

City of Mountlake Terrace Shoreline Master Program



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City of Mountlake Terrace Shoreline Master Program Update

2013

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CHAPTER 1

INTRODUCTION

1.1 USER'S GUIDE TO THE MASTER PROGRAM

The City of Mountlake Terrace Shoreline Management Master Program consists of several components, together with explanatory text and maps, all prepared to reflect the philosophy of the Shoreline Management Act (SMA or Act) of 1971 and the requirements of RCW 90.58 and WAC 173-26. Each of the components is designed to serve a separate and distinct purpose within the structure of the Shoreline Management Master Program (Master Program or SMP).

The purposes of this Master Program are:

1. To carry out the responsibilities of the City of Mountlake Terrace as established by the Washington State Shoreline Management Act (RCW 90.58).
2. To promote uses and development of the City of Mountlake Terrace shoreline consistent with the City of Mountlake Terrace Comprehensive Plan while protecting and restoring environmental resources.
3. To promote the public health, safety, and general welfare by providing a guide and regulation for future development of the shoreline resources of the City of Mountlake Terrace.

1.1.1 AUTHORITY

Authority for enactment and administration of the program is the Shoreline Management Act of 1971, Chapter 90.58 RCW, as now or hereafter amended.

1.1.2 APPLICABILITY

All proposed uses and development occurring within shoreline jurisdiction of the City of Mountlake Terrace must conform to the Shoreline Management Act and this Master Program. All uses, even those not meeting the definition of development, are subject to the provisions and development regulations of this Master Program, even though a permit may not be required.

1.1.3 CITY OF MOUNTLAKE TERRACE SHORELINE JURISDICTION

The shoreline jurisdiction within the City of Mountlake Terrace consists of the shoreline along Lake Ballinger, and associated wetlands and floodplain. See Appendix A for Shoreline Maps. Under the SMA, the shoreline area to be regulated under the City's Master Program must include shorelands, defined as the upland area within 200 feet of the ordinary high water mark (OHWM), as well as any associated wetlands and floodplain (RCW 90.58.030 - Definitions and Concepts). All proposed uses and development occurring within the shoreline jurisdiction must conform to Chapter 90.58 RCW, the Shoreline Management Act, and this Shoreline Master Program.

1.1.4 RELATIONSHIP TO OTHER PLANS OR REGULATIONS

1. Uses, developments and activities regulated by this Master Program may also be subject to the provisions of the City of Mountlake Terrace Comprehensive Plan, the Washington State Environmental Policy Act (SEPA), Mountlake Terrace Municipal Code (MTMC), and various other provisions of local, state, and federal law, as may be amended. Project proponents shall comply with all applicable laws prior to commencing any use, development or activity.
2. The Shoreline Master Program has been developed as a both a policy and a regulatory program. As such, the Shoreline Master Program is a part of and was developed to be consistent with the City of Mountlake Terrace Comprehensive Plan and its component elements.
3. The MTMC establishes specific and detailed regulations for most of the uses, development, and activities regulated in this chapter. The MTMC and this Master Program are intended to operate together to produce coherent and thorough shoreline regulations. Uses, developments and activities must comply with both the MTMC and the Shoreline Master Program in all cases. If there is a conflict between the two, the Shoreline Master Program shall prevail.

1.1.5 LIBERAL CONSTRUCTION

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

1.1.6 MASTER PROGRAM CONTENTS

This Master Program contains the following components:

Goals and General Development Policies

The Goals express the desires of the people of the City of Mountlake Terrace with respect to the long-range development of the City's shorelines. Each element described in RCW 90.58.100(2) is addressed by a Goal and a series of General Development Policies. These goals and policies form the basis for all succeeding levels of the Master Program but, with the exception of the Shoreline Use Element, are not directly used in the Development Evaluation Process.

Use Activity Policies address each of the activities enumerated in WAC 173-16-060 and are intended to establish citywide policies for the conduct of each such activity in the shoreline jurisdiction.

Use Activity Regulations are designed to regulate the Use Activities in a manner compatible with the policies established for each such activity. These regulations establish minimum performance standards for shoreline activity conduct; deviation from these regulations can only be allowed subject to issuance of a Variance.

Environment Designation Criteria set forth the “ground rules” to be used in determining which Environment is appropriate to assign a given section of shoreline. (These criteria are not used in the Development Evaluation Process for a specific use proposed within an environment.)

Environment Designations (Map)

The Environment Designations establish the kinds of activities allowed on a given section of shoreline. They also specify the intensity of use and the manner of use of that shoreline. The general philosophy underlying the use of each Environment is contained in the Management Policies of each designation type. Appendix A contains the Shoreline environment map.

The Shoreline Management Act specifies that special consideration shall be given to Shorelines of Statewide Significance as defined by RCW 90.58.030(2)(e). There are no Shorelines of Statewide Significance within the City of Mount lake Terrace.

1.1.7 DOCUMENT ORGANIZATION

This Master Program is divided into the following eight parts, consistent with the material to be included within a Master Program as established in Chapter 173-26 WAC:

1. Chapter 1 contains basic and general information regarding the Shoreline Master Program.
2. Chapter 2 contains the city's goals and policies with respect to the program elements established in Chapter 173-26 WAC.
3. Chapter 3 contains information regarding the different shoreline environments to be found within the city including goals and policies specific to each of the shoreline environments.
4. Chapter 4 contains policies and regulations with respect to general Master Program provisions identified in Chapter 173-26 WAC.
5. Chapter 5 contains policies and regulations that apply to specific uses and modifications that are regulated under the Shoreline Master Program.
6. Chapter 6 contains administrative procedures for shoreline permitting.
7. Chapter 7 contains definitions applicable to the Shoreline Master Program.
8. The Appendices contains the shoreline environments map and reference regulations and documents pertaining to this Master Program.

CHAPTER 2

SHORELINE MASTER PROGRAM ELEMENTS

2.1 SHORELINE ELEMENT GOALS AND POLICIES

The Shoreline Management Act of 1971 establishes eight basic land and water use elements that must be incorporated into the City of Mountlake Terrace's Shoreline Master Program. These elements are: shoreline use, economic development, public access, recreation, circulation, historic/cultural/scientific/education, flood damage prevention and minimization, and conservation. Elements for restoration and enhancement, and implementation have also been provided to accomplish the policy of the Shoreline Management Act.

The following comprehensive set of shoreline goals and general development policies provide the foundation and the framework on which the remainder of the Master Program has been developed. These goals and policies reflect the level of achievement believed to be intrinsically desirable for all shoreline uses, resources, needs and developments.

2.1.1 SHORELINE USE ELEMENT

Goal:

Assure appropriate conservation and development of City of Mountlake Terrace's shorelines by allowing those uses which are particularly dependent upon their location on and use of shorelines, as well as other development which provides an opportunity for substantial numbers of people to enjoy the shorelines. This must be done in a manner which will achieve an orderly balance of shoreline uses that do not unduly diminish the quality of the environment.

Policies:

1. Permit only those uses or conditions that protect the opportunity for shorelines to be used in the future for activities that depend upon a shoreline location, unless identified benefits clearly compensate for the physical, social and/or economic loss to future generations.
2. Ensure that activities and facilities are designed and located on the shoreline in such a manner as to maintain or improve the ecological functions of the shoreline environment and assure no net loss of ecological functions.
3. Assure that all uses and developments are compatible with the site, the surrounding area and the environment.
4. Provide site development performance standards and other appropriate criteria to developers indicating minimum acceptable standards to be achieved.
5. Encourage uses which protect and preserve the potential long-term benefits to the public from compromise by short-term economic gain or convenience.

6. Encourage multiple uses of shorelines where location and integration of compatible uses or activities is feasible.
7. Shoreline land and water areas which are particularly suited for specific and appropriate uses should be reserved for such uses whether they are existing or potential.
8. Prohibit nonwater-dependent or non-water-related uses that permanently alter the shoreline in such a way as to conflict with, or preempt future water-dependent or water-related uses.
9. Allow uses, on a limited time basis that are not water-related or water-dependent, if not permanent and if not requiring permanent modifications of natural shorelines.
10. Implement a management system which will plan for and permit all reasonable and appropriate uses by providing a system of priorities. Those priorities will be established for each designated environment using the following criteria, in order of preference:
 - a. Protection and enhancement of natural areas or systems – those identified as containing or having unique geological, ecological, or biological significance;
 - b. Water-dependent uses – all uses that cannot exist in any other location and are dependent on the water by reason of the intrinsic nature of their operations;
 - c. Water-related uses – those uses which do not depend on a waterfront location to continue their operation, but whose operation is facilitated economically by a shoreline location;
 - d. Non-water related uses – those uses which do not need a waterfront location to operate though they may need easement or utility corridors for access to the water; Non water-oriented uses should be allowed only when substantial public benefit is provided with respect to the goals of the Act for public access and ecological restoration.
 - e. Prohibited uses – those uses which have no relation to the water and whose operation is intrinsically harmful to the shoreline.
12. Encourage continuing biological, geological, ecological, and economic studies of shoreline systems, which will provide a continuously updated data base against which the impact of any proposal relative to the City of Mountlake Terrace Master Program can be judged.
13. Require all development to plan for and control runoff and, when necessary, treat it before discharging from the site. The use of Low Impact Development techniques is encouraged.

2.1.2 ECONOMIC DEVELOPMENT ELEMENT

Goal:

Allow only those transportation facilities and commercial and recreational developments particularly dependent upon their location on and use of City of Mountlake Terrace's shoreline, as well as other

developments that will provide substantial numbers of the public an opportunity to enjoy the shorelines. Minimal disruption of the natural environment is envisioned in the implementation of this goal.

Policies:

1. Give priority to transportation facilities and commercial and recreational development that is water-surface or shoreline dependent and those developments that will provide substantial numbers of the public an opportunity to enjoy the shorelines.
2. Limit the adverse effects of new transportation facilities and commercial and recreational development upon the physical environment and natural processes.
3. Encourage clustering and the orderly development of commercial uses.
4. Discourage commercial developments from locating in previously undeveloped areas when it is practicable to locate such developments in previously developed areas.
5. Locate commercial development in areas already developed so long as such areas have not reached their carrying capacity.
6. Encourage the development of commercial and recreational activities which can make use of existing public services.
7. Encourage development toward a multi-use concept to provide public access to the shoreline while maintaining the economic viability of the principal use.

2.1.3 PUBLIC ACCESS ELEMENT

Goal:

Assure and regulate safe, convenient, and diversified access for the public to the shorelines of Mountlake Terrace and assure that the intrusions created by public access will recognize the rights of private property owners, will not endanger life, and will not adversely affect fragile natural areas.

Policies:

1. Respect and protect the enjoyment of private rights in shoreline property when considering public access development.
2. Locate, design, and maintain public access development so as to protect the natural environment and natural processes.
3. Provide for the public health and safety when developing public access.
4. Purchase, or otherwise make available to the public, shoreline properties if their value for public use merits such action.

5. Provide for and design various types of access which are appropriate to the shoreline environment and its specific uses.
6. Control and regulate public access on the publicly-owned shorelines to ensure that it is located, designed, managed, and maintained in a manner that protects shoreline processes and assures no net loss of ecological functions.

2.1.4 CIRCULATION ELEMENT

Goal:

Permit safe and convenient circulation systems appropriate to the shoreline environment that cause minimum disruption to shoreline access, shoreline environment, and minimum conflict between the different users.

Policies:

1. Locate and design circulation systems so as to provide for multiple modes of transportation and to allow for the future incorporation of alternate modes of transportation.
2. Locate and design circulation systems so as to ensure the overall integrity of other social and economic activities and natural systems.
3. Design circulation systems that provide safe and efficient movement of people and products while providing for alternative modes of transportation.
4. Locate, design, and manage circulation systems and activities in a manner that protects shoreline processes and assures no net loss of ecological functions.
5. Ensure that circulation systems and activities do not take private property for public use without just compensation.
6. Locate and design major vehicular circulation systems away from the shoreline so that natural shorelines and floodplains remain substantially unmodified, except for necessary crossings.
7. Encourage corridors for transportation and utilities when they must cross shorelines.

2.1.5 HISTORIC, CULTURAL, SCIENTIFIC AND EDUCATION ELEMENT

Goal:

Protect, preserve, and encourage restoration of those sites and areas on the shorelines of Mountlake Terrace which have significant historic, cultural, educational, or scientific values, in accordance with applicable state and federal laws regarding historic and archaeological resources.

Policies:

1. Preserve and protect to the maximum extent all shoreline area sites, buildings, structures, and objects that have been placed on the national or state historical register.

2. Encourage the preservation for scientific study and public observation all areas known to contain significant archaeological data.
3. Encourage the preservation for the public benefit, with opportunity for appropriate public utilization, significant historic, scientific, and educational areas of the shorelines.

2.1.6 RECREATIONAL ELEMENT

Goal:

Preserve, enlarge, and provide additional opportunities and space for diverse forms of recreation for the public.

Policies:

1. Identify, preserve, protect, and purchase, if feasible, areas with unique recreational characteristics before other development makes such action impossible.
2. Encourage recreational use consistent with the ability of the site to support such use.
3. Locate, design, manage, and maintain recreational uses to assure no net loss of shoreline ecological functions or shoreline processes.
4. Encourage location, design, and operation of recreational development for maximum compatibility with other uses and activities.
5. Provide a balanced choice of recreational opportunities.
6. Encourage innovation and cooperative techniques among public agencies and private persons which increase and diversify recreation opportunities.
7. Encourage private investment in recreational facilities open to the public.
8. Do not substantially impair original natural or recreational values when developing or redeveloping recreational uses.
9. Give recognition to the recreational values of shorelines in their natural state.
10. Recreational development and shoreline restoration and habitat enhancement projects should be coordinated where feasible.
11. Encourage compatible recreational uses in transportation and utility corridors.
12. Encourage development that is consistent with the City's Recreation, Parks, and Open Space Master Plan, and other relevant City planning documents.

2.1.7 CONSERVATION ELEMENT

Goal:

Assure preservation, protection, and restoration of Mountlake Terrace's unique and nonrenewable

resources while encouraging the best management practices for the conservation of renewable resources of the shorelines.

Policies:

1. Protect the scenic and aesthetic qualities of shorelines and vistas to the fullest extent practicable.
2. Provide for a beneficial utilization of shoreline resources in a way that ensures no net loss of shoreline ecological functions or processes.
3. Identify those areas that have a potential for restoration of damaged features or ecosystems to a higher quality than may currently exist, develop standards for improvement of the conditions in those areas, and provide incentives for achieving such standards.
4. Provide incentives to preserve unique, rare, and fragile natural features and resources as well as scenic vistas, parkways, and wildlife habitats.
5. Encourage the best management practices for the conservation of renewable resources.
6. Identify those areas that are necessary for the support of wild and aquatic life and those having unique geological/biological or historical significance and establish regulations to minimize adverse impact on those areas.
7. Encourage public and private shoreline owners to manage their lands in a way that promotes the proliferation of wildlife, fish, and plants without unduly interfering with existing activities so long as the management of these lands is consistent with this SMP.
8. Protect critical areas and shoreline ecological processes and functions through regulatory and non-regulatory means. Protection may include acquisition of key properties, regulation of development, and incentives to encourage ecologically sound design.
9. The City shall ensure that uses and development in shoreline areas is compatible with the shoreline environments designated in this Shoreline Master Program. Adherence to these designations will ensure that sensitive habitat, ecological systems, and other shoreline resources are protected.
10. New development or redevelopment should avoid or mitigate additional loss of shoreline ecological functions. Developments should be encouraged to improve ecological functions and restore riparian buffers.

2.1.8 FLOOD DAMAGE PREVENTION AND MINIMIZATION ELEMENT

Goal:

Give consideration to statewide interests in the prevention and minimization of flood damage. Establish and implement applicable floodplain management strategies to minimize private property damage, improve ecological function and prevent species and habitat loss in wetlands and streams.

Policies:

1. Require all development to comply with applicable stormwater management regulations.
2. Stormwater source control Best Management Practices that minimize the potential for downstream flooding should be implemented to the maximum extent practicable.
3. Encourage the use of Low Impact Development techniques where practicable.
4. Discourage the cutting of trees, removing of natural soils and vegetation, and alteration of floodplains and wetlands, where such actions could increase the potential for downstream flooding.
5. Support future efforts identify causes of flooding and make recommendations for actions to minimize flooding.
6. Support reassessment and modification, when necessary, of the management of the Lake Ballinger inlet and outlet weirs to maintain the lake level at an elevation that will minimize flooding potential, based on best available science.

2.1.9 RESTORATION AND ENHANCEMENT ELEMENT

Goal:

Support the restoration and enhancement of shoreline ecological functions within the City of Mountlake Terrace through vegetation conservation and timely restoration and enhancement of impaired shoreline areas to achieve a net gain in shoreline ecological functions over time.

Policies:

1. The goals and objectives of the City of Mountlake Terrace Restoration Plan should be supported and pursued to achieve a net gain in shoreline ecological functions.
2. Areas of existing native vegetation should be protected and allowed to mature to enhance shoreline functions and ecological processes.
3. Cooperative restoration programs between local, state, and federal agencies, tribes, non-profit organizations, and landowners should be encouraged to address shorelines with impaired ecological functions and/or processes.
4. Restoration actions should be prioritized to restore native vegetation in riparian and estuarine areas, improve water quality, and restore native vegetation and natural hydrologic functions of degraded areas.
5. Restoration and enhancement efforts should be targeted towards improving habitat requirements of sensitive, priority and/or locally important fish and wildlife species.
6. Shoreline ecological functions and processes and features should be restored and enhanced through voluntary and incentive-based public and private programs.

2.1.10 IMPLEMENTATION ELEMENT

Goal:

Further the intent and policy of the Shoreline Management Act of 1971 through a fair, balanced, and impartial administration of the substantial development permit process and other legal requirements of the act.

Policies:

1. Base all official actions relating to Substantial Development Permits upon the Shoreline Management Act and this Shoreline Master Program.
2. Employ the performance standards of the Master Program equitably to ensure the highest degree of shoreline protection consistent with the proposed development.
3. Process Substantial Development Permits as expeditiously as the law and thorough analysis and review will allow.
4. Seek advice and assistance from recognized experts at federal, state, or local levels whenever technically complex issues are involved in a Substantial Development Permit.
5. Grant variances from the provisions of the Master Program only in those limited instances when strict compliance with the provisions of the Master Program would impose unnecessary hardships on the applicant or thwart the policies set forth in the Shoreline Management Act and the City of Mountlake Terrace Shoreline Master Program; variances shall be granted in strict compliance with the provisions of the Washington Administrative Code relating to same. (WAC 173-27-170).
6. Approve Conditional Uses when they will further the intent of the Master Program, be compatible with their surroundings, and be regulated to minimize undesirable effects on the shoreline of the City; Conditional Uses shall be approved in strict compliance with the provision of the Washington Administrative Code relating to same. (WAC 173-27-160).
7. Comply with the requirements of the State Environmental Policy Act in processing Substantial Development Permits, when applicable, as a means of thoroughly evaluating the impact of a proposed development on the City's shorelines and, thus, furthering the intent of the Master Program.
8. Provide assistance to the general public as necessary and proper with regard to the provisions and requirements of the Shoreline Management Act of 1971 and the City of Mountlake Terrace's Master Program.
9. Provide for periodic review of shoreline uses and their locations as to appropriateness and compatibility with goals and policies.

CHAPTER 3

SHORELINE ENVIRONMENT DESIGNATIONS AND POLICIES

3.1 Shoreline Planning Environments

Introduction

In order to plan and effectively manage shoreline resources, the City of Mountlake Terrace has developed a system of categorizing shoreline areas as part of its Master Program. This system is designed to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas. To accomplish this, the environmental designations to be given any specific area will be based on the existing development pattern, the biophysical capabilities and limitations of the shoreline being considered for development and the goals and aspirations of the public.

The system to be utilized in the City of Mountlake Terrace is based upon the recommendations and requirements of the Shoreline Management Act's Final Guidelines (WAC 173-16-040(4)). This system classifies the City's shorelines into four distinct environments (Natural, Aquatic, Urban Conservancy, and Shoreline Residential) which provide the framework for implementing shoreline policies and regulatory measures.

This system is designed to encourage uses in each environment which enhance the character of that environment. At the same time, the City will place reasonable standards and restrictions on development so that such development does not disrupt or destroy the character of the environment.

The basic intent of this system is to utilize performance standards which regulate use activities in accordance with goals and general development policies previously developed as part of the Master Program. Thus, the particular uses of type of developments placed in each environment must be designed and located to that there are no effects detrimental to achieving the objectives of the environment and other Master Program development criteria.

This approach provides an "umbrella" environment class over present and future City land use planning and zoning of the shorelines. Since every area of the City as well as the remainder of the State is endowed with different resources, has different intensity of development and attaches different social values to these physical and economic characteristics, the environment designations should not be regarded as a substitute for on-going City and municipal planning and land use regulations.

General Designation Criteria

The determination as to which designation should be given any specific area in the City should be made in the following manner:

1. The resources of the shoreline areas should be analyzed for their opportunities and limitations for different uses. Completion of the comprehensive inventory of resources is a prerequisite to identifying resource attributes which determine these opportunities and limitations. (See Appendix C, Shoreline Inventory and Characterization Report, September 2010.)

2. Each of the plan elements should be analyzed for their effect on the various resources throughout the City's shoreline areas. Since shorelines are only a part of the system of resources within the City of Mountlake Terrace's jurisdiction, it is particularly important that planning for shorelines be considered an integral part of area wide planning.
3. Public desires should be considered through the citizen involvement process to determine which environment designations reflect local values and aspirations for the development of different shoreline areas within Mountlake Terrace.
4. All areas within shoreline jurisdiction that are not mapped or designated shall be assigned an Urban Conservancy designation until the shoreline can be redesignated through a Master Program amendment.

The location and boundaries of each environment designation is shown on the Shoreline Environment Designation Map (see Appendix A).

The management objectives and features which characterize each of the environments are given in the following sections to provide a basis for environment designation and management within Mountlake Terrace.

Each environment category includes several elements including:

1. Purpose which attempts to describe the basic function and purpose of the particular environment category.
2. Designation criteria which define the development, uses and/or features and resources which characterize each environment.
3. Management policies which are designed to regulate use and development consistent with the character of each environment.

3.1.1 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 in order to maintain the ecological functions and ecosystem-wide processes. Consistent with the policies of the designation, the City of Mountlake Terrace should include planning for restoration of degraded shorelines within this environment.

Designation Criteria

A "natural" environment designation applies to shoreline areas if any of the following characteristics apply:

1. The shoreline is ecologically intact and therefore currently performing an important, irreplaceable function or ecosystem-wide process that would be damaged by human activity;
2. The shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational interest; or
3. The shoreline is unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety.

Ecologically intact shorelines, as used here, means those shoreline areas that retain the majority of their natural shoreline functions, as evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, ecologically intact shorelines are free of shoreline structural modifications, structures, and intensive human uses. This designation applies to Ballinger Island.

Management Policies

1. Prohibit any use that would substantially degrade the ecological functions or natural character of the Natural Environment.
2. New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions should not be allowed.
3. Apply severe restrictions to the intensity and type of uses allowed in order to maintain the natural systems and the resources of the Natural Environment in their natural state.
4. Permit limited access to the Natural Environment for scientific, historical or education purposes as long as there is no significant ecological impact.
5. Prohibit uses or activities requiring permanent installations which would permanently deplete or consume the physical and biological resources found in the Natural Environment.
6. New uses other than those referenced in Policy #4 should not be allowed in the Natural Environment.
7. Restoration opportunities should be encouraged in the Natural Environment.

3.1.2 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.

Designation Criteria

An “aquatic” environment designation applies to lands waterward of the ordinary high-water mark. The Aquatic shoreline environment designation includes the water surface together with the underlying lands and the water column. This designation applies to that portion of Lake Ballinger within the city limits of Mountlake Terrace.

Management Policies

1. Allow new over-water structures only for water-dependent uses, public access, or ecological restoration.
2. The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.
3. In order to reduce the impacts of shoreline development and increase effective use of water resources, over-water facilities should be encouraged to serve multiple functions.
4. All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation.
5. All developments and uses should be located and designed to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.
6. Uses that adversely impact the ecological functions of critical freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and then only when their impacts are mitigated according to the sequence described in WAC 173-26-201 (2)(e) as necessary to assure no net loss of ecological functions.
7. Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.
8. Ensure that piers, docks, and boat ramps are compatible with the shoreline area where they are located and are designed and maintained to minimize adverse impacts to the environment.
9. Dredging and dredge material disposal should be limited to the minimum amount necessary. Dredging operations should minimize impacts to other shoreline uses and functions.
10. Restoration opportunities associated with project impacts should be encouraged in the aquatic environment.

3.1.3 URBAN CONSERVANCY ENVIRONMENT

Purpose

The purpose of the "urban conservancy" environment is to protect and restore ecological functions or open space, flood plain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses. This designation applies to the north and east shorelines of Lake Ballinger.

Designation Criteria

An "urban conservancy" environment designation applies to shoreline areas appropriate and planned for development that is compatible with maintaining or restoring the ecological functions of the area,

that are not generally suitable for water-dependent uses and that lie in incorporated municipalities or urban growth areas if any of the following characteristics apply:

1. They are suitable for water-related or water-enjoyment uses;
2. They are open space, flood plain or other sensitive areas that should not be more intensively developed;
3. They have potential for ecological restoration;
4. They retain important ecological functions, even though partially developed; or
5. They have the potential for development that is compatible with ecological restoration.

Management Policies

1. Give preference to those uses which do not permanently deplete the physical and biological resources of the Urban Conservancy Environment.
2. Give priority to activities and uses of a nonpermanent nature which do not substantially degrade the existing character of the Urban Conservancy Environment.
3. Encourage outdoor recreation activities to be the predominant uses in the Urban Conservancy Environment.
4. Maintain the Urban Conservancy Environment by encouraging recreational activities which will not be detrimental to the shoreline character or the forces which created and maintain the shoreline area.
5. Restrict new development to those which are generally compatible with the natural and biological limitations of the land and water and will not require extensive alteration of the land-water interface.
6. Prohibit development which would be hazardous to public health and safety, or which significantly interferes with natural processes.
7. Allow beach enrichment projects when it can be shown that other portions of the shoreline will not be adversely affected.
8. Discourage development which would permanently strip the shoreline of vegetative cover or cause substantial landslide, erosion, sedimentation or impairment of fish and aquatic life.
9. Prohibit the construction of flood control works or streambank stabilization projects that would contribute to destructive streamway channelization or substantial modification of existing shoreline character except for streamway rehabilitation projects.
10. Encourage streamway rehabilitation projects which will restore or enhance the natural streamway character.

11. Uses that preserve the natural character of the area or promote preservation of open space, floodplain or sensitive lands either directly or over the long term should be the primary allowed uses. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.
12. Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the Urban Conservancy designation. These standards shall ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.
13. Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.
14. Water-oriented uses should be given priority over non-water-oriented uses.
15. Require use of low impact development techniques for any development occurring within the Urban Conservancy environment consistent with City codes, including Chapter 16.20 MTMC.

3.1.4 SHORELINE RESIDENTIAL ENVIRONMENT

Purpose

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

Designation Criteria

A “shoreline residential” environment designation applies to shoreline areas that are predominantly single-family or multifamily residential development or are planned and platted for residential development. This applies to existing residential properties on the northwest side of Lake Ballinger.

Management Policies

1. Maintain and enhance the residential character of the Shoreline Residential Environment by carefully controlling the type, location, scale and timing of new shoreline development.
2. Restrict the Shoreline Residential Environment to low-intensity residential and recreational uses.
3. Provide incentives and actively promote aesthetic considerations in Shoreline Residential development by means of sign control regulations, architectural design standards, landscaping requirements, and other such means.
4. Allow beach enrichment projects only when it can be shown that other portions of the shoreline will not be adversely affected.
5. Multi-lot residential and recreational developments should provide public access and joint use for community recreational facilities when consistent with statutory and constitutional limitations on development exactions.

6. Any new development or redevelopment should utilize low impact development techniques where feasible and appropriate.
7. Standards for density or minimum frontage width, setbacks, lot coverage limitations, buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality shall be set to assure no net loss of shoreline ecological functions, taking into account the environmental limitations and sensitivity of the shoreline area, the level of infrastructure and services available, and other comprehensive planning considerations.
8. Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.
9. Limited non-residential uses, such as parks, day cares, home occupation businesses may be allowed, provided they are consistent with the residential character.
10. Development should be located, sited, designed and maintained to protect, enhance and be compatible with the shoreline environment.
11. Private property owners should be encouraged to preserve and enhance native shoreline vegetation and use environmentally friendly landscaping practices, through incentives, information and other assistance.
12. Water-oriented recreational uses should be allowed.
13. Public access and public recreation objectives should be implemented if feasible and wherever any significant ecological impacts, such as importation of invasive species to Lake Ballinger, can be mitigated.

CHAPTER 4

GENERAL SHORELINE POLICIES AND REGULATIONS

4.1 GENERAL SHORELINE POLICIES AND REGULATIONS

The provisions of this chapter shall be applied either generally to all shoreline areas or to shoreline areas that meet the specified criteria of the provision without regard to environment designation.

4.1.1 ARCHAEOLOGICAL AND HISTORIC RESOURCES

INTRODUCTION

Archaeological areas, ancient villages, military forts, old settlers' homes, ghost towns, and trails were often located on shorelines because of the proximity of food and resources and because water provided an important means of transportation. These sites are nonrenewable resources and many are in danger of being lost through present day changes in land use and urbanization. Because of their rarity and the educational link they provide to our past, these locations should be preserved.

The following policies and regulations apply to archaeological and historic resources that are recorded at the State Historic Preservation Office and/or by the City of Mountlake Terrace, or which are inadvertently uncovered. Archaeological sites are subject to RCW 27.44 (Indian graves and records) and RCW 27.53 (Archaeological sites and records). Developments or uses that may impact such sites shall comply with WAC 25-48 and the provisions of this chapter.

POLICIES

1. Consult with professional archaeologists, Washington State Department of Archaeology and Historic Preservation (DAHP), and affected Indian tribes to identify areas containing potentially valuable archaeological data, and to establish procedures for salvaging the data.
2. Preserve wherever feasible, sites with high value for scientific study and public observations.
3. Due to the limited and irreplaceable nature of archaeological and historic resources, prevent the destruction of or damage to any site having historic, cultural, scientific, or educational value as identified by the appropriate authorities, including affected Indian tribes and DAHP.
4. Attach a special condition to shoreline permits in areas documented to contain archaeological resources providing for site inspection or evaluation by a professional archaeologist in coordination with affected Indian tribes to ensure that possible archaeological data are properly salvaged.
5. Ensure that all applicable provisions of the National Historic Preservation Act of 1966 and the State Historic Preservation Act (RCW 43.51) are complied with.

REGULATIONS

1. All shoreline permits shall contain a special provision requiring permittees to notify the City of Mountlake Terrace if any possible archaeological data are uncovered during excavation or development.

2. All permits issued for development in areas known to be archaeologically significant shall provide for site inspection by a qualified archaeologist, in coordination with affected Indian tribes, prior to initiation of any development activity.
3. All development proposed for location adjacent to historical sites which are registered on the state or national historic register shall be located and designed so as to be complimentary to the historic site. Development which degrades or destroys the historic character of such sites shall not be permitted.
4. Developers and property owners shall immediately stop work and notify the City of Mountlake Terrace, DAHP (State Office of Archaeology and Historic Preservation), and affected Indian tribes if archaeological resources are uncovered during excavation.

4.1.2 CRITICAL AREAS

INTRODUCTION

Critical areas include the following areas and ecosystems: wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, and frequently flooded areas.

REGULATIONS

1. The City of Mountlake Terrace Critical Areas Ordinance, as codified in Chapter 16.15 of the MTMC (Ord. 2370, 2004), are herein adopted as a part of this Program, except for the specific subsections list below. Please refer to Appendix B for the adopted provisions of the Critical Areas Ordinance. Where there are conflicts between the City of Mountlake Terrace Critical Areas Ordinance and this Shoreline Master Program, provisions of the Shoreline Master Program shall prevail. All references to the City of Mountlake Terrace Critical Areas Ordinance in this Program are for this specific version. The provisions of the City of Mountlake Terrace Critical Areas Ordinance, less the exceptions listed below, shall apply to any use, alteration, or development within shoreline jurisdiction whether or not a shoreline permit or written statement of exemption is required.
2. The following provisions of the City of Mountlake Terrace Critical Areas Ordinance shall not apply to critical areas within shoreline jurisdiction:
 - a. MTMC 16.15.020 Definitions.
 - b. MTMC 16.15.040.A.8, 9, and 10. Exemptions.
 - c. MTMC 16.15.080.C. Wetland Classification.
 - d. MTMC 16.15.080.G. Geologic Hazard Classifications.
 - e. MTMC 16.15.090.B.1. Wetland buffers.
 - f. MTMC 16.15.090.B.3. Geologic hazard area setbacks.

- g. MTMC 16.15.090.C.1.a, b, and c. Wetland buffers.
 - h. MTMC 16.15.090.C.4. Critical Geologic Hazard Areas.
 - i. MTMC 16.15.090.D. Buffer Width Variance.
 - j. MTMC 16.15.100.D. Geologic Hazard Areas.
 - k. MTMC 16.15.110. Mitigation standards, criteria, and plan requirements.
 - l. MTMC 16.15.120.D. Geologic Hazard Areas.
 - m. MTMC 16.15.150 Reasonable Use Provision.
3. Wetland Delineation. Wetlands shall be delineated in accordance with the approved federal wetland delineation manual and applicable regional supplements, as required by WAC 173-22-035. Wetland delineation shall be no more than 5 years old.
 4. Wetland Classification and Rating. Classification and rating of wetlands shall be conducted in accordance with the Washington State Wetland Rating System for Western Washington – Revised (Ecology Publication No. 04-06-25, August 2004, annotated August 2006).
 5. The standards and criteria for alteration or development of critical areas contained in MTMC 16.15.100 shall be applied to shorelines in such a manner to achieve, at a minimum, no net loss of wetland area and functions, including lost time when the wetland does not perform the function, consistent with the provisions of WAC 173-26-221(2)(c).
 6. Wetland buffers.
 - a. Buffer Requirements. The standard buffer widths in Table 4-1 have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington state wetland rating system for western Washington.
 - i. The use of the standard buffer widths requires the implementation of the measures in Table 4-2, where applicable, to minimize the impacts of the adjacent land uses.
 - ii. If an applicant chooses not to apply the mitigation measures in Table 4-2, then a 33% increase in the width of all buffers is required. For example, a 75-foot buffer with the mitigation measures would be a 100-foot buffer without them.
 - iii. The standard buffer widths assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

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

Table 4-1 Wetland Buffer Requirements

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

Table 4-2 Required measures to minimize impacts to wetlands
(Measures are required, where applicable to a specific proposal)

Disturbance	Required Measures to Minimize Impacts
Lights	Direct lights away from wetland
Noise	Locate activity that generates noise away from wetland If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source
Toxic runoff	Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered Establish covenants limiting use of pesticides within 150 ft of wetland Apply integrated pest management
Stormwater runoff	Retrofit stormwater detention and treatment for roads and existing adjacent development when feasible Prevent channelized flow from lawns that directly enters the buffer Use Low Intensity Development techniques (per PSAT publication on LID techniques)
Change in water regime	Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	Use best management practices to control dust
Disruption of corridors or connections	Maintain connections to offsite areas that are undisturbed Restore corridors or connections to offsite habitats by replanting

- v. Increased Wetland Buffer Area Width. Buffer widths shall be increased on a case-by-case basis as determined by the Administrator when a larger buffer is necessary to protect wetland functions and values. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the wetland. The documentation must include but not be limited to the following criteria:

- (1). The wetland is used by a plant or animal species listed by the federal government or the state as endangered, threatened, candidate, sensitive, monitored or documented priority species or habitats, or essential or outstanding habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
 - (2). The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or
 - (3). The adjacent land has minimal vegetative cover or slopes greater than 30 percent.
- vi. Buffer averaging to improve wetland protection may be permitted when all of the following conditions are met:
- (1). The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a “dual-rated” wetland with a Category I area adjacent to a lower-rated area.
 - (2). The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas report from a qualified wetland professional.
 - (3). The total area of the buffer after averaging is equal to the area required without averaging.
 - (4). The buffer at its narrowest point is never less than either $\frac{3}{4}$ of the required width or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever is greater.
- vii. Averaging to allow reasonable use of a parcel may be permitted when all of the following are met:
- (1). There are no feasible alternatives to the site design that could be accomplished without buffer averaging.
 - (2). The averaged buffer will not result in degradation of the wetland’s functions and values as demonstrated by a critical areas report from a qualified wetland professional.
 - (3). The total buffer area after averaging is equal to the area required without averaging.

- (4). The buffer at its narrowest point is never less than either 3/4 of the required width or 75 feet for Category I and II, 50 feet for Category III and 25 feet for Category IV, whichever is greater.
- b. Allowed Buffer Uses. The following uses may be allowed within a wetland buffer in accordance with the review procedures of this Chapter, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland:
 - i. Conservation and Restoration Activities. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.
 - ii. Passive recreation. Passive recreation facilities designed and in accordance with an approved critical area report, including:
 - (1). Walkways and trails, provided that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located in the outer twenty-five percent (25%) of the wetland buffer area, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five (5) feet in width for pedestrian use only. Raised boardwalks utilizing non-treated pilings may be acceptable.
 - (2). Wildlife-viewing structures.
 - iii. Educational and scientific research activities.
 - iv. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, provided that the maintenance or repair does not increase the footprint or use of the facility or right-of-way.
 - v. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.
 - vi. Drilling for utilities/utility corridors under a buffer, with entrance/exit portals located completely outside of the wetland buffer boundary, 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 is disturbed.
 - vii. Enhancement of a wetland buffer through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand

removal. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

- viii. Stormwater management facilities. Stormwater management facilities are limited to stormwater dispersion outfalls and bioswales. They may be allowed within the outer twenty-five percent (25%) of the buffer of Category III or IV wetlands only, provided that:
 - (1). No other location is feasible; and
 - (2). The location of such facilities will not degrade the functions or values of the wetland; and
 - (3). Stormwater management facilities are not allowed in buffers of Category I or II wetlands.
- ix. Non-Conforming Uses. Repair and maintenance of non-conforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity.

c. Signs and Fencing of Wetlands and Buffers:

- i. Temporary markers. The outer perimeter of the wetland buffer and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary "clearing limits" fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the Administrator prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.
- ii. Permanent signs. As a condition of any permit or authorization issued pursuant to this Chapter, the Administrator may require the applicant to install permanent signs along the boundary of a wetland or buffer.
 - (1). Permanent signs shall be made of an enamel-coated metal face and attached to a metal post or another non-treated material of equal durability. Signs must be posted at an interval of one (1) per lot or every fifty (50) feet, whichever is less, and must be maintained by the property owner in perpetuity. The signs shall be worded as follows or with alternative language approved by the Administrator:

"Protected Wetland Area - Do Not Disturb"

Contact the City of Mountlake Terrace Regarding Uses,
Restrictions, and Opportunities for Stewardship”

- (2). The provisions of Subsection (a) may be modified as necessary to assure protection of sensitive features or wildlife.

- iii. Fencing

- (1). The applicant shall be required to install a permanent fence around the wetland or buffer when domestic grazing animals are present or may be introduced on site.
- (2). Fencing installed as part of a proposed activity or as required in this subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

7. Compensatory Mitigation.

- a. Mitigation Sequencing. Before impacting any wetland or its buffer, an applicant shall demonstrate that the following actions have been taken. Actions are listed in the order of preference:

- i. Avoid the impact altogether by not taking a certain action or parts of an action.
- ii. Minimize impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
- iii. Rectify the impact by repairing, rehabilitating, or restoring the affected environment.
- iv. Reduce or eliminate the impact over time by preservation and maintenance operations.
- v. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.
- vi. Monitor the required compensation and take remedial or corrective measures when necessary.

- b. Requirements for Compensatory Mitigation. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans:

- i. Shall be consistent with Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans--Version 1, (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised.

- ii. Shall be consistent with mitigation ratios in subsection 4.2.1.7.g (Wetland Mitigation Ratios) of this Chapter.
 - iii. Mitigation requirements may also be determined using the credit/debit tool described in “Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Operational Draft” (Ecology Publication #10-06-011, February 2011, or as revised) consistent with subsection 4.2.1.7.h of this Chapter.
- c. Compensating for Lost or Affected Functions. Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except when either:
 - i. The lost wetland provides minimal functions, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington state watershed assessment plan or protocol; or
 - ii. Out-of-kind replacement of wetland type or functions will best meet watershed goals formally identified by the City, such as replacement of historically diminished wetland types.
- d. Preference of Mitigation Actions. Methods to achieve compensation for wetland functions shall be approached in the following order of preference:
 - i. Restoration (re-establishment and rehabilitation) of wetlands.
 - ii. Creation (establishment) of wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of non-native species. This should be attempted only when there is an adequate source of water and it can be shown that the surface and subsurface hydrologic regime is conducive to the wetland community that is anticipated in the design.
 - iii. Enhancement of significantly degraded wetlands in combination with restoration or creation. Enhancement alone will result in a loss of wetland acreage and is less effective at replacing the functions lost. Enhancement should be part of a mitigation package that includes replacing the impacted area and meeting appropriate ratio requirements.
 - iv. Preservation. Preservation of high-quality, at-risk wetlands as compensation is generally acceptable when done in combination with restoration, creation, or enhancement, provided that a minimum of 1:1 acreage replacement is provided by re-establishment or creation.

Preservation of high-quality, at risk wetlands and habitat may be considered as the sole means of compensation for wetland impacts when the following criteria are met:

- (1). Wetland impacts will not have a significant adverse impact on habitat for listed fish, or other ESA listed species.
- (2). There is no net loss of habitat functions within the watershed or basin.
- (3). Mitigation ratios for preservation as the sole means of mitigation shall generally start at 20:1. Specific ratios should depend upon the significance of the preservation project and the quality of the wetland resources lost.
- (4). The impact area is small (generally <½acre) and/or impacts are occurring to a low-functioning system (Category III or IV wetland).

All preservation sites shall include buffer areas adequate to protect the habitat and its functions from encroachment and degradation.

- e. Type and Location of Compensatory Mitigation. Unless it is demonstrated that a higher level of ecological functioning would result from an alternative approach, compensatory mitigation for ecological functions shall be either in kind and on site, or in kind and within the same stream reach, sub-basin, or drift cell (if estuarine wetlands are impacted). Compensatory mitigation actions shall be conducted within the same sub-drainage basin and on the site of the alteration except when all of the following apply:
 - i. There are no reasonable opportunities on site or within the sub-drainage basin (e.g., on-site options would require elimination of high-functioning upland habitat), or opportunities on site or within the sub-drainage basin do not have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts. Considerations should include: anticipated replacement ratios for wetland mitigation, buffer conditions and proposed widths, available water to maintain anticipated hydrogeomorphic classes of wetlands when restored, proposed flood storage capacity, and potential to mitigate riparian fish and wildlife impacts (such as connectivity);
 - ii. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and
 - iii. Off-site locations shall be in the same sub-drainage basin unless:
 - (1) Established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the City and strongly justify location of mitigation at another site; or

- (2) Credits from a state-certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the bank's certification;
 - (3) Fees are paid to an approved in-lieu fee program to compensate for the impacts.
 - iv. The design for the compensatory mitigation project needs to be appropriate for its location (i.e., position in the landscape). Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland. An atypical wetland refers to a compensation wetland (e.g., created or enhanced) that does not match the type of existing wetland that would be found in the geomorphic setting of the site (i.e., the water source(s) and hydroperiod proposed for the mitigation site are not typical for the geomorphic setting). Likewise, it should not provide exaggerated morphology or require a berm or other engineered structures to hold back water. For example, excavating a permanently inundated pond in an existing seasonally saturated or inundated wetland is one example of an enhancement project that could result in an atypical wetland. Another example would be excavating depressions in an existing wetland on a slope, which would require the construction of berms to hold the water.
- f. Timing of Compensatory Mitigation. It is preferred that compensatory mitigation projects be completed prior to activities that will disturb wetlands. At the least, compensatory mitigation shall be completed immediately following disturbance and prior to use or occupancy of the action or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.
 - i. The Administrator may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a written explanation from a qualified wetland professional as to the rationale for the delay. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties (e.g., project delay lapses past a fisheries window, or installing plants should be delayed until the dormant season to ensure greater survival of installed materials). The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, or general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the compensatory mitigation plan. The justification must be verified and approved by the City.

- g. **Wetland Mitigation Ratios.** The wetland mitigation ratios are based on the category and type of wetland as shown in Table 4-3. Ratios for rehabilitation and enhancement may be reduced when combined with 1:1 replacement through creation or re-establishment. See Table 1a or 1b, *Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance--Version 1*, (Ecology Publication #06-06-011a, Olympia, WA, March 2006 or as revised).

Table 4-3 Wetland Mitigation Ratios.

Category and Type of Wetland	Creation or Re-establishment	Rehabilitation	Enhancement	Preservation
Category I: Bog, Natural Heritage site	Not considered possible	6:1	Case by case	10:1
Category I: Mature Forested	6:1	12:1	24:1	24:1
Category I: Based on functions	4:1	8:1	16:1	20:1
Category II	3:1	6:1	12:1	20:1
Category III	2:1	4:1	8:1	15:1
Category IV	1.5:1	3:1	6:1	10:1

- h. **Credit/Debit Method.** To more fully protect functions and values, and as an alternative to the mitigation ratios found in the joint guidance “Wetland Mitigation in Washington State Parts I and II”(Ecology Publication #06-06-011a-b, Olympia, WA, March, 2006), the Administrator may allow mitigation based on the “credit/debit” method developed by the Department of Ecology in “Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Operational Draft,” (Ecology Publication #10-06-011, Olympia, WA, February 2011, or as revised).
- i. **Mitigation Plan, Compensatory.** When a project involves wetland and/or buffer impacts, a compensatory mitigation plan prepared by a qualified professional shall be required, meeting the following minimum standards:
- i. **Wetland Critical Area Report.** A critical area report for wetlands must accompany or be included in the compensatory mitigation plan and include the minimum parameters described in minimum standards for Wetland Reports (of this Master Program (Appendix B, Attachment 1 (MTMC 16.15.070.B)).
 - ii. **Compensatory Mitigation Report.** The report must include a written report and plan sheets that must contain, at a minimum, the following elements. Full

guidance can be found in Wetland Mitigation in Washington State— Part 2: Developing Mitigation Plans (Version 1) (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised).

- (1) The written report must contain, at a minimum:
 - (a) The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the compensatory mitigation report; a description of the proposal; a summary of the impacts and proposed compensation concept; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.
 - (b) Description of how the project design has been modified to avoid, minimize, or reduce adverse impacts to wetlands.
 - (c) Description of the existing wetland and buffer areas proposed to be impacted. Include acreage (or square footage), water regime, vegetation, soils, landscape position, surrounding lands uses, and functions. Also describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating, based on Wetland Ratings determination per Section 4.1.2.4 of this Chapter.
 - (d) Description of the compensatory mitigation site, including location and rationale for selection. Include an assessment of existing conditions: acreage (or square footage) of wetlands and uplands, water regime, sources of water, vegetation, soils, landscape position, surrounding land uses, and functions. . Estimate future conditions in this location if the compensation actions are NOT undertaken (i.e., how would this site progress through natural succession?).
 - (e) A description of the proposed actions for compensation of wetland and upland areas affected by the project. Include overall goals of the proposed mitigation, including a description of the targeted functions, hydrogeomorphic classification, and categories of wetlands.
 - (f) A description of the proposed mitigation construction activities and timing of activities.
 - (g) A discussion of ongoing management practices that will protect wetlands after the project site has been developed, including

proposed monitoring and maintenance programs (for remaining wetlands and compensatory mitigation wetlands).

- (h) An itemized estimate of the cost to guarantee successful implementation for the entire compensatory mitigation project, including the following elements: site preparation, plant materials, construction materials, installation oversight, maintenance twice per year for up to five (5) years, annual monitoring field work and reporting, and contingency actions for a maximum of the total required number of years for monitoring. Performance and maintenance warranties shall comply with City regulations, Chapter 15.35 MTMC.
 - (i) Proof of establishment of a conservation easement for the wetlands and buffers on the project site, including the compensatory mitigation areas.
- (2) The scaled plan sheets for the compensatory mitigation must contain, at a minimum:
- (a) Surveyed edges of the existing wetland and buffers, proposed areas of wetland and/or buffer impacts, location of proposed wetland and/or buffer compensation actions.
 - (b) Existing topography, ground-proofed, at two-foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed to create the compensation area(s). Also existing cross-sections of on-site wetland areas that are proposed to be impacted, and cross-section(s) (estimated one-foot intervals) for the proposed areas of wetland or buffer compensation.
 - (c) Surface and subsurface hydrologic conditions, including an analysis of existing and proposed hydrologic regimes for enhanced, created, or restored compensatory mitigation areas. Also, illustrations of how data for existing hydrologic conditions were used to determine the estimates of future hydrologic conditions.
 - (d) Conditions expected from the proposed actions on site, including future hydrogeomorphic types, vegetation community types by dominant species (wetland and upland), and future water regimes.

- (e) Required wetland buffers for existing wetlands and proposed compensation areas. Also, identify any zones where buffers are proposed to be reduced or enlarged outside of the standards identified in this Chapter.
 - (f) A plant schedule for the compensation area, including all species by proposed community type and water regime, size and type of plant material to be installed, spacing of plants, typical clustering patterns, total number of each species by community type, timing of installation.
 - (g) Performance standards (measurable standards reflective of years post-installation) for upland and wetland communities, monitoring schedule, and maintenance schedule and actions by each biennium.
 - (3) Buffer Mitigation Ratios. Impacts to wetland buffers shall be mitigated at a 1:1 ratio. Compensatory buffer mitigation shall replace those buffer functions lost from development.
- j. Monitoring. Mitigation monitoring shall be required for a period necessary to establish that performance standards have been met, but not for a period less than five years. If a scrub-shrub or forested vegetation community is proposed, monitoring may be required for ten years or more. The project mitigation plan shall include monitoring elements that ensure certainty of success for the project's natural resource values and functions. If the mitigation goals are not obtained within the initial five-year period, the applicant remains responsible for restoration of the natural resource values and functions until the mitigation goals agreed to in the mitigation plan are achieved.
- k. Wetland Mitigation Banks.
 - i. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:
 - (1) The bank is certified under state rules;
 - (2) The Administrator determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
 - (3) The proposed use of credits is consistent with the terms and conditions of the bank's certification.
 - ii. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification.
 - iii. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In

some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

- I. In-Lieu Fee. To aid in the implementation of off-site mitigation, the City may develop a program which prioritizes wetland areas for use as mitigation and allows payment of fees in lieu of providing mitigation on a development site. This program shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu fee mitigation, and state water quality regulations. The program should address:
 - i. The identification of sites within the City/County that are suitable for use as off-site mitigation. Site suitability shall take into account wetland functions, potential for wetland degradation, and potential for urban growth and service expansion, and
 - ii. The use of fees for mitigation on available sites that have been identified as suitable and prioritized.
- m. Advance Mitigation. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to federal rules, advance of the impacts if the mitigation is implemented according to federal rules, state policy on advance mitigation and state water quality regulations.
- n. Alternative Mitigation Plans. The Administrator may approve alternative critical areas mitigation plans that are based on best available science, such as priority restoration plans that achieve restoration goals identified in the SMP. Alternative mitigation proposals must provide an equivalent or better level of protection of critical area functions and values than would be provided by the strict application of this chapter.

The Administrator shall consider the following for approval of an alternative mitigation proposal:

- i. The proposal uses a watershed approach consistent with Selecting Wetland Mitigation Sites Using a Watershed Approach (Ecology Publication #09-06-32, Olympia, WA, December 2009.)
- ii. Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas;
- iii. Mitigation, according to subsection 7.e is not feasible due to site constraints such as parcel size, stream type, wetland category, or geologic hazards;
- iv. There is clear potential for success of the proposed mitigation at the proposed mitigation site;

- v. The plan shall contain clear and measurable standards for achieving compliance with the specific provisions of the plan. A monitoring plan shall, at a minimum, meet the provisions in subsection 7.i (Compensatory Mitigation Plan);
- vi. The plan shall be reviewed and approved as part of overall approval of the proposed use;
- vii. A wetland of a different type is justified based on regional needs or functions and values; the replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative;
- viii. Mitigation guarantees shall meet the minimum requirements as outlined in 4.1.2.7.i.ii.(1)(h) of this Chapter.
- ix. Qualified professionals in each of the critical areas addressed shall prepare the plan.

4.1.3. FLOOD HAZARD REDUCTION

INTRODUCTION

The following provisions apply to actions taken to reduce flood damage or hazard and to uses, development, and shoreline modifications that may increase flood hazards. Flood hazard reduction measures may consist of nonstructural measures, such as setbacks, land use controls, wetland restoration, dike removal, use relocation, biotechnical measures, and stormwater management programs, and of structural measures, such as weirs, dikes, levees, revetments, floodwalls, channel realignment, and elevation of structures consistent with the Federal Emergency Management Agency (FEMA) National Flood Insurance Program.

POLICIES

1. Flood hazard reduction measures should be consistent with applicable provisions of City stormwater management, floodplain, and critical areas regulations, as well as the National Flood Insurance Program.
2. Structural flood control devices should be allowed only after it is demonstrated that nonstructural solutions are not feasible to reduce the hazard.
3. Participate in watershed-wide programs to reduce flood hazards and improve the shoreline ecology.
4. Discourage new development in shoreline areas that are reasonably likely to be harmed by flood conditions, or which would create or intensify flood hazard impacts on other properties.
5. Where feasible, preference should be given to nonstructural flood hazard reduction measures over structural measures.
6. New structural flood protection measures should only be allowed when necessary to protect existing development or to facilitate restoration projects.

7. Ensure that flood hazard reduction measures do not result in a net loss of ecological functions.

REGULATIONS

1. Development and redevelopment shall be located and designed to prevent the need for structural flood hazard reduction measures.
2. Nonstructural flood reduction measures shall be given preference over structural measures.
3. Flood control works shall be permitted when it is demonstrated by engineering and scientific evaluations that:
 - a. They are necessary to protect health/safety and or existing development;
 - b. Non-structural flood hazard reduction measures are infeasible; and
 - c. The flood control work will not result in a net loss of ecological function in the shoreline area.
4. New structural flood control works shall be placed landward of associated wetlands, and designated habitat conservation areas, except for works that improve ecological functions, such as wetland restoration.
5. Development within the shoreline environment shall meet the standards and provisions for protection of frequently flooded areas as provided to areas of special flood hazard in the current edition of the International Residential Code and International Building Code, and MTMC Title 15 and Title 16.
6. All development in floodplains and flood protection measures shall be consistent with the applicable requirements of the National Flood Insurance Program, and applicable building codes regarding flood-proof construction.
7. Require that the removal of gravel for flood management purposes be consistent with an adopted flood hazard reduction plan and with this chapter and allowed only after a biological and geomorphological study shows that extraction has 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.
8. Streambank vegetation shall be preserved to the maximum extent feasible consistent with safe construction requirements.
9. Cut-and-fill slopes and backfill areas shall be revegetated with natural grasses, shrubs and/or trees in keeping with existing river bank vegetation.
10. Require that new structural public flood hazard reduction measures, such as weirs, dikes and levees, dedicate and improve public access pathways unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant ecological impacts, unavoidable conflict

with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development.

11. The following uses or activities may be appropriate and/or necessary within the channel migration zone or floodway, subject to the regulations of this SMP:
 - a. Actions that protect or restore the ecosystem-wide processes or ecological functions.
 - b. Bridges, utility lines, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate cost. Where such structures are allowed, mitigation shall address impacted functions and processes in the affected section of watershed or drift cell.
 - c. Repair and maintenance of an existing legal use, provided that such actions do not cause significant ecological impacts or increase flood hazards to other uses.
 - d. Development with a primary purpose of protecting or restoring ecological functions and ecosystem-wide processes.
 - e. Modifications or additions to an existing nonagricultural legal use, provided that channel migration is not further limited and that the new development includes appropriate protection of ecological functions.
 - f. Existing structures that prevent active channel movement and flooding.
 - g. Measures to reduce shoreline erosion, provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measure does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions, and that the measure includes appropriate mitigation of impacts to ecological functions associated with the stream.

4.1.4 PUBLIC ACCESS AND VIEWS

INTRODUCTION

Public access includes the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations.

POLICIES

1. To the greatest extent feasible consistent with the overall best interest of the state and the people generally, protect the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including views of the water.
2. Physical access for swimming and non-motorized boating, passive recreation (such as interpretive trails) and habitat enhancement should be important objectives for the management of shoreline public access sites.

3. Public access provisions should be required for all shoreline development and uses, except for a single family residence or residential projects containing less than four (4) dwelling units.
4. Regulate the design, construction, and operation of permitted uses in the shoreline jurisdiction to minimize, insofar as practical, interference with the public's use of the water.
5. Assure that public access improvements do not result in a net loss of shoreline ecological functions.
6. Public access facilities should be constructed of environmentally friendly materials, use low impact development techniques, and support healthy natural processes, when feasible.

REGULATIONS

1. Except where exempted below, the dedication and improvement of public access shall be required as a condition of Shoreline Substantial Development Permits or Conditional Use Permits for water-enjoyment, water-related, and non-water-dependent uses, where any of the following conditions are present:
 - a. The use or modification will create increased demand for public access to the shoreline.
 - b. The use or modification will interfere with an existing public access way.
 - c. A use which is not a priority shoreline use under the Shoreline Management Act will locate on a shoreline of the state.
 - d. A use or modification located within shoreline jurisdiction will interfere with a public use of lands or waters subject to the public trust doctrine.
 - e. New multifamily residential development.
 - f. A subdivision of land into more than four parcels.
 - g. New Boating facilities.
2. Shoreline development by public entities 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.
3. Public access shall not be required if it is demonstrated to be infeasible where:
 - a. Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means.
 - b. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions.

- c. The cost of providing the access, easement or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development.
 - d. Unacceptable environmental harm will result from the public access which cannot be mitigated.
 - e. Significant undue and unavoidable conflict between any access provisions and the proposed use/modification and adjacent uses would occur and cannot be mitigated.
 - f. Statutory or constitutional requirements would prohibit the mandatory dedication of access without just compensation or compliance with statutory criteria.
- 4. In order to meet any of the conditions in subsection 3 of this section, the applicant must first demonstrate and the city determine in its findings that all reasonable alternatives have been exhausted, including but not limited to:
 - a. Regulating access by such means as maintaining a gate and/or limiting hours of use.
 - b. Designing separation of uses and activities (e.g., fences, terracing, use of one-way glazings, hedges, landscaping, etc.).
 - c. Developing provisions for off-site access such as at a street end, vista, or trail system.
- 5. Exceptions. The following uses, developments, modifications and activities are exempt from providing public access under this section:
 - a. The construction, repair, remodeling and use of one detached single-family dwelling unit, as well as the construction, remodeling, repair, and use of bulkheads, docks and other uses, modification and activities incidental to the use of the subject property as a detached single-family residence.
 - b. All shoreline uses, modifications and activities in conservancy environments, or environmentally sensitive areas where the city determines that access would create distinct and unavoidable hazards to human safety or be contrary to city policies regarding the protection of unique and fragile environments.
- 6. Public Use Facilities.
 - a. In addition to the public access areas required by subsection 1 of this section, the applicant may propose and/or the City may require that benches, picnic tables, a public access pier or boardwalk, or other public use facilities be constructed on the subject property.
 - b. If public use facilities are required or proposed, the city will determine the size, location and other regulations (design considerations) on a case-by-case basis.

7. Timing. The public access required by this section must be completed and available at the time of occupancy or completion of work; provided, however, that the city may on a case-by-case basis defer the physical availability of public access in the following cases:
 - a. If the City determines that the size, location, or topography of the subject property makes it infeasible to provide public access without first obtaining public access on an adjacent property. If such a determination is made, public access shall be provided on the subject property at such time as public access on an adjacent property can be obtained.
 - b. If pre-existing legal or nonconforming improvements on the subject property physically preclude the provisions of public waterfront access within a reasonable period of time.
8. Easements recorded. In each case where public access is required, whether it is physically available at the end of development or deferred until a later date, all owners of the subject property must record a public easement, in a form approved by the city attorney, establishing the right of the public to access, use and traverse that portion of the subject property.
9. Signs. The city shall require the posting of signs, obtained from the City at the City's cost, designating public access. The planning manager or his/her designee is authorized to establish reasonable rules and regulations governing the public's use of public access and use areas under this chapter. Where appropriate, these rules and regulations shall be included within the document recorded under subsection 8 of this section.
10. Shoreline uses, modifications and activities shall be designed and operated to avoid blocking, reducing or adversely interfering with the public's existing physical and visual access to the water and shorelines.
11. Public access sites shall include provisions for disabled and physically impaired persons, where feasible.
12. Public access easements and permit conditions shall be recorded on the deed of title and/or on the face of a plat or short plat as a condition running contemporaneous with the authorized land use, at a minimum. Said recording with the county auditor's office shall occur at the time of permit approval (RCW 58.17.110).
13. The minimum width of public access easements shall be 25 feet, unless the Administrator determines that undue hardship would result. In such cases, easement width may be reduced only to the minimum extent necessary, as determined by the Administrator, to relieve the hardship, provided the larger easement is not needed for emergency access.
14. Future actions by the applicant, successors in interest, or other parties shall not diminish the usefulness or value of the public access provided.

4.1.5 SHORELINE VEGETATION CONSERVATION

INTRODUCTION

Vegetation conservation includes activities to protect and restore vegetation along or near freshwater shorelines that contribute to the ecological functions of shoreline areas. Vegetation conservation provisions include the prevention or restriction of plant clearing and earth grading, vegetation restoration, and the control of invasive weeds and nonnative species.

Unless otherwise stated, vegetation conservation does not include those activities covered under the Washington State Forest Practices Act, except for conversion to other uses and those other forest practices activities over which the City of Mountlake Terrace has authority. Vegetation conservation provisions apply even to those shoreline uses and developments that are exempt from the requirement to obtain a permit. Vegetation conservation standards do not apply retroactively to existing uses and structures.

Where new developments and/or uses are proposed, native shoreline vegetation should be conserved to maintain shoreline ecological functions and/or processes and mitigate the direct, indirect and/or cumulative impacts of shoreline development, where feasible.

Important functions of shoreline vegetation include, but are not limited to:

- Providing shade necessary to maintain water temperatures required by salmonids, forage fish, and other aquatic biota.
- Providing organic inputs critical for aquatic life.
- Providing food in the form of various insects and other benthic macroinvertebrates.
- Stabilizing banks and minimizing erosion.
- Reducing fine sediment input into the aquatic environment through stormwater best management practices.
- Filtering and vegetative uptake of nutrients and pollutants from ground water and surface runoff.
- Providing a source of large woody debris into the aquatic system.
- Regulation of microclimate in the stream-riparian corridors.
- Providing habitat for wildlife, including connectivity for travel and migration corridors.

POLICIES

1. Native plant communities within shoreline jurisdiction including, but not limited to, wetlands, lakes, and streams should be protected and maintained to minimize damage to the ecology and environment of the shoreline area.
2. Cleared and disturbed sites remaining after completion of construction should be promptly replanted with native vegetation or with other species as approved by the City.

3. Conserve existing native vegetation to maintain and enhance water and sediment storage, removal of excess nutrients and toxic compounds, recruitment of large woody debris, bank stability, shade, and recruitment of organic matter.
4. Emphasize retention of native shoreline vegetation when reviewing plans for future development and encourage replanting and enhancement of shoreline vegetation when absent to reestablish and upgrade impaired ecological shoreline processes and functions.
5. Use soil bioengineering techniques when restoring degraded shorelines, wherever feasible, to minimize the processes of erosion, sedimentation, and flooding.
6. The City should provide information to the public about environmentally appropriate vegetation management, landscaping for shoreline properties and alternatives to the use of pesticides and herbicides which impact water quality and aquatic habitat.
7. Property owners should use the following Best Management Practices (BMPs) when maintaining residential landscapes:
 - a. Avoid use of herbicides, fertilizers, insecticides, and fungicides along drainage channels, and shores of Lake Ballinger, as well as in the water. If used, only organic fertilizer, weed and pest control is permitted within the shoreline jurisdiction.
 - b. Limit the amount of lawn and garden watering so that there is no surface runoff.
 - c. Dispose of grass clippings, leaves, or twigs properly; do not sweep these materials into the street, into a body of water, or near a storm drain.
8. Aquatic weed management should involve usage of native plant materials wherever possible in soil bioengineering applications and habitat restoration activities. Where active removal or destruction of aquatic vegetation is necessary, it should be done only to the extent necessary to allow water-dependent activities to continue. Removal or modification of aquatic vegetation should be conducted in a manner that minimizes adverse impacts to native plant communities, and should include appropriate handling or disposal of weed materials and attached sediments.
9. Monitor and control aquatic invasive species in Lake Ballinger.

REGULATIONS

1. Alteration of native shoreline vegetation shall only be allowed as set forth below:
 - a. Landscaping or maintenance associated with an existing legal use or new permitted shoreline use or development. The use of native plant species shall be encouraged.
 - b. Removal of noxious weeds as listed by the state in WAC 16-750, provided such activity shall be conducted in a manner consistent with best management practices and native vegetation is promptly reestablish in the disturbed area.

- c. Modification of vegetation in association with a legal, nonconforming use provided that said modification is conducted in a manner consistent with this Master Program and results in no net loss to ecological functions or critical fish and wildlife conservation areas.
 - d. Restoration activities conducted in accordance with an approved plan designed to improve ecological functions and values.
 - e. Selective pruning of trees for safety and adequate view protection. Protection of views should not take precedence over the objectives of this Master Program.
- 2. The removal or disturbance of existing vegetation and the alteration of topography shall be limited to the minimum necessary to accommodate approved shoreline development.
 - 3. Exposed soils shall be immediately developed or revegetated to prevent erosion.
 - 4. Revegetation must be planted such that complete coverage of exposed soils is attained within one growing season.
 - 5. In all cases where clearing is followed by revegetation, native plants shall be preferred.
 - 6. In all shoreline areas, the removal or disturbance of existing vegetation, land clearing, grading, filling, and alteration of natural drainage features and landforms shall be limited to the minimum necessary for approved shoreline development.

4.1.6 WATER QUALITY, STORMWATER, AND NON-POINT POLLUTION

INTRODUCTION

Development of the shoreline and surrounding areas affects water quality in several ways. The creation of impervious surfaces increases stormwater runoff volumes, causing higher peak stormwater discharges at higher velocities, which cause scouring and erosion of stream banks. Erosion increases suspended solids concentrations and turbidity in receiving waters. Runoff from impervious surfaces, including roads and parking areas, as well as from grass or landscaped areas, including golf courses, lawns, and gardens, carries oil, grease, yard and garden chemicals, household wastes, sediment, bacteria, heavy metals, excess nutrients, and other pollutants into these waters. Increased nitrogen and phosphorus enrichment results in algal growth that depresses levels of dissolved oxygen in receiving waters. The degradation of water quality adversely impacts wildlife habitat and public health.

Maintaining high water quality standards and restoring degraded systems has been mandated in RCW 90.58. The City of Mountlake Terrace regulates stormwater in Chapter 16.20 of the Mountlake Terrace Municipal Code.

POLICIES

- 1. Impacts to water quality and stormwater quantity that would result in a net loss of shoreline ecological functions, or a significant impact to aesthetic qualities, or recreational opportunities, should be prevented.

2. All shoreline uses and activities should be located, designed, constructed and maintained to mitigate the adverse impacts to water quality.
3. Stormwater impacts should be addressed through the application of all applicable City and State stormwater, including construction stormwater, erosion, and sedimentation, regulations.
4. New impervious surfaces should be limited within the shoreline management area by encouraging the use of pervious pavements and other low impact development technologies.
5. The City should encourage homeowners and property managers to use non-chemical weed and pest control solutions and natural and organic fertilizers if used at all.
6. Ensure that actions that affect stormwater runoff or water quality are consistent with other applicable regulations that address water quality and stormwater quantity, including public health, stormwater, water discharge standards, and plans. This may include recommendations outlined in the 2009 Lake Ballinger/McAleer Creek Watershed Strategic Action Plan.

REGULATIONS

1. An erosion and sedimentation control plan shall be submitted with a permit application for activities that involve the removal of vegetation, stockpiling of earth or other materials, or any activity that could result in shoreline erosion or siltation. The plan shall conform to applicable local and state regulations governing stormwater and erosion control and shall utilize Best Management Practices (BMPs) to prevent shoreline erosion and siltation.
2. The bulk storage of oil, fuel, chemicals, or hazardous materials, on either a temporary or permanent basis, shall be prohibited in the shoreline. This does not apply to the incidental storage of such materials for residential use.
3. All shoreline development, both during and after construction, shall minimize impacts related to surface runoff through control, treatment and release of surface water runoff such that there is no net loss of receiving water quality in the shoreline environment. Control measures include but are not limited to dikes, runoff intercepting ditches, catch basins, settling wet ponds, sedimentation ponds, oil/water separators, filtration systems, grassy swales, planted buffers, and fugitive dust controls.
4. All shoreline development shall comply with Chapter 16.20 MTMC, and implement applicable Low Impact Development techniques to the maximum extent feasible, pursuant to the standards contained in the Department of Ecology Stormwater Manual, and the Puget Sound Action Team Low Impact Development Technical Guidance Manual for Puget Sound or successor.
5. Construction materials that come in continuous, direct contact with surface waters shall not be treated or coated with toxic materials. Untreated wood, precast concrete, plastic or nontoxic alternatives shall be used unless the project proponent demonstrates and the City of Mountlake Terrace building official determines that there is no feasible alternative to toxic treatments that will provide the structural characteristics necessary for the project.

4.1.7 SHORELINE BULK AND DIMENSIONAL STANDARDS

Bulk and dimensional standards for shoreline development shall be determined by standards of the underlying zoning, as specified in the MTMC, except for those shoreline-specific bulk and dimensional standards summarized in Table 4-4 below. Additional buffer or setback requirements may apply to development within or adjacent to critical areas.

Table 4-4 Dimensional Requirements.

	Aquatic	Natural	Shoreline Residential²	Urban Conservancy³
Maximum Height¹	N/A	N/A	3 stories, not to exceed 35 feet	35'
Shoreline Setback	N/A	N/A	50	100
Maximum Lot Coverage⁴	N/A	N/A	25% of lot area	10% of lot area
Minimum Lot Frontage and Width	N/A	N/A	55 feet	400 feet
Minimum Lot Size and Lot Density	N/A	N/A	8400 sq. ft.	20 acres

Notes

1. Development shall also be subject to the height limits established by the underlying zoning, but in no case shall the height exceed fifty-five feet (55) above average grade level. The height limit shall not apply to television antennas, chimneys, flagpoles, public utilities, and similar appurtenances per Chapter 19.120 MTMC. A height of more than thirty-five feet (35) can only be achieved if the applicant prepares a view corridor study indicating that the proposed structure would not substantially diminish views of the lake from surrounding properties including the exceptions to height.
2. The underlying zoning is Single Household Residential (RS 8400).
3. The underlying zoning is Recreation and Park District (REC).
4. Lot coverage includes structures and other impervious surface areas.

CHAPTER 5

SHORELINE USE AND MODIFICATION POLICIES AND REGULATIONS

5.1 INTRODUCTION

This chapter provides policies and regulations applicable to uses or modifications that may be proposed within the shoreline. A use generally refers to a type of development or use of shorelines or shoreline resources. A modification is generally related to construction of a physical element. A modification may be undertaken in support of or in preparation for a shoreline use. A development proposal may contain more than one use or modification, and must comply with the policies and regulations applicable to all portions of the proposal.

The Use Regulations supplement, but do not duplicate, specific requirements of other city land use regulations. For example, floodproofing considerations are not addressed here since they are effectively covered by both state and city laws. In essence, the Use Regulations address those Shoreline Management issues which are not effectively provided for by existing federal, state, or city regulations and which must be provided for if the adopted goals and policies of this Master Program are to be implemented.

Table 5-1 indicates whether a use or modification proposed to be located within one of the shoreline environments is prohibited, permitted subject to the regulations specific to the proposed use and pursuant to the permit application procedures and other applicable policies and regulations of this Master Program, or allowed subject to the conditional use permit provisions of this Master Program.

Shoreline use activities not specifically identified and for which policies and regulations have not been developed will be evaluated on a case by case basis and will be required to satisfy the goals and general development policies of the master program, the policy of the Shoreline Management Act and shall be consistent with the management policy and character of the shoreline environment in which they propose to locate.

Policies and regulations specific to shoreline uses are discussed in Section 5.2 of this chapter. Shoreline modifications are discussed in Section 5.3. See Appendix A for location of shoreline environments.

TABLE 5.1 – SHORELINE USE AND MODIFICATION TABLE

Shoreline Environments				
	Natural	Aquatic	Urban Conservancy	Shoreline Residential
Use Activity				
Agriculture	X	X	X	X
Aquaculture	X	X	X	X
Boating Facilities	X	C	C	X
Commercial	X	X	C	X
Forest Practices	X	X	X	X
Industrial	X	X	X	X
In-Stream/Lake Structural Uses	X	C	C	X
Mining	X	X	X	X
Recreational Development	X	P	P	P
Residential	X	X	X	P
Transportation & Roads	X	X	C	P
Parking (as primary use)	X	X	X	X
Utilities	X	C	P	P
Modification				
Dredging	X	C	C	X
Landfill, Fill, and Excavation	X	C	C	C
Signs	X	X ¹	P	P
Piers & Docks	X	P	P	P
Soft Shoreline Stabilization	X	P	P	P
Hard Shoreline Stabilization	X	C	C	C

Key

P = Permitted

C = Conditional

X = Prohibited

Footnotes

- 1 Signs are prohibited in the Aquatic Environment except for those signs specifically exempted by this Master Program. See Section 5.2.7, Signs.

5.2 Use Policies and Regulations

As required by the Shoreline Management Act, this Master Program sets forth policies and regulations governing specific categories of uses and activities typically found in shoreline areas. The policies and regulations, which provide basic criteria for evaluating shoreline permit applications, are used to implement the broader goals, policies and intent of the Shoreline Management Act and this Program.

5.2.1 PROHIBITED USES

The following uses are prohibited in all shoreline environments:

- Agriculture
- Aquaculture
- Forest Practices
- Industrial Uses
- Mining
- Parking (as a primary use)

5.2.2 BOATING FACILITIES

INTRODUCTION

Boating facilities include public or private dry storage and wet-moorage facilities and structures; boat launch ramps, covered moorage, boat houses, mooring buoys, and marine travel lifts. Boating facilities as defined in this SMP do not apply to residential moorage facilities serving four (4) or fewer single-family residences.

Accessory uses found in boating facilities may include fuel docks and storage, boating equipment sales and rental, wash-down facilities, fish cleaning stations, repair services, public launching, bait and tackle shops, potable water, waste disposal, administration, parking, groceries, and dry goods.

POLICIES

1. Boating facilities should be located, designed, and operated to provide maximum feasible protection and restoration of ecological processes and functions and all forms of aquatic, littoral, or terrestrial life.
2. To the extent possible, boating facilities should be located in areas of low biological productivity.
3. Boating facilities should be located and designed so their structures and operations will be aesthetically compatible with the area visually affected and will not unreasonably impair shoreline views. However, the need to protect and restore functions and to provide for water-dependent uses carries higher priority than the protection of views.
4. Boating facilities should provide physical and visual public shoreline access and provide for multiple use, including water-related use, to the extent compatible with shoreline ecological functions and processes and adjacent shoreline use.

5. Accessory uses to boating facilities should be limited to water-oriented uses, or uses that provide physical or visual shoreline access for a substantial number of the general public.
6. Location and design of boating facilities should not unduly obstruct navigable waters and should avoid adverse effects to recreation opportunities such as fishing, pleasure boating, swimming, beach walking, picnicking, and shoreline viewing.

REGULATIONS

1. Boat launch ramps may be permitted as a conditional use in the Urban Conservancy shoreline environment. All other boating facility uses are prohibited.
2. Extended moorage and live-aboard vessels are prohibited on Lake Ballinger.
3. Boating facilities shall be located only at sites with suitable environmental conditions, shoreline configuration, access, and neighboring uses.
4. Boating facilities shall be located and designed to ensure no net loss of shoreline ecological functions. Impacts for boat launches shall be mitigated according to mitigation sequencing as described in Critical Areas, Section 4.1.2 of this Master Program.
5. It is the applicant's responsibility to comply with all state agency policies and regulations, including all applicable health, safety and welfare requirements associated with the primary use or accessory use.
6. The traffic generated by such a facility must be safely and conveniently handled by the streets serving the proposed facility.
7. No part of a boating facility that may come in contact with the water may be treated with or consist of creosote, oil based paints, toxic chemicals, or other substances that would be harmful to the aquatic environment, unless specifically permitted and authorized by appropriate State and Federal regulatory agencies.
8. Location and design of boating facilities shall not unduly obstruct navigable waters.

5.2.3 COMMERCIAL DEVELOPMENT

INTRODUCTION

Commercial developments typically include those uses which are involved in wholesale and retail trade or business activities including business parks, restaurants, shops, and offices. Commercial developments can be intensive users of space because of extensive floor areas and because of facilities, such as parking, necessary to serve them. Primary commercial uses are prohibited in all shoreline environments subject to this Shoreline Master Program. The following policies apply to commercial uses that are accessory to permitted recreational uses.

POLICIES

1. Commercial uses should only be allowed as accessory uses to permitted recreational uses. Primary commercial uses should be prohibited.
2. Preference should be given first to water-dependent commercial uses over nonwater-dependent commercial uses; and second, to water-related and water-enjoyment commercial uses over nonwater-oriented commercial uses.
3. Strongly encourage new commercial developments on shorelines to locate in those areas where current commercial uses exist.
4. In order to minimize adverse impact, ensure that adequate assessment be made of and consideration given to, the effect a commercial structure will have on a scenic view significant to a given area or enjoyed by a significant number of people.
5. New parking facilities to serve commercial uses should be prohibited. Accessory commercial uses should make use of permitted parking facilities necessary to serve the primary use.
6. Permitted commercial development should provide physical and/or visual public access to the shoreline where appropriate.
7. Ensure that commercial development does not result in a net loss of shoreline ecological functions or have significant adverse impact to other shoreline uses, resources and values provided for in RCW 90.58.020 such as navigation, recreation and public access.

REGULATIONS

1. Nonwater-oriented commercial uses on the shoreline are prohibited unless they meet the following criteria:
 - a. The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or
 - b. Navigability is severely limited at the proposed site; and the commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.
2. Commercial development may be allowed in the Urban Conservancy environment as an accessory use to a permitted recreational use, pursuant to the conditional use permit provisions of this Master Program. Examples of limited accessory commercial uses include:
 - a. Concession stands.
 - b. Restaurants.

- c. Sale or rental of sports equipment.
 - d. Booths or other facilities associated with festivals sponsored by the City, or private parties or receptions and banquets, that are permitted as temporary uses pursuant to City regulations governing such temporary uses and special events. (See Chapter 10.20 MTMC, Special Events, and Title 19 MTMC, Zoning code).
3. Primary commercial uses are prohibited in all shoreline environments.
4. Public access and ecological restoration shall be considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development unless such improvements are demonstrated to be infeasible or inappropriate.
5. Where commercial use is proposed for location on land in public ownership, public access shall be required.
6. Overwater commercial development is prohibited.
7. Commercial development shall only be permitted where it can be demonstrated to result in no net loss of shoreline ecological functions.

5.2.4 IN-STREAM/LAKE STRUCTURAL USES

INTRODUCTION

“In-Stream/lake structure” means a structure placed by humans within a stream or lake waterward of the ordinary high water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream/lake structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, stormwater outfall structures, the existing hypolimnetic injection system, weirs, or other purpose. Breakwaters and jetties are marine structures that are not appropriate for this shoreline and are prohibited.

A weir is a fence or enclosure set in a waterway for the purpose of taking fish or a dam in a stream or river for the purpose of raising the water level or diverting its flow. Lake Ballinger’s outlet is controlled by a weir that conveys water out of the lake into McAleer Creek. The weir regulates the lake level at an elevation set by superior court order. A weir also exists in the inlet to Lake Ballinger, Hall Creek. The modification or replacement of these weirs or the construction of any new weirs shall be subject to the policies and regulations contained in this Master Program.

POLICIES

1. In-stream/lake structures should provide for the protection and preservation of ecosystem-wide processes, ecological functions, and cultural resources, including, but not limited to, fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas.

2. The location and planning of in-stream structures should give due consideration to the full range of public interests, watershed functions and processes, and environmental concerns.
3. Any modification or replacement of the existing weir or construction of a new weir should be consistent with relevant basin planning documents such as the 2009 Lake Ballinger/McAleer Creek Strategic Action Plan or successors.

REGULATIONS

1. In-stream/lake structures shall be allowed only where necessary to support water-dependent uses, public access, shoreline stabilization, or other specific public purpose.
2. Any modification or replacement of existing in-stream/lake structures or construction of a new structure should be located and designed to ensure no net loss of shoreline ecological functions or processes.
3. In-stream/lake structures shall be designed to protect critical areas and shall provide for mitigation according to the sequence defined in WAC 173-26-201(2)(e).
4. In-stream structures shall be constructed and maintained in a manner that does not degrade the quality of affected waters.
5. In-stream structures shall allow for normal ground water movement and surface runoff.
6. In-stream structures shall preserve valuable recreation resources and aesthetics values.
7. Any modification or replacement of the existing weir or construction of a new weir must maintain a lake level consistent with the 1982 readjudicated Superior Court Order or any subsequent court orders that modify that level.

5.2.5 RECREATIONAL DEVELOPMENT

INTRODUCTION

Recreation is the refreshment of body and mind through forms of play, amusement, or relaxation. Water related recreation accounts for a very high proportion of all recreational activity in the Pacific Northwest. The recreational experience may be an active one involving boating, swimming, fishing or hunting or the experience may be passive such as enjoying the natural beauty of a vista of a lake or stream. Recreational development includes commercial and public facilities designed and used to provide recreational opportunities to the public and privately owned shoreline facilities intended for use by the public or a private club, group, association, or individual.

POLICIES

1. Give priority to development which provides recreational uses and other improvements facilitating public access to shorelines.

2. Prevent concentration of use pressure at a few points by encouraging the development of a combination of area and linear access (parking areas and easement for example), when providing public access to recreational locations such as fishing streams.
3. Strongly encourage the linkage of shoreline parks and public access points through the use of linear access. Many types of connections can be used such as hiking paths, bicycle trails and/or scenic drives.
4. Carefully consider the total effect the development of a recreation site will have on the environmental quality and natural resources of an area.
5. Develop guidelines for the preservation and enhancement of scenic views and vistas.
6. Avoid wasteful use of the limited supply of recreational shoreline areas by locating parking areas inland away from the immediate edge of the water and recreational beaches. Safe access should be provided by walkways or other methods.
7. Encourage a variety of recreational facilities which will satisfy the diversity of demands from groups in nearby populated centers.
8. Allow intensive recreational developments only where sewage disposal and vector control can be accomplished to meet public health standards without adversely altering the natural features attractive for recreational use.
9. Minimize surface runoff from recreational facilities.
10. Recreational development shall be located, designed, and operated in a manner consistent with the purposes of the environment designation in which they are located and such that no net loss of shoreline ecological functions or ecosystem-wide processes results.
11. Locate and design recreational facilities to minimize adverse impacts including those related to stormwater runoff, water quality, visual qualities, public access, and vegetation and habitat maintenance.

REGULATIONS

1. Recreation facilities shall be designed to take maximum advantage of and enhance the natural character of the shoreline area.
2. Private and public recreation areas shall protect existing native vegetation in the shoreline area and restore vegetation impacted by development activities. Recreational use and development shall result in no net loss of shoreline ecological functions. Mitigation shall be provided as necessary to meet this requirement. Failure to meet this standard will result in permit denial. The City may request necessary studies by qualified professionals to determine compliance with this standard.

3. Motor vehicle use, to include two- and three-wheeled vehicles, shall not be permitted on beaches or fragile shoreline areas EXCEPT as necessary for official maintenance or the preservation of public health and safety.
4. The construction of swimming facilities, piers, moorages, floats and launching facilities waterward of the OHWM shall be governed by the regulations relating to overwater structure construction and boating facilities in this chapter.
5. Stairways and landings shall be located upland of existing bulkheads, banks, and the ordinary high water mark unless integral to a water-dependent use or overwater structure permitted by this chapter.
6. Low intensity recreational uses shall be permitted in the Urban Conservancy Environment, subject to the following regulations:
 - a. A recreation facility or structure which changes or detracts from the character of the Urban Conservancy Environment (by building design, construction technique, or intensity of use that is attracted) shall be prohibited;
 - b. Parking and roads shall be set back 100 feet from the ordinary high water mark. Trail access should be provided to link upland facilities to the shoreline;
 - c. Playing fields, and other large areas devoted to athletic activities, with the exception of existing golf courses, will not be permitted.
 - d. Only use of organic fertilizer, weed and pest control is permitted within the shoreline jurisdiction. If used, an integrated pest management approach is required.
 - e. Golf course development may be permitted upon the issuance of a conditional use permit and compliance with local rules, regulations, statutes and ordinances, provided all of the following broad parameters are met:
 - i. Shoreline native vegetation buffers are established along the creek, lake shore, and associated marsh, bog, and swamp areas, provided shoreline access points, utility and emergency road access, and limited golf cart and pedestrian path crossings may be authorized by permit, and
 - ii. Forested wetlands are to be avoided altogether, adjacent natural buffers retained to the greatest extent possible, and adverse impacts thereto minimized to the greatest extent feasible, provided, that where the existing vegetative buffer is decreased to less than 200 feet in width that an equivalent buffer based on performance be substituted and that the functions and values, including habitat values and acreage, are compensated for in a demonstrable

and significant increase at a different location, preferably on-site but definitely within the project area.

- iii. Stormwater improvements shall be required in order to optimize water quality treatment prior to discharge into adjacent water bodies, including wetlands.
- iv. For the purpose of habitat acreage compensation, areas restored and/or enhanced as part of d.i above may be included in the replacement ratio required in d.ii based on a site specific analysis, and their establishment shall be expedited.

5.2.6 RESIDENTIAL DEVELOPMENT

INTRODUCTION

Single-family residences are identified by the SMA as a priority use when developed in a manner consistent with control of pollution and prevention of damage to the natural environment. Without proper management, single-family residential use can cause significant damage to the shoreline area through cumulative impacts from shoreline armoring, stormwater runoff, septic systems, introduction of pollutants, and vegetation modification and removal. Residential development includes the creation of new residential lots through land division as well as accessory uses and structures when allowed by the underlying zoning.

POLICIES

1. Single-family residences and their appurtenant structures are a preferred shoreline use when developed in a way that controls pollution and prevents damage to the shoreline environment.
2. Accessory structures such as accessory dwelling units, swimming pools, sport courts and other structures should be located and designed to minimize impervious surface and be visually and physically compatible with adjacent shoreline features.
3. Property owners wishing to expand or modify existing residences within shoreline jurisdictions should enhance shoreline vegetation and/or improve shoreline conditions in a manner that offsets the impacts of the proposed expansion or modification.
4. Prohibit residential development over water.
5. Do not allow new residential development on shorelines that would be dependent on future structural shoreline stabilization.
6. Residential development should result in no net loss of shoreline ecological functions.
7. Measures to conserve native vegetation along shorelines should be required for all residential development. Vegetation conservation may include avoidance or minimization of clearing or grading, restoration of areas of native vegetation, and/or control of invasive species.

8. Residential development should provide adequate setbacks and natural buffers from the water and ample open space among structures to protect natural features, preserve views and minimize use conflicts.
9. Residential development should be designed so as to preserve existing shoreline vegetation, control erosion and protect water quality using best management practices, using low impact development technologies, where feasible.
10. The City encourages the use of joint-use piers and docks in lieu of individual piers and docks for each waterfront lot to protect the ecological functions of the lake.

REGULATIONS

1. Residential development shall result in no net loss of shoreline ecological functions. Mitigation shall be provided as necessary to meet this requirement. Failure to meet this standard will result in permit denial. The City may request necessary studies by qualified professionals to determine compliance with this standard.
2. Residential development over water shall be prohibited.
3. Clearing and grading associated with a single-family residence may be exempted from the shoreline substantial development permit requirement, provided the following conditions are met:
 - a. The clearing and grading activity is confined to the construction site; and
 - b. Grading does not exceed 250 cubic yards.
4. The stormwater runoff for all new or expanded pavements or other impervious surfaces shall be directed to infiltration systems and other low impact development techniques shall be incorporated into new development as feasible, consistent with Chapter 16.20 of MTMC and the Low Impact Development Technical Guidance Manual for Puget Sound.
5. Structures or other development accessory to residential uses are permitted in shoreline jurisdiction, if allowed under all other applicable standards in this SMP and subject to the provisions of the City's zoning code.
6. All additions to residential structures must comply with all standards in this SMP, including required shoreline setbacks.
7. Residential development and normal appurtenances, such as garages, decks, driveways, and fences shall be located sufficiently landward of the ordinary high water mark to preclude the need for new structural shoreline stabilization during the useful life of the structure.

5.2.7 SIGNS

INTRODUCTION

Signs are publicly displayed boards whose purpose is to provide information, direction, or advertising. Signs may be pleasing or distracting, depending upon their design and location. A sign, in order to be effective, must attract attention; however, a message can be clear and distinct without being offensive. There are areas where signs are not desirable, but generally it is the design that is undesirable, not the sign itself.

POLICIES

1. Prohibit off-premise outdoor advertizing signs in all shoreline areas.
2. Establish size, height, density, and lighting limitations for signs.
3. Prevent degradation of vistas and viewpoints and impairment of visual access to the water from such vistas by the placement of signs.
4. Require, whenever feasible, that signs be constructed against existing buildings to minimize visual obstructions of the shorelines.

REGULATIONS

1. All signs shall comply with the City's sign regulations as contained in applicable sections of Chapter 19.135, Sign Regulations and Chapter 19.75 Recreation and Park District) of the MTMC.
2. Off-premises, outdoor advertising signs shall not be permitted in any area subject to the jurisdiction of the Shoreline Management Act.
3. Animated signs are prohibited.
4. Freestanding signs shall not be allowed when they would significantly degrade a vista or viewpoint or impair the visual access to the water from such vistas.
5. Applications for freestanding signs shall demonstrate that it is infeasible or impracticable to locate or mount the requested sign flush on the building. Failure to satisfactorily meet this requirement shall be sufficient grounds for denial of the application.
6. The maximum allowable height for all signs shall be six (6) feet from the ground level to sign top. Flush mounted signs may be placed on a wall higher than five (5) feet above ground as long as the height of the sign itself does not exceed three (3) feet.

5.2.8 TRANSPORTATION

INTRODUCTION

Transportation facilities are those structures and developments that aid in land and water surface movement of people, animals, goods, and services. They include roads and streets, railroads,

bridges, bikeways, trails, parking and other related facilities. A road is a linear passageway, usually for motor vehicles, and a railroad is a surface linear passageway with tracks for train traffic. Their construction can limit access to shorelines, impair the visual qualities of water-oriented vistas, expose soils to erosion and retard the runoff of flood waters.

Parking is the temporary storage of automobiles or other motorized vehicles, and is only allowed as an accessory to a permitted shoreline use. Parking as a primary use and parking which serves a use not permitted in shoreline jurisdiction is prohibited.

POLICIES

1. New transportation facilities should be located away from shorelines whenever feasible. If allowed, transportation facilities should be designed to be the minimum width necessary.
2. All new or expanded roadways should be designed and located to minimize impacts to shoreline ecological functions including riparian and nearshore areas, and the natural landscape.
3. Design and maintain roads to minimize erosion and permit a natural movement of surface runoff.
4. Provide safe pedestrian and other nonmotorized travel facilities in public shoreline areas.
5. Circulation system planning shall include systems for pedestrian, bicycle, and public transportation where appropriate. Circulation planning and projects should support existing and proposed shoreline uses that are consistent with the Master Program.
6. New road construction in the shoreline jurisdiction should be minimized, and allowed by conditional use only when related to and necessary for the support of permitted shoreline activities.
7. Parking is not a preferred use in shorelines and should only be allowed to support authorized uses where no feasible alternatives exist.
8. Parking facilities in shoreline areas should be located and designed to minimize adverse impacts including those related to stormwater runoff, water quality, visual qualities, public access, and vegetation and habitat maintenance, and shall result in no loss of ecological functions.
9. Parking in shoreline areas should not restrict access to the site by necessary public safety vehicles, utility vehicles, or other vehicles requiring access to shoreline properties.

REGULATIONS

General

1. New road construction in shoreline jurisdiction shall be minimized and allowed only when related to and necessary for the support of permitted shoreline activities.

2. Expansion of existing roadways within the shoreline jurisdiction shall be allowed only when the proponent demonstrates that:
 - a. No alternative route is feasible;
 - b. The roadway is constructed and maintained to cause the least possible adverse impact on the land and water environment; and
 - c. The roadway is found to be in the public interest.
3. Streets within shoreline jurisdiction shall be designed with the minimum pavement area required. Gravel and more innovative materials shall be used where feasible for pathways and road shoulders to minimize the amount of impermeable surfaces and help to maintain a more natural appearance.
4. Transportation and parking facilities shall be planned, located, and designed so that routes will have the least possible adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses.
5. Road routes shall make provisions for pedestrian, bicycle, and other non-motorized modes of travel whenever feasible.

Parking

6. Parking facilities are not a water-dependent use and shall only be permitted within the shoreline to support an authorized use where it can be demonstrated that there are no feasible alternative locations away from the shoreline.
7. Parking facilities shall be located outside of shoreline jurisdiction or as far landward from the ordinary high water mark as feasible. When located within shoreline jurisdiction, the location and design of parking facilities shall:
 - a. Minimize visual and environmental impacts to adjacent shoreline and critical areas.
 - b. Provide for pedestrian access through the facility to the shoreline; and
 - c. Facilitate public access to and enjoyment of the shoreline.
8. Parking, storage, loading and service areas and facilities serving commercial uses shall minimize their visual impact on the shorelines, utilize low impact development techniques and be placed outside of the shoreline, wherever possible.
9. Off-street parking facilities shall be set back from the ordinary high water mark a sufficient distance, to be determined on a case-by-case basis, so as not to require the creation of or the protection of new land by shore protection measures.

10. Upland parking facilities within the jurisdiction of this Master Program shall be designed and landscaped to minimize adverse impacts on adjacent shorelines and abutting properties. Landscaping shall be appropriate materials and vegetation, be planted within one year after completion of construction and be providing effective screening five years after planting, where applicable.
11. Upland parking facilities within the jurisdiction of this Master Program for shoreline activities shall provide safe and convenient pedestrian circulation within the parking area and to the shorelines.
12. Parking layouts must be designed efficiently to use the minimum amount of space necessary to provide the required parking and safe and reasonable access.
13. Parking areas serving individual buildings on the shoreline shall be located landward from the primary building being served, EXCEPT when the parking facility is within or beneath the structure and adequately screened or in cases when an alternate orientation would have less adverse impact on the shoreline.
14. Parking facilities shall comply with federal and state water quality laws and regulations with regard to surface water runoff.
15. Parking facilities shall not be permitted over water.

5.2.9 UTILITIES

INTRODUCTION

Utilities are services that produce and carry electric power, gas, sewage, water, communications, and oil. At this time, the most feasible methods of transmission are the linear ones of pipes and wires. The installation of this apparatus necessarily disturbs the landscape but can usually be planned to have minimal visual and physical effect on the environment. On-site utility features serving a primary use, such as water, sewer, or gas lines to a residence, are “accessory utilities” and shall be considered a part of the primary use.

POLICIES

1. Design and location of utilities should provide for no net loss of ecological functions and values.
2. Ensure that upon completion of utility installation or maintenance projects on shorelines, all areas be restored to pre-project configuration, replanted with native species and, provided with maintenance care until the newly planted vegetation is established.
3. Locate utility trunk lines and facilities outside shoreline areas, to the maximum extent feasible.
4. Locate utility lines and facilities, when they must be placed in a shoreline area, so as not to obstruct or destroy scenic views. Whenever feasible, these facilities should be placed underground, or designed to do minimal damage to the aesthetic qualities of the shoreline area.

5. To the maximum extent feasible, local governments should incorporate major transmission line rights-of-way on shorelines into their program for public access to and along water bodies.
6. Locate utilities to meet the needs of future populations in areas planned to accommodate this growth.
7. Combine utility rights-of-way in shoreline areas to the maximum extent possible.
8. Require that major utility development be consistent with adopted City comprehensive plans for utilities, where they exist, for provision of the respective utility service to the City's residents.
9. Solid waste disposal activities and facilities are prohibited in shoreline areas.
10. Utilities serving new development should be located underground, wherever feasible.

REGULATIONS

General

1. Applications for installation of utility facilities shall include the following (at a minimum):
 - a. Reasons why utility facility must be in a shoreline area;
 - b. Alternative location(s) considered and reasons for their elimination;
 - c. Location of other utility facilities in the vicinity of the proposed project to include the facilities of other types of utilities;
 - d. Proposed method(s) of construction;
 - e. Plans for reclamation of areas disturbed during construction;
 - f. Landscape plans (where appropriate);
 - g. Documentation that major utility developments are consistent with adopted City comprehensive plans for utilities, where such plans exist.
2. Utility transmission lines shall be underground (underwater) wherever practical and where not significantly detrimental to the environment.
3. Utility distribution lines, service lines, and connections shall be underground (underwater) wherever practical PROVIDED that such systems designed to serve floodplain development need not be so located.
4. Utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities, that are nonwater-oriented shall not be allowed in shoreline areas unless it can be demonstrated that no other feasible option is available.

5. Where utility systems cross shoreline areas, clearing necessary for installation or maintenance shall be kept to a minimum width necessary to prevent interference by trees and other vegetation with the proposed systems.
6. Outfall pipelines and diffusers are water-dependent, but should be located only where there will be no net loss in shoreline ecological functions and processes or adverse impacts upon shoreline resources and values.
7. Temporary storage of solid waste in suitable receptacles is permitted as an accessory use to a primary permitted use, or for litter control.
8. Solid waste disposal sites and facilities are prohibited in the shoreline environment.
9. The location and construction of outfalls shall comply with all appropriate federal, state, county and city regulations.
10. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
11. Utilities shall be located in existing rights-of-way or corridors wherever practicable.

Underground Utility Lines

1. Such facilities shall minimize crossings of water bodies.
2. Banks and dikes where such facilities enter or leave a body of water shall be returned to their preconstruction configuration, shall be thoroughly compacted and protected against erosion, and shall be maintained in a safe conditions by the utility.
3. Utility lines entering or leaving a body of water, other than a river, shall be buried below the surface of the water body's bed out to a minimum water depth of minus ten feet (-10'), measured from mean lower low water PROVIDED that, where the utility consists of a flexible cable and the bottom material is soft, such cable need only be buried to a depth of minus five feet (-5'), measured from mean lower low water; and PROVIDED FURTHER that, if such cable does not bury itself to a minimum depth of ten (10) feet below mean lower low water within one year of installation, the permittee shall bury the cable to such depth.
4. Underground utility lines shall be completely buried under the river bed in all stream crossings except where such lines are permanently affixed to a bridge structure.

Surface Utility Lines

1. Surface utility lines shall be avoided wherever possible.

2. When paralleling a water body or highway surface, utility rights-of-way shall be separated from them by a visual buffer of natural vegetation wherever available.
3. Surface utility lines shall cross shoreline jurisdictional areas by the shortest, most direct route feasible, unless such a route would cause significant environmental damage.
4. Surface utility lines shall minimize crossings of shoreline areas.

Aerial Utility Lines

1. Aerial utility lines shall minimize crossings of shoreline areas.
2. Aerial utility lines shall cross shoreline jurisdictional areas by the shortest, most direct route feasible, unless such a route would cause significant environmental damage.
3. Rights-of-way for aerial utility lines shall not be clearcut, but shall leave low-growing shrubs and bushes except as necessary for access roads.
4. Low areas between towers shall not be cleared where the projected growth of vegetation in such areas would not endanger the utility lines.
5. Aerial utility lines shall make maximum use of topography to minimize visual contrast with the environment.
6. When paralleling a water body, aerial utility rights-of-way shall be separated from said bodies by a visual buffer of natural vegetation wherever available, except where located in highway rights-of-way.
7. Bends shall be the preferred location for river crossings of aerial utility lines.

5.3 Modification Policies and Regulations

Shoreline modification activities are those actions that modify the physical configuration or qualities of the shoreline area. Shoreline modification activities are, by definition, undertaken in support of or in preparation for a permitted shoreline use. A single use may require several different shoreline modification activities.

Shoreline modification activity policies and regulations are intended to assure, at a minimum, no net loss of ecological functions necessary to sustain shoreline natural resources and to prevent, reduce and mitigate the negative environmental impacts of proposed shoreline modifications consistent with the goals of the Shoreline Management Act. A proposed development must meet all of the regulations for both applicable uses and activities as well as the general and environment designation regulations.

5.3.1 DREDGING

INTRODUCTION

Dredging is the removal of earth from the bottom of a stream, river, lake, bay or other water body for the purposes of deepening a navigational channel or to obtain use of the bottom materials for landfill. A significant portion of all dredged materials are deposited either in the water or immediately adjacent to it, often resulting in problems of water quality. Upland disposal of dredge spoils in the shoreline shall be subject to the policies and regulations for landfill.

POLICIES

1. Regulate and control dredging to minimize damage to existing ecological systems and natural resources of both the area to be dredged and the area for deposit of dredged materials.
2. Identify soil deposit sites in water areas with the assistance of the State Departments of Natural Resources, and Fish and Wildlife.
3. Allow deposition of dredge materials in water areas, except as provided for under Landfills, only for habitat improvements, to correct problems of material distribution adversely affecting fish resources or where the alternative of depositing materials on land is more detrimental to shoreline resources than depositing it in water areas.
4. Dredging of bottom materials for the single purpose of obtaining fill material should not be allowed except when the material is necessary for the restoration of ecological functions and where placement of the material is waterward of the ordinary high water mark.
5. Encourage utilization of a spoil transfer site which can be used on a continuing basis.
6. Approve new dredging projects only when accompanied by an acceptable plan for the long-range disposal of dredge spoils created by the project and its continued maintenance.
7. Provide for a periodic review of existing dredging projects.
8. Prohibit dredging in or the disposal of spoils on archaeological sites which are listed on the Washington State Register of Historic Places until such time as they are released.
9. Dredging should be sited and designed to avoid or, if avoidance is not possible, minimize the need for new or maintenance dredging.

REGULATIONS

1. Dredging and disposal of dredge material shall avoid, and minimize significant ecological impact; impacts that cannot be avoided shall be mitigated to achieve no net loss of ecological processes and functions.
2. Dredging may be permitted as a conditional use activity only:

- a. When necessary to support a permitted water-dependent use.
 - b. For maintenance dredging for the purpose of restoring a lawfully established development.
 - c. As part of mitigation actions, environmental restoration, or habitat enhancement projects.
 - d. When technical information demonstrates water circulation, aquatic life and water quality will not be substantially impaired.
 - e. When other solutions would result in greater environmental impact.
 - f. As part of an approved habitat improvement project.
 - g. If it improves water quality.
 - h. To remove silt or sediment deposited because of severe and unusual erosion or resulting from the existence of a bulkhead on nearby property.
 - i. To mitigate conditions which could endanger public safety.
 - j. Provided applicable permits of other local, state, and federal agencies have been obtained.
3. Maintenance dredging associated with a water dependent use shall be restricted to maintaining the previously dredged and/or existing authorized location, depth and width.
 4. Dredging for the primary purpose of obtaining fill or construction material is prohibited, except for projects associated with MTCA (Model Toxics Control Act, Chapter 70.105.D RCW) or CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act, commonly known as Superfund, to cleanup sites with hazardous substances), habitat restoration, or any other significant restoration effort approved by a shoreline conditional use permit. When dredging is allowed for fill materials, placement of fill must be waterward of the OHWM.
 5. Dredging may be permitted in McAleer Creek for removal of gravel, sediment, or buried wood debris for flood management purposes consistent with a City-adopted flood hazard reduction plan and only after a biological and geomorphological study demonstrates that extraction has a long term benefit to flood hazard reduction, does not result in a long-term degradation of fish habitat, and is part of a comprehensive flood management solution.
 6. Excavations on beaches below the OHWM in lands covered by water constitute dredging and shall include precautions to prevent the migration of fine grain sediments, disturbed by the excavation, onto adjacent beach areas. Excavations on beaches shall be backfilled promptly using material of similar composition and similar or coarser grain size.

7. Dredging shall be timed so that it does not interfere with aquatic life.
8. Dredging shall utilize techniques (such as hydraulic dredging instead of agitation dredging) that cause minimal dispersal and broadcast of bottom material.
9. Limitations may be imposed on dredging activities, such as limited operating hours, time periods, and requirements for buffer strips at the site.
10. Dredge spoil disposal is prohibited on Lake Ballinger shorelines or beds; except that, dredge spoil may be used in approved projects for the restoration or enhancement of shoreline ecological functions and processes, such as beach nourishment.
11. Applications for dredging and dredged material disposal shall include the following information (at a minimum):
 - a. A description of the purpose of the proposed dredging and an analysis of compliance with the policies and regulations of this Program.
 - b. A detailed description of the existing physical character, shoreline geomorphology and biological resources provided by the area proposed to be dredged, including:
 - i. A site plan map outlining the perimeter of the proposed dredge area. The map must also include the existing bathymetry depths based on Mean Lower Low Water (MLLW) and have data points at a minimum of 2-foot depth increments.
 - ii. A habitat survey must be conducted and Washington State Department of Fish and Wildlife (WDFW) must be contacted to ensure the survey is conducted according to the most recent WDFW eelgrass/macroalgae survey guidelines.
 - iii. Information on stability of bedlands adjacent to proposed dredging and spoils disposal.
 - c. A detailed description of the physical, chemical and biological characteristics of the dredge spoils to be removed, including:
 - i. Physical analysis of material to be dredged: material composition and amount, grain size, organic materials present, source of material, etc.
 - ii. Chemical analysis of material to be dredged: volatile solids, chemical oxygen demand, (COD), grease and oil content, mercury, lead and zinc content, etc.
 - iii. Biological analysis of material to be dredged.
 - d. A description of the method of materials removal, including facilities for settlement and movement.

- e. Dredging procedure: length of time it will take to complete dredging, method of dredging and amount of materials removed.
- f. Frequency and quantity of project maintenance dredging.
- g. Hydraulic modeling studies sufficient to identify existing geo-hydraulic patterns and probable effects of dredging.

5.3.2 LANDFILL, FILL, AND EXCAVATION

INTRODUCTION

“Landfill” means the creation of or addition to, a dry upland area (landward of the OHWM) by the addition of rock, soil, gravels and earth or other material. “Landfill” does not include solid or hazardous waste. Fill is the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land. Landfills and fills also occur to replace shoreland areas removed by wave action or the normal erosive processes of nature. However, most landfills and fills destroy the natural character of land, create unnatural heavy erosion and silting problems and diminish the existing water surface. Disposal of dredged material is subject to the dredging requirements of this SMP.

The policies contained herein are intended to focus on the aspects of natural systems affected by dredging and the disposal of dredge material, man-made fill, cuts, excavations and site grading actions, while at the same time recognizing the community's needs.

POLICIES

1. Sanitary Landfills should be prohibited in all shoreline environments.
2. Landfill should only be permitted to the minimum extent necessary to accommodate an approved shoreline use or development and with assurance of no net loss of shoreline ecological functions and processes. Enhancement and voluntary restoration of landforms and habitat are encouraged.
3. Shoreline landfills should be designed and located so that there will be no significant damage to existing ecological systems or natural resources, and no alteration of local currents, surface and subsurface drainage, or flood waters which would result in hazard to adjacent life, property, or natural resource systems.
4. Where permitted, landfill coverage should be the minimum necessary to provide for the proposed use. Landfills should be permitted only when tied to a specific development proposal that is permitted by the master program.
5. In evaluating landfill projects, factors such as current and potential public use of the shoreline and water surface area, water flow and drainage, water quality and habitat should be considered and protected to the maximum extent feasible. Further, the City should assess the

overall value of the landfill site in its present state versus the proposed shoreline use to be created to ensure consistency with the Shoreline Management Act and this Master Program.

6. The perimeter of landfills should be designed to avoid or eliminate erosion and sedimentation impacts, both during initial fill activities and over time. Natural appearing and self-sustaining control methods are preferred over structural methods.
7. Fill waterward of the OHWM should be prohibited, except as part of an approved habitat restoration or enhancement project.
8. Allow deposition of dredge materials in water areas only for habitat improvements, to correct problems of material distribution adversely affecting fish resources or where the alternative of depositing materials on land is more detrimental to shoreline resources than depositing it in water areas.

REGULATIONS

1. Sanitary landfills or the location of solid waste disposal sites within any area subject to the jurisdiction of the Shoreline Management Act is strictly prohibited.
2. Fills waterward of the ordinary high-water mark shall be allowed only when necessary to support: mitigation action, environmental restoration, beach nourishment, or enhancement project. All other fills waterward of the ordinary high water mark are prohibited.
3. Landfills shall be permitted only when used as preparation for an activity otherwise permitted by this program for the Environment in which it is located and for permitted mitigation actions, environmental restoration projects, or beach nourishment, or enhancement projects. Such landfills shall also be subject to the regulations for the proposed use.
4. Landfills and fills shall be permitted only where it is demonstrated that:
 - a. The project has been located, designed, and constructed in a manner that minimizes impacts to ecological processes and functions and where impacts cannot be avoided, mitigation is provided to achieve no net loss.
 - b. The landfill or fill does not result in significant damage to water quality, fish, aquatic habitat, and/or wildlife habitat.
 - c. The landfill or fill does not adversely alter natural drainage and circulation patterns, or significantly reduce flood water holding capabilities.
 - d. The landfill or fill will not result in erosion of the shoreline or undermine stability of neighboring properties.
 - e. The landfill or fill is the minimum necessary to reasonably accomplish the purpose for the fill.

- f. Where existing public access will be reduced, equivalent public access has been provided on or off site as part of the project.
 - g. Fill material consists only of soil, sand, rock, or gravel. The fill material must not contain organic or inorganic materials that would be detrimental to water quality or existing habitats.
 - h. Placement of landfill or fill will be timed so as to minimize damage to water quality and aquatic life.
- 5. The perimeter of all landfills shall be provided with some means to control erosion, such as vegetation, retaining walls, or other mechanisms.
- 6. Any placement or removal of materials landward of the OHWM shall comply with the provisions of Vegetation Conservation (Clearing and Grading) of this SMP.
- 7. Landfills, fills, and excavation shall be designed to blend physically and visually with existing topography whenever possible, so as not to interfere with long term appropriate use including lawful access and enjoyment of scenery.
- 8. A temporary erosion and sediment control (TESC) plan shall be provided for all proposed landfill and excavation activities.
- 9. The landfill or fill shall be designed and supervised by a civil engineer or similarly qualified professional. The professional shall certify that the landfill or fill meets the following requirements:
 - a. The landfill or fill is designed and executed to minimize adverse impacts on neighboring properties and the environment, and is fully integrated into an otherwise approved facility.
 - b. The landfill or fill is designed and executed to provide permanent structural integrity for the fill and surrounding areas.
- 10. Applications which include landfill or fill shall include the following information:
 - a. Physical, chemical, and biological character of fill material demonstrating that the fill is of such quality that significant water quality, ecological impacts, and public health problems would not occur from its placement;
 - b. Source of fill material;
 - c. Method of placement and compaction;
 - d. Type of proposed surfacing;

- e. Method of perimeter erosion control, and schedule for implementation;
- f. Proposed use of filled area.
- g. Assessment of water quality impacts.
- h. Type of surfacing and run-off control and treatment devices.
- i. Location of the landfill relating to natural or existing drainage patterns.
- j. Location of the perimeter of the landfill or fill relating to the ordinary high water mark and any critical areas.

5.3.3 OVERWATER STRUCTURES: PIERS, DOCKS, AND FLOATS

INTRODUCTION

Docks are fixed structures floating upon water bodies. Piers are fixed, pile-supported structures. Floats are floating structures that are moored, anchored, or otherwise secured in the water that are not connected to the shoreline. Docks, piers, and floats that serve four or fewer boats regularly moored are reviewed as recreational facilities. Proposals for five or more boats are considered marinas and are regulated under Boating Facilities. Floating docks generally have less of a visual impact than piers on pilings. However, in the nearshore, docks can interrupt littoral drift of sediments and other suspended materials, and significantly shade the aquatic environment throughout their length. Pile piers can provide diverse habitat for both desirable and undesirable aquatic life. Excavated moorage involves dredging and will disturb bottom sediments and aquatic life. Docks and piers alike create impediments to boat traffic and fish travel. Pier construction requires regulation to protect navigation, to protect shoreline aesthetics, and to maintain the useable water surface and aquatic lands for life forms characteristic and important to those areas.

POLICIES

1. Give priority to the use of community piers and docks in all new major waterfront subdivisions. In general, encouragement should be given to the cooperative use of piers and docks.
2. New piers and docks should be allowed only for public access and/or water-dependent uses.
3. New piers and docks should be restricted to the minimum size necessary and permitted only when the applicant has demonstrated that a specific need exists to support the intended water-dependent use.
4. A dock associated with a single family residence is considered a water-dependent use provided that it is designed and intended as a facility for access to watercraft and otherwise complies with the provisions of this section.

5. New pier or dock construction, excluding docks accessory to single-family residences, should be permitted only when the applicant has demonstrated that a specific need exists to support the intended water-dependent use.
6. When permitted, new residential development of more than two dwellings should provide joint use or community docks, rather than individual docks 7. Piers and docks, including that accessory to single-family residences, shall be designed and constructed to avoid or to minimize and mitigate the impacts to ecological functions, critical areas resources such as eelgrass beds and fish habitats and processes such as currents and littoral drift.
8. Preference should be given to fixed-pile piers elevated above the OHWM. Floating docks should be allowed if the applicant can demonstrate why a fixed pile pier is not feasible or will result in greater impacts.
9. Recreational floats should be allowed where they are intended to support public or private recreational uses, or in lieu of fixed piers adjacent to residential land uses.
10. New moorage covers should not be allowed.
11. Overwater structures, including piers, should only be authorized after consideration of:
 - a. The effect such structures have on wildlife and aquatic life, water quality, scenic and aesthetic values, environmental sensitive resources, submerged lands, and submerged vegetation.
 - b. The effect such structures have on water circulation, recreational boating, sediment movement and littoral drift and shoreline access.
12. Lighting facilities should be limited to the minimum extent necessary to locate the pier or dock at night.
13. Over-water structures should be designed to avoid the need for maintenance dredging. The moorage of a boat larger than provided for in the original moorage design shall not be grounds for approval of dredging.

REGULATIONS

General

1. Covered moorage is prohibited in all shoreline environments.
2. Mooring buoys are prohibited in all shoreline environments.
3. Piers and docks may not be larger than is necessary to provide safe and reasonable moorage for the boats which can reasonably be expected to be moored. The city will specifically review the size and configuration of each proposed pier or dock to ensure that:

- a. The pier or dock does not extend waterward beyond the point necessary to provide reasonable draft for the boats to be moored; and
 - b. The pier or dock is not larger than is necessary to moor the specified number of boats; and
 - c. The pier or dock will not interfere with the public use and enjoyment of the water or create a hazard to navigation; and
 - d. The pier or dock will not adversely affect nearby uses; and
 - e. The pier or dock will not have a significant long-term adverse effect on aquatic habitats.
4. In order to minimize impacts on nearshore areas and avoid reduction in ambient light level:
- a. The width of piers, docks, and floats shall be the minimum necessary. Piers and docks shall not exceed four (4) feet in width, except where special accommodation is needed for accessibility (ADA) or for safety reasons in which case residential piers and docks shall not exceed six (6) feet, and public piers and docks shall not exceed eight (8) feet in width. Floats shall not exceed eight (8) feet in width and 20 feet in length unless authorized by a variance.
 - b. Dock surfaces designed to allow maximum light penetration shall be used on walkways or gangplanks in nearshore areas.
 - c. Piers, docks and floats shall be located along a north/south orientation to the maximum extent feasible.
 - d. The surface of new piers, docks and floats shall provide at least 50% functional grating.
5. Waterward of the ordinary high water mark, pier and dock height may not exceed a height of five (5) feet above water level, except that public piers may exceed the height limit an additional three (3) feet, and except pilings may extend a reasonable amount above dock height to provide for fluctuating water level conditions.
6. Prohibited substances. No part of a pier, dock or other components that may come in contact with the water may be treated with or consist, in whole or in part, of creosote, oil based paints, toxic chemicals, or other substances that would be harmful to the aquatic environment, unless specifically permitted and authorized by appropriate state and federal regulatory agencies.
7. If the subject property provides moorage for not more than two boats, the following setbacks apply:
- i. No moorage structure may be within 25 feet of another moorage structure not on the subject property.

- ii. The side property line setback is 10 feet for moorage structures, provided that joint or shared moorage facilities may be located within the setback from the lot with whom the facility is shared.
- 8. If the subject property provides moorage for more than two boats, the following setbacks apply:
 - i. No moorage structure on private property may be within 100 feet of a public park.
 - ii. No moorage structure may be within 25 feet of another moorage structure not on the subject property.
 - iii. The side property line setback is 10 feet.
- 9. Moorage structures and facilities may only be permitted and used accessory to detached dwelling units on waterfront lots. Use of the moorage structure and facilities is limited to the residents and guests of the waterfront lots to which the moorage is accessory. Moorage space may not be leased, rented, sold, or otherwise made available to other than the residents and guests of the waterfront lots to which the moorage is accessory.
- 10. Accessory uses are not permitted in conjunction with a moorage structure.
- 11. All new, reconstructed, repaired, or modified overwater structures must comply with all regulations contained in this SMP and all other regulations as stipulated by State and Federal agencies, local Tribes, or others that have jurisdiction.
- 12. Mitigation shall be provided for all reconstructed, repaired, or modified overwater structures, if necessary to ensure no net loss of ecological function.
- 13. Where a permitted overwater structure would adversely impact the ecological functions of critical freshwater habitats, the impacts shall be mitigated according to the sequence described in WAC 173-26-201(2)(e) as necessary to assure no net loss of ecological functions.
- 14. All float tubs shall be fully encapsulated and the decks shall be fully grated except for the float tubs, designed with a ramp section connecting to the upland and are prohibited from resting on the substrate.
- 15. Floating docks are required to be designed to not ground during low water conditions.
- 16. All overwater structures shall be constructed and maintained in a safe and sound condition. Abandoned or unsafe overwater structures shall be removed or repaired promptly by the owner.
- 17. Residential Dock, Pier or Float (Moorage Structure) Development Standards:

- i. Shared moorage. When permitted, new residential development of more than two dwellings shall be required to provide joint use or community docks, rather than individual docks.
 - ii. Height. The height of a residential dock or pier shall not exceed five feet above the ordinary high water mark. The height of attendant pilings shall not exceed five feet above the ordinary high water mark or that height necessary to provide for temporary emergency protection of floating docks as determined in accord with generally accepted engineering practices.
 - iii. Length. The length of any residential dock or pier shall not exceed the lesser of 50 feet or the length of the existing dock, pier or float.
 - iv. Setbacks. All residential docks or piers shall observe a minimum 10-foot side yard setback from a property line or a storm drainage outfall. Joint use docks or piers may be located on the side property line; provided that the abutting waterfront property owners shall file a joint use maintenance agreement with the Snohomish County auditor in conjunction with, and as a condition of, the issuance of a building permit. Joint use docks or piers shall observe all other regulations of this subsection. If such joint maintenance agreement is terminated, the dock or pier shall be brought into compliance with the bulk and setback provisions of this Master Program.
 - v. Number. Each residential lot shall be allowed one dock or pier or portion thereof located on the lot, and one float.
 - vi. Size. No residential dock or pier shall exceed 400 square feet. No float shall exceed 160 square feet. The area of the float shall be counted as part of the overall dock or pier area.
 - viii. Covered Buildings. No covered building shall be allowed on any residential dock or pier.
18. Community or Public Dock, Pier or Float (Moorage Structure) Development Standards:
- i. Width. The width of community or public docks or piers shall be the minimum necessary. Piers and docks shall not exceed four (4) feet in width, except where special accommodation is needed for accessibility (ADA) or for safety reasons, and shall not exceed eight (8) feet.
 - ii. Height. The height of a community or public dock or pier shall not exceed eight feet above the ordinary high water mark. The height of attendant pilings shall not exceed eight feet above the ordinary high water mark or that height necessary to provide for temporary emergency protection of floating docks as determined in accord with generally accepted engineering practices.

- iii. Length. The length of any community or public dock or pier shall not exceed the lesser of 120 feet or the existing length.
- iv. Setbacks. All community or public docks or piers shall observe a minimum 25-foot side yard setback from a property line or a storm drainage outfall. Joint use docks or piers may be located on the side property line; provided that the abutting waterfront property owners shall file a joint use maintenance agreement with the Snohomish County auditor in conjunction with, and as a condition of, the issuance of a building permit. Joint use docks or piers shall observe all other regulations of this subsection. If such joint maintenance agreement is terminated, the dock or pier shall be brought into compliance with the bulk and setback provisions of this Master Program.
- v. Number. A maximum of one community dock, pier and/or float may be located on a single lot. Up to three public dock/piers may be built on a single parcel of public land, except that one community pier, dock or float combination is allowed at Ballinger Boat Launch Park.
- vi. Size. The maximum size of a new or replaced community or public dock shall not exceed the existing size or 800 square feet. The area of a float shall not exceed 160 square feet and shall be counted as part of the overall dock or pier area.
- viii. Covered Buildings. No enclosed structures shall be allowed on a community or public dock or pier.
- ix. One shelter, up to 120 square feet in area and up to 10 feet in height, shall be permitted when associated with a public dock or pier.

5.3.4 SHORELINE STABILIZATION

INTRODUCTION

Shoreline stabilization includes actions taken to protect property and dwellings, businesses, or structures from erosion impacts caused by natural processes, such as current, flood, tides, wind, or wave action. These actions include structural and nonstructural methods. Nonstructural methods include building setbacks, relocation of the structure to be protected, ground water management, planning and regulatory measures to avoid the need for structural stabilization.

“Soft” structural measures rely on less rigid materials, such as biotechnical vegetation measures or beach enhancement, while “Hard” structural stabilization measures refer to those with solid, hard surfaces, such as concrete bulkheads. Measures ranging from soft to hard include:

- Vegetation enhancement
- Upland drainage control
- Biotechnical measures
- Beach enhancement

- Anchor trees
- Gravel placement
- Rock revetments
- Gabions
- Concrete groins
- Retaining walls and bluff walls
- Bulkheads

Bulkheads are structures erected parallel to and near the high water mark for the purpose of protecting adjacent uplands from the action of waves or currents. Bulkheads have historically been constructed of poured-in-place or precast concrete, concrete blocks, wood, steel or aluminum sheet piling, wood or wood and structural steel combinations, and boulders. Bulkheads may be either thin structures penetrating deep into the ground or more massive structures resting on the surface.

Human use of the shoreline has typically led to hardening for various reasons including reduction of erosion or providing useful space at the shore or providing access to docks and piers. The impacts of hardening any one property may be minimal, but cumulatively the adverse impacts to shoreline ecological functions can be significant. Generally, the harder the construction measure, the greater the impact on shoreline processes, including sediment transport, geomorphology, and biological functions. Such impacts include:

- Beach starvation
- Habitat degradation
- Sediment impoundment
- Exacerbation of erosion
- Ground water impacts
- Hydraulic impacts
- Loss of shoreline vegetation
- Loss of large woody debris

The following policies are applicable to all shoreline stabilization measures, including bulkheads.

POLICIES

1. Discourage new development requiring structural shoreline stabilization.
2. Relocating existing structures out of harm's way is preferable to construction of structural stabilization.
3. Allow structural stabilization methods only:
 - a. After it is demonstrated that nonstructural solutions would not be able to reduce the potential damage sufficiently, and

- b. Where it has been demonstrated to be necessary to support a legally established, inhabited structure or when necessary for reconfiguration of the shoreline for hazardous substance remediation or restoration of ecological functions.
- 4. Structural stabilization will not be permitted for the indirect purpose of creating land by filling.
- 5. Encourage “soft” stabilization and protection works over “hard” structural means. Furthermore, designs that do not interrupt net drift or migration of anadromous fish are preferred.
- 6. Consider the effect that proposed shore stabilization has on ecosystem-wide processes and functions. Make provisions to avoid and minimize impacts where feasible. Mitigation should be provided if necessary to achieve no net loss of shoreline ecological functions.

REGULATIONS

General

- 1. For the purposes of this section, standards on shoreline stabilization, “replacement” means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately service its purpose. Addition to or increases in size of existing shoreline stabilization measures shall be considered new structures.
- 2. Shoreline stabilization proposals shall avoid and reduce significant ecological impacts according to the mitigation sequence in WAC 173-26-201(2)(e).
- 3. New development shall be located and designed to avoid the need for future shoreline stabilization to the extent feasible. Subdivision of land shall be regulated to 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.
- 4. New development that would require shoreline stabilization which causes significant negative impacts to adjacent or down-current properties and shoreline areas shall not be allowed.
- 5. Preference shall be given to those types of shoreline modifications that have a lesser impact on ecological functions. “Soft” shoreline modification measures shall be preferred over “hard” shoreline modification measures. “Hard” shoreline modifications shall only be allowed as provided in (7) below.
- 6. Structural stabilization methods shall be permitted when necessary for reconfiguration of the shoreline for mitigation or enhancement purposes.
- 7. New structural stabilization measures shall not be allowed except when necessity is demonstrated in the following manner:

- a. To protect existing primary structures:
 - i. New or enlarged structural shoreline stabilization measures for an existing primary structure, including residences, should not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, that the structure is in danger from shoreline erosion caused by tidal action, currents, or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization.
 - ii. The erosion control structure will not result in a net loss of shoreline ecological functions.
- b. In support of new non-water-dependent development, including single-family residences, when all of the conditions below apply:
 - i. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
 - ii. Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
 - iii. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report. The damage must be caused by natural processes, such as tidal action, currents, and waves.
 - iv. The erosion control structure will not result in a net loss of shoreline ecological functions.
- c. In support of water-dependent development when all of the conditions below apply:
 - i. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
 - ii. Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
 - iii. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report.

- iv. The erosion control structure will not result in a net loss of shoreline ecological functions.
 - d. To protect projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to Chapter 70.105D RCW when all of the conditions below apply:
 - i. Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
 - ii. The erosion control structure will not result in a net loss of shoreline ecological functions.
 - 8. All shoreline stabilization measures shall be designed and constructed so that downstream banks will not be adversely affected. Shoreline stabilization measures, including riprap, shall be designed and constructed in a manner consistent with Natural Resources Conservation Service, Corps of Engineers, and/or other engineering and design specifications deemed appropriate by the City Shoreline Administrator, and said designs shall be reviewed and confirmed by the City Shoreline Administrator as being consistent therewith.
 - 9. Shoreline stabilization measures shall not be designed and constructed in such a manner as to result in channelization of normal stream flows.
 - 10. Within the discretion of the permit granting authority, and considering the reasonableness of the conditions and the technological state of the art, applications for shoreline stabilization measures shall include the following (at a minimum):
 - a. Purpose of project;
 - b. Geotechnical report or analysis;
 - c. Hydraulic characteristics of stream or lake within one-half mile on each side of proposed project;
 - d. Existing shoreline stabilization and flood protection devices within one-half mile on each side of proposed project;
 - e. Construction material and methods;
 - f. Resultant hydraulic characteristics of stream or lake.
 - 11. Shoreline stabilization measures are allowed in floodways and density fringe areas of the base (100-year frequency) flood only when their purpose is to protect existing development or to prevent serious impairment of channel function. Provided, that where the detailed information

referenced in Regulation 10 above is not required due to waiver or exemption from a permit, stabilization measures shall be reviewed and approved by the City Shoreline Administrator, with said approval to confirm that measures mitigate or avoid the potential for adverse impacts to adjacent shoreline consistent with Regulation 7 above. Provided further, that vegetative and/or other nonstructural shoreline stabilization measures may be used in hydraulic floodways for any purpose otherwise consistent with the Master Program, the Shoreline Management Act and its administrative guidelines.

12. Streambank vegetation shall be preserved to the maximum extent feasible consistent with safe construction requirements.
13. Cut-and-fill slopes and backfill areas shall be revegetated with natural grasses, shrubs and/or trees and keeping with existing river bank vegetation.
14. Geotechnical reports pursuant to this section that address the need to prevent potential damage to a primary structure shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion and report on the urgency associated with the specific situation. As a general matter, hard armoring solutions should not be authorized except when a report confirms that there is a significant possibility that such a structure will be damaged within three years as a result of shoreline erosion in the absence of such hard armoring measures, or where waiting until the need is that immediate, would foreclose the opportunity to use measures that avoid impacts on ecological functions. Thus, 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, that report may still be used to justify more immediate authorization to protect against erosion using soft measures.
15. Geotechnical reports required pursuant to this section shall address the need for shoreline stabilization and shall include the following:
 - a. A scaled site plan showing:
 - i. The location of existing and proposed shore stabilization, structures, fill, and vegetation, with dimensions indicated distances to the ordinary high water mark.
 - ii. Existing site topography with two foot contours.
 - b. A description of the processes affecting the site, and surrounding areas that influence or could be influenced by the site, including areas in which lake or marine geomorphic processes affect the site, including, but not limited to:
 - i. Soil erosion, deposition, or accretion;

- ii. Evidence of past or potential erosion due to tidal action and/or waves;
 - iii. Littoral drift; and
 - iv. An estimate of shoreline erosion rates.
 - c. A description and analysis of the urgency and risk associated with the specific site characteristics.
16. When any structural shoreline stabilization measures are demonstrated to be necessary, pursuant to above provisions:
- a. Limit the size of stabilization measures to the minimum necessary. Use measures designed to assure no net loss of shoreline ecological functions. Soft approaches shall be used unless demonstrated not to be sufficient to protect primary structures, dwellings, and businesses.
 - b. Ensure that publicly financed or subsidized shoreline erosion control measures do not restrict appropriate public access to the shoreline except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions. Where feasible, incorporate ecological restoration and public access improvements into the project.
 - c. Mitigate new erosion control measures, including replacement structures, on feeder bluffs or other actions that affect beach sediment-producing areas to avoid and, if that is not possible, to minimize adverse impacts to sediment conveyance systems.
17. If hard stabilization methods are employed the following design criteria shall be met:
- a. The size and quantity of the material shall be limited to that the minimum necessary to withstand the estimated energy intensity of the hydraulic system;
 - b. Filter cloth must be used to aid drainage and help prevent settling;
 - c. The toe reinforcement or protection must be adequate to prevent a collapse of the system wave action; and
 - d. Fish habitat components shall be considered in the design subject to Hydraulic Project Approval by the Washington Department of Fish and Wildlife.

18. Shoreline stabilization and modification projects shall avoid and then minimize adverse impacts to the environment to the greatest extent feasible, and where such impacts cannot be avoided, mitigation shall be provided to achieve no net loss of shoreline ecological functions.
19. Structural stabilization shall not be permitted for the indirect purpose of creating land by filling.
20. Professional design (as approved by the City) of all shoreline stabilization is required. All shoreline modification activities shall be in support of a permitted shoreline use that is in conformance with the provisions of this Master Program unless it can be demonstrated that such activities are necessary and in the public interest.
21. All shoreline modification activities must comply with all other regulations as stipulated by State and Federal agencies, local Tribes, or others that have jurisdiction.
22. All construction and planting activities shall be scheduled to minimize impacts to water quality and fish and wildlife aquatic and upland habitat, and to optimize survival of new vegetation.
23. New bulkheads shall be allowed only for existing structures when evidence is presented through a report prepared by a geotechnical engineer or other qualified professional that conclusively demonstrates that use of natural materials and processes (soft structural solutions) and alternative site designs, including increased shoreline setbacks (nonstructural solutions), are either not feasible or will not provide the necessary protection for existing development.
24. Bulkheads and other shoreline protection structures shall be located landward of the ordinary high water mark and generally parallel to the natural shoreline unless geotechnical evaluation demonstrates the necessity for alternative design. In addition:
 - a. On shorelines where no other bulkheads are adjacent, the construction of a bulkhead shall tie in with the contours of the adjoining shorelines, as feasible, such that the proposed bulkhead would not cause erosion of the adjoining properties.
 - b. Bulkheads may tie in flush with existing bulkheads on adjoining properties, provided that the new bulkhead does not extend waterward of OHWM, except that which is necessary to make the connection to the adjoining bulkhead. In such circumstances, the remaining portion of the bulkhead shall be placed landward of the existing OHWM such that no net loss of lake occurs and the design complies with all other regulations as stipulated by State and Federal agencies, local Tribes, or others that have jurisdiction.
 - c. Replacement bulkheads shall not encroach waterward of the ordinary high-water mark or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.

25. An existing bulkhead or other shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect primary uses or structures from erosion caused by currents, tidal action, or waves.
 - a. The replacement structure should be designed, located, sized, and constructed to assure no net loss of ecological functions.
 - b. Replacement walls or bulkheads shall not encroach waterward of the ordinary high water mark or existing structure unless the residential structure to which it is appurtenant was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure may abut the existing shoreline stabilization structure.
26. Stairs or other permitted structures may be built into a bulkhead, but shall not extend waterward of a bulkhead.

CHAPTER 6

ADMINISTRATION

6.1 APPLICABILITY

6.1.1 PURPOSE

This Chapter establishes the permit review procedure for shoreline permits, in accordance with the Shoreline Management Act, Chapter 90.58 RCW and Chapter 173-27 WAC. All proposed uses, modifications and development occurring within the shoreline jurisdiction must conform to Chapter 90.58 RCW, the Shoreline Management Act, and this Master Program, regardless of whether a shoreline permit, letter of exemption, shoreline variance, or shoreline conditional use permit is required.

The Shoreline Management Act's provisions are intended to provide for the management of all development and uses within its jurisdiction, whether or not a shoreline permit is required. Many activities that may not require a substantial development permit, such as clearing vegetation or construction of a residential bulkhead, can, individually or cumulatively, adversely impact adjacent properties and natural resources, including those held in public trust. The City of Mountlake Terrace has the authority and responsibility to enforce Master Program regulations on all uses and development in the shoreline jurisdiction area.

The policy goals of the act, implemented by the planning policies of this Master Program, may not be achievable by development regulation alone. Planning policies should be pursued through the regulation of development of private property only to an extent that is consistent with all relevant constitutional and other legal limitations (where applicable, statutory limitations such as those contained in Chapter 82.02 RCW and RCW 43.21C.060) on the regulation of private property. The City of Mountlake Terrace shall use its established permit review process to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights.

6.1.2 PERMITS REQUIRED FOR SUBSTANTIAL DEVELOPMENT IN SHORELINE JURISDICTION

1. No use, modification or development shall be undertaken in the shoreline jurisdiction of the City except those which are consistent with the policy of the Shoreline Management Act of 1971, as amended, and the applicable policies, guidelines, and regulations of the Master Program adopted by the City.
2. A substantial development means any development whose total cost, or fair market value, exceeds \$5,000 (as of July 1, 2007 and as periodically adjusted - see Chapter 7, Definitions, "Substantial development," for a more complete description of the dollar threshold), or any development which materially interferes with the normal public use of the water or shorelines of the state.

6.1.3 EXEMPTIONS FROM SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT PROCESS – APPLICATION AND INTERPRETATION

1. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process.
2. An exemption from the substantial development permit process is not an exemption from compliance with the Shoreline Management Act or the City of Mountlake Terrace Shoreline Master Program, or from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of this Master Program and the Shoreline Management Act.
3. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the master program, such development or use can only be authorized by approval of a variance.
4. A development or use that is listed as a conditional use pursuant to this Master Program, or is an unlisted use, must obtain a conditional use permit even though the development or use does not require a substantial development permit.
5. The burden of proof that a development or use is exempt from the substantial development permit process is on the applicant.
6. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project.
7. The City of Mountlake Terrace may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Shoreline Management Act and this Master Program.

6.1.4 EXEMPTIONS FROM SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT REQUIREMENTS

A substantial development permit shall not be required for the following. A letter of exemption per Section 6.1.5 may be required for some exemptions.

1. Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand dollars (\$5,000), if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period and consistent with WAC 173-27-040(2)(a). For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development, that is occurring on shorelines of the state as defined in RCW 90.58.030(3)(e). 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.
 - a. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition.
 - b. "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.
 - c. 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. 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.
 - b. 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 height, may be used as backfill.
 - c. 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.
 - d. 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.
 - a. 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. 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.
 - b. Emergency construction does not include development of new permanent protective structures where none previously existed.
 - c. 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.
 - d. All emergency construction shall be consistent with the policies of Chapter 90.58 RCW and the local Master Program.
5. Construction or modification of navigational aids such as channel markers and anchor buoys.
6. Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet (35) above average grade level, is located landward of the OHWM and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to Chapter 90.58 RCW.
 - a. "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.
 - b. 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; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty (250) cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark.
7. 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 a single-family and multiple-family residences.
 - a. A dock, for this exception, is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities, or other appurtenances.

- b. This exception applies if, in fresh waters (Lake Ballinger), the fair market value of the dock does not exceed ten thousand dollars (\$10,000), but if subsequent construction, having a fair market value exceeding two thousand five hundred dollars (\$2,500), occurs within five (5) years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this Chapter.
- 8. 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 from the irrigation of lands.
- 9. 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.
- 10. Operation and maintenance of any system of dikes, ditches, drains, or other similar drainage or utility facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system.
- 11. Any project with a certification from the governor pursuant to Chapter 80.50 RCW.
- 12. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this Chapter if:
 - a. The activity does not interfere with the normal public use of the surface waters;
 - b. The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
 - c. The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
 - d. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and
 - e. The activity is not subject to the permit requirements of RCW 90.58.550.
- 13. 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.
- 14. Watershed restoration projects as defined herein. The Administrator shall review the projects for consistency with the Master Program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving all materials necessary to review the

request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section.

- a. “Watershed restoration project” means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:
 - i. A project that involves less than ten (10) miles of stream reach, in which less than twenty-five (25) cubic yards of sand, gravel, or soil is removed, imported, disturbed, or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;
 - ii. A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with the primary emphasis on using native vegetation to control the erosive forces of flowing water; or
 - iii. 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.
 - b. “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.
15. A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:
- a. The project has been approved in writing by the Department of Fish and Wildlife;
 - b. The project has received hydraulic project approval by the Department of Fish and Wildlife pursuant to Chapter 77.55 RCW; and
 - c. The City has determined that the project is substantially consistent with the local shoreline Master Program. The City shall make such determination in a timely manner and provide it by letter to the project proponent.

6.1.5 LETTER OF EXEMPTION

Whenever a development falls within the exemptions listed in Section 6.1.4 above as stated in WAC 173-27-040, the City shall prepare a letter addressed to the applicant and the Department of Ecology exempting the development from the permit requirements of Chapter 90.58 RCW. This exemption shall be in substantially the form required by Chapter 173-27 WAC and be available from the Community and Economic Development Department of the City.

1. The Administrator is hereby authorized to grant or deny requests for letters of exemption from the shoreline substantial development permit requirement for uses and developments with shorelines that are specifically listed in this Master Program. The letter of exemption 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 Master Program and the Act. As appropriate, such letters of exemption may contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of this Master Program and the Shoreline Management 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 letter of exemption or a denial are subject to appeal pursuant to the appeal procedures per this Chapter.
2. A letter of exemption shall be prepared addressed to the applicant/proponent and the Washington State Department of Ecology, pursuant to the requirement of WAC 173-27-050 when the project is subject to one or more of the following Federal permitting requirements:
 - a. A U.S. Army Corps of Engineers Section 10 Permit under the Rivers and Harbors Act of 1899. (The provisions of Section 10 of the Rivers and Harbors Act generally apply to any project occurring on or over navigable waters. Specific applicability information should be obtained from the Corps of Engineers.); or
 - b. A Section 404 permit under the Federal Water Pollution Control Act of 1972. (The provisions of Section 404 of the Federal Water Pollution Control Act generally apply to any project which may involve discharge of dredge or fill material to any water or wetland area. Specific applicability information should be obtained from the Corps of Engineers.)
3. Apart from the activities listed above, no letter of exemption shall be required for other uses or developments exempt pursuant to this Master Program unless the Administrator has cause to believe a substantial question exists as to qualification of the specific use or development for the exemption, an applicant requests a letter of exemption, or the Administrator determines there is a likelihood of adverse impacts to shoreline ecological functions.

6.1.6 NONCONFORMING USE AND DEVELOPMENT STANDARDS

1. "Nonconforming use or development" means a shoreline use or development which was lawfully constructed or established prior to the effective date of the Act or this Master Program,

or amendments thereto, but which does not conform to present regulations or standards of this Master Program. In such cases, the following standards shall apply:

- a. Structures that were legally established and are used for a conforming use, but which are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity.
 - b. Uses and developments that were legally established and are nonconforming with regard to the use regulations of the Master Program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded.
 - c. A use which is listed as a conditional use, but which existed prior to adoption of the Master Program or any relevant amendment and for which a conditional use permit has not been obtained, shall be considered a nonconforming use.
 - d. 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.
2. A nonconforming structure which is moved any distance must be brought into conformance with the Master Program and the Act;
 3. If a nonconforming structure is intentionally modified and the cost of the proposed development exceeds fifty (50) percent of the building valuation of the original structure, it shall be required to meet all applicable standards in the Master Program and Title 19.
 4. If a nonconforming structure is unintentionally damaged to an extent not exceeding seventy-five (75) percent of the building valuation of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, provided that application is made for the permits necessary to restore the structure within six months of the date the damage occurred, all permits are obtained, the reconstruction meets all applicable building codes and the restoration is completed within two years of permit issuance.
 5. A nonconforming use may be re-established as the same nonconformance, except that any nonconforming use that is discontinued for a period of six (6) continuous months shall not be re-established. Any nonconforming use of a building which is discontinued for a total of one (1) year (twelve (12) months) over a three (3) year period shall not be allowed to continue as the nonconforming use.
 6. An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established prior to the effective date of the Act or the Master Program, but which does not conform to the present lot size standards, may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the Master Program and the Act.

6.2 DEVELOPMENT EVALUATION PROCESS AND CRITERIA

There are two types of decisions required in the development evaluation process. Most are judgmental decisions which call for the Administrator to weigh the project against the policies of the Master Program and arrive at some conclusion regarding its compatibility with those policies. Since this type of decision contains a built-in element of flexibility, by its very nature, the Variance procedure is not applicable to these decisions.

The second type of decision is a factual determination wherein the project is weighed against the standards set forth in the Chapter 5, Use and Modifications Policies and Regulations. Where there are special circumstances arising out of site considerations, the Variance procedure would provide relief to the property owner as appropriate. The Variance procedure is applicable to this type of decision since there is little or no latitude available to the deciding authority in the application of Use Regulations: the use is either allowed or not allowed; a standard is either met or not met. In the case of a negative answer in such circumstances, the applicant may apply for a Variance and, upon meeting the requirements for such Variance as spelled out in WAC 173-27-170, may receive approval to depart from the established regulations of the plan.

A “no” ruling on any of the judgmental questions would be sufficient grounds for denial of the requested permit. A “no” ruling on a factual determination would lead to the Variance procedure; a “no” ruling from the Variance procedure would also be sufficient grounds for permit denial. Appeal from a permit denial would follow the steps outlined in the Shoreline Management Act (RCW 90.58).

Processing of all permits or exemptions under this Master Program shall follow the procedures established in WAC 173-27, and as outlined in this Title.

6.2.1 REVIEW AND CRITERIA FOR ALL DEVELOPMENT

No authorization to undertake use, modification or development in the City of Mountlake Terrace shoreline jurisdiction shall be granted unless upon review the use, modification or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the City of Mountlake Terrace Shoreline Master Program, Title 16.10 MTMC and Title 19 MTMC, as applicable.

6.2.2 SUBSTANTIAL DEVELOPMENT PERMITS

1. A substantial development permit shall be required for all proposed use and development of shorelines unless the proposal is specifically exempt per Section 6.1.4 of this Chapter.
2. In order for a substantial development permit to be approved, the Administrator must find that the proposal is consistent with the following criteria:
 - a. All regulations of the Master Program appropriate to the shoreline designation (see Chapter 3) and the type of use, modification or development proposed (see Chapters 4 and 5) shall be met, except those bulk and dimensional standards that have been modified by an approval of a shoreline variance.

- b. All policies of the Master Program appropriate to the shoreline designation and the type of use, modification or development proposed shall be considered and substantial compliance demonstrated.

6.2.3 CONDITIONAL USE PERMITS

The purpose of a conditional use permit is to provide greater flexibility in the administering of use regulations of this Master Program in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by the City or the Department of Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the Shoreline Management Act and this Master Program. With provisions to control undesirable effects, the scope of uses within each of the four Environments can be expanded to include a greater range of uses.

Uses classified as subject to the issuance of a conditional use permit can be permitted only by meeting such performance standards that make the use compatible with other permitted uses within that area.

1. Conditional use permits shall be granted only after the applicant can demonstrate all of the following:
 - a. That the proposed use is consistent with the policies of RCW 90.58.020 and this Master Program;
 - b. The use will cause no unreasonably adverse effects on the environment or other existing or potential uses which are allowed outright in the subject environment;
 - c. The use will not interfere with the normal public use of public shorelines;
 - d. Design of the site will be compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and the Master Program;
 - e. The proposed use will not be contrary to the general intent of the Master Program, and shall also comply with WAC 173-27-160.
 - f. That the public interest suffers no substantial detrimental effect.
2. Uses which are not specifically identified as an allowed use or uses which are specifically prohibited by this Master Program may not be authorized as conditional uses.
3. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.
4. All applications for conditional uses approved by the City of Mountlake Terrace shall be forwarded to the Department of Ecology, pursuant to WAC 173-27-200, for final approval or

disapproval. No approval shall be considered final until acted upon by the Department of Ecology.

6.2.4 VARIANCES

Variances deal with specific requirements of the Master Program, and their objective is to grant relief when there are practical difficulties or unnecessary hardship if the strict letter of the Master Program were carried out. The applicant must show that if he or she complies with the provisions of the Master Program he or she cannot make any reasonable use of his or her property. The fact that he or she might make a greater profit by using their property in a manner contrary to the intent and provisions of the Program is not sufficient reason for variance approval.

1. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in this Master Program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of this Master Program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. Variances from the use regulations of this Master Program are prohibited.
2. Variances will be granted in circumstances where the denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances exist and that the public interest shall suffer no substantial detrimental effect.
3. Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM) may be authorized provided the applicant can demonstrate all of the following:
 - a. That the strict application of the bulk, dimensional or performance standards set forth in the applicable Master Program precludes, or significantly interferes with lawful, reasonable use of the property;
 - b. The hardship which serves as the basis for granting the variance is specifically related to the property of the applicant and does not apply generally to other property in the vicinity in the same Environment;
 - c. That the hardship described in 1 of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of this Master Program, and not, for example, from deed restrictions or the applicant's own actions or those of a predecessor in title;
 - d. The variance, if granted, will be in harmony with the general purposes and intent of the Master Program, and shall also comply with WAC 173-27-170;

- e. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline Master Program and will not cause adverse impacts to the shoreline environment;
 - f. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
 - g. That the variance requested is the minimum necessary to afford relief; and
 - h. That the public interest will suffer no substantial detrimental effect; if more harm will be done to the area by granting the variance than would be done to the applicant by denying it, the variance shall be denied.
4. Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM) may be authorized provided the applicant can demonstrate all of the following:
- a. That the strict application of the bulk, dimensional or performance standards set forth in the applicable Master Program precludes all reasonable use of the property;
 - b. That the proposal is consistent with the variance permit criteria established above; and
 - c. That the public rights of navigation and use of the shorelines will not be adversely affected.
5. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.
6. All applications for variances approved by the City of Mountlake Terrace shall be forwarded to the Department of Ecology, pursuant to WAC 173-27-200, for final approval or disapproval. No approval shall be considered final until acted upon by the Department of Ecology.

6.2.5 APPLICATION FOR SUBSTANTIAL DEVELOPMENT PERMIT

Applications for a permit required by RCW 90.58.140(2) shall be made in substantially the form provided for in Chapter 173-27 WAC. Such forms shall be supplied by and submitted to the Community and Economic Development Department.

6.2.6 PERMITS FOR CONDITIONAL USES AND VARIANCES

Pursuant to RCW 90.58.100(5) the City shall have the authority to issue or deny and submit to the Department of Ecology for approval or disapproval, permits for variances and conditional use as regulated by this chapter and the Master Program.

6.2.7 MINIMUM APPLICATION REQUIREMENTS

A complete application for substantial development, conditional use, or variance permit shall contain as a minimum, the following information:

1. The name, address and phone number of the applicant. The applicant should be the owner of the property or the primary proponent of the project and not the
2. The name, address and phone number of the applicant's representative if other than the applicant.
3. The name, address and phone number of the property owner, if other than the applicant.
4. Location of the property. This shall, at a minimum, include the property address and identification of the section, township and range to the nearest quarter, quarter section or latitude and longitude to the nearest minute. All applications for projects located in open water areas away from land shall provide a longitude and latitude location.
5. Identification of the name of the shoreline (water body) that the site of the proposal is associated with. This should be the water body from which jurisdiction of the act over the project is derived.
6. A general description of the proposed project that includes the proposed use or uses and the activities necessary to accomplish the project.
7. A general description of the property as it now exists including its physical characteristics and improvements and structures.
8. A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical characteristics.
9. A site development plan consisting of maps and elevation drawings, drawn to an appropriate scale to depict clearly all required information, photographs and text which shall include:
 - a. The boundary of the parcel(s) of land upon which the development is proposed.
 - b. The ordinary high water mark of all water bodies located adjacent to or within the boundary of the project. This may be an approximate location provided, that for any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark the mark shall be located precisely and the biological and hydrological basis for the location as indicated on the

plans shall be included in the development plan. Where the ordinary high water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline. The precise location of the ordinary high water mark shall be field verified by the City of Mountlake Terrace and/or the Department of Ecology.

- c. Existing and proposed land contours. The contours shall be at intervals sufficient to accurately determine the existing character of the property and the extent of proposed change to the land that is necessary for the development. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.
- d. Existing critical areas.
- e. A general indication of the character of vegetation found on the site.
- f. The dimensions and locations of all existing and proposed structures and improvements including but not limited to; buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.
- g. Where applicable, a landscaping plan for the project.
- h. Where applicable, plans for development of areas on or off the site as mitigation for impacts associated with the proposed project shall be included and contain information consistent with the requirements of this section.
- i. Quantity, source and composition of any fill material that is placed on the site whether temporary or permanent.
- j. Quantity, composition and destination of any excavated or dredged material.
- k. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.
- l. Where applicable, a depiction of the impacts to views from existing residential uses and public areas.
- m. On all variance applications the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.

6.2.8 NOTICE

Upon receipt of a proper application for a shoreline management substantial development permit, the City shall publish notices thereof at least once a week on the same day of the week for two (2) consecutive weeks in a newspaper of general circulation in the area of the City. The land owners and occupants of land within 300 feet of the boundary of the property upon which the substantial development is proposed shall receive a copy of the notice. In addition, at least three (3) additional notices shall be posted, one of which shall be in the Civic Center building business office, and the other two in conspicuous locations adjacent to the area upon which the action is proposed. All notices shall indicate when the public comment period expires.

Within 30 days of the final publication, posting or mailing of the notice, whichever comes last, any interested person may submit his written views upon the application to the Community and Economic Development Department or notify the City Community and Economic Development Department of their desire to receive a copy of the action taken upon the application. All persons who so submit their views, and all others who so notify the appropriate local government, shall be entitled to receive a copy of the action taken upon the application.

All notices of applications for substantial development shall be in substantially the form required by Chapter 173-27 WAC and be available from the Community and Economic Development Department of the City.

6.2.9 SPECIAL PROCEDURES AND NOTICES FOR LIMITED UTILITY EXTENSIONS AND BULKHEADS

1. An application for a substantial development permit for a limited utility extension or for the construction of a bulkhead or other measures to protect a single-family residence and its appurtenant structures from shoreline erosion shall be subject to all of the requirements of this Chapter except that the following time periods and procedures shall be used:
 - a. The public comment period shall be twenty (20) days. The notice provided shall state the manner in which the public may obtain a copy of the local government decision on the application no later than two (2) days following its issuance;
 - b. The local government shall issue its decision to grant or deny the permit within twenty one (21) days of the last day of the comment period specified in subsection 1.a of this section; and
 - c. If there is an appeal of the decision to grant or deny the permit to the local government legislative authority, the appeal shall be finally determined by the legislative authority within thirty days.
2. For purposes of this section, a limited utility extension means the extension of a utility service that:

- a. Is categorically exempt under Chapter 43.21C RCW for one or more of the following:
Natural gas, electricity, telephone, water, or sewer;
- b. Will serve an existing use in compliance with this Chapter; and
- c. Will not extend more than two thousand five hundred (2,500) linear feet within the shorelines of the state.

6.2.10 ADMINISTRATOR REVIEW

- 1. Pursuant to MTMC 18.05.310 Authorities, the Administrator shall have review and decision making authority in regard to Shoreline Management Act permits.
- 2. The Administrator shall review an application for a permit based on the following:
 - a. The application.
 - b. The environmental assessment.
 - c. Written comments from interested persons.
 - d. Information and comments from affected City Departments.
 - e. Conformance with applicable policies and regulations of the Master Program.
- 3. The Administrator may require that an applicant furnish information in addition to the information contained in the application.
- 4. The Administrator shall issue a decision to approve, approve with conditions or deny the application within the timelines established by this title or MTMC 18.05, whichever is applicable.

6.2.11 GRANTING OR DENIAL OF PERMITS – ATTACHING CONDITIONS TO PERMITS

- 1. In granting or extending a permit, the City may attach thereto such conditions, modifications and restrictions regarding the location, character and other features of the proposed development as it finds necessary to make the permit compatible with criteria set forth in this Master Program and the Act. Such conditions may include the requirement to post a performance bond assuring compliance with other permit requirements, terms and conditions.
- 2. Issuance of a substantial development permit does not obviate requirements for other federal, state, and city permits, procedures and regulations.

6.2.12 NOTICE OF DECISION AND RECONSIDERATION

- 1. Notice of Decision
 - a. Within five days of a decision on a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance permit, the Administrator shall deliver a copy of the final decision to the following:
 - i. The applicant/proponent;

- ii. Any person(s) who have filed a written request for a copy of the decision;
 - iii. All persons who submitted substantive written comments on the application; and
 - iv. The Department of Ecology; and
 - v. The Washington State Attorney General.
 - b. The Notice of Decision shall include findings and conclusions, and a statement of the SEPA threshold determination and the procedures for an appeal (if any) of the permit decision or recommendation.
 - c. Decisions filed with the Department of Ecology shall contain the following information:
 - i. A copy of the complete application;
 - ii. Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation(s), applicable Master Program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s).
 - iii. The final decision of reached by the City of Mountlake Terrace on the proposal;
 - iv. A completed permit data sheet in the form provided in WAC 173-27-130 or hereafter amended.
 - v. Where applicable, the City of Mountlake Terrace shall also file the applicable documents required by SEPA, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under Chapter 43.21C RCW.
2. Reconsideration.
- a. The applicant/proponent or any party of record may request reconsideration of any final action by the Administrator within (10) days of the decision.
 - b. Grounds for reconsideration must be based upon the content of the written decision.
 - c. The Administrator is not required to provide a written response or modify his/her original decision. He/she may initiate such action as he/she deems appropriate.
 - d. The procedure of reconsideration shall not pre-empt or extend the appeal period for a permit or affect the date of filing with the Department of Ecology, unless the applicant/proponent requests the abeyance of said permit appeal period in writing within ten (10) days of a final action.

6.2.13 OPEN RECORD APPEAL

1. Pursuant to the procedures and timelines established by MTMC 18.05, an open record appeal

hearing before the Hearing Examiner shall be held for appeals filed within fourteen (14) days of the date that the Administrator's decision is issued.

2. Appeals of a final decision of the City of Mountlake Terrace or the Department of Ecology shall be filed within twenty-one (21) days of the date of filing of the final permit and shall be heard by the Shorelines Hearings Board pursuant to the procedures and timelines of RCW 90.58.180.
3. Appeals of a revision to a Substantial Development Permit shall be consistent with Section 6.2.17.10 of this Chapter.

6.2.14 REVIEW BY SHORELINES HEARING BOARD

1. Any party of record aggrieved by the granting, denying or rescission of a Shoreline Substantial Development permit, Conditional use permit, or Variance permit may seek review from the Shoreline Hearings Board by filing an original and one copy of request for the same with the Shoreline Hearings Board within twenty-one (21) days of the date of filing as defined in Section 6.2.16 of this Master Program. Said request shall be in the form required by the rules for practice and procedure before the Shoreline Hearings Board.
2. Concurrently, with the filing of any request for review with the Shoreline Hearings Board, the person seeking review shall file a copy of their request with the Washington State Department of Ecology, the Attorney General, and the City.

6.2.15 RESCISSION OF PERMIT

1. Any permit granted pursuant to this Chapter may be rescinded or modified upon a finding by the Administrator that the permittee has not complied with the conditions of his permit.
2. The Administrator may initiate rescission and modification proceedings by serving written notice of noncompliance on the permittee.
3. Before a permit can be rescinded or modified, a public hearing shall be held by the Hearing Examiner no sooner than 10 days following the service of notice upon the permittee. The Community and Economic Development Department shall have the power to prescribe rules and regulations for the conduct of such hearings.

6.2.16 INITIATION OF DEVELOPMENT

1. Development pursuant to a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance shall not begin and shall not be authorized until twenty-one (21) days after the "date of filing" or until all review proceedings before the Shoreline Hearings Board have terminated.
2. The date of filing of a substantial development permit, shoreline conditional use permit, or shoreline variance permit is the date that the Department of Ecology receives the local permit decision (WAC-173-27-130).

6.2.17 REVISIONS IN SUBSTANTIAL DEVELOPMENT PERMITS

1. Where the applicant seeks to revise a substantial development permit previously granted, it shall submit detailed plans and text describing the proposed changes and request in writing of the City, of the Department and Attorney General and latest recorded real property owners within 400 feet of the boundary of the property on which the development is to be undertaken, whether they believe a new substantial development permit should be required. If, within 30 days of notification the Department, the Attorney General or any surrounding property owners make written request that a new substantial development permit be obtained, then application for a new substantial development permit shall be made and processed pursuant to Chapter 173-27 WAC.
2. If no such request is made, the City may revise the existing substantial development permit and forward it to the Department and Attorney General for review pursuant to RCW 90.58.140(5) and WAC 173-27.
3. Where no new substantial development permit is requested pursuant to this section the Department and the Attorney General may release the revised permit prior to the expiration of the 21-day review period established by RCW 90.58.180(2), where the permittee has conclusively shown that such action will avoid undue hardship on the permittee and where the public interest will not suffer thereby.
4. A revision is required when an applicant proposes substantive changes to the design, terms, or conditions of an approved 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, or the Act. Changes, which the Administrator determines are not substantive, do not require approval of a revision.
5. “Within the scope and intent of the original permit” means all of the following:
 - a. No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet (500) or ten percent (10%) from the provisions of the original permit, whichever is less;
 - b. Ground area coverage and height may be increased a maximum of ten percent (10%) from the provisions of the original permit;
 - c. The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable Master Program except as authorized under a variance granted as the original permit or a part thereof;
 - d. Additional or revised landscaping is consistent with any conditions attached to the original permit and with the applicable Master Program;
 - e. The use authorized pursuant to the original permit is not changed; and
 - f. No adverse environmental impact will be caused by the project revision.

6. If the sum of the proposed revision and any previously approved revisions do not meet the criteria of C above, an application for a new Shoreline Substantial Permit must be submitted.
7. If the revision involves a Shoreline Conditional Use Permit or Shoreline Variance, which was conditioned by the Department of Ecology, the revision also must be reviewed and approved by the Department of Ecology. Under the requirements of WAC 173-27-110(6), the Department of Ecology shall render and transmit to the City of Mountlake Terrace and the applicant its final decision with fifteen (15) days of the date of the Department's receipt of the submittal from the City of Mountlake Terrace. The City of Mountlake Terrace shall notify parties of record of the Department's final decision.
8. Revision approvals, including the revised site plans, a detailed description of the authorized changes, and the final ruling on consistency with this section shall be filed with the Department of Ecology. In addition, the City of Mountlake Terrace shall notify parties of record of the revision.
9. Revisions to shoreline permits may be authorized after the original authorization has expired. Revisions made after the expiration of the original permit shall be limited to changes that are consistent with this Master Program and that would not require a permit under this Master Program. If the proposed change is a substantial development as defined by this Master Program, then a new permit is required. The provisions of this paragraph shall not be used to extend the time requirements or to authorize substantial development beyond the time limits or scope of the original permit.
10. Appeals on revisions shall be in accordance with RCW 90.58.180 and shall be filed within twenty-one days from the date of receipt of the City of Mountlake Terrace's action by the Department of Ecology or, when appropriate under subsection E of this section, the date the Department of Ecology's final decision is transmitted to local government and the applicant. Appeals shall be based only upon contentions of noncompliance with the provisions of subsection C of this section. Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit is at the applicant's own risk until the expiration of the appeals deadline. If an appeal is successful in proving that a revision is not within the scope and intent of the original permit, the decision shall have no bearing on the original permit.

6.2.18 SCOPE OF PERMIT

The following time requirements shall apply to all substantial development permits:

1. Construction or substantial progress toward construction of a project for which a permit has been granted pursuant to this Chapter must be undertaken within two years after the approval of the permit by the City or the permit shall terminate. If such progress has not been made, a new permit will be necessary.
2. No permit authorizing construction shall extend for a term of more than five years. If a project for which a permit has been granted has not been completed within five years after the

approval of the permit by the Administrator at the expiration of the five-year period, review the permit and upon a showing of good cause, extend the permit for one year, otherwise, the permit shall terminate.

3. The effective date of a substantial development permit shall be the date of filing as provided for in Section 6.2.16. The permit time periods in subsections 1 and 2 of this section do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.
4. Notwithstanding the time limits established above, upon finding of good cause based on the requirements and circumstances of the proposed project and consistent with the policies and provisions of this Master Program and the Shoreline Management Act, the Administrator may set different time limits for a particular substantial development permit as part of the action to approve the permit. The Administrator may also set different time limits on specific conditional use permits or variance permits with the approval of the Department of Ecology. The different time limits may be longer or shorter than those established above but shall be appropriate to the shoreline development or use under review. "Good cause based on the requirements and circumstances of the proposed project" shall mean that the time limits established for the project are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted, and/or are necessary for the protection of shoreline resources.
5. The Administrator shall notify the Department of Ecology in writing of any change to the effective date of a permit with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized shall require a new permit application.

6.3 AUTHORITY, COMPLIANCE, AND ENFORCEMENT

6.3.1 ADMINISTRATIVE AUTHORITY AND RESPONSIBILITY

1. Shoreline Administrator. The Shoreline Administrator, or Administrator, shall be the Community and Economic Development Director or his/her designee and is vested with the following authority and responsibility to:
 - a. Have overall administrative responsibility for this Master Program;
 - b. Grant or deny written Letters of Exemption from Shoreline Substantial Development Permit requirements of this Master Program;
 - c. To grant or deny Shoreline Substantial Development Permits;
 - d. To grant or deny Shoreline Conditional Use Permits under this Master Program;
 - e. To grant or deny Variance Permits from this Master Program;

- f. Review and evaluate the records of project actions (permits and exemptions) in shoreline areas and report on the cumulative effects of authorized development of shoreline conditions at a minimum every seven years when this Master Program is updated. The Administrator shall coordinate such review with the Washington State Department of Ecology, Washington State Department of Fish and Wildlife, and other interested parties.
 - g. Advise interested citizens and project proponents of the goals, policies, regulations and procedures of this Master Program; and
 - h. Make administrative decisions and interpretations of the policies and regulations of this Master Programs and the Shoreline Management Act.
2. Hearing Examiner. The Hearing Examiner is vested with the authority to decide on appeals of administrative decisions issued by the Administrator of this Master Program in accordance with open record appeal procedures set forth in Chapter 18.05 MTMC.

6.3.2 COMPLIANCE

Failure to comply with the conditions of approval associated with a shoreline permit shall cause the permit to immediately become void and any continuation of the use activity shall be considered a violation of this Master Program and a public nuisance subject to enforcement proceedings.

6.3.3 ENFORCEMENT

Procedures for investigation and notice of violation, compliance, and the imposition of penalties for the violation of any requirements of this Master Program shall be consistent with provisions in Chapter 16.10 MTMC, and Part II 173-27 WAC, RCW 90.58.210, and RCW 90.58.220.

6.3.4 CRIMINAL PENALTIES – CIVIL LIABILITY

- 1. Any person found to have willfully engaged in activities on the shorelines of the City in violation of this Chapter or the Shoreline Management Act or in violation of the Master Program, rules or regulations adopted pursuant thereto shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than \$25.00 nor more than \$1,000 or by imprisonment in the county jail for not more than 90 days, or both such fine and imprisonment; provided, that the fine for the third and all subsequent violations in any five-year period shall be not less than \$500.00 nor more than \$10,000.
- 2. The City Attorney shall bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the City in conflict with the provisions and programs of this Chapter or the Shoreline Management Act, and to otherwise enforce the provisions of this Chapter and the Shoreline Management Act.
- 3. Any person subject to the regulatory program of this Chapter who violates any provision of this Chapter or the provisions of a permit issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected

area to its condition prior to such violation. The City Attorney shall bring suit for damages under this subsection on behalf of the City. Private persons shall have the right to bring suit for damages under this subsection on their own behalf and on behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by a violation, the court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including money damages, the court in its discretion may award attorney's fees and costs of the suit to the private person bringing suit, where he prevails.

6.4 ADMINISTRATION

6.4.1 RULES

The City of Mountlake Terrace Administrator is authorized to adopt such rules as are necessary and appropriate to carry out the provisions of this Master Program.

6.4.2 AMENDMENTS TO THE MASTER PROGRAM

1. Any of the provisions of this Master Program may be amended as provided for in RCW 90.58.120 and 200 and Chapter 173-26 WAC. Any amendments shall also be subject to the procedures in Chapter 18.10 MTMC.
2. Amendments or revisions to the Master Program, as provided by law, do not become effective until reviewed and approved by the Department of Ecology pursuant to RCW 90.58.190 and Chapter 173-26 WAC.

6.4.3 REAL PROPERTY ASSESSMENTS

The restrictions imposed by this Chapter shall be considered by the County Assessor in establishing the fair market value of property.

6.4.4 SEVERABILITY

If any provisions of this Master Program, or its application to any person or legal entity or parcel of land or circumstances is held invalid, the remainder of the Master Program, or the application of the provisions to other persons or legal entities or parcels of land or circumstances, shall not be affected.

6.4.5 CONFLICT OF PROVISIONS

Should a conflict occur between the provisions of this Shoreline Master Program or between this Master Program and the laws, regulations, codes or rules promulgated by any other authority having jurisdiction within the City, the most restrictive requirement shall be applied, except when constrained by federal or state law, or where specifically provided otherwise in this Master Program.

CHAPTER 7

DEFINITIONS

7.1 GENERAL

For the purpose of this Master Program, certain terms and their derivations shall be construed as specified in this section. Some terms used in this Master Program may have a different definition and application under other City of Mountlake Terrace regulations. Words in the singular include the plural, the plural the singular. The words “shall” and “will” are mandatory; the word “may” is permissive. Additional definitions applicable to this master Program and adopted by reference herein, are found in RCW 90.58 and Chapters 173-26 and 173-27 WAC. The following definitions apply throughout this Program, unless otherwise indicated.

If a definition is not included here, the city shall rely on definitions found in applicable citations in the Revised Code of Washington (RCW), Washington Administrative Code (WAC), the Mountlake Terrace Municipal Code (MTMC), and finally a standard dictionary, in that order. In case of conflict with the MTMC, the definition within the RCW, WAC, and/or this Master Program shall prevail.

7.2 DEFINITIONS

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

"Administrator" or "Shoreline Administrator" means the person, per MTMC 18.05.310, responsible for administering and interpreting the City of Mountlake Terrace Shoreline Master Program and Chapter 16.10 MTMC.

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

"Anadromous fish" means fish, such as wild salmon, that migrate up rivers from the sea to breed in fresh water.

"Applicant" means the person, party, firm, corporation, or other entity that proposes or has performed any activity that affects a shoreline or critical area.

“Aquaculture” is the culture or farming of food fish, shellfish, or other aquatic plants and animals.

“Aquifer” means, generally, any water-bearing soil or rock unit. Specifically, a body of soil or rock that contains sufficient saturated permeable material to conduct ground water and yield economically significant quantities of ground water to wells or springs.

“Aquifer recharge area” means an area where, due to permeable soils, water infiltrates from the surface to ground water aquifers. Recharge areas are classified as “low,” “medium” or “high” based on the soil and ground water conditions and risks depending on the combined effects of hydrogeological susceptibility to contamination and contaminant loading potential, as follows:

- a. Low significance/low susceptibility recharge areas – uplands and sloping areas underlain by soils consisting largely of silt, clay or glacial till.
- b. Medium significance/medium susceptibility – upland areas underlain by soils consisting largely of sand and gravel, and valley floors underlain by soils consisting largely of sand, silt and clay in which there is a significant upward component to ground water flow within the valley alluvium.
- c. High significance/high susceptibility – valley floors, uplands and sloping areas underlain by soils consisting largely of sand and gravel in which there is a predominantly downward or lateral component to ground water flow, and which serve as a source of drinking water.

“Aquifer susceptibility” means a contributory factor of potential contamination of an aquifer that results from soil, rock and ground water characteristics within a recharge area.

“Aquifer vulnerability” means the combined effect of aquifer susceptibility and contaminant loading potential; it includes hydrogeologic, land use and other factors that affect the potential for ground water contamination.

“Artificially created wetland” means wetlands created from non-wetland sites through purposeful, legally authorized human action, such as irrigation and drainage ditches, grass-lined swales, canals, retention or detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities.

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

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

“Base flood” or “100-year flood” means a flood having a one percent chance of being equaled or exceeded in any given year, also referred to as the “100-year flood.” The base flood is determined for existing conditions, and is shown on Flood Insurance Rate Maps (FIRM), current version; unless a more complete basin plan including projected flows under future developed conditions has been completed and adopted by the City of Mountlake Terrace, in which case these future flow projections shall be used. In areas where the flood insurance study for the City includes detailed base flood calculations, those calculations may be used.

“Boat launch or ramp” means graded slopes, slabs, pads, planks, or rails used for launching boats by means of a trailer, hand, or mechanical device.

“Boating facilities” means public or private dry storage and wet-moorage facilities and structures; boat launch ramps, covered moorage, boat houses, mooring buoys, and marine travel lifts. For the purposes of this Master Program, "boating facilities" excludes docks serving four or fewer single-family residences.

“Boathouse” means a structure designed for storage of vessels located over water. Boathouses should not be confused with "houseboats.”

“Buffer” or “buffer area, critical area” means a naturally vegetated and undisturbed, enhanced or revegetated zone surrounding a critical area and which protects the critical area from adverse impacts to its integrity and value and is an integral part of the resource’s ecosystem.

“Building setback” means an area that is the outermost portion of a critical area buffer and that may provide a transition between the primary portion of the critical area buffer and the potential location of a building.

“Bulkhead” means those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting existing primary structures and/or appurtenant structures from loss or damage by erosion.

"Channel migration zone (CMZ)" means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings.

“City” means the City of Mountlake Terrace.

“Clearing” means the removal of timber, brush, grass, ground cover or other vegetative matter from a site which exposes the earth’s surface of the site, or any actions which disturb the existing ground surface.

“Commercial facilities” means a category of land use that includes commercial services, offices, retail, eating/drinking establishments, studios, and similar facilities, excluding unless otherwise specified uses

within the following categories: home occupations, medical/health care, recreation/entertainment/cultural facilities, lodging, schools/day care centers, membership organizations, public service facilities, and industry, except as the definition may be amended by Title 19 MTMC.

“Comprehensive Plan” means the City of Mountlake Terrace Comprehensive Plan as now adopted or hereafter amended.

"Conditional use" means a use, development, or substantial development which is classified as a conditional use or is not classified within this Master Program;

“Contaminant loading potential” means the availability within an aquifer recharge area of any potential physical, chemical, biological, or radiological substance that enters the hydrological cycle and may cause a deleterious effect on ground water resources.

“Creation of critical areas” means the purposeful and legally authorized construction or forming of a wetland or stream from an upland (non-wetland or dry) site through artificial means.

“Critical aquifer recharge areas” means areas where an aquifer that is a source of drinking water is both highly susceptible and vulnerable to contamination. High significance/high susceptibility recharge areas – generally uplands and sloping areas underlain predominantly by sand and gravel, and valley floors underlain by relatively coarse alluvium – are considered to be critical recharge areas unless site-specific information demonstrates little or no contaminant loading potential.

“Critical area” or “environmentally critical area” means areas that possess important natural functions and embody a variety of important natural and community values. Such areas include wetlands, streams, fish and wildlife habitat, geologic hazard areas, aquifer recharge areas, flood hazard areas, and areas with significant trees and vegetation. If not conducted properly, development or alteration of such areas may cause significant impacts to the valuable functions and values of these areas and/or may generate risks to the public health and general welfare, and/or to public and private property.

“Critical area report” means a report prepared by a “qualified consultant” (as that term is defined in this section) to determine the presence, type, class, size, function and/or value of an area subject to these regulations. Also see “Stream reconnaissance report,” “Wetland impact assessment report,” and “Wildlife report.”

“Critical erosion hazard areas” means lands or areas underlain by soils identified by the U.S. Department of Agriculture Soil Conservation Service (SCS) (now known as the Natural Resource Conservation Service) as having “severe” or “very severe” erosion hazards. This includes, but is not limited to, the following group of soils when they occur on slopes of 15 percent or greater: Alderwood-Kitsap (AkF), Alderwood gravelly sandy loam (AgD), Kitsap silt loam (KpD), Everett (EvD) and Indianola (InD). Additional soil groups may be identified through site-specific analysis.

“Critical geologic hazard areas” means lands or areas subject to high or severe risks of geologic hazard, including critical erosion hazard areas, critical landslide hazard areas, and critical seismic hazard areas.

“Critical habitat,” “critical wildlife habitat,” or “critical fish and wildlife conservation area” means habitat areas associated with threatened, endangered, sensitive, monitor or priority species of plants or wildlife and which, if altered, could reduce the likelihood that the species will maintain and reproduce over the long term. Such areas are identified herein with reference to lists, categories and definitions of species promulgated by the Washington Department of Fish and Wildlife (Nongame Data System Special Animal Species) as identified in WAC 232-12-011 or 232-12-014; in the Priority Habitat and Species (PHS) program of the Department of Fish and Wildlife; or by rules and regulations adopted currently or hereafter by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service.

“Critical landslide hazard areas” means lands or areas where there is a high (Class III) or very high (Class IV) risk of landslide due to a combination of slope, soil permeability and water.

“Critical seismic hazard areas” means lands or areas where there is a high risk of seismic events and damage.

“Department” means the City of Mountlake Terrace Community and Economic Development Department, or successor agency, unless the context indicates a different City department.

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

“Director” means the Director of the City of Mountlake Terrace Community and Economic Development Department, or his/her designee.

“Dock” means a structure designed to protrude overwater or float upon the water, and which is attached to the shoreline and is used for moorage or other water-related activity such as swimming or diving.

“Dredging” means the removal of earth, sand, sludge or other materials from the bottom of a stream, river, lake, bay or other water body. Provided that the creation of temporary depressions or contour alterations of tide-lands or bedlands through the use of aquacultural harvesting equipment approved by the Department of Fisheries shall not be construed to be dredging as defined in this Master Program.

“Earth/earth material” means naturally occurring rock, soil, stone, sediment, or a combination thereof.

"Ecological functions" or "shoreline functions" means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem. See WAC 173-26-200(2)(c).

"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" means an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with the master program. Emergency construction is construed narrowly as that which is necessary to protect property from the elements (RCW 90.58.030(3eiii) and WAC 173-27-040(2d)).

"Enhancement" means the improvement of an existing viable wetland, stream or habitat area or the buffers established for such areas, through such measures as increasing plant diversity, increasing wildlife habitat, installing environmentally compatible erosion controls, increasing structural diversity or removing plant or animal species that are not indigenous to the area. Enhancement also includes actions performed to improve the quality of an existing degraded wetland, stream or habitat area. See also "Restoration."

"Erosion" means a process whereby wind, rain, water and other natural agents mobilize and transport soil particles.

"Erosion hazard areas" means lands or areas that, based on a combination of slope inclination and the characteristics of the underlying soils, are susceptible to varying degrees of risk of erosion. Erosion hazard areas are classified as "low" (areas sloping less than 15 percent) or "high" (areas sloping 15 percent or more) on the following Soil Conservation Service (SCS), now known as the Natural Resource Conservation Service (NRCS), soil types: Alderwood-Kitsap (AkF), Alderwood gravelly sandy loam (AgD), Kitsap silt loam (KpD), Everett (EvD) and Indianola (InD). Additional soil groups may be identified through site-specific analysis.

"Excavate or excavation" means the removal or displacement of earth material by human or mechanical means.

"Exempt" developments are those set forth in WAC 173-27-040 and RCW 90.58.030 (3)(e), 90.58.140(9), 90.58.147, 90.58.355, and 90.58.515, and in Chapter 6 of this Master Program when consistent with these citations, which are not required to obtain a substantial development permit but which must otherwise comply with applicable provisions of the act and the local master program;

"Exotic" means any species of plant or animal that is foreign and not indigenous to the Mountlake Terrace area.

"Fair market value" of a development is the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

"Feasible" means, for the purpose of this Master Program, that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

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

In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant.

In determining an action's infeasibility, the reviewing agency may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

"Fill" (verb) 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.

"Fill/fill material" (noun) means a deposit of earth material placed by human or mechanical means.

"Filling" means the act of transporting or placing (by any manner or mechanism) fill material from, to, or on any surface water body or wetland, soil surface, sediment surface, or other fill material.

"Float" or "recreational float" means a floating structure that is moored, anchored, or otherwise secured in the water offshore and that may be associated with a fixed-pile pier, or may be a standalone structure, such as platforms used for swimming and diving.

"Floating home" means a structure designed and operated substantially as a permanently based over water residence. Floating homes are not vessels and lack adequate self-propulsion and steering equipment to operate as a vessel. They are typically served by permanent utilities and semi-permanent anchorage/moorage facilities.

“Flood hazard areas” means those areas subject to inundation by the base flood. A flood hazard area consists of the following components, as determined by the City:

- a. Floodplain. The total area subject to inundation by the base flood.
- b. Flood Fringe. That portion of the floodplain outside of the floodway which is generally covered by flood waters during the base flood; it is generally associated with shallow, slower moving water rather than rapidly flowing water.
- c. Floodway. The channel of the stream or river and that portion of the adjoining floodplain which is necessary to contain and discharge the base flood flow without increasing the base flood elevation more than one foot. It is generally associated with rapidly flowing water.

“Flood Insurance Rate Map (FIRM)” means the official map prepared as part of (but published separately from) the Flood Insurance Rate Study on which the Federal Emergency Management Agency (FEMA) has delineated both the areas of special flood hazards and the applicable risk premium zones.

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

"Floodway" means the area that has been established in FEMA FIRMs or floodway maps.

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, as defined and regulated by the Forest Practices Act, RCW 76.09.

“Frequently flooded areas” means observed areas of localized flooding.

“Geologic hazard areas” means lands or areas characterized by geologic, hydrologic and topographic conditions that render them susceptible to varying degrees of potential risk of landslides, erosion, or seismic or volcanic activity; and areas characterized by geologic and hydrologic conditions that make them vulnerable to contamination of ground water supplies through infiltration of contaminants to aquifers.

"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 any excavating, filling, clearing, leveling, or contouring of the ground surface by human or mechanical means.

“Habitat management” means management of land and its associated resources/features to maintain species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. This does not imply maintaining all habitat or individuals of all species in all cases.

“Hearings board” means the Shorelines Hearings Board established by the Act.

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

“High impact land use” means land uses which are likely to have significant adverse impacts to critical areas because of the intensity of the use, levels of human activity, use of machinery or chemicals, site design or arrangement of buildings and structures. High impact land uses include, but are not limited to, active recreation, residential, institutional, commercial, and industrial land uses.

“Houseboat” means a vessel, principally used as an over water residence. Houseboats are licensed and designed for use as a mobile structure with detachable utilities or facilities, anchoring and the presence of adequate self-propulsion and steering equipment to operate as a vessel. Principal use as an overwater residence means occupancy in a single location, for a period exceeding two months in any one calendar year. This definition includes liveaboard vessels.

“Hydrologically isolated” means wetlands which: (1) have no surface water connection to a lake, river, or stream during any part of the year; (2) are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream; and (3) have no contiguous hydric soil between the wetland and any lake, river, or stream. May also be a pond excavated from uplands with no surface water connection to a stream, lake, or other wetland.

“In-kind wetland mitigation” means replacement of wetlands with substitute wetlands whose characteristics closely approximate those destroyed or degraded by a regulated activity.

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

"Intentionally created streams" means streams created through purposeful human action, such as irrigation and drainage ditches, grass-lined swales, and canals. This definition does not include stream modifications performed pursuant to City authorization, such as changes or redirection of stream channels.

"Industrial" means those fields of economic industry that include natural resource extraction, construction, manufacturing, processing, trucking, freight distribution, communication, production or distribution of power, sanitary services, mini-warehouses, warehouse storage, large-scale cleaning facilities, large-scale vehicle service stations, research and development laboratories, machine shops, wholesale sales/trade and distribution, solid waste facilities, and operations that may involve noise, vibration, or odor not appropriate to commercial or residential areas.

"Landfill" means the creation of or addition to, a dry upland area (landward of the OHWM) by the addition of rock, soil, gravels and earth or other material. "Landfill" does not include solid or hazardous waste.

"Landslide" means episodic downslope movement of a mass of soil or rock.

"Landslide hazard areas" means areas that, due to a combination of slope inclination, relative soil permeability, and hydrologic conditions are susceptible to varying degrees of risk of landsliding. Landslide hazard areas are classified as Classes I through IV based on the degree of risk as follows:

- a. Class I/Low Hazard. Areas with slopes of less than 15 percent.
- b. Class II/Moderate Hazard. Areas with slopes of between 15 percent and 40 percent and that are underlain by soils that consist largely of sand, gravel or glacial till.
- c. Class III/High Hazard. Areas with slopes between 15 percent and 40 percent that are underlain by soils consisting largely of silt and clay.
- d. Class IV/Very High Hazard. Areas with slopes steeper than 15 percent with mappable zones of emergent water (e.g., springs or ground water seepage), areas of known (mappable) landslide deposits regardless of slope, and all areas sloping more steeply than 40 percent.

The slopes referenced above include only those where the surface drops 10 feet or more vertically within a horizontal distance of 25 feet.

“Low impact land use” means land uses which are not likely to have significant adverse impacts to critical areas because of the intensity of the use, levels of human activity, use of machinery or chemicals, site design or arrangement of buildings and structures. Depending on the specific context, examples of low impact land uses may include utility facilities and passive recreation.

“Master Program” means the comprehensive shoreline use plan for the City of Mountlake Terrace and the use regulations together with maps, diagrams, charts or other descriptive material and text, a statement of desired goals and standards developed in accordance with the policies enunciated in Section 2 of the Shoreline Management Act of 1971.

“Mining” means the removal of sand, gravel, soil, minerals, and other earth materials for commercial and other uses.

“Mitigation” means measures to mitigate unavoidable environmental impacts not otherwise avoided or mitigated by compliance with the Master Program and other applicable regulations to assure no net loss of shoreline ecological functions, in accordance with WAC 173-26-201(2)(e).

“Mitigation sequencing” means considering or performing mitigation actions, as defined in the definition of “mitigation,” in a preferred sequence as follows, in accordance with WAC 173-26-201(2)(e):

- a. Avoiding the impact altogether by not taking a certain action or parts of an action;
- b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
- c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- d. Reducing or eliminating the impact over time by preservation and maintenance operations;
- e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
- f. Monitoring the impact and the compensation projects and taking appropriate corrective measures.

“Moorage” means any device or structure used to secure a vessel for temporary anchorage, but which is not attached to the vessel (such as a pier or buoy).

“Moorage piles” means structural members that are driven into the lake bed to serve as a stationary moorage point. They are typically used for moorage of small boats in the absence of, or instead of, a dock or pier. In some cases, moorage piles may be associated with a dock or pier.

“Mooring buoy” means a floating object anchored to the bottom of a water body that provides tie up capabilities for vessels.

“Native vegetation” means vegetation existing on a site or plant species which are or were indigenous to the area in question.

"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 filling;

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

“Off-site mitigation” means performance of mitigation actions, pursuant to standards established in this Master Program, on a site or in an area other than that proposed for conduct of a regulated activity.

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

“Out-of-kind mitigation” means replacement of wetlands or habitat with substitute wetlands or habitat whose characteristics do not closely approximate those adversely affected, destroyed or degraded by a regulated activity.

“Overwater structure” means any device or structure projecting over the ordinary high water mark, including, but not limited to piers, docks, floats, and moorage.

“Parking, Principal Use” is commercial parking which is the principal use on the property and is not accessory to another use.

"Party of record" includes 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.

“Permanent erosion control” means continuous on-site and off-site control measures that are needed to control conveyance or deposition of earth, turbidity or pollutants after development, construction, or restoration.

“Permit” means that required by the Act for substantial development of shorelines, to be issued by the local government entity having administrative jurisdiction and subject to review by the Department of Ecology and the Attorney General.

"Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated.

“Pier” means a fixed structure which abuts the shoreline and is used for moorage or other water-related activities such as fishing, swimming and diving.

“Plant association of infrequent occurrence” means one or more plant species which because of the rarity of the habitat and/or the species involved, or for other botanical or environmental reasons, do not often occur in the City of Mountlake Terrace. Examples include but are not limited to:

- a. Wetlands with a coniferous forested class or subclass consisting of trees such as western red cedar, Sitka spruce or lodge pole pine growing on organic soils;
- b. Bogs with a predominance of sphagnum moss, or those containing sphagnum moss, and typically including one or more species such as Labrador tea, sundew, bog laurel or cranberry.

“Priority habitat/species” or “priority wildlife habitat/species” means habitats and species of local importance and concern in urban areas, as identified by the Washington Department of Fish and Wildlife Priority Habitat and Species (PHS) program. “Priority species” are wildlife species of concern due to their population status and their sensitivity to habitat alteration. “Priority habitats” are areas with one or more of the following attributes: comparatively high wildlife density; high wildlife species richness; significant wildlife breeding habitat; significant wildlife seasonal ranges; significant movement corridors for wildlife; limited availability; and/or high vulnerability. General types of priority habitat identified in the PHS program – some of which do not occur in the City of Mountlake Terrace – include Aspen stands, cliffs, meadows, oak woodlands, old-growth/ mature forests, riparian areas, shrub-steppe, snag-rich areas and wetlands.

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

"Public interest" means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from a use or development;

“Qualified Consultant” means, for purposes of these regulations, a person who has attained a degree from an accredited college or university in the subject matter necessary to evaluate the critical area in question (e.g., biology, ecology or horticulture/arboriculture for wetlands, streams and wildlife habitat and significant vegetation, geology and/or civil engineering for geologic hazards and aquifer recharge

areas), and/or who is professionally trained and/or certified or licensed by the state of Washington to practice in the scientific disciplines necessary to identify, evaluate, manage and mitigate impacts to the critical area in question and who has at least two years of experience in the relevant discipline.

“Recreational facilities” means facilities such as parks, trails, and pathways, whether public, private or commercial, that provide a means for relaxation, play, or amusement. For the purposes of this Master Program, recreational facilities are divided into two categories:

- a. Water-dependent (i.e. – moorage facilities, fishing piers, recreational floats) and
- b. Non-water-dependent (i.e. – sports fields, golf courses, and RV camping)

“Redevelopment” means development of a site that contains or has contained real estate improvements such as buildings or other structures, mining, dredging, filling, grading, paving, or excavation.

“Regulated activity” means activities that have a potential to significantly impact a critical area that is subject to the provisions of this Master Program. Regulated activities generally include but are not limited to any filling, dredging, dumping or stockpiling, draining, excavation, flooding, clearing or grading, construction or reconstruction, driving pilings, obstructing, shading, clearing or harvesting.

“Residential Development” means single-family residences, multifamily development, and the creation of new residential lots through land division.

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

“Secondary habitat” means areas that offer less diversity of animal and plant species than priority habitat but that are important for performing the essential functions of habitat.

“Seismic hazard areas” means areas that, due to a combination of soil and ground water conditions, are subject to risk of ground shaking, subsidence or liquefaction of soils during earthquakes. These areas are typically underlain by soft or loose saturated soils (such as alluvium), have a shallow ground water table and are typically located on the floors of river valleys.

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

"Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river

deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this Master Program; the same to be designated as to location by the Department of Ecology.

- a. Any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom.
- b. Any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to nonforest land use, on lands subject to the provisions of this subsection (2)(d)(ii) are not subject to additional regulations under this Master Program;

"Shoreline areas" and "shoreline jurisdiction" means all "shorelines of the state" and "shorelands" as defined in RCW 90.58.030.

"Shoreline master program" or "master program" means the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020.

As provided in RCW 36.70A.480, the goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations.

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

"Shoreline stabilization" includes actions taken to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, tides, wind, or wave action. These actions include structural and nonstructural methods. Nonstructural methods include building setbacks, relocation of the structure to be protected, ground water management, planning and regulatory measures to avoid the need for structural stabilization. Examples of shoreline stabilization measures include:

- Vegetation enhancement;
- Upland drainage control;
- Biotechnical measures;
- Beach enhancement;

- Anchor trees;
- Gravel placement;
- Rock revetments;
- Gabions;
- Concrete groins;
- Retaining walls and bluff walls;
- Bulkheads; and
- Seawalls.

“Shoreline stabilization, hard” means structural stabilization measures with solid, hard surfaces, such as concrete bulkheads. Hard shoreline stabilization measures include:

- Gravel placement
- Rock revetments
- Gabions
- Concrete groins
- Retaining walls and bluff walls
- Bulkheads

“Shoreline stabilization, soft” means stabilization measures that rely on less rigid materials, such as biotechnical vegetation measures or beach enhancement. Soft shoreline stabilization measures include:

- Vegetation enhancement
- Upland drainage control
- Beach enhancement
- Anchor trees
- coir rolls or biotechnical measures

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

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

"Should" means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this Master Program, against taking the action.

"Significant vegetation removal" means the removal or alteration of trees, shrubs, and/or ground cover

by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

“Site” means the location containing a regulated critical area and on which a regulated activity is proposed. The location may be a parcel or portion thereof, or any combination of contiguous parcels where a proposed activity may impact a critical area.

“Slope” means an inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance.

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

“Stream reconnaissance report” means a type of critical area report prepared by an applicant’s qualified consultant to describe a stream and to characterize its conditions, wildlife, habitat values and water quality.

“Streams” means those areas where surface waters produce a defined channel or bed. A “defined channel or bed” is an area which demonstrates clear evidence of the passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed need not contain water year-round. This definition is not intended to include artificially created irrigation ditches, canals, storm or surface water devices or other entirely artificial watercourses unless they are used by salmonids or created for the purposes of stream mitigation.

“Structural diversity, vegetative” means the relative degree of diversity or complexity of vegetation in a wildlife habitat area as indicated by the stratification or layering of different plant communities (e.g., ground cover, shrub layer and tree canopy); the variety of plant species; and the spacing or pattern of vegetation.

"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" shall mean any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States Department of

Labor. The Office of Financial Management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

“Substantial improvement” means any repair, reconstruction or improvement the cost of which, during any three-year period, is more than 50 percent of the market value of the structure either (A) before the improvement is started, or (B) before the damage occurred if the structure damaged is being replaced. An improvement occurs when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not the alteration affects the external dimensions of the structure. Substantial improvement does not include (A) an improvement undertaken solely to comply with existing state or local health, sanitary or safety code specifications which are necessary to assure safe conditions; or (B) alteration of a structure listed on the national register of historic places or a state inventory of historic places.

"Substantially degrade" means to cause significant ecological impact.

“Substrate” means the soil, sediment, decomposing organic matter or combination of those located on the bottom surface of the wetland, lake, stream or river.

“Temporary erosion and sedimentation control” means on-site and off-site control measures to control conveyance or deposition of earth, turbidity or pollutants during development, construction, or restoration.

“Utilities” means services and facilities that produce, convey, store, or process power, gas, sewage, communications, oil, waste, and the like. On-site utility features serving a primary use, such as water, sewer or gas line to a residence, are "accessory utilities" and shall be considered a part of the primary use.

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

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

“Utility” includes natural gas, electric, telephone and telecommunications, cable communications, water, sewer, or storm drainage and their respective facilities, lines, pipes, mains, equipment and appurtenances.

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

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

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

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

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

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

"Water-related use" means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

- a. The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
- b. The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

"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 the 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.

“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.

“Weir” means a fence or enclosure set in a waterway for taking fish or a dam in a stream or river to regulate the water level or divert its flow.

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

“Wetland classification and rating” means classification and rating of wetlands conducted in accordance with the Hruby, T. 2004. Washington State Wetland Rating System for Western Washington – Revised. (Ecology Publication No. 04-06-025, August 2004, annotated August 2006.)

“Wetland delineation manual” or “wetland delineation methodology” means the manual and methodology used to identify wetlands in the field, in accordance with the approved federal wetland delineation manual and applicable regional supplements (Corps of Engineers Wetland Delineation

Manual, 1987, and the regional supplement for western Washington, Western Mountains, Valleys, and Coast Region (Version 2.0), 2010).

“Wetland impact assessment report” means a report prepared by a “qualified consultant,” as that term is defined in this Master Program, that identifies, characterizes and analyzes potential impacts to wetlands consistent with applicable provisions of these regulations. A wetland impact assessment may be combined with and include a formal wetland delineation.

“Wildlife habitat” means areas, including naturally occurring ponds, that provide food, protective cover, nesting, loafing, breeding or movement for fish and wildlife and with which individual species have a primary association.

“Wildlife report” means a report, prepared by a qualified consultant, that evaluates plant communities and wildlife functions and values on a site, consistent with the format and requirements established by this Master Program.

APPENDICES

Appendix A. Shoreline Environment Designations Map

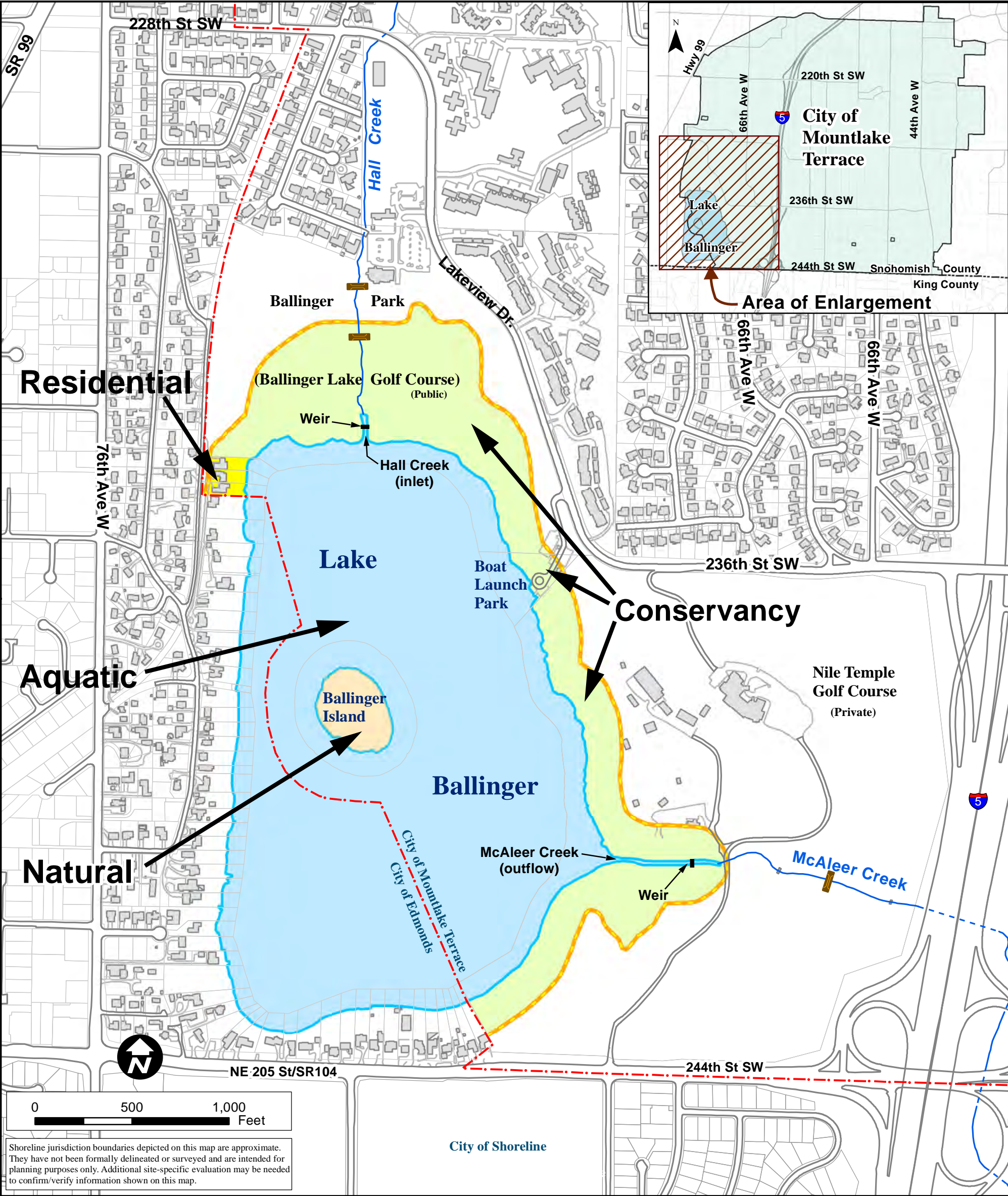
Appendix B. Critical Areas Ordinance

CONTAINED IN SEPARATE DOCUMENTS

**Appendix C. Shoreline Inventory and Characterization Report
(September 2010)**

Appendix D. Restoration Plan (August 2012)

Appendix E. Cumulative Impacts Analysis (September 2012)



Legend

- City Boundary
- Approximate Ordinary High Water Line
- Shoreline Planning Area (generally follows or relates to recognizable physical features, such as shoreline or wetland areas.)
- Creek
- Creek Culvert
- Bridge
- Shoreline Designation - Residential
- Shoreline Designation - Natural
- Shoreline Designation - Conservancy
- Shoreline Designation - Aquatic
- Parcel Lines

Shoreline Master Program Update

Shoreline Environment Designations Map

Date: May 2013

CRITICAL AREAS REGULATIONS

Explanation of Appendix B

The City of Mountlake Terrace Critical Areas regulations, as codified in Chapter 16.15 MTMC (Ord. 2370, 2004), are herein adopted as a part of the Shoreline Master Program, less the exceptions identified in Section 4.1.2 Critical Areas of the Master Program. Those exceptions are indicated in strikeout in the Chapter below. The provisions of the City of Mountlake Terrace Critical Areas Ordinance, less the noted exceptions, shall apply to any use, alteration, or development within shoreline jurisdiction whether or not a shoreline permit or written statement of exemption is required. Refer to the Shoreline Master Program for applicability.

Note: For clarify, references to Attachments 1-5 have been inserted into the text, in italics, where appropriate, although references to specific attachments by number are not in the codified code. See the end of this Appendix for the attachments.

Chapter 16.15 CRITICAL AREAS

Sections:

- 16.15.010 Purpose and intent.
- 16.15.020 Definitions.
- 16.15.030 Applicability – Regulated activities.
- 16.15.040 Exemptions.
- 16.15.050 Critical areas maps.
- 16.15.060 Relationship to other regulations.
- 16.15.070 Critical area review process and application requirements.
- 16.15.080 Classification and rating of critical areas.
- 16.15.090 Buffer areas and setbacks.
- 16.15.100 Alteration or development of critical areas – Standards and criteria.
- 16.15.110 Mitigation standards, criteria and plan requirements.
- 16.15.120 Performance standards for mitigation planning.
- 16.15.130 Monitoring program and contingency plan.
- 16.15.140 Procedural provisions.
- 16.15.150 Reasonable use provision.

16.15.010 Purpose and intent.

A. The City of Mountlake Terrace contains numerous areas that can be identified and characterized as critical or environmentally sensitive. Such areas within the City include wetlands, streams, wildlife habitat, geologic hazards, and flood hazards. The City contains no known aquifer recharge areas.

B. The City finds that these critical areas perform a variety of valuable and beneficial biological and physical functions that benefit the City and its residents. Alteration of certain critical areas may also pose a threat to public safety or to public and private property or the environment. The City finds, therefore, that identification, regulation and protection of critical areas is necessary to

protect the public health, safety and general welfare. The City further finds that the functions of critical areas, and the purpose of these regulations, include the following:

1. Wetlands. Wetlands perform a variety of functions that include maintaining water quality; storing and conveying storm water and flood water; recharging ground water; providing important fish and wildlife habitat; and as areas for recreation, education and scientific study and aesthetic appreciation.

Wetland buffers serve to moderate runoff volume and flow rates; reduce sediment, chemical nutrient and toxic pollutants; provide shading to maintain desirable water temperatures; provide habitat for wildlife; and protect wetland resources from harmful intrusion.

The primary goals of wetland regulation are to avoid and/or otherwise mitigate wetland impacts; to achieve no net loss of wetland function and value; to provide levels of protection that reflect the sensitivity of individual wetlands and the intensity of proposed land uses; and to restore and/or enhance existing wetlands, where possible.

2. Streams. Streams and their associated riparian corridors provide important fish and wildlife habitat, including habitat for threatened and endangered species; help to maintain water quality; store and convey storm water and flood water; recharge ground water; and serve as areas for recreation, education and scientific study and aesthetic appreciation. Stream buffers serve to moderate runoff volume and flow rates; reduce sediment, chemical nutrient and toxic pollutants; provide shading to maintain desirable water temperatures; provide habitat for wildlife; and protect stream resources from harmful intrusion.

The primary goals of stream regulation are to avoid and/or otherwise mitigate impacts to streams and associated riparian corridors; to protect threatened and endangered species; to protect water quality through appropriate management techniques; and, where possible, to provide for stream enhancement and rehabilitation.

3. Wildlife Habitat. Wildlife habitat provides opportunities for food, cover, nesting, breeding and movement for fish and wildlife within the City; maintains and promotes diversity of species and habitat within the City; coordinates habitat protection with elements of the City's open space system; helps to maintain air and water quality; helps control erosion; serves as areas for recreation, education and scientific study and aesthetic appreciation; and provides neighborhood separation and visual diversity within urban areas.

The primary goals of wildlife habitat regulation are to avoid impacts to critical habitats for fish and wildlife; to implement the goals of the Endangered Species Act; to promote connectivity between habitat areas to allow for wildlife movement; to provide multipurpose open space corridors; and where possible to provide for wildlife habitat enhancement and rehabilitation. The City has not identified any specific "species of local concern" on its maps or in this chapter, but protects habitat and open space for a broad range of species that may live in the urban area.

4. Geologic Hazard Areas. Geologic hazard areas include land areas characterized by geologic, hydrologic and topographic conditions that render them susceptible to varying degrees of risk of landslides, erosion, or seismic or volcanic activity.

The primary goals of regulating geologic hazards are to avoid and minimize potential impacts to life and property; to regulate and/or limit land uses where necessary; and to

conduct appropriate levels of analysis and ensure sound engineering and construction practices to address identified hazards.

5. Aquifer Recharge Areas. Aquifer recharge areas provide a source of potable water and contribute to stream discharge/flow during periods of low flow. The City finds that such locations are susceptible to contamination of water supplies through infiltration of pollutants through soil to ground water aquifers.

The primary goals of aquifer recharge regulations are to protect critical aquifer recharge areas and ground water quality by avoiding or limiting land use activities that pose potential risk of aquifer contamination; and to minimize impacts to significant aquifer recharge areas through the application of performance standards.

6. Flood Hazard Areas. Floodplains help to store and convey storm water and flood water; recharge ground water; provide important areas for riparian habitat; and serve as areas for recreation, education and scientific study. Development within floodplain areas can be hazardous to those inhabiting such development, and to those living upstream and downstream. Floods also cause substantial damage to public and private property that results in significant costs to the public and individuals.

The primary goals of flood hazard regulations are to limit or condition development within the 100-year floodplain to avoid substantial risk and damage to public and private property, and that results in significant costs to the public and individuals; and to avoid significant increases in peak storm water flows or loss of flood storage capacity.

C. This chapter of the MTMC contains standards, procedures, criteria and requirements intended to identify, analyze and mitigate potential impacts to the City's critical areas and to enhance and restore degraded resources, such as wetlands, streams or habitat, where possible. The general intent of these regulations is to avoid impacts to critical areas. In appropriate circumstances, impacts to specified critical areas resulting from regulated activities may be reduced, minimized, rectified, and/or compensated for, consistent with the requirements of this chapter.

D. It is the further intent of this chapter to:

1. Comply with the requirements of the Growth Management Act (Chapter 36.70A RCW) and implementing rules to identify and protect critical areas, and to use the "best available science" in its development regulations as required by WAC 365-195-900 et seq.;
2. Develop and implement a comprehensive, balanced and fair regulatory program that avoids impacts to critical resources where possible, that requires that mitigation be performed by those affecting critical areas, and that thereby protects the public from injury, loss of life, property or financial losses due to flooding, erosion, landslide, seismic events, soil subsidence or steep slope failure;
3. Implement the goals and policies of the Mountlake Terrace Comprehensive Plan and zoning code, including those pertaining to natural features and environmental protection; as well as goals relating to land use, housing, economic development, transportation, and adequate public facilities;
4. Serve as a basis for exercise of the City's substantive authority under the State Environmental Policy Act (SEPA) where necessary to supplement these regulations, while

also reducing the City's reliance on project-level SEPA review to protect regulated critical areas;

5. Provide consistent standards, criteria and procedures that will enable the City to effectively manage and protect critical areas while accommodating the rights of property owners to use their property in a reasonable manner;

6. Provide greater certainty to property owners regarding uses and activities that are permitted, prohibited and/or regulated due to the presence of critical areas;

7. Coordinate environmental review and permitting of proposals involving critical areas with existing development review and approval processes to avoid duplication and delay pursuant to Chapter 36.70B RCW;

8. Establish conservation and protection measures for threatened and endangered fish species in compliance with the requirements of the Endangered Species Act and WAC 365-195-925;

9. Alert members of the public, including appraisers, assessors, owners, and potential buyers or lessees, to the development limitations or critical areas and their required buffers.

E. Best Available Science. The City has considered and included the best available science in developing these regulations, consistent with the requirements of RCW 36.70A.172 and WAC 365-900 et seq. This has included identification and review of relevant technical sources of information, including "Citations of Recommended Sources of the Best Available Science for Designating and Protecting Critical Areas" (CTED, 2002). In some instances, the City has found conflicts in the scientific information, lack of consensus as to what constitutes the best available science, and/or lack of information or direction from resource agencies.

Preparation of these regulations has also included the use of relevant nonscientific information, including consideration of legal, social, policy, economic and land use issues. This reflects the City's responsibilities under numerous laws and programs, including other provisions of the Growth Management Act, and the need to weigh and balance various factors as part of decision making to accomplish municipal objectives. This may result in some risk to the functions and values of some critical areas. The City will also use its authority under the State Environmental Policy Act (SEPA) to identify, consider and mitigate, where appropriate, significant adverse effects on critical resources not otherwise addressed by the regulations of this chapter. The City intends to review and monitor implementation of its critical areas regulations and to use an adaptive management approach. It will make adjustments to its regulations, as appropriate, in response to changing conditions, new information about best available science, or empirical data indicating the effectiveness of its regulatory program. This will occur in the context of the City's ongoing review and revision of its Comprehensive Plan and development regulations pursuant to the Growth Management Act.

Additional information, both scientific and nonscientific, regarding compliance with WAC 365-195-915(c), including identification of risks to resources, is contained in the findings and conclusions and the overall record supporting adoption of Mountlake Terrace's critical areas regulations. (Ord. 2370 § 3, 2004).

16.15.020 Definitions.

~~For the purposes of this chapter, the following definitions shall apply:~~

~~“Anadromous fish” means fish, such as wild salmon, that migrate up rivers from the sea to breed in fresh water.~~

~~“Applicant” means the person, party, firm, corporation, or other entity that proposes or has performed any activity that affects a critical area.~~

~~“Aquifer” means, generally, any water bearing soil or rock unit. Specifically, a body of soil or rock that contains sufficient saturated permeable material to conduct ground water and yield economically significant quantities of ground water to wells or springs.~~

~~“Aquifer recharge area” means an area where, due to permeable soils, water infiltrates from the surface to ground water aquifers. Recharge areas are classified as “low,” “medium” or “high” based on the soil and ground water conditions and risks depending on the combined effects of hydrogeological susceptibility to contamination and contaminant loading potential, as follows:~~

~~A. Low significance/low susceptibility recharge areas—uplands and sloping areas underlain by soils consisting largely of silt, clay or glacial till.~~

~~B. Medium significance/medium susceptibility—upland areas underlain by soils consisting largely of sand and gravel, and valley floors underlain by soils consisting largely of sand, silt and clay in which there is a significant upward component to ground water flow within the valley alluvium.~~

~~C. High significance/high susceptibility—valley floors, uplands and sloping areas underlain by soils consisting largely of sand and gravel in which there is a predominantly downward or lateral component to ground water flow, and which serve as a source of drinking water.~~

~~“Aquifer susceptibility” means a contributory factor of potential contamination of an aquifer that results from soil, rock and ground water characteristics within a recharge area.~~

~~“Aquifer vulnerability” means the combined effect of aquifer susceptibility and contaminant loading potential; it includes hydrogeologic, land use and other factors that affect the potential for ground water contamination.~~

~~“Artificially created wetland” means wetlands created from nonwetland sites through purposeful, legally authorized human action, such as irrigation and drainage ditches, grass lined swales, canals, retention or detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities.~~

~~“Base flood” or “100-year flood” means a flood having a one percent chance of being equaled or exceeded in any given year, also referred to as the “100-year flood.” The base flood is determined for existing conditions, and is shown on Flood Insurance Rate Maps (FIRM), current version; unless a more complete basin plan including projected flows under future developed conditions has been completed and adopted by the City of Mountlake Terrace, in which case these future flow projections shall be used. In areas where the flood insurance study for the City includes detailed base flood calculations, those calculations may be used.~~

~~“Buffer” or “buffer area, critical area” means a naturally vegetated and undisturbed, enhanced or revegetated zone surrounding a critical area and which protects the critical area from adverse impacts to its integrity and value and is an integral part of the resource’s ecosystem.~~

~~“Building setback” means an area that is the outermost portion of a critical area buffer and that may provide a transition between the primary portion of the critical area buffer and the potential location of a building.~~

~~“City” means the City of Mountlake Terrace.~~

~~“Clearing” means the removal of timber, brush, grass, ground cover or other vegetative matter from a site which exposes the earth’s surface of the site, or any actions which disturb the existing ground surface.~~

~~“Comprehensive Plan” means the City of Mountlake Terrace Comprehensive Plan as now adopted or hereafter amended.~~

~~“Contaminant loading potential” means the availability within an aquifer recharge area of any potential physical, chemical, biological, or radiological substance that enters the hydrological cycle and may cause a deleterious effect on ground water resources.~~

~~“Creation of critical areas” means the purposeful and legally authorized construction or forming of a wetland or stream from an upland (nonwetland or dry) site through artificial means.~~

~~“Critical aquifer recharge areas” means areas where an aquifer that is a source of drinking water is both highly susceptible and vulnerable to contamination. High significance/high susceptibility recharge areas—generally uplands and sloping areas underlain predominantly by sand and gravel, and valley floors underlain by relatively coarse alluvium—are considered to be critical recharge areas unless site-specific information demonstrates little or no contaminant loading potential.~~

~~“Critical area” or “environmentally critical area” means areas that possess important natural functions and embody a variety of important natural and community values. Such areas include wetlands, streams, fish and wildlife habitat, geologic hazard areas, aquifer recharge areas, flood hazard areas, and areas with significant trees and vegetation. If not conducted properly, development or alteration of such areas may cause significant impacts to the valuable functions and values of these areas and/or may generate risks to the public health and general welfare, and/or to public and private property.~~

~~“Critical area report” means a report prepared by a “qualified consultant” (as that term is defined in this section) to determine the presence, type, class, size, function and/or value of an area subject to these regulations. Also see “Stream reconnaissance report,” “Wetland impact assessment report,” and “Wildlife report.”~~

~~“Critical erosion hazard areas” means lands or areas underlain by soils identified by the U.S. Department of Agriculture Soil Conservation Service (SCS) (now known as the Natural Resource Conservation Service) as having “severe” or “very severe” erosion hazards. This includes, but is not limited to, the following group of soils when they occur on slopes of 15 percent or greater: Alderwood-Kitsap (AkF), Alderwood gravelly sandy loam (AgD), Kitsap silt loam (KpD), Everett (EvD) and Indianola (InD). Additional soil groups may be identified through site-specific analysis.~~

~~“Critical geologic hazard areas” means lands or areas subject to high or severe risks of geologic hazard, including critical erosion hazard areas, critical landslide hazard areas, and critical seismic hazard areas.~~

~~“Critical habitat,” “critical wildlife habitat,” or “critical fish and wildlife conservation area” means habitat areas associated with threatened, endangered, sensitive, monitor or priority species of plants or wildlife and which, if altered, could reduce the likelihood that the species will maintain and reproduce over the long term. Such areas are identified herein with reference to lists, categories and definitions of species promulgated by the Washington Department of Fish and Wildlife (Nongame Data System Special Animal Species) as identified in WAC 232-12-011 or 232-12-014; in the Priority Habitat and Species (PHS) program of the Department of Fish and~~

~~Wildlife; or by rules and regulations adopted currently or hereafter by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service.~~

~~“Critical landslide hazard areas” means lands or areas where there is a high (Class III) or very high (Class IV) risk of landslide due to a combination of slope, soil permeability and water.~~

~~“Critical seismic hazard areas” means lands or areas where there is a high risk of seismic events and damage.~~

~~“Department” means the City of Mountlake Terrace Department of Community Development, Planning and Development Services, or successor agency, unless the context indicates a different City department.~~

~~“Development” means any human made change to real estate including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment and materials.~~

~~“Director” means the Director of the City of Mountlake Terrace Department of Community Development, Planning and Development Services, or his/her designee.~~

~~“Earth/earth material” means naturally occurring rock, soil, stone, sediment, or a combination thereof.~~

~~“Enhancement” means the improvement of an existing viable wetland, stream or habitat area or the buffers established for such areas, through such measures as increasing plant diversity, increasing wildlife habitat, installing environmentally compatible erosion controls, increasing structural diversity or removing plant or animal species that are not indigenous to the area. Enhancement also includes actions performed to improve the quality of an existing degraded wetland, stream or habitat area. See also “Restoration.”~~

~~“Erosion” means a process whereby wind, rain, water and other natural agents mobilize and transport soil particles.~~

~~“Erosion hazard areas” means lands or areas that, based on a combination of slope inclination and the characteristics of the underlying soils, are susceptible to varying degrees of risk of erosion. Erosion hazard areas are classified as “low” (areas sloping less than 15 percent) or “high” (areas sloping 15 percent or more) on the following Soil Conservation Service (SCS), now known as the Natural Resource Conservation Service (NRCS), soil types: Alderwood-Kitsap (AkF), Alderwood gravelly sandy loam (AgD), Kitsap silt loam (KpD), Everett (EvD) and Indianola (InD). Additional soil groups may be identified through site specific analysis.~~

~~“Excavation” means the removal or displacement of earth material by human or mechanical means.~~

~~“Exotic” means any species of plant or animal that is foreign and not indigenous to the Mountlake Terrace area.~~

~~“Fill/fill material” means a deposit of earth material placed by human or mechanical means.~~

~~“Filling” means the act of transporting or placing (by any manner or mechanism) fill material from, to, or on any surface water body or wetland, soil surface, sediment surface, or other fill material.~~

~~“Flood hazard areas” means those areas subject to inundation by the base flood. A flood hazard area consists of the following components, as determined by the City:~~

~~A. Floodplain. The total area subject to inundation by the base flood.~~

~~B. Flood Fringe. That portion of the floodplain outside of the floodway which is generally covered by flood waters during the base flood; it is generally associated with shallow, slower moving water rather than rapidly flowing water.~~

~~C. Floodway. The channel of the stream or river and that portion of the adjoining floodplain which is necessary to contain and discharge the base flood flow without increasing the base flood elevation more than one foot. It is generally associated with rapidly flowing water.~~

~~“Flood Insurance Rate Map (FIRM)” means the official map prepared as part of (but published separately from) the Flood Insurance Rate Study on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the applicable risk premium zones.~~

~~“Frequently flooded areas” means observed areas of localized flooding.~~

~~“Geologic hazard areas” means lands or areas characterized by geologic, hydrologic and topographic conditions that render them susceptible to varying degrees of potential risk of landslides, erosion, or seismic or volcanic activity; and areas characterized by geologic and hydrologic conditions that make them vulnerable to contamination of ground water supplies through infiltration of contaminants to aquifers.~~

~~“Grading” means any excavating, filling, clearing, leveling, or contouring of the ground surface by human or mechanical means.~~

~~“Habitat management” means management of land and its associated resources/features to maintain species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. This does not imply maintaining all habitat or individuals of all species in all cases.~~

~~“High impact land use” means land uses which are likely to have significant adverse impacts to critical areas because of the intensity of the use, levels of human activity, use of machinery or chemicals, site design or arrangement of buildings and structures. High impact land uses include, but are not limited to, active recreation, residential, institutional, commercial, and industrial land uses.~~

~~“Hydrologically isolated” means wetlands which: (1) have no surface water connection to a lake, river, or stream during any part of the year; (2) are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream; and (3) have no contiguous hydric soil between the wetland and any lake, river, or stream. May also be a pond excavated from uplands with no surface water connection to a stream, lake, or other wetland.~~

~~“In-kind wetland mitigation” means replacement of wetlands with substitute wetlands whose characteristics closely approximate those destroyed or degraded by a regulated activity.~~

~~“Intentionally created streams” means streams created through purposeful human action, such as irrigation and drainage ditches, grass lined swales, and canals. This definition does not include stream modifications performed pursuant to City authorization, such as changes or redirection of stream channels.~~

~~“Landslide” means episodic downslope movement of a mass of soil or rock.~~

~~“Landslide hazard areas” means areas that, due to a combination of slope inclination, relative soil permeability, and hydrologic conditions are susceptible to varying degrees of risk of landsliding. Landslide hazard areas are classified as Classes I through IV based on the degree of risk as follows:~~

~~A. Class I/Low Hazard. Areas with slopes of less than 15 percent.~~

~~B. Class II/Moderate Hazard. Areas with slopes of between 15 percent and 40 percent and that are underlain by soils that consist largely of sand, gravel or glacial till.~~

~~C. Class III/High Hazard. Areas with slopes between 15 percent and 40 percent that are underlain by soils consisting largely of silt and clay.~~

~~D. Class IV/Very High Hazard. Areas with slopes steeper than 15 percent with mappable zones of emergent water (e.g., springs or ground water seepage), areas of known (mappable) landslide deposits regardless of slope, and all areas sloping more steeply than 40 percent.~~

~~The slopes referenced above include only those where the surface drops 10 feet or more vertically within a horizontal distance of 25 feet.~~

~~“Low impact land use” means land uses which are not likely to have significant adverse impacts to critical areas because of the intensity of the use, levels of human activity, use of machinery or chemicals, site design or arrangement of buildings and structures. Depending on the specific context, examples of low impact land uses may include utility facilities and passive recreation.~~

~~“Mitigation” includes:~~

~~A. Avoiding the impact altogether by not taking a certain action or parts of actions.~~

~~B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation.~~

~~C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.~~

~~D. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.~~

~~E. Compensating for the impact by replacing or providing substitute resources or environments.~~

~~While monitoring without additional actions is not considered mitigation for the purposes of these regulations, it may be part of a comprehensive mitigation program.~~

~~“Mitigation sequencing” means considering or performing mitigation actions, as defined in the definition of “mitigation,” in a preferred sequence from subsections A through E of the definition. Avoidance is generally preferred and must be considered prior to pursuing other forms of mitigation.~~

~~“Native vegetation” means vegetation existing on a site or plant species which are or were indigenous to the area in question.~~

~~“Off site mitigation” means performance of mitigation actions, pursuant to standards established in this chapter, on a site or in an area other than that proposed for conduct of a regulated activity.~~

~~“Out-of-kind mitigation” means replacement of wetlands or habitat with substitute wetlands or habitat whose characteristics do not closely approximate those adversely affected, destroyed or degraded by a regulated activity.~~

~~“Permanent erosion control” means continuous on site and off site control measures that are needed to control conveyance or deposition of earth, turbidity or pollutants after development, construction, or restoration.~~

~~“Plant association of infrequent occurrence” means one or more plant species which because of the rarity of the habitat and/or the species involved, or for other botanical or environmental reasons, do not often occur in the City of Mountlake Terrace. Examples include but are not limited to:~~

~~A. Wetlands with a coniferous forested class or subclass consisting of trees such as western red cedar, Sitka spruce or lodge pole pine growing on organic soils;~~

~~B. Bogs with a predominance of sphagnum moss, or those containing sphagnum moss, and typically including one or more species such as Labrador tea, sundew, bog laurel or cranberry.~~

~~“Priority habitat/species” or “priority wildlife habitat/species” means habitats and species of local importance and concern in urban areas, as identified by the Washington Department of Fish and Wildlife Priority Habitat and Species (PHS) program. “Priority species” are wildlife species of concern due to their population status and their sensitivity to habitat alteration. “Priority habitats” are areas with one or more of the following attributes: comparatively high wildlife density; high wildlife species richness; significant wildlife breeding habitat; significant wildlife seasonal ranges; significant movement corridors for wildlife; limited availability; and/or high vulnerability. General types of priority habitat identified in the PHS program—some of which do not occur in the City of Mountlake Terrace—include Aspen stands, cliffs, meadows, oak woodlands, old-growth/ mature forests, riparian areas, shrub steppe, snag-rich areas and wetlands.~~

~~Qualified Consultant. For purposes of these regulations, “qualified consultant” shall mean a person who has attained a degree from an accredited college or university in the subject matter necessary to evaluate the critical area in question (e.g., biology, ecology or horticulture/arboriculture for wetlands, streams and wildlife habitat and significant vegetation; geology and/or civil engineering for geologic hazards and aquifer recharge areas), and/or who is professionally trained and/or certified or licensed by the state of Washington to practice in the scientific disciplines necessary to identify, evaluate, manage and mitigate impacts to the critical area in question and who has at least two years of experience in the relevant discipline.~~

~~“Redevelopment” means development of a site that contains or has contained real estate improvements such as buildings or other structures, mining, dredging, filling, grading, paving, or excavation.~~

~~“Regulated activity” means activities that have a potential to significantly impact a critical area that is subject to the provisions of this chapter. Regulated activities generally include but are not limited to any filling, dredging, dumping or stockpiling, draining, excavation, flooding, clearing or grading, construction or reconstruction, driving pilings, obstructing, shading, clearing or harvesting.~~

~~“Restoration” means actions taken to reestablish wetland, stream or habitat functional values and characteristics that have been destroyed or degraded by past alterations (e.g., filling or grading). See also “Enhancement.”~~

~~“Secondary habitat” means areas that offer less diversity of animal and plant species than priority habitat but that are important for performing the essential functions of habitat.~~

~~“Seismic hazard areas” means areas that, due to a combination of soil and ground water conditions, are subject to risk of ground shaking, subsidence or liquefaction of soils during earthquakes. These areas are typically underlain by soft or loose saturated soils (such as alluvium), have a shallow ground water table and are typically located on the floors of river valleys.~~

~~“Site” means the location containing a regulated critical area and on which a regulated activity is proposed. The location may be a parcel or portion thereof, or any combination of contiguous parcels where a proposed activity may impact a critical area.~~

~~“Slope” means an inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance.~~

~~“Stream reconnaissance report” means a type of critical area report prepared by an applicant’s qualified consultant to describe a stream and to characterize its conditions, wildlife, habitat values and water quality.~~

~~“Streams” means those areas where surface waters produce a defined channel or bed. A “defined channel or bed” is an area which demonstrates clear evidence of the passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds, and defined channel swales. The channel or bed need not contain water year round. This definition is not intended to include artificially created irrigation ditches, canals, storm or surface water devices or other entirely artificial watercourses unless they are used by salmonids or created for the purposes of stream mitigation.~~

~~“Structural diversity, vegetative” means the relative degree of diversity or complexity of vegetation in a wildlife habitat area as indicated by the stratification or layering of different plant communities (e.g., ground cover, shrub layer and tree canopy); the variety of plant species; and the spacing or pattern of vegetation.~~

~~“Substantial improvement” means any repair, reconstruction or improvement the cost of which, during any three year period, is more than 50 percent of the market value of the structure either (A) before the improvement is started, or (B) before the damage occurred if the structure damaged is being replaced. An improvement occurs when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not the alteration affects the external dimensions of the structure. Substantial improvement does not include (A) an improvement undertaken solely to comply with existing state or local health, sanitary or safety code specifications which are necessary to assure safe conditions; or (B) alteration of a structure listed on the national register of historic places or a state inventory of historic places.~~

~~“Substrate” means the soil, sediment, decomposing organic matter or combination of those located on the bottom surface of the wetland, lake, stream or river.~~

~~“Temporary erosion and sedimentation control” means on-site and off-site control measures to control conveyance or deposition of earth, turbidity or pollutants during development, construction, or restoration.~~

~~“Utility” includes natural gas, electric, telephone and telecommunications, cable communications, water, sewer, or storm drainage and their respective facilities, lines, pipes, mains, equipment and appurtenances.~~

~~“Water dependent use” means a principal use which can only exist when the land/water interface provides biological or physical conditions necessary for the use.~~

~~“Wetland” or “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 nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street or highway. However, wetlands include those artificial wetlands intentionally created to mitigate conversion of wetlands.~~

~~Wetland Class. The U.S. Fish and Wildlife Service wetland classification scheme uses an hierarchy of systems, subsystems, classes and subclasses to describe wetland types (refer to USFWS, December 1979, "Classification of Wetlands and Deepwater Habitats of the United States" for a complete explanation of the wetland classification scheme). Eleven class names are used to describe wetland and deepwater habitat types. These include: forested wetland, scrub-shrub wetland, emergent wetland, moss-lichen wetland, unconsolidated shore, aquatic bed, unconsolidated bottom, rock bottom, rocky shore, streambed, and reef.~~

~~"Wetland delineation manual" or "wetland delineation methodology" means the manual and methodology used to identify wetlands in the field, as described in the "Washington State Wetlands Identification and Delineation Manual," adopted by the Department of Ecology in 1997 (pursuant to RCW 36.70A.175 and 90.58.380), and which is based on the U.S. Corps of Engineers Wetlands Delineation Manual (1987). Use of this manual is required by RCW 36.70A.175 and 90.58.380.~~

~~"Wetland impact assessment report" means a report prepared by a "qualified consultant," as that term is defined in this section, that identifies, characterizes and analyzes potential impacts to wetlands consistent with applicable provisions of these regulations. A wetland impact assessment may be combined with and include a formal wetland delineation.~~

~~Wetland Subclass. Twenty-eight subclass names are used in the USFWS wetland classification scheme to distinguish between different types of wetland classes. Subclass names include, but are not limited to, the following: persistent, nonpersistent, broad-leaved deciduous, needle-leaved deciduous, broad-leaved evergreen, needle-leaved evergreen, dead. The classification system is fully described in Cowardin et al., "Classification of Wetlands and Deepwater Habitats of the United States U.S. Fish and Wildlife Service, Washington, DC, 1979."~~

~~"Wildlife habitat" means areas, including naturally occurring ponds, that provide food, protective cover, nesting, loafing, breeding or movement for fish and wildlife and with which individual species have a primary association.~~

~~"Wildlife report" means a report, prepared by a qualified consultant, that evaluates plant communities and wildlife functions and values on a site, consistent with the format and requirements established by this chapter. (Ord. 2370 § 4, 2004).~~

16.15.030 Applicability – Regulated activities.

A. The provisions of this chapter shall apply to any activity that potentially affects a critical area or its buffer unless otherwise exempt, including but not limited to the following:

1. Removing, excavating, disturbing or dredging soil, sand, gravel, minerals, organic matter or materials of any kind;
2. Dumping, discharging or filling with any material;
3. Draining, flooding or disturbing the water level or water table, or diverting or impeding water flow;
4. Driving pilings or placing obstructions;
5. Constructing, reconstructing, demolishing or altering the size of any structure or infrastructure;
6. Destroying or altering vegetation through clearing, grading, harvesting, shading or planting vegetation that would alter the character of a critical area;

7. Activities that result in significant changes in water temperature, physical or chemical characteristics of water sources, including quantity and pollutants; and
8. Any other activity potentially affecting a critical area or buffer not otherwise exempt from the provisions of this chapter as determined by the Department.

B. To avoid duplication, the following permits and approvals shall be subject to and coordinated with the requirements of this chapter: land clearing; grading; subdivision or short subdivision; temporary erosion and sedimentation control; building permit; planned unit development; shoreline substantial development; variance; conditional use permit and other permits or approvals leading to the development or alteration of land.

C. Nonproject actions, including but not limited to rezones, annexations, and the adoption of plans and programs, shall be subject to the requirements of this chapter. However, the Department may, at its discretion, permit any studies or evaluations required by this chapter to use methodologies and provide a level of detail appropriate to the action proposed and its level of planning. (Ord. 2370 § 5, 2004).

16.15.040 Exemptions.

A. The following activities performed on sites containing critical areas as defined by this chapter shall be exempt from the provisions of this chapter:

1. Activities involving artificially created wetlands or streams intentionally created from nonwetland sites, including but not limited to grass-lined swales, irrigation and drainage ditches, retention or detention facilities, and landscape features, except wetlands or streams created as mitigation or that provide critical habitat for anadromous fish;
2. Normal and routine maintenance, operation and reconstruction of existing roads, streets, utilities and associated structures; provided, that reconstruction of any structures may not increase the impervious area and may not cause further encroachment on the critical area or its buffer;
3. Normal maintenance, repair and reconstruction of residential or commercial structures, facilities and landscaping; provided, that reconstruction of any structures may not increase the previous floor area; and further provided, that the provisions of this chapter and MTMC 19.120.250 are followed;
4. The addition of floor area within an existing building which does not increase the building footprint;
5. Site investigative work and studies that are prerequisite to preparation of an application for development authorization including soils tests, water quality studies, wildlife studies and similar tests and investigations; provided, that any disturbance of the critical area shall be the minimum necessary to carry out the work or studies;
6. Educational activities, scientific research, and outdoor recreational activities, including but not limited to interpretive field trips, bird watching and hiking, that will not have a significant effect on the critical area;
7. Emergency activities necessary to prevent an immediate threat to public health, safety, property or the environment which requires immediate action within a time too short to allow full compliance with this chapter as determined by the Department;

~~8. Previously legally filled wetlands or wetlands accidentally created by human actions prior to January 1, 1990. The latter shall be documented through photographs, statements and/or other conclusive evidence;~~

~~9. Development vested prior to the effective date of the ordinance codified in this chapter; and~~

~~10. Minor activities not mentioned above and determined in advance and in writing by the Department to have minimal impacts to a critical area.~~

B. Notwithstanding the exemptions provided by this section, any otherwise exempt activities occurring in or near a critical area shall comply with the intent of these standards and shall consider on-site alternatives that avoid or minimize significant adverse impacts.

C. With the exception of subsections (A)(1) through (9) of this section, no property owner or other entity shall undertake exempt activities prior to providing 14 days' notice to the City and receiving confirmation in writing that the proposed activity is exempt. In case of any question as to whether a particular activity is exempt from the provisions of this section, the City's determination shall prevail and shall be confirmed in writing.

D. Reconstruction of existing structures that intrude into critical area buffers is subject to the nonconformance provisions of MTMC 19.120.250 unless otherwise provided by this chapter and, if permitted, shall not further intrude into the buffer area.

E. Exempt activities occurring in flood hazard areas shall not alter flood storage capacity or conveyance. (Ord. 2370 § 6, 2004).

16.15.050 Critical areas maps.

The approximate location and extent of critical areas within the City and its Urban Growth Area are shown on the critical areas map adopted as part of this chapter. This map shall be used only for informational purposes and as a general guide for the assistance of property owners and other interested parties. The boundaries and locations shown are generalized and do not delimit or precisely depict the extent of regulated critical areas. The actual presence or absence, type, extent, boundaries, and classification of critical areas on a specific site shall be identified in the field by a qualified consultant and determined by the City, according to the procedures, definitions and criteria established by this chapter. In the event of any conflict between the location, extent, designation or type of critical area shown on the City's maps and the criteria or standards of this section, the criteria and standards of this chapter shall prevail.

16.15.060 Relationship to other regulations.

A. These critical area regulations shall apply as an overlay and in addition to zoning, land use and other regulations established by the City of Mountlake Terrace. In the event of any conflict between these regulations and any other regulations of the City, the regulations which provide greater protection to critical areas and/or require more detailed critical area information shall apply.

B. Areas characterized by a particular critical area may also be subject to other regulations established by this chapter due to the overlap or multiple functions of some critical areas. Wetlands, for example, may be defined and regulated according to the wetland, habitat and stream management provisions of this chapter. In the event of any conflict between regulations for particular critical areas in this chapter, the regulations which provide greater protection to environmentally critical areas shall apply. (Ord. 2370 § 8, 2004).

16.15.070 Critical area review process and application requirements.

A. Preapplication Conference. All applicants proposing development within 200 feet of a wetland, stream, or critical wildlife habitat area are required to meet with the City prior to submitting an application subject to this chapter. The Director may waive this requirement for minor projects that do not involve grading. The purpose of this meeting shall be to discuss the City's critical area requirements, processes and procedures; to review any conceptual site plans prepared by the applicant; to identify potential impacts to critical areas and appropriate mitigation measures; and to the extent it can be determined inform the applicant of any federal or state regulations or approvals applicable to the subject critical area. Such conference shall be for the convenience of the applicant and any recommendations shall not be binding on the applicant or the City.

B. Application Requirements.

1. Timing of Submittals. Concurrent with submittal of a SEPA checklist, or concurrent with submittal of an application for a project that is exempt from SEPA, a critical area report must be submitted to the City for review. The purpose of the report is to determine the extent, characteristics and functions of any critical areas located on or potentially affected by activities on a site where regulated activities are proposed. The report will also be used by the City to determine the appropriate critical area classification and to establish appropriate buffer requirements. Critical area reports shall be required for proposed development within 200 feet of a stream or wetland and for any development containing a critical wildlife habitat area or a critical geologic hazard.

2. Report Contents. Reports and studies to be submitted by this chapter shall contain detailed information, as required by the Department, to analyze impacts and options for development within or adjacent to critical areas. The Department may tailor the information required to reflect the complexity of the proposal and the sensitivity of critical areas that may be present. *(Refer to Attachments 1, 2, 3, 4 and 5 for reporting requirements for Wetland, Streams, Wildlife Habitat, Geologic Hazard, and Mitigation Plan respectively.)*

C. Consultant Qualifications and City Review. All reports and studies required of the applicant by this section shall be prepared by a "qualified consultant" as that term is defined in these regulations. The City may, at its discretion, retain a qualified consultant to review and confirm the applicant's reports, studies and plans. Such review shall be paid for by the applicant.

D. Review Process. This section is not intended to create a separate critical area review permit process for development proposals. To the extent possible, the City shall consolidate and integrate the review and processing of critical area-related aspects of proposals with other land use and environmental considerations and approvals. Any permits required by separate codes or regulations, such as a flood hazard permit or shoreline substantial development permits, shall continue to be required. (Ord. 2370 § 9, 2004).

16.15.080 Classification and rating of critical areas.

A. To promote consistent application of the standards and requirements of this chapter, critical areas within the City of Mountlake Terrace shall be classified according to their characteristics, function and value, and/or their sensitivity to disturbance.

B. Classification of critical areas shall be determined by the Department based on consideration of the following factors and in the following order:

1. Consideration of the technical reports submitted by qualified consultants in connection with applications subject to these regulations;
2. Application of the criteria contained in these regulations; and
3. Maps adopted pursuant to this chapter.

~~C. Wetland Classification. Wetlands shall be designated Category I, Category II, Category III, Category IV and Artificial according to the criteria in this section. Wetland classifications incorporate the Washington State Wetlands Rating System for Western Washington (DOE, 1993). (Note: As of this draft, Ecology is in the process of revising its wetland rating system. The City will follow the progress of Ecology's process and may consider modifications to its wetland classification system in the future.) Wetland rating categories shall not be altered to recognize illegal modifications. Categories may be modified in accordance with permitted activities.~~

~~1. "Category I wetlands" are those wetlands which meet any of the following criteria:~~

- ~~a. The documented occurrence, as documented by federal or state agencies, within the wetland of plant, animal or fish species listed by the federal government or state of Washington as "endangered," or "threatened"; or~~
- ~~b. High quality native wetland communities listed in or which qualify for inclusion in Washington Natural Heritage Program maintained by the state Department of Natural Resources; or~~
- ~~c. Documented, by federal or state agencies, as regionally significant waterfowl concentration areas; or~~
- ~~d. Wetlands with irreplaceable ecological attributes per WDFW criteria; or~~
- ~~e. Wetlands of local significance, as now or hereafter designated by the City of Mountlake Terrace, pursuant to criteria in the Washington State Wetland Rating System for Western Washington.~~

~~2. "Category II wetlands" are those wetlands which are not Category I wetlands and which meet any of the following criteria:~~

- ~~a. Wetlands with a documented occurrence within the wetland of a federal or state listed "candidate" or "sensitive" species of plant, animal or fish species; or~~
- ~~b. Wetlands that contain "priority" species or habitats documented by the Washington Department of Wildlife Priority Habitat and Species program; or~~
- ~~c. Wetlands with significant functions, as determined by the wetland report required by these regulations, which may not be adequately replicated through creation or restoration; or~~
- ~~d. Wetlands with significant habitat value (greater than or equal to 22 points using the wetlands rating field form required by these regulations); or~~
- ~~e. Wetlands of local significance, as now or hereafter designated by the City of Mountlake Terrace.~~

~~3. "Category III wetlands" are those wetlands that are not Category I or II wetlands, and which meet any of the following criteria:~~

- ~~a. Wetlands with significant habitat value (where the habitat score is less than or equal to 21 points using the wetlands rating field data form, as required by these regulations); or~~
- ~~b. Wetlands of local significance, as now or hereafter designated by the City of Mountlake Terrace.~~

~~4. "Category IV wetlands" are those wetlands which meet any of the following criteria:~~

- ~~a. Wetlands that are less than one acre, that are hydrologically isolated, and that are comprised of only one vegetated class which is dominated (greater than 80 percent areal cover) by either soft rush, hard hack, buck brush, or cattail; or~~
- ~~b. Wetlands that are less than two acres, that are hydrologically isolated, and that are comprised of one vegetated class, and 90 percent of the areal coverage is any combination of invasive or exotic plants (as listed in Table 3 of the Washington State Wetlands Rating System for Western Washington, 1993).~~

~~5. "Artificially created wetlands" are wetlands as defined in MTMC 16.15.020. Such wetlands, except for those that were created as mitigation or that were previously modified for approved land use activities, are excluded from regulation under this section; provided, that their purposeful creation is demonstrated to the Department through documentation, photographs, statements and/or other evidence.~~

D. Stream Classification. Streams shall be designated Class I, Class II, Class III, and Class IV according to the criteria in this section. When more than one stream class is present on the property in question (e.g., the stream changes character in short alternating segments), it will be classified according to the stream class present along the majority of the length within a given section. The stream class shall change at the point at which the majority of the length receives a different classification.

1. "Class I streams" are those natural streams identified as "shorelines of the state" under the City of Mountlake Terrace Shoreline Master Program.

2. "Class II streams" are those natural streams that are not Class I streams and are either perennial or intermittent and have one of the following characteristics:

- a. Anadromous fish use;
- b. Significant potential for anadromous fish use; if the fish or its habitat have not been designated or documented by federal or state agencies, the guidance in Appendix 3 of the Recording Requirements shall be used to determine potential for anadromous fish use; or
- c. Significant recreational value, as determined by the Department.

3. "Class III streams" are those natural streams with perennial (year-round) or intermittent flow and are not used by anadromous fish.

4. "Class IV streams" are those natural streams and drainage swales with channel width less than two feet taken at the ordinary high water mark that are not used by salmonid fish.

5. "Class V streams" are those natural streams that are not Class I, II, III or IV streams, which are seasonal (i.e., surface flow is not present for at least some portion of the year), which do not contain fish, and which are not located downstream of a Class IV stream reach.

6. "Intentionally created streams" are those manmade streams defined as such in these regulations, and do not include streams created as mitigation. Purposeful creation must be

demonstrated through documentation, photographs, statements and/or other evidence. Intentionally created streams may include irrigation and drainage ditches, grass-lined swales and canals. Intentionally created streams are excluded from regulation under this section, except manmade streams that provide “critical habitat,” as designated by federal or state agencies, for anadromous fish.

E. Wildlife Habitat Classification. Wildlife habitat areas shall be classified as critical or secondary according to the criteria in this section.

1. “Critical habitat” are those habitat areas which meet any of the following criteria:
 - a. The documented presence of species or habitat listed by federal or state agencies as “endangered,” “threatened,” “candidate” or “sensitive” or “priority”; or
 - b. The presence of unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
 - c. “Category I wetlands,” as defined in these regulations; or
 - d. “Class I streams,” as defined in these regulations.
2. “Secondary habitat” is habitat which is valuable to wildlife and support a wide variety of species due to its undisturbed nature, a diversity of plant species and structure, presence of water, or the area’s size, location or seasonal importance.

F. Aquifer Recharge Areas. Aquifer recharge areas, if identified, shall be classified as “low,” “medium” and “high” significance based on the soil and ground water conditions and risks to potable water and to surface water during periods of low hydrology. Classification depends on the combined effects of hydrogeological susceptibility to contamination and contaminant loading potential, as follows:

- a. Low significance recharge areas – uplands and sloping areas underlain by silt, clay or glacial till.
- b. Medium significance – valley floors underlain by relatively fine-grained alluvial soils.
- c. High significance – uplands and sloping areas underlain predominantly by sand and gravel, and valley floors underlain by relatively coarse alluvium.

~~G. Geologic Hazard Classifications. Geologic hazard areas shall be classified according to the criteria in this section:~~

~~1. Critical Erosion Hazard Areas. “Critical erosion hazard areas” are lands or areas underlain by soils identified by the U.S. Department of Agriculture Soil Conservation Service (SCS), now known as the Natural Resource Conservation Service, as having “severe” or “very severe” erosion hazards. This includes the following group of soils when they occur on slopes of 15 percent or greater: Alderwood Kitsap (AkF), Alderwood gravelly sandy loam (AgD), Kitsap silt loam (KpD), Everett (EvD) and Indianola (InD).~~

~~2. Landslide Hazard Areas. “Landslide hazard areas” are classified as “Class I,” “Class II,” “Class III” or “Class IV” as follows:~~

- ~~a. Class I/Low Hazard. Areas with slopes of 15 percent or less.~~
- ~~b. Class II/Moderate Hazard. Areas with slopes of between 15 percent and 40 percent and that are underlain by soils that consist largely of sand, gravel or glacial till.~~

~~e. Class III/High Hazard. Areas with slopes between 15 percent and 40 percent that are underlain by soils consisting largely of silt and clay.~~

~~d. Class IV/Very High Hazard. Areas with slopes steeper than 15 percent with mappable zones of emergent water (e.g., springs or ground water seepage), areas of known (mappable) landslide deposits regardless of slope, and all areas with slopes 40 percent or greater.~~

~~3. Seismic Hazard Areas. "Seismic hazard areas" are lands that, due to a combination of soil and ground water conditions, are subject to severe risk of ground shaking, subsidence or liquefaction of soils during earthquakes. These areas are typically underlain by soft or loose saturated soils (such as alluvium), have a shallow ground water table and are typically located on the floors of river valleys. (Ord. 2370 § 10, 2004).~~

16.15.090 Buffer areas and setbacks.

A. General Provisions. The establishment of buffers, buffer areas or setbacks shall be required for all development proposals and activities in or adjacent to critical areas. The purpose of the buffer shall be to protect the integrity, function and value of the subject critical area (wetlands, streams, and wildlife habitat areas), and/or to protect life, property and resources from risks associated with development on unstable or critical lands (geologic hazard areas, flood hazard areas, aquifer recharge). Buffers shall typically consist of an undisturbed area of native vegetation. No buildings or structures shall be allowed unless otherwise permitted by this chapter. If the site has previously been disturbed, the buffer area shall be revegetated pursuant to an approved enhancement plan. Buffers shall be protected during construction by placing a temporary barricade, posting notice of the presence of the critical area, and implementing appropriate erosion and sedimentation controls. Restrictive covenants or conservation easements may be required to provide long-term preservation and protection of buffer areas.

B. Required buffer widths shall reflect the sensitivity of the particular critical area or the risks associated with development. In those circumstances permitted by these regulations, the type and intensity of human activity proposed to be conducted on or near the critical area should also be considered. Buildings shall be set back a minimum of 15 feet from the edge of the buffer. Buffers shall be measured as follows:

~~1. Wetland buffers — the buffer shall be measured perpendicular from the wetland edge as delineated and marked in the field using the 1997 Washington State Wetlands Identification and Delineation Manual;~~

2. Stream buffers – the buffer shall be measured from the ordinary high water mark;

~~3. Geologic hazard area setbacks — buffers shall be measured from the top and toe and along the sides of the hazardous slope.~~

C. Buffer widths shall be established according to the following standards and criteria:

~~1. Wetland Buffers.~~

~~a. Wetland buffers shall be established as follows:~~

Wetland Category	Buffer Width	Building Setback
Category I	300 feet	25 feet
Category II	100 feet	15 feet

Category III	65 feet	15 feet
Category IV	50 feet	15 feet

~~b. Wetland buffer widths may be modified either by averaging buffer widths or by enhancing buffer quality as set forth herein.~~

~~i. Buffer width averaging shall be allowed only where the applicant demonstrates to the Department that the wetland contains variations in sensitivity due to existing physical characteristics and/or that lower intensity land uses would be located adjacent to areas where buffer width is reduced; and that averaging will not adversely impact the wetland functional values. In any case, the total area contained within the buffer after averaging shall be no less in area than contained within the standard buffer prior to averaging. The required building setback shall not be included in the area used to calculate buffer averaging.~~

~~ii. Buffer width on a site with existing development that has a legal nonconforming buffer and is proposed for redevelopment, notwithstanding the provisions of MTMC 19.120.250, may be reduced by up to 25 percent if an applicant undertakes measures approved by the Department to enhance or restore the buffer; provided, that best available science indicates such measures are likely to enhance the functions and values of the wetland compared to existing conditions. The restoration or enhancement may include, but is not limited to, planting of native trees or shrubs, increasing the diversity of plant cover types, or replacement of exotic species with native species which approximate in composition a naturally occurring plant community.~~

~~iii. Application of subsection (C)(1)(b)(i) or (ii) of this section shall not result in buffer width being reduced on any part of the parcel by more than 25 percent of the buffer otherwise required under subsection (C)(1)(a) of this section; provided, that buffers for hydrologically isolated Type IV wetlands smaller than 250 square feet may not be reduced by more than 35 percent.~~

~~c. Limited uses and activities which are consistent with the purpose and function of the wetland buffer, are consistent with the sensitivity of the wetland, and do not detract from its integrity may be permitted by the Department within the buffer. Examples of uses and activities with minimal impacts which may be permitted in appropriate cases include permeable pedestrian trails or viewing platforms, and utility easements; provided, that any impacts to the buffer resulting from such permitted activities shall be mitigated.~~

d. Low impact uses may be permitted within the building setback. Examples of such uses include utilities, recreation, and temporary construction staging required for such uses, and permitted accessory uses; provided, that any building or structure shall not be of such size as to require issuance of a building permit.

e. Long-term protection of a regulated wetland and its associated buffer shall be provided by one of the following methods: placing in a separate tract on which development is prohibited; execution of an easement; dedication to a conservation organization or land trust; or preserved through a comparable permanent protective mechanism acceptable to the City. The location and limitations associated with the wetland and its buffer shall be shown on the face of the deed or plat applicable to the property and shall be recorded with the Snohomish County Department of Records.

2. Stream Buffers.

a. The following minimum buffers are established for streams:

Stream Class	Minimum Buffer Width (ft)	Additional Buffer (ft) for Threatened or Endangered Species	Building Setback (ft)
I	150	75	15
II	100	50	15
III	65	0 (no anadromous fish)	15
IV	50	0 (no anadromous fish)	15
V	Determined based on review of required technical information		

The buffer widths required in this section are minimums, except as provided below, and may be increased by the Department in response to site-specific conditions and based on the information submitted to characterize the functions and values of the stream. (*Refer to Attachment I.*)

b. A buffer width greater than the minimum may be required by the Department based on the findings of site-specific studies.

c. The applicant may propose to implement one or more enhancement measures, listed below, which may be considered in establishing buffer requirements under subsection (C)(2)(b) or (C)(2)(f) of this section:

- i. Removal of fish barriers to restore accessibility to anadromous fish;
- ii. Enhancement of fish habitat using log structures incorporated as part of a fish habitat enhancement plan;
- iii. Landscaping outside the buffer area with native vegetation or a reduction in the amount of clearing outside the buffer area;
- iv. Planting native vegetation within the buffer area, especially vegetation that would increase value for fish and wildlife, increase stream bank or slope stability, improve water quality, or provide aesthetic/recreational value;
- v. Creating a surface channel where a stream was previously culverted or piped;
- vi. Removing or modifying existing stream culverts (such as at road crossings) to improve fish passage and flow capabilities which are not detrimental to fish;
- vii. Upgrading retention/detention facilities or other drainage facilities beyond required levels; or
- viii. Similar measures determined applicable by the Department.

d. No structures or improvements shall be permitted within the stream buffer area, including buildings, decks, and docks, except as otherwise permitted under one of the following circumstances:

- i. When the improvements are part of an approved enhancement, restoration or mitigation plan; or

- ii. For construction of new public roads and utilities, and accessory structures, when no feasible alternative location exists; or
 - iii. Construction of foot trails, according to the following criteria:
 - (A) Constructed of permeable materials;
 - (B) Designed to minimize impact on the stream system;
 - (C) Of a maximum width of eight feet;
 - (D) Located within the outer half of the buffer, i.e., the portion of the buffer that is farther away from the stream; or
 - iv. Construction of footbridges; or
 - v. Construction of educational facilities, such as viewing platforms and informational signs.
- e. The Department may permit buffer widths to be averaged for segments of Class II, III, IV or V streams based on the findings of the stream report (*refer to Attachment 2*), subject to the following criteria: stream functions will not be reduced; fish habitat will not be adversely affected; additional enhancement of habitat is provided in conjunction with the reduced buffer; the buffer is not reduced more than 25 percent in any location; and the total buffer area after averaging is not less than what would be contained in the standard buffer. For averaging purposes, stream buffer widths shall be calculated based only on the stream segment located on the parcel being developed.
- f. Buffer width on a site with existing or prior commercial development that has a legal nonconforming buffer and is proposed for redevelopment with improvements that will increase the economic viability of the development, notwithstanding the provisions of MTMC 19.120.250, may be reduced by up to 25 percent if an applicant undertakes measures approved by the Department to enhance or restore the buffer; provided, that best available science indicates such measures are likely to enhance the functions and values of the wetland compared to existing conditions. The restoration or enhancement measures may include, but are not limited to, those measures listed in subsection (C)(2)(c) of this section.
- g. Long-term protection of a regulated stream and its associated buffer shall be provided by one of the following methods: placing in a separate tract on which development is prohibited; protected by execution of an easement; dedicated to a conservation organization or land trust; or similarly preserved through a permanent protective mechanism acceptable to the City. The location and limitations associated with the stream and its buffer shall be shown on the face of the deed or plat applicable to the property and shall be recorded with Snohomish County.
3. Wildlife Habitat Areas.
- a. Buffer widths for critical habitat areas shall be determined by the Department based on consideration of the following factors: (i) species recommendations of the Washington Department of Fish and Wildlife, based on consideration of published species-specific information and consultation with the Department; (ii) recommendations contained in the wildlife study submitted by a qualified consultant, following the reporting requirements

of these regulations (*refer to Attachment 3*); and (iii) the nature and intensity of land uses and activities occurring on the site and on adjacent sites. Buffers shall not be required for secondary habitat unless such habitat includes another regulated critical area for which a buffer is required by this chapter.

b. Wildlife habitat buffer widths may be modified by averaging buffer widths or by enhancing or restoring buffer quality, pursuant to scientific analysis that the functions and values of the wildlife habitat will be retained or enhanced.

c. Certain uses and activities which are consistent with the purpose and function of the habitat buffer and do not detract from its integrity may be permitted by the Department within the buffer depending on the sensitivity of the habitat area. Examples of uses and activities with minimal impact which may be permitted in appropriate cases include permeable pedestrian trails and viewing platforms, and utility easements; provided, that any impacts to the buffer resulting from permitted facilities shall be mitigated. When permitted, such facilities shall be located in the outer 10 feet of the buffer.

d. Long-term protection of critical habitat areas and their associated buffer(s) shall be provided by one of the following methods. It shall be placed in a separate tract on which development is prohibited, protected by execution of an easement, dedicated to a conservation organization or land trust, or similarly preserved through a permanent protective mechanism acceptable to the City. The location and limitations associated with the wetland and its buffer shall be shown on the face of the deed or plat applicable to the property and shall be recorded with Snohomish County.

~~4. Critical Geologic Hazard Areas.~~

~~a. Required buffers for critical geologic hazard areas shall vary between 15 feet and 50 feet in most cases. The width of the buffer shall reflect the sensitivity of the geologic hazard area in question and the types and density of uses proposed on or adjacent to the geologic hazard. In determining the appropriate buffer width, the Department shall consider the recommendations contained in any technical report required by these regulations and prepared by an applicant's qualified consultant.~~

~~b. Buildings and structures shall be set back an additional minimum of 15 feet from the edge of the critical area buffer. (Refer to Attachment 4.)~~

~~c. Setbacks may be reduced when the applicant demonstrates through technical studies that the reduction will adequately protect the geologic hazard and the proposed development in view of proposed engineering techniques.~~

~~D. Buffer Width Variances. A "minor critical area buffer width variance," defined as up to and including 10 percent of the standard requirement under subsection (C)(1)(a) or (C)(2)(a) of this section, may be granted by the Hearing Examiner pursuant to the following:~~

~~1. A complete application for a minor critical area buffer width variance, including the appropriate variance fee, has been received by the Department;~~

~~2. Procedural requirements, including those in MTMC 18.05.420, 18.05.500, and 18.05.620, have been met; and~~

~~3. The minor critical area buffer width variance being requested is consistent with the following criteria:~~

- ~~a. There are unique physical conditions peculiar and inherent to the affected property which make it difficult or infeasible to strictly comply with the provisions of this section;~~
- ~~b. The variance is the minimum necessary to accommodate the building footprint and access;~~
- ~~c. The proposed variance would preserve the functions and values of the critical area, and/or the proposal does not create or increase a risk to the public health, safety and general welfare, or to public or private property;~~
- ~~d. The proposed variance would not adversely affect surrounding properties;~~
- ~~e. Adverse impacts to critical areas resulting from the proposal are minimized; and~~
- ~~f. The special circumstances or conditions affecting the property are not a result of the actions of the applicant or previous owner. (Ord. 2370 § 11, 2004).~~

16.15.100 Alteration or development of critical areas – Standards and criteria.

Alteration of critical areas and/or their established buffers may be permitted by the Department subject to the criteria of this section. Standards for mitigation of impacts to critical areas are identified in MTMC 16.15.110.

A. Wetlands.

1. Category I Wetlands. Alterations of Category I wetlands shall be avoided subject to the reasonable use provisions of this chapter.
2. Category II Wetlands.
 - a. Alteration and mitigation shall comply with the mitigation performance standards and requirements of these regulations; and
 - b. No net loss of wetland functions and values may occur.
3. Category III and IV Wetlands.
 - a. Alteration and mitigation shall comply with the mitigation performance standards and requirements of these regulations;
 - b. Where enhancement restoration or creation is proposed, replacement ratios shall comply with the requirements of these regulations; and
 - c. No net loss of wetland functions and values may occur.

B. Streams.

1. Relocation of a Class I stream shall be prohibited. Relocation of other streams may take place only when it is part of an approved mitigation or enhancement or restoration plan, will result in equal or better habitat and water quality, and will not diminish the flow capacity of the stream. Relocation of a Class II, III and IV stream exclusively to facilitate general site design shall not be permitted.
2. Bridges shall be used to cross Class I streams; boring/micro-tunneling may be considered for utility crossings if it would result in the same or lower impacts as bridging.
3. Culverts are allowable only under the following circumstances:

- a. Only in Class II, III, and IV streams;
 - b. When fish passage will not be impaired;
 - c. When the following design criteria are met:
 - i. Oversized culverts will be installed;
 - ii. Culverts will include gradient controls and creation of pools within the culvert for Class II streams;
 - iii. Gravel substrate will be placed in the bottom of the culvert to a minimum depth of one foot for Class II and Class III streams;
 - d. The applicant or successors shall, at all times, keep any culvert free of debris and sediment to allow free passage of water and, if applicable, fish.
4. The City may require that a culvert be removed from a stream as a condition of approval, unless the culvert is not detrimental to fish habitat or water quality, or removal would be a long-term detriment to fish or wildlife habitat or water quality.

C. Wildlife Habitat.

1. Critical Habitat. Alterations of critical habitat shall be avoided, subject to the reasonable use provisions of this chapter.
2. Secondary Habitat. Alterations of secondary habitat may be permitted; provided, that the applicant mitigates adverse impacts consistent with the performance standards of MTMC 16.15.120, and other requirements of this chapter.

~~D. Geologic Hazard Areas.~~

~~1. General Standard. The City may approve, condition or deny proposals for the alteration of geologic hazard areas based on the degree to which significant risks posed by critical hazard areas to public and private property and to public health and safety can be mitigated. The objective of mitigation measures shall be to render a site containing a critical geologic hazard site as safe as one not containing such hazard or one characterized by a low hazard. In appropriate cases, conditions may include limitations of proposed uses, modification of density, alteration of site layout and other appropriate changes to the proposal. Where potential impacts cannot be effectively mitigated, or where the risk to public health, safety and welfare, public or private property, or important natural resources is significant notwithstanding mitigation, the proposal shall be denied, unless permitted as a reasonable use exception under MTMC 16.15.150.~~

~~2. Class IV Landslide Hazard Areas. Alteration shall be prohibited in Class IV (very high) landslide hazard areas, subject to the reasonable use provisions of this chapter.~~

~~3. Critical Seismic Hazard Areas.~~

~~a. For one-story and two-story residential structures, the applicant shall conduct an evaluation of site response and liquefaction potential based on the performance of similar structures under similar foundation conditions; and~~

~~b. For all other proposals, the applicant shall conduct an evaluation of site response and liquefaction potential including sufficient subsurface exploration to provide a site~~

~~coefficient (S) for use in the static lateral force procedure described in the International Building Code.~~

~~4. When development is permitted in geologic hazard areas by these regulations, an applicant and/or its qualified consultant shall provide assurances which, at the City's discretion, may include one or more of the following:~~

~~a. A letter from the geotechnical engineer and/or geologist who prepared the studies required by these regulations that risks of damage from the proposal, both on-site and off-site, are minimal subject to the conditions set forth in the report, that the proposal will not increase the risk of occurrence of the potential geologic hazard, and that measures to eliminate or reduce risks have been incorporated into its recommendations;~~

~~b. A letter from the applicant, or the owner of the property if not the applicant, stating an understanding and acceptance of any risk of injury or damage associated with development of the site and agreeing to notify any future purchasers of the site, portions of the site, or structures located on the site of the geologic hazard;~~

~~c. A legally enforceable hold harmless agreement, which shall be recorded as a covenant and noted on the face of the deed or plat, and executed in a form satisfactory to the City, acknowledging that the site is located in a geologic hazard area; the risks associated with development of such site; and a waiver and release of any and all claims of the owner(s), their directors, employees, successors or assigns against the City of Mountlake Terrace for any loss, damage or injury, whether direct or indirect, arising out of issuance of development permits for the proposal; and~~

~~d. Posting of a bond, guarantee or other assurance device approved by the City, to cover the cost of monitoring, maintenance and any necessary corrective actions.~~

E. Aquifer Recharge Areas.

1. The following land uses and activities shall be avoided in critical (high significance) aquifer recharge areas:

a. Land uses and activities that involve the use, storage, transport or disposal of regulated quantities of chemicals, substances or materials that are toxic, dangerous or hazardous, as those terms are defined by state regulations (per WAC 173-303-070 through 173-303-100, and Chapter 173-342 WAC);

b. On-site sewage disposal systems;

c. Underground or outdoor storage of chemicals;

d. Petroleum pipelines; and

e. Solid waste landfills.

2. Medium or Low Significance Recharge Areas. Development within "medium or low significance aquifer recharge areas," as those terms are defined in these regulations, shall implement the mitigation standards contained in MTMC 16.15.110 and 16.15.120.

F. Flood Hazard Areas – Development Standards.

1. Flood Hazard Areas Generally. Any development in flood hazard areas is subject to the provisions of Chapters 15.05 and 16.20 MTMC. (Ord. 2370 § 12, 2004).

~~16.15.110 Mitigation standards, criteria and plan requirements.~~

~~A. Mitigation Standards.~~

- ~~1. Adverse impacts to critical area functions and values shall be mitigated. Mitigation actions shall be implemented in the preferred sequence identified in this chapter. Proposals which include less preferred and/or compensatory mitigation shall demonstrate that:
 - ~~a. All feasible and reasonable measures have been taken to reduce impacts and losses to the critical area, or to avoid impacts where avoidance is required by these regulations;~~
 - ~~b. The restored, created or enhanced critical area or buffer will be as viable and enduring as the critical area or buffer area it replaces; and~~
 - ~~c. In the case of wetlands and streams, no overall net loss will occur in wetland or stream functions and values. The mitigation shall be functionally equivalent to the altered wetland or stream in terms of hydrological, biological, physical and chemical functions.~~~~

~~B. Location and Timing of Mitigation.~~

- ~~1. Mitigation shall be provided on-site. Mitigation may be allowed off-site only when it is determined by the Department that on-site mitigation is not scientifically feasible or practical due to physical features of the property, or where the affected site is identified as appropriate for off-site mitigation pursuant to an off-site mitigation program. The burden of proof, based on a preponderance of the evidence, shall be on the applicant to demonstrate that mitigation cannot be provided on-site.~~
- ~~2. When mitigation cannot be provided on-site, mitigation shall be provided in the same drainage basin as the permitted activity on property owned, secured or controlled by the applicant where such mitigation is practical and beneficial to the critical area and associated resources. Mitigation sites shall be located within the City.~~
- ~~3. In-kind mitigation shall be provided except when the applicant demonstrates, based on a preponderance of the evidence, and the Department concurs, that greater functional and habitat value can be achieved through out-of-kind mitigation.~~
- ~~4. When wetland, stream or habitat mitigation is permitted by these regulations on-site or off-site, the mitigation project shall occur near an adequate water supply (river, stream, ground water) with a hydrologic connection to the critical area to ensure a successful mitigation or restoration. A natural hydrologic connection is preferential as compared to one which relies upon manmade features requiring routine maintenance.~~
- ~~5. Any agreed-upon mitigation plan shall be completed before initiation of other permitted activities, unless a phased or concurrent schedule that assures completion prior to occupancy has been approved by the Department.~~

~~C. Wetland Replacement Ratios.~~

- ~~1. Where wetland alterations are permitted by the Department, the applicant shall enhance or create areas of wetlands in order to compensate for wetland losses. The compensation shall be determined according to acreage, function, type, location, timing factors, and projected success of enhancement or creation.~~
- ~~2. The following acreage replacement and enhancement ratios shall be implemented. The Department may vary these standards only if the applicant can demonstrate, and the Department agrees, that the variation will be compensated by mitigation that will replace the~~

~~lost functions of the wetland. In no case shall the amount of mitigation be less than the area of affected wetland. The Department may at its discretion increase these standards where mitigation is to occur off-site or in other appropriate circumstances.~~

Wetland Category	Wetland Creation Replacement Ratio	Wetland Enhancement Ratio (Aeres)
-	(Aeres Created or Enhanced: Aeres Impacted)	
Category I	6:1	12:1
Category II	Forested 3:1	6:1
-	Scrub/Shrub 2:1	4:1
-	Emergent 2:1	4:1
Category III	Forested 3:1	6:1
-	Scrub/Shrub 2:1	4:1
-	Emergent 2:1	4:1
Category IV	1.25:1	2.5:1

~~Source: Wetland Mitigation Replacement Ratios: Defining Equivalency, Department of Ecology, 1992. (Ord. 2370 § 13, 2004).~~

16.15.120 Performance standards for mitigation planning.

The performance standards in this section and the standards in MTMC 16.15.110 shall be incorporated into mitigation plans submitted to the Department to address impacts to critical areas. Mitigation plans shall contain detailed critical area information as required by the Department to analyze impacts and alternatives. (*Refer to Attachment 5.*)

A. Wetlands and Streams.

1. Use plants native to the Puget Lowlands; nonnative, introduced plants or plants listed by the Washington State Department of Agriculture as noxious weeds (Chapter 16-750 WAC) shall not be used;
2. Use plants adapted to and appropriate for the proposed habitats and consider the ecological conditions known or expected to be present on the site. For example, plants assigned a facultative wetland (FACW) wetland indicator status should be used for sites with soils that are inundated or saturated for long periods during the growing season. Use nearby reference wetlands or aerial photos to identify plants suitable to the site conditions and hydrologic regimes planned for the mitigation site;
3. Avoid planting significant areas of the site with species that have questionable potential for successful establishment, such as species with a narrow range of habitat tolerances;
4. Specify plants that are commercially available from native-plant nurseries or available from local sources; if collecting some or all native plants from donor sites, collect in accordance with ecologically accepted methods, such as those described in the Washington Native Plant Society's Policy on Collection and Sale of Native Plants, that do not jeopardize the survival or integrity of donor plant populations;
5. Use perennial plants in preference to annual species;

6. Use plant species high in food and cover value for native fish and wildlife species that are known or likely to use the mitigation site (according to reference wetlands, published information, and professional judgment);
7. Install a temporary irrigation system and specify an irrigation schedule unless a sufficient naturally occurring source of water is demonstrated;
8. For stream substrate or wetland soils, at least one foot of clean inorganic and/or organic materials, such as cobble, gravel, sand, silt, clay, muck, or peat as appropriate shall be ensured. The stream substrate or wetland soils shall be free from solid, dangerous, or hazardous substances as defined by Chapter 70.105 RCW and implementing rules;
9. Confine temporary stockpiling of soils to upland areas. Unless otherwise approved by the Department, comply with all applicable best management practices for clearing, grading, and erosion control to protect any nearby surface waters from sediment and turbidity;
10. Show densities and placement of plants; these should be based on the ecological tolerances of species proposed for planting, as determined by a qualified consultant;
11. Provide sufficient specifications and instructions to ensure proper placement diversity and spacing of seeds, tubers, bulbs, rhizomes, springs, plugs, and transplanted stock and other habitat features, to provide a high probability of success, and to reduce the likelihood of prolonged losses of wetland functions from proposed development. Prepare contingency plans for all mitigation proposals;
12. Do not rely on fertilizers and herbicides to promote establishment of plantings; if fertilizers are used, they must be applied per manufacturer specifications to planting holes in organic or time-release forms, such as Osmocote® or comparable formulations, and never broadcast on the ground surface; if herbicides are used to control invasive species or noxious weeds and to help achieve performance standards, only those approved for use in aquatic ecosystems by the Washington Department of Ecology shall be used; herbicides shall only be used in conformance with all applicable laws and regulations and be applied per manufacturer specifications by an applicator licensed in the state of Washington;
13. Include the applicant's mitigation plan consultant in the construction process to ensure the approved mitigation plan is completed as designed. At a minimum, the consultant's participation will include site visits to inspect completed rough and final grading, installation of in-water or other habitat structures, and to verify the quality and quantity of native plant materials before and after installation; and
14. During construction, place temporary markers, signs and/or fencing around the perimeter of the critical area, where practical and applicable to particular critical areas.

B. Wetlands.

1. Do not exceed a maximum water depth of 6.6 feet (two meters) at mean low water unless approved as part of a planned interspersions of wetland vegetation classes and deep-water habitats;
2. Do not exceed a slope of 25 percent (4H:1V) in the wetland unless it can be clearly demonstrated by supporting documentation that wetland hydrology and hydric soils capable of supporting hydrophytic (wetland) vegetation will be created on steeper slopes;

3. Do not exceed a slope of 25 percent (4H:1V) in the wetland buffer.

C. Wildlife Habitat.

1. Incorporate relevant performance standards from subsections A and B of this section, as determined by the Department;
2. Include the following additional mitigation measures in mitigation planning:
 - a. Locate buildings and structures in a manner that minimizes adverse impacts on critical habitats used by priority or threatened or endangered species and identified by the Washington State Department of Fish and Wildlife, National Marine Fisheries Services, and U.S. Fish and Wildlife Services. Priority habitats include, but are not limited to, riparian areas, streams, wetlands, caves, snags and logs, talus, and urban natural open space;
 - b. Integrate retained habitat into open space and landscaping;
 - c. Wherever possible, consolidate critical habitats into larger, unfragmented, contiguous blocks;
 - d. Use native plant species for landscaping of disturbed or undeveloped areas and in any habitat enhancement or restoration activities;
 - e. Create habitat heterogeneity and structural diversity that emulates native plant communities described in Natural Vegetation of Oregon and Washington (Franklin, J.F. and C.T. Dyrness 1988) or other regionally recognized publications on native landscapes;
 - f. Remove and/or control any noxious weeds or exotic animals which are problematic to the critical habitat area as determined by the Department or consultant hired by the City to review the mitigation plan; and
 - g. Preserve significant or existing native trees, preferably in stands or groups, consistent with achieving the goals and standards of this chapter; the plan shall reflect the report prepared pursuant to MTMC 16.15.070.

~~D. Geologic Hazard Areas.~~

- ~~1. Relevant performance standards, as determined by the Department, shall be incorporated into mitigation plans.~~
- ~~2. The following additional performance standards shall be reflected in proposals within geologic hazard areas:~~
 - ~~a. A geotechnical study shall be prepared to identify and evaluate potential hazards and to formulate mitigation measures;~~
 - ~~b. Construction methods will reduce or not adversely affect geologic hazards;~~
 - ~~c. Site planning shall minimize disruption of existing topography and natural vegetation;~~
 - ~~d. Impervious surface coverage shall be minimized;~~
 - ~~e. Disturbed areas shall be replanted as soon as feasible pursuant to an approved landscape plan;~~
 - ~~f. Clearing and grading shall be limited to the period of May 1st to October 1st unless the geotechnical report specifically addresses measures necessary to perform clearing and grading during other portions of the year;~~

- ~~g. Use of retaining walls that allow maintenance of existing natural slope areas are preferred over graded slopes;~~
- ~~h. Temporary erosion and sedimentation controls, pursuant to an approved plan, shall be implemented during construction;~~
- ~~i. A master drainage plan shall be prepared for large projects as required by the City Engineer;~~
- ~~j. Development shall not increase instability or create a hazard to the site or adjacent properties, or result in a significant increase in sedimentation or erosion.~~

E. Aquifer Recharge Areas.

1. Development within “high and medium significance aquifer recharge areas,” as those terms are defined in these regulations, shall implement the following measures:

- a. Underground storage of chemicals, substances or materials that are toxic, hazardous or dangerous is prohibited;
- b. Any chemicals, substances or materials that are toxic, hazardous or dangerous as defined by state law (per WAC 173-303-070 through 173-303-100 and Chapter 173-342 WAC) should be segregated and stored in receptacles or containers that meet state and federal standards;
- c. Storage containers should be located in a designated, secured area that is paved and able to contain leaks and spills, and surrounded by a dike;
- d. Secondary containment devices should be constructed around storage areas to retard the spread of any spills and a monitoring system should be implemented;
- e. A written operations plan should be developed, including procedures for loading/unloading liquids and for training of employees in proper materials handling;
- f. An emergency response/spill clean-up plan shall be prepared and employees properly trained in reacting to accidental spills;
- g. The tanks should include overfill protection systems and positive controls on outlets to prevent uncontrolled discharges;
- h. Development should be clustered and impervious surfaces limited where possible;
- i. No waste liquids or chemicals of any kind shall be discharged to storm sewers; and
- j. All development shall implement best management practices (BMPs) for water quality, as approved by the Department, such as biofiltration swales and use of oil-water separators, and BMPs appropriate to the particular use proposed.

2. Development within low significance aquifer recharge areas shall implement best management practices (BMPs) for water quality as approved by the City.

On completion of construction, any approved mitigation project must be signed off by the applicant’s qualified consultant and approved by the Department. Signature will indicate that the construction has been completed as approved. (Ord. 2370 § 14, 2004).

16.15.130 Monitoring program and contingency plan.

A. For all actions requiring a mitigation plan, a monitoring program shall be prepared and

implemented by the applicant to evaluate the success of the mitigation project and to determine necessary corrective actions. This program shall determine if the original goals and objectives are being met. The monitoring program shall be reviewed and approved by the Department prior to implementation.

B. The monitoring program shall include a contingency plan in the event that implementation of the mitigation plan is inadequate or fails. A performance and maintenance bond or other acceptable security device is required to ensure the applicant's compliance with the terms of the approved mitigation plan. The amount of the performance and maintenance bond shall equal 125 percent of the cost of the mitigation project for the length of the monitoring period; the Department may agree to reduce the bond in proportion to work successfully completed over the period of the bond.

C. Incorporate the following into monitoring programs prepared to comply with this chapter:

1. Appropriate, accepted, and unbiased qualitative or precise and accurate quantitative sampling methods to evaluate the success or failure of the project compared to performance standards approved by the City;
2. Quantitative sampling methods that include permanent photopoints installed at the completion of construction and maintained throughout the monitoring period and shall also include permanent transects, sampling points (e.g., plots or quadrants or water quality or quantity monitoring stations), and wildlife monitoring stations;
3. Clearly stipulated qualitative and quantitative sampling methods that are approved by the City or the consultant selected by the City to review the monitoring plan before implementation by the project proponent;
4. Appropriate qualitative and/or quantitative performance standards that will be used to measure the success or failure of the mitigation. These will include, at a minimum, standards for plant survival and diversity, including structural diversity, the extent of wetland hydrology, hydric soils, and habitat types and requirements as appropriate; all proposed standards are subject to review and approval by the City or the consultant selected by the City to review the monitoring plan;
5. Monitoring programs for an appropriate period of time, usually three to five years, that include, at a minimum: preparation of an as-built plan; biannual monitoring and preparation of annual monitoring reports following implementation; and a maintenance plan. More stringent monitoring requirements may be required on a case-by-case basis for more complex mitigation plans;
6. Monitoring reports shall be submitted to the Department by December 1st of the year in which monitoring is conducted. The reports are to be prepared by a qualified consultant and must contain all qualitative and quantitative monitoring data, photographs, and an evaluation of each of the applicable performance standards. If performance standards are not being met, appropriate corrective or contingency measures must be identified and implemented to ensure that performance standards will be met;
7. Provision for extension of the monitoring period beyond the minimum timeframe if performance standards are not being met at the end of the initial three- or five-year period; and provision for additional financial securities or bonding to ensure that any additional

monitoring and contingencies are completed to ensure the success of the mitigation. (Ord. 2370 § 15, 2004).

16.15.140 Procedural provisions.

A. Interpretation and Conflicts. The Director shall have the authority to administer the provisions of this chapter, to make determinations with regard to the applicability of the regulations, to interpret the intent of unclear provisions, to require additional information, to determine the level of detail and appropriate methodologies for critical area reports and studies, to prepare application and informational materials as required, to promulgate procedures and rules for unique circumstances not anticipated with the standards and procedures contained within this section.

B. Enforcement.

1. Voluntary Correction. When it has been determined that a violation has occurred or is occurring, the City of Mountlake Terrace may enter into a voluntary correction agreement, which is a contract between the City and the responsible person, under which such person agrees to abate the violation within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:

- a. The name and address of the person responsible for the violation; and
- b. The street address or other description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and
- c. A description of the violation and a reference to the regulation which has been violated; and
- d. The necessary corrective action to be taken, and a date or time by which the correction must be completed; and
- e. An agreement by the person responsible for the violation that the City may inspect the premises as necessary to determine compliance with the voluntary correction agreement; and
- f. A statement of understanding that if the terms of the voluntary correction agreement are not satisfied, that the City may abate the violation and recover its costs and expenses (including attorney fees, expert witness fees, and court costs) from the person responsible for the violation, and/or they may be subject to a monetary penalty; and
- g. A statement of understanding that by entering into the voluntary correction agreement, the person responsible for the violation waives the right to a hearing as to the existence of the violation and stipulates to the same. A statement of understanding that an extension of the time limit for correction or a modification of the required corrective action may be granted if the person responsible for the violation has shown due diligence and/or substantial progress in correcting the violation, but unforeseen circumstances delay correction under the original conditions.

2. Notice of Civil Violation. When it is determined that a violation has occurred or is occurring, and the City is unable to secure voluntary correction or a voluntary agreement is

not applicable, the City may issue a notice of civil violation, or a “notice and order” to the person responsible for the violation. A “notice and order” shall include the following:

- a. The name and address of the person responsible for that violation; and
- b. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and
- c. A description of the violation and a reference to the provision(s) of the City regulation(s) which has been violated; and
- d. The required corrective action and a date and time by which the correction must be completed, after which the City may abate the unlawful condition using all legal means; and
- e. A statement that the order may be appealed to the Hearing Examiner upon filing a written request for hearing with the City Manager or designee within 15 days of issuance of the order. Failure to timely file a notice of appeal shall constitute a waiver of the right to appeal the determination of the order. An appeal hearing, timely requested, shall be set before the Hearing Examiner no less than 20 days but no more than 60 days from the date the notice of civil violation is issued, unless such date is continued by the Hearing Examiner for good cause or by agreement of the parties; and
- f. A statement indicating that the hearing will be canceled and no monetary penalty will be assessed, other than City costs and expenses, if the required corrective action is completed and approved by the City prior to the hearing; and
- g. A statement that the costs and expenses of abatement incurred by the City and a monetary penalty in an amount per day or week for each violation may be assessed against the person to whom the notice of civil violation is directed as specified and ordered by the court.

Service of the notice to the person responsible for the violation may be done either personally or by mailing a copy of the notice of civil violation by certified or registered mail, return receipt requested, to such person at their last known address. If the person responsible for the violation cannot be personally served within Snohomish County and if an address for mailed service cannot be ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made and, if by posting, the facts showing the attempts to serve the person personally or by mail.

3. Abatement.

- a. Urgent Abatement. Whenever a condition, the continued existence of which constitutes an immediate threat to the public health, safety or welfare or to the environment, is found to exist, the City may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement.
- b. Judicial Abatement. The City may seek judicial process, as it deems necessary to abate a condition which was caused by or continues to be a violation of this chapter and other

methods of remedial action failed to produce compliance. An order of abatement is issued through the appropriate court of jurisdiction.

C. Penalties.

1. Violation of, or failure to comply with, any provision of this chapter is a civil offense except as otherwise provided, and subject to a fine as established by resolution. If the violation has not been corrected pursuant to a notice and order, or the fine is not paid within 15 days of issuance of the notice and order and the notice and order has not been appealed, the violation shall constitute a continued offense subject to the penalties in subsection (C)(3) of this section.
2. Any person or entity cited for violation under subsection B of this section may request an administrative hearing by notifying the Department in writing within 15 days of the issuance of the citation. The requested hearing shall be brought before the Hearing Examiner in accordance with and pursuant to Chapter 2.120 MTMC.
3. A continued offense or subsequent violation of the same or like provision committed within a 24-month period shall constitute a misdemeanor crime and shall be punishable by a fine not to exceed \$1,000 or 90 days in jail, or both such fine and jail time, and shall be in addition to any civil remedy for abatement and collection for the cost and expense thereof.

D. Appeals of Critical Area Review Decisions. Critical area review decisions may be appealed to the Hearing Examiner pursuant to Chapter 2.120 MTMC by a party with standing and shall be governed by the following procedures and standards:

1. Written Appeal. Appeals shall be written and shall state the following:
 - a. The decision being appealed, the name of the project applicant and the date of the decision.
 - b. The name and address of the person appealing, and his or her interest in the matter.
 - c. The reasons why the person appealing believes the decision to be in error under the provisions of this chapter.
2. Filing the Appeal. The person appealing shall file the appeal and applicable fee with the Director of Community Services within 14 calendar days after the date of the decision being appealed.
3. Standards. In deciding the appeal, the Hearing Examiner shall determine whether the critical area decision, pursuant to the appeal, was in error pursuant to the provisions of this chapter. (Ord. 2370 § 16, 2004).

~~16.15.150 Reasonable use provision.~~

~~A. The standards and requirements of these regulations are not intended, and shall not be construed or applied in a manner, to deny all reasonable use of private property. If an applicant demonstrates to the satisfaction of the Hearing Examiner that strict application of these standards would deny all reasonable use of a property, development may be permitted subject to appropriate conditions.~~

~~B. Applications for a reasonable use exception shall be processed for consideration by the Hearing Examiner, pursuant to Chapter 2.120 MTMC.~~

~~C. An applicant for relief from strict application of these standards shall demonstrate that all of the following criteria are met:~~

- ~~1. No reasonable use with less impact on the critical area and its buffer is possible; and~~
- ~~2. No feasible and reasonable on-site alternative is possible to the activities proposed, considering possible changes in site layout, reductions in density and similar factors, that would allow a reasonable economic use with fewer adverse impacts; and~~
- ~~3. The proposed activities, as conditioned, will result in the minimum possible impacts to affected critical areas; and~~
- ~~4. All reasonable mitigation measures have been implemented or assured; and~~
- ~~5. The inability to derive reasonable economic use is not the result of the applicant's actions or that of a previous property owner, such as by segregating or dividing the property and creating an undevelopable condition; and~~
- ~~6. Any alteration of a critical area approved under this section shall be subject to appropriate conditions and will require mitigation under an approved mitigation plan.~~

~~D. Approval of a reasonable use exception shall not eliminate the need for any other permit or approval otherwise required by applicable City codes. (Ord. 2370 § 17, 2004).~~

ATTACHMENTS

1. Wetland Study & Reporting Requirements
2. Stream Reconnaissance Report Requirements
3. Wildlife Study and Report Requirements
4. Geologic Hazard Report Requirements
5. Mitigation Plan Requirements

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WETLAND STUDY & REPORTING REQUIREMENTS

1. Prior to the issuance of a SEPA threshold determination for a proposal within 200 feet of a wetland, as defined in MTMC 16.15.020, a wetland report must be submitted to the City for review. The purpose of the report is to determine the extent, characteristics and functions of any wetlands located on or potentially affected by activities on a site where regulated activities are proposed. The report will also be used by the City to determine the appropriate wetland rating and to establish appropriate buffer requirements. The information required by this report should be coordinated with the study and reporting requirements for any other sensitive areas located on the site.

2. Wetland boundaries must be staked and flagged in the field by a qualified consultant employing the Federal Methodology. Field flagging must be distinguishable from other survey flagging on the site. The field flagging must be accompanied by a wetland delineation report.

3. A wetland delineation report shall include the following information:

- a. Vicinity map;
- b. Site designated on a National Wetland Inventory Map (U.S. Fish and Wildlife Service) and any city wetland inventory map;
- c. The wetland boundary must be accurately drawn at an appropriate engineering scale such that information shown is not cramped or illegible. Generally, a scale of 1" = 40' or greater (such as 1" = 20') should be used. Existing features must be distinguished from proposed features. The map must show:
 - i. site boundary property lines and roads;
 - ii. internal property lines, rights-of-way, easements, etc.;
 - iii. existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc.;
 - iv. contours at the smallest readily available intervals, preferably at 5-foot intervals;
 - v. delineated wetland boundary;
 - vi. hydrologic mapping showing patterns of water movement into, through, and out of the site area; and
 - vii. location of all test holes and vegetation sample sites, numbered to correspond with flagging in the field and field data sheets.
- vii. for large and/or complex projects, an air photo with overlays displaying the site boundaries and wetland delineation may be required. Generally, an orthophotograph at a scale of 1" = 400' or greater (such as 1" = 200') should be used. If an orthophotograph is not available, the center of a small scale (e.g., 1" = 2,000') aerial photograph enlarged to 1" = 400' may be used.
- d. The report must describe:
 - i. locational information including legal description and address;
 - ii. all natural and man-made features within 200 feet of the site boundary;
 - iii. delineation methodology, with special emphasis on whether the approach used was routine, intermediate, or comprehensive, as described in the Federal Manual;
 - iv. general site conditions including topography, acreage, and surface areas of wetlands and water bodies;
 - v. specific descriptions of plant communities, soils, and hydrology; and
 - vi. a summary of existing wetland function and value.

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e. Field data sheets from the Federal Manual, numbered to correspond with sample site locations as staked and flagged in the field.

f. A summary of proposed wetland and buffer alterations, impacts, and the need for the alterations as proposed. Potential impacts may include but are not limited to loss of flood storage potential, loss of wildlife habitat, expected decreases in species diversity or quantity, changes in water quality, increases in human intrusion, and impacts on associated wetland or water resources. If alteration of a Type II or III wetland is proposed, a wetland mitigation plan is required according to the standards of MTMC 16.15.120.

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STREAM RECONNAISSANCE REPORT REQUIREMENTS

1. Prior to the issuance of a SEPA threshold determination for a proposal, a stream reconnaissance report must be submitted to the City for review. The purpose of the report is to determine the physical and biological characteristics of streams on any site where regulated activities are proposed. The report will also be used by the City to determine the appropriate stream rating designation and buffering requirement for the stream. The information required for this report should be coordinated with the study and reporting requirements established for any other sensitive areas located on the site.

2. Stream banks (or stream centerline) should be flagged in the field by a qualified consultant. Field flagging must be distinguishable from other survey flagging on the site. The field flagging must be accompanied by a stream reconnaissance report. The report shall include the following information:

- a. Vicinity map;
- b. Site designated on a City of Mountlake Terrace stream inventory map;
- c. Streams shall be located approximately on a site map at an appropriate engineering scale such that information shown is not cramped or illegible. Generally, a scale of 1" = 40' or greater (such as 1" = 20') should be used. Existing features must be distinguished from proposed features. The map must show:

- i. site boundary property lines and roads;
 - ii. internal property lines, rights-of-way, easements, etc.;
 - iii. existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc.;
 - iv. contours at the smallest readily available intervals, preferably at 5-foot intervals;
 - v. approximate locations of all streams on the property;
 - vi. hydrologic mapping showing patterns of water movement into, through, and out of the site area; and

- vii. for large and/or complex projects, an air photo with overlays displaying the site boundaries and stream locations may be required. Generally, an orthophotograph at a scale of 1" = 400' or greater (such as 1" = 200') should be used. If an orthophotograph is not available, the center of a small scale (e.g., 1" = 2,000') aerial photograph enlarged to 1" = 400' may be used.

- d. The report must describe:
 - i. locational information including legal description and address;
 - ii. all natural and man-made features within 150 feet of the site boundary;
 - iii. general site conditions including topography, acreage, and area hydrology;
 - iv. specific descriptions of streams, including gradient and flow characteristics, stream bed condition, stream bank and slope stability, presence of fish or habitat for fish, presence of obstructions to fish movement, general water quality, and stream bank vegetation; and

- v. a summary of existing stream value for fisheries habitat. A summary of proposed stream and buffer alterations, impacts, and the need for the alterations as proposed. Potential impacts may include but are not limited to vegetation removal, stream bed and stream bank alterations, alteration of fisheries habitat, changes in water quality, and increases in human intrusion. If alteration of a stream is proposed, a stream mitigation plan is required according to the standards of Section 12.

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WILDLIFE STUDY AND REPORTING REQUIREMENTS

1. Prior to the issuance of a SEPA threshold determination for a proposal, a wildlife habitat report must be submitted to the City for review. The purpose of the report is to determine the extent, function and value of wildlife habitat on any site where regulated activities are proposed. The report will also be used by the City to determine the sensitivity and appropriate classification of the habitat, appropriate buffering requirements, and potential impacts of proposed activities. The information required by this report should be coordinated with the study and reporting requirements for any other sensitive area located on the site.

2. The report shall include the following information:

- a. Vicinity map;
- b. A map showing:
 - i. site boundary property lines and roads;
 - ii. internal property lines, rights-of-way, easements, etc.;
 - iii. existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc.;
 - iv. contours at the smallest readily available intervals, preferably at 5-foot intervals;
 - v. for large and/or complex projects, an air photo with overlays displaying the site boundaries and wetland delineation may be required. Generally, an orthophotograph at a scale of 1" = 400' or greater (such as 1" = 200') should be used. If an orthophotograph is not available, the center of a small scale (e.g., 1" = 2,000') aerial photograph enlarged to 1" = 400' may be used;
 - vi. a map of vegetative cover types, reflecting the general boundaries of different plant communities on the site;
 - vii. a description of the species typically associated with the cover types, including an identification of any critical wildlife species that might expected to be found;
 - viii. the results of searches of DNR's Natural Heritage and Non-Game Data System databases; and
 - viii. the result of searches of the Washington Department of Fish and Wildlife Priority Habitat and Species database.
- c. The report must describe:
 - i. locational information including legal description and address;
 - ii. all natural and man-made features within 150 feet of the site boundary;
 - iii. general site conditions including topography, acreage, and water bodies or wetlands;
 - iv. identification of any areas that have previously been disturbed or degraded by human activity or natural processes;
 - v. the layers, diversity and variety of habitat found on the site;
 - vi. identification of edges between habitat types and any species commonly associated with that habitat;
 - vii. the location of any migration or movement corridors; and
 - viii. a narrative summary of existing habitat functions and values. The analysis shall use a habitat evaluation procedure or methodology approved by the Department.

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d. A summary of proposed habitat and buffer alterations, impacts and mitigation. Potential impacts may include but are not limited to clearing of vegetation, fragmentation of wildlife habitat, expected decreases in species diversity or quantity, changes in water quality, increases in human intrusion, and impacts on wetlands or water resources.

e. The level of detail contained in the report shall generally reflect the size and complexity of the proposal and the function and value of the habitat. The Department may require field studies in appropriate cases.

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GEOLOGIC HAZARD REPORTING REQUIREMENTS

1. Applicants for activities within geologic hazard areas shall conduct technical studies to: evaluate the actual presence of geologic conditions giving rise to geologic hazards; determine the appropriate class of hazard, according to the classification of potential hazards contained in these regulations; evaluate the safety and appropriateness of proposed activities; and recommend appropriate construction practices, monitoring programs and other mitigation measures required to ensure achievement of the purpose and intent of these regulations. The format of any required reports shall be determined by the City. The information required by this report should be coordinated with the study and reporting requirements for any other sensitive areas located on the site.

2. The approach of the City of Mountlake Terrace critical area regulations is to require a level of study and analysis commensurate with potential risks associated with geologic hazards on particular sites and for particular proposals. Depending on the particular geologic hazard, geologic, hydrologic and/or topographic studies may be required. At a minimum, all applicants shall review the history of the site and conduct a surface reconnaissance. The appropriate report(s) and level of analysis shall be determined using the following guidelines:

- a. Class 2 Landslide Hazard Areas:
 - i. Review site history and available information;
 - ii. Conduct a surface reconnaissance of the site and adjacent areas;
 - iii. Conduct subsurface exploration if indicated by i. and ii. as determined by the applicant's qualified consultant and the City.
- b. Class 3 Landslide Hazard Areas:
 - i. Review site history and available information;
 - ii. Conduct a surface reconnaissance of the site and adjacent areas;
 - iii. Conduct subsurface exploration suitable to the site and proposal to assess geohydrologic conditions;
 - iv. Recommend surface water management controls during construction and operation; and
 - vi. Proposed construction scheduling;
- c. Class 4 Landslide Hazard Areas:
 - i. Review site history and available information;
 - ii. Conduct a surface reconnaissance of the site and adjacent areas;
 - iii. Conduct subsurface exploration suitable to site and proposal to assess geohydrologic conditions;
 - iv. Conduct detailed slope stability analysis;
 - v. Recommend detailed surface water management controls during construction and operation;
 - vi. Proposed construction scheduling;
 - vii. Recommendations for site monitoring and inspection during construction.
- d. Critical Erosion Hazard Areas:
 - i. Review site history and available information;
 - ii. Conduct a surface reconnaissance of the site and adjacent areas; and

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iii. Identify surface water management, erosion and sediment controls appropriate to the site and proposal.

e. Seismic Hazard Areas:

i. For one and two story single-family structures, conduct an evaluation of site response and liquefaction potential based on the performance of similar structures under similar foundation conditions;

ii. For all other proposals, conduct an evaluation of site response and liquefaction potential including sufficient subsurface exploration to provide a site coefficient (S) for use in the static lateral force procedure described in the Uniform Building Code.

f. Aquifer Recharge Areas:

i. A characterization of the affected aquifer system and a description of subsurface soil types (between the surface and the uppermost significant aquifer);

ii. Description of proposed uses and activities;

iii. Identification of the type and quantities of any dangerous or hazardous chemicals or substances that will be used, stored, transported or disposed of on the site;

iv. Proposed methods of storing any of the above substances, including containment methods;

v. An emergency response plan for dealing with any spills; and

vi. Proposed Best Management Practices (BMPs) is for controlling surface water runoff.

g. All Critical Geologic Hazard Areas:

i. Vicinity map;

ii. A map showing:

(a) site boundary property lines and roads;

(b) internal property lines, rights-of-way, easements, etc.;

(c) existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc.; and

(d) contours at the smallest readily available intervals, preferably at 5-foot intervals.

iii. The report must describe:

(a) locational information including legal description and address;

(b) all natural and man-made features within 150 feet of the site boundary;

(c) general site conditions including topography, acreage, and water bodies or wetlands;

(d) identification of any areas that have previously been disturbed or degraded by human activity or natural processes;

(e) a characterization of soils, geology and drainage; and

(f) a characterization of groundwater conditions including the presence of any public or private wells in the immediate vicinity.

iv. An analysis of proposed clearing, grading and construction activities, including construction scheduling; potential direct and indirect, on-site and off-site impacts from development; and proposed mitigation measures, including any special construction techniques, monitoring or inspection program, erosion or sedimentation programs (during and after construction), and surface water management controls.

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MITIGATION PLAN REQUIREMENTS

1. Where it is determined by the City that compensatory mitigation is required or appropriate, a mitigation plan shall be prepared. The purpose of the plan is to prescribe mitigation to compensate for impacts to the affected sensitive area functions, values and acreage as a result of the proposed action. This plan shall consider the chemical, physical, and biological impacts on the critical area system using a recognized assessment or evaluation methodology and/or best professional judgment.

2. The mitigation plan shall be prepared in two phases – a conceptual phase and a detailed phase.

a. Conceptual Plan - Standards and Criteria. The applicant shall prepare a conceptual mitigation plan for submission to the Department at a pre-mitigation conference. The conceptual mitigation plan shall include:

- i. General goals of the mitigation plan;
- ii. A review of alternative actions that would avoid or lessen the impacts on the wetland;
- iii. A review of literature or experience to date in restoring or creating the type of wetland proposed;
- iv. Approximate site topography following construction;
- v. Location of proposed wetland compensation area;
- vi. General hydrologic patterns on the site prior to and following construction;
- vii. Nature of compensation, including wetland or habitat types (in-kind and out-of-kind), general plant selection and justification, approximate project sequencing and schedule, and approximate size of the new sensitive area buffer.
- viii. A conceptual maintenance plan; and
- ix. Conceptual monitoring and contingency plan.

b. Detailed Plan-Standards and Criteria. Following acceptance of the conceptual mitigation plan by the Department, the applicant shall submit a detailed mitigation plan prepared by a qualified consultant. Each detailed plan shall contain, at a minimum, the following seven components, and shall be consistent with applicable mitigation standards:

i. A clear statement of the objectives of the mitigation. The goals of the mitigation plan should be stated in terms of the new wetland functions and values compared to the functions and values of the original wetland. Objectives should include:

(a) Qualitative and quantitative standards for success of the project, including hydrologic characteristics (water depths, water quality, hydroperiod/hydrocycle characteristics, flood storage capacity); vegetative characteristics (community types, species composition, density, and spacing); faunal characteristics, and final topographic elevations.

(b) An ecological assessment of the wetlands values and wetland buffers that will be lost as a result of the activities, and of the replacement wetlands and buffers, including but not limited to the following:

- (i) Acreage of project;
- (ii) Existing functions and values;
- (iii) Sizes of wetlands, wetland buffers, and areas to be altered;

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- (iv) Vegetative characteristics, including community type, areal coverage, species composition, and density;
 - (v) Habitat type(s) to be enhanced, restored, or created; and
 - (vi) Dates for beginning and completion of mitigation project, and sequence of construction activities.
- (c) A statement of the location, elevation, and hydrology of the new site, including:
- (i) Relationship of the project to the watershed and existing water bodies;
 - (ii) Topography of site using five foot contour intervals;
 - (iii) Water level data, including depth and duration of seasonally high water table;
 - (iv) Water flow patterns;
 - (v) Grading, filling and excavation, including a description of imported soils;
 - (vi) Irrigation requirements, if any;
 - (vii) Water pollution mitigation measures during construction;
 - (viii) Aerial coverage of planted areas to open water areas (if any open water is to be present); and
 - (ix) Appropriate buffers.
- (d) A planting plan, describing what will be planted where and when, including:
- (i) Soils and substrate characteristics;
 - (ii) Specify substrate stockpiling techniques; and
 - (iii) Planting instructions, including species, stock type and size, density or spacing of plants, and water and nutrient requirements.
- (e) A monitoring and maintenance plan, consistent with applicable requirements of this chapter.
- (i) Specify procedures for monitoring and site maintenance; and
 - (ii) Submittal of periodic monitoring reports to the Department.
- (f) A contingency plan, which addresses the potential need and responsibility to modify the mitigation program in response to changes, and consistent with requirements of this chapter.
- (g) A detailed budget for implementation of the mitigation plan, including monitoring, maintenance and contingency phases.
- (h) A guarantee, in the form of a bond or other security device in a form and amount acceptable to the City, assuring that the work will be performed as planned and approved, consistent with the requirements of this chapter.