. The City operates under a Phase II stormwater permit from Ecology and has a compliant stormwater utility. The shoreline jurisdiction is characterized by uses put in place before stormwater regulations were developed. In total there are approximately 6.5 acres of impervious driving surfaces in the shoreline jurisdiction. Roughly 55% of that impervious surface is in gravel parking areas in Riverfront Park, the RV park and the boat launch parking lot. River Road makes up about 30%, and parking areas on the north side of River Road accounts for about 15% of the impervious surface in the area.

Vegetation in the shoreline jurisdiction largely consists of maintained grass fields, of which there are approximately 15.75 acres. Much of this maintained area is regularly used play area and ballfields, but some of it is easily maintained landscaping for the assisted living facility.

An area of tree and brush cover (approximately 10 acres) lies in the northeast portion of the shoreline jurisdiction. Most of the tree cover (approximately 12.5 acres) lies near the river, primarily in the western portion of the park. The understory is comprised largely of salmonberry where there is an understory. Other areas have unmaintained grass or are sparsely vegetated. The BMX riders may have an effect on the vegetation in this area, however it is unknown how hydrology, soils or human alteration has affected the vegetation in the shoreline jurisdiction. No studies of the vegetation in this area, or any other part of the jurisdiction, have been performed. There is room for additional studies of the vegetation in the area.

The Skagit River is a historically dynamic river. Since the removal of the logjams that the river was known for, as well as other human modifications such as the upriver dams, the river has maintained its current river channel in the area adjacent to Sedro-Woolley. There is no armoring on the north bank of the Skagit River where it is adjacent to the City's shoreline jurisdiction. Historic dredging or filling is not known; this is another area where information is lacking. Observations of the shoreline offer no indication of recent human modification of the river bank through this stretch, with one exception. There is a concrete boat launch on the eastern side of Riverfront Park.

The shoreline jurisdiction is almost entirely in public ownership. The only restrictions to public access in the area is signage and fencing in place on some high-bank areas to discourage access for safety reasons. The River runs swiftly past the shoreline jurisdiction, and the cold water temperatures make the river unsafe without watercraft.

There is a public boat launch and handicapped accessible fishing area at Riverfront Park. In addition, there are some low-bank sections that make river access possible for those willing to walk off of paved surfaces using an

impromptu trail system. Because most of the shoreline jurisdiction is in public ownership, additional recreation opportunities may be possible in the future. Floodway restrictions will dictate acceptable uses in the shoreline jurisdiction. Current inventory of uses include:

- Baseball fields
- Off-leash dog park
- Boat launch
- RV campground
- Play equipment
- Amphitheater
- Multiple picnic shelters
- Trails
- Fishing
- BMX and mountain bike course (unofficial feature)
- Basketball court
- Public restrooms
- Open fields (used for car show, carnival, other community gatherings)

Appendix C to the SMP contains critical areas regulations for wetlands, aquifer recharge areas, geologically hazardous areas, fish and wildlife conservation areas and frequently flooded areas within the shoreline jurisdiction. The inventory of critical areas was based on a wide range of information sources, including City GIS, critical area inventories, Washington Department of Fish and Wildlife databases, and other relevant maps and literature obtained from the Washington Department of Natural Resources (DNR), Ecology, National Marine Fisheries Service, and U.S. Fish and Wildlife Service.

The river channel has been static in the in recent history. Channel migration has been analyzed by Skagit County based on Ecology's criteria and has elected to define the Skagit River CMZ very broadly and through the Sedro-Woolley area, the CMZ extends approximately 10,000 feet (1.89 miles) landward from the city's shoreline jurisdiction. This places the extent of the CMZ near the northern border of the city, approximately 11,500 feet (2.17 miles) northward from the river bank. Based on the recent history of the river channel and the lack of steep rivers affecting the city's shoreline jurisdiction, river migration is not anticipated in the near future. However the city is aware of the potential for channel migration.

The floodplain extends northward from the river bank to a steep embankment at the south portion of the city's developed area. This embankment is the approximate edge of the 100 year floodplain. The only development below the bank is parks infrastructure such as ball fields and play equipment; infrastructure that will neither impede floodwaters nor be severely damaged as a result of a flood. There are some impervious surfaces in the floodplain that may affect overland storm and floodwater infiltration. However, the amount of impervious area is a small portion of the overall shoreline jurisdiction within the floodplain and is not likely to have an ill effect on infiltration rates or water quality.

There is anecdotal information that a portion of Riverfront Park was operated as a private solid-waste disposal site prior to the city taking ownership. The highest area in the park is understood to be layer of soil over mounded garbage. That hill is the highest point in the preliminary shoreline jurisdiction. The structures on top of the hill area not known to have ever flood, thus it is assumed that the top of the hill is possibly out of the flood way, potentially out of the 100 year floodplain; this information cannot be determined conclusively from the FEMA FIRM map and floodway maps, as those maps show evidence of inaccurate data. Information about the years of operation and any potential hazards is sparse. Further research is necessary, but the site is known and appropriate measures to avoid interaction with the subsoil taken by the City. The structures on the hill are thought to have been constructed in the mid to late 1970's.

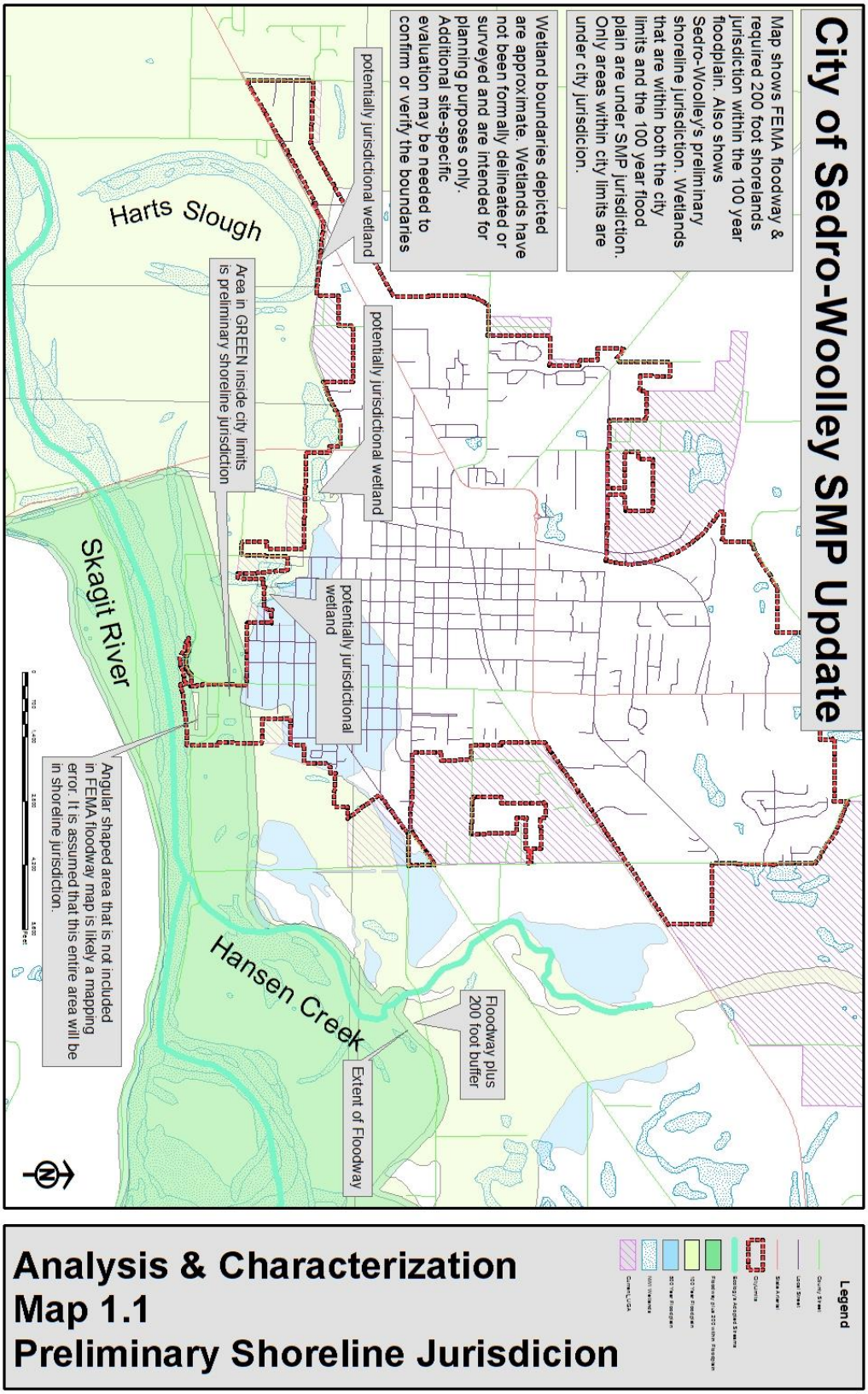
Restoration Opportunities

As noted, the great majority of land within the shoreline jurisdiction is City-owned. This allows the City greater control of restoration projects within the shoreline jurisdiction. 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. Direct City restoration actions are limited to those sites actually owned by the City. Preservation of existing ecological functions on privately-owned lands will be accomplished through the goals, policies and regulations within the SMP.

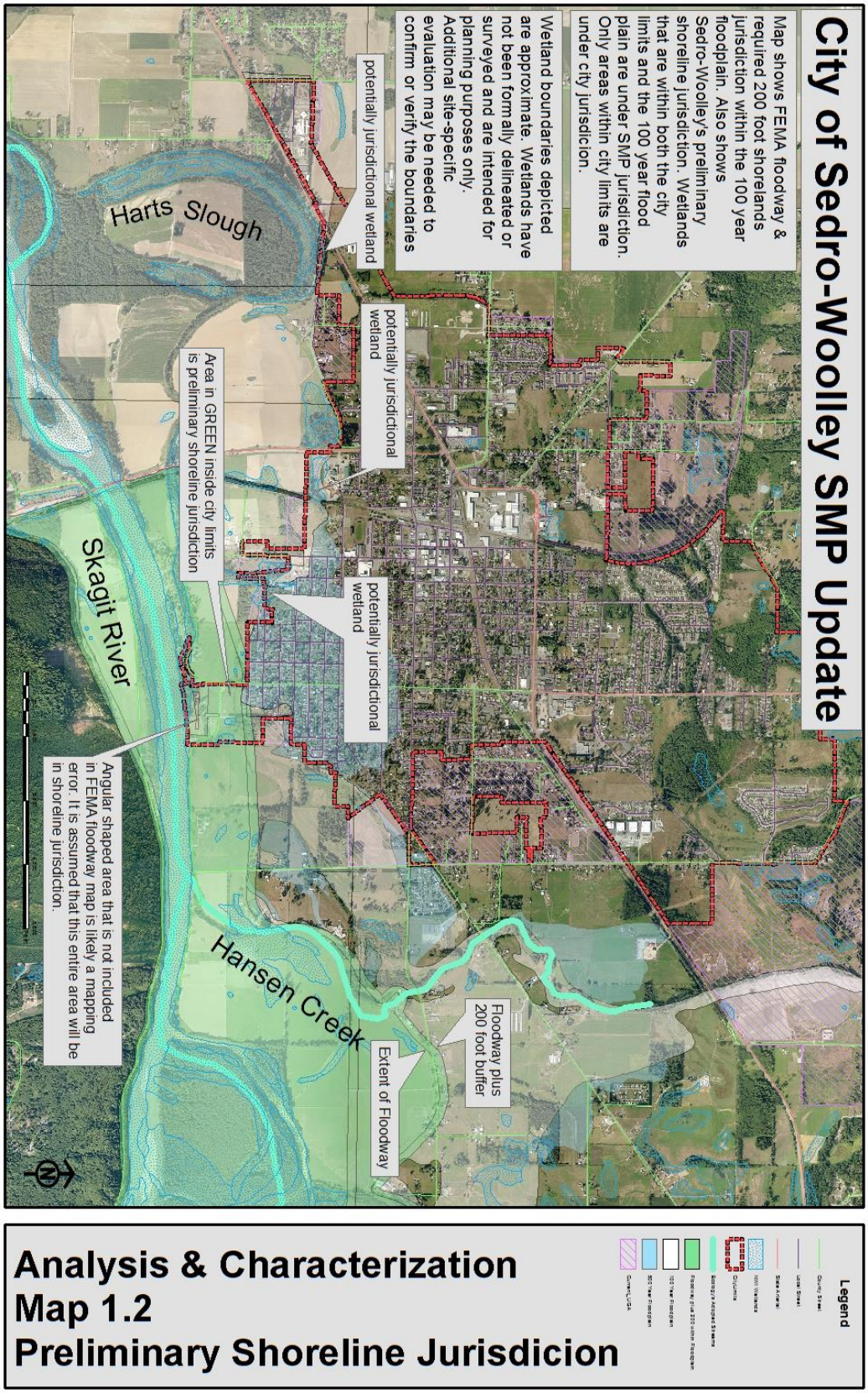
The former solid waste disposal site within Riverfront Park represents a potential restoration opportunity, though permitting and financial constraints may complicate the issue. With the exception of the caretaker's home, the structures built atop the landfill are important to the citizens of Sedro-Woolley. Any mitigation in this area should protect these public assets.

Other plant restoration opportunities exist in the northeast section of the jurisdiction where the vegetation is unmanaged. Invasive weeds have taken foothold in large portions of this area eliminating the opportunity for public access and creating a less desirable species habitat. Public-private partnerships to plan and execute vegetation enhancement projects are encouraged.

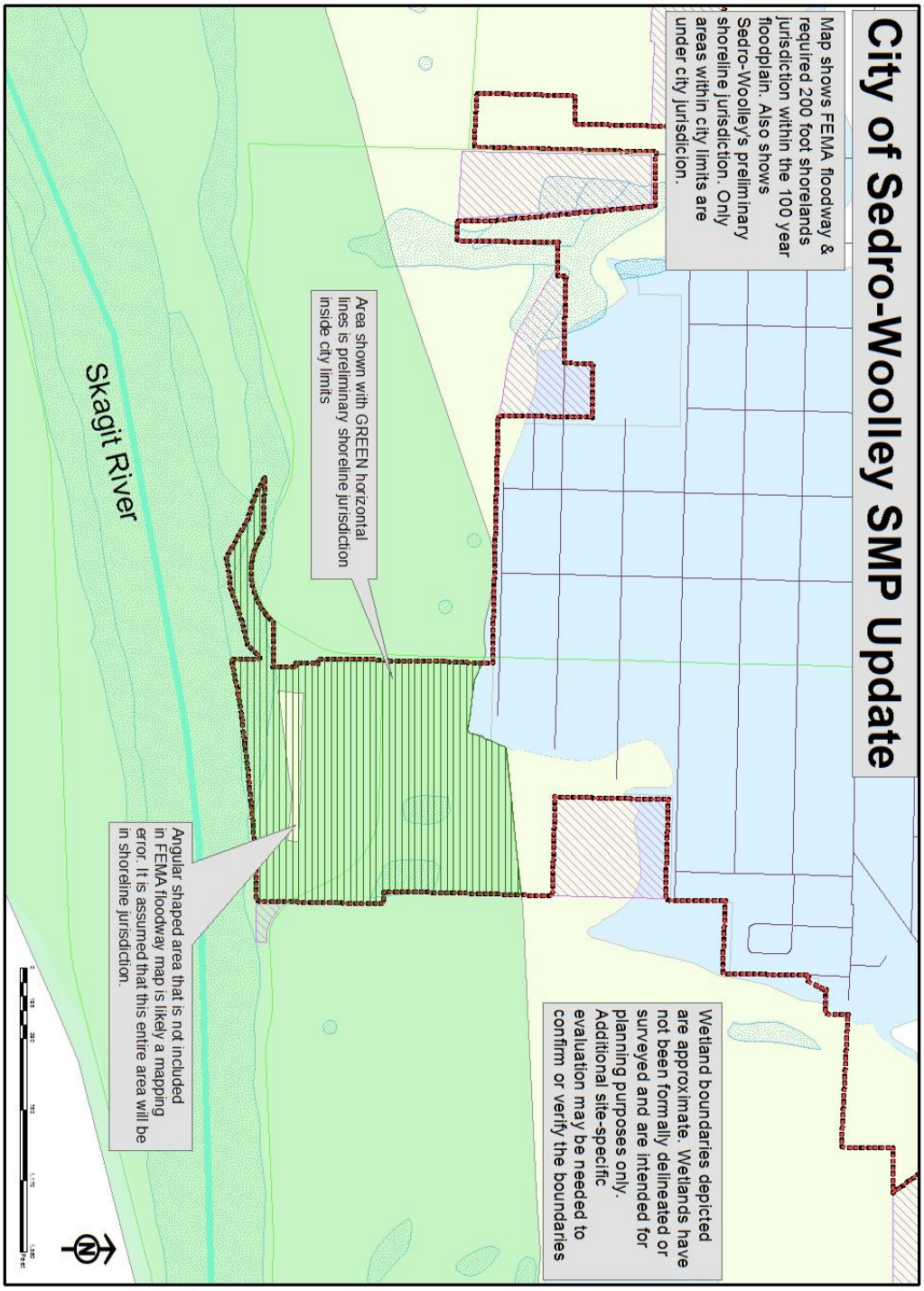
MAPS



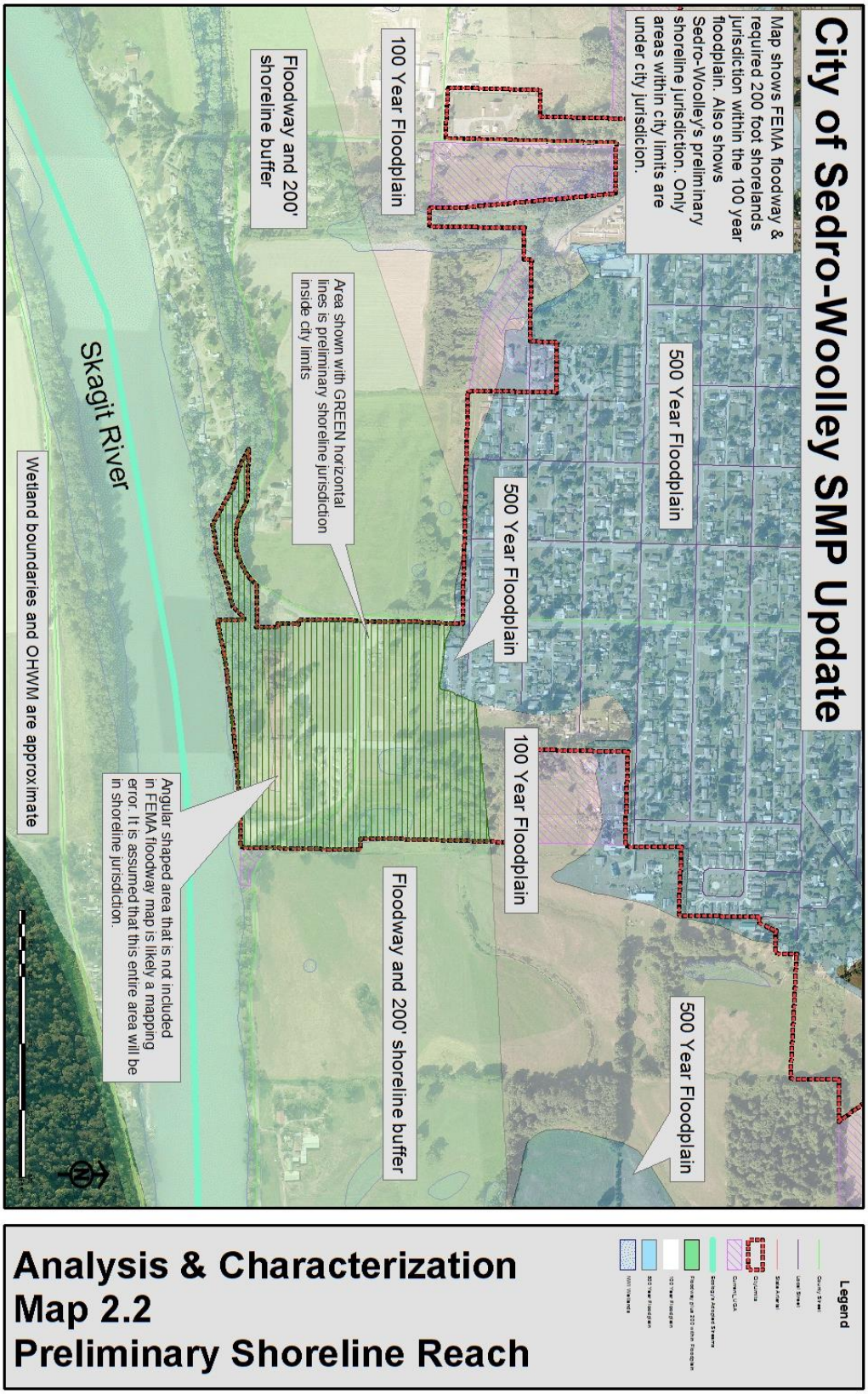
Analysis & Characterization
Map 1.1
Preliminary Shoreline Jurisdicion



Analysis & Characterization
Map 1.2
Preliminary Shoreline Jurisdicion



Analysis & Characterization
Map 2.1
Preliminary Shoreline Reach



Analysis & Characterization
Map 2.2
Preliminary Shoreline Reach

Appendix C to Shoreline Management Program - Shoreline Critical Areas Regulations

Article I. General Provisions

Introduction.

This chapter shall be known as the Shoreline Master Program (SMP) Critical Areas Regulations and it is adopted as part of the SMP to assist in orderly development, conserve the value of property, safeguard the public welfare, and provide protection for defined critical areas within the City of Sedro-Woolley's shoreline jurisdiction.

The ordinance codified in this chapter was developed under the directives of the Shoreline Management Act to conserve, protect, and provide no-net-loss of critical areas ecological functions and values within the shoreline jurisdiction. Critical areas are defined as wetlands, aquifer recharge areas, flood hazard areas, geologically hazardous areas, and fish and wildlife habitat conservation areas. Some of these areas, such as geologic hazards and flood hazard areas are critical because of the hazard they represent to public health. Others, such as fish and wildlife habitats and wetlands are critical because of their public value.

Critical areas will be designated by definition and then classified through site assessments so that they can be identified using scientifically based criteria, protected, or their functions and values mitigated resulting in no-net-loss. The use of site assessments to confirm the actual presence and classification of critical areas is central to the management approach developed under this chapter.

The ordinance codified in this chapter was drafted to provide regulatory structure for identification, designation, protection, and mitigation of critical areas in the shoreline jurisdiction. This chapter allows staff to provide site visits, preliminary reviews, and pre-application meetings to assist in the identification of critical areas in the shoreline jurisdiction.

Critical Area Maps. Maps are useful primarily as an indicator of the distribution and extent of critical areas. Maps will be used wherever possible as part of the screening process for evaluating individual applications. Critical areas maps may be updated as critical areas are delineated through the application process. Although a number of map resources are utilized in this chapter, regulatory measures such as buffer requirements are based upon the identification of critical areas during the permit, development authorization, or other approval processes. These maps include the location of known or potential critical areas and are based on the best available science information, and include natural resource information, gathered through field inventory, as well as information prepared by applicable state and federal agencies. These maps shall be referred to as the "Critical Areas Maps" of the city of Sedro-Woolley.

Application, purpose.

A. This chapter shall apply to land use, development, structures, facilities, and platting located in the shoreline jurisdiction, alternately referred to as the shoreline management zone (SMZ), of the city of Sedro-Woolley, within the geographical areas that meet the definitions and criteria for critical areas regulation as set forth in this chapter. No development activity or alteration of land, water, or vegetation within a critical area or its standard buffer, except as specifically allowed by this chapter, shall be allowed without prior authorization by the director.

For critical areas (and their buffers) located outside of the SMZ, see the Sedro-Woolley Critical Areas Ordinance in Chapter 17.65 SWMC.

B. The purpose of these regulations is to:

1. Protect human life, property, and the public health and safety of the citizens of Sedro-Woolley;
2. Minimize the expenditure of public money;
3. Maintain the city's flood insurance eligibility while avoiding regulations which are unnecessarily restrictive or difficult to administer;
4. Ensure that wetland, fish and wildlife habitat, and other critical area functions and values are protected or mitigated for no-net-loss to provide public benefits in accordance with the Shoreline Management Act.

C. The following shall constitute critical areas:

1. Wetlands and Riparian Corridors, Including Brickyard Creek, Willard Creek, Hanson Creek and Tributaries. Wetlands and riparian corridors serve many important ecological and environmental functions and help to protect public health, safety and welfare by providing flood storage and conveyance, erosion control, fish and shellfish production, fish and wildlife habitat, recreation, water quality protection, water storage, education, scientific research and other public benefits. It is the purpose of this chapter to protect these functions to prevent the continual loss of wetlands and riparian corridors, and where practical to enhance or restore wetlands and riparian corridors functions and values.

2. Areas with a Critical Recharging Effect on Aquifers Used for Potable Water. Potable water is an essential life-sustaining element. Sedro-Woolley's drinking water comes from Public Utility District #1, rather than groundwater supplies. Once groundwater is contaminated, it is difficult, costly, and sometimes impossible to clean-up. It is the purpose of this chapter to prevent contamination and depletion, avoid exorbitant clean-up costs, hardships and potential physical harm to people. There are some existing wells used for irrigation in the city limits that are not mapped.

3. Fish and Wildlife Habitat Conservation Areas. In addition to their intrinsic value, certain species of fish and wildlife represent important historic, cultural, recreational and economic resources. Many species serve as indicators of the condition of the environment and the quality of life that local residents have invested in, enjoy and respect. It is the purpose of this chapter to protect, restore where practical, and enhance fish and wildlife populations and their associated habitats.

4. Frequently Flooded Areas. It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in the floodplain and the floodway according to the provisions established under this code; and

5. Geologically Hazardous Areas. Geologically hazardous areas include areas susceptible to the effects of erosion, sliding, earthquake, or other geologic events. They pose a threat to the health and safety of citizens when incompatible residential, commercial, industrial, or infrastructure development is sited in areas of a hazard. Geologic hazards pose a risk to life, property, and resources when steep

slopes are destabilized by inappropriate activities and development or when structures or facilities are sited in areas susceptible to natural or human caused geologic events. Some geologic hazards can be reduced or mitigated by engineering, design, or modified construction practices so that risks to health and safety are acceptable. When technology cannot reduce risks to acceptable levels, building and other construction within identified geologically hazardous areas shall be prohibited.

D. Exemptions from Critical Areas Review Requirements. Subject to the limitations established in this chapter the following developments, associated uses and activities shall be exempt from the critical areas review procedures:

1. Emergency activities necessary to reduce or prevent an immediate threat to public health, safety, and welfare. Such emergency is an unanticipated, imminent threat to the public health or safety or to the environment that requires immediate action within a period of time too short to allow full compliance with this chapter (However, emergency activities are subject to WAC 173-27-040(2)(d) – emergencies exempt from shoreline substantial development permits);

2. Ongoing agriculture activities, including related development and activities that do not result in an expansion or further expansion into a critical area or its standard buffer;

3. Normal and routine maintenance or repair of existing structures, utilities, sewage disposal systems, potable water systems, drainage facilities, ponds or public and private roads and driveways associated with existing residential or commercial development; normal maintenance, repair, or operation of existing structures, facilities, and improved areas accessory to a single-family residential use; and such maintenance activities are limited to existing landscaping improvements and do not expand into critical areas or associated buffers, do not expose soils, do not alter topography, do not destroy or clear native vegetation, and do not diminish water quality or quantity;

4. Modification of any existing residence that does not add to or alter the existing use and does not expand the building footprint or increase septic effluent;

5. Activities involving artificially created wetlands or artificial watercourses intentionally created from nonwetland sites, including, but not limited to, grass-lined swales, irrigation and drainage ditches, road side ditches, stormwater detention facilities, and landscape features, except those features that provide critical habitat for anadromous fish and those features that were created as mitigation pursuant to the provisions of this chapter;

6. Passive outdoor recreation activities that do not adversely impact critical areas or their buffers;

7. Education and scientific research activities that do not adversely impact critical areas or their buffers.

8. Those activities listed in section VI (B) (1) of the SMP are exempt from shoreline substantial development permits.

Definitions.
As used in this chapter:

“Anadromous fish” refers to a fish species that ascend rivers from the sea to spawn.

“Aquifer recharge areas, critical” refer to areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of water.

“Artificial watercourse” refers to ditches and other water conveyance systems, not constructed from natural watercourses, which are artificially constructed and actively maintained for irrigation and drainage. Artificial watercourses include lateral field ditches used to drain farmland where the ditch did not replace a natural watercourse, roadside ditches, stormwater systems, or any other constructed drainage ditch.

“Best available science” refers to information gathered, analyzed and presented based on professional experience, expertise, and judgment, and established scientific principles and practices. Such principles and practices include peer review, use of scientific methodology, logical analysis and reasonable inference, statistical analysis, rigorous referencing within the scientific literature, and conclusions drawn from within an accepted scientific framework and placed in an appropriate scientific context.

“Best management practices (BMPs)” refer to physical, structural, and/or managerial practices, that when used singly or in combination, prevent or reduce water pollution. Source control BMPs include those which keep the pollutant from ever coming in contact with stormwater, and stormwater treatment BMPs include those which consist of various methods of treating stormwater. See also SWMC Chapter 13.36 and Chapter 13.40 (Stormwater Management).

“Biological assessment” refers to a study prepared by a qualified biologist that describes the biotic and abiotic aspects of the site and surrounding area. This includes, but is not limited to, the flora, fauna, plant communities, habitat(s), streams, wetlands, soils, and topography of and on the site and adjacent area.

“Buffer, critical area” is an area that provides a reasonable margin of safety through protection of slope stability, attenuation of surface water flows and landslide hazards reasonably necessary to minimize risk to the public from loss of life or well-being or property damage resulting from natural disasters; or an area which is an integral part of a stream or wetland ecosystem or wildlife habitat and that provides shading, input of organic debris and coarse sediments, room for variation in stream or wetland boundaries, habitat for wildlife, and protection from harmful intrusion necessary to protect the public from losses suffered when the functions and values of aquatic resources are degraded.

“Compensatory mitigation” is replacing project-induced critical area losses or impacts, and includes, but is not limited to, restoration, creation, or enhancement.

“Critical areas” mean and include the following areas and ecosystems:

1. Wetlands;
2. Areas with a critical recharging effect on aquifers used for potable water;
3. Fish and wildlife habitat conservation areas;

4. Frequently flooded areas; and
5. Geologically hazardous areas.

“Delineation” is the precise determination of wetland boundaries in the field according to the application of specific methodology as described in the approved U.S. Army Corps of Engineers Wetlands Delineation Manual and applicable regional supplements.

“Development” means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the act at any stage of water level.

“Director” means the city of Sedro-Woolley planning director or his/her designee.

“Fish and Wildlife Habitat Conservation Areas (HCA)” refer to areas with which endangered, threatened, sensitive, priority species, their habitat, streams, stream corridors, or mature forested areas, as indicated by local, state, or federal governmental agencies have a primary association.

“Geologically hazardous areas” are areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to siting commercial, residential, or industrial development consistent with public health or safety concerns.

“Habitats of local importance” mean and include a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration, such as cliffs, talus, mature forests, corridors, and wetlands.

“In-lieu of fee” refers to a fee paid as compensation for impacting a critical area in place of completing compensatory mitigation. Any in-lieu fee paid shall go towards protection of habitat commensurate to compensate the lost functions and values of the critical area affected by a development.

“Mean sea level” means the average height of the sea for all stages of tide, also equals National Geodetic Vertical Datum.

“Mobile home or manufactured home” means any structure designed or used as a permanent residence, built on a permanent chassis, and transportable to site of placement in one or more sections.

“Mobile home park or manufactured home park” means a parcel of land in one ownership containing two or more mobile homes or manufactured homes, sited for habitation.

“Native vegetation” refers to plant species that are indigenous to the Sedro-Woolley area.

“Natural watercourse” refers to any stream in existence prior to settlement that originated from a natural source. An example of a natural watercourse is a stream that originates in a wetland or upland area, flows through

agricultural, rural, and/or urban areas, and ultimately empties into a saltwater bay or another watercourse. A natural watercourse may have been ditched or piped.

“Primary association” means the use of a habitat area by a species for breeding, nesting, rearing young, roosting, feeding, or foraging on a regular basis.

“Public facilities” mean and include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreation facilities, and schools.

“Public services” mean and include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

“Qualified expert” means a person having substantially demonstrated experience as a practicing specialist with a minimum of five years experience working full time in the profession and who has a degree in a related field from an accredited college or university or who has equivalent training.

“Residential health care facilities” mean facilities caring for elderly or infirm persons wherein clients are partly or entirely residents or detainees thereof. Includes hospitals, convalescent homes and homes for the elderly where some supervision or health care is provided.

“Seismic hazard areas” are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, or soil liquefaction. The city of Sedro-Woolley is located in Seismic Zone 3 and construction is required to comply with the Uniform Building Code seismic standards.

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

“Steep slope areas” are areas with slopes greater than fifteen percent.

“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.

“Substantial improvement” means any repair, reconstruction, or improvement to a structure, the cost of which equals or exceeds fifty percent of the market value of the structure either:

1. Before the improvement is started; or

2. If the structure has been damaged and is being restored, before the damage occurred.

This term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are necessary to assure safe living conditions; or

2. Any alteration of a structure listed in the National or State Register of Historic Places.

“Unavoidable impacts” refer to affecting critical areas where site conditions preclude avoidance because of density requirements, critical areas that bisect parcels such as streams or linear wetlands, or parcels that contain many small wetlands.

“Urban growth” refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural produce, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services. “Characterized by urban growth” refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

“Wetland” or “wetlands” means 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 nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July l, 1990, that were unintentionally created as a result of the construction of a road, street or highway. However, wetlands may include these artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands, if permitted by the city.

“Wetland mitigation bank” means a wetland area that has been restored, created, enhanced, or (in exceptional circumstances) preserved, which is then set aside to compensate for future conversions of wetlands for development activities. A wetland bank may be created when a government agency, a corporation, or a nonprofit organization undertakes such activities under a formal agreement with a regulatory agency. The value of a bank is determined by quantifying the wetland values restored or created in terms of “credits.”

Authority.
The ordinance codified in this chapter is adopted under the authority of Chapter 90.58 RCW.

Applicability, jurisdiction and coordination.
A. Relationship to Other Federal, State and County Jurisdictional Agencies’ Regulations. Many state, federal and regional regulations apply to projects conducted within critical areas. Uses otherwise allowed by local codes do not eliminate other agency regulatory requirements.

1. Federal regulations include:

    a. Clean Water Act, Section 404, 401;
    b. Coastal Zone Management Act;
    c. Endangered Species Act;
    d. Federal Water Pollution Control Act;
    e. Food Security Act—Swampbuster;
    f. National Environmental Policy Act;

g. National Floodplain Insurance Program;
h. River and Harbor Act, Section 10.

2. State regulations include:

a. RCW 43.21C State Environmental Policy Act;
b. RCW 75.20 Hydraulic Project Approval;
c. RCW 76.09 Forest Practices Regulations;
d. RCW 77.12 Bald Eagle Protection Rules;
e. RCW 78.44 Surface Mining Act;
f. RCW 86.16 Floodplains;
g. RCW 90.03 State Water Code;
h. RCW 90.48 State Water Pollution Control Act;
i. RCW 90.58 Shoreline Management Act.

3. Local regulations include:

a. SWMC Chapter 2.88, Environmental Policy;
b. SWMC Chapter 13.36, Stormwater Management Standards.

B. Jurisdictional Substitution. In cases where other agencies possess jurisdictional control over critical areas and it is determined by the director that the permit conditions in permits issued by those other agencies satisfy the requirements of this chapter, those requirements may substitute for the requirements of this chapter. Such requirements shall be a condition of critical area approval and be enforceable under this chapter. Such agencies may include, but are not limited to, the United States Army Corps of Engineers, Environmental Protection Agency, U.S. Fish and Wildlife Service; local tribes, the Washington State Department of Ecology, Washington State Department of Natural Resources and Washington State Department of Fish and Wildlife. The applicant shall be notified in writing when any such substitution is made.

Resource information and maps.

A. Critical areas defined and identified in this chapter shall be mapped whenever possible. These maps shall be advisory and used by the director to provide guidance in determining applicability of the standards to a property. Sites which include critical areas, whether mapped or not mapped, shall be subject to the provisions of this chapter. The adopted shoreline areas map in the SMP, the aerial topographic map of the city of Sedro-Woolley, October 2003 and subsequent updates, along with wetland delineation maps in the city of Sedro-Woolley land use files, are the advisory maps, along with the “Flood Insurance Study, City of Sedro-Woolley,” dated December 1, 1989, and any revisions thereto, with accompanying flood insurance rate map (FIRM), dated December 1, 1989. That document is on file at Sedro-Woolley City Hall, 325 Metcalf Street.

B. Recognizing the necessity for accurate geographic information, a comprehensive inventory identifying the location, size, and other characteristics of critical areas shall be compiled as new data is available.

C. The results of the inventory shall be transferred to maps and published. These maps shall be available at the planning department for public inspection.

D. When completed, critical area maps shall serve as guides to the location and extent of such critical areas.

E. Critical area maps, with the exception of the flood insurance rate map used to designate certain flood hazard areas, are provided only as a general guide to alert the user to the possible distribution, location and extent of critical areas. Map identification of critical areas provides only approximate boundaries and locations. The actual locations and boundaries of critical areas, as well as their quality and quantity, shall be based upon the presence of the features applicable to each critical area element in this chapter. Maps shall not be considered a regulatory standard or substitute for site specific assessments. The application of definitions, methodologies and performance standards pursuant to the site specific assessment requirements provided in this chapter is the controlling factor in determining the actual presence and extent of critical areas.

F. The critical area maps utilize the best information currently available and will be updated on a continual basis by the director.

G. On a regular basis, formal requests shall be made for updated information to the resource agencies responsible for updating their respective map information. Incorporation of such updated information into the critical areas maps shall be made.

H. Critical areas mapped under the site assessment requirements of this chapter shall be compiled in a database and incorporated into critical area maps. This map information shall be utilized to facilitate tracking of compliance with the requirements of this chapter to ensure long-term protection of critical areas.

General requirements and authorizations required.

A. All proposals specified in subsection “Application of standards” (below), and located in critical areas shall meet the following general requirements:

1. Site. Complete stabilization of all portions of a site which are disturbed or impacted by the proposed development, including all development coverage and construction activity areas, shall be required. Complete stabilization of all portions of a site refers to the process and actions necessary to ensure that existing and proposed site improvements are stabilized, and that all on-site areas and adjacent properties which are disturbed or impacted are stabilized. The proposed development shall be limited and controlled to avoid adverse impacts and potential harm and ensure safe, stable and compatible development appropriate to site conditions. Other reasonable and appropriate solutions to solve site stability problems may be required by the director.

2. Adjacent Site, Surrounding Area, and Drainage Basin. The proposed development shall ensure safe, stable and compatible development which avoids adverse environmental impacts and potential harm to adjacent sites, the surrounding neighborhood, and the drainage basin. Detailed analysis of impacts of the development upon wetlands, riparian corridors, native vegetation and wildlife habitats, water quality, natural water temperature, slope and soil conditions, and surface water drainage may be required at the request of the director when site and area conditions indicate the need for this analysis. Supplemental technical reports may be required by the director to specify measures to preserve, protect, and maintain adjacent sites and the drainage basin and ensure safe, stable and compatible development.

B. With the exception of activities identified as exempt under subsection D of “Application, purpose” (above) and subsection “Application of standards” (below), any land use activity that can impair the functions and values of critical areas or their buffers through a development activity or by disturbance of the soil or water, and/or by removal of, or damage to, existing vegetation shall require critical areas review and written authorization pursuant to this chapter. Vegetation destruction or removal, other than the normal maintenance of existing landscaping identified as exempt under subsection M of “Application of standards” (below), shall be prohibited within a critical area or its required buffer, unless there is an approved mitigation plan pursuant to the requirements of the particular critical area that demonstrates there will be no adverse impact to the critical area with the proposed vegetation removal and disturbance of the soil or water and includes any mitigation or buffer enhancement necessary to address critical areas impacts. Authorizations required under this chapter overlay other permit and approval requirements of the Sedro-Woolley Municipal Code. Regardless of whether a development permit or approval is required, any proposed alteration that can adversely affect a critical area or its standard buffers’ functions must comply with the substantive and procedural requirements of this chapter. Critical areas review pursuant to this chapter shall be conducted as part of the underlying permit or approval, where applicable. It is the responsibility of the landowner, or designee, who conducts or proposes to undertake land use activities that can adversely impact critical areas or their buffers to obtain authorization prior to commencing such activities. In some cases, the typical thresholds that trigger review and permits have been reduced to zero for any development activity located within a critical area or its required buffer.

C. Procedures: No substantial shoreline development permit or other authorization required shall be granted until the applicant has demonstrated compliance with the applicable provisions of the SMP and this chapter.

1. The applicant shall demonstrate that the proposal submitted conforms to the purposes and standards of the SMP and this chapter, assesses impacts on the critical area from activities and uses proposed, and identifies protective mechanisms adequate to meet the requirements of this chapter.

2. The director or designee shall review each proposal and determine if the proposal is consistent with applicable regulations of the SMP and this chapter and if the protective mechanisms proposed are sufficient to protect the critical area, public health, safety and welfare, and if so, shall condition approval accordingly. If not, the director shall specify conditions of approval. If the director determines that there are no conditions under which the proposal could be approved, then the director shall deny the proposal.

Any proposed development or land division shall be conditioned as necessary to mitigate impacts to critical areas as required by this chapter and any project that cannot adequately mitigate its impacts to critical areas shall be denied.

Conflicts with Other Provisions: If any provision of this chapter conflicts with any other applicable code provision, the one which most implements the provisions of RCW 90.58.020 shall prevail.

3. Satisfaction of the requirements of this chapter shall also be sufficient to satisfy the requirement for critical areas analysis and mitigation pursuant to RCW 43.21C the State Environmental Policy Act and SWMC Chapter 2.88, Environmental Policy.

Public notice and records.

A. Public notice for projects subject to the provisions of this chapter shall be provided pursuant to the requirements of SWMC Chapter 2.90, Consolidated Planning Procedures.

B. Records of all critical area assessments and related land use approvals and conditioning shall be maintained and be made available to the public upon request.

Application submittal requirements.

In addition to the application submittal requirements specified in the Administrative Provisions section of the SMP, all development proposals in the SMZ and subject to this chapter, may include at the director's request, the following additional information:

A. Surveyed Site Plan. A surveyed site plan shall be prepared by a state of Washington licensed surveyor and shall include the following, all or in part when required by the director:

1. Existing topography at two-foot contour intervals on site within twenty-five feet of the site's abutting boundaries, and within the full width of abutting public and private rights-of-way and easements.

2. Terrain and drainage flow characteristics within the site, within twenty-five feet of the site's abutting boundaries, and within the full width of abutting public and private rights-of-way and easements.

3. Proposed location and boundaries of all required undisturbed fenced areas and buffers on-site and on adjacent lands.

4. Location of all vegetation, including location and description of all trees over six inches in diameter measured five feet above the base of the trunk, shrubs over eight feet tall or six feet wide, and noting their species.

5. Location and boundaries of all existing and proposed site improvements on the site and within twenty-five feet of the site's property boundaries, and the full width of abutting public and private rights-of-way and easements. This shall include the limits of development coverage, impervious surfaces and construction activity areas (noting total square footage and percentage of site occupied).

6. Location of all grading activities in progress or proposed, and all drainage control facilities or systems in existence in progress or proposed within twenty-five feet of the site's property boundaries, and the full width of abutting public and private rights-of-way and easements.

7. Location of all existing and proposed utilities (water, sewer, gas, electric, phone, cable, etc.), both above and below ground, on-site, on adjacent lands within twenty-five feet of the site's property lines, and in the full width of abutting public rights-of-way, and proposed methods and locations for the proposed development to hookup to these services.

8. Such other additional site plan information as necessary to complete review of a project or waive specific submittal requirements when not necessary for project review.

B. Technical Reports. Technical reports shall be prepared as required by the director detailing geological, hydrological, drainage, and other site conditions, to comply with the development standards in subsection "General requirements and authorizations required" above and pursuant to SWMC Chapter 13.36, Stormwater Management Standards. The reports shall be used to condition development to prevent potential harm and to protect the critical nature of the site, adjacent properties, and the drainage basin. Technical reports prepared by consultants not contracted with the city of Sedro-Woolley for the work shall be subject to third party review by the city of Sedro-Woolley's independent consultant/expert at the applicant's expense. Appeals of the decision by the director in consultation with the city's independent consultant/expert shall be subject to the administrative appeals procedures in SWMC Chapter 2.90. In making the decision, the city may also rely on opinions from agencies including, but not limited to, the United States Army Corps of Engineers, Environmental Protection Agency, U.S. Fish and Wildlife Service; local tribes, the Washington State Department of Ecology, Washington State Department of Natural Resources and Washington State Department of Fish and Wildlife.

Administration.

A. The planning director in consultation with the city engineer and the building official shall be responsible for the administration of this chapter, including:

1. Review applications for development in the city limits to verify compliance with this chapter;

2. Reviewing applications for development in the city limits to assure that all necessary permits have been obtained from those federal, state or local government agencies from which prior approval is required;

3. Recording and maintaining records of:

a. As-built elevation above mean sea level of the lowest floor including basement of all new and substantially improved structures requiring a floodplain approval and whether same structure contains a basement,

b. Certification by registered professional engineer or architect as required by this chapter,

c. Floodplain approvals and other actions pursuant to the administration of this chapter;

4. Notification to adjacent communities and the Department of Ecology and the Department of Fish and Wildlife prior to any alteration or relocation of a watercourse with copy to FEMA, and maintenance within the altered or relocated portion of such watercourse so that flood-carrying capacity is not diminished;

5. When base flood elevation data has not been provided, obtaining, reviewing, and reasonably utilizing any base flood elevation and floodway data that should become available from a federal, state or other source in order to administer standards and floodways;

6. Issuance of development permits pursuant to SWMC Chapter 17.68, Home Occupation Permits, and SWMC Chapter 15.04, Building Code before construction or development begins within the city limits;

7. Maintain for public inspection all records pertaining to the provisions of this code.

B. This chapter shall be administered in accordance with Chapters 90.58 RCW and 173-26 WAC. This chapter shall be revised as necessary to conform with any changes in state rules pertaining to flood control zones which may be adopted by the State Department of Ecology subsequent to the effective date of delegation of the state's permit program to the city.

C. The administrative procedure for critical areas review shall be as follows:

1. All applications for approval of activities requiring written authorization pursuant to subsection "General requirements and authorizations required" (above) shall require the submission of a critical areas checklist completed and filed by the applicant on the forms provided by the planning department. If not otherwise required, all applications for critical areas review shall include a description of the proposed activity and a site plan showing the location of the proposed activity and associated area of disturbance in relation to all known critical areas or critical area indicators. Upon receipt of the application, the director shall determine whether the proposed activity fits within any of the exempt activities found in subsection "Application of standards" (above). If the proposed activity is so allowed and meets the associated conditions for such an allowance, no other critical areas review shall be required, except as necessary for the director to ensure that any conditions for such an allowance are met in practice. The director shall note this determination in the application file and provide written authorization for the project or activity to proceed as proposed in the application when undertaken in accordance with any conditions for such an allowance.

Proposed activities identified under subsection "Application of standards" (above) that do not meet the conditions for such an allowance or that the director determines may result in significant adverse impacts to a critical area or its buffer shall be subject to standard shoreline critical areas review.

2. Upon determination that the proposed activity requires detailed critical areas review, and upon receipt of a completed critical areas checklist, the director shall use the following method to determine whether critical areas or their required buffers will possibly be affected by the proposed activity:

a. Review the critical areas checklist together with the maps and other critical areas resources identified in the relevant sections of this chapter;
b. Complete the critical areas staff checklist;
c. Inspect the site; and
d. Complete the critical areas field indicator form.

3. If the director determines that critical area indicators are not present within two hundred feet of the proposed activity or within a distance otherwise specified in this chapter, then the review required pursuant to this chapter is complete, except as necessary for the director to ensure that the proposed activity is undertaken as described in the application and as shown on the site plan. The director shall note this determination in the application file and provide written authorization for the project or activity to proceed as proposed in the application or, where applicable, with any specific conditions of approval. This determination shall not constitute approval of any use or activity or its compliance with the

requirements of this chapter, outside the scope of that stated in the application. Any proposed change in use or scope of activity from that contained in the application shall be subject to further review under this chapter. The applicant shall acknowledge in writing that this determination by the director regarding the apparent absence of critical area indicators and the likelihood that critical areas will not be affected is not intended as an expert certification regarding the presence or absence of critical areas and that the critical areas review process is subject to possible reopening if new information is received as described in subsection (C)(4) of this section. If the applicant wants greater assurance of the accuracy of any such critical area indicators determination, the applicant shall hire a qualified critical areas expert to provide such assurances.

4. Reopening of Review Process.

a. If at any time prior to completion of the public input process on the associated permit or approval, the director receives new evidence that a critical area may be present within two hundred feet of the project area or within a distance otherwise specified in this chapter, then the director shall reopen the critical areas review process pursuant to this chapter and shall require whatever level of critical areas review and mitigation as is required by this chapter.

b. Once the public input process on the associated permit or approval is completed and the record is closed, then the director's determination regarding critical areas pursuant to this chapter shall be final; provided, however, that the director shall not be prevented from reopening the critical areas review process, if staff relied on misinformation provided by the applicant in the application or checklist. For the purposes of this subsection, "misinformation" means information regarding the nature and/or location of the proposed activity as presented in the application or regarding the presence of a critical area or critical area indicators on the subject property which the applicant knew or should have known was relevant at the time of the submittal of the checklist. Prior to reopening a critical areas review under this subsection, the director shall make a site visit. No critical areas review shall be reopened under this section unless the director determines, after the site visit, that the applicant provided misinformation.

c. If a critical areas review is reopened under this subsection after a permit or approval is granted, the burden of proof on whether the applicant submitted "misinformation" at the time of the submittal of the checklist shall be on the director. The applicant or landowner who submitted the critical areas checklist upon which the misinformation was discovered shall be the responsible party for compliance with this chapter, including any necessary mitigation.

5. If the director determines that critical area indicators are present within two hundred feet of the proposed activity or within a distance otherwise specified in this chapter, then the director shall note this determination in the application file and the applicant shall be required to provide the critical areas site assessment specified in this chapter. Development of a site assessment may precede a site visit, provided, that no disturbance of vegetation or land surface occurs prior to authorization.

6. Critical Areas Determination and Conditions of Approval. Based on the critical areas site assessment report and other available critical areas information, the director shall make a determination

on the proposed activity. A determination to approve a proposed activity shall include designation of protected critical areas (PCAs) pursuant to subsection “Protected critical area requirements” (below) and stipulation of binding conditions and required mitigation, monitoring, maintenance or other conditions of approval pursuant to this chapter. If the director determines that there are no conditions under which the proposed activity could be approved, then the director shall deny the proposal.

Critical areas checklist, site assessment and conditions of approval.

A. Critical Areas Checklist. Every application for an activity that might alter or adversely affect a critical area or associated buffer shall include a critical area checklist on a form provided by the director. The checklist shall identify all critical area indicators and/or all known critical areas within two hundred feet of the proposed activity or within a distance otherwise specified in this chapter. The checklist shall be signed by the applicant and shall inform the applicant that if the information on the checklist is later determined incorrect, then any permit or approval issued based on misinformation may be rescinded and the site required to be restored to its original condition prior to disturbance.

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

C. Site Assessment Preparation. The critical area site assessment shall be prepared by a qualified expert for the type of critical area or areas involved and shall contain the information specified for each type of critical area. In general, the site assessment shall include critical area inventory, assessment of impacts and, where applicable, proposed mitigation, land use restrictions and landowner management, maintenance and monitoring responsibilities. The qualified expert may consult with the director prior to or during preparation of the site assessment to obtain approval of modifications to the contents of the site assessment where, in the judgment of the qualified expert, more or less information is required to adequately address the critical area impacts and required mitigation. The director shall allow for peer review and receipt of recommendations from qualified resource agency personnel as part of the process for approval of qualified experts.

D. Any site plans required by this chapter may be combined into a single site plan wherever possible.

E. Critical Areas Determination and Conditions of Approval. Upon receipt of a properly completed site assessment report, the director shall make a formal determination on the proposed activity as to whether it meets the requirements of this chapter and under what conditions. In making this determination, the director shall utilize the information provided in the site assessment report and all other resource information available. If the director determines that additional technical information or input is necessary or warranted, the director shall contact appropriate federal, state or tribal agencies to provide review and comment on the proposed activity. Formal determinations made by the director shall include the basis and rationale for the determination, as well as detailed specification of related conditions of approval, land use prohibitions, and required landowner mitigation,

management, monitoring and/or maintenance. All such requirements shall be clearly shown on plans filed with the director.

F. Complete Record. A complete record of all formal determinations by the director, along with related critical areas checklists, site assessments, binding agreements, conditions of approval, land use prohibitions, required mitigation and a full record of comments received from federal, state or tribal agencies, shall be maintained and made available to the public upon request.

Application of standards.

The standards of this chapter shall apply to all public and private proposals for new structures, proposed additions to structures, short subdivisions and subdivisions, and grading and drainage activity located on either public or private property in the SMZ. Projects may be exempted from the detailed critical area review requirements of this chapter when the following situations and/or conditions apply:

A. Emergencies that Threaten the Public Health, Safety and Welfare. An emergency is an unanticipated and imminent threat to the public health or safety or to the environment which requires immediate action within a period of time too short to allow full compliance with this chapter. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods that can address the emergency but also that have the least possible impact to the critical area or its buffer. The responsible party shall restore the critical area and buffer after the emergency to the extent feasible, as determined by the city planner. The person or agency undertaking such action shall notify the director within one working day or as soon as practical following commencement of the emergency activity. Following such notification, the director shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the director determines that the action taken or any part of the action taken was beyond the scope of allowed emergency actions, then the enforcement provision shall apply.

B. Normal and routine maintenance or repair of existing structures, utilities, sewage disposal systems, potable water systems, drainage facilities, ponds, or public and private roads and driveways associated with preexisting residential or commercial development, provided any maintenance or repair activities shall use reasonable methods with the least amount of potential impact to the critical areas and any impact to a critical area or its buffer shall be restored after the maintenance to the extent feasible.

C. Normal maintenance, repair, or operation of legally existing structures, facilities, and improved areas accessory to a single-family residential use, provided any maintenance or repair activities shall use reasonable methods with the least amount of potential impact to the critical area and any impact to a critical area or its buffer shall be restored after the maintenance to the extent feasible.

D. Modification of an existing single-family residence that does not change the use from residential, does not expand the building footprint or increase sewer effluent, and does not adversely impact critical areas or their buffers.

E. Modification of other than a single-family use which does not expand the building footprint, alter the use or increase septic effluent, pursuant to the requirements of the nonconforming use and structure provisions, and does not adversely impact critical areas or their buffers.

F. Outdoor recreational activities which do not adversely impact critical areas or their buffers.

G. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling soil, planting crops, or changing existing topography, water conditions or water sources and provided further that the activity does not adversely impact critical areas or their buffers.

H. The operation and maintenance of diking and drainage systems that do not alter their historic condition.

I. Education and scientific research activities that do not adversely impact critical areas or their buffers.

J. Construction or modification of navigational aids and channels markers.

K. Site investigation work necessary for land use applications such as surveys, soil logs, percolation tests and other related activities which do not adversely impact critical areas or their buffers. In every case, critical area impacts shall be minimized and disturbed areas shall be immediately restored.

L. Maintenance activities such as mowing and normal pruning or removal of nonnative plant species such as blackberries, Japanese knotweed, reed canary grass, provided, that such maintenance activities are limited to existing landscaping improvements and do not expand into critical areas or associated buffers, do not expose soils, do not alter topography, do not destroy or clear native vegetation, and do not diminish water quality or quantity.

M. Fish, wildlife, wetland and/or riparian enhancement activities not required as mitigation, provided, that the project is approved by the U.S. Department of Fish and Wildlife, the Washington State Department of Fish and Wildlife, the Washington State Department of Ecology, or the U.S. Army Corps of Engineers.

N. Developments in the floodplain other than the following shall require a floodplain approval:

1. Minor structures and additions for which a building permit is not required and which create no new residence such as a slab on grade, or a storage building less than one hundred twenty square feet in area, or other structures exempt from permits in the Uniform Building Code;

2. Normal maintenance, resurfacing and rebuilding, at comparable grade of streets, and accessways;

3. Underground improvements and excavations;

4. Maintenance and minor repair of existing improvements;

5. Improvements to structures listed on the National or State Register of Historic Places, subject to subsection “General construction and maintenance standards” (below);

6. Other minor developments that cause no significant impoundment or displacement of floodwaters, such as open fences, signs and small unenclosed structures.

All such activities shall be carried out in ways that cause the least impact to critical areas and their buffers. If any damage is caused to a critical area or buffer in connection with such activity, the critical area and its buffer must be restored to the extent feasible. To be exempt does not give permission to destroy a critical area or ignore risk. Proponents of such activities shall be responsible for notifying the director if any damage occurs and shall provide all necessary restoration or mitigation. For information on identifying, protecting or mitigating adverse impacts to critical areas, refer to sections in this chapter on wetlands, aquifer recharge areas, geologically hazardous areas, fish and wildlife habitat conservation areas, and flood hazard areas.

General construction and maintenance standards.
All proposals located in a shoreline critical area or buffer regulated by the SMP shall meet the following general construction and maintenance standards:

A. All buffer areas and other designated protected areas shall be fenced with a highly visible and durable protective barrier during construction to prevent access and protect critical areas.

B. All disturbed areas on the site, including development coverage and construction activity areas, shall be controlled in a manner sufficient to control drainage and prevent erosion during construction, and revegetated to promote drainage control and prevent erosion after construction. In cases where erosion potential is severe, the director may require a vegetation and revegetation report to be prepared by a qualified professional with landscaping, plant ecology and botany education and experience. All revegetation shall consist of trees, shrubs, and ground cover that is suitable for the location and does not require permanent irrigation systems for long-term survival.

C. When development is proposed in critical areas, grading activities shall be strictly limited to areas located on the most environmentally suitable portion of the site, as determined by the director in consultation with qualified experts.

D. All drainage associated with the development shall be connected to approved drainage control systems with approved discharge points in compliance with standards set by the city engineer, as specified in Titles 13 and 15 SWMC.

E. When calculating detention requirements, all disturbed area on the site shall be calculated as development coverage, including revegetated areas.

F. A development proposal's design shall account for a one-in-one-hundred-year seismic and flood event, unless a design for a greater event is required by other applicable codes. The International Building Code's construction standards for seismic design shall constitute compliance with this section.

G. All grading in critical areas shall not occur prior to March 31st and shall be stabilized by October 31st unless demonstrated to the satisfaction of the director based on approved technical analysis that no environmental harm or safety issues would result from grading between November 1st and March 31st.

H. Construction activity shall adhere to a prepared schedule to be approved by the director prior to issuance of a building permit. This schedule shall include, but not be limited to a schedule for compliance with project

conditions, limits of construction and work activities, equipment to be used, start and duration of each phase, and work sequencing.

I. The director may require additional construction practices and methods and requirements, including, but not limited to best management practices and limitations on construction equipment permitted on the site, to protect critical areas on-site, on adjacent sites, and within the drainage basin.

J. Dumping or filling is prohibited in special flood risk areas, wetlands or their buffers and any other non-designated dumping sites. Dumping includes deposit of yard waste, trash, litter, refuse, dirt, concrete, asphalt, rocks or similar materials, but shall not include work authorized by approved plans and permits.

Reasonable use exception.
The Shoreline Variance process of the SMP shall be used to address the reasonable use of a constrained parcel.

Critical area and buffer mitigation requirements—General provisions.
A. Buffers.

1. As described in more detail in each relevant section, buffers have in some cases been determined necessary and appropriate to protect critical areas and their functions or to prevent risk from a critical area hazard. In those sections of this chapter where specific buffers are identified, those buffers are deemed “required” or “standard” buffers. If a project or activity does not propose any alteration of those buffers or of the associated critical area and the director determines that these buffers are adequate to protect the critical area or to prevent risk of a hazard from the critical area, then no additional mitigation will be required. Once the critical area and its buffer have properly been delineated through a critical areas assessment and any conditions of approval have been established to ensure protection of the critical area function, no further critical areas mitigation assessment is required, except as necessary to ensure that long-term protection of critical areas and buffers is met in practice through compliance with subsection “Protected critical area requirements” (below). The applicant shall ensure the protection of critical area by performing a site assessment on the entire parcel.

2. If, however, based on a site assessment by a qualified expert, unique features of the particular critical area or its buffer or of the proposed development, the qualified expert determines that additional buffers and/or mitigation measures beyond these buffers are necessary to adequately protect the function of the critical area or to prevent risk of a hazard from the critical area, the director may impose such additional mitigation requirements, provided the qualified expert can demonstrate, based on best available science, why that additional mitigation or buffering is required to adequately protect the critical area function or to prevent hazard from a critical area.

3. Further, if the applicant proposes to reduce these buffers or to alter the critical area or its required buffer, then the applicant shall demonstrate pursuant to subsection “Protected critical area requirements” (below), based on best available science, why such buffer and/or critical area modification, together with such alternative mitigation proposed in the critical areas assessment, is sufficient to provide equal or better protection of the critical area function or provide no increased risk of

a hazard from the critical area and provided, that the reduction of a standard buffer by more than 25% shall require a shoreline variance.

4. The critical areas assessment and the conditions of approval shall make adequate provision for long-term protection related to critical areas and buffers, and shall include the requirements established in subsection “Protected critical area requirements” (below).

However, critical areas and/or buffers identified as Protected Critical Areas (PCAs) as defined in this chapter do not require any provisions for public access, and appropriate restrictions may be included in the easement or title documents. Critical areas and/or buffers identified as PCAs are however subject to periodic inspection by the director, upon prior notification to the landowner, to ensure long-term protection.

5. Protected Critical Areas (PCAs).

a. For proposed land divisions, critical areas and their associated buffers identified through the site assessment and city review process shall be designated as PCAs and placed in separate tracts or easements and protected through protective covenants shown on the face of the recorded plat. Protected critical areas shall be placed in separate tracts under a single owner, unless an easement or alternative method is shown to provide superior protection overtime. An example of an easement that is preferable to a separate tract would be an easement conveyed to a third-party conservation advocacy group.

b. For development projects or land use activities not involving a new land division, the critical area and its associated buffer identified through the site assessment process shall instead be identified as a PCA by either easement, open space designation or permit conditions, all including restrictive covenants and recorded with the auditor on a site plan to insure long-term protection. Critical areas and/or buffers identified as PCAs are subject to periodic inspection, upon prior notification to the landowner, to ensure long-term protection.

6. If a portion of a parcel contains a proposed development project that triggers a shoreline development permit, and has not had its critical areas and associated buffers delineated because it was outside the project or area affected by the project, then further critical areas assessment may be required in the future prior to any change of use, or new development permit for that portion of the site.

B. Mitigation. All proposed alterations to shoreline critical areas or associated buffers shall require mitigation sufficient to provide for and maintain the functional values of the critical area or to prevent risk from a critical area hazard and shall give adequate consideration to the reasonable economically viable use of the property. Mitigation of one critical area impact should not result in unmitigated impacts to another critical area. Mitigation may include, but is not limited to: buffers, setbacks, limits on clearing and grading, best management practices for erosion control and maintenance of water quality, compensatory mitigation or other conditions appropriate to avoid or mitigate identified adverse impacts.

C. Preferred Mitigation Sequence. Mitigation includes avoiding, minimizing or compensating for adverse impacts to regulated critical areas or their buffers. The preferred sequence of mitigation is defined below:

1. Avoid the impact altogether by not taking a certain action or parts of an action;

2. Minimize the impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

3. Rectify the impact by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project or activity;

4. Reduce or eliminate the impact overtime by preservation and maintenance operations during the life of the action;

5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments;

6. All proposed mitigation shall be included in the critical areas assessment. The critical areas mitigation shall include the following:

a. Description of existing conditions, functions, and values,

b. Description and quantification of impacts,

c. Description of proposed mitigations (critical areas lost/critical areas gained),

d. Functional analysis of mitigation/analysis of prevention of risk hazard,

e. Proposed applicant or landowner monitoring or inspection measures and schedule, including specification of method and frequency of submittal of reports on results, and

f. Contingency plan.

Such assessments must follow the Washington State Department of Ecology's standards.

D. The director shall make the final determination regarding required mitigation. Required mitigation shall be included in an approved mitigation plan.

E. Financial Assurance. The director or his/her designee shall require the complete mitigation proposed in the site assessment to be completed prior to final approval of the development permit. For all projects with an estimated mitigation cost of four thousand dollars or over, the director shall require financial assurance that will assure compliance with the mitigation plan if the complete mitigation proposed in the site assessment cannot be completed prior to final approval of the development permit. Financial assurance shall be in the form of either a surety bond, performance bond, assignment of savings account or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the city attorney, shall be in the amount of one hundred twenty-five percent of the estimated cost of the uncompleted actions or construction, and shall be assigned in favor of the city of Sedro-Woolley. The term of the financial assurance shall remain in place until the required mitigation is complete.

F. Monitoring of Critical Areas Mitigation. On a regular basis, but no longer than once every two years, the director shall make a significant sampling of projects and activities for which critical area site assessments were required, including mitigation plans, potentially impacting fish-bearing streams and/or Category I, II or III wetlands. The sample shall be taken from permits or approvals issued more than ten months prior to the sampling date. The selected sites shall be inspected for critical area and buffer size and condition and for compliance with any required mitigation or other conditions of approval. Results of such sampling shall be included in the permanent record for the project or activity, shall be reported to the city council, and shall also be utilized for enforcement purposes.

Protected critical area (PCA) requirements.

A. PCA Identification and Recording.

1. PCA Identification. Approval of development projects which trigger a development permit and other land use activities that can cause adverse impacts to critical areas and/or their buffers shall require the identification and designation of PCAs by the director. This section is intended to apply to unique critical area elements such as buffers or wellhead protection areas that can cause adverse impacts; location in the floodplain unless adjacent to a wetland or riparian corridor does not require recording of a PCA. PCAs shall include all critical areas and associated buffers on the proposed project site which have been identified through the site assessment process.

2. PCA Recording. All PCAs shall be recorded with the county auditor in accordance with the procedures established under this section. The applicant shall be responsible for all fees and other costs associated with recording of PCAs.

3. Binding Agreements. For each project or activity that requires recording of PCAs, the following information shall be recorded with the auditor as part of a binding agreement between the landowner and the city which shall run with the land and be readily available to the public upon request:

a. Binding agreement signed by the landowner and the director or designee which stipulates any special conditions of approval, protective covenants, binding conditions, or other requirements such as use restrictions, required mitigation, and/or landowner maintenance or monitoring requirements established at the time of approval;

b. Required final plat map or site plan clearly showing the locations of PCAs, existing vegetation and permanent buffer edge markers;

c. Additional information necessary to document the critical areas inventory at the time of approval, including descriptions of identified critical areas, their locations, functions and values, and existing critical areas or buffer vegetation;

d. Identification of any local responsibilities beyond those required by this chapter;

e. Reference to the file containing the complete record of information pertaining to approval of the project or activity.

4. Permanent Buffer Edge Markers. Except as provided under subsection a of this subsection, the outer edges of all PCAs, with the exception of aquifer recharge areas, shall be clearly marked on-site by the applicant or landowner with permanent rebar stakes and critical area markers. Critical area markers may be either approved critical area signs or inexpensive steel posts painted a standard color approved by the director that is clearly identifiable as a critical area marker. Installation of permanent markers shall be the responsibility of the landowner.

a. The director may waive or modify the requirement for permanent buffer edge markers, provided, that any such decision shall be based on a site-specific determination that future verification of PCA locations will not be substantially more difficult without the placement of permanent markers and that such waiver or modification will not result in reduced long-term protection of critical areas. The determination shall be included in the permanent record and made available to the public upon request.

b. Where such permanent markers are required, the director shall specify their frequency of placement and general location. Permanent markers shall be placed to locate the edge of the PCA to an approximate accuracy of within five percent of the specified buffer width or within five feet, whichever is larger. The spacing intervals of the markers shall be such as to provide comparable accuracy of line-of-sight determination of buffer edges. The locations of all required stakes/markers shall be shown on the plat map or site map recorded with the auditor.

B. Protected Critical Area (PCA) Designations for New Land Divisions.

1. For land divisions where site assessments have occurred pursuant to subsection (A)(1) of this section, all PCAs shall be placed into separate tracts or easements, whose uses shall be regulated by the provisions of this chapter and any conditions of approval, including protective covenants and binding agreements as provided for under subsection A of this section. Area within a PCA can be included in total acreage for development purposes and may be used in lot area or density calculations. PCAs may be owned and maintained by the owner of the lot of which they are a part or transferred to the homeowners association or land trust. Protected critical areas shall be placed in separate tracts under a single owner, unless an easement or alternative method is shown to provide superior protection overtime. An example of an easement that is preferable to a separate tract would be an easement conveyed to a third-party conservation advocacy group.

2. Recording. PCA designations shall be recorded with the auditor as part of the plat approval process.

The auditor file number referencing the agreement shall be on the face of the plat and its provisions shall run with the land,

3. PCA Descriptions. The location of PCAs shall be clearly identified on site plans and on preliminary and final plat maps. PCAs shall be labeled using the letters A through Z, or another labeling system approved by the director. Where more than one lot is involved, each lot shall carry independent labeling as described in subsection (D)(1) of this section.

4. Ingress, Egress and Use. Owners of PCAs shall grant ingress and egress by the director or his or her agent for monitoring and evaluation of compliance with established conditions of approval, binding conditions or any required mitigation. As part of an approved land division, the use limitations required of a designated and regulated critical area according to the provisions of this chapter, including the conclusions of the critical areas site assessment report and any conditions of approval, protective covenants and other binding conditions, shall be clearly stated on the face of the recorded plat.

C. PCAs on Preexisting Lots.

1. For development proposals and other land use activities that can adversely impact critical areas on preexisting lots, not part of a proposed land division or other form of multiple lot development, PCAs shall be identified on a scaled site plan showing the location of the PCA, structures (existing and proposed) and their distances from the PCA and lot lines to show relative location within the subject parcel(s). The project or activity shall be conditioned for critical area protection and the resulting information recorded with the auditor as defined under subsection A of this section. The site plan may be prepared by the applicant and all distances and locations of structures may be measured from the established PCA boundary to within plus or minus five feet.

2. Ingress and Egress. Owners of PCAs shall grant ingress and egress to the director or designee for monitoring and evaluation of compliance with established conditions of approval, binding conditions or any required mitigation.

D. PCA Mapping, Labeling, and Area Calculations.

1. All PCAs Shall be Mapped. The area shall be delineated on the final plat map or on a site plan to an accuracy of plus or minus five feet horizontal and monumented in the field by a qualified expert pursuant to subsection (A)(4) of this section. If a survey was not used to map the critical area, a note on the final plat map shall be recorded stating that a legal survey was not performed to delineate the critical area and that the surveyor is not incurring liability for the exact boundaries of the critical area on the plat map.

2. During construction phases of development, clear temporary marking using flagging and staking shall be maintained along the outer limits of the delineated PCA or the limits of the proposed site disturbance outside of the PCA. Prior to the start of construction activity, and as necessary during construction, temporary markings shall be inspected and approved by the director or designee. The person responsible for inspecting the temporary flagging shall provide written confirmation to be included in the record as to whether or not the flagging has been installed consistent with the permit requirements prior to commencement of the permitted activity.

3. All PCAs shall include the necessary labeling to show calculated area (in square feet or acreage), and type and/or class of critical area within each lot. This information shall be noted on the face of the approved plat or site plan.

4. Signs or Fencing Required as Part of Critical Area Mitigation. The director shall require permanent signs or fencing where the director determines that it is a necessary component of a mitigation plan.

Examples include situations where variances to the dimensional requirement of this chapter have been granted and the development will occur within a PCA; or where the sensitivity of the PCA will be impacted unless access to the PCA is limited (such as changes of use to farming where livestock is involved).

The intent is to provide clear and sufficient notice, identification and protection of critical areas on-site where damage to a critical area or buffer by humans or livestock is probable due to the proximity of the adjacent activity.

5. Sign, Marker and Fence Maintenance. It is the responsibility of the landowner, or any subsequent landowner, to maintain the required PCA markers, signs or fences in working order throughout the duration of the development project or land use activity. Maintenance includes any necessary replacement. Removal of required signs, markers or fences without prior written approval of the director shall be considered a violation of this chapter.

Incentives.

The following incentives are intended to minimize the burden to individual property owners from application of the provisions of this chapter and assist the city in achieving the goals of this chapter:

A. Open Space. Any property owner on whose property a critical area or its associated buffer is located and who proposes to put the critical area and buffer in a separate open space tract may apply for current use property tax assessment on that separate tract pursuant to RCW 84.34.

B. Conservation Easement. Any person who owns an identified critical area or its associated buffer may place a conservation easement over that portion of the property by naming a qualified designee under RCW 64.04.130 as beneficiary of the conservation easement. This conservation easement can be used in lieu of the creation of a separate critical areas tract to qualify for open space tax assessment described in subsection A of this section.

The purpose of the easement shall be to preserve, protect, maintain, restore and limit future use of the property affected. The terms of the conservation easement may include prohibitions or restrictions on access and shall be approved by the property owner and the qualified designee.

General natural resource preservation requirements.

A. For purposes of this section, natural resource lands shall be those lands designated by Skagit County as agricultural, forest or mineral resource lands of long-term commercial significance, and those lands within the city's urban growth area which are currently managed as natural resource lands but which may be designated as an urban reserve area or transitional area, and those lands designated as mineral resource sites within the city limits.

B. All short plats, subdivisions, development permits and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands or mineral resource lands, shall contain a notice that: "The subject property is within or near designated agricultural, forest or mineral resource lands on which a variety of commercial activities and management practices may occur that are not compatible with residential development for certain periods of limited duration."

C. To protect natural resource lands from conflicting uses, such as residential subdivisions, mobile home parks, multifamily residential or other such uses, and to provide a buffer for such uses from the incompatible activities associated with natural resource uses, subdivisions, mobile home parks, planned developments, and multifamily or cluster residential developments shall provide an open space buffer on the perimeter of the development next to the natural resource site(s). This buffer shall be at least fifty feet in width, planted with appropriate vegetation based upon the existing site conditions and adjacent uses, and shall include a fence as required by the director. This buffer area shall be designated as a separate tract within the plat or development, to be maintained through a homeowner's association, or may be preserved through a conservation easement through private individual lots. In either case, setbacks for structures, as required under the zoning ordinance, shall be from the property line or easement delineating the edge of the buffer area.

Natural resource area covenants, tracts, notices and dedications.

A. Covenants. All natural resource buffers established in compliance with this chapter shall be placed in a protective covenant.

B. Tracts. The city may require that any area classified as a natural resource area be placed in a separate tract, rather than included in a protective covenant. Such a tract shall be:

1. Placed in the same ownership as the parcel it was segregated from;
2. Placed into an undivided common ownership of all lots within a proposed subdivision, short plat, planned development or binding site plan; or
3. Dedicated to a public agency who is willing to accept the tract for long-term management of the protected resource.

C. Notice on Title. The owner of property adjacent to a natural resource site, on which a development proposal is submitted shall file with the Skagit County auditor a notice in the public record of the presence of a natural resource area, or buffer area easement or tract, the limitations on actions in or affecting such areas, and the applicability of this chapter to the property. The applicant shall submit proof that the notice has been filed for recording before the city may approve any development proposal on the site. The notice shall run with the land and failure to provide such notice to any purchaser prior to transferring any interest in the property shall be a violation of this chapter.

D. The covenant requirements of this section shall not apply to activities permitted, under the provisions of this chapter, within utility easements or street rights-of-way.

Article II. Shoreland Wetlands

Shoreland Wetlands designations.

Wetlands within the SMZ shall be identified and designated through a site visit and/or a site assessment utilizing the definitions, methods and standards set forth in the current approved U.S. Army Corps of Engineers Manual and applicable regional supplements.

Shoreland Wetlands initial project review.

A. A site visit shall be conducted to confirm the presence of wetland indicators listed in the critical areas checklist or identified on critical areas map references as being within two hundred feet of a proposed project or activity. A positive confirmation by the director that site indicators are present or that the proposed project may impact the wetland area will then require a professional site assessment.

B. The director shall use the following map references to assist in making a determination:

1. Wetlands mapped under the National Wetland Inventory by the U.S. Department of Interior; Fish and Wildlife Service;

2. Areas mapped as hydric soils under the Soil Survey of Skagit County Area, Washington by the United States Department of Agriculture; Soil Conservation Service;

3. A water of the state as defined under WAC 222-16-030 and maintained in the Washington State Department of Natural Resources Stream Type Maps;

4. Wetlands previously identified through the methodology specified under in this chapter for another project; and

5. City of Sedro-Woolley critical areas map as updated periodically by the planning department.

Shoreland Wetlands site assessment requirements.
If a wetlands site assessment is required, it shall meet the following requirements:

A. A wetland reconnaissance shall be performed by a qualified wetlands professional. The reconnaissance shall identify the presence of wetlands within two hundred feet of the project or activity area, if practicable. If this wetland reconnaissance demonstrates no wetlands within two hundred feet of the activity area, then no further study is required;

B. A wetland delineation shall be performed as part of a site assessment where a wetland reconnaissance confirms the presence of a wetland or the applicant chooses to perform a delineation instead of a wetland reconnaissance. The delineation shall be performed by a qualified wetland professional trained in conducting delineations in accordance with the methodology specified in this section;

C. Wetlands Site Assessment. The site assessment shall be prepared by a qualified expert wetland professional consistent with this section. The site assessment shall include the following:

1. Site plan prepared in accordance with the requirements of this chapter indicating the presence of wetlands within two hundred feet of the project or activity area. This site plan information may be prepared by the applicant with review by the qualified wetlands professional. If the applicant together with assistance from the director cannot obtain permission for access to properties within two hundred feet of the activity area then an approximation of the extent of off-site wetlands within two hundred feet of the area may be completed based on aerial interpretation and/or visual observation from nearby vantage points,

2. Wetland rating based upon Washington State Department of Ecology's Washington State Wetland Rating System for Western Washington 2014 update (Ecology Publication #14-06-029, effective January 2015) or subsequent revisions,

3. Delineation report including a site map indicating wetland boundaries and the locations of all data points,

4. Values and functions assessments shall include but not be limited to discussion of water quality, fish and wildlife habitat, flood and stream flow attenuation, recreation and aesthetics,

5. Project description and impact assessment shall include a detailed narrative describing the project, its relationship to the wetland and its potential impact to the wetland,

6. Any proposed mitigation plan shall include a discussion on how the project has been designed to avoid and minimize adverse impacts to wetlands, compensate for the loss of existing functions and values of wetlands, and should follow the general mitigation plan requirements described below under section "Wetland mitigation standards" and Guidance on Wetlands Mitigation in Washington - Parts 1 and 1, April 2004, or subsequent revisions, and shall be consistent with the city of Sedro-Woolley comprehensive plan; and

7. Approval of any activity that can adversely affect regulated wetlands shall conform to the requirements set forth in the above section "Protected critical area requirements."

Alteration of shoreland wetlands.

A. A regulated wetland in the SMZ or its required buffer can only be altered if the wetlands site assessment shows that the proposed alteration does not degrade the quantitative and qualitative functioning of the wetland, or any degradation can be adequately mitigated to protect or compensate for the wetland functions that are lost. Any alteration approved pursuant to this section shall include mitigation necessary to mitigate the impacts of the proposed alteration on the wetland as described in following section "Wetland mitigation standards."

B. Stormwater discharges to wetlands shall be controlled and treated to provide all known and reasonable methods of prevention, control, and treatment as mandated in the State Water Quality Standards, WAC 173-201A, as required by state law and implemented in SWMC Title 15, Buildings and Construction.

Shorleand wetland mitigation standards.

A. Mitigation Plan Requirements. Along with the other provisions of the other subsections below, the following items are required as part of a mitigation plan:

1. Description of project or activity and impact assessment shall include a detailed narrative describing the project or activity, its relationship to the wetland and its potential impact to the shoreline jurisdiction wetland.

2. Any proposed mitigation plan shall include a discussion on how the project or activity has been designed to avoid and minimize adverse impacts to wetlands and should follow the general mitigation plan requirements described in this section and in Guidance on Wetlands Mitigation in Washington - Parts 1 and 1, April 2004, and subsequent revisions.

B. Standard Wetland Buffers Requirements. Buffers satisfy the first step in the mitigation sequence set forth in this section. They are necessary in order to avoid potential project generated impacts. Buffers help maintain water quality and habitat diversity while stabilizing hydrology and minimizing direct human disturbance to wetlands. Buffer widths are based on wetland rating, the functions that the buffer is expected to perform, and the

intensity of the proposed land use. The following standard buffers shall be required for regulated wetlands unless otherwise provided for in this section:

Category of Wetland	Land Use with Low Impact*	Land Use with Moderate Impact*	Land Use with High Impact*
IV	25	40	50
III	75	110	150
II	150	225	300
I	150	225	300

* See Table below for types of land uses that can result in low, moderate and high impacts to wetlands.

Level of Impact from Proposed Land Use	**Types of Land Use Based on Common Zoning Designations ***
High	• Commercial • Industrial • Institutional • Mixed-use developments • Retail sales • Residential (more than 1 unit/acre) • Conversion to high-intensity agriculture (dairies, nurseries, greenhouses, growing and harvesting crops requiring annual tilling and raising and maintaining animals, etc.) • High-intensity recreation (golf courses, ball fields, etc.)
Moderate	• Residential (1 unit/acre or less) • Moderate-intensity open space (hard surface trails, parks with biking, jogging, etc.) • Conversion to moderate-intensity agriculture (orchards, hay fields, etc.) • Paved trails • Building of logging roads • Utility corridor or right-of-way shared by several utilities and including access/maintenance road
Low	• Forestry (cutting of trees only) • Low-intensity open space (hiking, bird-watching, preservation of natural resources, native berry picking, etc.) • Unpaved trails • Utility corridor without a maintenance road and little or no vegetation management. • Wetland enhancement.

~~Category I~~	~~150~~
~~Category II~~	~~110~~
~~Category III~~	~~50~~
~~Category IV~~	~~25~~

1. Wetland buffers shall be measured horizontally in a landward direction from the wetland edge, as delineated in the field. Where lands adjacent to a wetland display a continuous slope of twenty-five percent or greater, the buffer shall include such sloping areas. Where the horizontal distance of the sloping area is greater than the required standard buffer, the buffer shall be extended to a point twenty-five feet beyond the top of the bank of the sloping area;

2. Except as otherwise specified, wetland buffers shall be retained in their natural condition;

3. Where buffer disturbance or alteration has or will occur in conjunction with regulated activities, revegetation with native vegetation shall be required and completed as per a mitigation plan approved by the director.

C. As described generally in subsection A of this section, if an applicant does not propose to alter the required buffer, then no additional wetland impact mitigation shall be required.

D. If an applicant proposes to decrease or alter a required buffer or alter a wetland pursuant to the above section “Reasonable use exceptions,” the applicant shall demonstrate through the shoreline variance process why such buffer and/or wetland modification, together with such alternative mitigation proposed in the wetland area assessment is sufficient to adequately protect the wetland functions and values or compensate for disturbance to the functions and values of the wetland. A buffer reduction of less than 25% the standard buffer may be accomplished without engaging the shoreline variance permit process.

E. Performance Based Buffer Alternatives. Buffer widths may be increased, decreased or averaged in accordance with the following provisions. In implementing alternative buffer widths, the director may require fourteen days for review and comment from appropriate federal, state or tribal natural resource agencies to ensure the use of best available science and relevant comments will be conditions of project approval. All comments shall be included in the public record along with the basis and rationale for requirement or approval of any such alternative buffer widths.

1. Buffer Width Increasing. Standard buffers may be increased upon a determination by the qualified wetland expert with confirmation from the Washington State Departments of Ecology and/or Fish and Wildlife that buffer width averaging is not adequate to protect the functions and values of the wetland and increased buffer widths are necessary to:

a. Maintain viable populations of existing species listed by the federal or state government as endangered, threatened or sensitive;

b. Maintain critical habitat for those species referenced in subsection (E)(1)(a) of this section;

c. Protect wetlands against severe erosion that standard erosion control measures will not effectively address; or

d. If the wetland contains variations in sensitivity, increasing the buffer widths will only be done where necessary to preserve the structure, function and value of the wetland.

2. Buffer Width Decreasing. Decreasing of standard buffer widths by up to 25% of the standard buffer without a variance will be allowed administratively, provided, that in decreasing a standard buffer width, the functions and values of the wetland are not decreased. A wetland delineation report prepared by a qualified professional will be required to demonstrate that the functions and values of the wetland are not decreased.

3. Buffer Width Averaging. Wetland buffers may be averaged, provided, that the total buffer area on the lot is not less than that required within the standard buffer, and that averaging will not reduce the wetland functional values. The city may require buffer width averaging in order to protect a particular portion of the wetland or buffer which is especially sensitive, or to incorporate existing significant vegetation or habitat areas into the buffer. Any reduction in buffer width as part of buffer width averaging shall not exceed twenty-five percent of the standard buffer width.

F. Allowed Uses in Buffers. Low impact uses and activities which are consistent with the purpose and function of the habitat buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the habitat involved, provided, that such activity shall not result in a decrease in wetland functional values and shall not prevent or inhibit the buffer's recovery to at least prealtered condition or function. Examples of uses and activities which may be permitted in appropriate cases, as long as the activity does not retard the overall recovery of the buffer, include removal of noxious vegetation, pedestrian trails, revegetation of stormwater facilities, and viewing platforms. Pedestrian trails should consist of permeable surfaces, be not more than five feet in width, minimize wetlands crossings, be located in the outer twenty-five percent of a wetlands buffer, and be designed to minimize impact on a wetland. Buffer widths should be increased to compensate for the loss due to the width of the trail if the buffer is less than fifty feet in width.

G. Establishment of Limits of Clearing. The location of the outer extent of the wetland buffer and the limits of the areas to be disturbed shall be marked in the field and be included as a condition of a development permit or approval. Such field markings may be field-approved by the director prior to the commencement of permitted activities. Markings shall be maintained throughout the duration of any construction activities.

H. Exceptions to Mitigation Requirements. Requirements for mitigation do not apply under the following circumstances:

1. When a wetland alteration is intended exclusively for the enhancement or restoration of an existing regulated wetland and the proposal will not result in a loss of wetland function and value, subject to the following conditions:

a. The enhancement or restoration project shall not be associated with a development activity;

b. An enhancement or restoration plan shall be submitted for site plan review. The restoration or enhancement plan must include the information required in this chapter.

2. When a wetland is a part of a development activity that is permitted by the Corp of Engineers NWP 14 permitting crossing of wetlands as part of road construction, provided, that the applicant shall comply with any compensatory mitigation required by the NWP 14, Ecology's 401 Water Quality Certification, or Ecology's Coastal Zone Management Consistency Determination.

I. Compensatory Mitigation.

1. General Provisions.

a. In selection compensation actions, applicants should consider the following order of preference:

i. Restoring wetlands on upland sites which were formerly wetlands,
ii. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of exotic introduced species,
iii. Enhancing significantly degraded wetlands,
iv. Preserving high-quality wetlands which are under imminent threat,
v. In-lieu fees,
vi. Preservation of other habitat;

b. Compensatory mitigation shall be conducted on property which shall be protected and managed to avoid further loss or degradation. The applicant shall provide for long-term preservation of the compensation area;

c. Compensatory mitigation shall follow an approved compensatory mitigation plan pursuant to criteria in the above section titled “Alteration of wetlands” and reflect the restoration/creation ratios specified in subsection (I)(2) of this section;

d. Enhancement of existing wetlands may be considered for compensation as further described in subsection (I)(2) of this section;

e. Compensation shall be completed prior to, concurrently with, or bonded to enable mitigation to occur after wetland loss, or, in the case of an enforcement action, prior to further development of the site.

2. On-Site Compensation. As a condition of any development permit or approval which results in on-site loss or degradation of regulated wetlands and/or wetland buffers, the director shall require of the applicant compensatory mitigation to offset impacts resulting from the actions of the applicant. On-site compensation is generally preferred over off-site compensation if practicable.

Except under subsection H of this section, any person who alters or proposes to alter regulated wetlands shall restore or create areas of wetland in order to compensate for wetland losses. The following ratios in the table below apply to creation or restoration which is in-kind (i.e., the same type of wetland) on-site, and is accomplished prior to or concurrently with loss. The first number specifies the acreage of wetlands to be restored or created and the second specifies the acreage of wetlands lost:

Wetland On-Site Restoration/Creation Ratios:

Wetland Created: Wetland Area Lost

Category I	6:1
Category II	3:1
Category III	2:1

Category IV	1.5:1

These ratios apply to creation or restoration of a nonwetland area, which is, the same category as the impacted wetland, timed prior to or concurrent with the alteration, and has a high probability of success.

These ratios may be increased under the following circumstances:

a. Uncertainty as to the probable success of the proposed restoration or creation;
b. Significant period of time between impact and replication of wetland functions;
c. Proposed mitigation will result in lower category wetland or reduced functions than the wetland being impacted; or
d. The impact was an unauthorized impact.

These ratios may be decreased under the following circumstances:

a. Documentation by a qualified wetland specialist demonstrates that the proposed mitigation actions have a very high likelihood of success;
b. Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions will provide significantly greater functions and values than the wetland being impacted; or
c. The proposed mitigation actions are conducted in advance of the impact and are shown to be successful.

Wetlands Enhancement

Any applicant proposing to impact wetlands may propose to enhance existing significantly degraded wetlands in order to compensate for wetland losses. Applicants proposing to enhance wetlands must produce a report that identifies how enhancement will increase the functions of the degraded wetland and how this increase will adequately compensate for the loss of wetland area and function at the impact site. An enhancement proposal must also show whether existing wetland functions will be reduced by the enhancement actions.

At a minimum, enhancement acreage shall be four times the acreage required for creation or restoration unless it is demonstrated that the enhancement proposal would result in no loss of wetlands area or wetlands functions, in which case it may be reduced, but not below the acreage required for creation or restoration.

3. Off-Site Compensation. Off-site compensation allows replacement of wetlands away from the site on which the wetland has been impacted by a regulated activity. Off-site compensation will be conducted in accordance with the restoration/creation ratios described in subsection (I)(2) of this section and selecting compensation sites in subsection (I)(5) of this section. Off-site compensation should occur within the same drainage basin of the same watershed where the wetland loss occurs. In such instances, the stormwater storage function provided by a wetlands must be provided for within the design of the development project. Off-site compensation can be allowed only under one or more of the following circumstances:

a. On-site compensation is not feasible due to hydrology, soils, or other factors;
b. On-site compensation is not feasible due to limited site constraints needed to meet density requirements;

c. On-site compensation is not practical due to probable adverse impacts from surrounding land uses or would conflict with a federal, state or county public safety directive;

d. Potential functional values at the site of the proposed restoration are greater than the lost wetland functional values;

e. When the wetland to be altered is of a limited functional value and is degraded, compensation shall be of the wetland community types needed most in the location of compensation and those most likely to succeed with the highest functional value possible.

4. Out-of-kind compensation can be allowed when out-of-kind replacement will best meet the provisions of subsection (I)(1) of this section and the mitigation sequence outlined in this section.

5. Selecting Compensation Sites. General provisions.

a. Except in the case of cooperative compensation projects in selecting compensation sites, applicants shall pursue locations in the following order of preference:

i. Filled, drained, or cleared sites which were formerly wetlands and where appropriate hydrology exists,

ii. Upland sites, adjacent to wetlands, if the upland is significantly disturbed and does not contain a mature forested or shrub community of native species, and where the appropriate natural hydrology exists,

iii. Within wildlife corridors;

b. Where out-of-kind replacement is accepted, greater restoration/creation ratios may be required.

J. Timing. Construction of compensation projects shall be timed to reduce impacts to existing wildlife and plants. Construction shall be timed to assure that grading and soil movement occurs during the dry season and planting of vegetation shall be specifically timed to needs of the target species.

K. Alternative Compensation Projects. The director may encourage, facilitate and approve innovative wetland mitigation projects. Advance compensation or mitigation banking are examples of alternative compensation projects allowed under the provisions of this section wherein one or more applicant(s), or an organization with demonstrated capability, may undertake a compensation project together if it is demonstrated that all of the following circumstances exist:

1. Creation of one or several larger wetlands may be preferable to many small wetlands;

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

3. The group demonstrates that long-term management of the compensation area will be provided;

4. There is a clear potential for success of the proposed compensation at the identified compensation site;

5. Conducting compensation as part of a cooperative process does not reduce or eliminate the required replacement ratios outlined in subsection (I)(2) of this section. Exception: (a) where a

compensatory mitigation plan including a five-year monitoring agreement is included as a condition of approval where woody vegetation is not a part of the replacement plan, such plan shall allow for one is to one resulting replacement ratios upon successful completion of the monitoring agreement; and (b) where a compensatory mitigation plan including a ten-year monitoring agreement is included as a condition of approval where woody vegetation is part of the replacement plan, such plan shall allow for one is to one resulting replacement ratios upon successful completion of the monitoring agreement. Provided further, no reduction of the required replacement ratios outlined in subsection (I)(2) of this section shall be allowed unless the applicant can demonstrate that there will be no loss of resulting wetlands function or area overtime. The applicant may be required to provide additional replacement area to allow for probably loss of area during the period of establishment;

6. Wetland mitigation banking programs consistent with the provisions outlined in the wetland mitigation bank rule (WAC 173-700) will be considered as a method of compensation for unavoidable, adverse wetland impacts associated with future development. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when;

a. The bank is certified under state rules;
b. The Administrator determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
c. The proposed use of credits is consistent with the terms and conditions of the certified bank instrument.

Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument. Credits from certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the certified bank instrument. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

Article III. Aquifer Recharge Areas

Aquifer recharge areas.

A. Intent. This section establishes areas determined to be critical in maintaining both groundwater quantity and quality in the shoreline jurisdiction. This section specifies regulatory requirements to be enacted when development within these areas is proposed to occur and provides a methodology by which the level of review and any mitigation required is determined. The intent of this section is to:

1. Define minimum regulatory requirements to protect groundwater quality and quantity for existing and future use;

2. Identify the practices, alternatives, or mitigations that can minimize the adverse impacts of proposed projects; and

3. Insure adequate design, construction, management, and operations to protect groundwater quality and quantity.

B. Existing and future beneficial uses of groundwater shall be maintained and protected and degradation of groundwater quality that would interfere with or become injurious to beneficial uses shall be avoided or minimized.

C. Wherever groundwaters are determined to be of a higher quality than the criteria established for such waters under this section, the existing water quality shall be protected, and contaminants that will reduce the existing quality thereof shall not be allowed to enter such waters, except in those instances where it can be demonstrated that:

1. An overriding consideration of the public interest will be served; and

2. All contaminants proposed for entry into such groundwater(s) shall be provided with all known, available, and reasonable methods of prevention, control, and treatment prior to entry.

D. It is the intent of this regulation to be consistent with and implement the requirements of RCW 90.48, RCW 90.54, WAC 173-200, WAC 173-201A, WAC 173-160, WAC 246-290, and WAC 246-291, as the same may hereafter be amended.

Aquifer recharge area designations.

Two categories are designated for aquifer recharge areas. These categories are designated to assist the director in determining the level of assessment necessary to evaluate specific land use proposals. The categories are based on the determination that certain areas require additional scrutiny of the potential impacts of a proposed land use with consideration given to hydrogeologic vulnerability. All designated areas are subject to change as data and information are updated or become available.

A. Designation Categories.

1. Category I areas are those so designated because of the need to provide them special protection due to a specific preexisting land use, or because they are identified by the local, state or federal government as areas in need of special aquifer protection where a proposed land use may pose a potential risk which increases aquifer vulnerability.

Category I includes areas served by groundwater which have been designated as a “Sole Source Aquifer Area” under the Federal Safe Drinking Water Act; areas identified within a “closed” or “low-flow” stream watershed designated by the Department of Ecology pursuant to RCW 90.22; areas identified by the Department of Ecology as sea water intrusion areas; and areas designated as “Wellhead Protection Areas” pursuant to WAC 246-290-135(4) and the groundwater contribution area in WAC 246-291-100(2)(e). Wellhead protection areas shall, for the purpose of this regulation, include the identified recharge areas associated with either Group A public water supply wells, those Group B wells with a wellhead protection plan filed with the Skagit County Health Department, or plats served by five or more individual wells where the average lot size is equal to or less than two acres for which a well head protection plan has been completed and filed with the Skagit County Health Department. Category I areas are shown on the aquifer recharge area map.

2. Category II is designated as areas not identified as Category I areas.

3. When any portion of the proposed project area lies partly within a Category I area, the proposed project shall be subject to the level of scrutiny provided for Category I area.

Aquifer recharge applicability and prohibited activities.

A. Applicability. All development projects are subject to the provisions of this section except for the following:

1. Existing activities that currently and legally exist at the time this chapter became effective. However, expansions or changes in use are subject to this section and the review process contained in this chapter.

2. Single-family residential building permits, including accessory building permits, which are outside Category I areas.

3. Residential short plats outside Category I areas where each lot is two and one-half acres or greater.

4. Single-family residential building permits where a site assessment report was required to be completed for the land division, in which case, to meet the conditions of this exemption, the applicant must comply with the recorded plat notes and the applicable mitigations contained in the site assessment report.

B. Prohibited Activities. The following activities are prohibited in the shoreline jurisdiction due to the probability and/or potential magnitude of their adverse effects on groundwater:

1. Landfill activities as defined in WAC 173-304 and WAC 173-351;

2. Untreated sewage waste disposal wells;

3. Cesspools;

4. Industrial process water and disposal wells;

5. Radioactive waste disposal; and

6. Radioactive disposal sites.

Aquifer recharge initial project review.

A. General Procedures. Applicants for all development projects not allowed under SWMC Section the exemptions listed in this chapter shall be required, through a site assessment report prepared to evaluate potential impacts to aquifer recharge areas, and appropriate mitigation measures to reduce or eliminate the potential for adversely impacting aquifer recharge areas shall be identified. The level of study and report detail required will be determined by the director based on the type of land use being proposed, the designated aquifer recharge area category, and the vulnerability of the underlying aquifer(s) to contamination. The goal of this section is to require applicants to identify and characterize vulnerability only to the level necessary to determine appropriate mitigation measures necessary, to either reduce potential adverse impacts to established parameters or eliminate potential adverse impacts to underlying aquifer(s).

B. Scoping. The level of study which will be required of the applicant by the director for a given development will be based on an initial project review that may include staff from the planning and health departments, and a hydrogeologist.

Elements for the report that are required at a minimum and other elements that may be required as part of the scope for the study are listed in the next subsection “Aquifer recharge site assessment report.” Subsequent findings from the study or other information made available after the initial project review may obligate the applicant to additional evaluation, development of a mitigation plan, and/or development of a groundwater monitoring plan. The following outlines the review process:

1. The director and health officer shall review the project and determine the required scope of the site assessment report. The scope of site assessment required shall be conveyed to the applicant and/or his or her representative in writing. The applicant may present evidence to the director and health officer to justify reduction in the scope for the site assessment report.

2. The site assessment report shall be submitted for review. The director and/or health officer shall either approve the site assessment report as submitted, require additional evaluation, or require development of a mitigation plan. If additional information is required beyond the initial site assessment report, the applicant and/or his or her representative shall be notified in writing of the specifics of the information required. The applicant may present evidence in writing to the reviewing official to justify modification of the requirement for additional information or present alternative or additional mitigation measures in lieu of further study.

3. When, to the satisfaction of the director, all information is provided and mitigation(s) established as being in compliance with this section, the director shall make appropriate recommendations for project permit approval.

Aquifer recharge site assessment report.

A. The scope of the site assessment report shall be determined based on the initial project review specified in above subsection. The scope of the report may be reduced by utilizing appropriate mitigation measures, or if the water quality or quantity issue(s) are already known.

B. The site assessment report shall be prepared by, or under the direction of, and signed by a professional engineer, licensed in the state of Washington, trained and qualified to analyze geologic, hydrologic, and groundwater flow systems; or by a geologist or hydrogeologist who earns his or her livelihood from the field of geology and/or hydrogeology and has received a degree in geological sciences from an accredited four-year institution of higher education and who has relevant training and experience analyzing geologic, hydrologic, and groundwater flow systems.

C. Site Assessment Report Requirements. A site plan shall be prepared in accordance with the requirements of this code. In addition, a site assessment report shall include:

1. A description of the project including those activities, practices, materials, or chemicals that have a potential to adversely affect the quantity or quality of underlying aquifer(s);

2. Identification of appropriate mitigation measures and description of how they will prevent degradation of underlying aquifer(s);

3. A site plan or another appropriately scaled map showing the approximate location of known or geologically representative well(s) (abandoned and active), spring(s), and surface watercourses within one thousand feet of the subject project property. All well logs available through the health department for identified wells within one thousand feet of the project property shall be included;

4. A description of the site-specific hydrogeologic characteristics regarding impact to the quantity or quality of underlying aquifer(s). At a minimum this will include a description of the lithology, depth to and static water level of known underlying aquifer(s), and depiction of groundwater flow direction and patterns on the appropriate map;

5. Identification of the initial receptors of potential adverse impacts located hydraulically downgradient from the project within one thousand feet or as otherwise directed by the director and/or health officer.

D. Additional Site Assessment Elements. After the initial project review, one or more of the site assessment elements listed below may be required based upon the proposed project activity, aquifer recharge area classification, complexity of underlying hydrogeologic conditions, and/or the perceived potential to adversely impact hydraulically downgradient receptors. One or more of these additional elements may also be required if the applicant chooses to demonstrate that certain mitigation measures are not necessary to protect the quantity or quality of the underlying aquifer(s), or that the project does not pose a detrimental risk to hydraulically downgradient receptors:

1. Lithologic characteristics and stratigraphic relationships of the affected aquifer(s) and overlying geologic units (includes soil types) including thickness, horizontal and vertical extent, permeability, and infiltration rates of surface soils;

2. Delineation of identified structural features such as faults, fractures, and fissures;

3. Aquifer characteristics including determination of recharge and discharge areas, transmissivity, storage, hydraulic conductivity, porosity, and estimate of groundwater flow direction, velocity and patterns for the affected aquifer(s);

4. Estimate of precipitation, evaporation, and evapotranspiration rates for the project area;

5. Preparation of appropriate hydrogeologic cross sections depicting at a minimum underlying lithology and stratigraphy, aquifer(s), and potential or probable contaminant pathways from a chemical release;

6. Contaminant fate and transport including probable migration pathways and travel time of potential contaminant release(s) from the site through the unsaturated zone to the aquifer(s) and through the aquifer(s), and how the contaminant(s) may be attenuated within the unsaturated zone and the aquifer(s). Includes consideration of advection, dispersion, and diffusion of contaminants in the groundwater;

7. Delineation of areas potentially affected by contaminant migration on the ground surface and/or through the affected aquifer(s);

8. Determination of background or existing groundwater quality underlying the project area;

9. Development of a groundwater monitoring program to measure potential impacts of the development to underlying aquifer(s);

10. Development of a spill plan and/or contingency plan describing the specific actions, which will tie taken if a release of a contaminant(s) occurs, or if groundwater monitoring results indicate a contaminant(s) from the site has entered the underlying aquifer(s);

11. The degree of continuity between groundwater and nearby surface water including potential impact to “closed” or “low-flow” streams (as described in subsection “aquifer recharge mitigation” below) from proposed groundwater withdrawals, and potential impacts to surface water quality from site runoff or contaminated groundwater discharge;

12. In conjunction with the Department of Ecology Seawater Intrusion Policy and subsequent policies or ordinances, applicable projects shall be required to determine appropriate pumping rates and schedules that maintain dynamic drawdown levels above mean sea level;

13. Applicable projects such as special use permits, short plats, or long plats shall test existing and/or test wells for nitrate levels and where appropriate calculate the nitrate loading rate at full build-out of the project. If the calculated nitrate loading in the intended water supply equals or exceeds five mg/L nitrate as nitrogen, the proposal will need to develop a mitigation plan. The point of compliance shall be determined based on project specifics.

Aquifer recharge area mitigation.
The health department shall review development proposals to assess aquifer(s) vulnerability and establish needed mitigation. Where determined to be necessary through the site assessment process, development approvals shall include conditions designed to prevent significant degradation of water quality or reduction in water quantity in aquifer recharge areas. The project shall not cause degradation of the groundwater quality below the standards described in WAC 173-200 or Department of Ecology’s seawater intrusion policy.

Wellhead Protection Mitigation. Where a wellhead protection plan that addresses the project area exists, the director and/or health officer shall use the recommendations contained in the wellhead protection plan as a basis for formulating mitigations. In the absence of such a mitigation plan, the health department and Public Utility District #1 shall jointly develop mitigations, a summary of which shall be signed by the applicant and recorded with the applicant’s property title. All new development shall be required to connect to the Public Utility District #1 Water System.

Aquifer recharge public notice and review.
In addition to the provisions for public notice provided in the above section “Application submittal requirements,” the director shall make the site assessment report available for public review upon approval of the following projects which have undergone critical areas review pursuant to this chapter:

A. All projects occurring in Category I areas, except single-family residence or accessory building permits, and short subdivisions;

B. All activities identified under the above section “Aquifer recharge applicability and prohibited activities,” regardless of location; and

C. Commercial or industrial projects or subdivisions that have the potential to adversely affect the quality or availability of potable water.

Article IV. Geologically Hazardous Areas

Geologically hazardous area designations.
Geologically hazardous areas include erosion hazards, landslide hazards, mine hazards, volcanic hazards and seismic hazards, and shall be designated consistent with the definitions provided in WAC 365-190-080(4).

Geologically hazardous areas in the shoreline jurisdiction shall be classified as “known or suspected risk,” or “unknown risk.”

Geologically hazardous area initial project review.
A site visit shall be conducted by the director to determine whether: (1) “Areas of Known or Suspected Risk” identified below are or may be present within two hundred feet of the project or activity; (2) the proposed project or activity is or may be within a distance from the base of an adjacent landslide hazard area equal to the vertical relief of such hazard area; (3) the proposed activity may result in or contribute to an increase in hazard; and (4) whether the project or hazard areas pose a risk to life, property, or other critical areas on or off the project area sufficient to require a site assessment. Areas of known or suspected risk:

A. Erosion Hazard Indicators.

1. Those project areas located within two hundred feet of map unit delineations #51 Dystic Xerorthents, #99 Mundt and #117 Saxon or mapped as moderate to severe, severe or very severe erosion hazard or as having severe rill and inter-rill erosion hazard as identified in the U.S. Department of Agriculture Natural Resources Conservation Service Soil Survey of Skagit County Area, Washington (1989).

2. Those project areas that fall within any soil sloping greater than or equal to thirty percent.

3. The project area falls within areas designated in the Department of Ecology, Coastal Zone Atlas, Washington, Volume Two Skagit County (1978) as U (Unstable), UB (Unstable Bluff), URS (Unstable Recent Slide), or UOS (Unstable Old Slide).

4. Those project areas that may be considered to have an erosion hazard as a result of rapid stream incision or stream bank erosion.

B. Landslide Hazards Indicators.

1. The project area falls within or two hundred feet from areas designated in the Department of Ecology, Coastal Zone Atlas, Washington, Volume Two, Skagit County (1978) as U (Unstable), UB (Unstable Bluff), URS (Unstable Recent Slide), or UOS (Unstable Old Slide).

2. The project area falls within or two hundred feet from slopes having the following characteristics: Gradients of fifteen percent or greater intersecting geologic contacts with permeable sediments overlying low permeability sediment or bedrock and springs or groundwater seepage are present.

3. The project area falls within or two hundred feet from any area having a forty percent slope or steeper and with a vertical relief of ten feet or more.

4. The project area falls within or two hundred feet from any areas of historic failure such as areas designated as quaternary earth slumps, earthflows, mudflows, lahars, debris flows, rock slides, landslides or other slope failures on maps or technical reports published by the U.S. Geological Survey such as topographic or geologic maps, or the Geology and Earth Resources Division of the Washington Department of Natural Resources, or other documents authorized by government agencies.

5. The project area falls within or two hundred feet from any areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action shall be addressed as a flood hazard consistent with this chapter.

6. Areas that have shown movement during the Holocene epoch or which are underlain or covered by wastage debris of that epoch.

7. The project area falls within or two hundred feet from any slopes that are parallel or sub-parallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials.

8. The project area falls within or two hundred feet from any slopes with a gradient greater than eighty percent and subject to rock fall during seismic shaking.

9. The project area falls within or two hundred feet from any areas that show evidence of or are at risk from snow avalanches.

C. Seismic Hazards. Seismic hazard areas shall include areas that are subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction or surface faulting.

1. The project includes structures (as defined in the Uniform Building Code) proposed to be located in any of the areas described in subsection A or B of this section or located in areas to have a potential for soil liquefaction and soil strength loss during ground shaking as identified on the U.S. Geologic Survey Relative Slope Stability Map of the Port Townsend Quadrangle, Puget Sound Region, Washington, (1985), or as identified in the field. A geologic hazard site assessment is not required for soil liquefaction and soil strength loss resulting from seismic activity unless other criteria provided in this section apply. The building official shall require evaluation using the provisions set forth in the adopted building code.

2. The structures or critical facilities are proposed to be located on a Holocene fault line. (No critical facilities shall be located on a Holocene fault line as indicated on investigative maps or described in studies by the U.S. Geologic Survey, Geology and Earth Resources Division of the Washington Department of Natural Resources, or other documents authorized by government agencies, or as identified in the field). All developments on a Holocene fault line shall require a disclosure statement indicating the property is located on an active fault and may be geologically hazardous.

D. Volcanic Hazards. The project area is located in a volcanic hazard zone for Glacier Peak, Washington (Open-File Report 95-499); or in a volcanic hazard area of Mount Baker, Washington (Open-File Report 95-498). A site assessment is not required for volcanic hazard areas unless other criteria provided in this section apply.

E. Other Geologic Hazard Indicators.

1. The project area falls within or two hundred feet from an alluvial fan as designated on the Skagit County Alluvial Fan Study Orthophoto Maps;

2. The project area falls within or two hundred feet from a mine hazard area as designated on the Department of Natural Resources Map: Coal Measures of Skagit County, (1924) or within two hundred feet of any other current or historic mine operations determined to be geologic hazards as described by subsection “geologically hazardous areas” of this chapter;

3. Areas of Unknown Geologic Hazards. As part of any development application where no current information is available to confirm that the items identified in this section are present on the project area, the required critical areas review will provide a description of the known and visible site features and be used by the director in evaluating whether a geologically hazardous area site assessment is required pursuant to this section.

Geologically hazardous area site assessment requirements.

A. Site Visit Determination. The director shall make a determination using the following progressive order:

1. No Site Assessment. Where the director determines that the project or activity area has no potential for impacting adjacent ownership and property, other types of critical areas, public property (such as roads and other facilities) or living quarters of any kind, including any existing or proposed off-site, the director shall not require additional site assessments prior to approval under the provisions of this chapter.

2. Site Assessment Required. If the director determines during the site visit described in the previous subsection that the proposed development activity falls within two hundred feet of an “Area of Known or Suspected Risk” and the geologic condition may pose a risk to life and property on or off the project area, then a geologically hazardous area site assessment of the project area by a qualified professional as described in subsection (B)(2) of this section shall be required as part of the complete development permit application.

B. Geologically Hazardous Area Site Assessment. When required by the director, a site assessment report shall be prepared by a qualified professional. Portions of the report relating to recommended design or mitigation

shall be prepared under supervision of a licensed professional engineer. A qualified professional shall mean an engineer, licensed in the state of Washington, with training and experience analyzing geologic, hydrologic, and groundwater flow systems in Washington State; or by a geologist who earns his or her livelihood from the field of geology and/or geotechnical analysis, with training and experience analyzing geologic, hydrologic and groundwater flow systems in Washington State, who has received a relevant degree from an accredited four-year institution of higher education.

The geologically hazardous area site assessment report shall classify the type of hazard in accordance with the previous two subsections. The site assessment report shall include the following as appropriate:

1. A site plan must be prepared in accordance with the development permit requirements. The site plan shall depict the height of slope, slope gradient and cross section of the site. The site plan shall indicate the location of all existing structures, proposed structures and any significant known geologic features on the subject site. The site plan shall also include the location of springs, seeps, or other surface expressions of groundwater. The site plan shall also depict any evidence of surface or stormwater runoff;

2. A detailed description of the project, its relationship to potential geologic hazard(s), and its potential impact upon the hazard area(s), the subject property and adjacent properties. The description shall make a determination if a geologically hazardous area(s) is present on the subject site. The narrative shall include a full discussion of the geologic factors and conditions on the subject site resulting in the qualified professionals conclusions;

3. An assessment of the geologic characteristics and engineering properties of the soils, sediments, and/or rock of the subject property and potentially affected adjacent properties. Soils analysis shall be accomplished in accordance with the Unified Soil Classification System;

4. A description of load intensity including surface and groundwater conditions, public and private sewage disposal systems, fills and excavations and all structural development;

5. An assessment describing the extent and type of vegetative cover to include tree attitude;

6. For Potential Landslide Hazards. Estimate slope stability and the effect construction and placement of structures will have on the slope over the estimated life of the structure. Quantitative analysis of slope stability or slope stability modeling may be required by the director;

7. Additional site assessment standards may be required by the director.

C. Site Assessment Conclusions.

1. Where the qualified professional determines that a geologically hazardous condition is not present on the subject site and/or will not occur as a result of the proposed project, will have no potential for impacting adjacent ownership and property, other types of critical areas, public property (such as roads and other facilities) or living quarters of any kind, including any existing or proposed off-site, the director shall not require additional site assessments prior to approval under the provisions of this chapter. The

qualified professional shall be required to certify that a geologic hazard is not present on the subject parcel (see section titled “Application, purpose”).

2. Properties identified by the director and the qualified professional containing geologically hazardous conditions shall require a geologically hazardous area mitigation plan. Critical facilities as defined under SWMC Chapter 14.04 shall not be sited within designated geologically hazardous areas (Exception: volcanic hazard areas). No residential structures shall be located in geologically hazardous areas or their buffers that cannot be fully mitigated.

Geologically hazardous area mitigation standards.

The mitigation plan shall be prepared by a professional engineer or geologist under supervision of a professional engineer and include a discussion on how the project has been designed to avoid and minimize the impacts of development on geologically hazardous areas. The plan shall also make a recommendation for the minimum building setback from any bluff or slope edge and/or other geologic hazard shall be based upon the geotechnical analysis required by this chapter. Mitigation plans shall include the location and methods of drainage, locations and methods of erosion control, a vegetation management and/or restoration plan and/or other means for maintaining long-term stability of geologic hazards. The plan shall also address the potential impact of mitigation on the hazard area, the subject property and affected adjacent properties. The mitigation plan must be approved by the director and be implemented as a condition of project approval.

Within designated geologic hazards, mitigation plans shall address the appropriate items listed below as required by the site assessment. One or more of the following mitigation standards, as required by the director, shall be included as components of a mitigation plan (site assessment report). Other mitigation standards, other than those listed below, may be required by the director depending on the geologic hazard and the site conditions.

A. Mitigation Standards.

1. A temporary erosion and sedimentation control plan prepared in accordance with the requirements of SWMC Title 15, Buildings and Construction as amended.

2. A drainage plan for the collection, transport, treatment, discharge and/or recycle of water in accordance with the requirements of SWMC Title 15, Buildings and Construction as amended.

3. All proposals involving excavations and placement of fills shall be subject to structural review under the appropriate provisions as found in the Uniform Building Code.

4. Critical facilities shall not be sited within designated geologically hazardous areas. (Exception: volcanic hazard areas).

5. Surface drainage shall not be directed across the face of a landslide hazard (including ravines). If drainage must be discharged from the hazard area into adjacent waters, it shall be collected above the hazard and directed to the water by tight line drain and provided with an energy dissipating device at the point of discharge.

6. All infiltration systems such as, stormwater detention and retention facilities, and curtain drains utilizing buried pipe or French drain, are prohibited in geologically hazardous areas and their buffers unless a site assessment report indicates such facilities or systems will not affect slope stability and the systems are designed by a licensed civil engineer. The engineer shall also certify that the system and/or facilities are installed as designed.

7. Vegetation Removal and Replanting. Removal of vegetation in landslide hazard, erosion hazard and coastal bluff hazard areas shall be minimized. Any replanting that occurs shall consist of trees, shrubs, and ground cover that is compatible with the existing surrounding vegetation, meets the objectives of erosion prevention and site stabilization, and does not require permanent irrigation for long-term survival.

8. A minimum buffer with a width of thirty feet shall be established from the top, toe and all edges of all landslide hazardous areas. Existing native vegetation shall be maintained in accordance with mitigation recommendations within the buffer area. Any modifications to the buffer requirement shall be based on the report and recommendations of the professional geologist under supervision of a licensed professional engineer. The buffer may be reduced to a minimum of ten feet when, supported by a geotechnical report, and the applicant demonstrates to the director that the reduction will adequately protect the proposed development, adjacent developments and uses and the subject critical area. The buffer may be increased by the director for development adjacent to a ravine which is designated as unstable on the Coastal Zone Atlas, Washington, Volume Two Skagit County (1978) or where the director determines a larger buffer is necessary to prevent risk of damage to proposed and existing development (as in the case where the area potentially impacted by a landslide exceeds thirty feet). Normal nondestructive pruning and trimming of vegetation for maintenance purposes; or thinning of limbs of individual trees to provide a view corridor, shall not be subject to these buffer requirements.

9. Seismic Hazard Areas. Structural development proposals shall meet all applicable provisions of the Uniform Building Code.

The director shall evaluate submitted documentation (site assessment report) and condition permit approvals to minimize the risk on both the subject property and affected adjacent properties. All conditions on approvals shall be based on known, available, and reasonable methods of prevention, control and treatment. Evaluation of geotechnical reports may also constitute grounds for denial of the proposal.

B. Alterations of the buffer and/or geologically hazardous area. Alterations of the buffer and/or geologically hazardous area may occur for development meeting the following criteria:

1. No reasonable alternative exists; and

2. A site assessment report is submitted and certifies that:

a. There is a minimal hazard as proven by evidence of no landslide activity in the past in the vicinity of the proposed development and a qualitative analysis of slope stability indicates no significant risk to the development proposal and adjacent properties; or the geologically hazardous

area can be modified or the development proposal can be designed so that the hazard is eliminated or mitigated so that the site is as safe as a site without a geologically hazardous area,

b. The development will not significantly increase surface water discharge or sedimentation to adjacent properties beyond predevelopment conditions,

c. The development will not decrease slope stability on adjacent properties, and

d. Such alterations will not adversely impact other critical areas.

C. Noncompliance and Failed Mitigation Plans.

1. Projects found to be in noncompliance with the mitigation conditions issued as part of the development approval are subject to enforcement actions necessary to bring the development into compliance with this chapter.

2. Mitigation plans which do not fulfill the performance required based on the site assessment/geotechnical report findings or otherwise fail to meet the intent of this chapter shall be revised and the subject development brought into compliance with the revised mitigation plan.

3. Mitigation Plan Certification. Upon completion of the project, a qualified professional shall certify that the mitigation plan has been properly implemented. The certification shall be required prior to final approval of the project by the director.

Geologically hazardous area public review and record.

In addition to the provisions for public notice provided under this chapter, the director shall provide official notice of decision and make the site assessment report available for public review upon approval of any project requiring a geologically hazardous area site assessment and shall maintain a public record of all materials pertinent to approval decisions.

Article V. Fish and Wildlife Habitat Conservation Areas

Fish and wildlife habitat conservation area designations.

A. Fish and wildlife habitat conservation areas (HCA) shall be designated and classified as provided for in the definition section of this chapter. The map and species references indicated are intended to serve only as a guide during development review. A site assessment completed by a qualified professional shall be completed to confirm actual conditions.

B. In addition to the HCAs identified in subsection (C)(l) of the above section titled “Application, purpose” , additional species and habitats of local importance may be designated by the director based on declining populations, sensitivity to habitat manipulation or special value including, but not limited to, commercial, game or public appeal.

C. In order to nominate an area or a species to the category of habitats and species of local importance, an individual or organization must:

1. Demonstrate a need for special consideration based on:

a. Declining population,

b. Sensitivity to habitat manipulation, or

c. Commercial or game value or other special value, such as public appeal;

2. Propose relevant management strategies considered effective and within the scope of this chapter;

3. Provide species habitat location(s) on a map (scale 1:24,000). Submitted proposals will be reviewed by the director and may be forwarded to the Departments of Fish and Wildlife, Natural Resources, and/or other county and state agencies or experts for comments and recommendations regarding accuracy of data and effectiveness of proposed management strategies. A public hearing may be held for proposals found to be complete, accurate, potentially effective and within the scope of this chapter. Approved nominations will become designated “Habitats/Species of Local Importance” and will be subject to the provisions of this chapter.

D. The following species and habitats have been designated on a site-specific basis according to the official species and habitats of local significance map:

1. Great Blue Heron nest sites;
2. Vauxs Swifts Communal Roosts;
3. Pileated Woodpecker nest sites;
4. Osprey nest sites;
5. Townsend Big-eared Bat Communal Roosts;
6. Cavity Nesting Ducks breeding areas;
7. Trumpeter Swan concentrations;
8. Harlequin Duck breeding areas;
9. Waterfowl concentrations.

Fish and wildlife habitat conservation areas initial project review.

A. A site visit shall be conducted by the director to determine whether HCAs identified on a critical area checklist or on available map resources or whether HCAs not previously identified are present within two hundred feet of the project or activity site.

B. Habitat conservation areas are designated by definition in subsection (C)(3) of the above section titled “Application, purpose” and are referenced as follows:

1. An area with which anadromous fish, endangered, threatened or sensitive species have a primary association and/or their habitat such as those designated and mapped by the Washington State Department of Fish and Wildlife, Priority Habitats and Species Program;

2. A water of the state as defined under WAC 222-16-030;

3. A critical biological area as designated and mapped by the Department of Ecology Coastal Zone Atlas dated June 1978 and/or the maps;

4. Designated species and habitats of local importance pursuant to the previous section;

5. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat;

6. Lakes, ponds, streams, and rivers planted with game fish by a government or tribal entity;

7. Areas with which anadromous fish species have a primary association; and

8. State natural area preserves and natural resource conservation areas.

C. If the director determines through the site visit described in subsection (B)(1) of this section that a fish and wildlife habitat conservation area (HCA) may be present within two hundred feet of the proposed project or activity area, then a site assessment/habitat management plan as described in the following section, shall be required as part of the complete application.

Fish and wildlife habitat conservation area site assessment requirements.
Site assessment/habitat management plans shall be prepared by a qualified fish and wildlife biologist with experience assessing the relevant species and habitats and include at a minimum, the following requirements:

A. Site plan prepared in accordance with the permit requirements indicating all fish and wildlife habitat conservation areas falling within two hundred feet of the subject property. This site plan may be prepared by the applicant subject to review by the qualified fish and wildlife biologist;

B. Project narrative describing the proposal including, but not limited to, associated grading and filling, structures, utilities, adjacent land uses, description of vegetation both within and adjacent to the habitat conservation area, and when deemed necessary by the administrative officer, surface and subsurface hydrologic analysis;

C. Impact analysis identifying and documenting the presence of all habitat conservation areas and discussing the project's effects on the fish and wildlife habitat conservation areas;

D. Regulatory analysis including a discussion of any federal, state, tribal, and/or local requirements or special management recommendations which have been developed for species and/or habitats located on the site;

E. Mitigation report including a discussion of proposed measures of mitigating adverse impacts of the project and an evaluation of their potential effectiveness. Measures may include, but are not limited to, establishment of buffer zones, preservation of critically important plants, and trees, limitation of access to habitat areas, seasonal restrictions of construction activities, establishment of a timetable for periodic review of the plan and/or establishment of performance or maintenance bonds;

F. Management and maintenance practices including a discussion of ongoing maintenance practices that will assure protection of all fish and wildlife habitat conservation areas on-site after the project has been completed. This section should include a discussion of proposed monitoring criteria, methods and schedule;

G. Approval of any activity that can adversely affect fish and wildlife habitat conservation areas shall conform to the requirements set forth in subsection A of the above section “Protected critical area requirements” (Article I).

Fish and wildlife habitat conservation area mitigation standards.
Fish and wildlife habitat conservation areas shall be protected in accordance with local determination of appropriate conditions considering the site-specific recommendations from agencies with jurisdictions over the specific area, which may include, but not be limited to, the Washington State Department of Fish and Wildlife, Department of Ecology, federally recognized Indian Tribes located within Skagit County, WDFW Management Recommendations for Washington Priority Habitats and Species, and site-specific information supplied by the applicant.

Development proposals shall be reviewed for potential impacts to fish and wildlife habitat conservation areas. The determination of potential impacts shall be dictated by site conditions and made by the director. The director may consult with the Washington State Departments of Ecology, Fish and Wildlife and Natural Resources and federally recognized Indian Tribes located in Skagit County to determine potential impacts a proposed project may have on a fish and wildlife habitat. If it is determined that a proposed project may have an adverse effect on a fish and wildlife habitat conservation area, the applicant shall implement a habitat management plan including mitigation measures in conformity with the performance standards outlined below:

A. Riparian Performance Standards. Riparian buffer areas shall be established from the ordinary high water mark. The intent of riparian buffers is to protect five basic riparian forest functions that influence in-stream and near-stream habitat quality. These are:

1. Recruitment of Large Woody Debris (LWD) to the Stream. LWD recruitment creates habitat structures necessary to maintain salmon/trout productive capacity and species diversity.

2. Shade. Shading by the forest canopy maintains cooler water temperatures and influences the availability of oxygen for salmon/trout.

3. Bank Integrity (Root Reinforcement). Bank integrity helps maintain habitat quality and water quality by reducing bank erosion and creating habitat structure and instream hiding cover for salmon and trout.

4. Runoff Filtration. Filtration of nutrients and sediments in runoff (surface and shallow subsurface flows) helps maintain water quality.

5. Wildlife Habitat. Functional wildlife habitat for riparian-dependent species is based on sufficient amounts of riparian vegetation to provide protection for nesting and feeding.

B. Standard Riparian Buffers. Riparian areas have the following standard buffer requirements (Note: riparian areas do not extend beyond the toe of the slope on the landward side of existing dikes or levees unless specifically exempt from federal vegetation management requirements.):

Water Type Riparian Buffer

Type 1 and 2	200 feet
Type 3	110 feet
Type 4 and 5	50 feet

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

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

2. Decreasing Buffer Widths. Decreasing standard buffers will be through the shoreline variance process in Chapter 6 of the SMP, only if the applicant demonstrates that all of the following criteria are met:

a. A decrease is necessary to accomplish the purposes of the proposal and no reasonable alternative is available;
b. Decreasing width will not adversely affect the fish and wildlife habitat functions and values;
c. If a portion of a buffer is to be reduced, the remaining buffer area will be enhanced, using native vegetation, artificial habitat features, vegetative screening and/or barrier fencing as appropriate to improve the functional attributes of the buffer and to provide equivalent or better protection for fish and wildlife habitat functions and values;
d. The buffer width shall not be reduced below twenty-five percent of the standard buffer width unless the director determines that no other reasonable alternative exists and that no net loss of HCA riparian functional values will result, based on a functional assessment provided by the applicant utilizing a methodology approved by the director through the shoreline variance process.

C. Allowed Uses in HCAs or Buffers.

1. Docks. Docks designed to facilitate low-impact uses, such as education and/or private, noncommercial recreation may be permitted within fish and wildlife HCAs under the following conditions:

a. The activity will have minimum adverse impact to the fish and wildlife habitat conservation area;

b. The activity will not significantly degrade surface or groundwater;

c. The intrusion into the fish and wildlife habitat conservation area and its buffers is mitigated; and

d. The director may provide opportunity for review and comment by a federal, state and tribal natural resource agencies.

2. Limited park or recreational access to a fish and wildlife habitat area or its required buffer, provided, that all of the following are satisfied:

a. The access is part of a public park or a recreational resort development that is dependent on the access for its location and recreational function;

b. The access is limited to the minimum necessary to accomplish the recreational function;

c. The access and the balance of the development is consistent with other requirements of the Sedro-Woolley Municipal Code and the Skagit County Shoreline Management Master Program; and

d. The proponent obtains a written approval from the city council for the limited access and associated mitigation.

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

4. In the riparian buffer, removal of hazardous, diseased or dead trees and vegetation when necessary to control fire, or to halt the spread of disease or damaging insects consistent with the State Forest Practices Act, RCW 76.09, or when the removal is necessary to avoid a hazard such as landslides or pose a threat to existing structures may be permitted with prior written approval. Any removed tree or vegetation shall be replaced with appropriate species. Replacement shall be performed consistent with accepted restoration standards for riparian areas within one calendar year. The director may approve alternative tree species to promote fish and wildlife habitat.

Prior to commencement of tree or vegetation removal and/or replacement, the landowner must obtain written approval from the director.

5. To allow for greater flexibility in a development proposal, an applicant has the opportunity to remove timber within the standard buffer widths shown above if the applicant's mitigation measures incorporate all of the performance standards based upon water type listed in the table below. In conformance with professional standards used by the Washington Department of Natural Resources for

forest practices in sensitive areas, all removal of timber within HCA buffers shall be subject to conditioning specified by the director and may be made in conjunction with an on-site review in which participation by representatives of the proponent, Ecology, WDFW, WDNR and natural resource representatives of affected Indian Tribes is solicited.

The intent of this section is to provide an additional opportunity for an applicant to propose some level of timber removal within the riparian habitat zone as long as it can be demonstrated that the function of the buffer can be maintained at the levels described below. If the buffer, in its current state, cannot meet these standards, then the director will not be able to give its approval for any activity which would inhibit recovery of or degrade the current buffer.

The current performance of a given buffer area is compared to its potential performance as rated by the Soil Conservation Service, Soil Survey of Skagit County, 1989. In consultation with a representative from the natural resource conservation service, soil conservation district or professional forester, the applicant will determine the capability of the site for woodland management using the most suitable tree species according to the soil survey and establish the stand characteristics that would be expected from a mature stand of those species established on-site. If the current stand can exceed the riparian protection that could be expected based on site potential, then additional activity may be allowed provided the following performance standards can be met. For Type 1 and 2 streams, an alternative method may be utilized to allow limited timber harvest within the outer one hundred feet of a buffer:

Performance-based Riparian Standards*

(These Standards Must be Exceeded Before Additional Activity Can be Permitted Within the Riparian Zone)

Watertype Performance Standards.

Type 1 and 2 (Fish Bearing).

a. Maintain ninety-five percent of total LWD recruitment expected to enter the stream from a mature stand;
b. Maintain eighty-five percent of the trees which are greater than twenty-four inches DBH within one hundred feet of stream;
c. Maintain an average of seventy-five percent canopy cover (based on canopy densitometer readings at stream edge); and
d. The applicant may further request some limited timber harvest of up to thirty percent of the merchantable timber within the outer one hundred feet of any two hundred-foot required buffer provided the harvest:

i. Does not reduce the LWD and canopy requirements,
ii. The applicant will increase the total buffer size by fifty feet to mitigate for the limited timber harvest in the required buffer to provide additional wildlife habitat. The additional fifty-foot buffer shall retain a minimum of fifty percent of the total number of trees with twenty-five

percent of the total trees left having a diameter at breast height (DBH - four and one-half feet) greater than twelve inches, and

iii. No more than fifty percent of the dominant trees in the outer one hundred feet may be harvested.

Type 3 (Fish Bearing).

a. Maintain eighty-five percent of total LWD recruitment expected to enter the stream from a mature stand;

b. Maintain eighty-five percent of the trees which are greater than eighteen inches DBH within one hundred feet of stream; and

c. Maintain an average of seventy-five percent canopy cover (based on canopy densitometer readings at stream edge).

Type 4 and 5 (Nonfish Bearing).

a. Maintain fifty percent of total LWD recruitment expected to enter the stream from a mature stand;

b. Maintain eighty-five percent of the trees which are greater than twenty-four inches DBH within fifty feet of stream; and

c. Maintain an average of seventy-five percent canopy cover (based on canopy densitometer readings at stream edge).

* Note: Applicants electing to employ performance based mitigation in accordance with the above matrix shall include appropriate analysis and justification in their site assessment/habitat management plan.

D. Bald eagle habitats shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292), a cooperative habitat management plan shall be developed in coordination with the Department of Fish and Wildlife whenever activities that alter habitat are proposed near a verified nest territory or communal roost.

E. Wetlands that are identified as a fish and wildlife habitat conservation area shall be protected according to the provisions in subsection (B)(1) of this section. If the wetland buffer widths called for under subsection B of this section, conflict with this section, the buffer widths providing the greatest protection shall apply.

F. All other fish and wildlife habitat conservation areas, including habitats/species of local importance, shall be protected on a case by case basis by means of a habitat management plan based on the PHS program, as set forth in “Fish and wildlife habitat conservation areas initial project review” and “Fish and wildlife habitat conservation area site assessment requirements” sections of this Title V, initial project review and site assessment/habitat management plan.

G. Approval of any activity that can adversely affect fish and wildlife habitat conservation areas shall conform to the PCA identification and recording requirements set forth in Title I, section “Protected critical area requirements.”

Article VI. Flood Hazard Area

Standards for flood hazard areas.
Development proposed in flood hazard areas, in addition to the provisions of Chapter 5.1 – Flood Hazard Reduction of the SMP, standards found in WAC 173-26-221(3), and Chapter 17.66 (Flood Damage Prevention), shall be limited to the extent that:

A. Clearing, stripping of vegetative and coverage of the site by roads and structures shall be no more than necessary in order to maintain water quality.

B. Buildings are sited to minimize alteration of terrain and other natural features, and minimize the need for fill.

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.

C. New structural flood hazard reduction measures shall be allowed only where demonstrated to be necessary, and when non-structural methods are infeasible and mitigation is accomplished.

D. New structural flood hazard reduction measures shall be allowed only landward of associated wetlands and buffer areas except where no alternative exists as documented in a geotechnical analysis per WAC 173-26-221(3)(c)(ii) & (iii).

E. 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.

F. Existing hydrological connections to the floodplain and associated wetlands shall be maintained where feasible.

G. New publicly funded dikes or levees are required to dedicate and improve public access per WAC-173-26-221(3)(c)(iv).

H. Removal of gravel from the Skagit River for purposes of flood risk reduction is not allowed unless a biological and geomorphological study demonstrates a long-term benefit to flood hazard reduction, no net loss of ecological functions, and extraction is part of a comprehensive flood management solution.

Article VII. Compliance and Enforcement

Compliance with critical area regulations.
No permit for a development proposal described in section “Resource information and maps (Title I) shall be issued unless it also complies with the regulations of this chapter.

Construction.

In any case where the provisions of this chapter conflict with the provisions of the underlying zoning, the provisions of this chapter shall apply.

Severability.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person, owner, or circumstance shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons, owners or circumstances.

State Environmental Policy Act.

This chapter establishes minimum standards which are to be applied to specific land use and platting actions in order to prevent further degradation of critical areas in the city, and is not intended to limit the application of the State Environmental Policy Act (SEPA). Projects subject to SEPA shall be reviewed and may also be conditioned or denied.

Liability disclaimer—Flood hazard areas.

Since floods more severe than the one hundred-year flood occur on rare occasions, reliance on this chapter will not altogether guarantee freedom from flood damage, nor shall this chapter create liability on the part of the city for such damage. It is further noted that other data regarding one hundred-year floodplain elevations may exist which indicate a more severe threat than the data established by FEMA. Information on these other data sources shall be kept and made available at Sedro-Woolley City Hall.

Enforcement of the critical areas regulations.

A. Violations.

1. It is a violation of this chapter for any person to initiate or maintain or cause to be initiated or maintained the use of any structure, land or property within the city without first obtaining the permits or authorization required for the use by this chapter.

2. It is a violation of this chapter for any person to use, construct, locate, demolish or cause to be used, constructed, located, or demolished any structure, land or property within the city in any manner that is not permitted by the terms of any permit or authorization issued pursuant to this chapter, provided, that the terms or conditions are explicitly stated on the permit or the approved plans.

3. It is a violation of this chapter to remove or deface any sign, notice, complaint or order required by or posted in accordance with this chapter.

4. It is a violation of this chapter to misrepresent any material fact in any application, plans or other information submitted to obtain any critical areas authorization.

5. It is a violation of this chapter for anyone to fail to comply with the requirements of this chapter.

B. Duty to Enforce.

1. It shall be the duty of the director to enforce this chapter. The director may call upon the police, fire, health or other appropriate city departments to assist in enforcement.

2. Upon presentation of proper credentials, the director or duly authorized representative of the director may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or premises subject to the consent or warrant to perform the duties imposed by the critical areas code.

3. The critical areas code shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

4. It is the intent of this critical areas code to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land, wetlands, shorelines, and buildings within the scope of this code.

5. No provision of or term used in this code is intended to impose any duty upon the city or any of its officers or employees which would subject them to damages in a civil action.

C. Investigation and Notice of Violation.

1. The director shall investigate any structure or use which the director reasonably believes does not comply with the standards and requirements of the critical areas code.

2. If after investigation the director determines that the standards or requirements have been violated, the director shall serve a notice of violation upon the owner, tenant or other person responsible for the condition. The notice of violation shall state separately each standard or requirement violated; shall state what corrective action, if any, is necessary to comply with the standards or requirements; and shall set a reasonable time for compliance. The notice shall state that any subsequent violation may result in criminal prosecution as provided in Title I section titled “Protected critical area requirements”. In the event of violation of the standards or requirements of this chapter required corrective action shall include, if appropriate, but shall not be limited to, mitigating measures such as restoration of the area and replacement of damaged or destroyed trees.

3. The notice shall be served upon the owner, tenant or other person responsible for the condition by personal service, registered mail, or certified mail with return receipt requested, addressed to the last known address of such person. If, after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person or persons is unknown or service cannot be accomplished and the director makes an affidavit to that effect, then service of the notice upon such person or persons may be made by:

a. Publishing the notice once each week for two consecutive weeks in the city official newspaper; and

b. Mailing a copy of the notice to each person named on the notice of violation by first class mail to the last known address if known, or if unknown, to the address of the property involved in the proceedings.

4. A copy of the notice shall be posted at a conspicuous place on the property, unless posting the notice is not physically possible.

5. Nothing in this section shall be deemed to limit or preclude any action or proceeding pursuant to Title I section titled “Protected critical area requirements”.

6. The director may mail, or cause to be delivered to all residential and/or nonresidential rental units in the structure or post at a conspicuous place on the property, a notice which informs each recipient or resident about the notice of violation, stop work order or emergency order and the applicable requirements and procedures.

7. A notice or order may be amended at any time in order to:

a. Correct clerical errors; or

b. Cite additional authority for a stated violation.

D. Time to Comply.

1. When calculating a reasonable time for compliance, the director shall consider the following criteria:

a. The type and degree of violation cited in the notice;

b. The stated intent, if any, of a responsible party to take steps to comply;

c. The procedural requirements for obtaining a permit to carry out corrective action;

d. The complexity of the corrective action, including seasonal considerations, construction requirements and the legal prerogatives of landlords and tenants; and

e. Any other circumstances beyond the control of the responsible party.

2. Unless a request for review before the director is made in accordance with Title I section titled “Protected critical area requirements”, the notice of violation shall become the final order of the director. A copy of the notice shall be filed with the Skagit County auditor. The director may choose not to file a copy of the notice or order if the notice or order is directed only to a responsible person other than the owner of the property.

E. Stop Work Order. Whenever a continuing violation of this code will materially impair the director’s ability to secure compliance with this code, or when the continuing violation threatens the health or safety of the public, the director may issue a stop work order specifying the violation and prohibiting any work or other activity at the site. A failure to comply with a stop work order shall constitute a violation of this land use code.

F. Emergency Order.

1. Whenever any use or activity in violation of this code threatens the health and safety of the occupants of the premises or any member of the public, the director may issue an emergency order directing that the use or activity be discontinued and the condition causing the threat to the public health and safety be corrected. The emergency order shall specify the time for compliance and shall be posted in a conspicuous place on the property, if posting is physically possible. A failure to comply with an emergency order shall constitute a violation of this land use code.

2. Any condition described in the emergency order which is not corrected within the time specified is declared to be a public nuisance and the director is authorized to abate such nuisance summarily by such means as may be available. The cost of such abatement shall be recovered from the owner or person responsible or both in the manner provided by law.

G. Review by the Director.

1. Any person significantly affected by or interested in a notice of violation issued by the director pursuant to Title I section titled “Protected critical area requirements” may obtain a review of the notice by requesting such review within fifteen days after service of the notice. When the last day of the period so computed is a Saturday, Sunday or federal or city holiday, the period shall run until five p.m. on the next business day. The request shall be in writing, and upon receipt of the request, the director shall notify any persons served the notice of violation and the complainant, if any, of the date, time and place set for the review, which shall be not less than ten nor more than twenty days after the request is received, unless otherwise agreed by all persons served with the notice of violation. Before the date set for the review, any person significantly affected by or interested in the notice of violation may submit any written material to the director for consideration at the review.

2. The review will consist of an informal review meeting held at the department. A representative of the director who is familiar with the case and the applicable ordinances will attend. The director’s representative will explain the reasons for the director’s issuance of the notice and will listen to any additional information presented by the persons attending. At or after the review, the director may:

a. Sustain the notice of violation;

b. Withdraw the notice of violation;

c. Continue the review to a date certain for receipt of additional information; or

d. Modify the notice of violation, which may include an extension of the compliance date.

3. The director shall issue an order of the director containing the decision within seven days of the date of completion of the review and shall cause the same to be mailed by regular first class mail to the person or persons named on the notice of violation, mailed to the complainant, if possible, and filed with Skagit County auditor.

H. Extension of Compliance Date.

1. The director may grant an extension of time for compliance with any notice or order, whether pending or final, upon the director's finding that substantial progress toward compliance has been made and that the public will not be adversely affected by the extension.

2. An extension of time may be revoked by the director if it is shown that the conditions at the time the extension was granted have changed, the director determines that the conditions at the time the extension was granted have changed, the director determines that a party is not performing corrective actions as agreed, or if the extension creates an adverse effect on the public. The date of revocation shall then be considered as the compliance date. The procedures for revocation, notification of parties, and appeal of the revocation shall be established by rule.

I. Civil Penalty.

1. In addition to any other sanction or remedial procedure which may be available, any person violating or failing to comply with any of the provisions of this chapter shall be subject to a cumulative penalty in the amount of seventy-five dollars per day for each violation from the date set for compliance until the order is complied with.

2. The penalty imposed by this section shall be collected by civil action brought in the name of the city. The director shall notify the city attorney in writing of the name of any person subject to the penalty, and the city attorney shall, with the assistance of the director, take appropriate action to collect the penalty.

3. The violator may show as full or partial mitigation of liability:

a. That the violation giving rise to the action was caused by the willful act, or neglect, or abuse of another; or

b. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to gain access to the subject structure, or other condition or circumstance beyond the control of the defendant.

J. Criminal Penalties. Any person violating or failing to comply with any of the provisions of this critical areas code, this chapter, shall be subject to criminal prosecution for a gross misdemeanor, and upon conviction of a subsequent violation shall be fined in a sum not exceeding five thousand dollars or be imprisoned in the city jail for a term not exceeding one year or be both fined and imprisoned. Each day of noncompliance with any of the provisions of this critical areas code shall constitute a separate offense.

K. Additional Relief. The director may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of this critical areas code when civil or criminal penalties are inadequate to effect compliance.