

**Title 18**

**SHORELINE MASTER PROGRAM**

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## Chapter 18.03

### DEFINITIONS

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**18.03.005 Application of definitions.**

These definitions are adapted and/or taken from the Shoreline Management Act (chapter 90.58 RCW), from the Washington Administrative Code regulations (chapters 173-22, 173-26, and 173-27 WAC), and from the Skagit County shoreline master program. In addition to these definitions, the definitions and concepts set forth in RCW 90.58.030, as amended, and implementing rules shall also apply as used herein. (Ord. 1786 § 1, 2013).

**18.03.010 “A.”**

“Accessory development or use” means any structure or use incidental and subordinate to a primary shoreline development or use.

“Act” means the Shoreline Management Act of 1971 (chapter 90.58 RCW), as amended.

“Adjacent lands” means lands adjacent to the shorelines of the state, located outside of shoreline jurisdiction.

“Administrator” means the city of Burlington planning director or his/her designated representative.

“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 equipment and agricultural facilities” includes, but is not limited to:

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

“Agricultural land” means those specific land areas on which agricultural activities are conducted as of the date of adoption of a local master program pursuant to these guidelines as evidenced by aerial photography or other documentation. After the effective date of the master program, land converted to agricultural use is subject to compliance with the requirements of the master program.

“Agricultural products” includes, but is not limited to, horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within 20 years of planting; and livestock including both the animals themselves and animal products including, but not limited to, meat, upland finfish, poultry and poultry products, and dairy products.

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

“Aquatic” means pertaining to those areas waterward of the ordinary high water mark.

“Archaeological, historic, and cultural resources” means having to do with the scientific study of material remains of past human life and activities.

“Archaeological object” means an object that comprises the physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, graves, skeletal remains and technological by-products.

“Archaeological resource/site” means a geographic locality in Washington, including, but not limited to, submerged and submersible lands and the bed of the sea within the state’s jurisdiction, that contains archaeological objects.

“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 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 elevation at the midpoint of all exterior walls of the proposed building or structure. (Ord. 1786 § 1, 2013).

**18.03.020 “B.”**

“Best available science” means that the policies and development regulations designed to protect the functions and values of critical areas are in conformance with RCW 36.70A.172 and 90.58.100(1) and the procedural criteria established in Part Nine, Best Available Science, WAC 365-195-900 through 365-195-925.

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

“Breakwaters” are offshore structures generally built parallel to shore and may or may not be connected to land. They are built to protect harbors, moorages, navigation, and shorelines to retard or prevent wave action. Breakwaters may be fixed, i.e., made of quarry rock, floating, or submerged.

“Buffer area” means a parcel or strip of land that is designed and designated to permanently remain vegetated in an undisturbed and natural condition to protect an adjacent aquatic or wetland site from upland impacts, to provide habitat for wildlife and to afford limited public access.

“Building” means any structure designed for or used for the support, shelter, or enclosure of persons, animals, or personal property, and which is used in a fixed location on land, shorelines, or tidelands.

“Bulkheads” are wall-like structures generally constructed parallel to shore and near the high water mark and are for protecting the shore and uplands from erosion by current and wave action; they may also be for retaining uplands and fills that are prone to sliding, mass movement, or erosion. (Ord. 1786 § 1, 2013).

#### **18.03.030 “C.”**

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

“Channelization” is the straightening, deepening or lining of stream channels, and/or prevention of natural meander progression of streamways, through artificial means such as relocation of channels, dredging, and/or placement of continuous levees or bank revetments along significant portions of the stream. Dredging of sediment or debris alone is excluded.

“Conditional use” means a use, development, or substantial development which is classified as a conditional use or is not classified within the master program (WAC 173-27-030).

“Current deflector” is an angled “stub-dike,” groin, or sheet-pile structure which projects into a stream channel to divert flood currents from specific areas, or to control downstream current alignment; can be used as an alternative to direct streambank riprap. (Ord. 1786 § 1, 2013).

#### **18.03.040 “D.”**

“Department” means the Burlington planning department, unless otherwise noted.

“Department of Ecology” is the Washington State Department of Ecology.

“Development” means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this title at any state of water level. “Development” does not include dismantling or removing structures if there is no other associated development or re-development. (RCW 90.58.030).[DM1]

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

“Director” means the planning director.

“Dock” means a structure which abuts the shoreline and is used as a landing or moorage place for craft. A dock may be built either on a fixed platform or float on the water. See also “development” and “substantial development.”

“Dredge spoil” is the material removed by dredging.

“Dredging” is the removal or displacement of earth such as gravel, sand, mud, or silt and/or other materials or debris from any stream, river, lake, or marine water body and associated shorelines and wetlands. Dredging is normally done for specific purposes or uses such as for constructing and maintaining canals, navigation channels, turning

basins, harbors and marinas, submarine pipeline or cable crossings, for obtaining material for fill or construction, as part of an aquacultural operation, or dike repair and maintenance. (Ord. 1786 § 1, 2013).

**18.03.045 “E.”**

“Ecological functions or shoreline functions” means the work performed or role played by the physical, chemical, and biological processes that contribute to the proper maintenance of the aquatic and terrestrial environments that constitute the shoreline’s natural ecosystem.

“Ecosystem-wide processes” means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition and specific chemical processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline’s natural ecosystem.

“Exempt developments” are those set forth in WAC 173-27-040 and RCW 90.58.030(3)(e), 90.58.147, 90.58.355 and 90.58.515 which are not required to obtain a substantial development permit but which must otherwise comply with applicable provisions of the Act and the master program. (Ord. 1786 § 1, 2013).

**18.03.050 “F.”**

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

1. 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;
2. The action provides a reasonable likelihood of achieving its intended purpose; and
3. 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 placed on the applicant. In determining an action’s infeasibility, the reviewing agency may weigh the action’s relative public costs and public benefits, considered in the short- and long-term time frames.

“Fill” means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

“Float” is an anchored, buoyed object.

“Flood control works and flood protection” means all structures and works on streams designed to retard bank erosion, to reduce flooding of adjacent lands, to control or divert stream flow, or to create a reservoir, including but not limited to revetments, dikes, levees, channelization, dams, vegetative stabilization, weirs, flood and tidal gates. Excluded are water pump apparatus.

“Flood protection” includes the above structural devices but may also include various techniques of floodplain, river basin, and watershed management which may be applied in lieu of or complementary to structural measures.

“Flood hazard reduction” means the city of Burlington’s program to reduce flood damages to life and property and to minimize public expenses due to floods through a comprehensive system of planning, development regulations, building standards, structural works, and monitoring and warning systems.

“Floodplain” is synonymous with “100-year floodplain” and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon the Burlington critical areas code, chapter 14.15 BMC, and FEMA flood regulations maps.

“Floodway” means the area, as identified in a master program, that either: (1) has been established in Federal Emergency Management Agency (FEMA) flood insurance rate maps (FIRM) or floodway maps; or (2) consists of those portions of a river valley lying waterward-streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal conditions, by changes in surface soil conditions or changes

in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. ~~Regardless of the method used to identify the floodway,~~ The floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood risk reduction devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state. (Ord. 1786 § 1, 2013).[DM2]

**18.03.060 “G.”**

“Gabions” are shore defense works made up of rock, rubble, masonry or other suitable material, such as vinyl, enclosed to form massive blocks to act as walls on shorelines to prevent wave erosion, as foundations for breakwaters or jetties, or as a form of bank stabilization.

“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 professional engineers (or geologists) who have professional expertise about the regional and local shoreline geology and processes.

“Grading” means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land. (Ord. 1786 § 1, 2013).

**18.03.070 “H.”**

“Habitat” means the place or type of site where a plant or animal naturally or normally lives and grows.

“Hearings Board” means the State Shoreline Hearings Board established by the Act in RCW 90.58.170.

“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.

“Historic preservation professional” means those individuals who hold a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history, or a bachelor’s degree in architectural history, art history, historic preservation or closely related field plus one of the following:

1. At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or
2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

“Historic site” includes both archaeological and historic sites, structures, or development which provide knowledge about our cultural heritage, including but not limited to Indian and pioneer settlements, old buildings, forts, trails, landings, bridges, or the sites thereof together with interpretative facilities.

“Hydric soil” means soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part.

“Hydrophytic vegetation” is the sum total of macrophytic plant life growing in water or on a substrate that is a least periodically deficient in oxygen as a result of excessive water content. When hydrophytic vegetation comprises a community where indicators of hydric soils and wetland hydrology also occur, this area has wetland vegetation. (Ord. 1786 § 1, 2013).

**18.03.080 “I.”**

“In-stream structure” is placed by humans waterward of the ordinary high water mark and either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. (Ord. 1786 § 1, 2013).

**18.03.110 “L.”**

“Launch ramp” means an enclosed slab, set of pads, planks, or graded slope used for launching boats with trailers or occasionally by hand; extensive parking and turnaround areas are usually accessory to launch ramps.

“Levee” means a natural or man-made embankment on the bank of a stream for the purpose of keeping floodwaters from inundating adjacent land. Some levees have revetments on their sides. (Ord. 1786 § 1, 2013).

**18.03.120 “M.”**

“Master program” means the comprehensive use plan for the Skagit River and Gages Slough shorelines, 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 (RCW 90.58.030).

“May” means the action is acceptable, provided it conforms to the provisions of this title.

“Mitigation” or “mitigation sequencing” means the following sequence of steps listed in order of priority, with subsection (1) of this definition being top priority:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. 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;
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations;
5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
6. Monitoring the impact and the compensation projects and taking appropriate corrective measures (WAC 173-26-020).

“Must” means a mandate; the action is required. (Ord. 1786 § 1, 2013).

**18.03.130 “N.”**

“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.

“Nonconforming development or use,” for the purpose of this program, means a development in lawful use at the effective date of adoption or amendment, as appropriate, of this program, and which no longer conforms to the applicable shoreline provisions.

“Nonpoint pollution” means pollution that enters any water of the state from any dispersed land-based or water-based activities, including, but not limited to, atmospheric deposition, surface water runoff from agricultural lands, urban areas, or forest lands, subsurface or underground sources or discharges from boats or marine vessels not otherwise regulated under the National Pollutant Discharge Elimination System program.

“Non-water-oriented uses” mean those uses that are not water-dependent, water-related, or water-enjoyment. (Ord. 1786 § 1, 2013).

**18.03.140 “O.”**

“Open space” means public and private land and natural wetlands which retain their natural or semi-natural character because they have not been developed with structures and paving. It may include lands in agricultural use,

outdoor recreation land, or other land that may be required to be reserved in open space as part of a development project under this master program.

“Ordinary high water mark” on all lakes, streams and tidal water means that mark that will be found by examining the bed and banks and ascertaining where the presence and action of 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 of Ecology. Where the ordinary high water mark cannot be found on a stream, it shall be the line of mean high water. (Ord. 1786 § 1, 2013).

**18.03.150 “P.”**

“Permit” means any substantial development, variance, conditional use permit, or revision authorized under chapter 90.58 RCW.

“Planning commission” means the Burlington planning commission.

“Planning department” means the city of Burlington department of planning and community development.

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

1. Comparatively high fish and wildlife density;
2. Comparatively high fish and wildlife species diversity;
3. Fish spawning habitat;
4. Important wildlife habitat;
5. Important fish and wildlife seasonal ranges;
6. Important fish and wildlife movement corridors;
7. Rearing and foraging habitat;
8. Important marine mammal haul-out;
9. Refugia habitat;
10. Limited availability;
11. High vulnerability to habitat alteration;
12. Unique or dependent species; or
13. Shellfish bed.

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

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

1. Criterion 1. State-listed or state proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the department of fish and wildlife (POL-M-6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.
2. Criterion 2. Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations.
3. Criterion 3. Species of recreational, commercial, and/or tribal importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.
4. Criterion 4. Species listed under the Endangered Species Act as either threatened or endangered.

“Professional archaeologist” means a person with qualifications meeting the federal Secretary of the Interior’s standards for a professional archaeologist. Archaeologists not meeting this standard may be conditionally employed by working under the supervision of a professional archaeologist for a period of four years provided the employee is pursuing qualifications necessary to meet the federal Secretary of the Interior’s standards for a professional archaeologist. During this four-year period, the professional archaeologist is responsible for all findings. The four-year period is not subject to renewal.

“Provisions” means policies, regulations, standards, guideline criteria or environment designations. (Ord. 1786 § 1, 2013).

**18.03.160 “R.”**

“Recreation development” means the development of the natural or existing environment to accommodate commercial and public recreation facilities. This includes clearing land, earth modifications, structures and other facilities such as parks, camps, campgrounds, camping clubs, golf courses, and other outdoor recreation areas.

“Residential development” includes single-family residences, multifamily development, the creation of new lots through subdivision and floating homes and live-aboard vessels.

“Restore, restoration or ecological restoration” means the reestablishment or upgrading of ecological shoreline functions through measures such as revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not necessarily imply returning the shoreline area to aboriginal or pre-European settlement conditions.

“Revetments” are sloped walls constructed of riprap or other substantial material, placed on stream banks to retard bank erosion from high velocity currents.

“Riprap” means hard, angular quarry rock used for stream bank stabilization or other flood control works.

“Riverine” means pertaining to a river or stream system, including associated lakes and wetlands.

“River delta” means those lands formed as an aggradational feature by stratified clay, silt, sand and gravel deposited at the mouths of streams where they enter a quieter body of water. The upstream extent of a river delta is that limit where it no longer forms distributary channels. (Ord. 1786 § 1, 2013).

**18.03.170 “S.”**

“Shorelands or shoreland areas” (RCW 90.58.030) means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this title; the same to be designated as location by the Department of Ecology. Any county or city may determine that portion of a 100-year-floodplain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward 200 feet therefrom. In the city of Burlington, the shorelands include the Skagit River and

an area extending 200 feet landward from the floodway, the floodway being the waterward top of levee until established on a case-by-case basis.

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

Shoreline Management Zone (SMZ). In the city of Burlington, this includes the Skagit River and an area extending 200 feet landward from the floodway, the floodway being the waterward top of levee until established on a case-by-case basis. The SMZ also includes Gages Slough but not its buffer.

“Shoreline master program” or “master program” means the comprehensive land 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 city’s comprehensive plan. All other portions of the shoreline master program for a city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county’s 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 structures. They can include other actions, such as clearing, grading, or application of chemicals.

“Shoreline stabilization” means structural and nonstructural methods to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, tides, wind, or wave action. The definition of “new stabilization measures” includes enlargement of existing structures.

“Shorelines” means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (1) shorelines of statewide significance; (2) shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second or less and the wetlands associated with such upstream segments; and (3) shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes (RCW 90.58.030).

“Shorelines of the state” are the total of all “shorelines” and “shorelines of statewide significance” within the state.

“Shorelines of statewide significance” includes any natural river or segment thereof west of the crest of the Cascade range downstream of a point where the annual flow is measured at 1,000 cubic feet per second or more. In the city of Burlington this means the Skagit River shoreline and an area extending landward 200 feet from the floodway and the Gages Slough wetlands.

“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 title, against taking the action.

“Significant ecological impact” means an effect or consequence of a human caused action if any of the following apply:

1. The action degrades or changes an ecological function or ecosystem-wide process to such a degree that the ecosystem can no longer perform the function at levels within its natural range of variability or that the performance of the function falls outside the range needed to maintain the integrity of other ecological processes in shoreline areas. As used in this definition, the normal range of variability does not include alterations caused by catastrophic events.
2. Scientific evidence or objective analysis indicates that the action could cause degradation or change to those ecological functions or ecosystem-wide processes described in subsection (1) of this definition under foreseeable conditions.

3. Scientific evidence indicates that the action could contribute to degradation or change to ecological functions or ecosystem-wide processes described in subsection (1) of this definition as part of cumulative impacts, due to similar actions that are occurring or are likely to occur.

“Significant ecological impacts” do not include impacts that are inconsequential to attaining the objectives of the Act or to the protection and restoration of shoreline ecological functions or ecosystem-wide processes.

“Significant vegetation removal” means the removal 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.

“Stream” means a naturally occurring body of periodic or continuously flowing water where:

1. The mean annual flow is greater than 20 cubic feet per second; and
2. The water is contained within a channel. A channel is an open conduit either naturally or artificially created. This definition does not include artificially created irrigation, return flow, or stockwatering channels.

“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 \$7,0475,781, or as adjusted for inflation by the Washington Office of Financial Management (OFM) every five years, effective September 24, 2017, or any development which materially interferes with the normal public use of the water or shorelines of the state. (See RCW 90.58.030(3)(e) for details.) See BMC 18.09.020 for exemptions from substantial development permits. [DM3]

“Substantially degrade” means to cause significant ecological impact.

“Surface or open-pit mining” involves either the removal of surface material (overburden) to enable the underlying mineral resources to be exposed and extracted (quarried) or the direct extraction of naturally occurring surface minerals and materials such as rock, sand, gravel, and aggregate. Removal of sand from river bars is considered a surface mining activity. (Ord. 1786 § 1, 2013).

**18.03.180 “T.”**

“Threatened and endangered species or T&E species” means those native species that are listed in rule WAC 232-12-297 by the Washington State Department of Fish and Wildlife pursuant to RCW 77.12.020 as threatened (WAC 232-12-011) or endangered (WAC 232-12-014), or that are listed as threatened or endangered species under the federal Endangered Species Act, 16 U.S.C. 1533.

“Transportation facilities” are those structures and developments that aid in land and water surface movement of people, goods, and services, including roads, trails, bikeways, parking areas, bridges and rail transportation. (Ord. 1786 § 1, 2013).

**18.03.190 “U.”**

“Upland” means those shoreline areas landward of the ordinary high water mark except backshores, natural wetlands, and floodplains. (Ord. 1786 § 1, 2013).

**18.03.200 “V.”**

“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. (Ord. 1786 § 1, 2013).

**18.03.210 “W.”**

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

uses include ship cargo terminal loading areas, fishing, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float plane facilities, hydroelectric dams, surface water intake, and sewer outfalls.

“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 the location, design, and operation assures the public’s ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment. Primary water-enjoyment uses are as defined in WAC 173-26-020(40).

“Water-oriented use” means a use that is a water-dependent, water-related, or water-enjoyment use, 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 title, the term “water quantity” refers only to development and uses regulated under this title and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this title, 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:

1. 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
2. The use provides a necessary service supportive of the water-dependent activities and the proximity of the use to its customers makes its services less expensive and/or more convenient.

Water-related uses include manufacturers of ship parts large enough that transportation becomes a significant factor in the product’s cost, professional services serving primarily water-dependent uses and storage of water-transported foods. Other examples of water-related uses include the warehousing of goods transported by water, seafood processing plants, hydroelectric generating plants, gravel storage when transported by barge, oil refineries where transport is by tanker, and upland log storage for waterborne transportation.

“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 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. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands. (Ord. 1786 § 1, 2013).

## Chapter 18.06

### PURPOSE

Sections:

- 18.06.010 Authority.
- 18.06.020 Findings.
- 18.06.030 Purpose.
- 18.06.040 Title and short title.

#### **18.06.010 Authority.**

Authority for development, enactment and administration of this program is the Shoreline Management Act of 1971, chapter 90.58 RCW. (Ord. 1786 § 1, 2013).

#### **18.06.020 Findings.**

A. The city council concurs with the State Legislature in finding that the shorelines of the state are among the most valuable and fragile of our natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration and preservation. In addition, ever increasing pressures of additional uses are being placed on the shorelines, necessitating increased coordination in their management and development. Furthermore, much of the shorelines and uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines is not in the best public interest; and, therefore, coordinated planning is necessary in order to protect the public interest associated with shorelines while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational and concerted effort, jointly performed by local, state, and federal governments, to prevent the inherent harm in uncoordinated and piecemeal development of shorelines.

B. The city council finds that there are two areas of shorelines within the city of Burlington and its urban growth area, consisting of the Skagit River floodway and contiguous floodplain areas landward 200 feet from such floodways; and the Gages Slough wetland associated with the Skagit River.

C. The city council finds that the Gages Slough wetland has been substantially altered and degraded as a result of the influence of urbanization, lack of best management practices in both urban and agricultural areas and that a restoration, monitoring and maintenance plan shall be included as part of this master program.

D. The city council deems the goals, shoreline area designations, policies, regulations, and procedures set forth in this shoreline management master program to be essential to the protection of the public health, safety and general welfare of the people of the city of Burlington and its urban growth area.

E. Adaptive management shall be applied to the shoreline conditions by means of on-going monitoring of water quality, water levels, review of restoration activities relative to the wetland functional assessment, analysis of data relative to total maximum daily load (TMDL) standards for the wastewater treatment plant, review of the practices of Dike District No. 12 relative to vegetation management, and review and analysis of watershed planning activities occurring in water resource inventory areas 3 and 4.

F. The city council finds that many of the environmental protection issues facing the city can only be addressed on a regional level and the city shall participate actively in those regional efforts. (Ord. 1786 § 1, 2013).

#### **18.06.030 Purpose.**

A. To promote the public health, safety and general welfare by providing long-range, comprehensive policies and effective, reasonable regulations for development and use of the city of Burlington shorelines; and

B. To implement this program in a positive, effective and equitable manner; and

C. To further assume and carry out the responsibilities established by the Act for the city of Burlington, and to foster by adoption the policy contained in RCW 90.58.020 for shorelines of the state;

D. In implementing the policy of the Shoreline Management Act, this master program pursues the following objectives:

1. Plan for and foster reasonable and appropriate uses.
2. Promote and enhance the public interest.
3. Protect against adverse effects to public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life.
4. Protect the rights of navigation and public access.
5. Enhance the public's opportunity to enjoy the physical and aesthetic qualities of the natural shorelines of the state.
6. Protect and enhance shoreline resources, particularly those that cross jurisdictional boundaries within the state, those that are used by residents throughout the state and those that affect shoreline conditions outside a local jurisdiction's boundaries. Ensure that the cumulative effects of individual actions do not irreparably damage or diminish shoreline resources.
7. Protect the rights of ownership, including those of the state and other public entities, consistent with the public interest.
8. Achieve planning and regulatory consistency between jurisdictions in the implementation of shoreline management objectives.
9. Provide for equal and fair treatment of all parties with respect to shoreline resources.
10. Ensure that the long-term interests of the state's current and future citizens are favored over short-term interests. Maintain shoreline management options and resources for future generations.
11. Ensure consistency with other state laws and regulations and that the state is able to meet other laws and responsibilities, including the Federal Endangered Species Act;

E. The Legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance (the Skagit River shoreline in the city of Burlington). The Department of Ecology, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

1. Recognize and protect the statewide interest over local interest;
2. Preserve the natural character of the shoreline;
3. Result in long-term over short-term benefit;
4. Protect the resources and ecology of the shoreline;
5. Increase public access to publicly owned areas of the shorelines;
6. Increase recreational opportunities for the public in the shoreline;
7. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end, uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be

given priority for single-family residences, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location or on use of the shorelines of the state and other development that will provide an opportunity to substantial numbers of the people to enjoy the shorelines of the state.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water. (Ord. 1786 § 1, 2013).

**18.06.040 Title and short title.**

This document shall be known and may be cited as the master program for the Skagit River shorelines and Gages Slough in the city of Burlington. This document may refer to itself internally as "this master program" or "program." (Ord. 1786 § 1, 2013).

**Chapter 18.07**

**SHORELINES ENVIRONMENT DESIGNATIONS**

Sections:

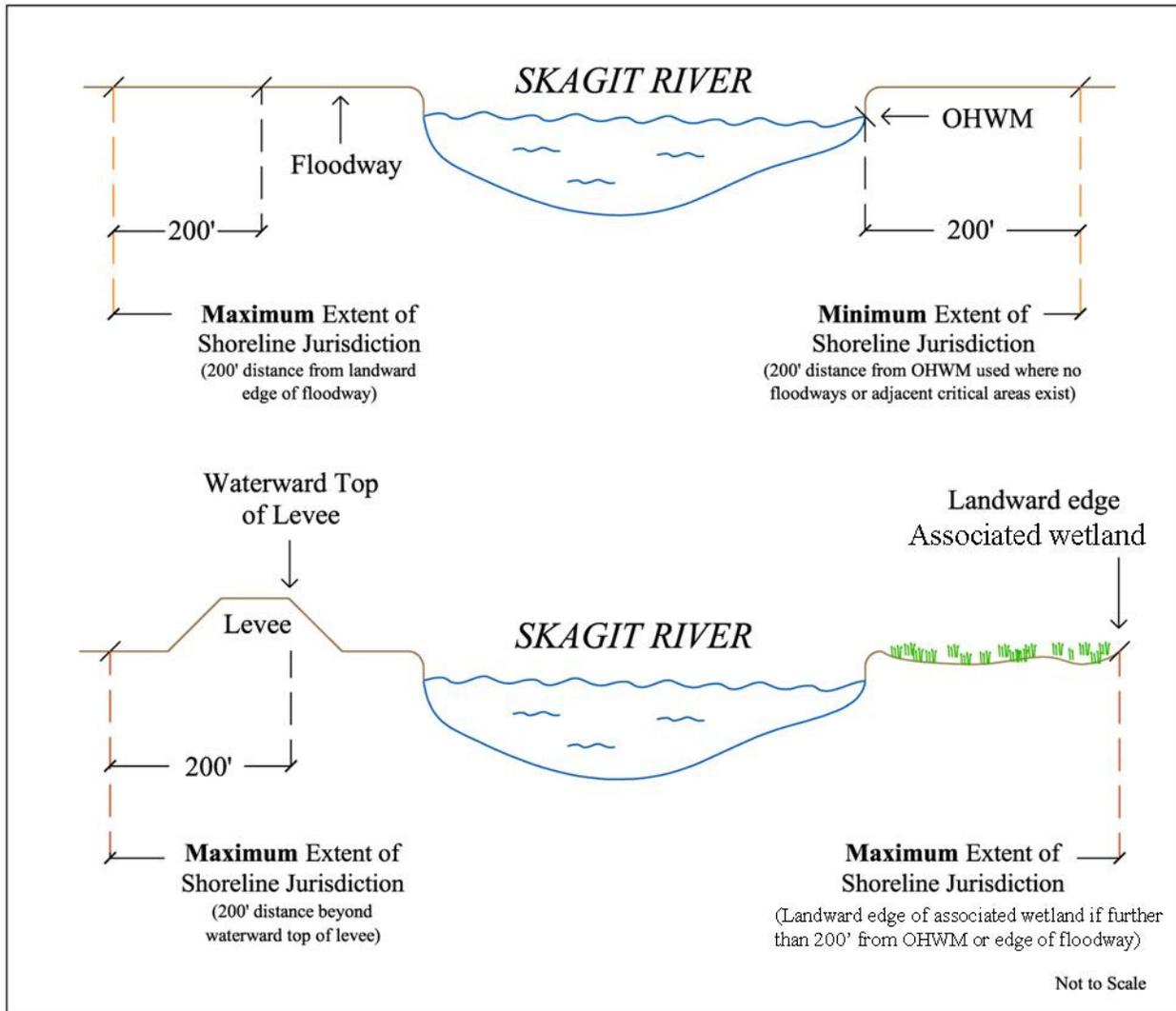
18.07.010 General.

18.07.040 Shorelines area designations.

**18.07.010 General.**

A. Shoreline Environment – Applicability.

1. Burlington’s shorelines under the shoreline master program are limited to those portions of the Skagit River, corresponding shorelands and the Gages Slough wetlands that occur within the city’s corporate limits, as detailed in BMC 18.09.060. For the purpose of this SMP the floodway is at the waterward top of the levee as depicted in Figure 1.



**Figure 1. Shoreline Management Zone**

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

**B. Environmental Designations.**

1. The Shoreline Management Act requires that each identified shoreline environment be given a designation, based on its physical condition and development pattern. The environmental designations provide a framework for implementing shoreline policies and regulations specific to each shoreline environment.
2. The Burlington shoreline master program has environmental designations based on the following:
  - a. Ecosystem characteristics and environmental functions;
  - b. Restoration potential;
  - c. Existing uses;
  - d. Development and redevelopment potential; and

e. Public and private plans.

3. Shorelines not found to be mapped or designated, such as through an annexation, will be assigned an urban conservancy environmental designation until such time that the SMP is updated to include analysis and appropriate designation of those shorelines.

C. Mapping.

1. An up-to-date and accurate map of the shoreline area, delineating the environmental designations, is maintained at the planning and community development department.

2. A list of shoreline properties, identified by Skagit County tax assessor parcel number, with their environmental designations, is maintained at the planning and community development department.

3. In the event of a mapping error, the designation criteria in conjunction with specific locational descriptions contained in this section shall prevail. The environmental designation boundaries, physical features, explicit criteria, or “common” boundary descriptions that define and distinguish the environments are included in BMC 18.07.040. (Ord. 1786 § 1, 2013).

**18.07.040 Shorelines area designations.**

A. Urban Conservancy Environment.

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

2. Designation Criteria. The urban conservancy environmental designation has been assigned to the shorelines that meet the following criteria:

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

3. Location of Environment.

- a. Skagit River shoreline management zone upland from ordinary high water.
- b. Gages Slough delineated wetland corridor extending from the east city limits to, and including, the Goldenrod Bridge corridor west of Interstate 5.

4. Management Guidelines.

- a. Uses that preserve the natural character of the area or promote preservation of open space, floodplain, or sensitive lands either directly or over the long term should be the primary allowed uses.
- b. Public utilities, including the city of Burlington wastewater treatment plant, are allowed in the urban conservancy environmental designation.
- c. Where levees are located within the urban conservancy environmental designation, additional new flood risk reduction measures may be constructed.
- d. New residential, commercial, or industrial uses should not be allowed in the urban conservancy environmental designation.

e. Public access and public recreation objectives should be implemented whenever feasible and where significant ecological impacts can be mitigated.

f. During development and redevelopment, all reasonable efforts should be taken to restore ecological functions.

#### B. Natural Environment.

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

2. Designation Criteria. The natural environment has been assigned to those shoreline areas that meet the following criteria:

a. The shoreline is relatively undeveloped with structures and roads;

b. The shoreline has not historically been in recreation or urban uses; and

c. There is existing or the potential for restoration of ecological functions and connectivity to the adjacent floodplain and associated wetlands.

3. Location of Environment. The natural environment applies to the following location: Gages Slough wetland area west of Goldenrod Bridge corridor, extending to the city limits.

#### 4. Management Guidelines.

a. Residential, commercial, industrial, and active recreation (sport fields) uses should not be allowed.

b. Passive recreation uses such as trails and viewpoints and low-intensity water dependent recreational access may be allowed where feasible and ecological impacts can be mitigated.

c. Scientific, historical, cultural, educational, and research uses may be allowed; provided, that no significant ecological impact on the area would result.

d. Additional wetland areas may be reclassified to natural as restoration projects are implemented, monitored and maintained.

#### C. Aquatic Environment.

1. Purpose. The purpose of the aquatic environment is to protect, restore, and manage the unique characteristics and resources of the area waterward of the ordinary high water mark (OHWM) in the Skagit River corridor.

2. Designation Criteria. The aquatic environment designation has been assigned to shoreline areas waterward of the OHWM.

3. Location of Environment. In Burlington, the aquatic environment is applicable only to the main stem of the Skagit River waterward of the OHWM. The city limit line is the midpoint of the river, and the shoreline management zone extends to that line.

#### 4. Management Guidelines.

a. New over-water structures should be prohibited except for water-dependent uses, recreation, public access, critical infrastructure or ecological restoration.

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

c. Provisions for the aquatic environment should be directed towards maintaining and restoring habitat for priority aquatic species.

- d. Uses that cause significant ecological impacts to Skagit River habitats should be discouraged.
- e. Shoreline uses and development should be designed and managed to prevent degradation of water quality and alteration of existing hydrographic conditions.
- f. All developments and activities using navigable waters or their beds should be located and designed to minimize interference with surface navigation, to minimize adverse visual impacts, encourage multiple uses and to allow for the safe, unobstructed passage of fish whose life cycles are dependent on such migration. (Ord. 1786 § 1, 2013).

## Chapter 18.09

### ADMINISTRATIVE PROVISIONS

Sections:

- 18.09.010 Applicability to development.
- 18.09.020 Applicability to substantial development.
- 18.09.030 Statement of exemption.
- 18.09.040 Nonconforming uses and structures.
- 18.09.050 Enforcement.
- 18.09.060 Geographical jurisdiction.
- 18.09.070 Applicability to persons.
- 18.09.080 Applicability to federal agencies (WAC 173-27-060).
- 18.09.090 Applicability to other local, state, and federal laws.
- 18.09.100 Applicability to and conflicts with other local and state policies and regulations.
- 18.09.120 Liberal construction.

#### **18.09.010 Applicability to development.**

A. A development or use shall not be undertaken on the shorelines in the city of Burlington unless it is consistent with the master program and the policies of the Act, whether or not a shoreline permit is required for such development or use. See definition of “development” in BMC 18.03.040.

B. Existing development is required to comply with the master program at the time of expansion or change of use or initiation of new forms of activity.

C. If use or development is nonconforming, change of ownership will not require compliance with the master program unless the new owner/operator significantly expands the operations or initiates new forms of activity.

D. The city will periodically review the cumulative effect of actions taken within the shoreline to ensure that the goal of no net loss of shoreline environmental functions is being met.

E. The city, for the purposes of making administrative decisions and processing permits as may be required by the SMP, means the department of planning and community development and its director.

F. The process of reviewing proposals shall be designed to assure that regulatory or administrative actions do not unconstitutionally infringe upon private property rights in accordance with WAC 173-26-186(5). (Ord. 1786 § 1, 2013).

#### **18.09.020 Applicability to substantial development.**

A. Shoreline Substantial Development Permits.

1. A substantial development permit is not required for projects that are below the threshold levels established in WAC 173-27-040(2), Developments Exempt from Substantial Development Permit Requirement, as follows (see WAC citation for complete list):

a. Any development of which the total cost or fair market value, whichever is higher, does not exceed \$5,718,047, if such development does not materially interfere with the normal public use of the water or shorelines of the state. (Note: The state of Washington requires that every five years the dollar threshold for this exemption be adjusted for inflation by the Washington Office of Financial Management (OFM). The adjustment is based upon changes in the Consumer Price Index during that time period (see chapter 18.03 BMC, Definitions). The OFM must calculate the new dollar threshold and transmit it to the Office of the Code Reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. WAC 173-27-040(2)(a).) For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030(2)(c). The total cost or fair market value

of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;[DM4]

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

c. Construction of the normal protective bulkhead common to single-family residences;

d. Emergency construction necessary to protect property from damage by the elements;

e. Construction and practices normal for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelines, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelines by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

f. Construction or modification of navigational aids such as channel markers and anchor buoys;

g. Construction on shorelines by an owner, lessee, or contract purchaser of a single-family residence for his own use or for the use of his family, which residence does not exceed a height of 35 feet above average grade level and which meets all the requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this title;

h. Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single- and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if the fair market value of the dock does not exceed ~~\$10,000~~22,500 for docks that are constructed to replace existing docks, are of equal or less square footage than the existing dock being replaced, or \$11,200 for all other docks constructed in freshwaters.; ~~but~~ However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified above, having a fair market value exceeding \$2,500 occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this title;[DM5]

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

j. 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;

k. Operation and maintenance of any system of levees, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

l. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this title, if:

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

ii. The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

- iii. The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
  - iv. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the city of Burlington to ensure that the site is restored to preexisting conditions; and
  - v. The activity is not subject to the permit requirements of RCW 90.58.550 (oil or gas exploration);
  - m. The process of removing or controlling an aquatic noxious weed, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or the Department jointly with other state agencies under chapter 43.21C RCW;
  - n. Watershed restoration projects as defined in RCW 89.08.460 are exempt from the requirement to obtain a substantial development permit. Gages Slough is part of the watershed project approved by the Department of Ecology and its restoration is exempt from the permit requirement;
  - o. Consistent with WAC 173-27-040, a public or private project that is designed to improve fish or wildlife habitat or fish passage, that conforms to the provisions of RCW 77.55.181, shall be exempt from the substantial development permit requirements of this chapter when all of the following apply:
    - i. The project has been approved by the Department of Fish and Wildlife;
    - ii. The project has received hydraulic project approval by the Department of Fish and Wildlife;
    - iii. The city has determined that the project is substantially consistent with the master program.<sup>[DM6]</sup>
  - p. The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 or to otherwise provide physical access to the structure by individuals with disabilities.<sup>[DM7]</sup>
2. A shoreline substantial development permit application is a Type II permit, as per chapter 14A.05 BMC.
3. The “effective date of a substantial development permit” is the date of filing. The date of filing is the date Ecology receives the city’s final decision. The date of filing for a shoreline variance or conditional use permit is the date the decision of Ecology is transmitted by Ecology to the city. For -substantial development permits simultaneously mailed with a CUP or Variance to Ecology, the date of filing is the date that Ecology’s decision on the CUP or Variance is transmitted to the applicant and the city. <sup>[DM8]</sup>The date of filing starts the two-year clock for beginning of construction and establishes the twenty-one day appeal period of the permit to the Shoreline Hearings Board. The two-year time period does not include periods of pendency for other related permits or legal actions.
4. Appeal procedures for land use actions are outlined in chapter 14A.05.190 BMC.<sup>[DM9]</sup> After all local permit administrative appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, the city will mail the permit using return receipt requested mail to the Department of Ecology regional office and the Office of the Attorney General. Projects that require both Conditional Use Permits and or Variances shall be mailed simultaneously with any Substantial Development Permits for the project.
5. The permit and documentation of the final local decision will be mailed together with the complete permit application; a findings and conclusion letter; a permit data form (cover sheet); and applicable SEPA documents.<sup>[DM10]</sup>
6. Time requirements for shoreline permits are as follows (see WAC 173-27-090 for complete language):
- a. Construction activities shall commence, or where no construction activities are involved, the use or activity shall commence within two years of the effective date of a substantial development permit.

- b. The period for commencement of construction or use may be extended once for a one-year period, if a request based on reasonable factors is filed before the expiration date and notice of the proposed extension is given to parties of record.
- c. The authorization to conduct development activities shall terminate five years after the effective date of a substantial development permit.
- d. The authorization period to conduct development activities may be extended once for a one-year period, if a request based on reasonable factors is filed before the expiration date and notice of the proposed extension is given to parties of record.
- e. The time periods in subsections (A)(4)(a) and (c) 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.
- f. It is the applicant's responsibility to inform local government of any legal actions or permits that may affect time periods established herein. The city may terminate the shoreline permit if the applicant fails to demonstrate good faith in obtaining all other necessary permits or resolve any legal actions in a timely manner.

75. Permit review procedures shall be as follows:

- a. The planning and community development department maintains records of project review actions resulting in issuance of permits, including shoreline substantial development permits.
- b. Copies of Shoreline Management Act permit data sheet and transmittal letters forwarded to the Department of Ecology shall be utilized for evaluation of the potential cumulative effects of previous and proposed actions in shoreline areas.

86. Appeals to the Shorelines Hearings Board shall be consistent with RCW 90.58.140.

B. Conditional Use Permits.

1. The purpose of a conditional use permit is to allow greater flexibility in administering the use regulations of the master program in a manner consistent with the policies of the SMA. Conditional use permits may also be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in the SMA.
2. A shoreline conditional use permit is a Type III permit, as per chapter 14A.05 BMC.
3. The planning commission shall, following an open record public hearing, make a recommendation to the city council, who has the authority to make the final local decision.
4. The application for a shoreline conditional use permit shall be processed pursuant to the legislative policies stated in the Shoreline Management Act, RCW 90.58.020 (Legislative Findings – State Policy Enunciated – Use Preference) and the shoreline master program of the city of Burlington.
5. The criteria for approving conditional uses shall be consistent with WAC 173-27-160 (Review Criteria for Conditional Use Permits) and include the following:
  - a. That the proposed use is consistent with the policies of RCW 90.58.020, the master program, and the BMC;
  - b. That the proposed use will not interfere with the normal public use of public shorelines;

- c. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and the SMP;
- d. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
- e. That the public interest suffers no substantial detrimental effect.

6. Other uses that are not classified or set forth in the master program may be authorized as conditional uses; provided, that the applicant can demonstrate, in addition to the criteria set forth in subsection (B)(5)(a) of this section and RCW 90.58.020, that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the permitted use regulations of the master program.

7. When reviewing conditional use permit applications, consideration shall be given to the cumulative impact of like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

8. Uses which are specifically prohibited or not allowed by the master program may not be authorized pursuant to either subsection (B)(5) or (6) of this section.

#### C. Variances.

1. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the applicable master program where there are extraordinary circumstances relating to the physical character or configuration of property. Shoreline variances should be granted in a circumstance where strict implementation of the master program would impose unnecessary hardships on the applicant or where denial of the permit would result in a thwarting of the policy enumerated in the SMA. In all instances, extraordinary circumstances should be shown, and the public interest shall suffer no substantial detrimental effect.

2. A shoreline variance permit is a Type II permit, as per chapter 14A.05 BMC. The board of adjustment shall, following an open record public hearing, make a final local decision on the permit application.

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

- a. That the strict application of the bulk, dimensional, or performance standards as set forth in the master program precludes or significantly interferes with a reasonable permitted use of the property.
- b. That the hardship is specifically related to the property and is the result of unique conditions, such as irregular lot shape, size, or natural features, in the application of the master program and not, for example, from deed restrictions or the applicant's own actions.
- c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environmental designation.
- d. That the variance authorized does not constitute a grant of special privilege not enjoyed by other properties in the area, and will be the minimum necessary to afford relief.
- e. That the public interest will suffer no substantial detrimental effect.

4. Variances for development that will be located waterward of the OHWM may be authorized, provided the applicant can satisfy all of the criteria specified in subsections (C)(3)(b) through (e) of this section. The applicant must also demonstrate that the public rights of navigation and that the strict application of the bulk, dimensional, or performance standards set forth in the master program precludes all reasonable use of the property.

5. In granting of all shoreline variances, consideration shall be given to the cumulative impact of additional requests or like actions in the area.
6. Variances from the use regulations of the master program are prohibited.

D. Developments not required to obtain shoreline permits or local reviews. Requirements to obtain a Substantial Development Permit, Conditional Use Permit, Variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:

1. Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to Chapter 70.105D RCW, or to the Department of Ecology when it conducts a remedial action under Chapter 70.105D RCW.

2. Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit.

3. WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a Substantial Development Permit, Conditional Use Permit, Variance, letter of exemption, or other local review.

4. Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.

5. Projects authorized through the Energy Facility Site Evaluation Council process pursuant to chapter 80.50 RCW. [DM11]

E.D. Revisions to Permits.

1. When an applicant seeks to revise a shoreline substantial development permit, conditional use permit, or variance, whether such permit or variance was granted under this SMP, or under the Skagit County SMP in effect prior to adoption of the Burlington SMP, the planning and community development department shall request from the applicant detailed plans and text describing the proposed changes to the project. If the staff determines that the proposed changes are within the general scope and intent of the original substantial development permit, conditional use permit or variance, as the case may be, the revision may be approved by the planning director, without the need for the applicant to file a new substantial development permit application, provided the development is consistent with the SMA, WAC 173-27-100 (Revisions to Permits), and the master program.
2. Within the scope and intent of the original permit means the following:
  - a. No additional over-water construction will be involved, except that pier, dock, or float construction may be increased by 500 square feet or 10 percent from the provisions of the original permit, whichever is less.
  - b. Lot coverage and height may be increased a maximum of 10 percent from the provisions of the original permit.
  - c. Additional or revised landscaping is consistent with the conditions attached to the original permit and with the shoreline master program.
  - d. The use authorized pursuant to the original permit is not changed.
  - e. No adverse environmental impact will be caused by the project revision.
  - f. The revised permit shall not authorize development to exceed height, lot coverage, setback, or any other requirements of the master program except as authorized under a variance granted as the original permit or a part thereof.

3. If the revision, or the sum of the revision and any previously approved revisions, will violate the criteria specified above, the planning and community development department shall require the applicant to apply for a new shoreline substantial development or conditional use permit or variance, as appropriate, in the manner provided for herein.
4. If proposed revisions to the original permit involve a conditional use or variance, the city shall submit the proposed revision to the DOE for review. The DOE shall respond with its final decision on the proposed revision request within 15 days of the date of receipt by the DOE (WAC 173-27-100(6)). The city shall notify parties of record of the DOE's final decision.
5. Revisions to permits may be authorized after original permit authorization has expired under RCW 90.58.143. The purpose of such revisions shall be limited to authorization of changes which are consistent with this section and which would not require a permit for the development or change proposed under the terms of chapter 90.58 RCW, this regulation and the local master program. If the proposed change constitutes substantial development then a new permit is required; provided, this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permit.
6. The revision approval, including the revised site plans and text consistent with the provisions of WAC 173-27-180 as necessary to clearly indicate the authorized changes, and the final ruling on consistency with this section shall be filed with the DOE. In addition, the city shall notify parties of record of their action.
7. The revised permit is effective immediately upon final decision by the city or, when appropriate under subsection (D)(4) of this section, upon final action by the DOE.
8. Appeals shall be in accordance with RCW 90.58.180 and shall be filed within 21 days from the date of receipt of the city's action by the DOE or, when appropriate under subsection (D)(4) of this section, the date the DOE's final decision is transmitted to the city and the applicant. Appeals shall be based only upon contentions of noncompliance with the provision of subsection (D)(2) 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. (Ord. 1786 § 1, 2013).

**18.09.030 Statement of exemption.**

- A. Whenever a development falls within the exemptions stated in BMC 18.09.020(A)(1) and the development is subject to a U.S. Corps of Engineers Section 10 permit under the Rivers and Harbors Act of 1899, or a Section 404 permit under the Federal Water Pollution Control Act of 1972, the city shall prepare a letter addressed to the applicant and the department, exempting the development from the substantial development permit requirements of chapter 90.58 RCW. This exemption shall be in the form prescribed by WAC 173-27-050.
- B. A statement of exemption is also required for exempt work on levees.
- C. 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.
- D. An exemption from the substantial development permit process is not an exemption from compliance with the Act or the local master program, or from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of the applicable master program and the Shoreline Management Act. A development or use that is listed as a conditional use pursuant to the local master program or is an unlisted use must obtain a conditional use permit even though the development or use does not require a substantial development permit. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the master program, such development or use can only be authorized by approval of a variance.
- E. The burden of proof that a development or use is exempt from the permit process is on the applicant.

F. 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.

G. Local government may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Act and the local master program. (Ord. 1786 § 1, 2013).

**18.09.040 Nonconforming uses, ~~and~~ structures and lots.**

A. The following definitions and standards shall apply to nonconforming structures and uses regulated by this master program:

1. "Nonconforming use or development" means a shoreline use or development that was lawfully constructed or established prior to the effective date of the city of Burlington shoreline master program or amendments thereto, but does not conform to current regulations or standards of the program.

2. Structures that were legally established and are used for a conforming use but are nonconforming with regard to shoreline setback requirements may be maintained and repaired and may be enlarged or expanded; provided, that any such enlargement or expansion:

- a. Will not extend the footprint of the structure any closer to the shoreline or wetland than the current design;
- b. Will not interfere with or obstruct dedicated public access routes to the shoreline, per applicable requirements set out herein;
- c. Will meet any construction standards enacted by the city to protect adjacent flood risk reduction structures;
- d. Will be consistent with the current, or another authorized, conforming use; and
- e. Will adhere to underlying municipal code and building regulations.

3. A nonconforming lot may be developed if permitted by other land use regulations of the city and so long as such development conforms to all other requirements of this master program and the act. [DM12]

43. Uses and development that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded unless otherwise permitted by this SMP.

54. A use that is listed as a shoreline conditional use but existed prior to adoption of the master program or any relevant amendment and for which a conditional use permit has not been obtained shall be considered a nonconforming use.

65. A use that is listed as a shoreline conditional use but existed prior to the applicability of the master program to the site and for which a conditional use permit has not been obtained shall be considered a nonconforming use.

76. 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.

87. A structure that is being used, or has been used, for a nonconforming use may be used for a different nonconforming use only upon the approval of a shoreline conditional use permit. A shoreline conditional use permit for any such new nonconforming use may be approved only upon a finding that:

- a. No reasonable alternative conforming use is practical; and
- b. The proposed use will be at least as consistent with the policies and provisions of the SMA and the master program and as compatible with the uses in the area as the preexisting use.

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

98. A nonconforming structure that is moved within the SMZ must be brought into conformance with the master program, unless such relocation is expressly authorized through previous agreement between the city and the property owner.

109. If a nonconforming structure is damaged or partially destroyed to an extent not exceeding 50 percent of the assessed valuation of such structure as established by the most current Skagit County assessor's tax roll, it may be restored to its original condition, as authorized by the city's building official, and its immediately preceding or existing use at the time of partial destruction may be continued or resumed. Such damaged or destroyed building may be reconstructed to a size not to exceed the existing footprint at the time of the damage or destruction and within the height at the time of the damage or destruction, and except for the shoreline setback provision in subsection (A)(2) of this section, must conform to those specifications required by the current building code and applicable zoning requirements for reconstruction of nonconforming structures; provided, that:

- a. Application is made for the permits necessary to restore the development within six months of the date the damage occurred;
- b. All permits are obtained; and
- c. The restoration is started within one year and completed within two years of permit issuance.

1140. If a nonconforming use is discontinued for 12 consecutive months or for 12 months during any two-year period, the rights to such use shall expire and any subsequent use of such structure shall be conforming. A use authorized pursuant to subsection (A)(87) of this section shall be considered a legal nonconforming use for purposes of this section.

1244. An undeveloped lot, tract, parcel, site, or division of land located landward of the OHWM that was established in accordance with local and state subdivision requirements prior to the effective date of the city of Burlington shoreline master program, but does not conform to the present lot size standards or is not configured to allow for reasonable use that would meet current shoreline setback requirements, may be developed if permitted by other land use regulations of the BMC and so long as such development conforms to all other requirements of the master program and the SMA. In this case, a SMP variance shall be required. (Ord. 1786 § 1, 2013).

#### **18.09.050 Enforcement.**

A. In the event of failure to comply with the plans approved by the city or with any conditions imposed upon the shoreline development permit, the permit shall immediately become void and any continuation of the use activity shall be construed as being in violation of BMC Title 17.

B. Any person failing to conform to the terms of a permit issued in accordance with the SMP or who undertakes development on the shorelines of the state without first obtaining any permit required by the SMP shall be subject to a civil penalty as per RCW 90.58.210 and WAC 173-27-280. (Ord. 1786 § 1, 2013).

#### **18.09.060 Geographical jurisdiction.**

This master program shall apply to all lands and waters as defined by RCW 90.58.030 for the city of Burlington including the Skagit River Shoreline District and associated Gages Slough wetland corridor.

The shoreline management zone extends a minimum of 200 feet upland from the line of the ordinary high water mark (OHWM) of the Skagit River or 200 feet from the edge of the floodway within the floodplain, whichever is greater. The floodway may be the area established by FEMA maps or by identifying the contiguous land upon which flood waters may be carried during periods of flooding that can occur with reasonable regularity, although not necessarily annually. These areas prone to flooding have been identified, under normal conditions, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other

indicators of flooding. As of the date of writing of this shoreline master program, the jurisdictional map shall utilize the waterward top of levee as the edge of the floodway. The actual extent of shoreline jurisdiction will be determined on a case by case basis as needed. The shoreline management zone includes associated wetlands, but not wetland buffers beyond 200 feet of the floodway. (Ord. 1786 § 1, 2013).

**18.09.070 Applicability to persons.**

This master program shall apply to every person, individual, firm, partnership, association, organization, corporation, local or state government agency, public or municipal corporation, or other entity which develops, owns, leases or administers lands, wetlands, and waters which fall under the jurisdiction of the Shoreline Management Act. Nothing in this management program shall be construed as allowing any abridgment of private property rights. (Ord. 1786 § 1, 2013).

**18.09.080 Applicability to federal agencies (WAC 173-27-060).**

A. Direct federal agency activities in or affecting Washington's coastal zone shall be consistent to the maximum extent practicable with the enforceable policies of the most recent federally approved Washington State Coastal Zone Management Program pursuant to the Federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq. (CZMA) and federal regulations adopted pursuant thereto.

Washington's coastal zone, as established in the state's approved Coastal Zone Management Program, includes the following coastal counties: Whatcom, Skagit, San Juan, Island, Snohomish, King, Pierce, Thurston, Mason, Kitsap, Jefferson, Clallam, Grays Harbor, Pacific and Wahkiakum.

The Shoreline Management Act is incorporated into the Washington State Coastal Zone Management Program and, thereby, those direct federal agency activities affecting the uses or resources subject to the Act must be consistent to the maximum extent practicable with the enforceable provisions of the Act, regulations adopted pursuant to the Act and the local master program.

When the Department of Ecology receives a consistency determination for an activity proposed by the federal government, it shall request that local government review the proposal and provide the Department of Ecology with its views regarding the consistency of the activity or development project with the enforceable policies of the local master program.

The CZMA federal consistency decision-making process for federal agency activities is prescribed in the Coastal Zone Management Act (16 U.S.C. 1456 (c)(1) and (2)), in federal regulations at 15 CFR Part 930, Subpart C, and in Washington's most recent federally approved CZM program document.

B. Federal agency activities may be required by other federal laws to meet the permitting requirements of chapter 90.58 RCW.

C. The policies and provisions of chapter 90.58 RCW, including the permit system, shall apply statewide to all nonfederal developments and uses undertaken on federal lands and on lands subject to nonfederal ownership, lease or easement, even though such lands may fall within the external boundaries of a federal ownership. (Ord. 1786 § 1, 2013).

**18.09.090 Applicability to other local, state, and federal laws.**

Obtaining a shoreline permit or letter of exemption for a development or use does not excuse the applicant from complying with any other local, regional, state, or federal laws applicable to such development or use. (Ord. 1786 § 1, 2013).

**18.09.100 Applicability to and conflicts with other local and state policies and regulations.**

In the event that there are conflicts between the master program and other applicable state and local policies, regulations, and ordinances, the provisions of the master program shall prevail. (Ord. 1786 § 1, 2013).

**18.09.120 Liberal construction.**

This program is exempted from the rule of strict construction, and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted. (See also RCW 90.58.900, Liberal Construction.) (Ord. 1786 § 1, 2013).

## Chapter 18.12

### MASTER PROGRAM POLICY GOALS

Sections:

- 18.12.010 Adoption.
- 18.12.020 Master program policy goals.

#### **18.12.010 Adoption.**

The following policy goals are adopted to provide an overall, comprehensive foundation and sense of direction upon which the regulations, shoreline area designations, and administrative procedures are based. (Ord. 1786 § 1, 2013).

#### **18.12.020 Master program policy goals.**

##### A. Economic Development Element.

1. Land and shoreline use patterns shall provide for the location of existing and future transportation facilities, utilities, and recreation activities that are dependent on access to the water.
2. Because of the unique floodway and floodplain limitations on the use of the Skagit River shorelines, particularly the levee system, the majority of the shoreline shall be identified and reserved for recreational and open space uses.
3. Existing and projected water-oriented uses shall be accommodated through environment designation policies and regulations based on the inventory of existing shoreline resources and analysis of future demand for water-oriented uses.
4. Because navigation is restricted to small boats, primarily for sports fishing, preference shall be given to those uses that allow a significant number of people to enjoy the shoreline, public access (water-enjoyment) and/or uses that demonstrably pursue shoreline objectives.
5. Preference shall also be given to uses that enhance the ecological viability and enhancement of fisheries habitats along the Skagit River shoreline.

##### B. Public Access Element.

1. The public access system shall provide for both physical and visual access. The system shall include but not be limited to public lands and shall seek to increase the amount and diversity of public access to the state's shorelines and adjacent areas consistent with the natural shoreline character, property rights, including the public's rights under the public trust doctrine, and public safety.
2. The public's right to use the surface waters of the state for navigation under the public trust doctrine shall be protected.
3. The public's right to view the waters of the state shall be protected, including measures such as maximum height limits, setbacks, and view corridors to minimize the impacts to existing views from public property or substantial numbers of residences.
4. The primary public access area to the Skagit River shall consist of the land that is subject to the interlocal agreement with Dike District No. 12, with motorized public access at Gardner Road Bar and just west of the Railroad Bridge and with nonmotorized public access along the levee adjacent to the Skagit River.
5. Public access to Gages Slough shall include, where appropriate, viewing areas or interpretative trails and publicly owned park lands. Decisions on where to locate public access and the extent of access that is allowed will be based on best scientific information developed specifically for Gages Slough.

C. Recreation Element.

1. Ensure optimal recreational opportunities now and in the future in shoreline areas that can reasonably tolerate, during peak use periods, active, passive, competitive, or contemplative uses without destroying the integrity and character of the shoreline.
2. The Skagit River public recreation area specifically includes the shorelines extending from Gardner Road Bar to the Burlington-Mount Vernon Bridge for fishing, boating, passive and active recreation activities. As the setback levee is constructed through the bridge corridor, opportunities for public access will increase.
3. The Gages Slough recreation opportunities shall be limited based on the best available scientific information developed specifically for Gages Slough.
4. Recreation policies in the parks and recreation comprehensive plan are adopted here by reference and those policies are consistent with growth projections and level-of-service standards.

D. Circulation Element.

1. Existing and planned circulation systems are adequate to serve as access to shorelines.
2. Nonmotorized routes that connect the community with the shorelines and include environmental restoration and interpretative components shall be made whenever feasible.

E. Use Element.

1. It is the goal to protect and restore the Gages Slough wetlands to optimize water quality, habitat, best management practices and ensure that adjacent land use patterns are compatible with the protection and enhancement of the wetlands and take advantage of the unique attributes of the site, allowing no net loss of wetlands, and for Gages Slough, to also increase the size of culverts, remove obstructions, develop and implement specific plans to improve the functions relative to surface water management, and generally improve the flow characteristics to provide for efficient conveyance of water through the city during flood events.
2. It is the goal to allow limited use of the Skagit River and its shoreline compatible with the current edition of the Burlington floodplain management and natural hazard mitigation plan, consistent with the following priorities: recognizing and protecting the state-wide interest over local interests, preserving natural character, realizing long-term over short-term benefit, protecting resources and ecology, increasing public access to publicly owned areas, increasing recreational opportunities, providing for any other element that is appropriate or necessary.

F. Conservation and Restoration Element.

1. The Skagit River riparian corridor shall be managed in accordance with regional watershed planning standards and best management practices, including vegetation management of shoreline areas fronted by levees. Adaptive management techniques shall be employed as additional scientific information and regional mitigation plans are developed.
2. The floodplain shall be managed in accordance with applicable federal, state, regional and local regulations, best management practices and best available science practices, along with the city of Burlington floodplain management and natural hazard mitigation plan.
3. Reclaim and restore areas which are biologically and aesthetically degraded to the greatest extent feasible while maintaining appropriate use of the shoreline. Preserve and protect the natural resources of the shorelines in the public interest and for future generations.
4. Protect ground water aquifers from contamination.
5. Protect native vegetation and wildlife within the protected wetlands and riparian corridors and their buffers, and encourage planned buffer restoration and parks open space enhancement; provided, that, in the case of the

shoreline fronted by levees along the Skagit River, vegetation management standards are established by the Corps of Engineers, as may be amended.

6. Encourage the cleanup and ecological restoration of degraded shorelines, including the Gages Slough corridor.

G. Historic and Cultural Element.

1. Identify, protect, preserve and restore important archaeological, historical and cultural sites located in shorelines for educational and scientific purposes, and enjoyment of the public.

2. Optimize educational opportunities by encouraging interpretative displays and facilities for educational purposes, as part of public access.

H. Flood Damage Reduction Element.

1. Continue to work closely with the Dike Districts, Skagit County, and business and property owners in flood risk reduction planning.

2. Implement the flood risk reduction planning objectives and projects in the city of Burlington as further defined in the Burlington floodplain management and natural hazard mitigation plan.

3. Participate in watershed-wide programs to reduce flood hazards and improve shoreline ecology. (Ord. 1786 § 1, 2013).

## Chapter 18.14

### GENERAL PROVISIONS

Sections:

- 18.14.010 Introduction.
- 18.14.020 Policies and regulations.

#### **18.14.010 Introduction.**

General policies and regulations are applicable to all uses and activities (regardless of master program environment designation) that may occur along a jurisdiction's shorelines. If used properly, they can also reduce redundancy in a master program by eliminating the need to repeat regulations over and over for each environment designation.

BMC 18.14.020 is broken up into 10 different topic headings and is arranged alphabetically. Each topic begins with a discussion of background master program issues and considerations, followed by general policy statements and regulations. The intent of these model provisions is to be inclusive, making them applicable over a wide range of environments as well as particular uses and activities. (Ord. 1786 § 1, 2013).

#### **18.14.020 Policies and regulations.**

##### A. Universally Applicable Policies and Regulations.

1. Applicability. The following regulations describe the requirements for all shoreline uses and development in all environment designations.

2. Policies.

a. The city will periodically review conditions on the shoreline and conduct appropriate analysis to determine whether or not other actions are necessary to protect and restore the ecology, protect human health and safety, upgrade the visual qualities, protect property rights and enhance residential and recreational uses on the city's shorelines. Specific issues to address in such evaluations include, but are not limited to:

i. Water quality.

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

iii. Upland vegetation.

iv. Shoreline stabilization and modifications.

b. The city will keep records of all project review actions within shoreline jurisdiction, including shoreline permits, letters of exemption, and building permits.

c. Where appropriate, the city will pursue the policies of this master program in other land use, development permitting, public construction, and public health and safety activities that may not fall under the authority of the Shoreline Management Act. Specifically, such activities include, but are not limited to:

i. Water quality and storm water management activities, including those outside shoreline jurisdiction but affecting the shorelines of the state.

ii. Aquatic vegetation management.

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

iv. Public works and utilities development.

- v. Involve affected federal, state, and tribal governments in the review process of shoreline applications.
3. Regulations.
- a. All proposed shoreline uses and development, including those that do not require a shoreline permit, must conform to the Shoreline Management Act, chapter 90.58 RCW, and to the policies and regulations of this master program.
  - b. All new shoreline development must be in support of an allowable shoreline use that conforms to the provisions of this master program. Except as otherwise noted, all shoreline developments not associated with a legally existing or an approved shoreline use are prohibited.
  - c. Shoreline uses, development, and conditions listed as “prohibited” shall not be eligible for consideration as a shoreline variance or shoreline conditional use permit.
  - d. The “policies” listed in this master program will provide broad guidance and direction and will be used by the city in applying the “regulations.” The policies, taken together, constitute the shoreline element of the Burlington comprehensive plan.
  - e. Where provisions of this master program conflict, the provisions most directly implementing the objectives of the Shoreline Management Act, as determined by the city, shall apply unless specifically stated otherwise.
  - f. All new shoreline use and development shall result in no net loss of shoreline ecological functions necessary to sustain shoreline natural resources by utilizing the mitigation sequencing as outlined in subsection (C)(3) of this section.

B. Archaeological, Historical, and Cultural Resources.

1. Applicability. The archaeological, historical, and cultural resources element provides for protection and restoration of buildings, structures, sites, districts, objects, and areas, hereinafter referred to as “sites,” having known or potential archaeological, historical, cultural, or scientific value or significance.

The following provisions apply to archaeological and historic resources that are either recorded at the Department of Archaeology and Historic Preservation (DAHP) and/or by local jurisdictions or have been inadvertently uncovered.

2. Policies.

- a. Due to the limited and irreplaceable nature of the resource, public or private uses, activities, and development should be prevented from destroying or damaging any site having historic, cultural, scientific or educational value as identified by the appropriate authorities and deemed worthy of protection and preservation.
- b. Site development activity in shoreline areas shall be subject to the policies and regulations of this section and the Burlington comprehensive plan policies related to such resources. The archaeological, historical, and cultural resources element provides for protection and restoration of buildings, structures, sites, districts, objects, and areas, hereinafter referred to as “sites,” having known or potential archaeological, historical, cultural, or scientific value or significance.
- c. Shoreline features should be protected to prevent the destruction of or damage to any site having archaeological, historic, cultural, or scientific value through coordination and consultation with the appropriate local, state, tribal, and federal authorities.
- d. Sites should be protected in collaboration with appropriate tribal, state, federal, and local governments. Cooperation among public and private parties is to be encouraged in the identification, protection, and management of cultural resources.

e. When or where appropriate, access to such sites should be made available to parties of interest. Access to such sites must be designed and managed in a manner that gives maximum protection to the resource.

f. Opportunities for education related to archaeological, historical, and cultural features should be provided when or where appropriate and incorporated into public and private management efforts, programs, and development.

### 3. Regulations – General.

a. All applications for a shoreline development permit, a building permit, a clearing and grading permit, a demolition permit, or a statement of exemption for shoreline development within the jurisdiction of the Burlington SMP shall be reviewed for a determination of whether the site(s) in question:

i. Is on property within 500 feet of a site known to contain historic, cultural, or archaeological resource(s); or

ii. Is in an area mapped as having the potential for the presence of archaeological, historic, or cultural resources to be present.

b. All applications meeting these criteria shall require a cultural resource site survey or assessment, unless this requirement is waived or modified by the DAHP. Any required site assessment shall be conducted by a professional archaeologist or historic preservation professional, as applicable, to determine the presence of historic or significant archaeological resources. Buildings or structures over 40 years in age shall be inventoried in a DAHP historic property inventory database entry and archaeological sites shall be recorded on DAHP archaeological site inventory forms. The fee for the services of the professional archaeologist or historic preservationist shall be paid by the applicant.

c. If the cultural resource site assessment identifies the presence of archaeological, significant historic or cultural resources, appropriate recommendations shall be prepared by a professional archaeologist or historic preservation professional, as part of the survey or assessment. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the applicant. In the preparation of such plans, the professional archaeologist or historic preservation professional shall solicit comments from the Washington State Department of Archaeology and Historic Preservation, and the affected tribe(s). Comments received from these reviewers shall be incorporated into the conclusions and recommended conditions of the survey or assessment to the maximum extent practicable.

d. A cultural resources survey or site assessment shall be prepared in accordance with guidance for such studies approved or promulgated by the DAHP. DAHP shall determine whether the research design or study is adequate.

e. The administrator shall consult with the Washington State Department of Archaeology and Historic Preservation and affected tribe(s) prior to approval and acceptance of the survey or assessment.

f. Based upon consultation with DAHP and affected tribe(s), the administrator may reject or request revision of the conclusions reached in a survey or assessment when the administrator can demonstrate that the assessment is inaccurate or does not fully address the historic or archaeological resource management concerns involved.

g. In the event a cultural resources survey or site assessment is submitted directly to the city of Burlington, the professional archaeologist or historic preservation professional will be advised to submit the materials directly to DAHP.

h. In granting shoreline permits or statements of exemption for such development, the city of Burlington may attach conditions of approval to require consultation with the Washington State Department of Archaeology and Historic Preservation, affected tribe(s), and any local historic preservation authority, to assure that historic or archaeological resources are properly protected, or for appropriate agencies to contact property owners regarding purchase or other long-term arrangements. Provisions for the protection

and preservation of historic or archaeological sites, structures, buildings, districts, objects, or areas shall be incorporated to the maximum extent practicable.

4. Regulations – Inadvertent Discovery.

a. Whenever historic, cultural, or archaeological sites or artifacts are discovered in the process of development on shorelines, work on that portion of the development site shall be stopped immediately and the find reported as soon as possible to the administrator or DAHP.

b. The administrator shall then notify the Washington State Department of Archaeology and Historic Preservation, affected tribe(s), any local historic preservation authority, and any other appropriate agencies and, upon consultation with DAHP, shall require that an immediate site assessment be conducted by a professional archaeologist or historic preservation professional, as applicable, pursuant to subsection (B)(3)(b) of this section to determine the extent of damage to the resource. The site assessment shall be distributed to the Washington State Department of Archaeology and Historic Preservation, the affected tribe(s), and local historic preservation authority for a 15-day review period. If the above listed agencies or governments have failed to respond within the applicable review period following receipt of the site assessment, such stopped work may resume.

c. If human remains are encountered, all activity must cease and the area must be protected and the find reported to local law enforcement and the county coroner or medical examiner.

C. Critical Areas.

1. Applicability.

a. Wetlands and their buffers occurring in the city's shoreline jurisdiction (note: the city is not opting for the expansion of the shoreline jurisdiction, as provided for in RCW 90.58.030(2)(d)(ii)).

b. The main stem of the Skagit River, which is designated an aquatic environment in BMC 18.07.040(C), and its buffer, which provide the critical ecological function of fish passage to upstream spawning and rearing habitats.

c. The language adopted as part of this SMP has been reviewed and determined to meet the standard of no net loss of ecological functions.

2. Policies.

a. In implementing this master program, the city will take necessary steps to ensure compliance with chapter 43.21 RCW, the Washington State Environmental Policy Act of 1971, and its implementing guidelines.

b. All significant adverse impacts to the shoreline should be avoided or, if that is not possible, minimized to the extent feasible.

c. Applicable sections of the critical area ordinance (CAO) pertaining to wetlands have been incorporated into the SMP and have been included as Appendix A, Shoreline Wetlands, Fish and Wildlife Habitat Conservation Areas, and General Critical Area Regulations.

3. Regulations.

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

b. Projects that cause significant ecological impacts are not allowed unless mitigated according to the sequence in subsection (C)(3)(d) of this section to avoid reduction or damage to ecosystem-wide processes and ecological functions.

- c. Projects that cause significant adverse impacts, other than significant ecological impacts, shall be mitigated according to the sequence in subsection (C)(3)(d) of this section.
- d. When applying mitigation to avoid or minimize significant adverse effects and significant ecological impacts, the city will apply the following sequence of steps in order of priority, with (i) being top priority:
  - i. Avoiding the impact altogether by not taking a certain action or parts of an action;
  - ii. 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;
  - iii. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
  - iv. Reducing or eliminating the impact over time by preservation and maintenance operations;
  - v. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
  - vi. Monitoring the impact and the compensation projects and taking appropriate corrective measures.
- e. The city will set mitigation requirements or permit conditions based on impacts identified. In determining appropriate mitigation measures, avoidance of impacts by means such as relocating or redesigning the proposed development will be applied first. Lower priority measures will be applied only after higher priority measures are demonstrated to be not feasible or not applicable.
- f. All shoreline development shall be located and constructed to avoid significant adverse impacts to human health and safety.
- g. All such activities shall be carried out in ways that cause the least impact to critical areas and their buffers. If any damage is caused to a critical area or buffer in connection with such activity, the critical area and its buffer must be restored to the extent feasible. To be exempt does not give permission to destroy a critical area or ignore risk. Proponents of such activities shall be responsible for notifying the director if any damage occurs and shall provide all necessary restoration or mitigation. For information on identifying, protecting or mitigating adverse impacts to critical areas, refer to sections in this title on wetlands, aquifer recharge areas, geologically hazardous areas, fish and wildlife habitat conservation areas, and flood hazard areas.
- h. The critical areas buffer for the Skagit River shall be waterward of the waterward toe of the levee or 200 feet from the ordinary high water mark of the river where no levee exists.

#### D. Flood Hazard Reduction.

1. Applicability. The provisions in this section apply to those areas within the shoreline management zone lying along the Skagit River floodplain corridor, including the river, and associated wetlands in the floodplain.

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

- a. Protecting human safety and minimizing flood hazard to human activities and development.
- b. Protecting and contributing to the restoration of ecosystem-wide processes and ecological functions found in the applicable watershed or sub-basin.

#### 2. Policies.

- a. Implement a comprehensive program to manage the city's floodplain corridor that integrates the following city ordinances and activities:
  - i. Regulations of the master program as codified in the BMC.

- ii. The floodplain management standards in BMC 14.15.390 through 14.15.430.
  - iii. The development standards of the underlying zoning district.
  - iv. The city storm water management plan and implementing regulations.
  - v. The city's participation in flood hazard reduction programs, including the Federal Emergency Management Act and the Washington State Flood Control Assistance Account Program, and the 2008-2013 Floodplain Management and Natural Hazard Mitigation Plan.
  - vi. City, county and dike district approved flood risk reduction measures.
  - vii. The construction or improvement of new public facilities, including roads, levees, utilities, bridges, and other structures.
  - viii. The ecological restoration of selected shoreline areas.
- b. In regulating development on shorelines within SMA jurisdiction, endeavor to achieve the following:
- i. Maintenance of human safety.
  - ii. Protection and, where appropriate, the restoration of the physical integrity of the ecological system processes, including wetland buffer restoration and storm water quality restoration.
  - iii. Protection of water quality and natural ground water movement.
  - iv. Protection of fish, vegetation, and other life forms and their habitat vital to the aquatic food chain.
  - v. Protection of recreation resources and aesthetic values.
- c. Undertake flood hazard mitigation planning in a coordinated manner among affected property owners and public agencies and consider the entire Skagit River drainage system.
- d. Manage the existing levee system along the Skagit River shoreline to optimize flood protection and manage levee vegetation as required under the Corps of Engineers PL 84-99 standards as may be amended.
- e. Provide public pedestrian access to the shoreline for low-impact outdoor recreation.
3. Regulations.
- a. New, structural, public flood hazard reduction projects that are continuous in nature, such as levees, shall provide public access to the shoreline unless such access is not feasible or desirable according to the criteria in the public access section of the SMP.
  - b. Designs for flood hazard reduction measures and shoreline stabilization measures in the river corridor must be prepared by qualified professional engineers, geologists, and/or hydrologists who have expertise in local riverine processes.
  - c. Existing hydrological connections to the floodplain and associated wetlands shall be maintained where feasible.
  - d. Use and development that do not meet the following standards are prohibited in the floodway:
    - i. Minor structures and additions for which a building permit is not required;
    - ii. Fills of less than 12 cubic yards or which will not raise the level of the land above that of the surrounding area;

- iii. Normal maintenance, resurfacing and rebuilding, at comparable grade of streets, and accessways;
  - iv. Underground improvements and excavations;
  - v. Maintenance and minor repair of existing improvements;
  - vi. Improvements to structures listed on the National or State Register of Historic Places;
  - vii. Other minor developments which cause no significant impoundment or displacement of floodwaters, such as open fences, signs and small unenclosed structures;
  - viii. Utility outfall structures authorized by the Corps of Engineers and levee construction to maintain the structural integrity of critical infrastructure.
- e. New structural flood hazard reduction measures in shoreline jurisdiction are allowed only when it can be demonstrated by a scientific and engineering analysis that they are necessary to protect existing development, that nonstructural measures are not feasible, that impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss, and that appropriate vegetation conservation actions are undertaken consistent with WAC 173-26-221(5) or as required under the Corps of Engineers PL 84-99 standards as may be amended.
- f. Structural flood hazard reduction measures shall be consistent with an adopted comprehensive flood hazard management plan approved by the department that evaluates cumulative impacts to the watershed system.

#### E. Public Access.

1. Applicability. Shoreline public access is the physical ability of the general public to reach and touch the water's edge and/or the ability to have a view of the water and the shoreline from upland locations. Public access facilities may include picnic areas, pathways and trails, floats and docks, promenades, viewing towers, bridges, boat launches, and improved street ends. The city has adopted a plan for nonmotorized public access that extends along the Skagit River frontage on the levees, and connects to a trail system along Gages Slough and through the city to the east to Cascade Trail and to the west.

#### 2. Policies.

- a. Public access should be considered in the review of all private and public developments as appropriate.
- b. Developments, uses, and activities on or near the shoreline should not impair or detract from the public's access to the water, or the rights of navigation, or space for water-dependent uses.
- c. Promote and enhance the public interest with regard to rights to access waters held in public trust by the state while protecting private property rights and public safety.

#### 3. Regulations.

- a. Except as provided in subsections (E)(3)(b) and (c) of this section, shoreline substantial developments or conditional uses shall provide public access where any of the following conditions are present:
- i. Where a development or use will create increased demand for public access to the shoreline, the development or use shall provide public access to mitigate this impact.
  - ii. Where a development or use will interfere with an existing public access way, the development or use shall provide public access to mitigate this impact. Impacts to public access may include blocking access or discouraging use of existing on-site or nearby accesses.
  - iii. Where a use which is not a priority shoreline use under the Shoreline Management Act locates on a shoreline of the state, the use or development shall provide public access to mitigate this impact.

- iv. Where a use or development will interfere with a public use of lands or waters subject to the public trust doctrine, the development shall provide public access to mitigate this impact.
  - v. Where the development is proposed by a public entity or on public lands.
  - vi. Where called for under the city's connected open space and nonmotorized public access plan, including completing public access along the levees on the Skagit River and the Gages Slough trail.
- b. The shoreline permit file shall describe the impact, the required public access conditions, and how the conditions address the impact. Mitigation for public access impacts shall be in accordance with the definition of mitigation and mitigation sequence.
- c. An applicant need not provide public access where the city determines that one or more of the following conditions apply:
- i. The adopted city's public access planning indicates that public access is not required;
  - ii. Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means;
  - iii. Significant ecological impacts will result from the public access which cannot be mitigated; or
  - iv. Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.
- d. In order to meet any of the conditions in subsections (E)(3)(c)(i) through (iv) 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:
- i. Regulating access by such means as maintaining a gate and/or limiting hours of use;
  - ii. Designing separation of uses and activities (e.g., fences, terracing, use of one-way glazings, hedges, landscaping, etc.); and
  - iii. Developing provisions for access at a site geographically separated from the proposal such as a street end, vista or trail system.
- e. Public access provided by shoreline street ends, public utilities and rights-of-way shall not be diminished. (This is a requirement of RCW 35.79.035 and 36.87.130.)
- f. Public access sites shall be connected directly to the nearest public street or public right-of-way and shall include provisions for physically impaired persons, where feasible.
- g. Required public access sites shall be fully developed and available for public use at the time of occupancy of the use or activity unless not feasible.
- h. 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).
- i. Minimum width of public access easements shall be 20 feet, unless the city determines that undue hardship would result. In such cases, easement width may be reduced only to the minimum extent necessary to relieve the hardship.
- j. The standard state approved logo or other approved signs that indicate the public's right of access and hours of access shall be constructed, installed and maintained by the applicant in conspicuous locations at

public access sites. In accordance with subsection (E)(3)(a) of this section, signs may control or restrict public access as a condition of permit approval.

k. Future actions by the applicant successors in interest or other parties shall not diminish the usefulness or value of the public access provided.

l. Public access shall be provided as close as feasible to the water's edge without causing significant ecological impacts and should be designed in accordance with the Americans with Disabilities Act.

m. Public access shall be designed to provide for public safety and comfort and to minimize potential impacts to private property and individual privacy. There shall be a physical separation or other means of clearly delineating public and private space in order to avoid unnecessary user conflict.

n. Public views from the shoreline upland areas shall be enhanced and preserved. Enhancement of views should not be construed to mean excessive removal of existing native vegetation that partially impairs views.

o. Public access and interpretive displays should be provided as part of publicly funded restoration projects where significant ecological impacts can be avoided.

p. The adopted connected open space plan and nonmotorized plan in the city's parks and recreation plan shall be implemented to provide a continuous waterfront multi-purpose trail and Gages Slough trail that connects to the Blooming Tree Trail on SR 20 and will connect the community east/west/north/south.

#### F. Shorelines of Statewide Significance.

1. Applicability. The Shoreline Management Act specifically designates certain areas as shorelines of statewide significance. The interest of all of the people shall be paramount in the management of shorelines of statewide significance. Preference shall be given to uses and developments which are consistent with the principle of statewide over local interest.

Natural rivers or segments thereof lying west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at 1,000 cubic feet per second or more and associated shorelands. The flow of the Skagit River is over 100,000 cubic feet per second and constitutes the shoreline of statewide significance for the city of Burlington.

2. Policies. The City, in adopting guidelines for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

- a. Recognize and protect the state-wide interest over local interest;
- b. Preserve the natural character of the shoreline;
- c. Result in long-term over short-term benefit;
- d. Protect the resources and ecology of the shoreline;
- e. Increase public access to publicly owned areas of the shorelines;
- f. Increase recreational opportunities for the public in the shoreline;
- g. Provide for any other element deemed appropriate or necessary within the context of the policies and use regulations of this program.

#### G. Signage.

1. Applicability. A sign is defined as a device of any material or medium, including structural component parts, which is used or intended to be used to attract attention to the subject matter for advertising, identification or

informative purposes. The following provisions apply to any commercial or advertising sign directing attention to a business, professional service, community, site, facility, or entertainment, conducted or sold either on or off premises.

2. Policies.

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

3. Regulations.

- a. All signs shall be located and designed to avoid interference with vistas, viewpoints and visual access to the shoreline.
- b. Over-water signs, signs on floats or pilings, and signs for goods, services, or businesses not located directly on the site proposed for a sign are prohibited.
- c. Lighted signs shall be hooded, shaded, or aimed so that direct light will not result in glare when viewed from surrounding properties or watercourses.
- d. Signs shall not exceed 32 square feet in surface area. On-site freestanding signs shall not exceed six feet in height. When feasible, signs shall be flush-mounted against existing buildings.
- e. Temporary or obsolete signs shall be removed within 10 days of elections, closures of business, or termination of any other function. Examples of temporary signs include: real estate signs, directions to events, political advertisements, event or holiday signs, construction signs, and signs advertising a sale or promotional event.
- f. Signs that do not meet the policies and regulations of this program shall be removed or conform within two years of the adoption of this master program.
- g. No signs shall be placed in a required view corridor.
- h. Allowable Signs. The following types of signs may be allowed in all shoreline environments:
  - i. Water navigational signs, and highway and railroad signs necessary for operation, safety and direction.
  - ii. Public information signs directly relating to a shoreline use or activity.
  - iii. Off-premises, freestanding signs for community identification, information, or directional purposes.
  - iv. National, site and institutional flags or temporary decorations customary for special holidays and similar events of a public nature.
  - v. Temporary directional signs to public or quasi-public events if removed within 10 days following the event.

i. Prohibited Signs. The following types of signs are prohibited:

- i. Off-premises detached outdoor advertising signs.
- ii. Commercial signs for products, services, or facilities located off site.
- iii. Spinners, streamers, pennants, flashing lights and other animated signs used for commercial purposes. Highway and railroad signs are exceptions.

- iv. Signs placed on trees or other natural features.

#### H. Utilities (Accessory).

1. Applicability. Accessory utilities are those that affect small-scale distribution services connected directly to the uses along the shoreline. They are addressed in this section because they concern all types of development and have the potential to impact the quality of the shoreline and its waters.

2. Policies.

- a. Accessory utilities should be properly installed so as to protect the shoreline and water from contamination and degradation.

- b. Accessory utility facilities and rights-of-way should be located outside of the shoreline area to the maximum extent possible. When utility lines require a shoreline location, they should be placed underground.

- c. Accessory utility facilities should be designed and located in a manner which preserves the natural landscape and shoreline ecological processes and functions and minimizes conflicts with present and planned land uses.

3. Regulations.

- a. In shoreline areas, accessory utility transmission lines, pipelines and cables shall be placed underground unless demonstrated to be infeasible. Further, such lines shall utilize existing rights-of-way, corridors and/or bridge crossings whenever possible. Proposals for new corridors in shoreline areas involving water crossings must fully substantiate the infeasibility of existing routes.

- b. Accessory utility development shall, through coordination with government agencies, provide for compatible multiple uses of sites and rights-of-way. Such uses include shoreline access points, trails and other forms of recreation and transportation systems, providing such uses will not unduly interfere with utility operations or endanger public health and safety.

- c. Sites disturbed for utility installation shall be stabilized during and following construction to avoid adverse impacts from erosion and, where feasible, restored to pre-project configuration and replanted with native vegetation.

- d. Utility discharges and outfalls should be located, designed, constructed, and operated in accordance with best management practices to ensure degradation to water quality is kept to a minimum.

#### I. Vegetation Conservation.

1. Applicability.

- a. The following provisions apply to any activity that results in the removal of or impact to shoreline vegetation, whether or not that activity requires a shoreline permit, except as noted herein. Such activities include clearing, grading, grubbing, and trimming of vegetation. These provisions also apply to vegetation protection and enhancement activities.

- b. Management of vegetation as a function of flood risk reduction structure maintenance shall comply with standards of the PL 84-99 Rehabilitation and Inspection Program for nonfederal levees conducted by the U.S. Army Corps of Engineers or other agencies with jurisdiction over such structures.

2. Policies.

- a. Vegetation within the city shoreline areas, waterward of dikes and levees or where no such structures exist, should be enhanced over time to provide a greater level of ecological function.

b. The master program, in conjunction with other city of Burlington development regulations, should establish a coordinated and effective set of provisions and programs to protect and restore functions provided by shoreline vegetation.

c. Aquatic weed management should stress prevention first. Where active removal or destruction is necessary, it should be the minimum to allow water-dependent activities to continue, minimize negative impacts to native plant communities, and include appropriate handling or disposal of weeds.

### 3. Regulations.

a. Except for levees, all development, including clearing and grading, shall minimize vegetation removal in areas of shoreline jurisdiction to that necessary to accommodate the proposed development. In order to implement this regulation, applicants proposing development that includes significant vegetation removal, clearing, or grading within areas of shoreline jurisdiction, as a part of a substantial development permit application or a shoreline exemption certificate application, shall submit a site plan drawn to scale, indicating existing and proposed land contours, dimensions and locations of all existing and proposed structures and improvements. The site plan shall also include a general indication of the character of vegetation found on the site, and the extent of proposed clearing and/or grading (see WAC 173-27-180(9)). The city may require that the proposed development or extent of clearing and grading be modified to reduce the impacts to ecological functions. Note that this provision does not apply to the removal of noxious and invasive plant species.

b. Vegetation restoration of disturbed shorelines waterward of levees shall use diverse native plant material similar to that which originally occurred on site, unless the city finds that such material is not appropriate.

c. A condition of all development shall be that those shorelines on the site not occupied by structures, landscaping, accessory uses, or other areas dedicated to human activities shall be revegetated with native vegetation, to the extent feasible given the applicable shoreline conditions and the likelihood of long-term survival of such vegetation if it is reintroduced.

d. The enhancement of vegetation shall be a condition of all development in the shoreline environments, except where the city finds that:

- i. Vegetation enhancement is not feasible on the project site or necessary.
- ii. The restoration of ecological processes and functions can be better achieved through other measures.
- iii. Sufficient native vegetation already exists.

e. Aquatic weed control shall only occur when native plant communities and associated habitats are threatened or where an existing water dependent use is restricted by the presence of weeds. Aquatic weed control shall occur in compliance with all other applicable laws and standards.

f. The control of aquatic weeds by hand pulling, mechanical harvesting, or placement of aqua screens shall be considered normal maintenance and repair and, therefore, exempt from the requirement to obtain a shoreline substantial development permit.

g. Use of herbicides to control aquatic weeds shall be prohibited, except where no reasonable alternative exists and weed control is demonstrated to be in the public interest. A conditional use permit shall be required in such case.

h. Selective pruning of trees for purposes of safety and protection of public views of the river is allowed, provided such pruning is the minimum necessary.

i. Management of vegetation as a function of flood risk reduction structure maintenance shall comply with standards of PL 84-99, Rehabilitation and Inspection Program, for nonfederal levees conducted by the U.S. Army Corps of Engineers or other agencies with jurisdiction over such structures.

J. Water Quality.

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

2. Policies.

a. All shoreline uses and activities should be located, designed, constructed, and maintained to avoid significant ecological impacts by altering water quality, quantity, or hydrology.

b. The city should require reasonable setbacks, buffers, and storm water storage basins and encourage low-impact development techniques and materials to achieve the objective of lessening negative impacts on water quality.

c. All measures for controlling erosion, stream flow rates, or flood waters through the use of stream control works should be located, designed, constructed, and maintained so that net off-site impacts related to water do not degrade the existing water quality.

d. As a general policy, the city will seek to improve water quality, quantity, and flow characteristics in order to protect and restore ecological functions and ecosystem-wide processes of shorelines within shoreline management zone.

3. Regulations.

a. All shoreline development, both during and after construction, shall avoid or minimize significant ecological impacts, including any increase in surface runoff, through control, treatment, and release of surface water runoff so that the receiving water quality and shore properties and features are not adversely affected. Control measures include, but are not limited to, dikes, catch basins or settling ponds, oil interceptor drains, grassy swales, planted buffers, and fugitive dust controls.

b. All development shall conform to local, state, and federal water quality regulations.

c. The city shall require reasonable setbacks, buffers, and encourage low-impact development techniques and materials to achieve the objective of lessening negative impacts on water quality.

d. The city has adopted the current edition of the Washington Department of Ecology Stormwater Manual as part of the surface water management regulations.

e. All measures for the treatment of runoff for the purpose of maintaining and/or enhancing water quality should be conducted on site before shoreline development impacts waters off site. (Ord. 1786 § 1, 2013).

**Chapter 18.16**  
**REGULATIONS**

Sections:

- 18.16.010 Shoreline use and development tables.
- 18.16.015 Shoreline modifications.
- 18.16.020 Agriculture.
- 18.16.030 Boating facilities.
- 18.16.040 Commercial and industrial development.
- 18.16.050 In-stream structures.
- 18.16.060 Mining.
- 18.16.070 Recreational development.
- 18.16.080 Residential.
- 18.16.090 Transportation and parking – Existing corridors.
- 18.16.100 Transportation and parking – New corridors.
- 18.16.110 Utilities including wastewater treatment plant and accessory utilities.
- 18.16.120 Wetlands and Skagit River shoreline buffer areas – Restoration and maintenance.

**18.16.010 Shoreline use and development tables.**

The following tables indicate the allowable uses and shoreline development and some of the standards applicable to those uses and development. Where there is a conflict between the chart and the written provisions in this master program, the written provisions shall apply. Please note that the severely limited list of uses is a result of the shoreline fronted by levees and the fact that the land has been and continues to be acquired in public ownership for flood hazard mitigation.

The charts are coded according to the following legend:

- P = May be permitted although a shoreline permit may not be required
- C = May be permitted as a conditional use only
- X = Prohibited; the use is not permitted nor is it eligible for a variance or conditional use permit
- N/A = Not applicable

See also notes to tables following Table 3.

**Table 1: Shoreline Use**

Shoreline Use	Shoreline Environment		
	Aquatic	Natural	Urban Conservancy
<b>Agriculture</b>	X	X	P – 1
<b>Boating facilities</b>	P – 2,3	X	C – 2,3
<b>Commercial:</b>			
Water-dependent	X – 9	X	X – 9
Water-related, water-enjoyment	X	X	X
Non-water-oriented	X	X	X
<b>Flood hazard reduction</b>	P	X – 11	P – 2

Shoreline Use	Shoreline Environment		
	Aquatic	Natural	Urban Conservancy
<b>Industrial:</b>			
Water-dependent	X	X	X
Water-related, water-enjoyment	X	X	X
Non-water-oriented	X	X	X
<b>Mining</b>	C – 3	X	X
<b>Parking (primary)</b>	X	X	X
<b>Parking (accessory)</b>	X	X	P
<b>Recreation</b>	P – 9	P – 9	P – 9
<b>Residential development</b>	X	X	X
<b>Transportation – existing corridors</b>	P – 2	P – 2	P – 2
<b>Transportation – new corridors</b>	C – 4	C – 4	C – 4
<b>Utilities (accessory)</b>	P	P	P
<b>Utilities including wastewater treatment plant</b>	P – 10	P – 10	P – 10
<b>Wetland restoration and maintenance</b>	P – 2	P – 2	P – 2

**Table 2: Shoreline Modifications**

Shoreline Modification	Shoreline Environment		
	Aquatic	Natural	Urban Conservancy
<b>Shoreline Stabilization:</b>			
Beach or buffer restoration/enhancement	P – 5	P	P
Bioengineering	P – 5,6	X	P – 5,6
Revetments	P – 5,6	X	P – 1,5,6
Bulkheads	P – 5,6	X	P – 1,5,6
Breakwaters/jetties/rock weirs/groins	P – 5,6	X	P – 1,5,6
Levees	P	X	P – 1
<b>Dredging</b>	C – 5	X	X
<b>Hazardous waste cleanup</b>	P	P	P
<b>Fill</b>	C – 5,6	X	P – 1,6
<b>Piers, docks, buoys, floats</b>	P – 7	X	P

**Table 3: Development Standards**

Development Standard	Shoreline Environment		
	Aquatic	Natural	Urban Conservancy
<b>Boating facilities</b>			
Water-dependent setback	N/A	N/A	0
Water-related building setback	N/A	N/A	50 – 8
<b>Recreational development</b>			
Water-dependent setback	N/A	N/A	0
Water-related, water-enjoyment setback	N/A	N/A	70 – 8
Non-water-oriented setback	N/A	N/A	70 – 8
Building height limit	N/A	N/A	45 – 8
<b>Parking (accessory)</b>			
Setback	N/A	N/A	70 – 8

Notes to Tables 1, 2 and 3:

1. The use or development is prohibited in Gages Slough urban conservancy, except as part of a transportation improvement, utility installation or water quality enhancement project with mitigation as prescribed in Appendices A and B.
  2. Public access, as approved by the city, is a condition of development and substantial development.
  3. The use may be allowed provided it does not cause significant ecological impacts that cannot be mitigated on site.
  4. The use may be allowed providing there is no other feasible route or location.
  5. The shoreline modification may be allowed only for environmental restoration/mitigation or if the city determines that there will be a net increase in desired shoreline ecological functions.
  6. Development for which a floodplain approval is required is prohibited in the floodway, other than utility outfall structures authorized by the Corps of Engineers and levee construction to maintain the structural integrity of critical infrastructure.
  7. Piers or docks may be allowed only for public access or hand-carried vessels and only if significant adverse ecological impacts are avoided.
  8. The setback is measured from the ordinary high water mark and shall include a 50-foot minimum strip of shoreline restoration measures and/or native vegetation plantings as approved by the city plus a 20-foot-wide public access easement running parallel with the shoreline.
  9. Commercial recreation facilities may be allowed as a water-dependent use or in support of recreational facilities such as concession stands.
  10. New utility production and processing facilities are prohibited unless it can be demonstrated that no other practical option is available. The existing wastewater treatment plant and future expansion is a permitted facility.
  11. Only flood control physical elements such as levees or fill are prohibited. Other forms of flood hazard reduction such as planning, monitoring and warning systems are allowed.
- (Ord. 1786 § 1, 2013).

**18.16.015 Shoreline modifications.**

A. Implementation Policy. Shoreline modifications are generally related to construction of a physical element such as a dike, breakwater, dredged basin, or fill, but they can include other actions such as clearing, grading, application of chemicals, or significant vegetation removal. Shoreline modifications usually are undertaken in support of or in preparation for a shoreline use; for example, fill (shoreline modification) required for a cargo terminal (industrial

use) or dredging (shoreline modification) to allow for a marina (boating facility use). Shoreline modifications in Burlington are limited.

**B. Regulations.**

1. All new shoreline modifications must be in support or protection of an allowable shoreline use or development that is in danger of loss or substantial damage or is necessary for mitigation or enhancement and conforms to the provisions of this master program. Except as otherwise noted, all shoreline modifications not associated with a legally existing or an approved shoreline use are prohibited. (Ord. 1786 § 1, 2013).

**18.16.020 Agriculture.**

A. Implementation Policy. Agricultural activities on agricultural land are not regulated by this shoreline master program. Only new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and other development on agricultural land that does not meet the definition of agricultural activities is regulated by this shoreline master program.

Existing and ongoing agriculture shall be required to implement applicable standards and practices through an individual farm plan based on the Field Office Technical Guides (FOTG) administered by the Natural Resources Conservation Service of USDA. An accountability and monitoring program shall be included in each plan. The farm management plan shall be consistent with the Washington State Agricultural Strategy to ensure agricultural practices are not negatively affecting water quality, quantity or salmon habitat.

New development in support of agricultural activities shall be designed to minimize impacts to shoreline environments, specifically, to prevent livestock intrusion into the water; bank erosion; degradation of water quality from fertilizers, pesticides, and manure into the water; and loss of shoreline vegetation. Standards or best management practices, setbacks and vegetation management areas shall be addressed through individual farm plans as above.

**B. Regulations by Environment for New Agricultural Activities on Land Currently Not Meeting the Definition of Agricultural Land.**

1. Urban Conservancy Environment. Agriculture is prohibited in the Gages Slough urban conservancy. Agriculture is permitted in the Skagit River urban conservancy subject to the following requirements:
  - a. Fencing livestock out of Skagit River, associated wetlands and all buffers;
  - b. Prohibit the practice of spraying liquid manure, the use of pesticides, herbicides and organic fertilizers, and the cultivation of land within the buffers of the Skagit River, associated wetlands and their buffers.
2. Natural Environment. Agriculture is prohibited.
3. Aquatic Environment. Agriculture is prohibited. (Ord. 1786 § 1, 2013).

**18.16.030 Boating facilities.**

A. Implementation Policy. Provisions shall be included to address potential impacts while providing the public boating opportunities. Facilities shall be restricted to existing locations with suitable environmental conditions, shoreline configuration, access, and neighboring uses. Sewage pumpouts and wash-off stations shall be required where appropriate to meet health requirements. Mitigation of visual and ecological impacts shall be required. Parking impacts shall be mitigated. Live-aboards and covered moorage are prohibited.

At the time of adoption of the SMP, boating facilities in Burlington consist of one floating dock moored by pilings that abuts the shoreline and is used as a landing or moorage place for small water craft utilized for recreational purposes (e.g. private angling club facility), and one public boat launch ramp.

Pier and dock construction should be restricted to the minimum size necessary to meet the needs of the proposed use. Multiple-use and expansion of legally existing piers and docks should be encouraged over the addition of new facilities. Joint-use facilities are preferred over new single-use piers, docks, and floats. Piers and docks should be sited and designed to avoid or minimize potentially significant ecological impacts, including impacts on sediment

movement, water circulation and quality, and fish and wildlife habitat. The proposed size of the structure and intensity of use or uses of any pier or dock should be compatible with the surrounding environment and land and water uses.

**B. Regulations.**

1. Marinas are prohibited.
2. Live-aboards and covered moorage is prohibited.
3. Sewage pumpouts, restrooms and wash-off stations shall be required where appropriate to meet health requirements.
4. Pier and dock construction shall be restricted to the minimum size necessary to meet the needs of the proposed use. Piers and docks shall be sited and designed to avoid or minimize potentially significant ecological impacts, including impacts on sediment movement, water circulation and quality, and fish and wildlife habitat.

**C. Regulations by Environment.**

1. Urban Conservancy Environment. Boating facilities are a shoreline conditional use permit along the Skagit River. Boating facilities are prohibited in Gages Slough.
2. Natural Environment. Boating facilities are prohibited.
3. Aquatic Environment. Boating facilities are permitted subject to compliance with applicable state and federal regulations and standards and the implementation policies and regulations of this section. (Ord. 1786 § 1, 2013).

**18.16.040 Commercial and industrial development.**

A. Implementation Policy. No significant development other than critical infrastructure is allowed along the Skagit River, and no development is allowed in the Gages Slough wetland. Levee maintenance and improvement and transportation upgrades such as replacing bridges are the only potential development activity and mitigation would be required.

As stated in the regulations by environment, there is existing guide service that may utilize the boat launch ramp, but there is no location available for commercial and industrial development along the riverfront.

**B. Regulations by Environment.**

1. Urban Conservancy Environment. Commercial and industrial development is prohibited except for commercial services related to recreational facilities.
2. Natural Environment. Commercial and industrial development is prohibited.
3. Aquatic Environment. Water-dependent commercial and industrial development is prohibited except for water-taxi or guide service. (Ord. 1786 § 1, 2013).

**18.16.050 In-stream structures.**

A. Implementation Policies. The guidelines define an in-stream structure as a structure placed by humans within a stream or river waterward of the ordinary high water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.

In-stream structures are defined to include structures in wetlands and shall provide for the protection and preservation of natural and cultural resources, including but not limited to fish, wildlife, and water resources; critical areas; geohydrological processes; and natural scenic vistas. The location and planning of in-stream structures shall

give due consideration to the full range of public interests, watershed functions and processes, and environmental concerns, with special emphasis on protecting and restoring priority habitats and species.

The only likely installations in the Skagit River shoreline area would be associated with a transportation facility, data collection, flood control, or fish enhancement.

**B. Regulations.**

1. In-stream structures shall provide for the protection and preservation of safe surface navigation, ecosystem-wide processes, ecological functions and cultural resources, including but not limited to fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeologic processes, and natural scenic vistas.
2. The location and planning of in-stream structures shall give due consideration to the full range of public interests, watershed functions and processes, and environmental concerns, with special emphasis on protecting and restoring priority habitats and species.

**C. Regulations by Environment.**

1. Urban Conservancy Environment. In-stream structures including culverts and similar structures are permitted to be located in Gages Slough.
2. Natural Environment. In-stream structures are permitted as a shoreline conditional use.
3. Aquatic Environment. In-stream structures are permitted. (Ord. 1786 § 1, 2013).

**18.16.060 Mining.**

A. Implementation Policies. Mining shall not be allowed in unique and fragile areas and excavation of sand, gravel and other minerals shall be done as required by the Washington State Surface Mining Reclamation Act, chapter 78.44 RCW.

**B. Regulations.**

1. Mining is prohibited in unique and fragile areas. When allowed it shall be in compliance with the Washington State Surface Mining Reclamation Act, chapter 78.44 RCW.

**C. Regulations by Environment.**

1. Urban Conservancy Environment. Mining is prohibited.
2. Natural Environment. Mining is prohibited.
3. Aquatic Environment. Mining is prohibited except for gravel extraction as a shoreline conditional use for specific quantities and specified locations. The removal of gravel from the Skagit River shall be done only after a biological and geohydrological study shows that sustainable extraction can take place without altering the natural processes of gravel transport and there is no net loss of ecological functions. Fish and wildlife resources shall be protected consistent with the Endangered Species Act and all disturbed areas shall be reclaimed. Removal of gravel for flood management purposes shall be consistent with the flood hazard mitigation plan. (Ord. 1786 § 1, 2013).

**18.16.070 Recreational development.**

A. Implementation Policies. The public shall be allowed to enjoy the waters of the state through water-oriented recreation. Shoreline recreational facilities should be linked to other recreational attractions by pedestrian and bicycle trails. In order to provide for a spectrum of recreational needs and opportunities, recreational development must be consistent with the parks and recreation comprehensive plan.

Location and design shall minimize environmental damage, and shall be designed to improve natural habitat, whether on the shoreline or upland, to maximize the diversity of habitat opportunities.

B. Regulations by Environment.

1. Urban Conservancy Environment. Recreational development is permitted. All non-water-oriented recreational developments shall make provision for public access to the shoreline.
2. Natural Environment. Only low-intensity, water-oriented recreational development such as public access trails is permitted.
3. Aquatic Environment. Recreational development is permitted. (Ord. 1786 § 1, 2013).

**18.16.080 Residential.**

A. Implementation Policies. Existing residential development shall be allowed, subject to BMC 18.09.040, Nonconforming uses and structures.

Floating homes, houseboats and live-aboard vessels are not permitted.

B. Regulations by Environment.

1. Urban Conservancy Environment. Residences, floating homes, houseboats and live-aboard vessels are prohibited.
2. Natural Environment. Residences, floating homes, houseboats and live-aboard vessels are prohibited.
3. Aquatic Environment. Residences, floating homes, houseboats and live-aboard vessels are prohibited. (Ord. 1786 § 1, 2013).

**18.16.090 Transportation and parking – Existing corridors.**

A. Implementation Policies. Existing transportation corridors shall be upgraded as feasible, to comply with the latest edition of the Department of Ecology’s Surface Water Manual, for both quantity and quality, and shall further be required to improve public nonmotorized access opportunities when improvements are constructed.

Transportation and parking plans and projects should support circulation system planning for pedestrians, bicycles, and public transportation that in turn supports existing and proposed shoreline uses.

B. Regulations.

1. Existing transportation corridors shall be upgraded as feasible to comply with the latest edition of the Department of Ecology’s Surface Water Manual, for both quantity and quality, and shall further be required to improve public nonmotorized access opportunities when improvements are constructed.

C. Regulations by Environment.

1. Urban Conservancy Environment. Existing transportation corridors and related improvements are permitted.
2. Natural Environment. Existing transportation corridors and related improvements are permitted.
3. Aquatic Environment. Existing transportation corridors and related improvements are permitted. (Ord. 1786 § 1, 2013).

**18.16.100 Transportation and parking – New corridors.**

A. Implementation Policies. New transportation corridors shall only be established when a clear regional need is demonstrated.

Proposed transportation and parking plans and projects need to be planned, located and designed where they will have the least possible adverse effect on unique or fragile shoreline features, and will not result in a net loss of shoreline ecological functions.

They shall comply with the latest edition of the Department of Ecology's Surface Water Manual, for both quantity and quality, and shall further be required to provide public nonmotorized access opportunities when improvements are constructed.

Parking is the temporary storage of automobiles or other motorized vehicles. Except as noted the following provisions apply only to parking that is "accessory" to a permitted shoreline use. Parking as a "primary" use and parking which serves a use not permitted in the shoreline jurisdiction is prohibited. Parking should be planned to achieve optimum use. Where possible, parking should serve more than one use (e.g., serving recreational use on weekends, commercial uses on weekdays). Where feasible, parking for shoreline uses should be provided in areas outside shoreline jurisdiction. Low-impact parking facilities, such as permeable pavements, are encouraged.

Parking as a primary use or that serves a use not permitted in the applicable shoreline environment designation shall be prohibited over water and within shoreline jurisdiction. Parking in shoreline jurisdiction must directly serve a permitted shoreline use.

Parking facilities shall be designed and landscaped to minimize adverse impacts upon the adjacent shoreline and abutting properties. Landscaping shall consist of native vegetation and/or plant materials approved by the city and planted before completion of the parking area in such a manner that plantings provide effective screening within three years of project completion.

Parking facilities serving individual buildings on the shoreline shall be located landward from the principal building being served, except when the parking facility is within or beneath the structure and adequately screened, or in cases when an alternate location would have less environmental impact on the shoreline.

Parking facilities for shoreline activities shall provide safe and convenient pedestrian circulation within the parking area and to the shorelines.

Parking facilities shall provide adequate facilities to prevent surface water runoff from contaminating water bodies, using best available technologies, and include a maintenance program that will assure proper functioning of such facilities over time.

#### B. Regulations, General.

1. New transportation corridors and related improvements are permitted when there is no feasible route or location outside shoreline jurisdiction, when a clear regional need is demonstrated and as a shoreline conditional use permit.
2. Proposed transportation and parking plans and projects shall be planned, located and designed where they will have the least possible adverse effect on unique or fragile shoreline features, and will not result in a net loss of shoreline ecological functions.
3. Transportation and parking shall comply with the latest edition of the Department of Ecology's Surface Water Manual, for both quantity and quality, and shall further be required to provide public nonmotorized access opportunities when improvements are constructed.
4. Transportation and parking shall comply with the latest edition of the Department of Ecology's Surface Water Manual, for both quantity and quality, and shall further be required to provide public nonmotorized access opportunities when improvements are constructed.
5. Parking as a primary use or that serves a use not permitted in the applicable shoreline environment designation shall be prohibited within shoreline jurisdiction.
6. Parking facilities shall be designed and landscaped to minimize adverse impacts upon the adjacent shoreline and abutting properties. Landscaping shall consist of native vegetation and/or plant materials approved by the city and be planted before completion of the parking area in such a manner that plantings provide effective screening within three years of project completion.

7. Parking facilities serving individual buildings on the shoreline shall be located landward from the principal building being served, except when the parking facility is within or beneath the structure and adequately screened, or in cases when an alternate location would have less environmental impact on the shoreline.

8. Parking facilities for shoreline activities shall provide safe and convenient pedestrian circulation within the parking area and to the shorelines.

9. Parking facilities shall provide adequate facilities to prevent surface water runoff from contaminating water bodies, using best available technologies and include a maintenance program that will assure proper functioning of such facilities over time.

C. Regulations by Environment.

1. Urban Conservancy Environment. Parking areas shall be designed to minimize the environmental and visual impacts.

2. Natural Environment. Parking areas are prohibited in the natural environment.

3. Aquatic Environment. Parking areas are prohibited in the aquatic environment. (Ord. 1786 § 1, 2013).

**18.16.110 Utilities including wastewater treatment plant and accessory utilities.**

A. Implementation Policies. These facilities include utility production and processing as well as large transmission facilities. It does not include accessory utilities found in BMC 18.14.020(H). Design and location of utilities shall minimize harm to the shoreline, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses.

B. Regulations.

1. The existing wastewater treatment plant and future expansion is a permitted facility; new utility production and processing facilities are prohibited unless it can be demonstrated that no other practical option is available.

2. Transmission facilities for the conveyance of services, such as pipelines and power wires, shall be located to assure no net loss of shoreline ecological functions, cause minimum harm to the shoreline and be located outside the shoreline area where feasible, and shall be consistent with the master program environment designation. Locate utilities in existing rights-of-way and corridors wherever possible.

C. Regulations by Environment.

1. Urban Conservancy Environment. Utilities are permitted. Transmission facilities for the conveyance of services, such as pipelines and power wires, shall be located to assure no net loss of shoreline ecological functions, cause minimum harm to the shoreline and be located outside the shoreline area where feasible.

2. Natural Environment. Utilities are permitted. Transmission facilities for the conveyance of services, such as pipelines and power wires, shall be located to assure no net loss of shoreline ecological functions, cause minimum harm to the shoreline and be located outside the shoreline area where feasible.

3. Aquatic Environment. Utilities are permitted. Transmission facilities for the conveyance of services, such as pipelines and power wires, shall be located to assure no net loss of shoreline ecological functions, cause minimum harm to the shoreline and be located outside the shoreline area where feasible. (Ord. 1786 § 1, 2013).

**18.16.120 Wetlands and Skagit River shoreline buffer areas – Restoration and maintenance.**

A. Implementation Policies. The plans and implementation of restoration and maintenance of wetlands and shoreline buffers shall be designed, installed, monitored and maintained in accordance with best available science practices.

B. Regulations by Environment.

1. Urban Conservancy Environment. Wetland and Skagit River shoreline buffer restoration and maintenance is permitted and shall be designed, installed, monitored and maintained in accordance with best available science practices.
2. Natural Environment. Wetland and Skagit River shoreline buffer restoration and maintenance is permitted and shall be designed, installed, monitored and maintained in accordance with best available science practices.
3. Aquatic Environment. Wetland and Skagit River shoreline buffer restoration and maintenance is permitted and shall be designed, installed, monitored and maintained in accordance with best available science practices. (Ord. 1786 § 1, 2013).

## Appendix A

# WETLANDS, FISH AND WILDLIFE HABITAT CONSERVATION AREAS, AND GENERAL CRITICAL AREA REGULATIONS

Note to reviewer: Appendix A is taken directly from the current CAO (BMC Chapter 14.15). Text which has been added or deleted from the CAO is shown in underline/strikethrough.[DM13]

### I. Introduction and Overview

The city of Burlington is somewhat unique in that the entire Skagit River shoreline is fronted by a levee. There are few identified or delineated wetlands located on the waterward side of the levee system. Limited development such as recreation and restoration are allowed waterward of the levees which establish the floodway.

Gages Slough is a series of connected wetlands that cross the city and the wetland area itself is subject to the shoreline master program. As allowed by RCW 90.58.030(2)(d)(ii), the city has chosen not to place the wetland buffer into shoreline jurisdiction. The Gages Slough wetland buffer area is established through the city's critical area ordinance and is gradually being restored through implementation of a series of buffer restoration, maintenance and monitoring projects that do not extend into the wetland itself. There may be the need to obtain a shoreline permit for upgrades to the wetlands themselves in the future if it is determined that sediment buildup has an effect on flood hazard mitigation.

For these reasons, standards for wetland buffers and widths are handled by direct reference to the appropriate literature, rather than providing details that are unlikely to be utilized. If, at a future date, decisions are made to remove riverine levees, because of installation of planned setback levees to increase the channel migration zone, there may be the potential for wetlands to form, and the appropriate best available science standards will already be addressed in the shoreline master program. (Ord. 1786 § 1, 2013).

Applicable sections of the City's Critical Areas Regulations found within BMC Chapter 14.15 have been adopted into the SMP as Appendix A. All references to BMC Chapter 14.15, (Ordinance 1853, passed in 2018), are contained within this appendix. Where there are provisions in Chapter 14.15 that are less restrictive than the SMP, those provisions will not be applied and as such are not incorporated in Appendix A. However, where there are provisions that are more restrictive than the SMP, they will generally be applied. The intent is to ensure the provision providing the most protection is always applied.[DM14]

### II. Purpose

The purpose of these regulations is to ensure no net loss of ecological functions in wetlands and riparian corridors, including Gages Slough and wetlands along the Skagit River. Wetlands serve many important ecological and environmental functions and help to protect public health, safety and welfare by providing flood storage and conveyance, erosion control, fish and shellfish production, fish and wildlife habitat, recreation, water quality protection, water storage, education, scientific research and other public benefits. It is the purpose of this shoreline master program to protect these functions to prevent the continual loss of wetlands, and where practical to enhance or restore wetlands functions and values.

It is also the purpose of these regulations to protect, restore where practical, and enhance fish and wildlife populations and their associated habitats. In addition to their intrinsic value, certain species of fish and wildlife represent important historic, cultural, recreational and economic resources. Many species serve as indicators of the condition of the environment and the quality of life that local residents have invested in, enjoy and respect. (Ord. 1786 § 1, 2013).

### III. Definitions

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

“Priority habitats” are habitat types or elements with unique or significant value to a diverse assemblage of species based on the current and updated definitions by the Washington Department of Fish and Wildlife (WDFW). A priority habitat may consist of a unique vegetation type (e.g., shrub-steppe) or dominant plant species (e.g., juniper savannah), a described successional stage (e.g., old-growth forest), or a specific habitat feature (e.g., cliffs). In the case of the Skagit River, priority habitats include areas for migration, nesting, and rearing of juveniles.

“Priority species” require protective measures for their survival due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority species include state endangered, threatened, sensitive, and candidate species; animal aggregations (e.g., heron colonies, bat colonies) considered vulnerable; and species of recreational, commercial, or tribal importance that are vulnerable. In the case of the Skagit River, these include Chinook salmon, native cutthroat, and native steelhead fish.

“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. Wetlands may include these artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands (EHB 1653.PL). (Ord. 1786 § 1, 2013).

### IV. Wetlands

#### **14.15.180 Wetlands identification and rating.**

A. Identification and Delineation. Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. All areas within the city meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this chapter. Wetland delineations are valid for five years; after such date the city shall determine whether a revision or additional assessment is necessary.

B. Rating. Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication No. 14-06-029, effective January 2015) or as revised and approved by Ecology, which contains the definitions and methods for determining whether the criteria below are met.

1. Category I. Category I wetlands are: (a) relatively undisturbed estuarine wetlands larger than one acre; (b) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; (c) bogs; (d) mature and old-growth forested wetlands larger than one acre; (e) wetlands in coastal lagoons; (f) interdunal wetlands that score eight or nine habitat points and are larger than one acre; and (g) wetlands that perform many functions well (scoring 23 points or more). These wetlands: (a) represent unique or rare wetland types; (b) are more sensitive to disturbance than most wetlands; (c) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (d) provide a high level of functions.

2. Category II. Category II wetlands are: (a) estuarine wetlands smaller than one acre, or disturbed estuarine wetlands larger than one acre; (b) interdunal wetlands larger than one acre or those found in a mosaic of wetlands; or (c) wetlands with a moderately high level of functions (scoring between 20 and 22 points).

3. Category III. Category III wetlands are: (a) wetlands with a moderate level of functions (scoring between 16 and 19 points); (b) can often be adequately replaced with a well-planned mitigation project; and (c) interdunal wetlands between 0.1 and one acre. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

4. Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that we should be able to replace, or in some cases to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree. (Ord. 1853 § 2 (Exh. B), 2018).

#### **14.15.185 Wetland buffers.**

A. Standard Wetland Buffer Widths. The standard buffer widths in Table 14.15.185-1 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.

##### **1. Buffer Conditions.**

a. These 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.

b. Measurement of Wetland Buffers. All buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers will be considered. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers or included in buffer area calculations.

c. Buffers on Mitigation Sites. All mitigation sites shall have buffers consistent with the buffer requirements of this chapter to the extent feasible. Buffers shall be based on the expected or target category of the proposed wetland mitigation site.

d. Overlapping Critical Area Buffers. If buffers for two contiguous critical areas overlap (such as buffers for a stream and a wetland), the wider buffer applies.

e. Buffer Maintenance. Except as otherwise specified or allowed in accordance with this chapter, wetland buffers shall be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive nonnative weeds is required for the duration of the required maintenance and monitoring timeline, which ranges from five to 10 years depending on location

**Table 14.15.185-1. Width of buffers needed to protect wetlands in western Washington considering impacts of proposed land uses.**

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

\* See Table 14.15.185-2 below for types of land uses that can result in low, moderate, and high impacts to wetlands.

**Table 14.15.185-2. Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands**

Level of Impact from Proposed Change in Land Use	Types of Land Use Based on Common Zoning Designations
High	<ul style="list-style-type: none"> <li>• Commercial</li> <li>• Urban</li> <li>• Industrial</li> <li>• Institutional</li> <li>• Retail sales</li> <li>• Residential (more than 1 unit/acre)</li> <li>• Conversion to high-intensity agriculture (dairies, nurseries, greenhouses, growing and harvesting crops requiring annual tilling and raising and maintaining animals, etc.)</li> <li>• High-intensity recreation (golf courses, ball fields, etc.)</li> <li>• Hobby farms</li> </ul>
Moderate	<ul style="list-style-type: none"> <li>• Residential (1 unit/acre or less)</li> <li>• Moderate-intensity open space (parks with biking, jogging, etc.)</li> <li>• Conversion to moderate-intensity agriculture (orchards, hay fields, etc.)</li> <li>• Paved trails</li> <li>• Building of logging roads</li> <li>• Utility corridor or right-of-way shared by several utilities and including access/maintenance road</li> </ul>
Low	<ul style="list-style-type: none"> <li>• Forestry (cutting of trees only)</li> <li>• Low-intensity open space (hiking, bird-watching, preservation of natural resources, etc.)</li> <li>• Unpaved trails</li> <li>• Utility corridor without a maintenance road and little or no vegetation management</li> </ul>

B. Increased Wetland Buffer Widths. Buffer widths shall be increased on a case-by-case basis 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.

C. Decreased Wetland Buffer Widths. Buffer widths shall be decreased on a case-by-case basis as determined by the city. This determination shall be supported by appropriate documentation showing that it still protects the functions and values of the wetland. The documentation must include but not be limited to the following criteria:

1. Buffer averaging to improve wetland protection may be permitted when all of the following conditions are met:
  - a. 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.
  - b. 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.
  - c. The total area of the buffer after averaging is equal to the area required without averaging.
  - d. The buffer at its narrowest point is never less than either three-quarters 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.
- ~~2. Buffer averaging to allow reasonable use of a parcel may be permitted when all of the following are met:
  - a. There are no feasible alternatives to the site design that could be accomplished without buffer averaging.
  - b. 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.
  - c. The total buffer area after averaging is equal to the area required without averaging.
  - d. The buffer at its narrowest point is never less than either three quarters of the required width or 75 feet for Category I and II, 50 feet for Category III and 25 feet for Category IV, whichever category is applicable.~~

D. 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:

1. Conservation and Restoration Activities. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.
2. Passive recreation. Passive recreation facilities designed and in accordance with an approved critical area report, including:

a. 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 only in the outer 25 percent of the wetland buffer area, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five feet in width for pedestrian use only. Raised boardwalks utilizing nontreated pilings may be acceptable.

b. Wildlife-viewing structures.

3. Educational and scientific research activities.

4. 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.

5. 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 source.

6. 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.

7. Enhancement of a wetland buffer through the removal of nonnative 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.

8. Storm water management facilities. Storm water management facilities are limited to storm water dispersion outfalls and bioswales. They may be allowed within the outer 25 percent of the buffer of Category III or IV wetlands only; provided, that:

a. No other location is feasible; and

b. The location of such facilities will not degrade the functions or values of the wetland; and

c. Storm water management facilities are not allowed in buffers of Category I or II wetlands.

9. Nonconforming Uses. Repair and maintenance of nonconforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity.

E. Signs and Fencing of Wetlands and Buffers.

1. 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 community development director prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.

2. Permanent Signs. As a condition of any permit or authorization issued pursuant to this chapter, the city may require the installation of permanent signs along the boundary of a wetland or buffer.

a. Permanent signs shall be made of an enamel-coated metal face and attached to a metal post or another nontreated material of equal durability. Signs must be posted at an interval of one per lot or every 50 feet,

whichever is less, and must be maintained by the property owner in perpetuity. The signs shall be worded as follows or with alternative language approved by the community development director:

Protected Wetland Area

No Dumping - Do Not Disturb

*Thank you*

b. The provisions of subsection (E)(2)(a) of this section may be modified as necessary to assure protection of sensitive features or wildlife.

3. Fencing.

a. 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.

b. 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. (Ord. 1853 § 2 (Exh. B), 2018).

**14.15.190 Wetlands initial project review.**

A. A site visit shall be conducted to confirm the presence of wetland indicators listed in the critical areas checklist or identified on critical areas map references as being within 300 feet of a proposed project or activity. A positive confirmation by the community development director that site indicators are present or that the proposed project may impact the wetland area will then require a professional site assessment.

B. The following map references shall be used to assist in making a determination:

1. Wetlands mapped under the National Wetland Inventory by the U. S. Department of Interior, Fish and Wildlife Service;
2. Areas mapped as hydric soils under the Soil Survey of Skagit County Area, Washington, by the United States Department of Agriculture, Soil Conservation Service;
3. A water of the state as defined under WAC 222-16-030 and maintained in the Washington State Department of Natural Resources Stream Type Maps; and
4. Wetlands previously identified through the methodology specified under this title for another project. (Ord. 1853 § 2 (Exh. B), 2018).

**14.15.200 Wetlands site assessment requirements.**

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

A. A wetland reconnaissance shall be performed by a qualified wetlands professional. The reconnaissance shall identify the presence of wetlands within 300 feet of the project or activity area. If this wetland reconnaissance demonstrates no wetlands within 300 feet of the activity area, then no further study is required.

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

C. If the site of a proposed development includes, is likely to include, or is adjacent to a wetland, a wetland report, prepared by a qualified professional, shall be required. The expense of preparing the wetland report shall be borne by the applicant.

D. Minimum Standards for Wetland Reports. The written report and the accompanying plan sheets shall contain the following information, at a minimum:

1. The written report shall include 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 wetland critical area report; a description of the proposal; 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. A statement specifying the accuracy of the report and all assumptions made and relied upon.
- c. Documentation of any fieldwork, performed on the site, including field data sheets for delineations, rating system forms, baseline hydrologic data, etc.
- d. A description of the methodologies used to conduct the wetland delineations, rating system forms, or impact analyses including references.
- e. Identification and characterization of all critical areas, wetlands, water bodies, shorelines, floodplains, and buffers on or adjacent to the proposed project area. For areas off site of the project site, estimate conditions within 300 feet of the project boundaries using the best available information.
- f. For each wetland identified on site and within 300 feet of the project site provide: the wetland rating, including a description of and score for each function, per wetland ratings of this title; required buffers; hydrogeomorphic classification; wetland acreage based on a professional survey from the field delineation (acreages for on-site portion and entire wetland area including off-site portions); Cowardin classification of vegetation communities; habitat elements; soil conditions based on site assessment and/or soil survey information; and to the extent possible, hydrologic information such as location and condition of inlet/outlets (if they can be legally accessed), estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g., algal mats, drift lines, flood debris, etc.). Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site.
- g. A description of the proposed actions, including an estimation of acreages of impacts to wetlands and buffers based on the field delineation and survey and an analysis of site development alternatives, including a no-development alternative.
- h. An assessment of the probable cumulative impacts to the wetlands and buffers resulting from the proposed development.
- i. A description of reasonable efforts made to apply mitigation sequencing pursuant to mitigation sequencing to avoid, minimize, and mitigate impacts to critical areas.
- j. A discussion of measures, including avoidance, minimization, and compensation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land use activity.
- k. A conservation strategy for habitat and native vegetation that addresses methods to protect and enhance on-site habitat and wetland functions.
- l. An evaluation of the functions of the wetland and adjacent buffer. Include reference for the method used and data sheets.

2. A copy of the site plan sheet(s) for the project must be included with the written report and must include, at a minimum:

- a. Maps (to scale) depicting delineated and surveyed wetland and required buffers on site, including buffers for off-site critical areas that extend onto the project site; the development proposal; other critical

areas; grading and clearing limits; areas of proposed impacts to wetlands and/or buffers (include square footage estimates).

b. A depiction of the proposed storm water management facilities and outlets (to scale) for the development, including estimated areas of intrusion into the buffers of any critical areas. The written report shall contain a discussion of the potential impacts to the wetland(s) associated with anticipated hydroperiod alterations from the project. (Ord. 1853 § 2 (Exh. B), 2018).

#### **14.15.210 Alteration of wetlands.**

A. A regulated wetland or its required buffer can only be altered if the wetlands site assessment shows that the proposed alteration does not degrade the quantitative and qualitative functioning of the wetland, or any degradation can be adequately mitigated to protect the wetland function. Any alteration approved pursuant to this section shall include mitigation necessary to mitigate the impacts of the proposed alteration on the wetland as described in BMC 14.15.220, Wetland mitigation standards.

B. Storm water discharges to wetlands shall be controlled and treated to provide all known and reasonable methods of prevention, control, and treatment as mandated in the State Water Quality Standards, chapter 173-201A WAC, as required by state law and implemented in chapter 14.05 BMC, Surface Water Management. (Ord. 1853 § 2 (Exh. B), 2018).

#### **14.15.220 Wetland mitigation standards.**

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:

1. Avoid the impact altogether by not taking a certain action or parts of an action.
2. 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.
3. Rectify the impact by repairing, rehabilitating, or restoring the affected environment.
4. Reduce or eliminate the impact over time by preservation and maintenance operations.
5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.
6. Monitor the required compensation and take remedial or corrective measures when necessary.

B. Requirements for Compensatory Mitigation.

1. 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 shall be consistent with Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans – Version 1 (Ecology Publication No. 06-06-011b, Olympia, WA, March 2006 or as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington) (Publication No. 09-06-32, Olympia, WA, December 2009).
2. Mitigation ratios shall be consistent with subsection (G) of this section.
3. 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: Final Report (Ecology Publication No. 10-06-011, Olympia, WA, March 2012, or as revised) consistent with subsection (H) this section.

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:

1. 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
2. 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. Mitigation for lost or diminished wetland and buffer functions shall rely on the types below in the following order of preference:

1. Restoration (reestablishment and rehabilitation) of wetlands:
  - a. The goal of reestablishment is returning natural or historic functions to a former wetland. Reestablishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.
  - b. The goal of rehabilitation is repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres.
2. Creation (establishment) of wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of nonnative species. Establishment results in a gain in wetland acres. 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.
  - a. If a site is not available for wetland restoration to compensate for expected wetland and/or buffer impacts, the approval authority may authorize creation of a wetland and buffer upon demonstration by the applicant's qualified wetland scientist that:
    - i. The hydrology and soil conditions at the proposed mitigation site are conducive for sustaining the proposed wetland and that creation of a wetland at the site will not likely cause hydrologic problems elsewhere;
    - ii. The proposed mitigation site does not contain invasive plants or noxious weeds or that such vegetation will be completely eradicated at the site;
    - iii. Adjacent land uses and site conditions do not jeopardize the viability of the proposed wetland and buffer (e.g., due to the presence of invasive plants or noxious weeds, storm water runoff, noise, light, or other impacts); and
    - iv. The proposed wetland and buffer will eventually be self-sustaining with little or no long-term maintenance.
3. Enhancement of significantly degraded wetlands in combination with restoration or creation. Enhancement should be part of a mitigation package that includes replacing the altered area and meeting appropriate ratio requirements. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Applicants proposing to enhance wetlands or associated buffers shall demonstrate:
  - a. How the proposed enhancement will increase the wetland's/buffer's functions;
  - b. How this increase in function will adequately compensate for the impacts; and
  - c. How all other existing wetland functions at the mitigation site will be protected.
4. Preservation. Preservation of high-quality, at-risk wetlands as compensation are generally acceptable when done in combination with restoration, creation, or enhancement; provided, that a minimum of 1:1 acreage replacement is provided. Ratios for preservation in combination with other forms of mitigation generally range

from 10:1 to 20:1, as determined on a case-by-case basis, depending on the quality of the wetlands being altered and the quality of the wetlands being preserved.

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:

- a. The area proposed for preservation is of high quality. The following features may be indicative of high-quality sites:
  - i. Category I or II wetland rating (using the wetland rating system for western Washington).
  - ii. Rare wetland type (for example, bogs, mature forested wetlands, estuarine wetlands).
  - iii. The presence of habitat for priority or locally important wildlife species.
  - iv. Priority sites in an adopted watershed plan.
- b. Wetland impacts will not have a significant adverse impact on habitat for listed fish, or other ESA listed species.
- c. There is no net loss of habitat functions within the watershed or basin.
- d. 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.
- e. Permanent preservation of the wetland and buffer will be provided through a conservation easement or tract held by a land trust, or land in public ownership.
- f. The impact area is small (generally less than one-half acre) 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. Location of Compensatory Mitigation. Compensatory mitigation actions shall be conducted within the same subdrainage basin and on the site of the alteration except when all of subsections (E)(1) through (4) of this section apply. In that case, mitigation may be allowed off site within the subwatershed of the impact site. When considering off-site mitigation, preference should be given to using alternative mitigation, such as a mitigation bank, an in-lieu fee program, or advanced mitigation.

1. There are no reasonable opportunities on site or within the subdrainage basin (e.g., on-site options would require elimination of high-functioning upland habitat), or opportunities on site or within the subdrainage 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).
2. On-site mitigation would require elimination of high-quality upland habitat.
3. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the altered wetland.
4. Off-site locations shall be in the same subdrainage basin unless:
  - a. 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

- b. Credits from a state-certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the certified bank instrument; or
- c. Fees are paid to an approved in-lieu fee program to compensate for the impacts.

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.

1. The community development director 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 include implementation of the compensatory mitigation plan. The justification must be verified and approved by the city.

G. Wetland Mitigation Ratios<sup>1</sup>:

Category and Type of Wetland	Creation or Reestablishment	Rehabilitation	Enhancement
Category I: Bog, Natural Heritage Site	Not considered possible	Case by case	Case by case
Category I: Mature Forested	6:1	12:1	24:1
Forested I: Based on Functions	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

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 No. 06-06-011a and b, Olympia, WA, March 2006), the community development director 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: Final Report” (Ecology Publication No. 10-06-011, Olympia, WA, March 2012, or as revised).

I. 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 No. 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 altered. Include acreage (or square footage), water regime, vegetation, soils, landscape position, surrounding land uses, and functions. Also describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating, based on wetland ratings 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.
- 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. A bond estimate 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 years, annual monitoring field work and reporting, and contingency actions for a maximum of the total required number of years for monitoring.
- i. Proof of establishment of notice on title 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 altered, 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.

J. Buffer Mitigation Ratios. Impacts to buffers shall be mitigated at a 1:1 ratio. Compensatory buffer mitigation shall replace those buffer functions lost from development.

K. Protection of the Mitigation Site. The area where the mitigation occurred and any associated buffer shall be located in a critical area tract or a conservation easement or land in public ownership.

L. 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 10 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.

M. Wetland Mitigation Banks.

1. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

a. The bank is certified under state rules;

b. The city determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and

c. The proposed use of credits is consistent with the terms and conditions of the certified bank instrument.

2. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument.

3. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the certified bank instrument. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

4. The use of wetland mitigation banks shall only be authorized after fully complying with the mitigation sequencing requirements of this section. Wetlands provide critical and localized water quality functions and flood storage capacity. As such, wetland mitigation banks shall only be used to offset unavoidable impacts associated with large scale public facilities, transportation projects, utilities, or essential facilities. Projects utilizing wetland mitigation banks shall demonstrate that all local impacts to flood water storage and stormwater flows have been fully mitigated. [DM15]

N. In-Lieu Fee. To aid in the implementation of off-site mitigation, the city may develop an in-lieu fee program. 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. An approved in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor, a governmental or nonprofit natural resource management entity. Credits from an approved in-lieu fee program may be used when subsections (N)(1) through (6) of this section apply:

1. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts.
2. The mitigation will occur on a site identified using the site selection and prioritization process in the approved in-lieu fee program instrument.
3. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu fee program instrument.
4. Land acquisition and initial physical and biological improvements of the mitigation site must be completed within three years of the credit sale.
5. Projects using in-lieu fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland scientist using the method consistent with the credit assessment method specified in the approved instrument for the in-lieu fee program.
6. Credits from an approved in-lieu fee program may be used to compensate for impacts located within the service area specified in the approved in-lieu fee instrument.

O. 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, state policy on advance mitigation, and state water quality regulations.

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

1. When a wetland alteration is intended exclusively for the enhancement or restoration of an existing regulated wetland and the proposal will not result in a loss of wetland function and value, subject to the following conditions:
  - a. The enhancement or restoration project shall not be associated with a development activity.
  - b. An enhancement or restoration plan shall be submitted for site plan review. The restoration or enhancement plan must include the information required under this title.
2. When a wetland is a part of a development activity that is permitted by the Corps of Engineers NWP permitting crossing of wetlands as part of road construction. (Ord. 1853 § 2 (Exh. B), 2018).

#### V. Fish and Wildlife Habitat Conservation Areas

##### **14.15.350 Fish and wildlife habitat conservation area designations.**

A. Fish and wildlife habitat conservation areas (HCAs) shall be designated and classified as provided for in the definition section of this chapter. The map and species references indicated are intended to serve only as a guide during development review. In all cases, actual presence or absence for the listed species or habitat shall prevail.

B. In addition to the HCAs, additional species and habitats of local importance may be designated by the community development director based on declining populations, sensitivity to habitat manipulation or special value including but not limited to commercial, game or public appeal.

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

1. Demonstrate a need for special consideration based on:
  - a. Declining population,
  - b. Sensitivity to habitat manipulation, or

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

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

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

D. The following species and habitats have been designated on a site-specific basis according to the official Species and Habitats of Local Significance Map:

1. Great blue heron nest sites;
2. Vaux's swifts communal roosts;
3. Pileated woodpecker nest sites;
4. Osprey nest sites;
5. Townsend big-eared bat communal roosts;
6. Cavity nesting ducks breeding areas;
7. Trumpeter swan concentrations;
8. Harlequin duck breeding areas;
9. Waterfowl concentrations. (Ord. 1853 § 2 (Exh. B), 2018).

**14.15.360 Fish and wildlife habitat conservation areas initial project review.**

A. A site visit shall be conducted to determine whether HCAs identified on a critical area checklist or on available map resources or whether a HCA not previously identified are present within 200 feet of the project or activity site.

B. Habitat conservation areas are designated by definition in this title and are referenced as follows:

1. An area with which anadromous fish, endangered, threatened or sensitive species have a primary association and/or their habitat such as those designated and mapped by the Washington State Department of Fish and Wildlife, Priority Habitats and Species Program;
2. A water of the state as defined under WAC 222-16-030;
3. A Critical Biological Area as designated and mapped by the Department of Ecology Coastal Zone Atlas dated June 1978 and/or the maps;
4. Designated species and habitats of local importance;
5. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;
6. Lakes, ponds, streams, and rivers planted with game fish by a government or tribal entity;
7. Areas with which anadromous fish species have a primary association; and
8. State Natural Arm Preserves and Natural Resource Conservation Areas.

C. If the director determines through the site visit described in subsection (A) of this section that a fish and wildlife habitat conservation area (HCA) may be present within 300 feet of the proposed project or activity area, then a site assessment/habitat management plan shall be required as part of the complete application. (Ord. 1853 § 2 (Exh. B), 2018).

**14.15.370 Fish and wildlife habitat conservation area site assessment requirements.**

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

A. Site plan prepared in accordance with the permit requirements indicating all fish and wildlife habitat conservation areas falling within 300 feet of the subject property. This site plan may be prepared by the applicant subject to review by the qualified fish and wildlife biologist;

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

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

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

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

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

G. Approval of any activity that can adversely affect fish and wildlife habitat conservation areas shall conform to the requirements set forth in this title. (Ord. 1853 § 2 (Exh. B), 2018).

**14.15.380 Fish and wildlife habitat conservation area mitigation standards.**

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

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

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

1. Recruitment of large woody debris (LWD) to the stream: LWD recruitment creates habitat structures necessary to maintain salmon/trout productive capacity and species diversity.
2. Shade. Shading by the forest canopy maintains cooler water temperatures and influences the availability of oxygen for salmon/trout.
3. Bank Integrity (Root Reinforcement). Bank integrity helps maintain habitat quality and water quality by reducing bank erosion and creating habitat structure and instream hiding cover for salmon and trout.
4. Runoff Filtration. Filtration of nutrients and sediments in runoff (surface and shallow subsurface flows) helps maintain water quality.
5. Wildlife Habitat. Functional wildlife habitat for riparian-dependent species is based on sufficient amounts of riparian vegetation to provide protection for nesting and feeding.

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

Water Type	Riparian Buffer
Type 1 and 2	200 feet
Type 3	100 feet
Type 4 and 5	50 feet

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

1. Increasing Buffer Widths. The city may increase the standard buffer widths on a case-by-case basis, or to establish nonriparian buffer widths, when such buffers are necessary to protect priority fish or wildlife (e.g., great blue heron nesting colonies, osprey or cavity nesting ducks) using the HCA. This determination shall be supported by appropriate documentation from the Departments of Ecology and Fish and Wildlife, showing that the increased buffer width is reasonably related to the protection of the fish and/or wildlife using the HCA.
2. Decreasing Buffer Widths. Decreasing standard buffers will be allowed only if the applicant demonstrates that all of the following criteria are met:
  - a. A decrease is necessary to accomplish the purposes of the proposal and no reasonable alternative is available; and
  - b. Decreasing width will not adversely affect the fish and wildlife habitat functions and values; and
  - c. If a portion of a buffer is to be reduced, the remaining buffer area will be enhanced, using native vegetation, artificial habitat features, vegetative screening and/or barrier fencing as appropriate to improve the functional attributes of the buffer and to provide equivalent or better protection for fish and wildlife habitat functions and values; and
  - d. The buffer width shall not be reduced below 50 percent of the standard buffer width unless no other reasonable alternative exists and that no net loss of HCA riparian functional values will result, based on a functional assessment provided by the applicant utilizing a methodology approved by the city.

e. A demonstration is provided to ensure that the goal of no net loss of shoreline environmental functions is being met.[DM16]

C. Allowed Uses in HCAs or Buffers.

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

- a. The activity will have minimum adverse impact to the fish and wildlife habitat conservation area;
- b. The activity will not significantly degrade surface water or ground water;
- c. The intrusion into the fish and wildlife habitat conservation area and its buffers is fully mitigated; and
- d. An opportunity for review and comment by federal, state and tribal natural resource agencies shall be provided.

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

- a. The access is part of a public park or a recreational resort development that is dependent on the access for its location and recreational function;
- b. The access is limited to the minimum necessary to accomplish the recreational function;
- c. The access and the balance of the development is consistent with other requirements of the Burlington Municipal Code and the Burlington shoreline master program; and
- d. The proponent obtains a written approval from the city council for the limited access and associated mitigation.

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

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

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

**Performance-Based Riparian Standards\***

**(These standards must be exceeded before additional activity can be permitted within the riparian zone)**

Watertype Performance standards

Type 1 & 2

(Fish Bearing)

Maintain 95 percent of total LWD recruitment expected to enter the stream from a mature stand; and

Maintain 85 percent of the trees which are greater than 24-inch DBH within 100 feet of stream; and

Maintain an average of 75 percent canopy cover (based on canopy densitometer readings at stream edge)

The applicant may further request some limited timber harvest of up to 30 percent of the merchantable timber within the outer 100 feet of any 200-foot required buffer provided the harvest:

- a. Does not reduce the LWD and canopy requirements; and
- b. The applicant will increase the total buffer size by 50 feet to mitigate for the limited timber harvest in the required buffer to provide additional wildlife habitat. The additional 50-foot buffer shall retain a minimum of 50 percent of the total number of trees with 25 percent of the total trees left having a diameter at breast height (DBH – 4 1/2 feet) greater than 12 inches; and
- c. No more than 50 percent of the dominant trees in the outer 100 feet may be harvested.

Type 3

(Fish Bearing)

Maintain 85 percent of total LWD recruitment expected to enter the stream from a mature stand; and

Maintain 85 percent of the trees which are greater than 18-inch DBH within 100 feet of stream; and

Maintain an average of 75 percent canopy cover (based on canopy densitometer readings at stream edge).

Type 4 & 5

(Non-fish Bearing)

Maintain 50 percent of total LWD recruitment expected to enter the stream from a mature stand; and

Maintain 85 percent of the trees which are greater than 24-inch DBH within 50 feet of stream; and

Maintain an average of 75 percent canopy cover (based on canopy densitometer readings at stream edge).

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

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

E. Wetlands that are identified as a fish and wildlife habitat conservation area shall be protected according to the provisions in this title, referencing increasing buffer widths. If the wetland buffer widths, standard buffer widths conflict with this section, the buffer widths providing the greatest protection shall apply.

F. All other fish and wildlife habitat conservation area, including habitats/species of local significance, shall be protected on a case-by-case basis by means of a habitat management plan based on the PHS program, initial project review and site assessment/habitat management plan.

G. Approval of any activity that can adversely affect fish and wildlife habitat conservation areas shall conform to the requirements set forth in this title. (Ord. 1853 § 2 (Exh. B), 2018).

## VI. Critical Area Standards

### 14.15.070 General requirements and authorizations required.

A. In addition to any other requirements identified in this chapter, or otherwise imposed by the Burlington Municipal Code, all development occurring in critical areas, or critical area buffers, shall meet the following general requirements:

1. Site. Complete stabilization of all portions of a site which are disturbed or impacted by the proposed development, including all development coverage and construction activity areas, shall be required. Complete stabilization of all portions of a site refers to the process and actions necessary to ensure that existing and proposed site improvements are stabilized, and that all on-site areas and adjacent properties which are disturbed or impacted are stabilized. The proposed development shall be limited and controlled to avoid adverse impacts and potential harm and ensure safe, stable and compatible development appropriate to site conditions. Other reasonable and appropriate solutions to solve site stability problems may be required by the director.
2. Adjacent Site, Surrounding Area, and Drainage Basin. The proposed development shall ensure safe, stable and compatible development which avoids adverse environmental impacts and potential harm to adjacent sites, the surrounding neighborhood, and the drainage basin. Detailed analysis of impacts of the development upon wetlands, riparian corridors, native vegetation and wildlife habitats, water quality, natural water temperature, slope and soil conditions, and surface water drainage may be required at the request of the director when site and area conditions indicate the need for this analysis. Supplemental technical reports may be required by the director to specify measures to preserve, protect, and maintain adjacent sites and the drainage basin and ensure safe, stable and compatible development.

~~B. With the exception of activities identified as exempt under BMC 14.15.120, any land use activity that can impair the functions and values of critical areas or their buffers through a development activity or by disturbance of the soil or water, and/or by removal of, or damage to, existing vegetation shall require critical areas review and written authorization pursuant to this chapter. Vegetation destruction or removal, other than the normal maintenance of existing landscaping identified as exempt under BMC 14.15.120, shall be prohibited within a critical area or its required buffer, unless there is an approved buffer management plan pursuant to the requirements of the particular critical area that demonstrates there will be no adverse impact to the critical area with the proposed vegetation removal and disturbance of the soil or water and includes any mitigation or buffer enhancement necessary to address critical areas impacts. Authorizations required under this chapter overlay other permit and approval requirements of the Burlington Municipal Code. Regardless of whether a development permit or approval is required, any proposed alteration that can adversely affect a critical area or its standard buffers' functions must comply with the substantive and procedural requirements of this chapter. Critical areas review pursuant to this chapter shall be conducted as part of the underlying permit or approval, where applicable. It is the responsibility of the landowner, or designee, who conducts or proposes to undertake land use activities that can adversely impact critical areas or their buffers to obtain authorization prior to commencing such activities. In some cases, the typical thresholds that trigger review and permits have been reduced to zero for any development activity located within a critical area or its required buffer.~~

B. Procedures. No land use development permit, land division, development approval, or other authorization required shall be granted until the applicant has demonstrated compliance with the applicable provisions of this chapter.

1. The applicant shall demonstrate that the proposal submitted conforms to the purposes and standards of this chapter, assesses impacts on the critical area from activities and uses proposed, and identifies protective mechanisms adequate to meet the requirements of this chapter.
2. Each proposal shall be reviewed by the director for consistency with the applicable regulations identified in this chapter and to ensure the protective mechanisms proposed are sufficient to protect the critical area, public health, safety and welfare. If not, conditions of approval shall be specified as necessary to ensure compliance with the provisions of this chapter. If there are no conditions under which the proposal could be approved, then the proposal shall be denied.

C. All land use actions shall be conditioned as necessary to mitigate impacts to critical areas as required by this chapter and any project that cannot adequately mitigate its impacts to critical areas shall be denied.

D. Conflicts with Other Provisions. If any provision of this chapter conflicts with any other applicable code provision, the more restrictive shall apply unless specifically accepted in this chapter.

E. Satisfaction of the requirements of this chapter shall also be sufficient to satisfy the requirement for critical areas analysis and mitigation pursuant to chapter 43.21C RCW, State Environmental Policy Act, and chapter 14.10 BMC, Environmental Policy.

F. SEPA Compliance. The goals, policies and purposes set forth in this chapter shall be considered policies of the State Environmental Policy Act. When applicable the applicant must meet SEPA requirements.

G. Other Permits Required. It is recognized that many local, state, and/or federal permit conditions may apply to the proposed action, and that compliance with the provisions of this chapter may not necessarily constitute compliance with other such requirements. (Ord. 1853 § 2 (Exh. B), 2018).

#### **~~14.15.080 Public notice and records.~~**

~~Public notice for projects subject to the provisions of this chapter shall be provided pursuant to the requirements of BMC Title 14A, land use permit process. (Ord. 1853 § 2 (Exh. B), 2018).~~

~~Public notice for projects subject to the provisions of this chapter shall be provided pursuant to the requirements of BMC Title 14A, land use permit process. (Ord. 1853 § 2 (Exh. B), 2018).~~

#### **14.15.090 Application submittal requirements.**

In addition to the application submittal requirements specified in other codes, a complete application for development subject to this chapter shall include the following additional information:

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

1. Existing topography at two-foot contour intervals on site, within 25 feet of the site's abutting boundaries, and within the full width of abutting public and private rights-of-way and easements;
2. Terrain and drainage flow characteristics within the site, within 25 feet of the site's abutting boundaries, and within the full width of abutting public and private rights-of-way and easements;
3. Proposed location and boundaries of all required undisturbed fenced areas and buffers on site and on adjacent lands;
4. Location of all vegetation, including location and description of all trees over six inches in diameter measured five feet above the base of the trunk, shrubs over eight feet tall or six feet wide, and noting their species;
5. Location and boundaries of all existing and proposed site improvements on the site and within 25 feet of the site's property boundaries, and the full width of abutting public and private rights-of-way and easements. This shall include the limits of development coverage, impervious surfaces and construction activity areas (noting total square footage and percentage of site occupied);
6. Location of all grading activities in progress or proposed, and all drainage control facilities or systems in existence, in progress or proposed within 25 feet of the site's property boundaries, and the full width of abutting public and private rights-of-way and easements;
7. Location of all existing and proposed utilities (water, sewer, gas, electric, phone, cable, etc.), both above and below ground, on site, on adjacent lands within 25 feet of the site's property lines, and in the full width of

abutting public rights-of-way, and proposed methods and locations for the proposed development to hook up to these services;

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

B. Technical Reports. Technical reports shall be prepared and submitted as required by this chapter. (Ord. 1853 § 2 (Exh. B), 2018).

#### **14.15.100 Administration.**

A. The director shall be responsible for the administration of this chapter, including:

1. Review applications for land use actions to verify compliance with this chapter, issue permit decisions, or make recommendations to the hearing examiner in accordance with the permit processing procedures identified in BMC Title 14A;

2. Review applications for land use actions to assure that all necessary permits have been obtained from those federal, state or local government agencies from which prior approval is required;

3. Recording and maintaining records of:

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

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

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

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

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

6. Issuance of development permits pursuant to BMC Title 14A, Land Use Decisions, and chapter 15.04 BMC, Uniform Codes, before construction or development begins within the city limits.

B. This chapter shall be administered in accordance with chapter 86.16 RCW and chapter 508-60 WAC. This chapter shall be revised as necessary to conform with any changes in state rules pertaining to flood control zones which may be adopted by the State Department of Ecology subsequent to the effective date of delegation of the state's permit program to the city.

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

1. Determination that an Activity Requires Standard Review. All applications for approval of activities requiring written authorization pursuant to BMC 14.15.070 shall require the submission of a critical areas checklist completed and filed by the applicant on the forms provided by the planning department. If not otherwise required, all applications for critical areas review shall include a description of the proposed activity and a site plan showing the location of the proposed activity and associated area of disturbance in relation to all known critical areas or critical area indicators. Upon receipt of the application, a determination shall be made as to whether or not the proposed activity fits within any of the exempt activities found in BMC 14.15.12018.09.020. [DM17] If the proposed activity is classified as exempt, and meets the associated conditions for such an allowance, no other critical areas review shall be required, except as necessary to ensure that any

conditions for such an allowance are met in practice. This determination shall be made in writing and included in the application file.

Proposed activities identified under ~~BMC 14.15.120~~18.09.020 [DM18] that do not meet the conditions for such an allowance or that may result in significant adverse impacts to a critical area or its buffer shall be subject to standard critical areas review.

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

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

3. Determination that Critical Areas Are Not Affected. If critical area indicators are not present within 200 feet of the proposed activity or within a distance otherwise specified in this chapter, then the review required pursuant to this chapter is complete, except as necessary to ensure that the proposed activity is undertaken as described in the application and as shown on the site plan. This determination shall be noted in the application file and provide written authorization shall be provided for the project or activity to proceed as proposed in the application or, where applicable, with any specific conditions of approval. This determination shall not constitute approval of any use or activity or its compliance with the requirements of this chapter, outside the scope of that stated in the application. Any proposed change in use or scope of activity from that contained in the application shall be subject to further review under this chapter. The applicant shall acknowledge in writing that the determination regarding the apparent absence of critical area indicators and the likelihood that critical areas will not be affected is not intended as an expert certification regarding the presence or absence of critical areas and that the critical areas review process is subject to possible reopening if new information is received as described in subsection (C)(4) of this section. If the applicant wants greater assurance of the accuracy of any such critical area indicators determination, the applicant shall hire a qualified critical areas expert to provide such assurances.

4. Reopening of Review Process.

- a. If at any time prior to completion of the public input process on the associated permit or approval, the city receives new evidence that a critical area may be present within 200 feet of the project area or within a distance otherwise specified in this chapter, then the critical areas review process shall be reopened pursuant to this chapter and shall require whatever level of critical areas review and mitigation as is required by this chapter.
- b. Once the public input process on the associated permit or approval is completed and the record is closed, then the city's determination regarding critical areas pursuant to this chapter shall be final; provided, however, that the critical areas review process may be reopened if it is determined that incomplete or incorrect information was provided by the applicant in the application or checklist. For the purposes of this subsection, "incomplete or incorrect information" means information regarding the nature and/or location of the proposed activity as presented in the application or regarding the presence of a critical area or critical area indicators on the subject property which the applicant knew or should have known was relevant at the time of the submittal of the checklist. Prior to reopening a critical areas review under this subsection, the city shall conduct a site visit. No critical areas review shall be reopened under this section unless it is determined, after the site visit, that incomplete or incorrect information was provided.

5. Determination that Critical Areas Are Affected. If the city determines that critical area indicators are present within 200 feet of the proposed activity or within a distance otherwise specified in this chapter, then the determination shall be recorded in the project file and the applicant shall provide a critical areas site assessment as specified in this chapter. Development of a site assessment may precede a site visit; provided, that no disturbance of vegetation or land surface occurs prior to authorization.

6. Critical Areas Determination and Conditions of Approval. Based on the critical areas site assessment report and other available critical areas information, the city shall make a determination on the proposed activity. A determination to approve a proposed activity shall include designation of protected critical areas (PCAs) pursuant to this chapter and stipulation of binding conditions and required mitigation, monitoring, maintenance or other conditions of approval pursuant to this chapter. If there are no conditions under which the proposed activity could be approved, then the community development director shall deny the proposal. (Ord. 1853 § 2 (Exh. B), 2018).

#### **14.15.110 Critical areas checklist, site assessment and conditions of approval.**

A. Critical Areas Checklist. Every application for an activity that might alter or adversely affect a critical area or critical area buffer shall include a critical area checklist on a form provided by the director. The checklist shall identify all critical area indicators and/or all known critical areas within 200 feet of the proposed activity or within a distance otherwise specified in this chapter. The checklist shall be signed by the applicant and shall inform the applicant that if the information on the checklist is later determined incorrect, then any permit or approval issued based on information provided may be rescinded and the site restored to its original, predevelopment, condition.

B. Site Assessment Required. If, after a site visit, the city determines that the proposed activity area is within 200 feet, or within a distance otherwise specified in this chapter, of an area that may contain critical area indicators, or if the city determines that the proposed activity will adversely impact a critical area or its associated buffer, then a complete critical areas site assessment shall be required. Critical areas site assessments, as described in more detail in the various sections for each type of critical area, shall be submitted as part of a complete application for a development permit, or other approval of land use activities having the potential to impact critical areas or their buffers, by a qualified expert.

C. Site Assessment Preparation. The critical area site assessment shall be prepared by a qualified expert for the type of critical area or areas involved and shall contain the information specified for each type of critical area. In general, the site assessment shall include critical area inventory, assessment of impacts and, where applicable, proposed mitigation, land use restrictions and landowner management, maintenance and monitoring responsibilities. The city may require peer review or review by personnel from state and federal agencies with expertise.

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

E. Critical Areas Determination and Conditions of Approval. After receiving a complete site assessment report, the city shall determine whether or not the proposed activity meets the requirements of this chapter and under what conditions. This determination shall utilize the information provided in the site assessment report and all other resource information available.

Critical area determinations shall be made in writing, contain findings addressing the requirements of this chapter, and shall identify any conditions of approval, land use prohibitions, and mitigation, management, monitoring and maintenance requirements. (Ord. 1853 § 2 (Exh. B), 2018).

#### **14.15.120 Application of standards.**

~~This chapter shall apply to all public and private land use actions and development including, but not limited to, new structures, additions, land divisions, grading, and filling located on either public or private property. Projects may be exempted from the detailed critical area review requirements of this chapter when the following situations and/or conditions apply:~~

~~A. Emergencies that threaten the public health, safety and welfare. An emergency is an unanticipated and imminent threat to the public health or safety or to the environment which requires immediate action within a period of time~~

~~too short to allow full compliance with this chapter. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods that can address the emergency but also that have the least possible impact to the critical area or its buffer. The responsible party (property owner or agent) shall restore the critical area and buffer after the emergency to the extent feasible. The person or agency undertaking such action shall notify the director within one working day or as soon as practical following commencement of the emergency activity. Following such notification, the director shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the director determines that the action taken or any part of the action taken was beyond the scope of allowed emergency actions, then the enforcement provision shall apply.~~

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

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

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

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

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

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

~~H. The operation and maintenance, construction and reconstruction of diking and drainage systems which protect life and property along the Skagit River.~~

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

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

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

~~L. Maintenance activities such as mowing and normal pruning; provided, that such maintenance activities are limited to existing landscaping improvements and do not expand into critical areas or associated buffers, do not expose soils, do not alter topography, do not destroy or clear native vegetation, and do not diminish water quality or quantity.~~

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

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

- ~~1. Minor structures and additions for which a building permit is not required and which create no new residence such as a slab on grade, or a storage building less than 120 square feet in area, or other structures exempt from permits in the International Building Code;~~

- ~~2. Fills of less than 12 cubic yards or which will not raise the level of the land above that of the surrounding area;~~
- ~~3. Normal maintenance, resurfacing and rebuilding, at comparable grade of streets, and accessways;~~
- ~~4. Underground improvements and excavations;~~
- ~~5. Maintenance and minor repair of existing improvements;~~
- ~~6. Improvements to structures listed on the National or State Register of Historic Places;~~
- ~~7. Other minor developments which cause no significant impoundment or displacement of floodwaters, such as open fences, signs and small unenclosed structures.~~

~~All such activities shall be carried out in ways that cause the least impact to critical areas and their buffers. If any damage is caused to a critical area or buffer in connection with such activity, the critical area and its buffer must be restored to the extent feasible. To be exempt does not give permission to destroy a critical area or ignore risk. Proponents of such activities shall be responsible for notifying the community development director if any damage occurs and shall provide all necessary restoration or mitigation. For information on identifying, protecting or mitigating adverse impacts to critical areas, refer to sections in this chapter on wetlands, aquifer recharge areas, geologically hazardous areas, fish and wildlife habitat conservation areas, and flood hazard areas. (Ord. 1853 § 2 (Exh. B), 2018).~~

#### **14.15.130 General construction and maintenance standards.**

All land use actions and development activities located in critical areas or critical area buffers shall be subject to the following general construction and maintenance standards:

- A. All buffer areas and other designated protected areas shall be fenced with a highly visible and durable protective barrier during construction to prevent access and protect critical areas.
- B. All disturbed areas on the site, including development coverage and construction activity areas, shall be controlled in a manner sufficient to control drainage and prevent erosion during construction, and revegetated to promote drainage control and prevent erosion after construction. In cases where erosion potential is severe, a vegetation and revegetation report prepared by a qualified professional with landscaping, plant ecology and botany education and experience may be required. All revegetation shall consist of trees, shrubs, and ground cover that is suitable for the location and does not require permanent irrigation systems for long-term survival.
- C. When development is proposed in a critical area or critical area buffer, grading activities shall be strictly limited to areas located on the most environmentally suitable portion of the site.
- D. All drainage associated with the development shall be managed using an approved drainage control system in accordance with the provisions of this title.
- E. Land use actions and development shall comply with the seismic design requirements identified in the building code adopted by, or referenced in, BMC Title 15.
- F. All grading in critical areas shall not occur prior to March 31st and shall be stabilized by October 31st unless demonstrated to the satisfaction of the director based on approved technical analysis that no environmental harm or safety issues would result from grading between November 1st and March 31st.
- G. Construction activities shall adhere to a prepared schedule approved by the city prior to issuance of a building or development permit. This schedule shall include, but not be limited to, a schedule for compliance with project conditions, limits of construction and work activities, equipment to be used, start and duration of each phase, and work sequencing.

H. Dumping or filling is prohibited in wetlands and special flood risk areas. Dumping includes deposit of yard waste, trash, litter, refuse, dirt, concrete, asphalt, rocks or similar materials, but shall not include work authorized by approved plans and permits. (Ord. 1853 § 2 (Exh. B), 2018).

#### **14.15.150 Critical area and buffer mitigation requirements – General provisions.**

##### **A. Buffers.**

1. As described in more detail in each relevant section, buffers have in some cases been determined necessary and appropriate to protect critical areas and their functions or to prevent risk from a critical area hazard. In those sections of this chapter where specific buffers are identified, those buffers are deemed “required” or “standard” buffers. If a project or activity does not propose any alteration of those buffers or of the associated critical area and the city determines that these buffers are adequate to protect the critical area or to prevent risk of a hazard from the critical area, then subject to the provisions of this section, no additional mitigation will be required. Once the critical area and its buffer have properly been delineated through a critical areas assessment and any conditions of approval have been established to ensure protection of the critical area function, no further critical areas mitigation assessment is required, except as necessary to ensure that long-term protection of critical areas and buffers is met in practice through compliance with the provisions of this section. The applicant shall ensure the protection of critical area by performing a site assessment on the entire parcel.
2. If, however, based on a site assessment by a qualified expert, unique features of the particular critical area or its buffer or of the proposed development, the qualified expert determines that additional buffers and/or mitigation measures beyond these buffers are necessary to adequately protect the function of the critical area or to prevent risk of a hazard from the critical area, such additional mitigation requirements may be imposed, provided the qualified expert can demonstrate, based on best available science, why that additional mitigation or buffering is required to adequately protect the critical area function or to prevent hazard from a critical area.
3. If the applicant proposes to reduce buffers or to alter the critical area or its required buffer, then the applicant shall demonstrate, based on best available science, why such buffer and/or critical area modification, together with such alternative mitigation proposed in the critical areas assessment, is sufficient to provide equal or better protection of the critical area function or provide no increased risk of a hazard from the critical area.
4. The critical areas assessment and the conditions of approval shall make adequate provision for long-term protection related to critical areas and buffers, and shall fully address the requirements of this chapter.

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

##### **5. Protected Critical Areas (PCAs).**

- a. For proposed land divisions, critical areas and their associated buffers identified through the site assessment and city review process shall be designated as PCAs and placed in separate tracts or easements and protected through protective covenants shown on the face of the recorded plat. (See BMC 14.15.160, Protected critical area (PCA) requirements.)
- b. For development projects or land use activities not involving a new land division, the critical area and its associated buffer identified through the site assessment process shall instead be identified as a PCA by either easement, open space designation or permit conditions, all including restrictive covenants and recorded with the auditor on a site plan to ensure long-term protection. Critical areas and/or buffers identified as PCAs are subject to periodic inspection, upon prior notification to the landowner, to ensure long-term protection.

6. Open Space – Protected Area. If a portion of a parcel contains a proposed development project that triggers a development permit, and has not had its critical areas and associated buffers delineated because it was outside

the project or area affected by the project, then further critical areas assessment may be required in the future prior to any change of use, or new development permit for that portion of the site.

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

C. Preferred Mitigation Sequence. Mitigation includes avoiding, minimizing or compensating for adverse impacts to regulated critical areas or their buffers. The preferred sequence of mitigation is defined ~~in BMC 18.14.020.~~<sup>DM19</sup>

- ~~1. Avoid the impact altogether by not taking a certain action or parts of an action;~~
- ~~2. Minimize the impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;~~
- ~~3. Rectify the impact by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project or activity;~~
- ~~4. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action;~~
- ~~5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments;~~
- ~~6. All proposed mitigation shall be included in the critical areas assessment. The critical areas mitigation shall include the following:~~
  - ~~a. Description of proposed mitigations (critical areas lost/critical areas gained);~~
  - ~~b. Analysis of avoidance, minimization, reduction, and compensation;~~
  - ~~c. Functional analysis of mitigation/analysis of prevention of risk hazard;~~
  - ~~d. Proposed applicant or landowner monitoring or inspection measures and schedule, including specification of method and frequency of submittal of reports on results; and~~
  - ~~e. Contingency plan.~~

D. Mitigation requirements shall be identified in written conditions of approval and shall be included in an approved mitigation plan.

E. Financial Assurance. The approved mitigation plan shall be completed prior to final approval of the development permit. For all projects with an estimated mitigation cost of \$4,000 or over, the financial assurance may be required to assure compliance with the mitigation plan if the complete mitigation proposed in the site assessment cannot be completed prior to final approval of the development permit. Financial assurance shall be in the form of either a surety bond, performance bond, assignment of savings account or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the city attorney, shall be in the amount of 125 percent of the estimated cost of the uncompleted actions or construction, and shall be assigned in favor of the city of Burlington. The term of the financial assurance shall remain in place until the required mitigation is complete.

F. Monitoring of Critical Areas Mitigation. On a regular basis, but no less frequently than once every two years, the city shall survey a sampling of projects and activities for which critical area site assessments were required, including mitigation plans, potentially impacting fish-bearing streams and/or Category I, II or III wetlands. The sample shall be taken from permits or approvals issued more than 10 months prior to the sampling date. The selected sites shall be inspected for critical area and buffer size and condition and for compliance with any required

mitigation or other conditions of approval. Results of such sampling shall be included in the permanent record for the project or activity, shall be reported to the city council, and shall also be utilized for enforcement purposes. (Ord. 1853 § 2 (Exh. B), 2018).

#### **14.15.160 Protected critical area (PCA) requirements.**

##### **A. PCA Identification and Recording.**

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

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

3. For each project or activity that requires recording of PCAs, the following information shall be recorded with the auditor and be readily available to the public upon request:

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

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

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

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

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

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

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

b. Where such permanent markers are required, the director shall specify their frequency of placement and general location. Permanent markers shall be placed to locate the edge of the PCA to an approximate accuracy of within five percent of the specified buffer width or within five feet, whichever is larger. The spacing intervals of the markers shall be such as to provide comparable accuracy of line-of-sight

determination of buffer edges. The locations of all required stakes/markers shall be shown on the plat map or site map recorded with the auditor.

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

1. For land divisions where site assessments have occurred pursuant to this chapter, all PCAs shall be placed into separate tracts or easements, whose uses shall be regulated by the provisions of this chapter and any conditions of approval, including protective covenants and binding agreements as provided for under subsection (A) of this section. Area within a PCA can be included in total acreage for development purposes and may be used in lot area or density calculations. PCAs may be owned and maintained by the owner of the lot of which they are a part or transferred to the homeowners association or land trust. Wetlands and buffers in the Gages Slough corridor may be donated to the city in exchange for park impact fee credit.

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

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

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

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

**C. PCAs on Preexisting Lots.**

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

2. Ingress and Egress. The city shall be granted access to PCAs for monitoring and evaluation of compliance with established conditions of approval, binding conditions or any required mitigation.

**D. PCA Mapping, Labeling, and Area Calculations.**

1. All PCAs shall be mapped. The area shall be delineated on the final plat map or on a site plan to an accuracy of plus or minus five feet horizontal and monumented in the field by a qualified expert.

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

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

4. Sign, Marker and Fence Maintenance. It is the responsibility of the landowner to maintain the required PCA markers, signs or fences in working order throughout the duration of the development project or land use activity. Maintenance includes any necessary replacement. Removal of required signs, markers or fences without prior written approval of the director shall be considered a violation of this chapter. (Ord. 1853 § 2 (Exh. B), 2018).

**14.15.170 Incentives.**

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

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

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

The purpose of the easement shall be to preserve, protect, maintain, restore and limit future use of the property affected. The terms of the conservation easement may include prohibitions or restrictions on access and shall be approved by the property owner and the qualified designee. (Ord. 1853 § 2 (Exh. B), 2018).

## **Appendix B**

### **SHORELINE RESTORATION REPORT**

#### **I. Shoreline Management Act Restoration Principles**

The Shoreline Management Act makes protection of shoreline environments an essential statewide goal, with an emphasis on maintenance, protection, restoration, and preservation.<sup>1</sup> Local shoreline master programs include goals and policies for restoration of impaired shoreline ecological functions that are consistent with the principles embodied in WAC 173-26-186(8)(c) and (d).<sup>2</sup> These principles include the following:

- For cities containing any shorelines with impaired ecological functions, master programs shall include goals and policies that provide for restoration of such impaired ecological functions.
- These master program provisions shall identify existing policies and programs that contribute to planned restoration goals and identify any additional policies and programs that local government will implement to achieve its goals.
- These master program elements regarding restoration should make real and meaningful use of established or funded nonregulatory policies and programs that contribute to restoration of ecological functions.
- These components should appropriately consider the direct or indirect effects of other regulatory or nonregulatory programs under other local, state, and federal laws, as well as any restoration effects that may flow indirectly from shoreline development regulations and mitigation standards.
- Local master programs shall evaluate and consider cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions fostered by the policy goals of the Act.

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

A. Opportunities for Protection and Restoration. In Burlington, potential areas of meaningful restoration are organized as follows:

1. Shorelines fronted by an extensive levee system along the Skagit River.

- Locations where there is significant open space between the levee and the river's edge on land owned by the city or Dike District No. 12, including land outside the city limits. Johnson Bar is the major site as identified in the Skagit River Big Bend Reach Habitat Restoration Feasibility Study.<sup>3</sup>
- Future locations where the Dike District plans to build setback levees farther from the shoreline.

2. Gages Slough wetland corridor.

- Wetland buffer restoration sites identified through scientific study; 15 sites identified, three restored and in maintenance and monitoring phase, as spelled out in the Gages Slough management plan and related technical studies.<sup>4</sup>
- Opportunities for public access.
- Locations for water quality enhancement projects to achieve the result of clean water coming out of Gages Slough into the Skagit River to protect priority habitats and species.
- Listing ID 7124 (Bacteria – Category 4A) for Gages Slough was moved off the 303(d) List on September 1, 2000, when EPA approved the cleanup plan known as a TMDL.<sup>5</sup> Category 4A indicates that EPA has approved a cleanup plan that is thought to be capable of returning the waters to Category 1 (meets tested standard). The water is

still considered “impaired” until effectiveness monitoring shows the conditions have been resolved. The TMDL is very broad and does not include any specific program for Gages Slough management and cleanup. The adopted Gages Slough management plan will be evaluated and work program components prioritized to enhance efforts to meet standards.

- The Gages Slough management plan calls for getting the Slough into public ownership from Anacortes Street to the Skagit River. The Gages Slough Survey 2012 reinforces the need to make this happen as property owners are for the most part not interested in granting easements. Condemnation action is likely necessary.

#### B. Shoreline Management Program Restoration and Enhancement Goals.

1. Reestablish, rehabilitate, and/or otherwise improve impaired shoreline ecological functions and/or processes through actions that are consistent with this master program and guidelines provided in other local and regional restoration plans.
2. Encourage and facilitate cooperative restoration and enhancement programs between the city and state and federal public agencies, tribes, nonprofit organizations, developers, and landowners to address shorelines with impaired ecological functions and/or processes.
3. Restore and enhance shoreline ecological functions and processes as well as shoreline features through voluntary and incentive-based public and private programs.
4. Target restoration and enhancement with the goal of improving habitat requirements of priority and/or locally important wildlife species.
5. Ensure restoration and enhancement is consistent with and, where practicable, prioritized based on the biological recovery goals for salmon populations and other species and/or populations for which a recovery plan is available.
6. Integrate restoration and enhancement with parallel natural resource management efforts such as the 2005 Skagit Chinook Recovery Plan<sup>6</sup> and Department of Ecology Water Resource Inventory Area (WRIA) No. 3 watershed planning activities.

C. Biological Goals and Objectives. These are the goals for the habitat conservation plan of the city so that any proposed activity does not appreciably reduce the likelihood of survival and recovery of the listed species under the Endangered Species Act<sup>7</sup>, and that the plan minimizes and mitigates the impact of the taking of any listed species or habitat to the maximum extent practical.

1. Preservation means acquiring a site, using conservation easements, donations, etc., to protect its current values. Land acquisition is in process for both the Skagit River and Gages Slough corridors.
2. Enhancement of a habitat means improving an existing site in some way that will encourage and retain fish and wildlife, such as increasing pond size or improving buffer. Following land acquisition, habitat enhancement is feasible. Public education is in process for encouraging land owners to use best management practices on their own property and to enhance habitat areas and values in their own backyards. Along the Skagit River, enhancement areas are Johnson Bar with potential for a major project, and the forested buffer at Whitmarsh fields, where evergreen trees and maples are being planted to improve the buffer.
3. Restoration means a damaged or degraded site will in some manner be improved.
  - a. The Gages Slough corridor is the prime target for restoration projects. There are a total of 15 sites in the Gages Slough corridor that have been identified and a reconnaissance level plan has been prepared for each one, including locations for installation of bioswales adjacent to the wetlands for water quality enhancement. The wetland restoration demonstration project in the Jack Doyle Memorial Neighborhood Park is the first example. The Goldenrod Bridge restoration project is in the fifth year of maintenance and monitoring, located west of Interstate 5 in a very visible location. The Unit 10 former city dump restoration site is in year two of monitoring and maintenance. Public/private partnerships are strongly encouraged.

b. Along the Skagit River, the three-bridge corridor levee setback area is a long-term future restoration project opportunity.

4. Long-term management of priority habitat sites includes strategies to protect the habitat values of the sites. Every site in the urban wildlife habitat designation has a monitoring and management plan that is tailored to the specific requirements of the location. This work includes removal of invasive species and replanting as necessary in a timeline based on the season.

5. To not appreciably reduce the likelihood of survival and recovery is the statutory goal for permit issuance under the Endangered Species Act. In Burlington, this includes a strategy that will keep floodwaters out of the developed urban area so that pollution from the city does not enter the Skagit River, and prevent fish stranding in polluted areas with no potential for survival. The city and Dike District No. 12 are working together to develop a plan for levee certification and accreditation by FEMA, to prevent or at least severely restrict urban flooding in flood events up to the 100-year base flood. This project is the topic of an environmental impact statement.<sup>8</sup>

#### D. Restoration and Enhancement Policies.

1. The city of Burlington has determined priority restoration sites.

2. This master program recognizes the importance of restoration of shoreline ecological functions and processes and encourages cooperative restoration efforts and programs between the city, county, state, and federal public agencies, tribes, nonprofit organizations, and landowners to address shorelines with impaired ecological functions and/or processes.

3. Additional opportunities for restoration may be created when Dike District No. 12 completes plans to construct a setback levee along the Skagit River through the three-bridge corridor.

4. Restoration actions should restore shoreline ecological functions and processes as well as shoreline features and should be targeted towards meeting the needs of sensitive and/or locally important plant, fish, and wildlife species as well as the biological recovery goals for early Chinook, bull trout populations, and other salmonid species and populations.

5. Restoration should be integrated with other natural resource management efforts such as the 2005 Skagit Chinook Recovery Plan and the Skagit River Big Bend Reach Habitat Restoration Feasibility Study 2004.

6. Priority should be given to restoration actions that:

a. Create dynamic and sustainable ecosystems.

b. Restore connectivity between river channels, floodplains, and hyporheic zones.

c. Restore historic back-channels to create refugia for migrating fish.

d. Mitigate peak flows and associated impacts caused by high storm water runoff volume.

e. Reduce sediment input to the Skagit River and associated impacts.

f. Improve Skagit River water quality through storm water facility upgrades.

g. Restore native vegetation and natural hydrologic functions of degraded and former wetlands to the extent practical.

h. Replant native vegetation in shoreline areas to restore functions where such actions are meaningful and consistent with this SMP and dike district guidelines.

i. Where practical, restore riverine ecosystem processes, such as sediment transport and creation of sandbars and accumulation of large woody debris that create and sustain fish habitat.

The Skagit is the only river system in Washington that supports all five species of salmon, containing some of the largest and healthiest wild Chinook salmon runs in Puget Sound and the largest pink salmon stock in the state. In all, there are 10 species of salmonids within the Skagit River basin. These include six Chinook stocks (spring, summer, and fall), pink salmon, chum salmon, sockeye salmon, summer and winter run steelhead, sea run cutthroat trout, Dolly Varden, and bull trout. Three of these, Puget Sound Chinook salmon, Puget Sound steelhead, and Coastal Puget Sound bull trout, are Endangered Species Act (ESA) listed.<sup>9</sup>

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

E. Adaptive Management Plan. An adaptive management strategy is used to address significant uncertainty associated with a particular habitat conservation plan, but it is not practicable (or possible) to require that all adaptive management strategies impose an elaborate experimental design, but rather to overcome data gaps. As foreseeable circumstances change, a contingency plan must be in place to address the issues. An example here might be changes in the Corps of Engineers levee vegetation maintenance standards, or a flood event that changes a planned restoration project.

F. Monitoring Program. Monitoring types include compliance monitoring, effect monitoring, and effectiveness monitoring. Today, water quality monitoring is a TMDL and NPDES II requirement and there is ongoing monitoring at the sewer plant and at storm water outfall locations, as well as in the Gages Slough corridor. Restoration planting projects have an initial five-year intense maintenance and monitoring program, with less frequent visits as the sites mature. Mitigation projects will each have a specific monitoring plan. (Ord. 1786 § 1, 2013).

## II. Watershed Planning

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

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

Chapter 90.82 RCW recognizes that watersheds are the logical planning unit for addressing water resource issues and the protection and restoration of fish and wildlife habitats. The RCW establishes general criteria and guidelines for state agencies and local jurisdictions to follow in developing and implementing watershed plans. The primary purpose of these plans is to equitably manage water resources between the competing demands of human use, protection of existing water rights, and the maintenance of in-stream flows for resident fish. Habitat restoration is an optional element in the development of local watershed plans under the RCW. However, given the requirements of the GMA relative to the SMA for shorelines, restoration would be an expected component for those watersheds that have experienced significant development and historically supported significant fish populations and riparian habitats.

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

A. Watershed Resource Inventory Area No. 3. The state's major watersheds have been mapped into 62 Water Resource Inventory Areas (WRIA), with each further divided into sub-basins based on the physical extent of primary tributaries. Burlington is located within WRIA No. 3 – Lower Skagit River. As a planning unit, the boundaries of WRIA No. 3 represent the upper tier of the watershed hierarchy for the Lower Skagit.

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

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

The purposes of the plan are to:

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

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

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

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

C. Burlington Wetland Restoration Program. Part of the flood hazard mitigation plan includes improving Gages Slough so that water can flow more readily during and after a flood event, specifically considering sediment removal and culvert installations. This planning effort will be more focused over the next few years and will comply with the shoreline master program.

Technical studies have been completed for Gages Slough with important information about the existing conditions. These include water quality monitoring as part of the Lower Skagit River Water Quality Study completed in 1993, the comprehensive surface water management plan adopted in 1992, and the Surface Water Management Plan Update and Facilities Pre-Design Report completed in 1996. Out of these initial studies, three major actions took shape. A coastal zone management grant provided funding for in-depth technical studies of Gages Slough in 1998, to set up a long-range management plan to facilitate removal of Gages Slough from its current listing as a 303(d) site, in violation of the Clean Water Act. Gages Slough was moved off the 303(d) List on September 1, 2000, when EPA approved the cleanup plan known as a TMDL. Category 4A indicates that EPA has approved a cleanup plan that is thought to be capable of returning the waters to Category 1 (meets tested standard). Concurrently, a new pump station was designed and constructed to provide for storm water management as the city grows and to facilitate management of the hydroperiod of Gages Slough, in response to the clear need for wetland restoration

activities and the forecast demands of the comprehensive surface water plan. A citizen's advisory committee was formed to develop the shoreline master program for Gages Slough and the Skagit River shorelines.

The problems associated with the degraded series of connected wetlands, Gages Slough, that crosses the community, and concerns about the need for very costly storm water management facilities in the floodplain, became the focus of every neighborhood meeting in the 1990s. Gages Slough had become a combination sewer and garbage dump. City staff was not aware of the history of Gages Slough and made the assumption that the upriver end of Gages Slough had some sort of direct connection via culvert into Hart Slough, and reported that as a fact to the technical consultants. However, the culvert connects only to Brickyard Creek, which is the ditched stream connected to the culvert/fish passage. There are no piped connections to Gages Slough. The recent history of the area began with the construction of the Sterling Dam blocking any above-grade connections to Gages Slough in 1899 because there were numerous floods that were affecting the railroad tracks. The Sterling Dam is owned and maintained by Dike District No. 12. It is located north of SR 20 adjacent to Holtcamp Road.

In 1998, a wetlands ecological study was completed for Gages Slough including delineation, a functional assessment using the Department of Ecology hydrogeomorphic modeling approach, along with a water level and water quality analysis, and a management and restoration plan has been designed and integrated into this master program. Existing uses along Gages Slough include single-family residential, commercial, agriculture and industrial use.

The first survey of all the property owners along Gages Slough (both in and outside the city limits) was taken in the winter of 1995-96, and the results were mailed to all property owners in March of 1996. Grave concerns about the future of the wetlands were expressed, particularly in light of the fact that there was a significant flood event on the Skagit River in the winter of 1995 and there was a lot of discussion about turning Gages Slough into a backup flood control channel. These activities and issues led to creation of the citizen's advisory committee and to the request for the grant funding to get the essential elements of the long-range management plan established.

A second survey of Gages Slough property owners was conducted in the spring of 2012. Preliminary results have been tallied, but results will still be coming in following publication of this report.

Today, the Gages Slough management plan has been adopted as part of the overall comprehensive plan, the parks and recreation comprehensive plan and the comprehensive surface water management plan.<sup>10</sup> The plan was completed in the spring of 1999, updated September 1999, August 2006, February 2007, and followed by a 2009 Gages Slough reconnaissance report identifying a series of restoration project sites. There are two wetland buffer restoration projects that are five years or older and there is one wetland buffer restoration project that was planted in 2011, at the site of an old city burn dump.

As a participant in the NPDES II municipal permit system, the public works department is actively increasing the focus on improvements to the Gages Slough corridor that enhance its ability to process storm water and return clean water to the Skagit River system. New improved water level monitoring instruments have been installed in Gages Slough. Bi-monthly water quality monitoring is completed by the public works department. In addition, the Skagit Conservation District Stream Team has a committed team of volunteers that also does regular water quality monitoring in Gages Slough for temperature, turbidity, and fecal coliform, the TMDL standards. (Ord. 1786 § 1, 2013).

### III. Restoration Opportunities and Actions

A. Big Bend Reach Habitat Restoration Feasibility Study, 2004. The primary goal of the Skagit River Big Bend Reach Habitat Restoration Feasibility Study, prepared for the city of Mount Vernon in 2004, was to identify opportunities for improving the quality and quantity of rearing habitat available to juvenile salmon at various opportunity sites located in the Big Bend Reach of the Skagit River. There are remnant pockets of habitat to be found between the river and the existing levees. Some of these are actively engaged with the river. Most are currently isolated from river actions, except during high water events.

Thirteen opportunity sites were identified and analyzed for their existing habitat values and their ability to provide additional habitat benefits, extending from Johnson Bar downstream to Britt Slough. Johnson Bar is mostly owned by the city of Burlington, and this is the only significant restoration site along the Skagit River that the city has the potential to restore.

B. Gages Slough Restoration Plans, 2009 Update. This report provides an update on the identified restoration sites and sets a priority ranking for each site. Most of the sites have lots of invasive species including Himalayan blackberry and reed canary grass, and the need for shade and water quality improvement. The drainage utility is committed to funding the five-year and ongoing monitoring and maintenance program since 80 to 90 percent of the city's storm water enters Gages Slough. The sites are available as mitigation sites to compensate for decreased wetland buffers and for off-site mitigation under the critical areas standards.

C. Implementation Timelines, Benchmarks and Strategies.

*Identify timelines and benchmarks for implementing restoration projects and programs and achieving local restoration goals:*

1. The NPDES II storm water cleanup program is focused on public education, water quality monitoring, and source control through annual maintenance. This program is partially funded by the drainage utility and through state-administered grant funds, along with a dedicated team of volunteers from the conservation district. The overall water quality is monitored by the Department of Ecology as part of the TMDL that includes Gages Slough. The program is a permanent component; whether or not the water quality meets standards at some point, the need for education and source control is critical. As part of the FEMA community rating system program, every drainage facility has annual inspection and maintenance requirements. The city is committed to deliver clean water to Puget Sound; the benchmarks are set, timelines are ongoing.
2. Construction of water quality treatment bioswales in Gages Slough corridor for increased capacity to treat storm water. This program is a top priority for storm water grant applications. Grant match funds are from the drainage utility. The restoration sites have been prioritized based on water pollution and the first key location has a pending grant application. All projects include five to 10 years of monitoring and maintenance; once mature, maintenance needs decrease, but there is ongoing maintenance and removal of invasive species.
3. Wetland Buffer Restoration Projects. Fifteen sites identified; three have been constructed and the remaining sites are available for public and private restoration opportunities. This includes land development that requires wetland mitigation anywhere in this area. Two sites were constructed using donations to the Burlington Parks Foundation. The drainage utility has committed funds for the five-to-10-year maintenance and monitoring program. To date, restoration activity has occurred at the rate of approximately one site every five years. The commitment to permanent maintenance and monitoring is funded by the drainage utility.
4. Skagit River – Johnson Bar Restoration Project. This is a regional project located adjacent to the city limits on the waterward side of the levee. It is a high priority by police, fire and parks to get rid of a place that is an ongoing problem site used to dump trash, stolen cars, junk, and allowing on- and off-road vehicles to speed around and tear up the dirt road. The plan of action is to coordinate the project with levee upgrade work in process by Dike District No. 12. Additional land acquisition is in process by the Dike District; schedule to be set in the next year.
5. Skagit River – Levee Upgrades and Maintenance. Burlington levees are in the Corps of Engineers PL 84-99 maintenance program and levee vegetation standards have been set through an ESA Section 7 consultation. This program is ongoing with annual inspection by the Corps of Engineers.<sup>11</sup>

*Provide for mechanisms or strategies to ensure that restoration projects and programs will be implemented according to plans and to appropriately review the effectiveness of the projects and programs in meeting the overall restoration goals:*

1. Uniquely situated in the floodplain adjacent to the Skagit River on the south and east, with long-term agricultural resource lands to the north and west, Burlington has a comprehensive plan in place that is monitored not only by the city, but by the FEMA Community Rating System program where everyone in the city now receives a 25 percent reduction in flood insurance rates through the continued monitoring, maintenance and protection of environmentally sensitive sites and critical areas. This program has intensive federal monitoring.

2. Burlington is required to participate in NPDES II, a national pollution discharge elimination system program that applies citywide, focused on clean water.
3. As a result of concerns over how the National Flood Insurance Program is managed, every project in Burlington is reviewed for compliance with the Endangered Species Act biological opinion that is focused on habitat restoration.<sup>12</sup>
4. Burlington is also a participant in the Skagit County natural hazards mitigation plan that is updated every five years countywide.<sup>13</sup> (Ord. 1786 § 1, 2013).

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<sup>1</sup> Washington State Shoreline Management Act, chapter 90.58 RCW.

<sup>2</sup> Washington Administrative Code regulations; chapter 173-26 WAC, Shoreline Master Program Guidelines.

<sup>3</sup> Skagit River Big Bend Reach Habitat Restoration Feasibility Study, prepared by Miller Consulting, Skagit River System Cooperative, Pentec Environmental, and Wildlands of Washington, Inc., December 20, 2004.

<sup>4</sup> City of Burlington, Shoreline Analysis Report and Shoreline Inventory 2012 – Appendix D. Gages Slough management plan including history of Sterling Dam, history of the Gages Slough management plan, technical studies, restoration sites, Puget Sound Partnership Watershed Characterization, and water quality monitoring data.

<sup>5</sup> Lower Skagit River Fecal Coliform Total Maximum Daily Load Submittal Report Water Cleanup Plan, Publication No. 00-10-010, June 2000.

<sup>6</sup> Skagit Chinook Recovery Plan, 2005, prepared by Skagit River System Cooperative and Washington Department of Fish and Wildlife; and Appendix C, Linking Freshwater Rearing Habitat to Skagit Chinook Salmon Recovery, November 4, 2005, prepared by Eric M. Beamer, Bob Hayman, and Devin Smith.

<sup>7</sup> Endangered Species Act (ESA) of 1973, as amended.

<sup>8</sup> City of Burlington Draft EIS February 2009, and Final EIS July 16, 2010, to Adopt a Strategic Program for Comprehensive Flood Hazard Mitigation in the Burlington Urban Area and Adjacent Land with a Range of Structural and Non-Structural Components.

<sup>9</sup> Department of Commerce National Oceanic and Atmospheric Administration, 50 CFR Part 226, Designated Critical Habitat: Critical Habitat for 19 Evolutionarily Significant Units of Salmon and Steelhead in Washington, Oregon, Idaho, and California, Federal Register February 16, 2000, and Federal Register September 2, 2005.

<sup>10</sup> City of Burlington 2005 comprehensive plan, 2009 parks and recreation comprehensive plan with urban wildlife habitat plan, 2005 comprehensive surface water management plan and related planning documents.

<sup>11</sup> Biological Opinion, Consultation for Skagit River Levee Repair Projects, Skagit County, Washington: Flood Damage Repairs to Numerous Levees in Diking Districts 1, 3, 12, 17, and 22, prepared by U.S. Fish and Wildlife Service, Reference No. 13410-2010-F-0254, Agency U.S. Army Corps of Engineers Seattle District, May 27, 2011; and

Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat (EFH) Consultation, Skagit River – Diking Districts 1, 3, 12, 17 and 22, Levees Rehabilitation of Flood Control Works Project in Skagit County, Washington; NMFS Consultation Number: 2011/0033, October 24, 2011.

<sup>12</sup> Endangered Species Act – Section 7, Consultation Final Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation, September 22, 2008, regarding National Flood Insurance Program and FEMA.

<sup>13</sup> Skagit County Natural Hazards Mitigation Plan, September 2008.