SUMAS SHORELINE MANAGEMENT MASTER PROGRAM

PART TWO
SHORELINE MANAGEMENT REGULATIONS

CHAPTER 15.04 – SHORELINE MANAGEMENT
[PART OF SUMAS DEVELOPMENT REGULATIONS]

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SECTION ONE: AUTHORITY AND PURPOSE

15.04.010 Authority.

This Chapter contains the Shoreline Management Program regulations of the City of Sumas as adopted pursuant to and under the authority of the Shoreline Management Act, Chapter 90.58 RCW and WAC 173-26 (Part IV).

15.04.020 Purpose.

The purposes for which this Chapter has been developed include the following:

A. To further the goals of the Shoreline Management Act.

B. To implement a cooperative program of shoreline management between local and state government.

C. To provide a framework of development regulations to implement the goals and policies of the Shoreline Management Element of the Sumas Comprehensive Plan.

D. To comply with the mandate established in the Shoreline Management Act that local governments develop and adopt local master programs to guide and regulate development on shorelines of the state.

15.04.025 Effective Date.

This Program and all amendments thereto shall become effective upon adoption by the City Council and 14 days from the date of approval set forth in the Department of Ecology's written notice of final action.

SECTION TWO: DEFINITIONS

15.04.030 Definitions.

As used in this Chapter, unless the context requires otherwise, the following definitions and concepts shall apply. Word or phrases used in this Chapter that are not specifically defined below shall be interpreted to give them the meaning they have in common usage and to give this Chapter its most reasonable application.

ACT - Means the Shoreline Management Act of 1971, Chapter 90.58 RCW, as amended.

ADMINISTRATOR - Means the City of Sumas Public Works Director or designee. The Administrator is responsible for reviewing Shoreline Permit Applications, inspecting project sites, and making recommendations to the Sumas City Council.

AGRICULTURAL ACTIVITIES - Means agricultural uses and practices including, but not limited to: producing, breeding, or increasing agricultural products; rotating and changing 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 agricultural lands under production or cultivation.

AGRICULTURAL EQUIPMENT AND AGRICULTURAL FACILITIES – Include, but are not limited to:

1. 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;
2. Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;
3. Farm residences and associated equipment, lands, and facilities; and
4. Roadside stands and on-farm markets for marketing fruit or vegetables.

AGRICULTURAL LANDS - Means those specific land areas on which agricultural activities are conducted as of the adoption date of a local shoreline master program pursuant to WAC 173-26 as evidenced by aerial photography or other documentation. After the effective date of the this master program, land converted to agricultural use is subject to compliance with the requirements of the this master program.

AGRICULTURAL PRODUCTS – Means products including, but 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.

AQUACULTURE - Means the culture or farming of food fish, shellfish or other aquatic plants and animals for human consumption. Aquaculture does not include the harvest of free-swimming fish or the harvest of shellfish not artificially planted or maintained.

ARCHAEOLOGIST - Means a person who has designed and executed an archaeological course of study and has been awarded an advanced degree in archaeology, anthropology, or history or other germane discipline with a specialization in archaeology, and who has at least two (2) years of experience, including at least one (1) year of supervised field experience.

ASSOCIATED WETLAND - Means wetlands that are in proximity to tidal waters, lakes, rivers or streams that are subject to the Shoreline Management Act and either influence or are influenced by any such water body. Factors used to determine proximity and influence include but are not limited to: location contiguous to a shoreline water body, formation by tidally influenced geo-hydraulic processes, presence of a surface connection including through a culvert or tide gate, location in part or whole within the 100 year floodplain of a shoreline, periodic inundation, and/or hydraulic continuity.

AVERAGE GRADE - Means the average of the natural or existing topography of the portion of the lot, parcel, or a tract of real property which will be directly under the proposed building or structure; PROVIDED, that in the case of structures to be built over the water, average grade shall be the elevation of the ordinary high water mark. Calculation of the average grade shall be made by averaging the elevations at the center of all exterior walls of the proposed building or structure.

BUFFER - Means an upland land area adjacent to a shoreline, river, stream, wetland or critical area that protects the water feature or area from human disturbance by providing separation between the area and the adjacent land uses. A buffer shall be measured horizontally from the wetland edge or ordinary high water mark where appropriate. Buffers shall not apply to areas functionally and effectively disconnected from a stream, wetland or other critical area beyond a developed structure, such as a residence, roadway or other impervious surfaces, where such disconnection has been lawfully established.

CHANNEL MIGRATION ZONE (CMZ) - Means the area along a river within which the channel can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered in relation to the characteristics of the river and surrounding features.

CITY - Means the City of Sumas.

CLEARING - Means the destruction or removal of vegetation ground cover, shrubs and trees including, but not limited to, root material removal and/or topsoil removal.

CONDITIONAL USE - Means a use, development, or substantial development which is classified as a conditional use or which is not classified within the applicable Master Program.

CRITICAL AREAS - Means the following areas and ecosystems (a) wetlands; (b) areas with critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas.

DEPARTMENT - Means the Washington State Department of Ecology.

DEVELOPED SHORELINES - Means those shoreline areas that are characterized by existing development or structures located within shoreline jurisdiction.

DEVELOPMENT - Means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; placing of obstructions; or any project of a permanent or temporary nature which interferes with the

normal public use, at any state of water level, of the surface of the waters overlying lands subject to Chapter 90.58 RCW. "Development" does not include: 1) forest practices that only involve timber cutting; and 2) dismantling or removing structures if there is no other associated development or redevelopment.

DEVELOPMENT REGULATIONS - Means the controls placed on development or land use 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.

DIKE - Means an embankment, usually placed within or near the edge of a flood plain, to protect adjacent lowlands from flooding.

DISPOSAL FACILITIES - Means the location and facilities where any final treatment, utilization, processing, or depository of solid waste occurs.

ECOLOGICAL FUNCTIONS - Means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

ECOSYSTEM-WIDE PROCESSES - Means the suite of naturally occurring physical and geologic processes of erosion, transport and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

EMERGENCY ACTIVITIES - Means those activities that require immediate action within a time too short to allow full compliance with this program due to an unanticipated and imminent threat to public health, safety or the environment. Emergency construction does not include development of new permanent protective structures where none previously existed.

ENVIRONMENT, SHORELINE - Means a geographic area identified and governed by these regulations as shown on the Official Shoreline Map.

EXEMPT DEVELOPMENT - Means a use or development activity that is not a substantial development and that is specifically listed as exempt from the substantial development permit requirement in WAC 173-27-040, but which must otherwise comply with applicable provisions of the act and this master program.

EXISTING AND ONGOING AGRICULTURE - Means agricultural activities in existence and ongoing as of the effective date of this Ordinance.

FAIR MARKET VALUE - Means the open market bid price for conducting the work, using the equipment and facilities, and purchase of goods, services and materials necessary to accomplish a development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the coast 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 requirements, meets all of the conditions outlined in WAC 173-26-020(15).

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 PLAIN - Is synonymous with the 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 ordinances regulation maps or a reasonable method which meets the objectives of the act.

FLOODWAY, SHORELINE - Means those portions of a floodplain upon which flood waters are carried during periods of flooding that occur with reasonable regularity, said floodways being identified under normal circumstances by changes in soil or vegetation; PROVIDED that, floodways shall not include areas protected from flooding by flood control devices maintained or licensed by a government agency. For the purpose of this Program, the shoreline floodway shall include those areas within the ordinary high water marks of the Sumas River and Johnson Creek and those adjacent land areas extending to the top of bank of the Sumas River or Johnson Creek.

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.

GUIDELINES - Means those standards adopted by the department to implement the policy of chapter 90.58 RCW for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria for local governments and the department in developing and amending master programs.

HEIGHT - Means the distance as measured from the average grade level to the highest point of a structure excluding appurtenance such as chimneys and antennas and similar appurtenances, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines.

HEARINGS BOARD - Means the State Shoreline Hearings Board established by RCW 90.58.

MITIGATION PLAN - Means a detailed plan indicating actions necessary to mitigate adverse impacts to critical areas.

MIXED USE DEVELOPMENT - Means a combination of uses within the same building or site as a part of an integrated development project with functional interrelationships and coherent physical design.

NATIVE VEGETATION - Means plant species that are indigenous to Whatcom County and the local area.

NATURAL OR EXISTING TOPOGRAPHY - Means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or landfill

NONWATER-ORIENTED USES - Means those uses that are not water-dependent, water-related, or water-enjoyment.

NON-CONFORMING USE, DEVELOPMENT OR STRUCTURE - Means a shoreline use, development or structure which was lawfully constructed or established prior to the effective date of the act or this program or amendments thereto, but which does not conform to present regulations or standards of the program or policies of the act.

ORDINARY HIGH WATER MARK (OHWM) - Means that mark on all lakes, streams, and tidal water 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 approved development; provided that, in any area where the OHWM cannot be found, the OHWM adjoining saltwater shall be the line of mean higher high tide and the OHWM adjoining fresh water shall be the line of mean high water.

PARTY OF RECORD - Means all persons, agencies or organizations who have submitted written comments in response to a notice of application; made oral comments in a formal public hearing conducted on the application; or notified local government of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail.

PERMIT - Means any substantial development permit, conditional use permit, variance permit, or revision authorized under chapter 90.58 R.C.W.

PERSON - Means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local government unit however designated, or Indian Nation or tribe.

PRIMARY ASSOCIATION - Means the use of a habitat area by a listed or priority species for breading/spawning, rearing young, resting, roosting, feeding, foraging, and/or migrating on a frequent and/or regular basis during the appropriate season(s) as well as habitats that are used less frequently/regularly but which provide for essential life cycle functions such as breeding/nesting/spawning.

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:

1. Comparatively high fish or wildlife density;
2. Comparatively high species diversity;
3. Fish spawning habitat;
4. Important wildlife habitat;
5. Important fish or wildlife seasonal range;
6. Important fish or wildlife movement corridor;
7. Rearing and foraging habitat;
8. Refugia habitat;
9. Limited availability;
10. High vulnerability to habitat alteration; or
11. Unique or dependent species.

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. A priority habitat may also be described by a successional stage. Alternatively, it may also consist of a specific habitat element of key value to fish and wildlife. A priority habitat may contain priority and/or non-priority fish and wildlife species.

PRIORITY SPECIES - Means species requiring protective measure and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the listed criteria below, consistent with WAC 173-26-020(29).

1. State-listed or state proposed species.
2. Vulnerable aggregations.
3. Species of recreation, commercial, and/or tribal importance.
4. Species listed under the federal Endangered Species Act (ESA) as either proposed, threatened, or endangered.

PUBLIC INTERST - 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 such as an effect on public property or on health, safety, or general welfare resulting from a use or development.

QUALIFIED PROFESSIONAL OR CONSULTANT - Means a person with experience and training with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, soil science, engineering, environmental studies, fisheries, geology, geomorphology or related field, and related work experience.

REGULATED ACTIVITY - Means:

1. The removal, excavation, grading or dredging of soil, sand, gravel, minerals, organic matter or material of any kind;
2. The dumping, discharging or filling with any material;
3. The draining, flooding or disturbing of the water level or water table;
4. The driving of pilings;
5. The placing of obstructions;
6. The construction, reconstruction, demolition or expansion of any structure;
7. The destruction or alteration of vegetation through clearing, harvesting, shading, intentional burning or planting of vegetation that would alter the character of a wetland, river or stream; provided, that these activities are not part of a forest practice governed under Chapter 76.09 RCW and its rules; or
8. Any activity that results in a change of water temperature, a change of physical or chemical characteristics of wetland water sources, including quantity, or the introduction of pollutants.

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

RIP RAP - Means dense, hard, angular rock free from cracks or other defects conductive to weathering used for revetments, bulkheads or other flood control works.

RIPARIAN CORRIDOR OR AREA - Means the area adjacent to a water body (stream, lake or marine water) that contains vegetation that influences the aquatic ecosystem, nearshore area and/or and fish and wildlife habitat by providing shade, fine or large woody material, nutrients, organic debris, sediment filtration, and terrestrial insects (prey production).

SHALL - Means a mandate; the action must be done.

SHORELANDS - Means those lands extending landward for 200 feet in all directions, measured on a horizontal plane, from the ordinary high water mark of the Sumas River or Johnson Creek;

plus those lands extending landward for 200 feet in all directions, measured on a horizontal plane, from the shoreline floodway of the Sumas River or Johnson Creek; ~~and~~ plus those wetlands associated with any of these water bodies ~~and those land areas extending fifty feet from the delineated edge of those associated wetlands~~ located within the 100-year floodplain.

SHORELINE MASTER PROGRAM OR MASTER PROGRAM - Means the Shoreline Management Master Program of the City of Sumas. The Sumas Shoreline Master Program is comprised of two parts: the Shoreline Management Element of the Sumas Comprehensive Plan and the regulations contained or referenced in this Chapter.

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, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

SHORELINES OF THE STATE - Means all of the water areas of the state as defined in RCW 90.58.030, and their associated shorelands, together with the lands underlying them except:

1. Shorelines of statewide significance;
2. Shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second (20 c.f.s.) or less and the wetlands associated with such upstream segments; and
3. Shorelines on lakes less than twenty (20) acres in size and wetlands associated with such small lakes.

SHORELINES, SHORELINE AREAS, or SHORELINE JURISDICTION - Means all of the water areas within the City of Sumas identified as shorelines of the state, including the Sumas River, Johnson Creek, associated wetlands located within the 100-year floodplain, and their associated shorelands.

SHORELINES OF STATEWIDE SIGNIFICANCE - Means those shorelines of the state defined as shorelines of statewide significance pursuant to RCW 90.58.030(2)(f).

SHOULD - Means the particular action is required unless there is a demonstrated, compelling reason, based on the policy of the Shoreline Management Act and this master program, against taking the action.

SIGNIFICANT VEGETATION REMOVAL - Means the removal or alteration of vegetation by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by vegetation. The removal of invasive or noxious weeds and tree pruning not affecting ecological functions do not constitute significant vegetation removal.

SOLID WASTE - Means all putrescible and non-putrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities.

STATEMENT OF EXEMPTION - Means a written statement by the Administrator that a particular development proposal is exempt from the substantial development permit requirement and is generally consistent with this Program and the policy of the Act.

STREAMWAY - Means a river or stream's central runoff corridor including all wet and dry channels, together with adjacent point-bars, channel-bars, and islands which are wetted or surrounded by stream flow at bank full stage. The streamway is measured from outside bank edge to outside bank edge.

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 DEVELOPMENT - Means any development of which the total cost or fair market value exceeds $~~6,416~~7,047.00 or as this amount is hereafter adjusted for inflation pursuant to RCW 90.58.030(3)(e), or any development which materially interferes with normal public use of the water or shorelines of the state; EXCEPT that the classes of development listed under Section 15.04.090(A) (1) through (14) shall not be considered substantial developments.

SUBSTANTIALLY DEGRADE - Means to cause significant ecological impact.

SWAMP - Means a tract of low-lying land saturated with moisture and usually overgrown with vegetation.

THREATENED OR ENDANGERED SPECIES - Means those native species that are listed as threatened or endangered species under the federal Endangered Species Act, or that are listed in rule by the Washington State Department of Fish and Wildlife as threatened or endangered.

UPLAND - Means dry lands landward of the OHWM or delineated wetland edge.

VARIANCE - Means an adjustment in the application of this Program's regulations to a particular site to grant relief from the specific bulk, dimensional, or performance standards set forth in this Program.

VEGETATION CONSERVATION AREA - Means areas adjacent to the shoreline where native vegetation is to be protected or restored to support the habitat of priority species and threatened and endangered species. Except where otherwise designated on the Official Shoreline Map, the vegetation conservation area shall include those areas within the Natural Shoreline Environment and areas within applicable river, stream and wetland buffers.

VESSEL - Means 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.

VIEW - Means a confined view such as may occur by looking through a window, tunnel, or framed by vegetation and/or structures.

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, or enjoyment of, 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 - Refers to any combination of water-dependent, water-related, and/or water-enjoyment uses and serves as an all encompassing definition for priority uses established under the Act.

WATER QUALITY - Means the physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics.

WATER-RELATED USE - Means a use or a portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent on a waterfront location because: (a) the use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or (b) the use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

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

15.04.040 Tense and Number.

When consistent with the context, words used in the present tense shall include the future; the singular shall include the plural and the plural the singular.

15.04.050 Interpretation.

As used in this Chapter, the words “shall” and “must” are mandatory and the words ”should” and “may” are permissive.

SECTION THREE: APPLICABILITY

15.04.060 Geographic Jurisdiction.

The provisions of this Program shall apply to all shoreline areas within the corporate limits of the City of Sumas. The location and extent of known shoreline jurisdiction are shown on the Official Shoreline Map. Shoreline jurisdiction includes the water areas of the Sumas River and Johnson Creek, together with the lands underlying them, plus those lands within 200 feet of the ordinary high water mark of the above water bodies, plus those lands within 200 feet of the shoreline floodway of the above water bodies, plus those wetlands associated with any of the above water bodies located within the 100-yer floodplain~~, including, but not limited to, portions of Bone Creek and Sumas Creek. As a local option, the adjacent land area within fifty (50) feet of the delineated edge of such associated wetlands is also included in shoreline jurisdiction~~.

15.04.070 Application to Persons.

This program shall apply to every person as defined in Section 15.04.030 SMC.

15.04.080 Application to Development, Use and Modification.

A. ~~This~~ Except as noted in this Section, this program shall apply to any development as defined in Section 15.04.030 SMC and to any use or modification of areas within shoreline jurisdiction. All proposed uses, modifications and development occurring within shoreline jurisdiction must conform to and be consistent with this master program, and Chapter 90.58 RCW, the Shoreline Management Act, whether or not a permit is required.

B. No substantial development as defined in Section 15.04.030 SMC shall be undertaken by any person on shorelines without first obtaining a shoreline permit from the City of Sumas; PROVIDED that, such a permit shall not be required for the activities identified under Section 15.04.090 SMC.

C. No authorization to undertake use or development on shorelines of the state shall be granted unless upon review, the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and this master program.

D. Direct federal agency activities affecting the uses or resources subject to the Act must be consistent to the maximum extent practicable with the enforceable provisions of the Act and with this master program as required by WAC 173-27-060.

E. This program shall not apply to:

1. Activities undertaken to comply with a United States Environmental Protection Agency Superfund-related order, or a Washington Department of Ecology order pursuant to the Model Toxics Control Act (such as the Swift Creek Sediment Management Action Plan), or a Department of Homeland Security order that specifically preempts local regulations in the findings of the order.

2. Pursuant to RCW 90.58.045 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 replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW.

3. 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.

~~C.~~ Pursuant to RCW 90.58.140(12), a permit is not required in order to dispose of dredged materials at a disposal site approved through the cooperative planning process referenced in RCW 79.105.500, provided the dredged material disposal proponent obtains a valid site use authorization from the Dredged Material Management Program office within the Department of Natural Resources.

15.04.090 Exempt Activities.

A. A substantial development permit shall not be required for the following activities. Those activities identified under Subsections (1) through (16) are specifically exempted from the substantial development permit requirement pursuant to RCW 90.58.030(3)(9e) and WAC 173-27.040.

1. Any development of which the total cost or fair market value, whichever is higher, does not exceed ~~six thousand four hundred and sixteen~~seven thousand and forty-seven dollars or as this dollar value is adjusted for inflation pursuant to RCW 90.58.030(3)(e), if such development does not materially interfere with the normal public use of the water or shorelines of the state. For the purposes of determining whether or not a shoreline substantial development 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 and this master program. The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

2. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or 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;

3. Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion

control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the department of fish and wildlife;

4. Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to chapter 90.58 RCW, these regulations, or the local master program, obtained. All emergency construction shall be consistent with the policies of chapter 90.58 RCW and the local master program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;
5. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities 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 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;
6. Construction or modification, by or under the authority of the Coast Guard or a designated port management authority, of navigational aids such as channel markers and anchor buoys;
7. 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 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 RCW 90.58. “Single-family residence” means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An “appurtenance” is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. Normal appurtenances include a garage; deck; driveway; utilities; fences; and grading which does not exceed two hundred fifty cubic yards (except to construct a conventional drainfield);
8. 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 if the fair market value of the dock does not

exceed ten thousand dollars. However, if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of the completion of the prior construction, the subsequent construction shall be considered a substantial development;

9. 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 ground water for the irrigation of lands;
10. 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;
11. 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;
12. Any project with a certification from the governor pursuant to RCW 80.50;
13. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this Program, 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 a 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 ensure that the site is restored to preexisting conditions; and
    e. The activity is not subject to the permit requirements of section 90.58.550 RCW;
14. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department of ecology jointly with other state agencies under chapter 43.21C RCW;
15. Watershed restoration projects as defined herein.
    i. “Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:

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

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

        (C) A project primarily designed to improve fish and wildlife habitat, remove or

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

ii. "Watershed restoration plan" means a plan, developed or sponsored by the department of fish and wildlife, the department of ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the State Environmental Policy Act.

16. A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:

(i) The project has been approved in writing by the department of fish and wildlife;

(ii) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 77.55 RCW; and

(iii) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

~~16.~~17. The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with disabilities act o 1990 or to otherwise provide physical access to the structure by individuals with disabilities.

B. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exempt from the substantial development permit process.

C. An exemption from the substantial development permit requirements shall not be construed as an exemption from any other requirement of this program or the Act including, if applicable, the requirement for a shoreline variance or conditional use permit or to comply with any other applicable regulation. To be authorized as an exempt activity, the proposed use, development or modification must be consistent with the policies and regulatory provisions of this Program and the Act.

D. The burden of proving that a development or use is exempt is on the applicant or proponent of the proposed action.

E. If any part of a proposed development is not eligible for exemption, then a substantial development permit shall be required for the entire project.

15.04.100 Statement of Exemption.

A. The Administrator is hereby authorized to issue statements of exemption, upon request, for developments and activities which qualify under one or more of the exemptions in Section 15.04.090 SMC or which are otherwise found to be exempt from the permit

requirements of this program. The statement shall be in writing and shall indicate the specific exemption of this Program that is being applied to the development, and shall provide a summary of the Administrator's analysis of the consistency of the project with this Program and the Act. As appropriate, such statements of exemption shall contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of the Program and Act. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial. The Administrator's actions on the issuance of a statement of exemption or a denial are subject to appeal pursuant to Section 15.04.210 of this Chapter.

B. Whenever an exempt activity also requires a permit from the U.S. Army Corps of Engineers, a statement of exemption shall be sent to the applicant and the Department of Ecology pursuant to WAC 173-27-150.

15.04.110 Relationship to Other Local Regulations.

A. Obtaining a shoreline permit or statement of exemption for a development or use does not excuse the applicant from complying with any other local statutes or regulations applicable to such development or use.

B. Where both are applicable, a building permit shall not be issued until a shoreline permit is granted; provided that, any such permit issued by the Building Official shall be subject to the same terms and conditions which apply to the shoreline permit.

C. Where other local permits or approvals are required, such as for zoning conditional uses, variances or subdivisions, the Administrator of those permits or approvals shall attach conditions to such permits or approvals as are required to ensure that the developments are consistent with this Program.

15.04.120 Relationship to Other State and Federal Laws.

Obtaining a shoreline permit or statement of exemption for a development or use shall not excuse the applicant from complying with any other state, regional, or federal statutes or regulations applicable to such development or use.

15.04.130 Liberal Construction.

As provided for in RCW 90.58.900, the Shoreline Management Act is exempt from the rule of strict construction; the Act and this program shall therefore be liberally construed to give full effect to the purposes, goals, objectives and policies for which the Act and this Program were enacted and adopted, respectively.

15.04.140 Nonconforming Development.

The following provisions shall apply to lawfully established uses, buildings and/or structures that do not meet the specific standards of this Program.

A. Nonconforming developments may be continued. If the nonconforming use of a conforming or nonconforming building or structure is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming use right shall expire and any subsequent use shall be conforming, provided that a subsequent conforming use of a nonconforming building or structure shall only be allowed as a conditional use.

B. A nonconforming use housed in a nonconforming building or structure shall not be changed to another nonconforming use. The change of a nonconforming use housed in a conforming building or structure to a different nonconforming use may be allowed as a conditional use, provided that the conforming status of the building or structure is not

affected by the change of use, and 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 act and this master program and as compatible with the uses in the area as the preexisting use.

Conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the this master program and the act and to assure that the sue will not become a nuisance or a hazard.

C. Non-conforming structures may be maintained, repaired, renovated, or remodeled to the extent that non-conformance with the standards and regulations of this Program is not Increased; provided that nonconforming development, which is moved any distance, must be brought into conformance with the requirements of this Program.

D. The expansion of a nonconforming use may be permitted as a conditional use provided that the expansion does not result in new structures that are nonconforming or result in an increase in the nonconformity of existing structures.

E. The expansion of a nonconforming building or structure that contains a conforming use may be permitted as a conditional use, provided that the enlargement does not increase the extent of non-conformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.

F. A nonconforming single family residence damaged by any means, other than by a purposeful act of demolition by the owner or his agent, may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so long as restoration is completed within one year of the date of final resolution of all legal actions ensuing from the damage. Non-conforming structures other than single family residences which are damaged to an extent not exceeding seventy-five percent replacement cost of the original structure may be reconstructed in the same manner as set forth above for single family residences provided the restoration is completed within one year of the date of final resolution of all legal actions ensuing from the damage.

G. 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.

H. A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit.

15.04.150 Property Rights.

A. This Program shall not be construed as altering existing law on access to or trespass on private property.

B. This Program shall not be construed as granting the general public any right to enter private property without permission of the owner.

C. The permit procedures and enforcement provisions of the Shoreline Master Program shall be implemented in a manner consistent with relevant constitutional limitations on the regulation of private property.

SECTION FOUR: SHORELINE PERMITS

15.04.160 Permit Procedure.

A. The City Council of the City of Sumas is vested with the authority to hold public hearings, make final decisions on permit applications and establish permit conditions related to shoreline management within the City of Sumas pursuant to this Program.

B. The City Public Works Director, or his or her designee, shall be the Administrator of rules and regulations pertaining to shoreline management contained in or referenced in this Chapter and may prepare and require the use of such forms as are essential to its administration.

C. The Administrator is authorized by the City Council to make determinations regarding applications for shoreline substantial development permits and shoreline exemptions and to approve, deny or approve with conditions all such applications. The City Council retains the authority to make decisions and establish conditions regarding shoreline conditional use permit and shoreline variance applications.

D. A shoreline permit shall be applied for on forms provided by the Administrator. At a minimum, such applications shall include the following information:

1. The name, address and phone number of the applicant;
2. The name, address and phone number of the applicant's representative;
3. The name, address and phone number of the property owner, if different than the applicant;
4. The address, location and legal description of the property that is the subject of the proposed development;
5. The name of the shoreline (water body) that the site of the proposed development is associated with;
6. A general description of the subject property as it now exists including its use, physical and ecological characteristics, improvements and structures;
7. A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical and ecological characteristics;
8. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties;
9. A description of the proposed development, including detailed descriptions of all project components;
10. A statement indicting the proposed development's fair market value,
11. A description of the proposed development's anticipated impacts to on-site vegetation, topography and natural systems and processes;
12. A site plan or plans showing the existing and proposed conditions of the property, including showing the locations of the property boundary, the ordinary high water mark, any critical areas, existing and proposed development, existing vegetation, proposed vegetation alterations and landscaping, existing and proposed site contours, and existing and proposed structures; provided that, the ordinary high water mark may be an approximate location provided, that for any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark the mark shall be located precisely and the biological and hydrological basis for the location as indicated on the plans shall be included in the development plan; and provided further that where the ordinary high water mark is neither adjacent to or within the boundary of the project,

the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline;

13. A statement describing the anticipated impacts of the proposed development on views, critical areas, and shoreline functions and processes;
14. A statement explaining how the proposed development is consistent with the policies of the Shoreline Management Act, the goals and policies of the Shoreline Management Element of the Sumas Comprehensive Plan, and the Shoreline Regulations contained or referenced in this Chapter; and
15. The signature of the applicant and the property owner if different than the applicant.

E. The applicant shall complete the application form, return the application to the City along with the following:

1. A listing of the names and addresses of owners of property within three hundred feet from the proposed development;
2. A completed SEPA environmental checklist, if required; and
3. Payment of the appropriate fees.

F. Upon receipt of a properly completed application, the Administrator shall provide for permit processing and notification consistent with WAC 173-27-110 pursuant to the permit administration procedures contained in Chapter 20.08 SMC, except as modified by this chapter.

G. At a minimum, a thirty (30) day comment period shall be provided following notification prior to consideration of the matter and final action by the Administrator or City Council.

H. Notice of the final action on a permit application, whether it is an approval, a denial or a revision, shall be provided to the applicant and all parties of record and shall be filed with the Department of Ecology in the manner set forth in WAC 173-27-130. Filing with the Department shall include submittal of a completed Permit Data Sheet and Transmittal Letter substantially in the form set forth in WAC 173-27-990 (Appendix A).

I. The final decision regarding a substantial development permit application shall be made by the Administrator. The final decision regarding a shoreline conditional use or variance permit application shall be made by the Department following receipt of the City's decision.

15.04.170 Substantial Development Permit Criteria.

A. A Shoreline Substantial Development Permit shall be granted only if the development is consistent with the Shoreline Management Act and all regulations and policies of this Program appropriate to the type of use and the designated shoreline environment in which it is located.

B. Consistency with this Shoreline Management Master Program shall include consistency with the applicable goals and policies contained in the Shoreline Management Element of the Sumas Comprehensive Plan AND compliance with all applicable provisions of this Chapter, including the Shoreline Environment Designation Requirements contained in Sections 15.04.220 through .440, the General Requirements contained in Sections 15.04.450 through .520, and the Specific Use and Modification Regulations contained in Sections 15.04.530 and 15.04.540. Applicants for permits under this section have the burden of proving that a proposed substantial development is consistent with the applicable criteria before a permit is granted.

15.04.180 Conditional Use Permit Criteria.

A. The purpose of a conditional use permit is to allow greater flexibility in the application of the use regulations of this program in a manner consistent with the policies of RCW 90.58.020: PROVIDED that, conditional use permits may also be granted for a use not included in the enumerated permitted and conditional uses. In authorizing a conditional use, special conditions may be attached by the City or the Department of Ecology to prevent undesirable effects of the proposed use and/or to ensure consistency of the project with the Act and this master program.

B. Uses which are classified or set forth in this program as conditional uses may be authorized provided the applicant can demonstrate all of the following:

1. That the proposed use is consistent with the policies of RCW 90.58.020 and the provisions of this program;
2. That the proposed use will not interfere with the normal public use of public shorelines;
3. That the proposed use of the site and design of the project is compatible with other permitted uses within the area;
4. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
5. That the public interest suffers no substantial detrimental effect.

C. Other uses which are not classified or set forth in this program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the this master program.

D. Uses which are specifically prohibited and named by this program may not be authorized.

E. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like action in the area such that if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

15.04.190 Variance Permit Criteria.

A. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in this program where there are extraordinary or unique circumstances relating to the physical character or configuration of the property such that the strict implementation of this program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

B. Variance permits shall be granted in a circumstance where denial of the permit will result in a thwarting of the policy enumerated in RCW 90.58.020, and in all such instances extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

C. Variance permits may be authorized provided the applicant demonstrates all of the following:

For developments and/or uses located landward of the OHWM or outside of a wetland

1. That the strict application of the bulk, dimensional or performance standards set forth in this program precludes or significantly interferes with a reasonable use of the property not otherwise specifically prohibited by this program;

For developments and/or uses located waterward of the OHWM or within a wetland

2. That the strict application of the bulk, dimensional or performance standards set forth in this program precludes all reasonable use of the property not otherwise specifically prohibited by this program;

For all developments and/or uses

3. That the hardship addressed in this section 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 this program, and not from deed restrictions, the actions of the applicant or other similar circumstance;
4. That the design of the project is compatible with other permitted activities in the area and will not cause adverse impacts to adjacent properties or the shoreline environment;
5. That the requested variance permit does not constitute a grant of special privilege not enjoyed by other properties in the area, and is the minimum necessary to afford relief;
6. That the public rights of navigation and use of the shorelines will not be adversely affected, and
7. That the public interest will suffer no substantial detrimental effect.

D. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area such that if variances were granted to other developments in the area where similar circumstances exist the total of the variances shall remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects on the shoreline environment.

E. Variances from the specific use regulations set forth in this program are prohibited.

15.04.200 Permit Conditions, Expiration, Rescission and Revision.

A. In granting, revising or extending a shoreline permit, the City may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other features of the proposed development deemed necessary to assure that the development will be consistent with the permit criteria set forth in Sections 15.04.170, .180 and .190 of this Program and with the provisions of the State Environmental Policy Act, RCW 43.21C.

B. Development pursuant to a shoreline permit of any type shall not be authorized nor commenced until 21 days from the “date of filing” as defined in RCW 90.58.140(6), or until all review proceedings initiated within the 21 days from the date of such filing have terminated.

C. Construction authorized pursuant to a shoreline permit of any type shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years from the effective date of the permit as defined in WAC 173-27-090(4) and shall be completed within five years from the effective date; PROVIDED, the City Council may authorize a one-year extension to either or both of these timing requirements based on

reasonable factors.

D. Date of Filing. The Date of Filing is defined as the following:

1. The date the Department receives the City's final decision on the permit application; or
2. With respect to applications for conditional use or variance that have been approved by the City, the date the decision by the Department is transmitted by the Department to the City.

E. Permit Rescission. Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that the permittee has not complied with conditions of the permit.

F. Permit Revisions. Requests for revisions to substantial development, conditional use and variance permits shall be submitted and reviewed consistent with this section and WAC 173-27-100. A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which was approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this master program and/or the policies and provisions of the Act.

1. An applicant seeking to revise a permit shall submit a description of the proposed revision along with accompanying plans and any other information demonstrating that the proposed revision is consistent with the requirements set forth in this subsection.
2. If the Administrator determines that the proposed changes are within the scope and intent of the original permit, as defined under WAC 173-27-100(2), and are consistent with this program and the Act, the Administrator may approve the revision.
3. If the Administrator determines that the sum of the proposed revision and all previously approved revisions is not consistent with the requirements in subsection (2), the Administrator shall require that the applicant apply for a new permit.
4. For each approved permit revision, the Administrator shall transmit said revised permit to the Department and notify parties of record consistent with the provisions set forth under subsection 15.04.160(H) of this program.
5. If the original permit involved a conditional use or variance, the Administrator shall submit the revision to the Department for final approval, approval with conditions, or denial, and said revision shall state that it is being submitted to the Department for final action. The Department shall render and transmit to the City and the applicant its final decision within fifteen days of the date of its receipt of the submittal from the City. The Administrator shall notify parties of record of the department's final decision.
6. The effective date of a revised permit for substantial development shall be the date of final decision by the Administrator. The effective date for a revised conditional use or variance permit shall be the date of final action by the Department.
7. Appeals regarding final decisions on permit revisions shall be filed consistent with section 15.04.210 of this master program.

15.04.210 Appeals.

A. Any person aggrieved by the granting, denying or rescinding by the City of Sumas of a

Shoreline Substantial Development Permit, Shoreline Conditional Use Permit or Shoreline Variance Permit may appeal the action of the City to the State Shoreline Hearings Board by filing a request for review within twenty-one (21) days of the date of filing of the permit. The procedure for filing a request for review is set forth in RCW 90.58.180.

B. Appeals of decisions and determinations made by the Administrator in the administration of this Program, excluding decisions regarding shoreline substantial development permits, shall be filed and processed consistent with the procedures established under Section 20.08.150 of the Sumas Municipal Code.

15.04.215 Enforcement.

A. Enforcement action by City may be taken whenever a person has violated any provision of this master program, the Act or other regulation promulgated under the Act. The choice of enforcement action and the severity of any penalty shall be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the existence or degree of bad faith of the persons subject to the enforcement action..

B. Cease and Desist Order.

1. Where a person is found to be undertaking an activity on lands within shoreline jurisdiction that is in violation of this master program or the Act, the City shall have the authority to serve upon said person a cease and desist order.
2. A cease and desist order shall set forth and contain:
   (a) A description of the specific nature, extent, and time of violation and the damage or potential damage; and
   (b) A notice that the violation or the potential violation cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty under subsection (C) of this section may be issued with the order.
3. A cease and desist order once issued shall become effective immediately upon receipt by the person to whom it is directed.
4. Failure to comply with the terms of a cease and desist order can result in enforcement actions including, but not limited to, the issuance of a civil penalty.

C. Civil Penalty.

1. A person who fails to conform to the terms of a substantial development permit, conditional use permit or variance issued under this master program, who undertakes a development or use on shorelines of the state without first obtaining a permit, or who fails to comply with a cease and desist order issued under subsection 15.04.215(B) of this program may be subject to a civil penalty imposed by the City.
2. Amount of penalty. The penalty shall not exceed one thousand dollars for each violation. Each day of violation shall constitute a separate violation.
3. Any person who, through an act of commission or omission procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.
4. A civil penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the City, or jointly from the City and the department. The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require

necessary corrective action within a specific time.

D. Appeal of Civil Penalty.

1. Persons incurring a penalty imposed by the City alone may appeal the same to the City Council pursuant to Section 15.04.210 of this program. Persons incurring a penalty imposed by the department or imposed jointly by the department and local government may appeal the same to the shorelines hearings board. Appeals to the shorelines hearings board are adjudicatory proceedings subject to the provisions of chapter 34.05 RCW.
2. Appeals shall be filed within thirty days of the date of receipt of the penalty. The term "date of receipt" has the same meaning as provided in RCW 43.21B.001.
3. Penalties imposed under this section shall become due and payable thirty days after receipt of notice imposing the same unless application for remission or mitigation is made or an appeal is filed. Whenever an application for remission or mitigation is made, penalties shall become due and payable thirty days after receipt of local government's and/or the department's decision regarding the remission or mitigation. Whenever an appeal of a penalty is filed, the penalty shall become due and payable upon completion of all review proceedings and upon the issuance of a final decision confirming the penalty in whole or in part. If the amount of a penalty owed the City is not paid within thirty days after it becomes due and payable, the City may take actions necessary to recover such penalty.
4. Penalties recovered by the City shall be paid to the City treasury. Penalties recovered jointly by the department and City shall be divided equally between the department and the City unless otherwise stipulated in the order.

E. Criminal Penalty. The procedures for criminal penalties shall be governed by RCW 90.58.220.

SECTION FIVE: SHORELINE ENVIRONMENT DESIGNATIONS

15.04.220 Shoreline Environment Designations Established.

In order to classify, segregate and regulate the uses of land, water, buildings and structures, there is hereby established a set of designations for areas within shoreline jurisdiction called Shoreline Environment Designations. The purpose of these designations is to provide a systematic, rational and equitable basis upon which to guide and regulate development within specific shoreline reaches having some degree of geographic unity, but which differ from adjacent shoreline reaches and other areas in terms of natural features and development or potential development patterns. Shoreline Environment designations in the City of Sumas shall include the Aquatic, Natural, Shoreline Residential, Urban Conservancy and Urban Conservancy-Wetland designations as described in WAC 173-26-191(1)(d).

15.04.230 Official Shoreline Map.

A. The Official Shoreline Map shall indicate the Shoreline Environment designation assigned to those parcels within shoreline jurisdiction. The Official Shoreline Map shall be kept on file at the office of the City Clerk.

B. Upon annexation into the City of Sumas, annexed areas shall, for the purposes of shoreline management, be designated based on the shoreline environment designations for such areas included on the Official Shoreline Map at the time of adoption of the Sumas Shoreline Management Master Program.

C. Areas not identified as being included in any specific environment designation, either through oversight or intention, shall be deemed to be included in the Urban Conservancy environment, unless inclusion in an immediately adjacent designation is consistent with the designation criteria contained in this Program and provides for a more regular pattern of designation.

D. Wetland areas not identified on the Official Shoreline Map shall be deemed to be included in the Urban Conservancy-Wetland environment.

E. Wetland boundaries shown on the Official Shoreline Map are approximate, and regulatory boundaries for wetlands shall be established through site-specific delineation required pursuant to Section 15.04.471 SMC.

15.04.240 Interpretation.

In making interpretations regarding the jurisdictional boundaries of this Program or the boundaries between specific Environment Designations, the Administrator shall utilize the standards set forth in this Section. In those instances where disputes arise regarding these boundaries, the Administrator shall consult with the Department's shoreline local program representative.

A. If disagreement develops as to the exact location of a shoreline management jurisdiction boundary line, the official jurisdiction maps as approved by the Department of Ecology together with the definitions contained in Section 15.04.030 of this Chapter shall prevail.

B. If disagreement develops as to the exact location of a Shoreline Environment boundary line, the following rules apply.

1. Boundaries indicated as approximately following lot, tract, or section lines shall be so construed;

2. Boundaries indicated as approximately following roads or railways shall be

respectively construed to follow their centerlines;

3. Boundaries indicated as approximately parallel to or extensions of features indicated in subsection (1) and (2) above shall be so construed;

4. Boundaries indicated as approximately occurring at definite changes in topography, shoreforms, geology, soils, or vegetative cover shall be so construed.

C. Whenever existing physical features are at variance with boundaries on the Official Shoreline Map, the Administrator shall interpret the boundaries. The Administrator's decision may be appealed to the City Council pursuant to Section 15.04.210 of this Program.

15.04.250 Aquatic Environment - 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.

15.04.260 Aquatic Environment - Permitted Uses.

Permitted uses in the Aquatic Environment include the following:

A. Agriculture, limited to ongoing agricultural activities consistent with state regulations.

B. Shoreline habitat and natural systems enhancement projects.

15.04.270 Aquatic Environment - Conditional Uses.

The following conditional uses may be permitted within the Aquatic Environment by the City Council upon application and in accordance with Section 15.04.180 of this Chapter:

A. Aquaculture.

B. Boat ramps.

C. Docks.

D. Dredging.

E. In-stream structures.

F. Landfill and excavation.

G. Water dependent Recreational Development.

H. Shoreline flood protection.

I. Shoreline stabilization.

J. Water dependent Transportation development, or when no other alternative location is feasible.

K. Utilities where no other alternative location is feasible.

15.04.275 Aquatic Environment - Prohibited Uses.

The following uses are prohibited within the Aquatic Environment:

A. Agriculture, new.

B. Commercial development.

C. Industrial development.

D. Mining.

E. Outdoor advertising and signs.

F. Residential development.

G. Solid waste disposal.

H. Non-water-dependent uses.

15.04.280 Aquatic Environment - Site and Construction Standards.

A. Unless otherwise specified, the construction standards of the underlying zoning district shall apply.

B. Maximum building height. The maximum building height allowed within the Aquatic Environment is twenty-five (25) feet. The maximum building height for lands adjacent to an aquatic environment designation shall be determined by the respective height stipulations in that designation.

C. Shoreline setback. Not applicable.

D. Location and design of all developments and uses shall minimize interference with surface navigation and impacts to public views, and allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.

E. Developments within the Aquatic Environment shall be located and designed to prevent water quality degradation and alteration of natural hydrographic conditions.

15.04.290 Natural Environment - Purpose.

The purpose of the “natural” environment is to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. These systems require that only very low intensity uses be allowed to maintain ecological functions and ecosystem-wide processes.

15.04.300 Natural Environment - Permitted Uses.

Permitted uses in the Natural Environment include the following:

A. Agriculture, limited to ongoing agricultural activities consistent with state regulations.

B. Outdoor advertising and signs, limited to interpretive signage, including trail marking, hazard warnings, or for scientific or educational purposes.

C. Low intensity, water-oriented Recreational development, limited to unimproved pedestrian trails, where ecological impacts are avoided.

D. Shoreline habitat and natural systems enhancement projects.

15.04.310 Natural Environment - Conditional Uses.

The following conditional uses may be permitted within the Natural Environment by the City Council upon application and in accordance with Section 15.04.180 of this Chapter:

A. Docks

B. Landfill and excavation.

C. Low intensity, water-oriented Recreational development, limited to improved trails and designated public access.

D. Shoreline flood protection.

E. Shoreline stabilization.

F. Single-family residential on existing lots of record when no significant ecological impact on the area will result.

15.04.315 Natural Environment - Prohibited Uses.

The following uses are prohibited within the Natural Environment:

A. Agriculture, new.

B. Aquaculture.

C. Boat ramps.

D. Commercial development.

E. Industrial development.

F. Mining.

G. Non-water oriented Recreational development.

H. Solid waste disposal.

I. Uses that would substantially degrade ecological functions or the natural character of the shoreline.

J. Transportation development including, but not limited to, roads and parking areas.

K. Utility development.

L. Subdivision of property in a configuration that would require significant vegetation removal or shoreline modification that adversely impacts ecological functions.

15.04.320 Natural Environment - Site and Construction Standards.

A. Unless otherwise specified, the construction standards of the underlying zoning district shall apply.

B. Maximum building height. The maximum building height in the Natural environment is 28 feet.

C. Shoreline setback. The minimum shoreline setback shall be 10 feet from the outer edge of the stream buffer required pursuant to Section 15.04.478 and 10 feet from the wetland buffer required pursuant to Section 15.04.473.

15.04.330 Shoreline Residential Environment - Purpose.

The purpose of the “shoreline residential” environment is to accommodate residential development and appurtenant developments that are consistent with the goals of RCW 90.58 and this Program. An additional purpose is to provide appropriate public access and recreational uses.

15.04.340 Shoreline Residential Environment - Permitted Uses.

Permitted uses in the Shoreline Residential Environment include the following:

A. Agriculture, limited to existing and ongoing agricultural activities.

B. Boat ramps.

C. Docks.

D. Landfill and excavation.

E. Outdoor advertising and signs.

F. Recreational development.

G. Residential development.

H. Shoreline habitat and natural systems enhancement projects.

I. Transportation.

J. Utilities.

15.04.350 Shoreline Residential Environment - Conditional Uses.

The following conditional uses may be permitted within the Shoreline Residential Environment by the City Council upon application and in accordance with Section 15.04.180 of this Chapter:

A. Aquaculture.

B. Water-oriented Commercial development.

C. Shoreline flood protection.

D. Shoreline stabilization.

E. Solid waste disposal, limited to transfer stations.

15.04.355 Shoreline Residential Environment - Prohibited Uses.

The following uses are prohibited within the Shoreline Residential Environment:

A. Agriculture, new, except in areas zoned Agricultural District.

B. Non-water oriented Commercial development.

C. Industrial development.

D. Mining.

E. Solid waste disposal facilities.

15.04.360 Shoreline Residential Environment - Site and Construction Standards.

A. Unless otherwise specified, the construction standards of the underlying zoning district shall apply.

B. Maximum building height. The maximum building height in the Shoreline Residential environment is 35 feet.

C. Minimum shoreline setback. The minimum shoreline setback shall be 10 feet from the outer edge of the stream buffer required pursuant to Section 15.04.478 and 10 feet from the wetland buffer required pursuant to Section 15.04.473; provided, that the shoreline setback shall be increased to 50 feet from the outer limit of a site-specific buffer established in this Master Program.

15.04.370 Urban Conservancy Environment - Purpose.

The purpose of the “urban conservancy” environment is to protect and restore ecological functions of open space, floodplain, and other sensitive lands where they exist in urban and developed settings, while allowing for a variety of compatible uses.

15.04.380 Urban Conservancy Environment - Permitted Uses.

Permitted uses in the Urban Conservancy Environment include the following:

A. Agriculture, limited to existing and ongoing agricultural activities consistent with state regulations.

B. Commercial development.

C. Industrial development.

D. Landfill and excavation.

E. Outdoor advertising and signs.

F. Recreational development.

G. Residential development.

H. Shoreline habitat and natural systems enhancement projects.

I. Transportation.

J. Utilities.

15.04.390 Urban Conservancy Environment - Conditional Uses.

The following conditional uses may be permitted within the Urban Conservancy Environment by the City Council upon application and in accordance with Section 15.04.180 of this Chapter:

A. Aquaculture.

B. Boat ramps.

C. Docks.

D. Shoreline flood protection.

E. Shoreline stabilization.

F. Solid waste disposal, limited to transfer stations.

15.04.395 Urban Conservancy Environment - Prohibited Uses.

The following uses are prohibited within the Urban Conservancy Environment:

A. Agriculture, new.

B. Solid waste disposal facilities.

15.04.400 Urban Conservancy Environment - Site and Construction Standards.

A. Unless otherwise specified, the size and construction standards of the underlying zoning district shall apply.

B. Maximum building height. The maximum building height in the Urban Conservancy environment is 35 feet.

C. Minimum shoreline setback. The minimum shoreline setback shall be 10 feet from the outer edge of the stream buffer required pursuant to Section 15.04.478 and 10 feet from the wetland buffer required pursuant to Section 15.04.473; provided, that the shoreline setback shall be increased to 50 feet from the outer limit of a site-specific buffer established in this Master Program.

15.04.410 Urban Conservancy-Wetland Environment - Purpose.

The purpose of the “urban conservancy-wetland” environment is to protect and restore ecological functions of open space, floodplain, and other sensitive lands where they exist in

urban and developed settings in proximity to wetlands located within the 100-year floodplain, while allowing for a variety of compatible uses.

15.04.420 Urban Conservancy-Wetland Environment - Permitted Uses.

Permitted uses in the Urban Conservancy-Wetland Environment include the following:

A. Agriculture, limited to ongoing agricultural activities consistent with state regulations.

B. Industrial development, outside of Conservancy wetlands, when measures have been taken to avoid, minimize and mitigate impacts to wetlands and where the development results in no net loss of shoreline ecological functions and processes.

C. Landfill and excavation in association with approved development.

D. Outdoor advertising and signs.

E. Recreational development- passive recreation facilities consistent with Subsection 15.04.475(F).

F. Residential development, except in Conservancy wetlands.

G. Shoreline habitat and natural systems enhancement projects.

H. Transportation, pursuant to Subsection 15.04.475(C).

I. Utilities, pursuant to Subsection 15.04.475(B).

15.04.430 Urban Conservancy-Wetland Environment - Conditional Uses.

The following conditional uses may be permitted within the Urban Conservancy-Wetland Environment by the City Council upon application and in accordance with Section 15.04.180 of this Chapter:

A. Aquaculture, outside of Conservancy wetlands.

B. Commercial development.

C. Docks.

D. Recreational development not identified as permitted pursuant to Section 15.04.420 on existing lots of record where measures have been taken to avoid, minimize and mitigate impacts to wetlands and where the development results in no net loss of shoreline ecological functions and processes.

E. Shoreline flood protection.

F. Shoreline Stabilization.

G. Solid waste disposal, limited to transfer stations.

15.04.435 Urban Conservancy-Wetland Environment - Prohibited Uses.

The following uses are prohibited within the Urban Conservancy-Wetland Environment:

A. Agriculture, new.

B. Aquaculture in Conservancy wetlands.

C. Boat ramps.

D. Industrial development in Conservancy wetlands.

E. Mining.

F. Residential development in Conservancy wetlands.

G. Solid waste disposal facilities.

15.04.440 Urban Conservancy-Wetland Environment - Site and Construction Standards.

A. Unless otherwise specified, the size and construction standards of the underlying zoning district shall apply.

B. Maximum building height. The maximum building height in the Urban Conservancy environment is 35 feet; provided, that building heights up to 45 feet may be authorized through approval of a shoreline conditional use permit.

C. Minimum shoreline setback. The minimum shoreline setback shall be 10 feet from the outer edge of the wetland buffer required pursuant to Section 15.04.473.

D. All development shall be consistent with sections 15.04.471 through 15.04.474 of this program.

SECTION SIX: GENERAL REQUIREMENTS

15.04.450 Applicability of Title 20 SMC.

With respect to all matters related to management of shorelines within the City of Sumas, this Master Program shall take precedence over other City regulations. When not directly related to the management of shorelines within the City, this Program shall defer to Title 20 SMC (Zoning) to establish general requirements for development, such as maximum development density, minimum lot sizes, minimum yard setbacks, and other related requirements.

15.04.460 Archeological Areas and Historic Sites.

A. The National Historic Preservation Act of 1966 and Chapter 27.53 RCW provide for the protection, rehabilitation, restoration and reconstruction of areas and structures in American and Washington State history. The regulations in these acts shall be followed.

B. Following application and prior to issuance of a permit or statement of exemption for a site located within 500 feet of an area known to contain archaeological, cultural or historic resources, the City shall require the proponent to provide a cultural or historic resource site assessment and evaluation by a professional archaeologist or historic preservation professional. Said assessment shall be prepared in consultation with affected tribes and the Washington State Department of Archaeology and Historic Preservation. The cost of any such assessment shall be paid by the proponent. All such evaluations shall be completed to the satisfaction of the City, and the proposed use or development properly conditioned, prior to issuance of a permit and prior to beginning ground-disturbing activities. This requirement may be waived by the Administrator upon a finding that the proposed use or activity does not include any ground-disturbing activities and will not impact a known historic, cultural or archaeological site.

C. If the cultural resource site assessment identifies the potential presence of significant archaeological, cultural or historic resources, a Cultural Resource Management Plan (CRMP) shall be prepared by a professional archaeologist or historic preservation professional, as applicable. The cost of preparing any such CRMP shall be paid by the proponent. The CRMP shall be prepared in consultation with affected tribes and the State Department of Archaeology and Historic Preservation. The recommendations and conclusions of the CRMP shall be used to assist the Administrator in making final administrative decisions concerning the presence and extent of historic/archaeological resources and appropriate mitigating measures. The Administrator may request revision of a CRMP when the Administrator can demonstrate that the assessment is inaccurate or does not fully address the historic/archaeological resource management concerns involved.

D. All shoreline permits shall contain provisions which require developers to stop work immediately and secure the affected area and notify the City, affected tribes and the State Department of Archaeology and Historic Preservation if any archaeological, cultural or historic resources or human remains are uncovered during excavation or construction. Upon notification of any such inadvertent discovery, the Administrator shall conduct a site visit and shall consult with the above agencies and appropriate law enforcement authorities to determine the potential significance of the site, whether or not a site assessment and/or Cultural Resource Management Plan is required and whether any additional conditions are necessary to ensure the protection of said resources. Work in the affected area shall not resume until the proponent receives written authorization from the Administrator.

15.04.470 Critical Areas.

A. Generally.

Critical Areas include wetlands, fish and wildlife habitat conservation areas, frequently flooded areas, aquifer recharge areas and geologically hazardous areas. Where not specifically addressed within this Chapter, either directly or through reference, regulation of critical areas within shoreline jurisdiction shall be pursuant to applicable provisions codified in Chapter 15.20 SMC adopted by Ordinance No. 1400 in 2004 and amended by Ordinance No. 1687 in 2016; provided that projects that would otherwise require approval of a reasonable use exceptions pursuant to Section 15.20.450 shall be processed as and require approval of a shoreline variance pursuant to Section 15.04.190 of this chapter.

B. Wetlands.

The regulation of wetlands within shoreline jurisdiction shall be pursuant to Sections 15.04.471 through 15.04.475 of this Master Program.

C. Floodplains.

Development within portions of the 100-year floodplain that are also within shoreline jurisdiction shall be as follows:

1. Development on shorelands within the floodplain shall comply with the provisions of this Program as well as those codified in Chapter 14.30 SMC, Flood Damage Prevention, adopted through Ordinance Nos. 1035 in 1991, 1089 in 1993, 1105 in 1993, 1176 in 1996, 1216 in 1997, 1373 in 2003, 1376 in 2003, ~~and~~ 1399 in 2004, and 1738 in 2018, which are incorporated as part of this Program by reference; PROVIDED that, in the event of conflict between the provisions contained in each, the more restrictive provision shall apply.
2. Development on shorelands within the floodplain shall comply with a comprehensive flood hazard management plan developed pursuant to Chapter 86.12 RCW.
3. Development of hazardous waste treatment and storage facilities shall comply with the provisions of this master program, Chapter 14.30 SMC, which is incorporated as part of this Program by reference, and the requirements of the State Dangerous Waste Regulations, WAC 173-303; PROVIDED that, in the event of conflict between the provisions contained in each, the more restrictive provision shall apply.
4. New structural flood hazard reduction measures are allowed within shoreline jurisdiction only when it can be demonstrated by a scientific and engineering analysis that they are necessary.

D. Rivers and streams – Critical Freshwater Habitat.

The regulation of rivers and streams within shoreline jurisdiction shall be pursuant to Sections 15.04.476 through 15.04.479 of this Master Program.

E. Steep Slopes.

A steep slope can be defined as a slope exceeding 40 percent and a minimum of 20 feet in height. The following regulations shall apply to all uses and developments potentially affecting shoreline bluffs and steep slopes.

1. All development shall comply with the applicable provisions set forth in Chapter 15.20 SMC adopted by Ordinance 1400 in 2004 and amended by Ordinance No. 1687 in 2016.

2. Steep slopes shall be left in their natural state.

3. Development within the shoreline area within fifty feet below or above a steep slope shall be prohibited except where a geotechnical analysis demonstrates that the development will be safe from foreseeable risk from geological conditions and will not require structural shoreline stabilization during the life of the proposed development. Such development shall be a shoreline conditional use.

F. Fish and Wildlife Habitat Conservation Areas.

The regulation of fish and wildlife habitat conservation areas within shoreline jurisdiction shall be pursuant to Sections 15.04.476 through 15.04.479 of this Master Program.

15.04.471 Wetlands - Designation and classification.

A. Designation. Wetlands shall be identified and delineated according to the Corps of Engineers Wetlands Delineation Manual (Environmental Laboratory 1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0, 2010 or as revised).

B. Rating (Classification). Wetlands shall be rated (classified) as Category I, Category II, Category III, or Category IV based upon *Washington State Department of Ecology's Wetlands Rating System for Western Washington* (2014) or most recent update.

15.04.472 Wetlands - Site assessment requirements.

A. All development subject to the provisions of this Master Program that is within a designated wetland area or within an area about which the Administrator has information indicating that a wetland may be present or within a distance of 200 feet of any such area shall be required to submit a site assessment report prepared by a qualified wetland biologist.

B. Site assessment reports, when required, shall include the following information:

1. Project description;

2. Site plan or plans identifying the extent and boundaries of all wetlands as determined according to the methodology identified in Section 15.04.471(A) of this chapter and identifying the location of the proposed activity. The Administrator may require that the delineated wetland boundaries be surveyed by a professional land surveyor and the results of said survey be provided to the City in a digital format acceptable to the City.

3. A wetland community description and classification (rating) prepared according to the classification system identified in Section 15.04.471(B).

4. An assessment of wetland functions and values which addresses the following: soils, vegetation, hydrology, fish and wildlife habitat, and aesthetics.

5. Mitigation plan demonstrating how the proposed project (including any proposed mitigation) is able to mitigate impacts to wetlands in conformance with the mitigation sequence outlined in Subsection 15.04.480(B), the performance requirements set forth in Section 15.04.473, and the mitigation requirements set forth at Section 15.04.4741, including demonstrating how the proposal will result in no net loss of shoreline ecological function.

C. The Administrator may request additional information regarding the proposed development or activity if deemed necessary to determine the project's impacts and sufficiency of any proposed mitigation.

15.04.473 Wetlands - Performance requirements.

A. Basic Requirement.

Except as otherwise allowed pursuant to this Chapter, development or other regulated activities are prohibited within a regulated wetland or its standard buffer unless the site assessment report demonstrates that the proposal will not degrade the functions and values of the subject wetland and buffer or that all impacts to these areas will be fully mitigated. The following requirements shall apply:

1. Category I Wetlands. Regulated activities are prohibited within a Category I wetland and its standard buffer. Buffer reductions are prohibited.

2. Category II Wetlands. Regulated activities are prohibited within a Category II wetland and its standard buffer. Reduction of the standard buffer adjacent to a Category II wetland shall be permitted only where consistent with subsection (E), below, and only when all impacts are compensated at the expense of the developer through implementation of a mitigation plan prepared by a qualified wetland biologist consistent with the requirements set forth in Section 15.04.474.

3. Category III Wetlands. Regulated activities are prohibited within a Category III wetland and its standard buffer. Filling of a Category III wetland or reduction of the standard buffer adjacent to a Category III wetland shall only be permitted where consistent with subsection (E), below, and only when all impacts are compensated at the expense of the developer through implementation of a mitigation plan prepared by a qualified wetland biologist consistent with the requirements set forth in Section 15.04.474.

4. Category IV Wetlands. Regulated activities are prohibited within a Category IV wetland and its standard buffer, except as follows. Filling of a Category IV wetland or reduction of the standard buffer adjacent to a Category IV wetland shall only be permitted where consistent with Subsection (E), below, and only when all impacts are compensated at the expense of the developer through implementation of a mitigation plan prepared by a qualified wetland biologist consistent with the requirements set forth in Section 15.04.474.

~~4.~~5. Conservancy and Urban-2 Wetlands. The City has identified and mapped certain high-value wetlands that have been prioritized for increased protection under this Program. These high-value wetlands are identified as Conservancy on the Official Shoreline Map. Other wetlands not designated Conservancy are shown as Urban-2 on the Official Shoreline Map. Wetlands not shown on the Official Shoreline Map that are subsequently identified shall be designated Urban-2 unless they meet all of the following designation criteria: Category I or II, habitat function score of 6 or more, and one-quarter of an acre or larger in size. Other provisions of this Master Program not withstanding, the filling of Conservancy wetlands shall require approval of a Variance.

B. Buffers.

Buffers are upland areas adjacent to wetlands that are intended to provide sufficient separation between the aquatic feature and the surrounding areas and uses to protect the wetlands from disturbance from human activities. Buffers also provide vital upland habitat for wildlife species that require wetlands as part of their life cycle. Buffers shall be measured horizontally in a landward direction from the delineated wetland edge.

C. Standard Buffers.

1. Standard buffers where no minimizing measures are required.

   The following standard buffers shall be established for all wetlands where no minimizing measures are required based on classification (rating) and level of function for wildlife habitat. Standard buffers are assumed to be comprised of an intact native vegetation community that is adequate to protect the functions and values of the wetland at the time of the proposed activity:

	Buffer width (in feet) based on habitat score			
Wetland Category	3-4	5	6-7	8-9
Category I (based on total score)	100	140	220	300
Category II (based on total score)	100	140	220	300
Category III (based on total score)	80	140	220	300
Category IV (based on total score)	50	50	50	50

2. Standard buffers where minimizing measures are required.

   The following standard buffers shall be established for all wetlands where minimizing measures as set forth under subsection (3), below, are required and buffers are based on classification (rating) and level of function for wildlife habitat. Standard buffers are assumed to be comprised of an intact native vegetation community:

	Buffer width (in feet) based on habitat score			
Wetland Category	3-4	5	6-7	8-9
Category I	75	105	165	225
Category II	75	105	165	225
Category III	60	105	165	225
Category IV	40	40	40	40

3. Minimizing measures.

   The smaller standard buffers set forth under subsection (2), above, shall be applicable where the minimizing measures established in the following table are required AND in those cases where the wetland has a habitat score of five or more

an undisturbed vegetated corridor at least 100 feet wide is provided between the wetland and another priority habitat:

Disturbance	Required Measure to Minimize Impacts
Lights	• Direct lights away from wetland
Noise	• Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10-foot heavily vegetated buffer strip immediately adjacent to the outer edge of the wetland buffer
Toxic runoff	• Route all new, untreated runoff away from wetland while ensuring wetland is not de-watered • Establish covenants limiting use of pesticides within 150 feet of wetland • Apply integrated pest management
Stormwater runoff	• Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use Low Impact Development techniques
Change in water regime	• Infiltrate or treat, detain and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	• Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion • Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	• Use best management practices to control dust

D. Increased Buffers.

If the standard buffer is not comprised of a relatively intact native vegetation community sufficient to protect the functions and values of the wetland, the Administrator shall increase the standard buffer OR the applicant may choose to enhance the standard buffer to meet the above standard. Any such buffer enhancement shall be undertaken at the sole expense of the applicant and shall be based on and incorporated into a mitigation plan prepared by a qualified biologist consistent with the requirements established at Subsection 15.04.474(G). The Administrator shall also increase the required buffer above the standard buffer width if it is determined that unique circumstances exist, either in terms of the sensitivity of the wetland or the intensity of the proposed land use, such that an increased buffer is necessary to protect the functions and values of the wetland.

E. Buffer Reductions.

1. Buffer Reduction Based on Mitigation. Where compensatory mitigation is provided, standard buffers may be reduced, provided that the standard buffer is not reduced by more than 25 percent for Category II wetlands, and not by more than 40 percent for Category III and Category IV wetlands; provided that, standard buffers shall not be reduced by more than 25 percent for wetlands having a habitat functions score of over 4 on the wetland rating form. Reduction of the standard buffer of a Category I wetland is prohibited. Buffer reductions shall only be permitted when all impacts to wetlands and their required buffers are compensated at the expense of the applicant through implementation of a mitigation plan prepared by a qualified wetland biologist consistent with Section 15.04.474(G), below. Except as otherwise allowed pursuant to this Chapter, filling of any wetland, except a Category III or IV wetland designated Urban-2 on the Official Shoreline Map, or reduction of a wetland buffer by more than the percentages stated above, shall require approval of a shoreline variance. Buffer reductions up to one-half of the percentages identified above may be authorized through approval of a shoreline substantial development permit. Buffer reductions greater than one-half of but not exceeding the percentages identified above may be authorized through a shoreline conditional use permit.
2. Buffer Averaging. Standard buffers may be reduced through the use of buffer averaging provided that the total buffer area is not reduced below the area that would result from use of the standard buffer, and provided, further, that the standard buffer is not reduced by more than 25 percent through approval of a substantial development permit and not by more than 40 percent through approval of a conditional use permit, and the use of buffer averaging will improve the overall protection of the wetland. Reduction of the standard buffer of a Category I wetland is prohibited. Buffer averaging may not be utilized in combination with buffer reductions based on mitigation.

F. Limitation on Subdivision.

Properties located partially or wholly within a wetland or wetland buffer shall not be subdivided in such a way that would increase the impacts to the resource that would result from development of the proposed lots or parcels.

15.04.474 Wetlands - Mitigation requirements.

A. When a regulated activity is proposed within a wetland or wetland buffer, the applicant shall demonstrate to the satisfaction of the Administrator that all reasonable efforts have been made to avoid, minimize and/or compensate for potential impacts consistent with the mitigation sequence established at Subsection 15.04.480(B).

B. Except as otherwise allowed in this Chapter, all projects that result in permanent loss or degradation of wetland functions and values due to a proposed reduction in wetland or buffer area shall provide compensatory mitigation to offset proposed actions.

C. Mitigation Ratios.

The following ratios shall be used as a guide to determine the acreage of wetland or buffer to be created, restored or enhanced in relation to the acreage of wetland or buffer area lost:

	Mitigation Ratio		
Wetland Category	Creation or	Rehabilitation	Enhancement

	Reestablishment		
Category I	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

D. Compensatory mitigation shall be provided on-site or off-site in the location that will provide the greatest ecological benefit and have the greatest likelihood of success, provided that mitigation occurs as close as possible to the impact area and within the same watershed as the permitted alteration. This provision may be waived upon demonstration through a watershed- or landscape-based analysis that mitigation within an alternative sub-basin of the same basin or within an approved mitigation bank would have the greatest ecological benefit and the greatest likelihood of success.

E. All wetlands created, restored or enhanced as part of compensatory mitigation required pursuant to this Chapter shall be provided with buffers of sufficient size to protect their functions and values.

F. All mitigation areas shall be protected and managed to prevent degradation and ensure long-term protection of critical area functions and values. Permanent protection shall be achieved through deed restriction, protective covenant or other protective measure.

G. Mitigation Plan.

Where preparation of a mitigation plan is required, said plan shall be prepared by a qualified wetland biologist consistent with the Department of Ecology guidance document, Guidance on Wetland Mitigation in Washington State, and shall be approved by the Administrator. The mitigation plan shall be prepared based on the best available science and shall address the following:

1. The characteristics of the wetland;
2. The characteristics of the watershed contributing to the wetland;
3. The functions and values of the wetland to be protected by the buffer;
4. The characteristics of the buffer;
5. The intensity of the proposed adjacent land use;
6. The functions that the standard buffer is intended to provide at the specific location;
7. Proposed measures to reduce the adverse effects of adjacent land uses, such as lighting and noise restrictions, buffer fencing and signage, conservation easements, use of integrated pest management and limitations on application of pesticides, and use of low impact development techniques;
8. Proposed mitigation measures together with an analysis of the anticipated effectiveness of the proposed mitigation measures to protect the functions and values of the affected wetland and wetland buffer. Such mitigation shall include compensation for lost time when the wetland is unavailable to perform its function;
9. Proposed monitoring requirements to ensure the effectiveness of the proposed mitigation; and

10. Proposed bonding to insure the completion and effectiveness of the proposed mitigation.

H. Completion of Mitigation.

Where feasible, mitigation projects shall be completed prior to activities that will disturb wetland or buffer areas. In all other cases, mitigation shall be completed as quickly as possible following disturbance and prior to use or occupancy of the activity or development unless such timing is found to be infeasible due to factors such as the optimal time of year for planting. The Administrator may require the posting of a performance bond or other form of surety to insure that all required mitigation, including required monitoring and repair, is completed in a timely fashion and consistent with the approved mitigation plan.

15.04.475 Activities allowed in wetlands, streams, and buffers.

The following activities may be permitted as specified without the issuance of a shoreline variance when all reasonable measures have been taken to avoid adverse effects on functions and values, compensatory mitigation is provided for all unavoidable adverse impacts, and the amount and degree of alteration are limited to the minimum needed to accomplish the project purpose:

A. Surface water discharge into Category III and IV wetland buffers, and/or streams and their buffers when no other alternatives for discharge are feasible and the discharge is designed to minimize physical, hydrologic and ecological impacts to the wetland or stream. Surface water discharge into a Category II wetland buffer may be considered as a conditional use where demonstrated to maintain or enhance existing ecological functions.

B. Utility lines in Category II, III, and IV wetlands and their buffers, Category I wetland buffers, and/or streams and their buffers when the following criteria are met:

1. No feasible conveyance alternative is available;
2. The project is designed and constructed to minimize physical, hydrologic and ecological impacts;
3. The utility line is located as far from the wetland or stream edge as possible and in a manner that minimizes disturbance of soils and vegetation;
4. Clearing, grading, and excavation activities are limited to the minimum necessary to install the utility line and the area is restored following utility installation; and
5. Buried utility lines are constructed in a manner that prevents adverse impacts to subsurface drainage, such as through the use of trench plugs, and provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column will be disturbed.

C. Public roads, bridges, and trails in Category II, III, and IV wetlands and their buffers, Category I wetland buffers, and streams and their buffers when no feasible alternative alignment is available and the facility is designed and constructed to minimize physical, hydrologic and ecological impacts, including placement on elevated structures as an alternative to fill, where feasible.

D. Storm water management facilities, limited to detention / retention / treatment ponds, media filtration facilities, and lagoons or infiltration basins, within a Category III or IV wetland buffer or stream buffer where the following criteria are met:

1. No other feasible alternative location exists;
2. The width of the buffer between the storm water facility and the wetland or stream edge is not less than twenty-five feet;
3. The facility is located, constructed, and maintained in a manner that minimizes adverse effects on the buffer and adjacent wetland or stream;
4. The storm water facility meets applicable County or state storm water management standards; and
5. Low impact development approaches have been considered and implemented to the maximum extent feasible.

Storm water management facilities within Category II wetland buffers may be considered as a conditional use.

E. Storm water conveyance or discharge facilities such as dispersion trenches, level spreaders, and outfalls within a Category III, or IV wetland buffer or stream buffer where the following criteria are met:

1. Due to topographic or other physical constraints, there is no feasible location for the facility outside the buffer;
2. The discharge facility is located as far from the wetland or stream edge as possible, and no closer than fifteen feet, and is designed and constructed in a manner that minimizes disturbance of soils and vegetation;
3. The discharge outlet is designed to prevent erosion and promote infiltration where feasible;
4. The discharge water meets state water quality standards; and
5. Low impact development approaches have been considered and implemented to the maximum extent feasible.

Storm water management facilities within Category II wetland buffers may be considered as a conditional use.

F. Passive recreation facilities that are part of a non-motorized trail system or environmental education program including walkways, wildlife viewing structures, and trails, in wetland and stream buffers provided that all of the following criteria are met:

1. Trails shall not exceed ten feet in width and shall be made of pervious material where feasible;
2. The trail is constructed and will be maintained in a manner that minimizes disturbance of the buffer and the adjacent wetland or stream;
3. Trails should generally be located in the outer twenty-five percent (25%) of the buffer area, except where shoreline access will occur;
4. Trails shall be located to avoid removal of significant trees;
5. Minor trail or walkway crossings are allowed only when alternatives are infeasible and when consistent with the mitigation standard of this program; and

6. Trails that access the shoreline of a wetland or stream shall be the minimum necessary to provide access.

G. A wetland can be physically or hydrologically altered to meet the requirements of a Low Impact Development (LID), Runoff Treatment or Flow Control BMP if all of the following criteria are met:

1. The wetland is classified as a Category III or Category IV wetland with a habitat score of 3-4 points, and
2. There will be “no net loss” of functions and values of the wetland, and
3. The wetland does not contain a breeding population of any native amphibian species, and
4. The hydrologic functions of the wetland can be improved as outlined in questions 3, 4, 5 of Chart 4 and questions 2, 3, 4 of Chart 5 in the “Guide for Selecting Mitigation Sites Using a Watershed Approach,” or the wetland is part of a priority restoration plan that achieves restoration goals identified in this Master Program or other local or regional watershed plan, and
5. The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing, and
6. All regulations regarding stormwater and wetland management are followed, including but not limited to local and state wetland and stormwater codes, manuals, and permits, and
7. Proposed modifications that alter the structure of a wetland or its soils include preparation of a detailed study, and existing functions and values that are lost are compensated/replaced.
8. Stormwater LID BMPs required as part of New and Redevelopment projects can be considered within wetlands and their buffers. However, these areas may contain features that render LID BMPs infeasible. A site-specific characterization is required to determine if an LID BMP is feasible at the project site

15.04.476 Fish and wildlife habitat conservation areas - Designation.

Areas that meet any of the following criteria shall be designated as fish and wildlife habitat conservation areas (HCA) and shall be subject to the provisions of this Chapter:

A. Rivers, steams and creeks identified as Waters of the State pursuant to Title 222 WAC.

B. Areas with which federally and/or state listed species have a primary association.

C. State priority habitats and areas with which state priority species have a primary association.

D. Naturally occurring ponds under 20 acres in size.

15.04.477 Fish and wildlife habitat conservation areas - Site assessment requirements.

A. All development subject to the provisions of this Master Program that is within a designated HCA or within an area about which the Administrator has information indicating that a HCA may be present or within a distance of 200 feet of any such area shall be required to submit a site assessment report prepared by a qualified biologist.

B. A Fish and Wildlife HCA site assessment shall be prepared by a qualified fish and/or wildlife biologist and shall include the following:

1. A. Identification of the type, location and extent of the habitat area on the project site;
2. B. A habitat description and assessment of the functions and values of the habitat area, including a discussion of the species in question and the related plant and animal species, soils and hydrology.
3. C. A regulatory analysis, including a discussion of any federal, state, tribal and/or local requirements or management recommendations that have been developed for the species and/or habitats in question.
4. A mitigation plan, including a discussion of how the proposal and any proposed mitigation measures is sufficient to avoid or minimize adverse impacts to identified species and habitats.

15.04.478 Fish and wildlife habitat conservation areas - Performance requirements.

A. Basic Requirement.

A regulated Fish and Wildlife HCA or its standard buffer shall only be altered if the site assessment demonstrates that the proposal will not degrade the functions and values of the subject habitat.

B. Buffers.

Buffers are upland areas adjacent to fish and wildlife HCAs that are intended to provide sufficient separation between the habitat feature and the surrounding areas and uses to protect the habitat from disturbance from human activities. Buffers also provide vital upland habitat for wildlife species that require stream habitat as part of their life cycle. Buffers shall be measured horizontally in a landward direction from the ordinary high water mark (OHWM) or top of bank, as noted below, for stream habitats and from the outermost edge of upland habitat areas.

C. Standard Buffers.

1. The following standard buffers shall be established for the following fish and wildlife HCAs based on designation and classification. Standard buffers are assumed to be comprised of a moderately intact native vegetation community that is adequate to protect the functions and values of the resource at the time of the proposed activity.

   Stream Habitat - Standard Buffers.

   The following standard buffers shall be established for all Stream Habitats based on their classification:

River/Stream	Standard Buffer
Sumas River / Johnson Creek	In some locations site-specific buffers have been established through this Master Program and are identified as such on the Official Shoreline Map. In

	those areas where site-specific buffers have not been established, the stream buffer shall be 100 feet.
Sumas Creek	50 feet from top of bank
Bone Creek	50 feet from top of bank

2. Non-Stream Habitats.

   The Administrator shall determine the appropriate buffer widths for other habitat conservation areas based on the best available information. Buffer widths for non-stream habitat conservation areas shall be as set forth in the following table:

Areas with which federally listed species have a primary association; and State Priority Habitats and areas with which Priority Species have a primary association.	Buffers shall be based on recommendations provided by the Washington Department of Fish and Wildlife PHS Program; provided that local and site specific factors shall be taken into consideration and the buffer width based on the best available information concerning the species/habitat(s) in question and/or the opinions and recommendations of a qualified professional with appropriate expertise.
Natural Ponds	Buffers shall extend fifty (50) feet landward from the ordinary high water mark (OHWM) of ponds under 20 acres in size.

D. Increased Buffers.

If the standard buffer is not comprised of a moderately intact native vegetation community, the Administrator shall increase the standard buffer to protect the functions and values of the resource and buffer areas OR the applicant may choose to enhance the standard buffer to meet the above standard. Any such buffer enhancement shall be undertaken at the sole expense of the applicant and shall be based on and incorporated into a mitigation plan prepared by a qualified biologist consistent with the requirements established at Section 15.04.479. The Administrator shall also increase the required buffer above the standard buffer width if it is determined that unique circumstances exist, either in terms of the sensitivity of the habitat or the intensity of the proposed land use, such that an increased buffer is necessary to protect the functions and values of the resource.

E. Buffer Reductions.

1. Buffer Reduction Based on Mitigation.

   Where compensatory mitigation is provided, standard buffers may be reduced, provided that the standard buffer is not reduced by more than 40 percent. Buffer reductions shall only be permitted when all impacts to the habitat and their required buffers are compensated at the expense of the developer through implementation of a mitigation plan prepared by a qualified biologist consistent with section 15.04.479,

below. Buffer reductions up to one-half of the percentage identified above may be authorized through a shoreline substantial development permit. Buffer reductions greater than one-half of but not exceeding the percentage identified above may be authorized through a shoreline conditional use permit. Except as otherwise allowed pursuant to this Chapter, reduction of a HCA buffer by greater than the percentage stated above, shall require approval of a shoreline variance. In those areas where a site-specific buffer has been established, buffer reductions are prohibited, except through approval of a shoreline variance.

2. Buffer Averaging.

   Standard buffers may be reduced through the use of buffer averaging provided that the total buffer area is not reduced below the area that would result from use of the standard buffer, and provided, further, that the standard buffer is not reduced by more than 25 percent through approval of a substantial development permit and not by more than 40 percent through approval of a conditional use permit, and the use of buffer averaging will improve the overall protection of the resource. Buffer averaging may not be utilized in combination with buffer reductions based on mitigation, nor is it permitted in areas where a site-specific buffer has been established.

F. Limitation on Subdivision.

Properties located partially or wholly within a fish and wildlife habitat conservation area shall not be subdivided in such a way that would increase the impacts to the resource that would result from development of the proposed lots or parcels.

15.04.479 Fish and wildlife habitat conservation areas - Mitigation requirements.

A. When a regulated activity is proposed within a fish and wildlife habitat conservation area or its associated buffer, the applicant shall demonstrate to the satisfaction of the Administrator that all reasonable efforts have been made to avoid, minimize and/or compensate for potential impacts consistent with the mitigation sequence established at Subsection 15.04.480(B).

B. All projects that result in permanent loss or degradation of habitat functions and values due to a proposed reduction in a habitat conservation area or buffer area shall provide compensatory mitigation to offset proposed actions.

C. Compensatory mitigation shall be provided on-site or off-site in the location that will provide the greatest ecological benefit and have the greatest likelihood of success, provided that mitigation occurs as close as possible to the impact area and within the same watershed as the permitted alteration. This provision may be waived upon demonstration through a watershed- or landscape-based analysis that mitigation within an alternative sub-basin of the same basin or within an approved mitigation bank would have the greatest ecological benefit and the greatest likelihood of success.

D. All habitat conservation areas created, restored or enhanced as part of compensatory mitigation required pursuant to this Chapter shall be provided with buffers of sufficient size to protect their functions and values.

E. All mitigation areas shall be protected and managed to prevent degradation and ensure long-term protection of critical area functions and values. Permanent protection shall be achieved through deed restriction, conservation easement, protective covenant or other protective measure.

F. Mitigation Plan.

Where preparation of a mitigation plan is required, said plan shall be prepared by a qualified fisheries, wildlife or natural resource biologist and shall be approved by the Administrator. The mitigation plan shall be prepared based on the best available science and shall address the following:

1. The characteristics of the habitat conservation area;
2. The characteristics of the watershed within which the habitat area is located;
3. The functions and values of the habitat conservation area to be protected by the buffer;
4. The characteristics of the buffer;
5. The functions that the standard buffer is intended to provide at the specific location;
6. The intensity of the proposed adjacent land use;
7. Proposed measures to reduce the adverse effects of adjacent land uses, such as lighting and noise restrictions, buffer fencing and signage, conservation easements, use of integrated pest management and limitations on application of pesticides, and use of low impact development techniques;
8. Proposed mitigation measures together with an analysis of the anticipated effectiveness of the proposed mitigation measures to protect the functions and values of the affected habitat conservation area and buffer;
9. Proposed monitoring requirements to ensure the effectiveness of the proposed mitigation; and
10. Proposed bonding to insure the completion and effectiveness of the proposed mitigation.

G. Completion of Mitigation.

Where feasible, mitigation projects shall be completed prior to activities that will disturb habitat conservation areas or buffers. In all other cases, mitigation shall be completed as quickly as possible following disturbance and prior to use or occupancy of the activity or development unless such timing is found to be infeasible due to factors such as the optimal time of year for planting. The Administrator may require the posting of a performance bond or other form of surety to insure that all required mitigation, including required monitoring and repair, is completed in a timely fashion and consistent with the approved mitigation plan.

15.04.480 Ecological Protection.

A. Unless specifically authorized through this Chapter, all developments and activities proposed or undertaken within the shoreline jurisdiction of the City of Sumas shall result in no net loss of ecological functions. In addition to the requirements set forth in this Chapter, the Administrator shall determine the extent to which supplemental information prepared by a qualified consultant is necessary to ensure that specific development proposals and activities will not result in a net loss of ecological functions.

B. Mitigation Sequence. Mitigation, where required, shall include avoiding, minimizing and/or compensating for adverse impacts to shoreline ecological functions through the following, and in the following order of priority:

1. Avoiding the impact altogether by not taking a certain action;

2. Minimizing the impacts by limiting the degree or magnitude of an action or by otherwise adjusting the action so as to reduce or avoid impacts;
3. Rectifying the impact by repairing, rehabilitating or restoring the affected area;
4. Reducing or eliminating the impact over time through preservation and/or maintenance through the course of the action; and
5. Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and monitoring the adverse impact and the mitigation project and taking appropriate corrective measures;

15.04.490 Public Access.

A. Public access requirements, as specified below, shall only apply to developments meeting any of the following criteria:
   1. Development on properties including or abutting the water's edge or ordinary high water mark; or
   2. Development on properties within 200 feet of the ordinary high water mark of the Sumas River or Johnson Creek.

B. All subdivisions of more than 4 lots or units shall provide public access to the shoreline unless found to be infeasible or incompatible with the specific development location and if alternative opportunities for public access are available or can be provided.

C. The City Council shall approve proposed public access improvements, where required, for each application. Public access requirements shall be based on both the proportionate amount of linear shoreline included in the property proposed for development and the public access potential of the site.

D. Proposed public access improvements shall be consistent with and shall further the goals of the City's shoreline public access plan. Public access improvements may be provided either on- or off-site as approved by the City Council.

E. Where public access is required, the City shall require granting of easements or dedication of land to ensure long-term access by the public. In such cases, the City shall provide property owners with appropriate indemnification as allowed by law.

F. Commercial developments shall be required to provide either physical or visual public access to the shoreline through inclusion of a publicly accessible trail.

G. Industrial developments shall be required to provide physical or visual public access to the shoreline through inclusion of a publicly accessible walkway or trail; provided that, no such public access shall be required in situations where such access would pose a threat to public health or safety or to private property.

H. Residential developments that involve development of more than four ~~or more~~ units or lots shall be required to provide public access to the shoreline through inclusion of a walkway or trail.

I. The City shall encourage all other uses to provide community or public access to the shoreline consistent with the City's shoreline public access plan.

J. Shoreline development by public entities, including the City, port district, state agencies, and public utility district, shall include public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment. Such public access measures can be provided off-site where consistent with the City's public access plan.

15.04.500 Vegetation Conservation.

A. The Administrator shall ensure that the vegetation conservation goals and policies of the Sumas Shoreline Management Master Program are implemented through the protective measures associated with the Natural shoreline environment designation and the river, stream and wetland buffers applicable throughout the City. All developments and activities within or adjacent to an area designated Natural or within applicable buffers shall conform to the applicable vegetation conservation requirements set forth in this Chapter.

B. Except where specifically authorized through this Master Program, the clearing of vegetation within designated vegetation conservation areas is prohibited.

C. Where authorized through this Program, the clearing of vegetation shall be limited to the minimum necessary to accommodate approved shoreline development.

D. Removal of noxious weeds and/or invasive species shall be allowed when incorporated into a vegetation management plan designed to facilitate establishment of a stable community of native plants.

E. Vegetation conservation requirements shall not apply to the removal of hazard trees, provided that any authorized removal of hazard trees shall include a condition that mitigation will be provided to ensure no net loss of shoreline ecological functions. The Administrator shall review requests for removal of hazard trees and, where deemed necessary, may require the Applicant to submit: 1) a review by a qualified arborist to determine the level of hazard and the minimum removal necessary to reduce the risk to within acceptable levels; and/or 2) a site assessment / mitigation plan addressing mitigation necessary to ensure no net loss of ecological function.

F. The clearing of vegetation within a vegetation conservation area to establish a view corridor shall require approval of a conditional use permit.

G. For water-oriented uses, the clearing of vegetation within vegetation conservation areas may be allowed, on the condition that the development does not result in a net loss of ecological function.

H. For non-water-oriented uses, no disturbance of land or vegetation shall be permitted within a vegetation conservation area, unless part of a low-impact use, such as a pedestrian trail or an environmental restoration or enhancement project, that does not significantly decrease ecological functions and ecosystem-wide processes, and results in no net loss of ecological functions.

15.04.510 Views and Aesthetics.

A. Opportunities for providing and maintaining views of the shoreline shall be provided consistent with the public access provisions set forth in Section 15.04.490 of this Chapter.

B. Developments that substantially interfere with the public's opportunity to enjoy views of the shoreline are prohibited.

C. The following guidelines shall be used by the Administrator in reviewing developments potentially affecting views and aesthetics.

1. Where commercial, industrial, mixed use, multi family and/or multi lot developments are proposed, primary structures should provide for reasonable view corridors between buildings.

2. Buildings should incorporate architectural and design features that reduce scale such as setbacks, pitched roofs, offsets, angled facets, and recesses.

3. Building surfaces on or adjacent to the water should employ materials that minimize reflected light and that do not detract from the surrounding area.

4. Building mechanical equipment should be incorporated into building architectural features to the maximum extent possible. Where mechanical equipment cannot be incorporated into architectural features, a visual screen shall be provided consistent with building exterior materials that obstructs views of such equipment.

D. The creation or maintenance of views and view corridors shall not result in a net loss of shoreline ecological function. The Administrator may require the Applicant to submit a site assessment / mitigation plan addressing proposed clearing of vegetation to ensure no net loss of shoreline ecological function.

15.04.520 Water Quality and Stormwater.

A. All development within shoreline jurisdiction that includes the creation of new impervious surface or that has the potential to impact the water quality of adjacent shoreline areas, and/or the quantity or timing of stormwater shall demonstrate the following:

1. The proposed development is consistent with the Sumas Stormwater Management Plan, once adopted;

2. The proposed development is consistent with the Department of Ecology 2012 Stormwater Management Manual for Western Washington or most current updated version once adopted; and

3. The proposed development does not significantly alter the quality, quantity or timing of stormwater runoff.

B. Consistency with the above requirements shall be provided through submittal of appropriate engineering studies, plans and reports.

C. Shoreline development shall include measures to protect and maintain surface and ground water flow and quality in accordance with all applicable laws.

D. Best management practices (BMPs) shall be implemented for all development within shoreline jurisdiction for the control of erosion and sedimentation.

E. Low impact development techniques, consistent with the Ecology Stormwater Manual referenced in subsection (A)(2), above, shall be incorporated into all developments where feasible.

SECTION SEVEN: SHORELINE USE REGULATIONS

15.04.530 Specific Shoreline Use Regulations

The following activities have been determined to have the potential for significant impacts to shorelines of the City. Therefore, specific requirements have been developed to ensure minimal impact on the shoreline. The applicable requirements shall apply to the following land use activities regardless of the Shoreline Environment Designations of the proposed locations. In the event of a conflict between the provisions of this Section and any other provisions of this Program, the more restrictive provisions shall apply.

A. Agriculture.

1. Agriculture includes those methods used in vegetation and soil management. The methods used in agricultural processes often have a significant effect on the conditions of our shoreline and water quality.
2. These regulations shall not be applied retroactively to agricultural activities meeting the definition of existing and ongoing agriculture, but shall apply to new agricultural activities, including associated clearing and grading.
3. Use Regulations:
    a. A buffer zone of naturally occurring vegetation shall be maintained between all cultivated and pasture areas and adjacent water bodies, including wetlands. This buffer zone shall be 125 feet in width.
    b. Retention tanks, holding ponds or other acceptable methods shall be employed as necessary to prevent runoff containing manure, feed, wastage, or other possible pollutants from entering the adjacent water body.
    c. Manure lagoons shall be set back 200 feet from the ordinary high water mark of all shoreline-designated streams, and 100 feet from all shoreline-associated wetlands.
    d. The use of pesticides, herbicides and other chemicals that are potentially harmful to aquatic life should not be used within the shoreline area, unless part of an integrated pest management plan approved by the City or the USDA, Natural Resource Conservation Service.
    e. Watering of livestock in streams and wetlands within shoreline jurisdiction is prohibited.
    f. Grazing of livestock within seasonal streams and wetlands shall only be allowed when the area does not contain water and no later than the first day of September of any given year.
    g. Tilled areas must incorporate permanent erosion control measures approved by the USDA, Natural Resource Conservation Service.
    h. New feedlots and new manure lagoons are prohibited within shoreline jurisdiction.
    i. Discharge of any manure storage facility into ground or surface water is prohibited.
    j. Public access to the shorelines shall be encouraged and existing public access shall not be impaired.

k. Conversion of agricultural land to non-agricultural uses shall be consistent with the applicable environment designation, general, and use regulations.

B. Aquaculture.

1. Aquaculture is the culture of food fish, shellfish, or other aquatic plants and animals for commercial purposes.
2. Use Regulations:
   a. Aquaculture development may be permitted as a conditional use in order to insure that the merits of each application are reviewed carefully.
   b. Public access to and navigation on the surface of the water shall not be impaired, and existing opportunities for public access shall not be reduced.
   c. Structures associated with aquacultural activities shall blend as much as possible with the surrounding environment.
   d. Structures associated with aquacultural activity shall be restricted to one story, 20 feet in height, so as not to interfere with visual access to the shoreline.
   e. No processing of any aquaculture product shall occur in or over the water unless specifically approved by permit. Shore-based structures and parking associated with aquaculture shall be regulated in the same manner as water-related industry.
   f. Aquaculture shall only be permitted when the applicant provides information regarding design and location that supports the finding that such a development will not significantly degrade ecological function over the long-term, will not result in significant conflict with navigation and water-dependent uses, will not spread disease to native aquatic life, will not result in the establishment of new non-native species which cause significant ecological impacts, and will not significantly impact the aesthetic quality of the shoreline.
   g. Aquaculture activities which would have a significant adverse impact on natural, dynamic shoreline processes or which would result in a net loss of shoreline ecological functions shall be prohibited unless all such impacts are mitigated.
   h. Aquaculture practices shall be designed to minimize use of artificial substances and shall use chemical compounds that are least persistent and have the least impact on plants and animals.
   i. Aquaculture wastes shall be disposed of in a manner that will ensure strict compliance with all applicable governmental waste disposal standards. No garbage, wastes or debris shall be allowed to accumulate at the site of any aquaculture operation.
   j. Applications for aquaculture development or uses shall include in their applications all information necessary to conduct a thorough evaluation of the proposed aquaculture activity.
   k. Aquaculture activities shall comply with all applicable noise, air, and water quality standards. All projects shall be designed, operated and maintained to minimize odor and noise.

C. Commercial Development.

1. Commercial development includes those uses that are involved in wholesale and retail trade or business activities, but does not include industrial or light manufacturing uses. Because most commercial developments depend on people to support their certain activities, these developments lead to concentrations of people and traffic, which in turn can have a great effect on the condition of the shoreline.
2. The following commercial uses are allowed in order of preference:
    a. Water-dependent uses, which shall be given preference over water-related and water-enjoyment uses when a conflict exists.
    b. Water-related uses.
    c. Water-enjoyment uses.
    d. Non water-oriented uses, where part of a mixed use project that includes a water-oriented use and where the use provides significant public benefit with respect to the objective of the Act, such as public access, or shoreline restoration. When a conflict exists, water-related and water-enjoyment uses shall be given preference over non-water-oriented uses.
3. Use Regulations:
    a. New non-water-oriented commercial uses should be prohibited unless they are part of a mixed-use project that includes water dependent uses and the use provides a significant public benefit with respect to SMA objectives, such as public access or shoreline restoration.
    b. Non-water-oriented commercial uses that are not part of a mixed-use development may be allowed where adjacent to water areas where navigability is severely limited or where the site is physically separated from the shoreline by another property or a public right-of-way; provided that the use provides a significant public benefit with respect to SMA objectives.
    c. Proposed commercial developments shall incorporate permanent public access into their designs consistent with Section 15.04.490 SMC.
    d. Commercial developments that are not water-oriented shall provide public shoreline access proportionate to the nature and degree of impact associated with the development.
    e. Commercial developments shall result in no net loss of shoreline ecological functions and processes.
    f. Wherever feasible, commercial developments shall be required to incorporate environmental cleanup and restoration of the shoreline area in design plans.
    g. Commercial developments, accessory structures, and associated parking that do not require direct contiguous access to the water, shall be set back from the ordinary high water mark consistent with the building setbacks established for the applicable environment designation.
    h. Commercial developments shall not block scenic views and shall be limited to 35 feet in height within 100 feet from ordinary high water and 45 feet in height between 100 feet and 200 feet from the ordinary high water mark. Structures over 35 feet in height shall require approval of a shoreline conditional use permit.

i. Associated parking shall be set back from the ordinary high water mark at least 100 feet.

j. Commercial developments that have the potential of providing views and scenic vistas to the shoreline will have priority and shall allow public access within the development and/or to public or private trails or walkways.

k. Non-water-dependent commercial uses over water are prohibited except where necessary to support a water-dependent use.

D. Industrial Development.

1. This category includes industrial uses such as manufacturing, warehousing, intermodal freight transfer, and power generation.

2. Use Regulations:

a. Industrial uses shall be allowed in the following order of preference: water-dependent uses, water-oriented uses, and finally non-water-oriented uses.

b. Water-related industry is restricted to areas where water-related industries already exist.

c. Industrial development shall provide public access pursuant to Section 15.04.490 SMC.

d. Industrial developments shall be set back from the ordinary high water mark consistent with the building setbacks established for the applicable environment designation. Associated parking shall be set back from the ordinary high water mark at least 100 feet.

e. Industrial developments shall mitigate impacts to wetlands through wetland replacement or enhancement or, alternatively, provide other comparable means of enhancing the water resource and the public's visual and aesthetic enjoyment of these resources with the approval of the City.

f. Industrial developments should be designed and constructed to avoid, minimize or mitigate adverse impacts to the shoreline environment and to result in no net loss of shoreline ecological functions.

g. Wherever feasible, industrial development shall be required to incorporate environmental cleanup and restoration of the shoreline area in design plans.

h. Wherever feasible, industrial development shall be required to minimize the total amount of impervious surfaces on-site by cooperative use of parking and storage facilities by other industries.

i. New non-water-oriented industrial uses should be prohibited unless they are part of a mixed-use project and the use provides a significant public benefit with respect to SMA objectives, such as public access.

j. Non-water-oriented industrial uses that are not part of a mixed-use development may be allowed where adjacent to water areas where navigability is severely limited or where the site is physically separated from the shoreline by another property or a public right-of-way; provided that the use provides a significant public benefit with respect to SMA objectives.

E. In-Stream Structures.

1. An in-stream structure is waterward of the ordinary high water mark and either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow.
2. Use Regulations:
    a. In-stream structures proposed for fish habitat enhancement or shoreline restoration shall demonstrate the overall net benefit to the shoreline environment.
    b. New or replacement in-stream structures proposed for all purposes other than fish habitat enhancement and shoreline restoration shall only be allowed where it is demonstrated through the appropriate studies that adverse impacts to shoreline functions and resources are mitigated to the maximum extent practicable and no other feasible alternative exists.
    c. Removal of failing, harmful, unnecessary or ineffective in-stream structures shall not adversely affect the shoreline environment over the long term and shall restore shoreline functions where possible.

F. Mining.

1. Mining is the removal of naturally occurring metallic minerals and non-metallic minerals from the earth for economic use. The incidental sale of spoils generated by dredging pursuant to Section 15.04.540(C) does not constitute mining. Mining within shoreline areas can lead to many adverse effects.
2. Use Regulations:
    a. Mining is prohibited.

G. Recreational Development.

1. Recreational development includes development of active and passive recreation opportunities such as boating, swimming or simply viewing the shoreline.
2. Use Regulations, including for both commercial and public recreational developments:
    a. Priority shall be given to recreational developments that provide public access to the shoreline area.
    b. Water-dependent recreational uses will have first priority and second priority shall be given to water-related and water-enjoyment recreational uses.
    c. Recreational developments should be designed and constructed to avoid, minimize or mitigate adverse impacts to the shoreline environment to ensure no net loss of shoreline ecological functions and ecosystem-wide processes.
    d. Where feasible, shoreline recreational facilities shall be required to link to other recreational attractions via pedestrian and bicycle trails.
    e. Recreation areas or facilities within shoreline jurisdiction shall provide public physical or visual access to the shoreline and shall provide public access to publicly owned shoreline areas.
    f. Associated parking is prohibited in the shoreline area, with the exception of scenic pull-outs, view points, and trailheads; provided that designated parking

areas for public parks shall be allowed, but shall be set back at least 100 feet from the ordinary high water mark.

g. Overnight camping facilities shall be prohibited in the shoreline area.

h. Recreation facilities shall not unduly burden or create conflict with adjacent shoreline uses.

i. Any reconfiguration of stream channel morphology to provide safe access for fishing and other water-dependent recreational activities shall mitigate impacts to ensure no net loss of shoreline ecological functions and ecosystem-wide processes. Any such proposed action shall require approval of a City shoreline conditional use permit as well as Hydraulics Project Approval from the Washington Department of Fish and Wildlife.

H. Residential Development.

1. Residential development includes housing subdivisions or tract housing built by a person for resale, single family residences, townhouses, apartment houses, condominiums, camping clubs, or mobile home parks.

2. All residential development including residential development exempt from the shoreline permit requirement pursuant to Section 15.04.090 of this program shall comply with the following use regulations.

3. Use Regulations:

a. All residential structures, including accessory structures, located in the floodplain shall be constructed in conformance with this Program and Chapter 15.10, Flood Damage Prevention ordinance. Roadways, utilities and other development associated with residential development shall comply with the standards of this Program pertaining to those types of development.

b. Approved erosion and sedimentation control measures shall be employed during and as needed after construction. The Administrator shall review and approve the proposed erosion control method prior to the commencement of construction.

c. When feasible, residential development shall provide public or community access to the shoreline pursuant to Section 15.04.490 SMC.

d. Residential development shall mitigate impacts to wetlands through wetland replacement, enhancement or equivalent mitigation.

e. Residential subdivisions and conversions from non-residential uses shall be designed to avoid, minimize and mitigate adverse impacts to the shoreline environment to ensure no net loss of shoreline ecological functions and ecosystem-wide processes.

f. Residential subdivisions shall be designed to create lots of sufficient size and configuration to allow residences to be constructed without encroaching on required shoreline setbacks, designated vegetation conservation areas and areas with an environment designation of “Natural.”

g. Where authorized through City development regulations, new residential development shall be developed as planned unit developments and shall cluster dwelling units to reduce physical and visual impacts on shorelines.

h. New multi-unit residential development, including subdivision of land into more than four ~~or more~~ parcels, shall provide public access to publicly owned shorelines or public water bodies.

i. Residential development shall be consistent with the shoreline setbacks established for the applicable environment designation.

j. Wherever possible, the area within 200 feet of the ordinary high water mark should be used as open space to meet the subdivision regulation requirements.

k. Height limits shall be 35 feet.

l. All new subdivisions shall provide for vegetation conservation to mitigate cumulative impacts of intensification of use within or adjacent to the shoreline that shall include compliance with vegetation conservation requirements of Section 15.04.500 SMC, together with replanting and control of invasive species within required buffers and open space to assure establishment and continuation of a vegetation community characteristic of a native climax community.

m. New over-water residential development and floating homes are prohibited.

I. Transportation – Roads and Parking.

1. A road is a linear passageway for motor vehicles, and a railroad is a linear passageway with tracks for train traffic. The construction of linear transportation facilities and parking associated with allowed uses can both provide and limit access to shorelines, impair the visual qualities of water-oriented vistas, expose soils to erosion and retard the runoff of floodwaters, and accelerate or retard development.

2. Use Regulations:

   a. Wherever feasible, transportation and parking shall be located outside the shoreline area.

   b. Development of new railroad facilities is prohibited, except where such development includes construction of rail spurs to serve planned industrial development or is part of a regional expansion plan. Any such development shall require approval of a conditional use permit.

   c. Roads and parking within shoreline jurisdiction shall be designed, constructed and maintained to prevent sediments and pollutants from entering adjacent water bodies and wetlands.

   d. New transportation facilities within shoreline jurisdiction shall be designed to follow natural topography to minimize cuts and/or fills.

   e. Roads shall be located on stable sites whenever feasible to avoid placing structures near eroding banks and shifting channel elements.

   f. All bridges and other water crossing structures shall be designed not to impede the normal annual high water. Bridge approaches and side slopes shall be planted with a suitable cover.

   g. There shall be no side casting of excess road building material within shorelands.

   h. New roads shall make provisions for pedestrian and bicycle access.

   i. Major arterials shall be prohibited in shoreline areas except where necessary to cross a body of water.

j. Permitted roadways shall be low speed and designed to conform to existing topography, thus minimizing cut and fill.

k. Transportation facilities shall be constructed of materials which will not adversely affect water quality or aquatic plants and animals over the long term. Elements within or over water shall be constructed of materials approved by applicable state agencies for use in water for both submerged portions and other components to avoid discharge of pollutants from splash, rain or runoff. Wood or pilings treated with creosote, pentachlorophenol or other similarly toxic materials is prohibited. Preferred materials are concrete and steel.

l. Parking facilities are not a water-dependent use and shall only be permitted in the shoreline area to support an authorized use where it can be demonstrated that there is no feasible alternative location away from the shoreline. Parking facilities shall be set back from the waters' edge and screened from less intense adjacent land uses by vegetation, undeveloped space, or structures developed for the authorized primary use.

m. Parking areas shall be developed utilizing low impact development techniques whenever possible including but not limited to the use of permeable surfacing materials.

n. RCW 36.87.130 prohibits the City from vacating any public road right-of-way which abuts a body of saltwater or freshwater except for port, recreational, educational or industrial purposes. Therefore, vacation, development, abandonment, or alteration of undeveloped City road ends within shoreline jurisdiction is prohibited unless approved in accordance with this Program and where consistent with state law and City street vacation ordinances.

J. Utilities.

1. Utilities are systems which distribute or transport various items including electricity, oil, gas, communications, sewage and water. The installation of this apparatus necessarily disturbs the landscape, but can be planned to have minimal visual and physical effect on the environment.

2. Use Regulations:

   a. Construction of utilities is permitted provided that there is appropriate documentation that the facility cannot be feasibly located outside of shoreline jurisdiction due to uses served or the need to cross shorelands to connect specific end points.

   b. With the exception of sewage treatment plants, all utilities shall be located underground wherever feasible. New overhead utilities shall only be located on shorelines when no reasonable alternative is available.

   c. Major utility facilities, which include transmission lines, treatment plants and other similar facilities, shall only be permitted as conditional uses.

   d. Utility facilities shall be designed, located and constructed to minimize harm to ecosystem-wide processes and other ecological functions.

   e. Upon the completion of installation or maintenance projects on shorelands, the area affected shall be restored to pre-project configuration, replanted with native species wherever practicable or with pre-existing species, and provided with maintenance care until the newly planted vegetation is established.

f. Wherever feasible, existing rights-of-way, utility easements and other utility corridors shall be used to locate new utility development on shorelands.

g. Non-water-oriented utility production and processing facilities should only be permitted within shoreline jurisdiction if it can be shown that no other feasible option is available and that it will result in no net loss of ecological functions.

h. Sewage treatment plants shall be located where they do not interfere with and are compatible with recreational, residential, or other public uses of the water and shorelines.

SECTION EIGHT: SHORELINE MODIFICATION REGULATIONS

15.04.540 Specific Shoreline Modification Regulations

The following activities have been determined to have the potential for significant impacts to shorelines of the City. Therefore, specific requirements have been developed to ensure minimal impact on the shoreline. The applicable requirements shall apply to the following land use activities regardless of the Shoreline Environment Designations of the proposed locations. In the event of a conflict between the provisions of this Section and any other provisions of this Program, the more restrictive provisions shall apply.

A. Boat Ramps.

1. Boat ramps are permanent structures for launching watercraft. Development of boat ramps within the City's shoreline jurisdictional area is unlikely.
2. Regulations:
    a. Boat ramps shall only be permitted in conjunction with water-dependent uses or public access.
    b. Applications for boat ramps shall address the specific need that supports the development, as well as the design features and construction measures to be incorporated into the proposal to protect critical habitat and result in no net loss of ecological function.
    c. Boat ramps shall be limited in size based on the minimum necessary to accommodate the proposed use.
    d. New boat ramps shall be approved only if they provide public access to public waters, which are not adequately served by existing access facilities, or if use of existing facilities is documented to exceed the designed capacity.
    e. Boat ramps shall be designed and constructed to safeguard the health, safety, and welfare of the community.
    f. Review and approval of applications for boat ramps shall ensure that they are located at sites with suitable environmental conditions, shoreline configuration, and access, and where they do not create conflicts with neighboring uses.
    g. Boat ramps shall be required to meet applicable public health, safety and welfare requirements; to avoid, or if that is not possible, to mitigate aesthetic impacts; and to protect the rights of navigation.
    h. Boat ramps shall not permit associated moorage on waters of the state or boaters living on their vessels.

B. Docks.

1. Docks provide physical and visual access to the shoreline, but their construction can cause significant adverse impacts to the shoreline environment. Development of docks within the City's shoreline jurisdictional area is unlikely.
2. Regulations:
    a. New docks shall only be permitted in conjunction with water-dependent uses or public access.

b. Applications for docks shall address the specific need that supports the development, as well as the design features and construction measures to be incorporated into the proposal to protect critical habitat and result in no net loss of ecological function.

c. Docks shall be limited in size based on the minimum necessary to accommodate the proposed use.

d. Docks shall not significantly reduce use of the water surface and shall protect the rights of navigation.

e. Docks shall be constructed of materials which will not adversely affect water quality or aquatic plants and animals over the long term. Use of wood or pilings treated with creosote, pentachlorophenol or other similarly toxic materials is prohibited.

f. New residential development of two or more dwellings shall include a development limitation whereby joint use or community dock facilities are allowed, when feasible, rather than individual docks for each residence.

g. Docks serving more than four single-family dwellings, which may be considered boating facilities under state guidelines, are prohibited.

C. Dredging.

1. Dredging is the removal of unconsolidated material (gravel, sand, silt) from the bottom of a river, stream or other water body for purposes of deepening a navigable channel; deepening or removing sediments from a stream for drainage improvement; or enhancement or creation of habitat. Dredging has the potential to significantly impact the shoreline environment.

2. Dredging is permitted as a conditional use for the purpose of habitat creation or enhancement and/or maintenance of the drainage and flood carrying capacity of the streamway.

3. Regulations:

   a. Dredging activities shall be prohibited unless approved by state and federal agencies and shall be undertaken in a manner that has been demonstrated to not significantly impact ecological functions. Impacts that cannot be avoided shall be mitigated.

   b. Dredging for the single purpose of obtaining landfill or construction materials is prohibited, except for projects associated with MTCA or CERCLA habitat restoration, or any other significant restoration effort approved by a shoreline Conditional Use Permit.

   c. Dredging and/or disposal of dredge spoils within the shoreline area shall only be permitted as a conditional use.

   d. No dredging shall be conducted without the responsible person having obtained a shoreline conditional use permit and a substantial development permit or statement of exemption as appropriate, and where required, a Hydraulics Project Approval permit from the State and all other permits required by state and federal agencies.

   e. Maintenance dredging shall be allowed only within the boundaries of the originally approved dredge area.

f. Applications for dredging activities shall include the following information:

i. An analysis and physical description of the material to be dredged;

ii. Time schedule for dredging;

iii. Methods of dredging and disposal of spoils;

iv. Location, size, stability, and biological characteristics of the bedlands at and adjacent to the site; and

v. Chemical analysis of the spoil material if it is deemed necessary because of suspected pollution.

g. Applications for dredging activities shall include the following studies:

i. A hydrogeological study, conducted by a qualified professional and approved by appropriate state agencies, which demonstrates that removal of specific quantities at specific locations will not significantly alter the natural processes of gravel transportation for the river system as a whole; and

ii. A biological study, conducted by a qualified professional and approved by appropriate state agencies, which demonstrates that removal will not significantly degrade habitat values for priority species or damage other ecological functions.

h. Review of dredging and spoil disposal proposals shall assess:

i. The value of the dredge and disposal sites in their existing condition versus the proposed shoreline use to be created, relative to improved public access, economic, and environmental factors;

ii. The potential for the proposal to locate at a site where dredging and disposal are not required, and whether the proposed development could be redesigned to avoid the need for new and on-going maintenance dredging; and

iii. The potential for use of suitable dredge material to benefit shoreline resources.

D. Landfill and Excavation.

1. Landfill 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 shorelands in a manner that raises the elevation or creates dry land. Landfill can destroy the natural character of the shoreline and may contribute to increased erosion and siltation problems while reducing the existing water surface. Excavation is the surface removal or clearing of land. Such activities can also destroy the character of the shoreline and have adverse effects on shoreline ecological functions.

2. Regulations:

a. Landfill shall be permitted for the following purposes only:

i. Shoreline development in the floodplain for the purpose of elevating structures (including parking areas, roadways and railways) and buildings to comply with the City Flood Damage Prevention ordinance, where other means of compliance with the ordinance is not economically feasible.

ii. Development within a wetland consistent with the wetland management requirements of Section 15.04.470(B) SMC.

iii. Shore feature enhancement such as bank restoration, or insignificant raising of upland grades including landscaping.

iv. Biological habitat development when consistent with state Department of Fish and Wildlife policies.

v. The construction of dikes, levees and other flood control works consistent with the National Flood Insurance Program ordinance and with the shoreline protection standards of this program.

b. Landfill and excavation shall be designed to minimize damage to the shoreline environment and shall be located, designed and constructed to assure no net loss to shoreline ecological functions, and not to impede natural channel migration or movement of sediment materials.

c. Fill shall not be permitted which alters existing surface runoff patterns or storm peak flows and floods to the extent that other properties or valuable shore features or habitat will likely be adversely impacted.

d. Fill shall not be allowed where new shoreline stabilization structures would be required to maintain the materials placed.

e. The predicted economic benefits of proposed landfill and excavation shall be weighed against long-term cumulative impacts on shoreline processes and functions.

f. Fill materials shall have a specific gravity greater than 1.0 and shall be placed in such a manner so as not to adversely affect the water quality of adjacent water bodies.

g. In order to assure consistency with this program and with the Act, no landfill or excavation shall be undertaken within the shoreline unless the responsible person has first obtained either a shoreline permit or a shoreline statement of exemption as appropriate; provided, that the placement of fill waterward of the ordinary high water mark, except where directly associated with ecological restoration, shall require approval of a conditional use permit.

h. All landfill and excavation activities shall incorporate appropriate erosion and sedimentation control best management practices.

i. When no protective structure is required or proposed, the shoreline shall be maintained in or restored to its natural contours, slopes, and appearance.

j. No landfill or excavation activities that would interfere with the passage of stream waters or flood waters shall be permitted.

k. Fill and excavation activities shall only be done in conjunction with an approved new use or development or in conjunction with an existing use. No debris shall be placed within the streamway, or within 200 feet of the ordinary high water mark. All material shall be burned or otherwise removed from shorelands, except that earth, rocks, and the like shall be graded back to the original contour.

l. Proposals that require that power equipment or machinery be used in the Aquatic or Natural Environments must be authorized by the city.

m. The placement of fill waterward of the ordinary high water mark is prohibited except where necessary to support:

i. Water-dependent use;

ii. Public access;

iii. Cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan;

iv. Disposal of dredged material considered suitable under, and conducted in accordance with the dredged material management program of the department of natural resources;

v. Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline and then only upon a demonstration that alternatives to fill are not feasible;

vi. Mitigation action; or

vii. Environmental restoration.

E. Outdoor Advertising and Signs.

1. Signs are publicly displayed boards whose purpose is to provide information, direction or advertising. Advertising and signs, because they are intended to be very visible, can have a great effect on the aesthetics of an area.
2. Regulations:
   a. Off-premise signs and billboards are prohibited.
   b. Size, height, density and lighting of signs shall be consistent with applicable City regulations.
   c. In general, signs shall be constructed against buildings to minimize visual obstruction of the shoreline.
   d. Communities and/or neighborhoods shall have no more than one sign at each street gateway that will be limited to the name of the community.
   e. Signs are prohibited in the area between buildings and the ordinary high water mark to protect views of the water.

F. Shoreline Flood Protection.

1. Shoreline flood protection refers to flood protection along streamways and includes rip-rapping, beach fill, and dikes but excludes other shoreline stabilization measures pursuant to subsection 15.04.540(H).
2. Regulations:
   a. Shoreline flood protection measures shall be located, designed and constructed so as to protect the natural character of the shoreline and minimize alteration of the shoreline environment.
   b. Where flood protection measures such as dikes are planned, they shall be placed landward of the shoreline, including associated swamps and marshes and other wetlands directly interrelated and interdependent with the water body.
   c. Flood protection measures which result in extensive modification or channelization of the streamway or shoreline are prohibited.
   d. Shoreline flood protection measures shall be planned to maintain or restore as nearly as possible the natural condition of the shoreline.

e. Proposed shoreline flood protection projects which could alter wetlands as a result of landfill or other shoreline activity shall be assessed relative to impacts upon the area's physical and biological characteristics. Impacts identified with a proposed action shall be avoided or mitigated consistent with applicable City requirements, and recommendations from state, federal and tribal agencies.

f. Where consistent with public access goals and objectives, public shoreline protection projects shall provide opportunities for public access to the shoreline.

g. New structural flood hazard reduction measures shall only be allowed when it can be demonstrated by a scientific and engineering analysis that such measures are necessary to protect existing development, that nonstructural measures are not feasible, that impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss, and that appropriate vegetation conservation actions are undertaken.

h. Removal of gravel for flood management purposes shall only be allowed where consistent with an adopted flood hazard reduction plan and after a biological and geomorphological study shows that extraction will have a long-term benefit to flood hazard reduction, does not result in a net loss of ecological functions, and is part of a comprehensive flood management solution.

G. Shoreline Habitat and Natural Systems Enhancement Projects.

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

2. Regulations:

   a. Applications for shoreline habitat and natural systems enhancement projects shall demonstrate a net benefit to the shoreline environment and shall be reviewed for consistency with the City's Shoreline Restoration Plan.

   b. Wherever possible, shoreline habitat and natural system enhancement projects shall be authorized through issuance of a shoreline exemption, unless otherwise required pursuant to this Program.

   ~~b.~~c. The City may grant relief from shoreline master program standards and regulations resulting from shoreline restoration projects within urban growth areas consistent with criteria and procedures in WAC 173-27-215.

H. Shoreline Stabilization.

1. Shoreline stabilization includes actions taken to address erosion impacts to property, housing, businesses, or structures caused by natural processes. These can include both structural and non-structural methods of stabilization. New stabilization measures include enlargement of existing structures.

2. Regulations:

   a. New development should be located and designed to avoid the need for future shoreline stabilization to the extent feasible. Subdivision of land shall assure that the lots created will not require shoreline stabilization in order for reasonable development to occur using geotechnical analysis of the site and shoreline characteristics.

b. Shoreline stabilization measures shall be located, designed and constructed so as to minimize alteration of the natural character of the shoreline.

c. Shoreline stabilization measures which result in the extensive modification of the shoreline environment shall not be permitted.

d. Shoreline stabilization structures and facilities shall be designed and constructed based on approved plans prepared by a licensed professional engineer.

e. Streamway features such as snags, uprooted trees, or stumps shall be left in place unless causing significant bank erosion or higher flood stages. Existing stream bank vegetation shall be preserved.

f. Wherever possible, construction of shoreline stabilization structures and facilities shall incorporate opportunities for public access and shall provide for protection and restoration of ecological functions and ecosystem-wide processes.

g. New or expanded structural shore stabilization for existing primary structures, including residences, roads, railroads, public facilities, etc. is prohibited unless there is conclusive evidence, documented by a geotechnical analysis, that the structure is in danger from shoreline erosion caused by stream processes, and significant adverse impacts are mitigated to ensure no net loss of shoreline ecological functions and/or processes. Normal sloughing or erosion of streambanks by itself, without a geotechnical analysis, is not a demonstration of need.

h. New shore stabilization for new development is prohibited unless it can be demonstrated that the proposed use cannot be developed without shore stabilization, and a geotechnical analysis documents that alternative solutions are not feasible or do not provide sufficient protection. The need for shore stabilization shall be considered in the determination of whether to approve new water-dependent uses. Proposed designs for new or expanded shore stabilization shall be designed in accordance with Department of Ecology and Department of Fish and Wildlife guidelines and certified by a qualified professional.

i. New shore stabilization for new, non-water-oriented development is prohibited.

j. Replacement of existing stabilization structures is based on need demonstrated by geotechnical analysis. Waterward encroachment of replacement structures is only allowed for residences occupied prior to January 1, 1992, or for soft shoreline stabilization measures that provide restoration of ecological functions.

k. Geotechnical reports prepared to demonstrate need, including those for ecological restoration/toxic clean-up remediation projects, shall include estimates of rate of erosion and urgency associated with the specific situation. Hard armoring solutions should not be permitted unless the geotechnical report confirms that there is a significant possibility that a primary structure will be damaged within three years as a result of the shoreline erosion. Where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as the three years, the report may still be used to justify more immediate shoreline stabilization using soft measures.

l. Bulkheads should only be used where other more natural appearing methods of shoreline stabilization are not feasible. Where possible, open type construction of bulkheads should be used. Where shoreline stabilization is allowed, it shall

consist of “soft,” “flexible, and/or natural materials or other bioengineered approaches unless a geotechnical analysis demonstrates that such measures are not feasible.

m. The effects of proposed shoreline stabilization on the movement of water and drift materials, on fish and wildlife, on public access, and on the aesthetic quality of the shoreline shall be evaluated prior to permitting. Adverse impacts shall be avoided wherever possible.

n. Publicly financed or publicly subsidized shoreline erosion control measures shall not restrict appropriate pubic access to the shoreline except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions. Where feasible, ecological restoration and public access improvements shall be incorporated into such projects.

I. Solid Waste Disposal.

1. Solid waste disposal includes collection, transport and disposal of all discarded or spent materials other than liquids such as sewage or wastewater.
2. Regulations:
   a. Solid waste disposal sites (as defined in section 70.95.030 RCW) shall not be permitted on shorelands.
   b. Facilities for the collection, transfer, or reload of recyclable materials and municipal solid waste are permitted as a conditional use.

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