

CITY OF MOUNT VERNON  
SHORELINE MASTER PROGRAM

**I. INTRODUCTION**

---

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

**C. PUBLIC ACCESS GOALS**

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

**D. CIRCULATION GOALS**

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

**E. CONSERVATION GOALS**

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

**F. RESTORATION GOALS**

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

**G. RECREATION GOALS**

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

**H. HISTORIC AND CULTURAL GOALS**

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

**I. FLOOD RISK MANAGEMENT GOALS**

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

**III. SHORELINE MASTER PROGRAM ADMINISTRATIVE PROVISIONS**

---

**A. GENERAL**

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

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

**B. SHORELINE SUBSTANTIAL DEVELOPMENT PERMITS**

1. A shoreline substantial development permit shall be required for projects occurring within the City’s shoreline jurisdiction pursuant to the requirements and procedures contained in Chapter 173-27 WAC (Shoreline Management Permit and Enforcement Procedures); except that:
  - a. A substantial development permit is not required for projects that are below the threshold levels established in WAC 173-27-040(2), “Developments Exempt from Substantial Development Permit Requirement,” as follows:
    - i. Any development of which the total cost or fair market value, whichever is higher, does not exceed \$5,718, if such development does not materially interfere with the normal public use of the water or shorelines of the state. [Note: The State of Washington requires that every five years the dollar threshold for this exemption be adjusted for inflation by the Washington Office of Financial Management (OFM). The adjustment is based upon changes in the Consumer Price Index during that time period. (see Section IX, Definitions) The OFM must calculate the new dollar threshold and transmit it to the Office of the Code Reviser for publication in the *Washington State Register* at least one month before the new dollar threshold is to take effect. WAC 173-27-040(2)(a)] For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030(2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

- ii. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;
- iii. Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with the applicable chapter (Chapter 173-27 WAC);
- iv. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including, but not limited to head gates, pumping facilities, and irrigation channels. Provided, that a feedlot of any size; all process plants; other activities of a commercial nature; alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities;
- v. Construction or modification of navigational aids such as channel markers and anchor buoys;
- vi. Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to Chapter 90.58 RCW;

- vii. Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. This exception applies if the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter;
- viii. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water from the irrigation of lands;
- ix. The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;
- x. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;
- xi. Any project with a certification from the governor pursuant to Chapter 80.50 RCW;
- xii. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization, if:
  - a) The activity does not interfere with the normal public use of the surface waters;
  - b) The activity will have no significant adverse impact on the environment including, but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
  - c) The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
  - d) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and
  - e) The activity is not subject to the permit requirements of RCW 90.58.550.

- xiii. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other state agencies under Chapter 43.21C RCW;
  - xiv. Watershed restoration projects as defined within the SMP (Appendix B);
  - xv. A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply;
    - a) The project has been approved in writing by the Department of Fish and Wildlife;
    - b) The project has received hydraulic project approval by the Department of Fish and Wildlife pursuant to Chapter 77.55 RCW; and
    - c) The project has been determined to be substantially consistent with the Shoreline Master Program.
  - xvi. Standard subdivisions and short plats; however, physical improvements being made as part of a plat's conditions of approval that meet the definition of substantial development, require a shoreline permit before any construction activities can occur.
- b. A substantial development permit is not required for those actions described in WAC 173-27-045 (Developments Not Subject to the Shoreline Management Act), as follows:
- i. Pursuant to RCW 90.58.485, regarding Environmental Excellence Program agreements, notwithstanding any other provision of law, any legal requirement under the Shoreline Management Act, including any standard, limitation, rule, or order is superseded and pre-placed in accordance with the terms and provisions of an Environmental Excellence Program agreement, entered into under Chapter 43.21K RCW.
  - ii. Pursuant to RCW 90.58.355 regarding hazardous substance remedial actions, the procedural requirements of the SMA shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to Chapter 70.105D RCW.
  - iii. The holder of a certification from the governor pursuant to Chapter 80.50 RCW shall not be required to obtain a permit under Chapter 90.58 RCW.
2. A shoreline substantial development permit application is a Type II permit, as per MVMC 14.05.060, "Permit Classifications."
3. All projects proposed within the SMZ require a Pre-Application Meeting in accordance with the requirements of MVMC 14.05.110.

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

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

**C. CONDITIONAL USE PERMITS**

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

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

#### **D. VARIANCES**

- 1. The purpose of a shoreline variance is strictly limited to granting relief to specific bulk, dimensional, or performance standards set forth in the Master Program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the Master Program would impose unnecessary hardship on the applicant or thwart the policies set forth in the SMA.
- 2. Variances from the use regulations of the Master Program are prohibited.
- 3. Shoreline variances are Type III permits, as per MVMC 14.05.060.
- 4. The Hearing Examiner shall, following an open record public hearing, have the authority to make the final decision. The Hearing Examiner decision may be appealed to the City Council.
- 5. The criteria for granting shoreline variances shall be consistent with WAC 173-27-170 (Review Criteria for Variance Permits) and include the following:

- a. Shoreline variances should be granted in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in the SMA. In all instances, extraordinary circumstances should be shown, and the public interest shall suffer no substantial detrimental effect.
- b. Variances for development that will be located landward of the ordinary high water mark may be authorized provided the applicant can demonstrate all of the following:
  - i. That the strict application of the bulk, dimensional, or performance standards as set forth in the Master Program precludes or significantly interferes with a reasonable permitted use of the property.
  - ii. That the hardship is specifically related to the property and is the result of unique conditions, such as irregular lot shape, size, or natural features, in the application of the Master Program and not, for example, from deed restrictions or the applicant's own actions.
  - iii. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environmental designation.
  - iv. That the variance authorized does not constitute a grant of special privilege not enjoyed by other properties in the area, and will be the minimum necessary to afford relief.
  - v. That the public interest will suffer no substantial detrimental effect.
- c. Variances for development that will be located waterward of the OHWM may be authorized, provided the applicant can satisfy all of the criteria specified in Subsection 'b' of this section. The applicant must also demonstrate that the public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance, and that the strict application of the bulk, dimensional, or performance standards set forth in the Master Program precludes all reasonable use of the property.
- d. In granting of all shoreline variances, consideration shall be given to the cumulative impact of additional requests or like actions in the area.

**E. NONCONFORMING USE AND DEVELOPMENT**

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

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

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

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

**F. REVISIONS TO PERMITS**

1. When an applicant seeks to revise a shoreline substantial development permit, conditional use permit, or variance, whether such permit or variance was granted under this SMP, or under the Skagit County SMP in effect prior to adoption of the Mount Vernon SMP, the Community and Economic Development Department shall request from the applicant detailed plans and text describing the proposed changes to the project. If the staff determines that the proposed changes are within the general scope and intent of the original substantial development permit, conditional use permit or variance, as the case may be, the revision may be approved by the CEDD Director, without the need for the applicant to file a new Substantial Development Permit application, provided the development is consistent with the SMA, WAC 173-27-100 (Revisions to Permits), and the Master Program.
2. “Within the scope and intent of the original permit” means the following:
  - a. No additional over-water construction will be involved, except that pier, dock, or float construction may be increased by 500 square feet or 10 percent from the provisions of the original permit, whichever is less.
  - b. Lot coverage and height may be increased a maximum of 10 percent from the provisions of the original permit,
  - c. Additional or revised landscaping is consistent with the conditions attached to the original permit and with the Shoreline Master Program.
  - d. The use authorized pursuant to the original permit is not changed.
  - e. No adverse environmental impact will be caused by the project revision.
  - f. The revised permit shall not authorize development to exceed height, lot coverage, setback, or any other requirements of the Master Program except as authorized under a variance granted as the original permit or a part thereof.
3. If the revision, or the sum of the revision and any previously approved revisions, will violate the criteria specified above, the Community and Economic Development Department shall require the applicant to apply for a new shoreline substantial development or conditional use permit or variance, as appropriate, in the manner provided for herein.
4. If proposed revisions to the original permit involve a conditional use or variance, the City shall submit the proposed revision to the DOE for review. The DOE shall respond with its final decision on the proposed revision request within 15 days of the date of receipt by the DOE. WAC 173-27-100(6)

**G. ENFORCEMENT**

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

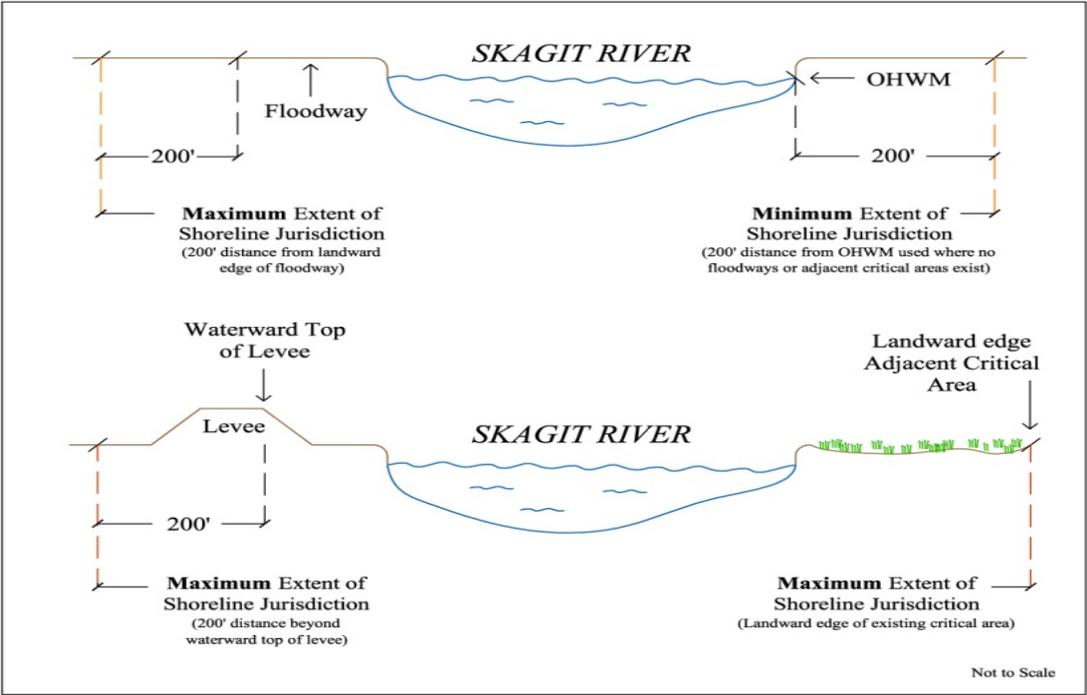
2. Any person failing to conform to the terms of a permit issued in accordance with the SMP or who undertakes development on the shorelines of the state without first obtaining any permit required by the SMP shall be subject to a civil penalty as per RCW 90.58.210 and WAC 173-27-280.

**IV. SHORELINE ENVIRONMENTAL DESIGNATIONS**

**A. Shoreline Environment - Applicability**

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

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



**Figure 1 Shoreline Management Zone**

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

**B. Environmental Designations**

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

**C. Mapping**

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

**D. Aquatic Environment**

1. Purpose

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

2. Designation Criteria

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

3. Location of Environment

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

## **E. Natural Environment**

### **1. Purpose**

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

### **2. Designation Criteria**

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

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

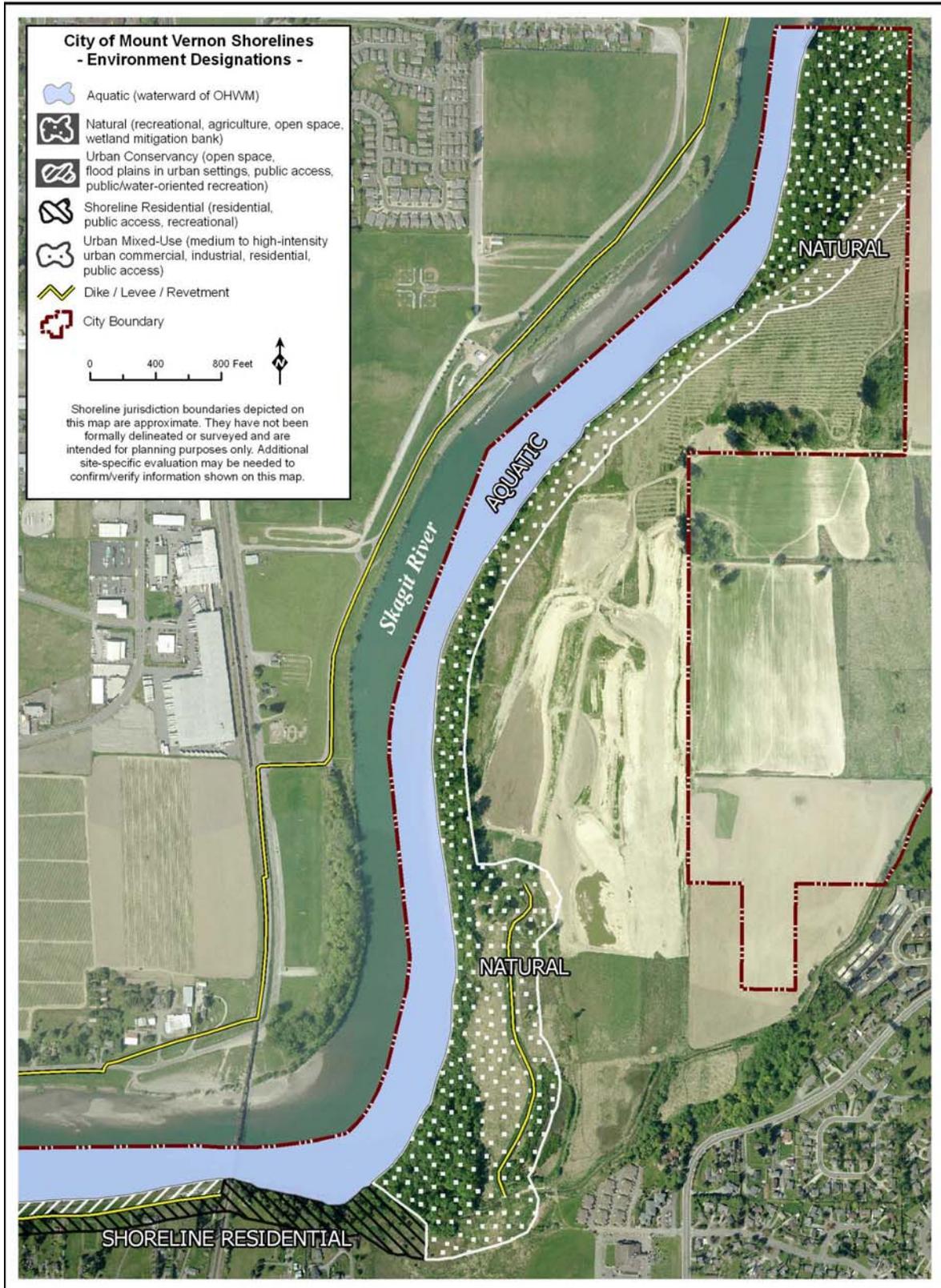
### 3. Location of Environment

The Natural Environment applies to the following locations:

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

### 4. Management Guidelines

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



**Figure 2 Northeast Mount Vernon Environmental Designations**

## F. Urban Conservancy Environment

### 1. Purpose

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

### 2. Designation Criteria

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

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



**Figure 3 North Mount Vernon Environmental Designations**

### 3. Location of Environment

The Urban Conservancy environmental designation applies to the following areas:

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

### 4. Management Guidelines

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

## **G. Shoreline Residential Environment**

### 1. Purpose

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

### 2. Designation Criteria

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

3. Location of Environment

The Shoreline Residential environmental designation applies:

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

4. Management Guidelines

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

**H. Urban Mixed-Use Environment**

1. Purpose

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

## 2. Designation Criteria

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

## 3. Location of Environment

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

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

## 4. Management Guidelines

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



**Figure 4 Central Mount Vernon Environmental Designations**

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

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

The charts are coded according to the following legend:

P = May be permitted

C = May be permitted as a conditional use only

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

n/a = Not applicable

See also Notes to Tables following Table 3.

**TABLE 1, SHORELINE USE:**

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

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

**TABLE 2, SHORELINE MODIFICATIONS:**

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

**TABLE 3, DEVELOPMENT STANDARDS:**

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

**NOTES TO TABLES:**

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

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

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

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

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

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

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

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

**C. Additional Engineering Review.**

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

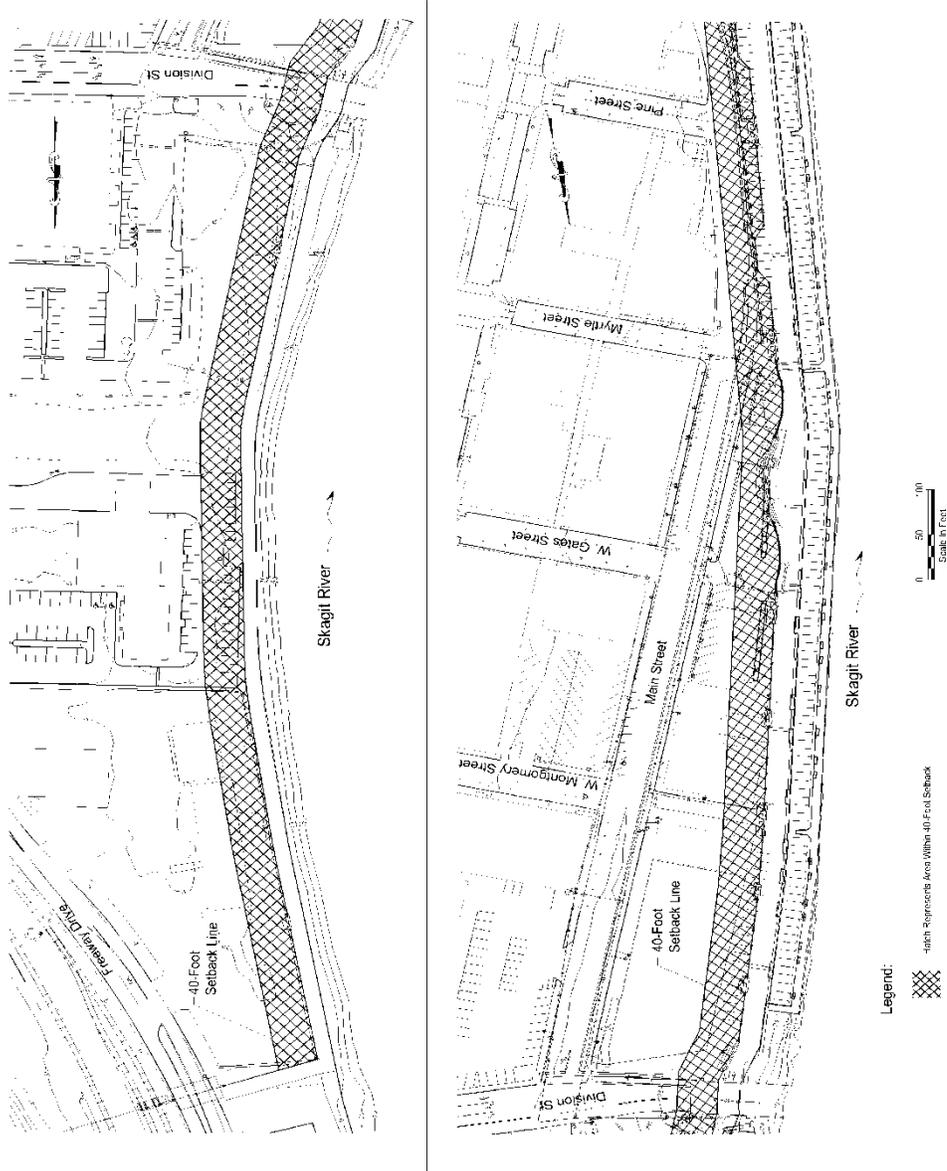
**D. Certification Defined.** Certifications by licensed engineers required under the provisions of this section shall be those required from FEMA's National Flood Insurance Program as set forth in Title 44 of the Federal Code of Regulations, as now or hereafter amended. As of the date of adoption of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

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

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

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

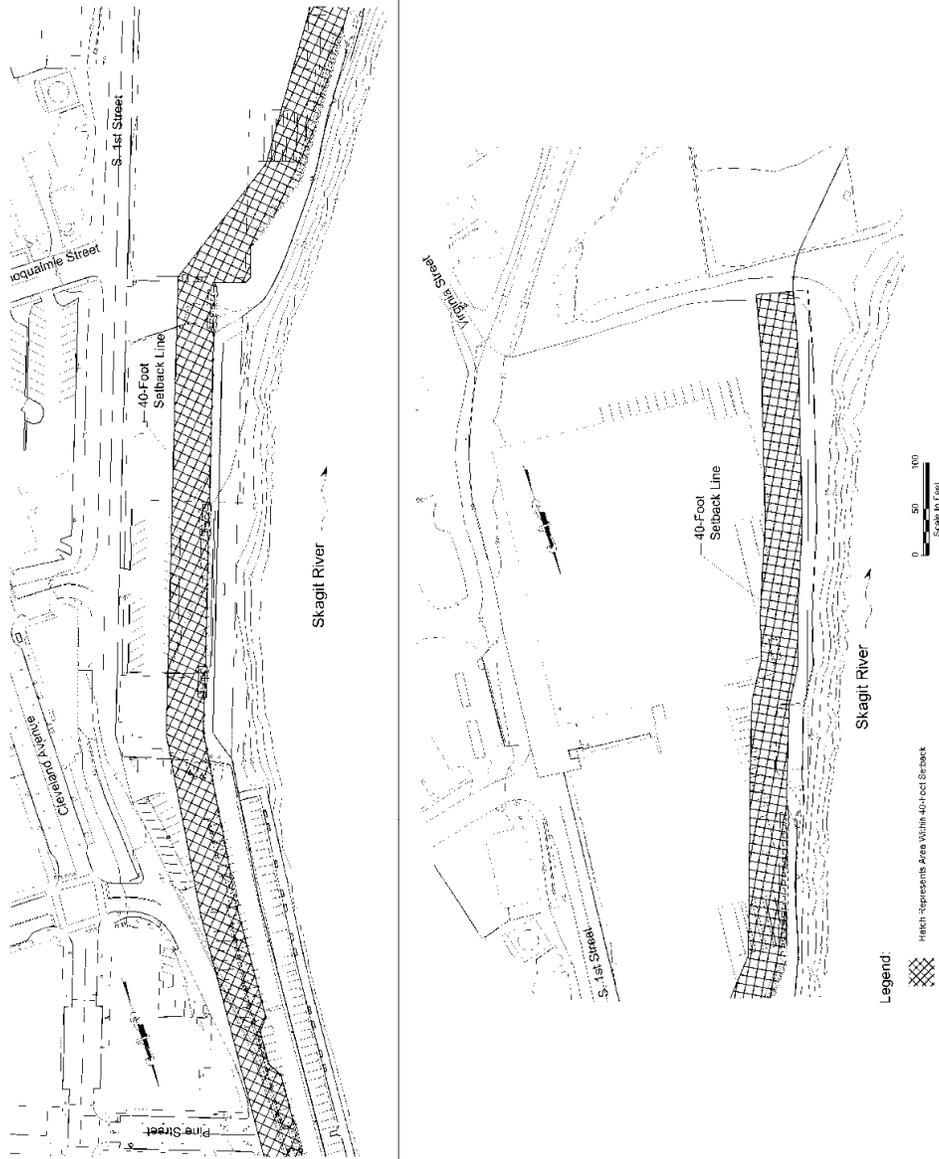
12. Determined by geotechnical analysis or Chapter 15.36 MVMC.
13. Breakwaters, jetties, groins, and weirs located waterward of the OHWM are allowed only where necessary to support water-dependent uses, public access, shoreline stabilization, or other specific public purpose, such as fish and wildlife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



**Figure 5**

Forty-foot Setback Area from Floodwall (north)

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



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

## **VI. GENERAL PROVISIONS**

---

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

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

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

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

### **1. Applicability**

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

### **2. Policies**

Due to the limited and irreplaceable nature of the resource, public or private uses, activities, and development should be prevented from destroying or damaging any site having historic, cultural, scientific, or educational value as identified by the appropriate authorities and deemed worthy of protection and preservation.

3. Regulations

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

**C. Critical Areas**

1. Applicability

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

## 2. Policies

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

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

## 3. Regulations

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

## **D. Flood Hazard Reduction**

### 1. Applicability

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

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

2. Policies

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

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

## **E. Public Access**

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

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

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

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

**F. Signage**

1. Applicability

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

2. Policies

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

3. Regulations

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

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

## **G. Accessory Utilities**

### **1. Applicability**

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

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

## **H. Vegetation Conservation**

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

2. Policies

- a. Vegetation within the City shoreline areas, waterward of dikes and levees or where no such structures exist, should be enhanced over time to provide a greater level of ecological function, human safety, and property protection. To this end, shoreline management activities, including the provisions and implementation of the Master Program, should be based on a comprehensive approach that considers the ecological functions currently and potentially provided by vegetation on different sections of the shoreline, as described in the Shoreline Inventory and Characterization Report of the SMP (Appendix A).
- b. The Master Program, in conjunction with other City of Mount Vernon development regulations, should establish a coordinated and effective set of provisions and programs to protect and restore functions provided by shoreline vegetation.
- c. Aquatic weed management should stress prevention first. Where active removal or destruction is necessary, it should be the minimum to allow water-dependent activities to continue, minimize negative impacts to native plant communities, and include appropriate handling or disposal of weeds.

3. Regulations

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

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

## **I. Water Quality**

### **1. Applicability**

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

### **2. Policies**

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

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

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

---

### **A. Introduction**

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

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

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

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

**C. Mixed-Use Development**

1. Applicability

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

2. Policies

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

3. Regulations

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

**D. Commercial Development**

1. Applicability

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

- b. Privately operated water-dependent uses for recreation or entertainment, such as sight-seeing boats or other passenger-carrying water craft, are considered commercial uses for the purposes of the SMP.
  - c. At the time of adoption of the SMP, existing commercial uses in the SMZ consist of non-water-oriented uses.
  - d. Piers and docks, bulkheads, shoreline stabilization, flood risk management measures, and other shoreline modifications are sometimes associated with commercial development and are subject to shoreline modification regulations, in addition to the standards for commercial development established herein.
2. Policies
- a. New commercial development on shorelines should be encouraged to locate in those areas with existing commercial uses and in a manner that will minimize sprawl and the inefficient use of shoreline areas.
  - b. Commercial development should be encouraged to utilize existing transportation corridors and minimize the number of ingress/egress points. Ingress/egress should be designed to minimize potential conflicts with and impact on regular corridor traffic.
  - c. Multiple use concepts, which include open space and recreation, should be encouraged in commercial developments.
  - d. Commercial development should be visually compatible with the surrounding area.
  - e. Structures should not significantly impact existing views of the aquatic zone from upland properties or from public roadways and other public areas.
3. Regulations
- a. The Community and Economic Development Department shall require and utilize the following information in its review of commercial development proposals:
    - i. The nature of the commercial activity (e.g., water-dependent, water-related, water-enjoyment, non-water-oriented), including an accounting of specific shoreline use components;
    - ii. The economic and land use justification for a shoreline location;
    - iii. Design measures to take advantage of the proposed location;
    - iv. Provisions for public visual and/or physical access to the shoreline;
    - v. Provisions to ensure that the development will not cause significant adverse environmental impacts;
    - vi. Layout, size, height, materials, colors, and general appearance, including massing, bulk, and relative scale of all proposed structures;
    - vii. Pedestrian and vehicular circulation, public access, site furniture and other features, pavement, landscaping, view corridors; and

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

## **E. Industrial Development**

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

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

## **F. Recreational Development**

### **1. Applicability**

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

### **2. Policies**

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

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

## **G. Residential Development**

### **1. Applicability**

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

### **2. Policies**

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

### **3. Regulations**

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

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

## **H. Utilities**

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

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

- i. Clearing of vegetation for the installation or maintenance of utilities shall be kept to a minimum and upon project completion any disturbed areas shall be restored to their pre-project condition or better.
- j. Wireless telecommunication towers, such as radio and cell phone towers, are specifically prohibited in the SMZ.

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

### **1. Applicability**

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

### **2. Policies**

- a. In-stream structures should provide for the protection, preservation, and restoration of ecosystem-wide processes, ecological functions, and cultural resources, including, but not limited to, fish and fish passage, wildlife and water resources, hydrogeologic processes, and natural scenic vistas.
- b. Within the City of Mount Vernon, in-stream structures should be allowed only for the purposes of environmental restoration and maintaining the existing bridges crossing the Skagit River.

### **3. Regulations**

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

## **J. Agriculture**

### **1. Applicability**

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

### **2. Policies**

- a. A vegetative buffer should be maintained between agricultural lands and water bodies or wetlands in order to reduce harmful bank erosion and resulting sedimentation, enhance water quality, reduce flood risk, and maintain habitat for fish and wildlife.
- b. Animal feeding operations, retention and storage ponds associated with agricultural activities, and feedlot waste and manure storage should be located out of the SMZ and constructed to prevent contamination of water bodies and degradation of the adjacent shoreline environment.
- c. Appropriate farm management techniques and new development construction should be utilized to prevent contamination of nearby water bodies and adverse effects on valuable plant, fish, and animal life from fertilizer and pesticide use and application.
- d. Where ecological functions have been degraded, new development should be conditioned with the requirement for ecological restoration.

### **3. Regulations**

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

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

## **K. Transportation**

### **1. Applicability**

- a. Transportation facilities are those structures and developments that aid in land and water surface movement of people, goods, and services. They include roads and highways, bridges and causeways, bikeways, trails, and railroad facilities.
- b. The policies and regulations identified in this section pertain to any project, within any environment, that proposes to change existing transportation facilities or introduce new such facilities.

### **2. Policies**

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

### 3. Regulations

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

## **VIII. SHORELINE MODIFICATION PROVISIONS**

---

### **A. Introduction**

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

3. The policies and regulations in this section are intended to prevent or mitigate the adverse environmental impacts of proposed shoreline modifications. General provisions, which apply to all shoreline modification activities, are followed by provisions tailored to specific shoreline modification activities. This chapter provides policies and regulations for shoreline modification features including shoreline stabilization measures, flood hazard reduction, piers and docks, dredging, fill, and shoreline restoration.

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

### **1. Applicability**

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

### **2. Policies**

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

### **3. Regulations**

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

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

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

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

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

## 2. Policies

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

## 3. Regulations

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

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

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

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

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

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

## **E. Dredging**

### **1. Applicability**

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

### **2. Policies**

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

### **3. Regulations**

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

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

**F. Fill**

1. Applicability

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

2. Policies

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

3. Regulations

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

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

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

### **1. Applicability**

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

### **2. Policies**

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

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

## **IX. DEFINITIONS**

---

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

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

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

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

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

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

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

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

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

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

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

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

**Bioengineering** means the use of biological elements, such as the planting of vegetation, often in conjunction with engineered systems, to provide a structural shoreline stabilization measure with minimal negative impact to the shoreline ecology.

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

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

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

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

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

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

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

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

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

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

**Consumer Price Index** means for any calendar year, that year's annual average consumer price index, Seattle Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor.

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

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

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

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

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

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

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

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

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

**Ecological functions** (or shoreline functions) means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

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

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

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

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

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

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

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

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

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

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

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

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

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

**Floodplain** is the hundred-year floodplain, meaning that land area susceptible to being inundated by stream-derived waters with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method that meets the objectives of the SMA.

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

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

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

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

**Grading** or **Graded** means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

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

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

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

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

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

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

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

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

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

**Ordinary High Water Mark (OHWM)** is that mark along the river or other bodies of water that can be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland in respect to vegetation as that condition exists on June 1, 1971, or as it may naturally change thereafter; or as it may change thereafter in accordance with permits issued by the City of Mount Vernon, Skagit County, or the Washington State Department of Ecology; provided that in any area where the ordinary high water mark cannot be found, the ordinary high water mark shall be the line of mean high water.

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

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

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

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

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

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

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

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

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

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

**Replacement stabilization measure** means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.

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

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

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

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

**SMZ** is the Shoreline Management Zone.

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

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

**Shorelands** or **shoreland areas** means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters that are subject to the provisions of RCW 90.58.030; the same as to location by the Department of Ecology.

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

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

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

**Shoreline Master Program** or **Master Program** means the comprehensive use plan for a described area (see Shorelands), and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020.

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

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

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

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

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

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

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

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

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

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

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

**Structure** means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels.

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

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

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

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

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

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

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

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

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

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

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

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

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