

## Chapter 16.04

### SHORELINE REGULATIONS

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**ARTICLE I. AUTHORITY AND PURPOSE**

**16.04.010 Authority**

- A. The Shoreline Management Act (SMA) of 1971, Chapter 90.58 RCW, is the authority for the enactment and administration of this Shoreline Master Program (SMP).

**16.04.020 Applicability**

- A. This Program shall apply to all of the shorelands and waters within Benton City as described in the City's Shoreline Goals and Policies, Profile of the Shoreline Jurisdiction within Benton City.

All proposed uses, activities, or development occurring within shoreline jurisdiction must conform to the intent and requirements of Chapter 90.58 RCW, the SMA, and this SMP whether or not a permit or other form of authorization is required, except when specifically exempted by statute. See the City's SMP Shoreline Goals and Policies for the shoreline jurisdiction description and SMP Section 16.04.860 for the definition of uses, activities, and development.

The SMP applies to shoreline jurisdiction within the City limits.

Pursuant to WAC 173-27-060, federal agency activities may be required by other federal laws to meet the permitting requirements of chapter 90.58 RCW. This Program shall apply to all nonfederal developments and uses undertaken

on federal lands and on lands subject to nonfederal ownership, lease or easement, even though such lands may fall within the external boundaries of a federal ownership.

As recognized by RCW 90.58.350, the provisions of this SMP shall not affect treaty rights of Indian Nations or tribes.

Maps indicating the extent of shoreline jurisdiction and shoreline designations are guidance only. They are to be used in conjunction with best available science, field investigations and on-site surveys to accurately establish the location and extent of shoreline jurisdiction when a project is proposed. All areas meeting the definition of a shoreline of the state or a shoreline of statewide significance, whether mapped or not, are subject to the provisions of this Program.

#### **16.04.030 Purpose**

A. The purposes of this SMP are:

1. To promote the public health, safety, and general welfare of the City by providing comprehensive policies and effective, reasonable regulations for development, use and protection of jurisdictional shorelines; and

To further assume and carry out the local government responsibilities established by the SMA in RCW 90.58.050 including planning and administering the regulatory program consistent with the policy and provisions of the SMA in RCW 90.58.020; and

To provide a high quality shoreline environment where:

Recreational opportunities are abundant;

The public enjoys access to and views of shoreline areas;

Natural systems are preserved, restored or enhanced;

Ecological functions of the shoreline are maintained and improved over time; and

Water-oriented uses are promoted consistent with the shoreline character and environmental functions.

To apply special conditions to those uses which are not consistent with the control of pollution and prevention of damage to the natural environment or are not unique to or dependent upon use of the state's shoreline; and

To assure no net loss of ecological functions associated with the shoreline.

#### **16.04.040 Relationship to Other Codes, Ordinances and Plans**

A. All applicable federal, state, and local laws shall apply to properties in the shoreline jurisdiction. Where this Program makes reference to any RCW, WAC, or other state, or federal law or regulation the most recent amendment or current edition shall apply.

In the event provisions of this SMP conflict with provisions of federal, state or City regulations, the provision that is most protective of shoreline resources shall prevail. It is understood that the provisions of this chapter may not allow development to occur at what otherwise might be the property's full zoning potential.

The policies in the SMP, Shoreline Goals and Policies, contained in the Shoreline Master Program Elements, state the underlying objectives the regulations are intended to accomplish. The policies guide the interpretation and enforcement of the SMP regulations contained in BCMC Chapter 16.04. The policies are not regulations in themselves and, therefore, do not impose requirements beyond those set forth in the regulations.

This Shoreline Master Program contains critical area regulations Article V of this Chapter applicable only in shoreline jurisdiction that provide a level of protection to critical areas assuring no net loss of shoreline ecological functions necessary to sustain shoreline natural resources. (RCW 36.70A.480).

Projects in the shoreline jurisdiction that have been approved through local and state reviews prior to the adoption of this Program are considered accepted. Major changes or new phases of projects that were not included in the originally approved plan will be subject to the policies and regulations of this Program.

#### **16.04.050 Liberal Construction**

- A. As provided for in RCW 90.58.900, the SMA is exempted from the rule of strict construction. The City shall therefore interpret the SMP to give full effect to the objectives and purposes for which it was enacted.

#### **16.04.060 Severability**

- A. Should any section or provision of this SMP be declared invalid, such decision shall not affect the validity of this SMP as a whole.

#### **16.04.070 Effective Date**

- A. The SMP is hereby adopted on the 17 date of June, 2014. This SMP and all amendments thereto shall become effective 14 days after the final approval by Ecology

## **ARTICLE II. ENVIRONMENT DESIGNATIONS**

#### **16.04.100 Environment Designations**

- A. The City has designated shorelines pursuant to chapter 90.58 RCW by defining them, providing criteria for their identification and establishing the shoreline ecological functions to be protected. Specific criteria for the designation of shorelines areas are described in this Article. The SMP classifies Benton City's shoreline into five shoreline environment designations consistent with the purpose and designation criteria as follows:
  - 1. Aquatic
  - 2. Urban Conservancy
  - 3. Agriculture Conservancy
  - 4. Shoreline Residential
  - 5. High Intensity
- B. Official Shoreline Maps
  - 1. Shoreline Area Designations are delineated on a map, hereby incorporated as a part of this Program (Appendix A) that shall be known as the Official Shoreline

Map. The purpose of the Official Shoreline Map is to identify Shoreline Area Designations. Maps indicating the extent of shoreline jurisdiction and shoreline designations are guidance only. They are to be used in conjunction with best available science, field investigations and on-site surveys to accurately establish the location and extent of shoreline jurisdiction when a project is proposed.

C. Unmapped or Undesignated Shorelines

1. All areas meeting the definition of a shoreline of the state or a shoreline of statewide significance, whether mapped or not, are subject to the provisions of this Program. All areas within shorelines that are not mapped and/or designated are automatically assigned Urban Conservancy designation. Within urban growth areas, such shorelines shall be automatically assigned an Urban Conservancy designation until such time that the shoreline area can be re-designated through a formal amendment.

D. Interpretation of Environment Designation Boundaries

1. Whenever existing physical features are inconsistent with boundaries on the Official Shoreline Map, the Administrator shall interpret the boundaries. Appeals of such interpretations may be filed pursuant to Section 16.04.810, Appeals.
2. All shoreline areas waterward of the OHWM shall be designated Aquatic.
3. Only one shoreline area designation shall apply to a given shoreland area.

**16.04.110 Aquatic**

- A. Purpose. The purpose of the "Aquatic" shoreline designation is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark (OHWM).
- B. Designation Criteria. An Aquatic shoreline designation is assigned to lands and waters waterward of the ordinary high-water mark.
- C. Management Policies. In addition to the other applicable policies and regulations of this Program, the following management policies shall apply:
  1. New over-water structures should be allowed only for water-dependent uses, public access, recreation, or ecological restoration.
  2. Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and natural hydrographic conditions.
  3. In-water uses should be allowed where impacts can be mitigated to ensure no net loss of shoreline ecological functions. Permitted in-water uses must be managed to avoid impacts to shoreline ecological functions. Unavoidable impacts must be minimized and mitigated.
  4. On navigable waters or their beds, all uses and developments should be located and designed to:
    - a. minimize interference with surface navigation
    - b. consider impacts to public views
    - c. allow for the safe, unobstructed passage of fish and wildlife, particularly species dependent on migration

5. Multiple or shared use of over-water and water access facilities should be encouraged to reduce the impacts of shoreline development and increase effective use of water resources.
6. Structures and activities permitted should be related in size, form, design, and intensity of use to those permitted in the immediately adjacent upland area. The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.
7. Natural light should be allowed to penetrate to the extent necessary to discourage salmonid predation and to support nearshore habitat unless other illumination is required by state or federal agencies.
8. Shoreline uses, development, activities, and modifications in the Aquatic shoreline designation requiring use of adjacent landside property should be in a shoreline designation that allows that use, development, activity or modification.

#### **16.04.120 Urban Conservancy**

- A. Purpose. The purpose of the "urban conservancy" environment is to protect and restore ecological functions of open space, public owned land, flood plain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.
- B. Designation Criteria. The following criteria are used to consider a Urban Conservancy shoreline designation:
  1. The shoreline is located within the urban growth area boundary or within an unimproved area within the City limits;
  2. The shoreline has moderate to high ecological function with moderate to high opportunity for preservation and low to moderate opportunity for restoration or low to moderate ecological function with moderate to high opportunity for restoration;
  3. The shoreline has potential for public, water-oriented recreation where ecological functions can be maintained or restored; or
  4. The shoreline has high scientific or educational value or unique historic or cultural resources value.
- C. Management Policies. In addition to the other applicable policies and regulations of this Program the following management policies shall apply:
  1. Allowed uses should be those that preserve the natural character of the area and/or promote preservation and restoration within critical areas and public open spaces either directly or over the long term.
  2. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.
  3. Development, when feasible, should be designed to ensure that any necessary shoreline stabilization, flood control measures, native vegetation removal, or other shoreline modifications do not result in a net loss of shoreline ecological function or further degrade other shoreline values

4. Public access and recreational facilities should be promoted.
5. Water-oriented uses should be given priority over non-water-oriented uses

#### **16.04.130 Agriculture Conservancy**

- A. Purpose. The purpose of the "agricultural conservancy" environment is to protect and restore ecological functions of floodway, flood plain and other sensitive lands, maintaining human safety and welfare from flood damages, while allowing a variety of compatible suburban agricultural uses. These systems require that only very low-intensity uses be allowed in order to maintain the flood plain, and ecological functions and ecosystem-wide processes.
- B. Designation Criteria. The following criteria are used to consider an Agriculture Conservancy shoreline designation:
  1. The shoreline is located within the urban growth area boundary and within floodway boundary landward from the Ordinary High Water Mark
  2. The shoreline has moderate to high ecological function with moderate to high opportunity for preservation and low to moderate opportunity for restoration or low to moderate ecological function with moderate to high opportunity for restoration;
  3. The shoreline has existing suburban agricultural uses and potential for additional suburban agricultural uses where ecological functions can be maintained or restored.
- C. Management Policies. In addition to the other applicable policies and regulations of this Program the following management policies shall apply:
  1. Allowed uses should be those that preserve the natural character of the area and/or promote preservation and restoration within critical areas either directly or over the long term.
  2. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.
  3. Development, when feasible, should be designed to ensure that any necessary shoreline stabilization, flood control measures, native vegetation removal, or other shoreline modifications do not result in a net loss of shoreline ecological function or further degrade other shoreline values
  4. In addition to existing agricultural uses, new low intensity agricultural uses should be given priority over other non-water-oriented uses

#### **16.04.140 Shoreline Residential**

- A. Purpose. The purpose of the "Shoreline Residential" designation is to accommodate primarily residential development and appurtenant structures, but to also allow other types of development that are consistent with this chapter. An additional purpose is to provide appropriate public access and recreational uses.
- B. Designation Criteria. Assign a "Shoreline Residential" environment designation to shoreline areas that are:

1. The shoreline has low to moderate ecological function with low to moderate opportunity for restoration
  2. The shoreline contains mostly residential development at urban densities and does not contain resource industries (agriculture, forestry, mining)
  3. The shoreline is planned or platted for residential uses in the comprehensive plan; or
  4. The shoreline has low to moderate potential for low-impact, passive or active water-oriented recreation where ecological functions can be restored.
- C. Management Policies. In addition to the other applicable policies and regulations of this Program the following management policies shall apply:
1. Encourage regulations that ensure no net loss of shoreline ecological functions as a result of new development such as limiting lot coverage, providing adequate setbacks from the shoreline, promoting vegetation conservation, reducing the need for shoreline stabilization and maintaining or improving water quality to ensure no net loss of ecological functions.
  2. The scale and density of new uses and development should be compatible with sustaining shoreline ecological functions and processes, and the existing residential character of the area.
  3. Public access and joint (rather than individual) use of recreational facilities should be promoted.
  4. Access, utilities, and public services to serve proposed development within shorelines should be constructed outside shorelines to the extent feasible, and be the minimum necessary to adequately serve existing needs and planned future development.
  5. Public or private outdoor recreation facilities should be provided with proposals for subdivision development and encouraged with all shoreline development if compatible with the character of the area. Priority should be given first to water-dependent and then to water-enjoyment recreation facilities.
  6. Commercial development should be limited to water-oriented uses. Nonwater-oriented commercial uses should only be allowed as part of mixed-used developments.

**16.04.150 High Intensity**

- A. Purpose. The purpose of the "High Intensity" environment is to provide for higher intensity land uses such as commercial and transportation together with appropriate accessory uses, while protecting the existing ecological functions in areas that have been previously degraded.
- B. Designation Criteria. The following criteria are used to consider a High Intensity shoreline designation:
1. The shoreline is located within the urban growth area boundary or within an improved area within the City limits;



2. The shoreline does not directly border the OHWM or waterbody, and has low to moderate ecological function with low opportunity for preservation and low to moderate opportunity for restoration;
  3. The shoreline currently supports high-intensity uses related to commerce and transportation and is suitable or planned for such uses.
- C. Management Policies. In addition to the other applicable policies and regulations of this Program the following management policies shall apply:
1. Allowed uses should be those that support planned or existing uses.
  2. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.
  3. Considering the fact that the land doesn't directly abut any water body, priorities shall be given to water-dependent, water-related and water-enjoyment uses in order of preference when feasible.
  4. Public access and recreational facilities should be promoted when feasible.
  5. New developments should assure no net loss of ecological functions.

### **ARTICLE III. GENERAL REGULATIONS**

#### **16.04.200 Shoreline Use and Modifications**

- A. Table 16.04.200 (J) indicates which shoreline activities, uses, developments and modifications may be allowed or are prohibited in shoreline jurisdiction within each shoreline environment designation. Activities, uses, developments, and modifications are classified as follows:
1. "Allowed Uses" require a Shoreline Substantial Development Permit or a written Shoreline Exemption.
  2. "Conditional Uses" require a Shoreline Conditional Use Permit per Section 16.04.750.
  3. "Prohibited" activities, uses, developments, and modifications are not allowed and cannot be permitted through a Variance or Shoreline Conditional Use Permit.
  4. General Regulations per Article III of this Chapter and Shoreline Modifications and Uses Regulations per Article IV of this Chapter shall be considered for additional limitations.
- B. Accessory uses shall be subject to the same shoreline permitting process as their primary use.
- C. Where there is a conflict between the chart and the written provisions in this SMP, the written provisions shall control.
- D. Authorized uses and modifications shall be allowed only in shoreline jurisdiction where the underlying zoning allows for it and are subject to the policies and regulations of this SMP.

- E. A use is considered unclassified when it is not listed in the General Regulations (Article III), or in the Shoreline Modifications and Uses Regulations, (Article IV). Any proposed unclassified use may be authorized as a conditional use provided that the applicant can demonstrate consistency with the requirements of this Master Program and the requirements for conditional uses.
- F. If any part of a proposed activity, use, modification or development is not eligible for exemption per Section 16.04.780 (Exemptions from Shoreline Substantial Development Permits), then a Shoreline Substantial Development Permit or Shoreline Conditional Use Permit shall be required for the entire proposed development project.
- G. When a specific use or modification extends into the Aquatic environment and an abutting upland environment without clear separation (e.g., shoreline stabilization), the most restrictive permit process shall apply to that use or modification.
- H. Shoreline and critical areas buffers found in Article V of this Chapter apply to all uses and modifications unless stated otherwise in the regulations.
- I. None of the allowed uses could be conducted in the floodway in any environment designation, except as allowed by Section 16.04.280, Flood Hazard Reduction, and Section 16.04.530, Frequently Flooded Areas.
- J. Shoreline use and modifications matrix:

**Table 16.04.200 (J). Shoreline Use and Modification Matrix**

<b>Abbreviations</b> <b>A = Allowed with Substantial Development Permit; CU = Conditional Use;</b> <b>X= Prohibited; N/A = Not Applicable;</b>					
<b>Use/ Modification</b>	<b>Aquatic</b>	<b>Urban Conservancy</b>	<b>Agriculture Conservancy</b>	<b>Shoreline Residential</b>	<b>High Intensity</b>
Resource Uses					
Agriculture	X	CU	A	CU	X
Mining	X	X	X	X	X
Boating Facilities					
Boat launch (motorized boats)	A	A	X	X	NA
Boat launch (non-motorized boat - canoe / kayak)	A	A	X	A	NA
Docks, Piers and Marinas	X	X	X	X	X
Commercial Development					
Water dependent	A	A	X	X	A
Water-related, Water-enjoyment	CU	A	X	CU	A
Non-water-oriented	X	CU <sup>1</sup>	X	X	A
Dredging Activities					
Dredging	CU	N/A	N/A	N/A	N/A
Dredge Material Disposal	CU <sup>3</sup>	X	X	CU <sup>2</sup>	CU <sup>2</sup>
Dredging & Disposal as part of Ecological	A	A	A	A	A

<b>Abbreviations</b> <b>A = Allowed with Substantial Development Permit; CU = Conditional Use;</b> <b>X= Prohibited; N/A = Not Applicable;</b>  <b>Use/ Modification</b>	Aquatic	Urban Conservancy	Agriculture Conservancy	Shoreline Residential	High Intensity
	Restoration/Enhancement				
Fill and Excavation					
Waterward of OHWM	CU	NA	NA	NA	NA
Other upland fill	X	CU	CU	A	A
In-water Modifications					
Breakwater	X	X	X	X	X
Groins and Weirs	CU	CU	CU	CU	CU
In-stream structures	CU	CU <sup>3</sup>	CU <sup>3</sup>	CU	CU
Recreational Development					
Water-dependent	A	A	CU <sup>4</sup>	A	A
Water-related/enjoyment (trails, accessory buildings)	CU	A	A <sup>4</sup>	A	A
Non-water-oriented	X	CU <sup>1</sup>	CU <sup>1</sup>	CU	A
Residential Development	X	CU <sup>5</sup>	CU <sup>5</sup>	A	CU <sup>1</sup>
Shoreline Habitat and Natural Systems Enhancement Projects	A	A	A	A	A
Shoreline Stabilization and Flood Control					
Flood Control: Modification of existing flood control facilities (Drainage ditches and Levees), including replacement landward of existing location	A	A	A	A	A
Flood Control: New flood control facilities (Dams, Dikes and Levees)	CU	CU <sup>5</sup>	CU <sup>6</sup>	CU	CU
Shoreline Stabilization New: Hard	CU	CU	CU	CU	CU
Shoreline Stabilization New: Soft	A	A	A	A	A
Transportation					
Highways, Arterials, Railroads(parallel to OHWM)	CU	CU	CU	A	A
Secondary/Public Access Roads (parallel to OHWM)	X	A	A	A	A
Roads perpendicular to the OHWM	X	CU	CU	A	A
Bridges (perpendicular to shoreline)	CU	CU	CU	CU	CU
Existing bridges, trails, roads, and parking facilities: improvement or expansion	A	A	A	A	A
New Parking, Accessory <sup>7</sup>	Permitted under the primary use permit process				
New Parking, Primary	X	X	X	X	X
Utility					
Above or under-ground Utilities (parallel or cross the shoreline)	CU	A	A	A	A

<b>Abbreviations</b> <b>A = Allowed with Substantial Development Permit; CU = Conditional Use;</b> <b>X= Prohibited; N/A = Not Applicable;</b>					
<b>Use/ Modification</b>	Aquatic	Urban Conservancy	Agriculture Conservancy	Shoreline Residential	High Intensity
<sup>1</sup> Allowed as part of mixed use <sup>2</sup> Permitted outside of channel migration zones <sup>3</sup> Habitat restoration and/or fish habitat enhance purposes only <sup>4</sup> Low intensity only <sup>5</sup> According to Flood Hazard Reduction section 16.04.270 <sup>6</sup> Only when no other alternatives are available <sup>7</sup> Not allowed within 50 ft of edge of riparian vegetation corridor					

### **16.04.210 Development standards**

- A. To preserve the existing and planned character of the shoreline consistent with the purposes of the shoreline environment designations, development standards are provided in Table 16.04.210 (C). These standards apply to all use and modification unless indicated otherwise. In addition, shoreline developments shall comply with all other dimensional requirements of the Benton City Municipal Code.
- B. When a development or use is proposed that does not comply with the dimensional performance standards of this SMP not otherwise allowed by administrative reduction or administrative modification, such development or use can only be authorized by approval of a Shoreline Variance.
- C. No permit shall be issued for any new or expanded building or structure of more than 35 feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines, except where the SMP does not prohibit the same and then only when overriding considerations of the public interest will be served. Where necessary, the applicant may prepare a view analysis and submit this with the application to document the impact of the view from applicable residences.

**Table 16.04.210 (C). Development Standards**

	Aquatic	Urban Conservancy	Agriculture Conservancy	Shoreline Residential	High Intensity
Building Height: maximum in feet <sup>1</sup>	NA	35 <sup>2</sup>	35 <sup>2</sup>	35	35
Impervious Surface Cover (%)	NA	40	10	30	50
Shoreline buffers	NA	75	75	75	75 <sup>3</sup>
<sup>1</sup> According to SMP 16.04.210 (C) above <sup>2</sup> Construction or reconstruction of residential structures is prohibited on floodways according to BC MC 15.10.330 <sup>3</sup> From the OHWM whether the environment abuts OHWM or not					

#### **16.04.220 Archaeological and Historic Resources**

- A. In all developments, whenever an archaeological area or historic site is discovered by a development in the shoreline area, the developer shall immediately stop the work and notify Benton City, and the Office of Archaeology and Historic Preservation and affected Indian tribes.
- B. Upon receipt of application for a shoreline permit or request for a statement of exemption for development on properties within 500 feet of a site known to contain an historic, cultural or archaeological resource, or upon findings as described in 16.04.220 (A) above, the City shall require a cultural resource site assessment; provided that, the provisions of this section may be waived if the Shoreline Administrator determines that the proposed development activities do not include any ground disturbing activities and will not impact a known historic, cultural or archaeological site. The site assessment shall be conducted by a professional archaeologist or historic preservation professional, as applicable, to determine the presence of significant historic or archaeological resources. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the landowner or responsible party. The applicant shall submit a minimum of five (5) copies of the site assessment to the Shoreline Administrator for distribution to the applicable parties for review.
- C. If the cultural resource site assessment identifies the presence of significant historic or archaeological resources, a Cultural Resource Management Plan (CRMP) shall be prepared by a professional archaeologist or historic preservation professional, as applicable. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the landowner or responsible party. In the preparation of such plans, the professional archaeologist or historic preservation professional shall solicit comments from the Washington State Department of Archaeology and Historic Preservation, and the local tribes (Yakama, Umatilla).

#### **16.04.230 Environmental Protection**

- A. All project proposals, including those for which a Shoreline Substantial Development Permit is not required, shall assure no net loss of shoreline ecological functions by analyzing environmental impacts of the proposal and include measures to mitigate environmental impacts not otherwise avoided or mitigated by compliance with the master program and other applicable regulations. To the extent RCW Chapter 43.21C, the Washington State Environmental Policy Act is applicable; the analysis of such environmental impacts shall be conducted consistent with the rules implementing SEPA, which also address environmental impact.
- B. Applicants shall apply mitigation sequencing within shoreline jurisdiction as provided in Section 16.04.500 (O).
- C. The City shall require mitigation measures and/or permit conditions based on the provisions of this SMP, in order to mitigate adverse impacts. In order to determine acceptable mitigation or permit conditions, the Shoreline Administrator may require the applicant to provide the necessary environmental information and analysis, including a description of existing conditions/ecological functions and anticipated shoreline impacts, along with a mitigation plan outlining how proposed mitigation measures would result in no net loss of shoreline ecological functions.

- D. When compensatory measures are appropriate pursuant to the mitigation priority sequence in Section 16.04.500 (O), preferential consideration shall be given to measures that replace the adversely impacted functions directly and in the immediate vicinity of the adverse impact. However, alternative compensatory mitigation may be authorized within the affected drainage area or watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans, including the Shoreline Restoration Plan, applicable to the area of adverse impact may be authorized. Authorization of compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure no net loss of ecological functions.
- E. In addition to any requirements for specific critical areas found in Critical Areas section, mitigation plans for any adverse impacts on ecological functions resulting from use, activity or development in shoreline jurisdiction, both inside and outside of critical areas, shall address the following:
1. Inventory existing shoreline environment including the physical, chemical and biological elements and provide an assessment of their condition;
  2. A discussion of the project's compliance with mitigation sequencing requirements and remaining unavoidable adverse impacts on the ecological functions;
  3. A discussion of any federal, state, or local special management recommendations which have been developed for critical areas or other species or habitats located on the site;
  4. A discussion of measures to preserve existing habitats and opportunities to restore habitats that were degraded prior to the proposed land use activity;
  5. A discussion of proposed measures which mitigate the adverse impacts of the project to ensure no net loss of shoreline ecological functions;
  6. Scaled drawings of existing and proposed conditions, materials specifications, and a five-year maintenance and monitoring plan, including performance standards;
  7. A discussion of proposed management practices which will protect fish and wildlife habitat both during construction, and after the project site has been fully developed;
  8. Contingency plan if the mitigation fails to meet established success criteria; and
  9. Any additional information necessary to determine the adverse impacts of a proposal and mitigation of the impacts.

#### **16.04.240 Shoreline Vegetation Conservation**

- A. Vegetation conservation standards shall not apply retroactively to existing uses and developments. Vegetation associated with existing structures, uses and developments may be maintained within shoreline jurisdiction as stipulated in the approval documents for the development.
- B. Regulations specifying establishment and management of shoreline buffers are located in the Article V, Critical Areas. Vegetation within shoreline buffers, other

stream buffers, and wetlands and wetland buffers shall be managed consistent with the Article V, Critical Areas.

- C. Vegetation outside of shoreline buffers, other stream buffers, and wetlands and wetland buffers and within shoreline jurisdiction shall be managed according to this Section 16.04.230, Environmental Protection, and any other regulations specific to vegetation management contained in other chapters of this SMP.
- D. Vegetation clearing outside of wetlands and wetland and stream buffers shall be limited to the minimum necessary to accommodate approved shoreline development that is consistent with all other provisions of this SMP. Mitigation sequencing shall be applied so that the design and location of the structure or development minimizes native vegetation removal. Development or uses that require vegetation clearing shall be designed to avoid the removal of native and non-native vegetation, except as part of an effort to remove invasive, non-native vegetation species and replace these with native species.

#### **16.04.250 Water Quality, Stormwater, and Nonpoint Pollution**

- A. The location, design, construction, and management of all shoreline uses and activities shall protect the quality and quantity of surface and groundwater adjacent to the site.
- B. All shoreline development shall comply with the applicable requirements of the latest version of the Washington State Department of Ecology's (Ecology) Stormwater Management Manual for Eastern Washington.
- C. Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all shoreline development.
- D. Potentially harmful materials, including but not limited to oil, chemicals, tires, or hazardous materials, shall not be allowed to enter any body of water or wetland, or to be discharged onto the land. Potentially harmful materials shall be maintained in safe and leak-proof containers.
- E. Herbicides, fungicides, fertilizers, and pesticides shall not be applied within twenty-five (25) feet of a water body, except by a qualified professional in accordance with state and federal laws.
- F. All shoreline development, both during and after construction, shall avoid or minimize significant adverse ecological impacts, including any increase in surface runoff, through control, treatment, and release of surface water runoff so that water quality and quantity are not adversely affected. Control measures include, but are not limited to, low impact development techniques, levees, catch basins or settling ponds, oil interceptor drains, grassy swales, planted buffers, and fugitive dust controls.
- G. New development shall provide stormwater management facilities designed, constructed, and maintained in accordance with the latest version of the Washington State Department of Ecology's (Ecology) Stormwater Management Manual for Eastern Washington, including the use of BMPs. Additionally, new development shall implement low impact development techniques where feasible and necessary to fully implement the core elements of the Surface Water Design Manual.

- H. BMPs for control of erosion and sedimentation shall be implemented for all development in shoreline jurisdiction through a City-approved temporary erosion and sediment control (TESC) plan, in accordance with the latest version of the Ecology's Stormwater Management Manual for Eastern Washington, as adopted by the City.
- I. For development activities with the potential for adverse impacts on water quality or quantity in a stream or fish and wildlife habitat conservation area, a critical area report as prescribed in Article V, Critical Areas, shall be prepared. Such reports should discuss the project's potential to exacerbate water quality parameters which are impaired and for which Total Maximum Daily Loads (TMDLs) for that pollutant have been established, and prescribe any necessary mitigation and monitoring.
- J. All materials that may come in contact with water shall be constructed of materials, such as untreated wood, concrete, approved plastic composites or steel, that will not adversely affect water quality or aquatic plants or animals. Materials used for decking or other structural components shall be approved by applicable state agencies for contact with water to avoid discharge of pollutants from wave splash, rain, or runoff. Wood treated with creosote, copper chromium arsenic, or pentachlorophenol is prohibited in shoreline waterbodies.

#### **16.04.260 Public Access**

- A. Applicants required to provide shoreline public access shall provide physical or visual access, consistent with the City's and other agencies management plans when applicable, unless specifically exempted in this section. Examples of physical and visual access are listed below.
  - 1. Visual Access. Visual public access may consist of view corridors, viewpoints, or other means of visual approach to public waters.
  - 2. Physical Access. Physical public access may consist of a dedication of land or easement and a physical improvement in the form of a walkway, trail, bikeway, park, view platform, or other area serving as a means of physical approach to public waters.
- B. Except as provided in SMP Section 16.04.270 (C) below, shoreline substantial developments and shoreline conditional uses shall provide for safe and convenient public access to and along the shoreline where any of the following conditions are present:
  - 1. The development is proposed by a public entity or on public lands;
  - 2. The nature of the proposed use, activity, or development will likely result in an increased demand for public access to the shoreline;
  - 3. The proposed use, activity, or development is not a water-oriented or other preferred shoreline use, activity or development under the Act, such as a non-water-oriented commercial or recreational use;
  - 4. The proposed use, activity, or development may block or discourage the use of customary and established public access paths, walkways, trails, or corridors between the OHWM and low waters; or



5. The proposed use, activity, or development will interfere with the public use, activity and enjoyment of shoreline areas or waterbodies subject to the public trust doctrine.
- C. Public access provides appropriate mitigation for impacts of a proposed use, activity or development to shoreline resources and values including impacts of over-water structures that reduce access to public aquatic lands
- D. The City may determine that on-site public access is not required where one or more of the following conditions apply, provided such exceptions shall not be used to prevent implementing the access and trail provisions mentioned in the City's and other agencies management plans:
1. Proposed use, activity, or development only involves the construction of four or fewer single-family dwellings;
  2. Proposed use is agricultural/ranching activities;
  3. The nature of the use, activity, or development or the characteristics of the site make public access requirements incompatible due to health, safety, security or impact to the shoreline environmental; the proponent shall carry the burden of demonstrating by substantial evidence the existence of unavoidable or unmitigable threats or hazards to public health, safety, or the environment that would be created or exacerbated by public access upon the site; the City shall determine that other alternatives such as offsite improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access are not feasible
  4. The economic cost of providing for public access upon the site is unreasonably disproportionate to the total long-term economic value of the proposed use, activity, or development;
  5. Safe and convenient public access already exists in the general vicinity of the site, and/or the City and agencies' plans show adequate public access at the property; or
  6. Public access has reasonable potential to threaten or harm the natural functions and native characteristics of the shoreline and/or is deemed detrimental to threatened or endangered species under the Endangered Species Act.
- E. Public access shall be located and designed to respect private property rights, be compatible with the shoreline environment, protect ecological functions and processes, and protect aesthetic values of shoreline, and provide for public safety.
- F. Shared community access may be allowed in addition to access along the shoreline identified in the City and other agencies' plan or for single family subdivisions of 4 or fewer lots, as long as existing public access is not impaired.
- G. General Performance Standards
1. Uses, activities and developments shall not interfere with the regular and established public use.
  2. Shoreline substantial development or conditional uses shall minimize the impact on views of shoreline waterbodies from public land or substantial numbers of residences.

3. Proponents shall include within their shoreline applications an evaluation of a proposed use, activity, or development's likely adverse impact on current public access and future demands for access to the site. Such evaluation shall consider potential alternatives and mitigation measures to further the policies of this SMP and the provisions of this section.
4. The preferred configuration of public access on sites where vegetated open space is provided along the shoreline shall consist of a public pedestrian walkway parallel to the ordinary high water mark of the property. The walkway shall be buffered from sensitive ecological features, may be set back from the water's edge, and may provide limited and controlled access to sensitive features and the water's edge where appropriate. Fencing may be provided to control damage to plants and other sensitive ecological features as appropriate.
5. Public access easements, trails, walkways, and corridors may encroach upon any buffers or setbacks required in Article V, Critical Areas, or under other provisions of this SMP, provided that such encroachment does not conflict with other policies and regulations of this SMP, and that no net loss of ecological function can be achieved. Generally trails should be placed in the outer portion of the buffer with limited and controlled access to the water's edge.
6. Public access facilities shall accommodate persons with disabilities unless determined infeasible by the Shoreline Administrator.

#### H. Trails

1. Existing trails shall be maintained and enhanced.
2. Where public access is to be provided by dedication of public access easements along the OHWM, the minimum width of such easements shall be 10 feet.

#### I. Rights-of-Way, Easements, and Streets for Public Access

1. The City shall maintain public rights of ways or easements as a means of retaining public access on the shoreline. Proposed use, activity or developments shall maintain public access provided by public street ends, public utilities, and rights-of-way.
2. The public easements required pursuant to this section, for the purpose of providing access across or through the site to the OHWM, shall be maintained by the property owner to provide for reasonable and safe public access to the OHWM.

#### J. Signage

1. Signage to be approved by the Shoreline Administrator shall be conspicuously installed along public access easements, trails, walkways, corridors, and other facilities to indicate the public's right of use and the hours of operation. The proponent shall bear the responsibility for establishing and maintaining such signs.
2. The Shoreline Administrator may require the proponent to post signage restricting or controlling the public's access to specific shoreline areas. The

proponent shall bear the responsibility for establishing and maintaining such signage.

#### **16.04.270 Flood Hazard Reduction**

- A. Development in floodplains shall avoid significantly or cumulatively increasing flood hazards. Development shall be consistent with this SMP, as well as applicable guidelines of the Federal Emergency Management Agency and BCMC Chapter 15.10, Flood Damage Protection.
- B. The channel migration zone (CMZ) is considered to be that area of a stream channel which may erode as a result of normal and naturally occurring processes and has been mapped consistent with WAC 173-26-221(3)(b) . Applicants for shoreline development or modification may submit a site-specific channel migration zone study if they believe these conditions do not exist on the subject property and the map is in error. The CMZ study must be prepared consistent with WAC 173-26-221(3)(b), and may include, but is not limited to, historic aerial photographs, topographic mapping, flooding records, and field verification. The CMZ must be prepared by a licensed geologist or engineer with at least five years of applied experience in assessing fluvial geomorphic processes and channel response.
- C. The following uses and activities may be authorized within the CMZ or floodway:
  - 1. New development or redevelopment landward of existing legal structures, such as levees, that prevent active channel movement and flooding.
  - 2. Development of new or expansion or redevelopment of existing bridges, utility lines, public stormwater facilities and outfalls, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate costs. The evaluation of cost differences between options within the CMZ or floodway and outside of the CMZ or floodway shall include the cost of design, permitting, construction and long-term maintenance or repair. Where such structures are allowed, mitigation shall address adversely impacted functions and processes in the affected shoreline.
  - 3. Actions that protect or restore the ecosystem-wide processes or ecological functions or development with a primary purpose of protecting or restoring ecological functions and ecosystem-wide processes.
  - 4. Modifications or additions to an existing nonagricultural legal use, provided that channel migration is not further limited and that the modified or expanded development includes appropriate protection of ecological functions.
  - 5. Repair and maintenance of existing legally established use and developments, provided that channel migration is not further limited, flood hazards to other uses are not increased, and significant adverse ecological impacts are avoided.
  - 6. Existing and ongoing suburban agricultural activities provided that no new restrictions to channel movement are proposed.
- D. Existing structural flood hazard reduction measures, such as berms, may be repaired and maintained as necessary to protect legal uses on the landward side of such structures. Increases in height of an existing levee, with any associated increase in width, that may be needed to prevent a reduction in the authorized level

of protection of existing legal structures and uses shall be considered an element of repair and maintenance.

- E. Flood hazard reduction measures shall not result in channelization of normal stream flows, interfere with natural hydraulic processes such as channel migration, or undermine existing structures or downstream banks.
- F. New development in shoreline jurisdiction, including the subdivision of land, shall not be permitted if it is reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway. New buildable lots shall contain 5,000 square feet or more of buildable land outside the channel migration zone and floodway.
- G. New public and private structural flood hazard reduction measures shall be approved when a scientific and engineering analysis demonstrates the following:
  - 1. that they are necessary to protect existing development;
  - 2. that nonstructural measures, such as setbacks, land use controls, wetland restoration, dike removal, use or structure removal or relocation, biotechnical measures, and stormwater management programs are not feasible; and
  - 3. that adverse impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss.
- H. Flood hazard reduction measures shall be placed landward of associated wetlands and designated shoreline buffers, except for actions that increase ecological functions, such as wetland restoration, or when no other alternative location to reduce flood hazard to existing development is feasible as determined by the Shoreline Administrator.
- I. New public structural flood hazard reduction measures, such as levees, shall dedicate and improve public access pathways unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant adverse ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development.
- J. In those instances where management of vegetation as required by this SMP conflicts with vegetation provisions included in state, federal or other flood hazard agency documents governing City-authorized, legal flood hazard reduction measures, the vegetation requirements of this SMP will not apply. However, the applicant shall submit documentation of these conflicting provisions with any shoreline permit applications, and shall comply with all other provisions of this section and this SMP that are not strictly prohibited by the approving flood hazard agency.
- K. The removal of gravel or other riverbed material for flood management purposes shall be consistent with the Dredging and Dredge Material Disposal section of this SMP and be allowed only after a biological and geo-morphological study shows that extraction has a long-term benefit to flood hazard reduction, and does not result in a net loss of ecological functions.
- L. Roads shall be located outside the floodway, except necessary crossings which shall be placed perpendicular to the waterbody as much as is physically feasible.

New transportation facilities shall be designed so that the effective base flood storage volume of the floodplain is not reduced. The applicant shall provide all necessary studies, reports and engineering analysis which shall be subject to review and modification by the City. If proposed transportation facilities effectively provide flood control, they shall comply with policies and regulations of this section.

## **ARTICLE IV SHORELINE MODIFICATIONS AND USES**

### **16.04.300 Agriculture**

- A. Existing suburban agricultural uses and future suburban agriculture activities as allowed in the Comprehensive Plan and BCMC shall be allowed.
- B. For shorelands used for suburban agricultural practices, new or additional uses, activities, and development that are not existing and ongoing suburban agriculture shall be subject to the following requirements:
  - 1. Such uses, activities, and development shall be allowed or permitted in a manner to ensure maintenance of ecological functions.
  - 2. Vegetation enhancement shall be required where the shoreline has been ecologically degraded.
  - 3. If the new use, activity, or development is more intensive than the existing and ongoing suburban agriculture, no significant vegetation removal, development, or grading shall occur in the shoreline buffer except as necessary to accommodate low-intensity water-dependent uses and public access that sustains ecological functions.
  - 4. New agricultural lands created by diking, draining, or filling wetlands or channel migration zones shall not be allowed.
- C. A Substantial Development Permit shall be required for all new suburban agricultural use and activities in Agriculture Suburban environment designation not specifically exempted by the provisions of RCW 90.58.030(3)(e)(iv). A Conditional Use Permit shall be required for all new agricultural use and activities in Urban Conservancy and Shoreline Residential environment designations.
- D. SMP provisions shall apply in the following cases:
  - 1. New agricultural activities on land not meeting the definition of agricultural land;
  - 2. Expansion of agricultural activities on non-agricultural lands;
  - 3. Conversion of agricultural lands to other uses;
  - 4. Other development on agricultural land that does not meet the definition of agricultural activities; and
  - 5. Agricultural development and uses not specifically exempted by the Act.
- E. New non-agricultural activities proposed on agricultural lands shall be consistent with the environment designation and the Shoreline Use and Modification Matrix (Table 16.04.200 (J)), as well as other applicable shoreline use standards, for example Commercial or Residential.

- F. Agricultural uses and development in support of agricultural uses shall be located and designed to assure no net loss of ecological functions and no significant adverse impact on other shoreline resources and values.
- G. Agricultural uses and activities shall prevent and control erosion of soils and bank materials within shoreline areas. They shall minimize siltation, turbidity, pollution and other environmental degradation of watercourses and wetlands.
- H. Agricultural chemicals, such as fertilizers and pesticides, shall be applied in a manner that prevents their direct runoff into waterbodies, wetlands or aquifer recharge areas, and that prevents the degradation of water quality, and in accordance with state Department of Fish and Wildlife management recommendations and the regulations of the state Department of Agriculture and the U.S. Environmental Protection Agency.
- I. New or redeveloped agricultural activities shall provide a buffer of permanent native vegetation between all cropland or pasture areas and adjacent waters or wetlands pursuant to the critical areas provisions of this SMP. Agricultural uses shall limit the livestock access to shorelines.
- J. Agricultural development shall conform to applicable state and federal policies and regulations.
- K. New agricultural lands created by diking, draining, or filling wetlands or channel migration zones shall not be allowed.

#### **16.04.310 Boating Facilities**

- A. Other than the existing boat launch facility in the park, boating facilities are not allowed except for facilities for non-motorized boating such as paddle boats or electric boats. These are encouraged for recreational purposes where they minimize the adverse impact on the shoreline ecological function.
- B. In-water work shall be scheduled to protect biological productivity (including but not limited to fish runs, spawning, and benthic productivity).
- C. Accessory uses at boating facilities shall be:
  - 1. Limited to water-oriented uses, including uses that provide physical or visual shoreline access for substantial numbers of the general public; and
  - 2. Located as far landward as possible while still serving their intended purposes.
- D. Parking and storage areas shall be landscaped or screened to provide visual and noise buffering between adjacent dissimilar uses or scenic areas.
- E. Boating facilities shall locate where access roads are adequate to handle the traffic generated by the facility and shall be designed so that lawfully existing or planned public shoreline access is not unnecessarily blocked, obstructed nor made dangerous.

#### **16.04.320 Commercial Development**

- A. Water-dependent commercial development shall be given priority over non-water-dependent commercial uses within shoreline environments. Secondly, water-related and water-oriented uses shall be given priority over non-water-oriented commercial uses.

- B. Non-water-oriented commercial uses shall be allowed if they can demonstrate at least one of the following:
  - 1. The commercial use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the objectives of the Act.
  - 2. Navigability is severely limited at the proposed site, including opportunities for water-oriented uses.
  - 3. The commercial use is physically separated from the shoreline by another property, public right-of-way or levee.
  - 4. The commercial use is farther upland than 200 feet from the OHWM; therefore, a water-oriented use is not a viable option.
  - 5. Public access is provided and/or ecological restoration is provided as a public benefit
- C. Non-water-oriented uses, including but not limited to residential uses, may be located within the shoreline with water-oriented commercial uses provided all of the following criteria are met:
  - 1. The mixed-use project includes one or more water-dependent uses.
  - 2. Water-dependent commercial uses as well as other water-oriented commercial uses are given preferential locations along the shoreline.
  - 3. If residential use is proposed, the underlying zoning district permits residential uses together with commercial uses.
  - 4. Public access is provided and/or ecological restoration is provided as a public benefit.
- D. Review Criteria: The City shall utilize the following information in its review of all commercial development applications:
  - 1. Whether there is a water-oriented aspect of the proposed commercial use or activity when it is located within 200 feet of the OHWM;
  - 2. Whether the proposed commercial use is consistent with the Shoreline Use and Modification Matrix (Table 16.04.200 (J));
  - 3. Whether the application has the ability to enhance compatibility with the shoreline environment and adjacent uses;
  - 4. Whether adequate provisions are made for public and private visual and physical shoreline access;
  - 5. Whether the application makes adequate provisions to prevent adverse environmental impacts and provide for shoreline ecological or critical area mitigation, where appropriate.
- E. Commercial development shall be designed and maintained in a manner compatible with the character and features of surrounding areas. The City may prescribe and modify project dimensions, screening standards, setbacks, or operation intensities to achieve this purpose.

- F. Eating and drinking facilities and lodging facilities shall be oriented to provide views to the waterfront when such view is available from the site.
- G. Commercial uses shall provide for public access as a condition of approval, unless such public access is demonstrated by the proponent to be infeasible for the shoreline pursuant to SMP Section 16.04.270, Public Access.
- H. Commercial uses shall provide for suitable measures to rehabilitate and enhance the shoreline ecology as a condition of approval.
- I. Non-water-dependent commercial uses shall not be allowed over water in any shoreline environment except in the limited instances where they are auxiliary to and necessary in support of water-dependent uses.
- J. All commercial loading and service areas shall be located upland or away from the shoreline. Provisions shall be made to screen such areas with walls, fences and landscaping and to minimize aesthetic impacts.
- K. The storage of potentially hazardous or dangerous substances or wastes is prohibited in the floodway or within 200 feet of the OHWM, whichever boundary extends farthest landward.
- L. Development shall be located, designed, and constructed in a manner that assures no net loss of shoreline ecological functions and without significant adverse impacts on shoreline uses, resources and values such as navigation, recreation and public access.

#### **16.04.330 Dredging and Dredge Material Disposal**

- A. Dredging.
  - 1. Non-maintenance dredging shall be avoided where possible. New development should be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging. New dredging shall be permitted only where it is demonstrated that it is essential to the proposed water dependent use, the proposal minimizes the need for new and maintenance dredging and will not result in substantial or ongoing adverse impacts to water quality, fish and wildlife habitat conservation areas and other critical areas, flood holding capacity, natural drainage and water circulation patterns, significant plant communities, prime agricultural land, and public access to shorelines, unless one or more of these impacts cannot be avoided. When such impacts are unavoidable, they shall be minimized and mitigated such that they result in no net loss of shoreline ecological functions.
  - 2. Maintenance dredging of established navigation channels and basins shall be restricted to managing previously dredged and/or existing authorized location, depth and width.
  - 3. Dredging and dredge disposal shall be prohibited on or in archaeological sites that are listed on the National Register of Historic Places and the Washington Heritage Register until such time that they have been reviewed and approved by the appropriate agency.
  - 4. Dredging techniques that cause minimum dispersal and broadcast of bottom material shall be used, and only the amount of dredging necessary shall be permitted.



5. Dredging shall be permitted only:
  - a. For navigation or navigational access;
  - b. In conjunction with a water-dependent use of water bodies or adjacent shorelands;
  - c. As part of an approved habitat improvement project;
  - d. To improve water flow or water quality, provided that all dredged material shall be contained and managed so as to prevent it from re-entering the water; or
  - e. In conjunction with a bridge, navigational structure or wastewater treatment facility for which there is a documented public need and where other feasible sites or routes do not exist.
6. Dredging for fill is prohibited except where the material is necessary for restoration of shoreline ecological functions.

#### B. Dredge Material Disposal

1. Upland dredge material disposal within shoreline jurisdiction is permitted under the following conditions:
  - a. Shoreline ecological functions and processes will be preserved, restored or enhanced, including protection of surface and groundwater; and
  - b. Erosion, sedimentation, floodwaters or runoff will not increase adverse impacts on shoreline ecological functions and processes or property; and
  - c. The site will ultimately be suitable for a use allowed by this SMP.
2. Dredge material disposal shall not occur in wetlands nor within a stream's channel migration zone, except as authorized by Conditional Use Permit as part of a shoreline restoration project.
3. Dredge material disposal within areas assigned an Aquatic environment designation may be approved only when authorized by applicable agencies, which may include the U.S. Army Corps of Engineers pursuant to Section 404 (Clean Water Act) permits, Washington State Department of Fish and Wildlife Hydraulic Project Approval (HPA), and/or the Dredged Material Management Program of the Washington Department of Natural Resources; and when one of the following conditions apply:
  - a. Land disposal is infeasible, less consistent with this SMP, or prohibited by law; or
  - b. Disposal as part of a program to restore or enhance shoreline ecological functions and processes is not feasible.
4. Dredge materials approved for disposal within areas assigned an Aquatic environment designation shall comply with the following conditions:
  - a. Aquatic habitat will be protected, restored, or enhanced;
  - b. Adverse effects on water quality or biologic resources from contaminated materials will be mitigated;

- c. Shifting and dispersal of dredge material will be minimal; and
  - d. Water quality will not be adversely affected.
5. When required by the city's Shoreline Administrator, revegetation of land disposal sites shall occur as soon as feasible in order to retard wind and water erosion and to restore the wildlife habitat value of the site. Native species shall be used in the revegetation.
6. Dredge material disposal operating periods and hours shall be limited to those stipulated by the Washington Department of Fish and Wildlife and hours to 7:00 AM to 5:00 PM Monday through Friday, except in time of emergency as authorized by the Shoreline Administrator. Provisions for buffers at land disposal or transfer sites in order to protect public safety and other lawful interests and to avoid adverse impacts shall be required.
- C. Submittal Requirements: The following information shall be required for all dredging applications:
- 1. A description of the purpose of the proposed dredging and analysis of compliance with the policies and regulations of this SMP.
  - 2. A detailed description of the existing physical character, shoreline geomorphology, and biological resources provided by the area proposed to be dredged, including:
    - a. A site plan map outlining the perimeter of the proposed dredge area. The map must also include the existing bathymetry (water depths that indicate the topography of areas below the OHWM) and have data points at a minimum of 2-foot depth increments.
    - b. A critical areas report.
    - c. A mitigation plan if necessary to address any identified adverse impacts on ecological functions or processes.
    - d. Information on stability of areas adjacent to proposed dredging and spoils disposal areas.
    - e. A detailed description of the physical, chemical and biological characteristics of the dredge materials to be removed, including:
    - f. Physical analysis of material to be dredged (material composition and amount, grain size, organic materials present, source of material, etc.).
    - g. Chemical analysis of material to be dredged (volatile solids, chemical oxygen demand (COD), grease and oil content, mercury, lead and zinc content, etc.).
    - h. Biological analysis of material to be dredged.
    - i. A description of the method of materials removal, including facilities for settlement and movement.
    - j. Dredging procedure, including the length of time it will take to complete dredging, method of dredging, and amount of materials removed.
    - k. Frequency and quantity of project maintenance dredging.

- I. Detailed plans for dredge spoil disposal, including specific land disposal sites and relevant information on the disposal site, including, but not limited to:
  - i. Dredge material disposal area;
  - ii. Physical characteristics including location, topography, existing drainage patterns, surface and ground water;
  - iii. Size and capacity of disposal site;
  - iv. Means of transportation to the disposal site;
  - v. Proposed dewatering and stabilization of dredged material;
  - vi. Methods of controlling erosion and sedimentation; and
  - vii. Future use of the site and conformance with land use policies and regulations.
  - viii. Total estimated initial dredge volume.
  - ix. Plan for disposal of maintenance spoils for at least a 20-year period, if applicable.
  - x. Hydraulic modeling studies sufficient to identify existing geohydraulic patterns and probable effects of dredging.

#### **16.04.340 Fill and Excavation**

- A. Fill waterward of the OHWM, except fill to support ecological restoration, requires a Conditional Use Permit and may be permitted only when:
  1. In conjunction with water-dependent or public access uses allowed by this SMP;
  2. For shoreline stabilization, beach restoration and erosion protection at the city park;
  3. In conjunction with a bridge or transportation facility of statewide significance for which there is a demonstrated public need and where no feasible upland sites, design solutions, or routes exist;
  4. In conjunction with implementation of an interagency environmental clean-up plan to clean up and dispose of contaminated sediments;
  5. Disposal of dredged material considered suitable under, and conducted in accordance with, the Dredged Material Management Program of the Washington Department of Natural Resources; or
  6. In conjunction with any other environmental restoration or enhancement project.
- B. Waterward of the 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 not feasible.
- C. Fill upland and waterward of the OHWM, including in non-watered side channels, shall be permitted only where it is demonstrated that the proposed action will not:
  1. Result in significant ecological damage to water quality, fish, and/or wildlife habitat;

2. Significantly reduce public access to the shoreline or significantly interfere with shoreline recreational uses.
- D. Fill shall be of the minimum amount and extent necessary to accomplish the purpose of the fill.
  - E. Excavation waterward of the OHWM or within wetlands shall be considered dredging for purposes of this Program.
  - F. Fills or excavation shall not be located where shore stabilization will be necessary to protect materials placed or removed. Disturbed areas shall be immediately stabilized and revegetated, as applicable.
  - G. Fills, beach nourishment and excavation shall be designed to blend physically and visually with existing topography whenever possible, so as not to interfere with long term appropriate use including lawful access and enjoyment of scenery.

#### **16.04.350 Groins and Weirs**

- A. Breakwaters shall be prohibited.
- B. New, expanded or replacement groins and weirs shall only be permitted if the applicant demonstrates that the proposed groin or weir will not result in a net loss of shoreline ecological functions, and the structure is necessary for water-dependent uses, public access, shoreline stabilization, or other specific public purposes.
- C. Groins and weirs shall require a Conditional Use Permit.
- D. Groins and weirs shall be located, designed, constructed and operated consistent with mitigation sequencing principles, including avoiding critical areas, as provided in Article V, Critical Areas.

#### **16.04.360 In-Stream Structures**

- A. In-stream structures are those structures placed by humans within a stream or river waterward of the OHWM that either cause or have the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, structures primarily intended for fisheries management, or other purposes. Docks, piers and marinas are not regulated as “in-stream structures” under this section of the SMP. See the Transportation: Trails, Roads, and Parking section and the Utilities section of this SMP for regulations governing road and utility crossings of streams.
- B. General
  1. The location, planning and design of in-stream structures shall be compatible with the following:
    - a. the full range of public interests, demand for public access to shoreline waters; desire for protection from floods; and need for preservation of historical and cultural resources;
    - b. protection and preservation of ecosystem-wide processes and ecological functions, including, but not limited to, fish and wildlife, with special emphasis on protecting and restoring priority habitats and species, and water resources and hydro geological processes.

- C. Structures shall be designed, located, and constructed consistent with mitigation sequencing principles in the Critical Areas Sections of this SMP, and as otherwise limited by floodplain regulations found in the Flood Hazard Reduction and Floodplain Management sections of this SMP.
- D. Structures shall be designed and located to minimize removal of riparian vegetation and, if applicable, to return flow to the stream in as short a distance as possible.
- E. In-stream structures shall provide for adequate upstream and downstream migration of resident fish, as applicable, and shall not adversely affect salmonid fish species or adversely modify salmonid fish habitat, as applicable.
- F. Utilities and transmission lines shall be located so as to minimize obstruction or degradation of views, and comply with applicable provisions of the Utilities section of this SMP.
- G. Mitigation shall be required of the proponent for the loss of ecological functions and processes pursuant to Environmental Protection and Critical Areas Sections of this SMP. No net loss in function, value, or acreage shall occur from such development.

#### **16.04.370 Recreational Development**

##### **A. General Preferences**

1. Recreational uses and facilities shall include features that relate to access, enjoyment, and use of the Benton City shorelines.
2. Both passive and active shoreline recreation uses are allowed consistent with the City's Comprehensive Plan.
3. Water-oriented recreational uses and activities are preferred in shoreline jurisdiction. Water-dependent recreational uses shall be preferred as a first priority and water-related and water-enjoyment recreational uses as a second priority.
4. Existing passive recreational opportunities, including nature appreciation, non-motorized trails, environmental interpretation and native habitat protection, shall be maintained.
5. Preference shall be given to the development and enhancement of public access to the shoreline to increase fishing and other water-related recreational opportunities where feasible.

##### **B. General Performance Standards**

1. The potential adverse impacts of all recreational uses shall be mitigated and adequate provisions for shoreline rehabilitation shall be made part of any proposed recreational use or development to ensure no net loss of shoreline ecological function.
2. Sites with fragile and unique shoreline conditions, such as high-quality wetlands and wildlife habitats, shall be used only for non-intensive recreation activities, such as trails, viewpoints, interpretive signage, and similar passive and low-impact facilities that result in no net loss of shoreline ecological function, and do not require the construction and placement of permanent structures.

3. In approving shoreline recreational developments, the City shall ensure that the development will maintain, enhance, or restore desirable shoreline features including unique and fragile areas, scenic views, and aesthetic values.
- C. Non-motorized boating facilities such as paddle boats or electric boats are encouraged for recreational purposes where they minimize the adverse impact on the shoreline ecological function.
- D. Recreational developments shall provide facilities for non-motorized access to the shoreline such as pedestrian and bicycle paths, and equestrian, as applicable. New motorized vehicle access shall be located and managed to protect riparian, wetlands and shrub steppe habitat functions and value.
- E. Recreational development shall be consistent with provisions of SMP Section 16.04.240, Shoreline Vegetation Conservation and Article V, Critical Areas.
- F. Accessory uses and support facilities such as maintenance facilities, utilities, and other non-water-oriented uses shall be consolidated and located in upland areas outside shoreline, wetland, and riparian buffers unless such facilities, utilities, and uses are allowed in shoreline buffers based on the regulations of this SMP.
- G. Recreational facilities shall make adequate provisions, such as screening, landscaping buffer strips, fences and signs, to prevent trespass upon adjacent properties and to protect the value and enjoyment of adjacent or nearby private properties and natural areas, as applicable.
- H. No recreational buildings or structures shall be built over any natural body of water.
- I. Recreational development shall minimize effective impervious surfaces in shoreline jurisdiction and incorporate low-impact development techniques.

#### **16.04.380 Residential Development**

- A. Single-family residential development is a preferred use when it is developed in a manner consistent with pollution control and preventing damage to the natural environment.
- B. Residential development shall be located and constructed to result in no net loss of shoreline ecological function. No net loss of shoreline ecological functions shall be assured through application of shoreline buffers specified in SMP Section 16.04.550, Fish and Wildlife Habitat Conservation Areas, to avoid future stabilization and other provisions of this SMP related to shoreline stabilization, vegetation management, and on-site sewage disposal.
- C. Lots for residential use shall have a maximum density consistent with the City's Comprehensive Plan.
- D. Accessory uses and structures shall be located outside of the riparian buffer, unless the structure is or supports a water-dependent use.
- E. All residential development shall be located or designed in such a manner as to prevent measurable degradation of water quality from stormwater runoff. Adequate mitigation measures shall be required and implemented where there is the reasonable potential for such adverse effect on water quality.
- F. Applications for new shoreline residences shall ensure that shoreline stabilization and flood control structures are not necessary to protect proposed residences.

- G. New floating residences and over-water residential structures shall be prohibited in shoreline jurisdiction.
- H. New residential development shall connect with sewer systems, when available.
- I. All new residential development shall be consistent with applicable environment designations. All new residential development shall be required to meet the vegetation management provisions contained in SMP Section 16.04.240, Shoreline Vegetation Conservation and SMP Section 16.04.550, Fish and Wildlife Habitat Conservation Areas.

#### **16.04.390 Shoreline Habitat and Natural Systems Enhancement Projects**

- A. Shoreline restoration and enhancement activities designed to restore or enhance shoreline ecological functions and processes and/or shoreline features should be targeted toward meeting the needs of sensitive and/or regionally important plant, fish, and wildlife species, and shall be given priority.
- B. Shoreline restoration, enhancement, and mitigation activities designed to create dynamic and sustainable ecosystems to assist the City in achieving no net loss of shoreline ecological functions are preferred.
- C. Restoration activities shall be carried out in accordance with an approved shoreline restoration plan, and in accordance with the provisions of this SMP.
- D. To the extent possible, restoration, enhancement, and mitigation activities shall be integrated and coordinated with other parallel natural resource management efforts, such as those identified in the shoreline restoration plan.
- E. Habitat and expansion, restoration, and enhancement projects may be permitted subject to required state or federal permits when the applicant has demonstrated that:
  - 1. The project will not adversely impact spawning, nesting, or breeding fish and wildlife habitat conservation areas;
  - 2. Upstream or downstream properties or fish and wildlife habitat conservation areas will not be adversely affected;
  - 3. Water quality will not be degraded;
  - 4. Flood storage capacity will not be degraded; and
  - 5. Impacts to critical areas and buffers will be avoided and where unavoidable, minimized and mitigated
- F. The City shall review the projects for consistency with this SMP in an expeditious manner and shall issue its decision along with any conditions within forty-five (45) days of receiving all materials necessary to review the request for exemption from the applicant (see Exemptions from Shoreline Substantial Development Permits section of this SMP).

#### **16.04.400 Shoreline Stabilization**

- A. Shoreline restoration and enhancement activities designed to restore shoreline ecological functions and processes and/or shoreline features should be targeted toward meeting the needs of sensitive and/or regionally important plant, fish, and wildlife species, and shall be given priority.

- B. New shoreline stabilization for new development is prohibited unless it can be demonstrated by a geotechnical analysis conducted by a qualified engineer or geologist that:
  - 1. The nonstructural shoreline stabilization solutions are not feasible, .
  - 2. Structural stabilization is necessary to provide protection from erosion caused by natural processes such as currents, waves or channel migration and that the erosion is not caused by upland conditions, such as loss of vegetation and drainage
- C. Structural stabilization necessary to protect projects for the restoration of ecological functions or hazardous substance remediation is allowed provided the applicant demonstrates nonstructural measures are infeasible or insufficient.
- D. Proposed new or expanded shoreline stabilization measures must document that alternative solutions are not feasible or do not provide sufficient protection; and be certified by a qualified professional. Alternatives for shoreline stabilization shall be based on the following hierarchy of preference:
  - 1. No action (allow the shoreline to retreat naturally), increase building setbacks, and relocate structures.
  - 2. Stabilization constructed of natural materials incorporating measures such as soft shore protection and bioengineering, including beach nourishment, protective berms, or vegetative stabilization.
  - 3. Soft-shore stabilization, as described above, in combination with rigid works, as described below, constructed as a protective measure.
  - 4. Rigid works constructed of artificial materials such as riprap or concrete.
- E. Land subdivisions and lot line adjustments shall be designed to assure that future development of the newly created lots will not require structural stabilization for subsequent development to occur.
- F. Measures to reduce shoreline erosion are allowed within a channel migration zone or floodway, provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measures do not interfere with fluvial hydrological and geo-morphological processes normally acting in natural conditions, and that the measures include appropriate mitigation of adverse impacts on ecological functions associated with the river or stream.
- G. New or expanded structural shoreline stabilization for existing primary structures, including roads, railroads, and public facilities, etc., is prohibited unless there is conclusive evidence documented by a geotechnical analysis that there is a significant possibility that the structure will be damaged within three (3) years as a result of shoreline erosion caused by wind/wave action or other hydraulic forces, and only when significant adverse impacts are mitigated to ensure no net loss of shoreline ecological functions and/or processes.
- H. Replacement of an existing legally established shoreline stabilization structure with a similar structure is permitted if there is a demonstrated need to protect existing primary uses, structures or public facilities including roads, bridges, railways, irrigation and utility systems from erosion caused by stream undercutting or wave



action. The existing shoreline stabilization structure shall be removed from the shoreline as part of the replacement activity if feasible. Replacement walls or bulkheads shall not encroach waterward of the ordinary high water mark or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. Proposed designs for shore stabilization replacements shall be in accordance with applicable state guidelines and certified by a qualified professional.

- I. Where a geotechnical analysis confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as three (3) years, the analysis may still be used to justify more immediate authorization for shoreline stabilization using bioengineering approaches.
- J. Shoreline stabilization projects that are part of a fish habitat enhancement project meeting the criteria of RCW 77.55.181 are exempt and will be regulated under the state process. Stabilization projects that are not part of such a fish enhancement project will be regulated by this SMP.
- K. Stabilization projects that involve no fill or excavation, or any work at or below the ordinary high water mark (for example, tree planting projects) shall be reviewed by a qualified professional to ensure that the project has been designed using best available science.
- L. Shoreline stabilization projects (requiring fill or excavation, placing objects in the water, or hardening the bank) shall be designed by a qualified professional using best available science. The applicant may be required to have a qualified professional oversee construction or construct the project.
- M. Standards for new stabilization structures when found to be necessary include limiting the size to minimum, using measures to assure no net loss of shoreline ecological functions, using soft approaches, and mitigating for impacts.

#### **16.04.410 Transportation: Trails, Roads, and Parking**

- A. New or expanded motor vehicle transportation facilities shall not be located within shoreline jurisdiction, unless:
  - 1. The proponent demonstrates that no feasible upland alternatives exist;
  - 2. The project represents the minimum development necessary to serve another specific, localized, and permitted shoreline use; or
  - 3. In the case of a water crossing, the proponent demonstrates that the project is necessary to further a substantial public interest.
- B. When new roads or road expansions are unavoidable in shoreline jurisdiction, proposed transportation facilities shall be planned, located, and designed to achieve the following:
  - 1. Meet mitigation sequencing provisions of Section 16.04.500 (O);
  - 2. Avoid adverse impacts on existing or planned water-oriented uses;
  - 3. Set back from the OHWM to allow for a usable shoreline area for vegetation conservation and any preferred shoreline uses unless infeasible;

4. Minimize grading, vegetation clearing, and alterations of the natural topography;  
and
  5. Use BMPs for preventing erosion and degradation of surface water quality.
- C. Improvements to existing motor vehicle facilities shall not interfere with pedestrian and bicycle access, and shall whenever possible, provide for expansion and enhancement of pedestrian and bicycle transportation facilities.
  - D. The development, improvement, and expansion of pedestrian and bicycle transportation facilities are allowed within all environments. Such transportation facilities are a preferred use when they provide public physical and visual access wherever they are compatible with the natural character, resources, and ecology of the shoreline.
  - E. Pedestrian and bicycle transportation facilities shall be designed, located, and constructed consistent with the policies and regulations for public access as provided in SMP Section 16.04.270, Public Access.
  - F. Parking facilities are not a water-dependent use and shall only be permitted in the shoreline jurisdiction when located 50 feet upland of the edge of riparian vegetation corridor and to support an authorized use where it can be demonstrated to the satisfaction of the Shoreline Administrator that there are no feasible alternative locations away from the shoreline. Parking as a primary use shall not be allowed in any shoreline jurisdiction. Accessory parking facilities shall be subject to the same permit type as the primary use.
  - G. Transportation and accessory parking facilities shall be planned to avoid or minimize adverse effects on unique or fragile shoreline features and shall not result in a net loss of shoreline ecological functions or adversely affect existing or planned water-dependent uses. Parking facilities shall be located upland of the principal structure, building, or development they serve, and preferably outside of shoreline jurisdiction, except:
    1. Where the proponent demonstrates that an alternate location would reduce adverse impacts on the shoreline and adjacent uses;
    2. Where another location is not feasible; and/or
    3. Except when Americans with Disability Act (ADA) standards require otherwise.
  - H. In such cases, the applicant shall demonstrate use of measures to reduce adverse impacts of parking facilities in shoreline jurisdiction, such as low impact development techniques, such as permeable surfaces, buffering, or other measures approved by the Shoreline Administrator.
  - I. Parking facilities shall be landscaped in a manner to minimize adverse visual and aesthetic impacts on adjacent shoreline and abutting properties.
  - J. All forms of transportation facilities shall, wherever feasible, consolidate water crossings and make joint use of rights-of-way with existing or planned future primary utility facilities and other transportation facility modalities.
  - K. Improvements to all existing transportation facilities shall provide for the reestablishment and enhancement of natural vegetation along the shoreline when appropriate.

- L. City Shoreline crossings and culverts shall be designed to minimize adverse impacts on riparian and aquatic habitat and shall allow for fish passage. See SMP Section 16.04.550, Fish and Wildlife Habitat Conservation Areas for regulations governing crossings of non-shoreline streams located in shoreline jurisdiction.

#### **16.04.420 Utilities**

- A. Expansion of existing utility facilities within shoreline jurisdiction must demonstrate:
  - 1. The expansion is designed to protect adjacent shorelands from erosion, pollution, or other environmentally detrimental factors during and after construction.
  - 2. The project is planned to fit existing natural topography as much as practical and avoid alteration of the existing natural environment.
  - 3. Debris, overburden, and other construction waste materials shall be disposed of so as to prevent erosion or pollution of a waterbody.
- B. New utility facilities and expansions shall include provisions to control the quantity and quality of surface water runoff to natural waterbodies, using BMPs to retain natural flow rates. A maintenance program to ensure continued proper functioning of such new facilities shall be required.
- C. Applications for installation of utility facilities shall include the following (at a minimum):
  - 1. Reason why the utility facility must be in shoreline jurisdiction;
  - 2. Alternative locations considered and reasons for their elimination;
  - 3. Location of the same, similar, or other utility facilities in the vicinity of the proposed project;
  - 4. Proposed method(s) of construction;
  - 5. Plans for reclamation of areas to be disturbed during construction;
  - 6. Landscape plans;
  - 7. Methods to achieve no net loss of ecological function and minimize clearing of native vegetation; and
  - 8. Consistency with City comprehensive plans for utilities, where such plans exist.
- D. Where feasible, utilities shall be consolidated within a single easement and utilize existing rights-of-way. Any utility located within property owned by the utility which must of necessity cross shoreline jurisdiction shall be designed and operated to provide public access on the right-of-way provided that the city may modify this requirement if it is infeasible because:
  - 1. The public will not be exposed to dangers from the utility equipment; and
  - 2. The utility itself will not be subjected to unusual risks of damage by the public.
  - 3. Alternate methods of providing public access, or specific mitigation such as fencing are not feasible
- E. In areas where utilities must cross shoreline jurisdiction, they shall do so by the most direct route feasible, unless such a route would negatively affect an

environmentally critical area, or obstruct public access to the shoreline. See Section 16.04.550, Fish and Wildlife Habitat Conservation Areas for regulations governing crossings of non-shoreline streams located in shoreline jurisdiction.

- F. Utility facilities shall be designed and located in a manner that protects scenic views and minimizes adverse aesthetic impacts.
- G. New utilities which must be constructed across shoreline jurisdiction in previously undisturbed areas must submit a mitigation plan demonstrating the restoration of the shoreline to at least its existing condition. Upon completion of utility installation or maintenance, any disturbed areas shall be regraded to be compatible with the natural terrain of the area and revegetated with appropriate native plants to prevent erosion.
- H. All underwater pipelines or those paralleling the waterway transporting liquids potentially injurious to aquatic life or water quality shall be prohibited, unless no other alternative exists to serve a public interest. In those limited instances where permitted, shut-off valves shall be provided at both sides of the waterbody except for public sanitary sewers of a gravity or siphon nature. In all cases, no net loss of ecological functions shall be maintained.
- I. Where utilities cannot cross a shoreline waterbody via a bridge or other existing water crossing, the utilities shall evaluate site-specific habitat conditions and demonstrate whether impacts can be mitigated to negatively impact substrate, or whether utilities will need to be bored beneath the waterbody such that the substrate is not disturbed. Construction of pipelines placed under aquatic areas shall be placed in a sleeve to avoid the need for excavation in the event of a failure in the future.
- J. Minor trenching to allow the installation of necessary underground pipes or cables is allowed if no alternative, including boring, is feasible, and if:
  - 1. Impacts on fish and wildlife habitat are avoided to the maximum extent possible.
  - 2. The utility installation shall not increase or decrease the natural rate, extent, or opportunity of channel migration.
  - 3. Appropriate BMPs are employed to prevent water quality impacts or other environmental degradation.
- K. Utility installation and maintenance operations shall be conducted in a manner that does not negatively affect surface water quality or quantity. Applications for new utility projects in shoreline jurisdiction shall include a list of BMPs to protect water quality.

## **ARTICLE V: CRITICAL AREAS**

### **16.04.500 General Provisions**

- A. Purpose.
  - 1. The purpose of the Article is to designate and classify ecologically sensitive and hazardous areas and to protect these areas to achieve no net loss of ecological functions and values, while also allowing for reasonable use of private property.

2. This Article is to implement the goals, policies, guidelines, and requirements of the City of Benton City (City) Comprehensive Plan and the Shoreline Management Act.
3. This Article is intended to protect critical areas located within the shoreline jurisdiction in accordance with the Shoreline Management Act and consistent with the Growth Management Act, and through the application of the most current, accurate, and complete scientific or technical information available, as determined according to 173-26-201(2)(a), and in consultation with state and federal agencies and other qualified professionals.

B. Authority and Applicability.

1. As provided herein, the designated Shoreline Administrator is given the authority to interpret and apply, and the responsibility to enforce this Article to accomplish the stated purpose.
2. The City shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated buffer located within the shoreline jurisdiction, without first assuring compliance with the requirements of this Article.
3. The provisions of this Article shall apply to all lands, all land uses and development activities, and all structure and facilities in the City's shoreline jurisdiction that are also identified as critical areas and/or buffers according to this Article, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the City. No person, company, agency, or applicant shall alter a critical area or buffer located within the shoreline jurisdiction except as consistent with the purposes and requirements of this Article. When a critical area buffer is located outside the shoreline jurisdiction, the BCMC 18.08 critical area regulations should apply.
4. Approval of a permit or development proposal pursuant to the provisions of this Article does not discharge the obligation of the applicant to comply with the provision of the Article.

C. Relationship to other regulations.

1. These critical area regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as locally adopted and all other regulations of this Shoreline Master Program as applicable.
2. Any individual critical area adjoined by another type of critical area shall meet the requirements that provide the most protection to the critical areas involved. When any provision of this Article or any existing regulation, easement, covenant, or deed restriction, conflicts with this Chapter, that which provides more protection to the critical areas shall apply.
3. Compliance with the provisions of the Article does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, HPA permits, Army Corps of Engineers Section 404 permits, NPDES permits). The applicant is responsible for complying with these requirements, apart from the process established in this Article. Where

applicable, the Shoreline Administrator will encourage use of information such as permit applications to other agencies or special studies prepared in response to other regulatory requirements to support required documentation submitted for critical areas review.

D. Administrative procedures.

1. The administrative procedures followed during the critical area review process shall conform to the standards and requirements of this Article (and Article VII (Administration and Enforcement)). This shall include, but not be limited to timing and appeals associated with applications covered by this Chapter.

E. Interpretation.

1. In the interpretation and application of this ordinance, the provision of this Article shall be considered to be the minimum requirements necessary, shall be liberally construed to serve the purpose of this ordinance, and shall be deemed to neither limit nor repeal any other provision under state statute.

F. Jurisdiction – Critical areas.

1. The City shall regulate all uses within shoreline jurisdiction that are likely to affect, one or more critical areas, consistent with the most current, accurate, and complete scientific and technical information available and the provisions herein.
2. Critical areas regulated in Benton City's shoreline jurisdiction include:
  - a. Wetlands
  - b. Critical aquifer recharge areas
  - c. Frequently flooded areas
  - d. Geologically hazardous areas
  - e. Fish and wildlife habitat conservation areas
3. All areas within the City's shoreline jurisdiction meeting the definition of one or more critical area, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this Article.

G. Protection of critical areas.

1. Any action taken pursuant to this Article shall result in equivalent or greater functions and values of the critical areas associated with the proposed action, as determined by the most current, applicable, and complete scientific and technical information available. All actions and developments shall be designed and constructed in accordance with Mitigation sequencing requirements in Section 16.04.500 (O) to avoid, minimize and restore all adverse impacts. Applications must first demonstrate an inability to avoid or reduce impacts, before restoration and compensation of impacts will be allowed. No activity or use shall be allowed that results in a net loss of the ecological functions of critical areas.

H. Authorizations Required.

1. The City shall not grant any approval or permission to alter the condition of any land, water or vegetation, or to construct or alter any structure or improvement located within a designated critical area located within the shoreline jurisdiction,

or that may affect a designated critical area and its buffers located within the shoreline jurisdiction, without fulfillment of the requirements of this Article.

I. Scientific and technical information.

1. The most current, accurate, and complete scientific and technical information available has been used consistent with the requirements established in WAC 173-26-201(2)(a). Critical area reports must be based upon the best available science and decisions to alter critical areas must give special consideration to conservation or protection measure necessary to preserve or enhance anadromous fish and their habitat.

J. Allowed activities.

1. Process. The Shoreline Administrator shall allow activities that are verified to comply with this Article. Documentation of allowed activities shall be maintained on file at the City. Allowed uses and activities involving developments within shoreline, that are not exempted under Section 16.04.780, shall require shoreline permits pursuant to Articles III and VII.
2. Allowed activities shall avoid impacts to critical areas. All allowed activities shall use reasonable methods to avoid potential impacts to critical areas, using best management practices that result in the least amount of impact to the critical areas where practicable. Designation as an allowed activity does not give permission to degrade a critical area or ignore risk from natural hazards. Best management practices shall be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The City shall observe the use of best management practices to ensure that the activity does not result in degradation to the critical area. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense.
3. Allowed activities in all critical areas. The following development, activities, and associated uses are allowed in the critical areas provided that they are otherwise consistent with the provisions of other local, state and federal laws and requirements:
  - a. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. The person or agency undertaking such action shall notify the City within one (1) working day following commencement of the emergency activity. Within thirty (30) days, the Shoreline Administrator shall determine if the action taken was within the scope of the emergency actions allowed in this Subsection. If the Shoreline Administrator determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions of Section 16.04.500 (R), Unauthorized critical area alteration and enforcement, shall apply.
  - b. After the emergency, the person or agency undertaking the action shall fully restore and/or mitigate any impacts to the critical area and buffers resulting from the emergency action in accordance with the report or other applicable information and mitigation plan to achieve no net loss of ecological function.

The person or agency undertaking the action shall apply for review, and the alteration, report or other applicable information, and mitigation plan shall be reviewed by the City in accordance with the review procedures contained herein. Restoration and/or mitigation activities must be initiated within one (1) year of the date of the emergency, and completed in a timely manner.

- c. Activities within the improved right-of-way. Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a City authorized private roadway except those activities that alter a wetland or watercourse, such as culverts or bridges, or results in the transport of sediment or increased stormwater, or otherwise result in a net loss of ecological function;
  - d. Chemical applications. The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary, provided that their use shall be conducted in accordance with applicable state and federal law and achieve no net loss of ecological function.;<sup>1</sup>
4. Allowed Activities in Wetlands. The activities listed below are allowed in wetlands. These activities do not require submission of a critical area report, except where such activities would result in a net loss of ecological functions of a wetland or wetland buffer, and would require associated mitigation to meet no net loss of ecological function requirement. These activities include:
- a. Conservation or preservation of soil, water, vegetation, fish, and/or other wildlife that does not entail changing the structure or functions of the existing wetland.
  - b. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.
  - c. Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer, provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column will be disturbed.
  - d. Enhancement of a wetland through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. All removed plant

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<sup>1</sup> More information on how to protect critical aquifer recharge areas can be found in Department of Ecology's "Critical Aquifer Recharge Areas: Guidance Document", Publication 05-10-028, March 2005.



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

- e. Educational and scientific research activities
  - f. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, provided that the maintenance or repair does not expand the footprint or use of the facility or right-of-way.
5. Allowed Uses in Wetland Buffer. In addition to the uses allowed in wetlands per Section 16.04.500 (J)(4), Allowed Uses in Wetlands, the following uses may also be allowed within a wetland buffer in accordance with the review and permit procedures of this Article, provided they are not prohibited by any other applicable law and they are conducted in a manner that does not result in a net loss of ecological function to the buffer and adjacent wetland:
- a. Passive recreation. Passive recreation facilities designed and in accordance with an approved critical area report, including:
  - b. Development of walkways and trails, provided that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent (25%) of the wetland buffer area, and located to avoid removal of native vegetation. They should be limited to pervious surfaces no more than five (5) feet in width for pedestrian use only. Raised boardwalks utilizing non-treated pilings may be acceptable.
  - c. Wildlife-viewing structures.
  - d. Stormwater management facilities. Stormwater management facilities are limited to stormwater dispersion outfalls and bioswales. They may be allowed within the outer twenty-five percent (25%) of the buffer of Category III or IV wetlands only, provided that:
  - e. No other location is feasible; and
  - f. The location of such facilities will not cause a net loss of ecological functions of the wetland;
  - g. Stormwater management facilities are not allowed in buffers of Category I or II wetlands.
  - h. Non-Conforming Uses. Repair and maintenance of non-conforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity.
- K. General review process.
- 1. The City review shall consist of the following:
    - a. Verify the information submitted by the applicant for the applicable permit;
    - b. Evaluate the project area and vicinity for critical areas;

- c. For wetland, geologically hazardous and/or fish and wildlife habitat conservation areas the City shall require that boundaries be verified and mapped by a qualified professional, and such boundaries be submitted to the City as part of the application for the applicable permit if the project is:
    - i. Within 200 feet of a wetland or fish and wildlife critical area; and
    - ii. Will not be receiving a no impact-waiver as provided in Section 16.04.500 (K)(2) below.
    - iii. The scale of the boundary information shall be the same as the City maps.
  - d. Determine whether the proposed project is likely to cause a net loss of ecological functions of critical areas; and
  - e. Determine if the proposed project adequately addresses the impacts and avoids impacts to the critical area associated with the project.
2. Critical areas present, but no impact – waiver. If the Shoreline Administrator determines that there are critical areas within or adjacent to the project area, but that the proposed activity is unlikely to cause net loss of ecological functions of the critical area, the Shoreline Administrator may waive the requirement for a report or other applicable information. A waiver may be granted if there is substantial evidence that all of the following requirement will be met:
- a. There will be no alteration of the critical area or buffer;
  - b. The development proposal will not impact the critical area in a manner contrary to the purpose, intent, and requirements of this Article; and
  - c. The proposal is consistent with other applicable regulations and standards.
- A summary of this analysis and the findings shall be included in any staff report or decision on the underlying permit.
3. Critical Areas Present and Potential Impact Likely. If the Shoreline Administrator determines that the proposed project is within, adjacent to, or is likely to impact the critical area, the Shoreline Administrator shall:
- a. Notify the applicant that a critical area report or other applicable information must be submitted prior to further review of the project, and indicate each of the critical area types that should be addressed;
  - b. Require a critical area report or other applicable information from the applicant that has been prepared by a qualified professional;
  - c. Review and evaluate the critical area report and other applicable information to determine whether the development proposal conforms to the purpose and performance standards of this Article;
  - d. Assess potential impacts to the critical area and determine if they are necessary and unavoidable;
  - e. Determine if any mitigation proposed by the applicant is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of this Article; and

- f. A summary of this analysis and the findings shall be included in any decision on the underlying permit(s). Critical area review findings may result in: a) no adverse impacts to critical area(s), b) list of applicable critical area(s) protection conditions for the underlying permit(s), or c) denial of permit based upon unavoidable impacts to critical area(s) functions and values.
- L. Wetland, geologically hazardous and habitat conservation areas – General report requirements.
1. Prepared by qualified professional. If required by Section 16.04.500 (K)(3), the applicant shall submit a report prepared by a qualified professional as defined herein.
  2. Incorporating current scientific and technical information. The report shall use scientifically valid methods and studies in the analysis of data and field reconnaissance, per Section 16.04.500 (I), Scientific and Technical Information, and reference the source of science used. The report shall evaluate the proposal and all probable impacts to critical areas in accordance with the provisions of this Article.
  3. Minimum report contents. At a minimum, the report shall contain the following:
    - a. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the critical area report; a description of the proposal, and identification of the permit requested;
    - b. A copy of the site plan for the development proposal showing:
      - i. Identified critical areas, buffers, and the development proposal with dimensions;
      - ii. Limits of any areas to be cleared; and
      - iii. A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations, consistent with the current edition of the Benton City Design Standards; including estimated areas of intrusion into the buffers of any critical areas.
    - c. The names and professional qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
    - d. Identification and characterization of all critical areas, wetlands, water bodies, shorelines, floodplains, and buffers on or adjacent to the proposed project area. For areas off site of the project site, estimate conditions within 200 feet of the project boundaries using the best available information.
    - e. A statement specifying the accuracy of the report, and all assumptions made and relied upon;
    - f. An assessment of the probable cumulative impacts to critical areas and buffers resulting from development of the site and the proposed development;
    - g. An analysis of site development alternatives;

- h. A description of reasonable efforts made to apply mitigation sequencing pursuant to Section 16.04.500 (O), Mitigation Sequencing, to avoid, minimize, and mitigate impacts to critical areas;
  - i. Plans for adequate mitigation, as needed, to offset any impacts, in accordance with Section 16.04.500 (N) through (P) including, but not limited to:
    - i. The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and
    - ii. The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment;
    - iii. A discussion of the performance standards applicable to the critical area and proposed activity; and
    - iv. Financial guarantees to ensure compliance, if applicable.
- M. Wetland, geologically hazardous and habitat conservation areas – Modifications to report requirements.
- 1. Limitations to study area. The Shoreline Administrator may limit the required geographic area of the report as appropriate if:
    - a. The applicant, with assistance from the City, cannot obtain permission to access properties adjacent to the project area; or
    - b. The proposed activity will affect only a limited part of the subject site.
  - 2. Critical Areas Present and Potential Impact Likely. If the Shoreline Administrator determines that the proposed project is within, adjacent to, or is likely to impact a critical area, the Shoreline Administrator shall:
    - a. Notify the applicant that a critical area report or other applicable information must be submitted prior to further review of the project, and indicate each of the critical area types that should be addressed;
    - b. Require a critical area report or other applicable information from the applicant that has been prepared by a qualified professional;
    - c. Review and evaluate the critical area report and other applicable information to determine whether the development proposal conforms to the purpose and performance standards of this Article;
    - d. Assess potential impacts to the critical area and determine if they are necessary and unavoidable;
    - e. Determine if any mitigation proposed by the applicant is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of this Article; and
    - f. A summary of this analysis and the findings shall be included in any decision on the underlying permit(s). Critical area review findings may result in:
      - i. No adverse impacts to critical area(s);

- ii. List of applicable critical area(s) protection conditions for the underlying permit(s); and
- iii. Denial of permit based upon unavoidable impacts to critical area(s) functions and values.

N. Mitigation requirements.

1. The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas. Unless otherwise provided in this Article, if alteration to the critical area is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a development proposal or alteration shall be mitigated in accordance with the critical area report and SEPA documents.
2. Mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.
3. Mitigation shall not be implemented until a) after City receipt of a report or other applicable information that includes a mitigation plan, and mitigation shall be in accordance with the provisions of the report or other applicable information; and b) city approval of the underlying permit(s).

O. Mitigation sequencing.

1. Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following order of preference:
  - a. Avoiding the impact altogether by not taking a certain action or parts of an action.
  - b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts.
  - c. Rectifying the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project.
  - d. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods.
  - e. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action.
  - f. Compensating for the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments.
  - g. Monitoring the hazard or other required mitigation and taking remedial action when necessary.

Mitigation for individual actions may include a combination of the above measures.

P. Mitigation plan requirements.

1. When mitigation is required, the applicant shall submit to the City a mitigation plan as part of the critical area report or other applicable information. The mitigation plan shall include:
  - a. Environmental goals and objectives. The mitigation plan shall include a written report identifying environmental goals and objectives of the compensation proposed and including:
    - i. A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area;
    - ii. A review of the most current, accurate, and complete scientific and technical information available supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed; and
    - iii. An analysis of the likelihood of success of the compensation project.
  - b. Performance standards. The mitigation plan shall address the applicable performance standards identified in this Article.
  - c. Detailed construction plans. The mitigation plan shall include written specifications and descriptions of the mitigation proposed, such as:
    - i. The proposed construction sequence, timing, and duration;
    - ii. Grading and excavation details;
    - iii. Erosion and sediment control features;
    - iv. A vegetation planting plan specifying plant species, quantities, locations, size, spacing, and density; and
    - v. Measures to protect and maintain plants until established.
    - vi. These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentages and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.
  - d. Monitoring program. The mitigation plan shall include a program for monitoring construction of the compensation project, and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring in years 1, 3 and 5 after site construction, and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. At a minimum, a monitoring report shall be

submitted to document mitigation performance in year 5 after site construction.

- e. Contingency plan. The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.
- f. Financial guarantees. The mitigation plan shall include financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures shall be posted in accordance with Section 16.04.500 (U).

Q. Innovative mitigation.

- 1. The City may encourage and facilitate innovative mitigation projects. Advance mitigation or mitigation banking are examples of alternative mitigation projects allowed under the provisions of this Section where one or more applicants, or an organization with demonstrated capability, may undertake a mitigation project together if it is demonstrated that all the following circumstances exist:
  - a. Creation or enhancement of a larger system of critical areas and open spaces is preferable to the preservation of many individual habitat areas;
  - b. The group demonstrates the organizational and fiscal capability to act cooperatively;
  - c. The group demonstrates that long-term management of the habitat area will be provided; and,
  - d. There is a clear potential for success of the proposed mitigation at the identified mitigation site.
- 2. Conducting mitigation as part of a cooperative process does not reduce or eliminate the required replacement ratios.

R. Unauthorized critical area alterations and enforcement.

- 1. When a critical area or its buffer has been altered in violation of this Article, all ongoing development work shall cease and the critical area shall be restored. The City shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation, replacement or where determined appropriate by the Shoreline Administrator, mitigation measures at the owner's or other responsible party's expense to compensate for violation of provisions of the Article and other applicable City code governing the underlying permit(s). Administrative procedures including but not limited to review and appeal of City actions related to unauthorized critical area alterations see Article VII, Administration and Enforcement.
- 2. Restoration/mitigation plan required. All development work shall remain stopped until a restoration/mitigation plan is prepared and approved by City. Such a plan shall be prepared by a qualified professional and shall describe how the actions proposed meet the minimum requirements described in Subsection C and/or mitigation requirements outlined in Section 16.04.500 (N) through (P), if mitigation is determined to be appropriate by the Shoreline

Administrator. The Shoreline Administrator shall, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

3. Minimum performance standards for restoration or mitigation.
  - a. For alterations to critical aquifer recharge areas, frequently flooded areas, wetlands, and habitat conservation areas the following minimum performance standards shall be met for the restoration or mitigation of impacts to a critical area, provided that if the violator can demonstrate in a restoration/mitigation plan that greater functional and habitat values can be obtained, these standards may be modified by the Mayor:
    - i. The historic structural and functional values shall be restored, including water quality and habitat functions;
    - ii. The historic soil types and configuration shall be replicated;
    - iii. The critical area and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities; and
    - iv. The historic functions and values should be replicated at the location of the alteration.
  - b. Information demonstrating compliance with other applicable provisions of this Chapter shall be submitted to the Shoreline Administrator.
  - c. For alterations to flood and geological hazards, the following minimum performance standards shall be met for the restoration of a critical area, provided that, if the violator can demonstrate that greater safety can be obtained, these standards may be modified:
    - i. The hazard shall be reduced to a level equal to, or less than, the pre-development hazard;
    - ii. Any risk of personal injury resulting from the alteration shall be eliminated or minimized; and
    - iii. The hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.

S. Critical area markers and signs.

1. The critical area or buffer shall be identified with temporary signs prior to any site alteration. Such temporary signs may be replaced with permanent signs, as determined appropriate by the Shoreline Administrator.

T. Bonds to ensure mitigation, maintenance, and monitoring

1. Mitigation required pursuant to a development proposal should be completed prior to City final permit approval. When it is not feasible for mitigation to be completed prior to City final permit approval, such as final plat approval or final building inspection, the City shall require the applicant to post a performance bond in a form and amount deemed acceptable by the City.
2. The bond shall be in the amount of one hundred and twenty-five percent (125%) of the estimated cost of the uncompleted actions or the estimated cost



of restoring the functions and values of the critical area that is at risk, whichever is greater.

3. The performance bonds shall remain in effect until the City determines, in writing, that the standards bonded for have been met. Bonds shall be held by the City for a minimum of five (5) years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.
4. Depletion, failure, or collection of bonds funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.
5. Public development proposals shall be relieved from having to comply with the bonding requirements of this Section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.
6. Any failure to satisfy critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within thirty (30) days after it is due or comply with other provisions of a mitigation plan shall constitute a default, and the City may demand payment of any financial guarantees or require other action authorized by the City code or any other law.
7. Any funds recovered pursuant to this Section shall be used to complete the required mitigation.

U. Critical area inspections.

1. Reasonable access to the site shall be provided to the City, state, and federal agency review staff for the purposes of inspections during any proposal review, restoration, emergency action, or monitoring period. Additionally, the City or its agent shall have reasonable access to the site for completing necessary remediation work in the event of noncompliance. The Shoreline Administrator shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.

**16.04.510 Wetlands**

A. Purpose.

1. The purposes of this Article are to:
  - a. Recognize and protect the beneficial functions performed by many wetlands, which include, but are not limited to, providing food, breeding, nesting and/or rearing habitat for fish and wildlife; recharging and discharging ground water; contributing to stream flow during low flow periods; stabilizing stream banks and shorelines; storing storm and flood waters to reduce flooding and erosion; and improving water quality through biofiltration, adsorption, and retention and transformation of sediments, nutrients, and toxicants.
  - b. Regulate land use to avoid adverse effects on wetlands and achieve no net loss to the functions and values of wetlands throughout Benton City.
  - c. Establish review procedures for development proposals in and adjacent to wetlands.

B. Identification and Rating.

1. Identification and Delineation. Wetlands shall be identified and delineated by a qualified wetland professional in accordance with WAC 173-22-035 and designated based on the definitions, methods and standards set forth in the currently approved Federal Wetland Delineation Manual and supplements. Wetland delineations are valid for five years; after such date the City may determine whether a revision or additional assessment is necessary.
2. Rating. Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the *Washington State Wetland Rating System for Eastern Washington* (Ecology Publication [#14-06-030](#), or as revised proved by Ecology), which contains the definitions and methods for determining whether the criteria below are met.
  - a. Wetland Rating Classes shall be as follows:
    - i. Category I Wetlands: Those wetlands scoring a “Category I” rating under the Washington State Department of Ecology (Ecology) Washington State Wetlands Rating System for Eastern Washington Publication [#14-06-030](#), as may be amended in the future (hereinafter referred to as the Ecology Wetlands Rating System);
    - ii. Category II Wetlands: Those wetlands scoring a “Category II” rating under the Ecology Wetlands Rating System;
    - iii. Category III Wetlands: Those wetlands scoring a “Category III” rating under the Ecology Wetlands Rating System; and
    - iv. Category IV Wetlands: Those wetlands scoring a “Category IV” rating under the Ecology Wetlands Rating System.
3. Illegal modifications. Wetland rating categories shall not change due to illegal modifications made by the applicant or with the applicant’s knowledge.

C. Subdivisions in Wetlands.

The subdivision and/or short subdivision of land in wetlands and associated buffers are subject to the following:

1. Land that is located wholly within a wetland or its buffer may not be subdivided.
2. Land that is located partially within a wetland or its buffer may be subdivided provided that an accessible and contiguous portion of each new lot is:
  - a. Located outside of the wetland and its buffer; and
  - b. Meets the minimum lot size requirements of BCMC Titles 17 and 20.

D. Wetland Buffers.

1. Buffer Requirements.
  - a. The standard buffer widths in Table 16.04.510 (E)(1)-2 have been established in accordance with the most current, accurate, and complete scientific and technical information available. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington state wetland rating system for Eastern Washington.

- b. Wetland buffer zones shall be required for all regulated activities adjacent to regulated wetlands. Any wetland created, restored or enhanced as compensation for approved wetland alterations shall also include the standard buffer required for the category of the created, restored or enhanced wetland.
- c. Buffers shall be determined by a qualified professional. Buffers shall not include areas that are functionally and effectively disconnected from the wetland by a road or other substantially developed surface of sufficient width to functionally disrupt ecological functions..
- d. Standard buffer widths. The standard buffer widths are based on wetland category, intensity of impacts, and wetland functions or special characteristics. The buffer is to be vegetated with native plant communities that are appropriate for the site conditions. If vegetation in the buffer is disturbed (grazed or mowed), applicants planning changes to land that will increase impacts to wetlands need to rehabilitate the buffer with native plant communities that are appropriate for the site conditions. The width of the buffer is measured in horizontal distance.
- e. Measurement of wetland buffers. All buffers shall be measured from the wetland boundary as surveyed in the field. The width of the wetland buffer shall be determined according to the proposed land use (Table 16.04.510 (E)(1)-1) and wetland category (Table 16.04.510 (E)(1)-2).

**Table 16.04.510 (E)(1)-1. Land Use Intensity Table**

Level of Impact from Proposed Change in Land Use	Types of Land Use Based on Common Zoning Designations
High	<ul style="list-style-type: none"> <li>• Commercial</li> <li>• Urban</li> <li>• Industrial</li> <li>• Institutional</li> <li>• Retail sales</li> <li>• Residential (more than 1 unit/acre)</li> <li>• High-intensity recreation (golf courses, ball fields, etc.)</li> </ul>
Moderate	<ul style="list-style-type: none"> <li>• Residential (1 unit/acre or less)</li> <li>• Moderate-intensity open space (parks with biking, jogging, etc.)</li> <li>• Paved driveways and gravel driveways serving 3 or more residences</li> <li>• Paved trails</li> </ul>
Low	<ul style="list-style-type: none"> <li>• Low-intensity open space (hiking, bird-watching, preservation of natural resources, etc.)</li> <li>• Timber management</li> <li>• Gravel driveways serving 2 or fewer residences</li> <li>• Unpaved trails</li> <li>• Utility corridor without a maintenance road and little or no vegetation management.</li> </ul>

**Table 16.04.510 (E)(1)-2. Wetland Buffer Widths**

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use	Other Measures Recommended for Protection
<b>Category IV Wetlands (For wetlands scoring less than 16 points for all functions)</b>		
Score for all 3 basic functions is less than 16 points	Low – 25 ft Moderate – 40 ft High – 50 ft	No recommendations at this time
<b>Category III Wetlands (For wetlands scoring 16-18 points or more for all functions)</b>		
Moderate level of function for habitat (score for habitat 5-7 points) *if wetland scores 8-9 points, see Category II wetland buffers	Low – 75ft Moderate – 110ft High – 150 ft	No recommendations at this time
Score for habitat 3-4 points	Low – 40 ft Moderate – 60 ft High – 80 ft	No recommendations at this time
<b>Category II Wetlands (For wetlands that score 19-21 points or more for all functions or having the “Special Characteristics” identified in the rating system)</b>		
High level of function for habitat (score for habitat 8-9 points)	Low – 100 ft Moderate – 150 ft High – 200 ft <sup>2</sup>	Maintain connections to other habitat areas.
Moderate level of function for habitat (score for habitat 5-7 points)	Low – 75ft Moderate – 110ft High – 150 ft	No recommendations at this time
High level of function for water quality improvement and low for habitat (score for water quality 8-9 points; habitat less than 5 points)	Low – 50 ft Moderate – 75 ft High – 100 ft	No additional surface discharges of untreated runoff
Vernal pool	Low – 100 ft Moderate – 150 ft High – 200 ft  OR  Develop a regional plan to protect the most important vernal pool complexes – buffers of vernal pools outside protection zones can then be reduced to:  Low – 40 ft Moderate - 60 ft High – 80 ft	No intensive grazing or tilling of wetland

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use	Other Measures Recommended for Protection
Riparian forest	Buffer width to be based on score for habitat functions or water quality functions	Riparian forest wetlands need to be protected at a watershed or subbasin scale  Other protection based on needs to protect habitat and/or water quality functions
Not meeting above characteristic	Low – 50 ft Moderate – 75 ft High – 100 ft	No recommendations at this time
<b><i>Category I Wetlands (For wetlands that score 22 points or more for all functions or having the “Special Characteristics” identified in the rating system)</i></b>		
Wetlands of high conservation value	Low – 125 ft Moderate – 190 ft High – 250 ft	No additional surface discharges to wetland or its tributaries. No septic systems within 300 ft of wetland. Restore degraded parts of buffer.
Bogs	Low – 125 ft Moderate – 190 ft High – 250 ft	No additional surface discharges to wetland or its tributaries. Restore degraded parts of buffer.
Alkali	Low – 100 ft Moderate – 150 ft High – 200 ft	No additional surface water discharges to wetland or its tributaries  Restore degraded parts of buffer
Forested	Buffer width based on score for habitat functions or water quality functions	If forested wetland scores high for habitat, need to maintain connections to other habitat areas.
High level of function for habitat (score for habitat 8-9 points)	Low – 100 ft Moderate – 150 ft High – 200 ft	Restore degraded parts of buffer. Maintain connections to other habitat areas
Moderate level of function for habitat (score for habitat 5-7 points)	Low – 75ft Moderate – 110ft High – 150 ft	No recommendations at this time
High level of function for water quality improvement (8-9 points) and low for habitat (less than 5-points)	Low – 50 ft Moderate – 75 ft High – 100 ft	No additional surface discharges of untreated runoff

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use	Other Measures Recommended for Protection
Not meeting any of the above characteristics	Low – 50 ft Moderate – 75 ft High – 100 ft	No recommendations at this time

- f. Increased Wetland Buffer Area Width. Buffer widths shall be increased on a case-by-case basis as determined by the Shoreline Administrator when a larger buffer is necessary to protect wetland functions and values. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the wetland. In areas where a wetland buffer extends beyond shoreline jurisdiction, buffer area outside the shoreline jurisdiction shall be regulated by the BCMC 18.08, Wetlands. The documentation must include but not be limited to the following criteria:
  - i. The wetland is used by a plant or animal species listed by the federal government or the state as endangered, threatened, candidate, sensitive, monitored or documented priority species or habitats, or essential or outstanding habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
  - ii. The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or
  - iii. The adjacent land has minimal vegetative cover or slopes greater than 30 percent.
2. Buffer averaging to *improve wetland protection* may be permitted when **all** of the following conditions are met:
  - a. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a “dual-rated” wetland with a Category I area adjacent to a lower-rated area.
  - b. The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas report from a qualified wetland professional.
  - c. The total area of the buffer after averaging is equal to the area required without averaging.
  - d. The buffer at its narrowest point is never less than either 75% of the required width.
3. Measurement of Wetland Buffers. All buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland

alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers will be considered. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers or included in buffer area calculations.

4. Buffers on Mitigation Sites. All mitigation sites shall have buffers consistent with the buffer requirements of this Article. Buffers shall be based on the expected or target category of the proposed wetland mitigation site.
5. Buffer Maintenance. Except as otherwise specified or allowed in accordance with this Article, wetland buffers shall be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive non-native weeds is required for the duration of the mitigation bond.
6. Impacts to Buffers. Requirements for the compensation for impacts to buffers are outlined in Section 16.04.510 (H) .
7. Overlapping Critical Area Buffers. If buffers for two contiguous critical areas overlap (such as buffers for a habitat conservation area and a wetland), the wider buffer applies.
8. Signs and Fencing of Wetlands and Buffers.
  - a. Temporary markers. The outer perimeter of the wetland buffer and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary “clearing limits” fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the Shoreline Administrator prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.
  - b. Permanent signs. As a condition of any permit or authorization issued pursuant to this Article, the Shoreline Administrator may require the applicant to install permanent signs along the boundary of a wetland or buffer.
    - i. Permanent signs shall be made of an enamel-coated metal face and attached to a metal post or another non-treated material of equal durability. Signs must be posted at an interval of one (1) per lot or every fifty (50) feet, whichever is less, and must be maintained by the property owner in perpetuity. The signs shall be worded as follows or with alternative language approved by the Shoreline Administrator:

Protected Wetland Area  
Do Not Disturb  
Contact Benton City  
Regarding Uses, Restrictions, and  
Opportunities for Stewardship
  - c. The provisions of Subsection (a) may be modified as necessary to assure protection of sensitive features or wildlife.
  - d. Fencing.

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

E. Critical Area Report for Wetlands.

1. If the Shoreline Administrator determines that the site of a proposed development includes, is likely to include, or is adjacent to a wetland, a wetland report, prepared by a qualified professional, shall be required. The expense of preparing the wetland report shall be borne by the applicant.
2. Minimum Standards for Wetland Reports. In addition to the report requirements per 16.04.500 (L), Wetland, geologically hazardous and habitat conservation areas – General report requirements, the written wetland report and the accompanying plan sheets shall contain the following information, at a minimum:
  - a. The written report shall include at a minimum:
    - i. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the wetland critical area report; Identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.
    - ii. Documentation of any fieldwork performed on the site, including field data sheets for delineations, function assessments, baseline hydrologic data, etc.
    - iii. A description of the methodologies used to conduct the wetland delineations, function assessments, or impact analyses including references.
    - iv. For each wetland identified on-site and within 200 feet of the project site provide: the wetland rating per Section 16.04.510 (B) (); required buffers; hydrogeomorphic classification; wetland acreage based on a professional survey from the field delineation (acreages for on-site portion and entire wetland area including off-site portions); Cowardin classification of vegetation communities; habitat elements; soil conditions based on site assessment and/or soil survey information; and to the extent possible, hydrologic information such as location and condition of inlet/outlets (if they can be legally accessed), estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g., algal mats, drift lines, flood debris, etc.). Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site.



- A. A description of the proposed actions including an estimation of acreages of impacts to wetlands and buffers based on the field delineation and survey and an analysis of site development alternatives including a no-development alternative.
  - B. A description of reasonable efforts made to apply mitigation sequencing pursuant to BCMC 16.04.500 (O).
  - C. A discussion of measures, including avoidance, minimization, and compensation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land-use activity.
  - D. A conservation strategy for habitat and native vegetation that addresses methods to protect and enhance on-site habitat and wetland functions.
  - E. An evaluation of the functions of the wetland and adjacent buffer. Include reference for the method used and data sheets.
- a. A copy of the site plan sheet(s) for the project must be included with the written report and must include, at a minimum:
    - i. Maps (to scale) depicting delineated and surveyed wetland and required buffers on-site, including buffers for off-site critical areas that extend onto the project site; the development proposal; other critical areas; grading and clearing limits; areas of proposed impacts to wetlands and/or buffers (include square footage estimates);.
    - ii. The depiction of the proposed stormwater management facilities and outlets (to scale) for the development, shall contain a discussion of the potential impacts to the wetland(s) associated with anticipated hydroperiod alterations from the project.

F. Compensatory Mitigation.

1. Mitigation Sequencing. Before impacting any wetland or its buffer, an applicant shall demonstrate that the mitigation sequencing actions per Section 16.04.500 (O) have been taken.
2. Requirements for Compensatory Mitigation.
  - a. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with *Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1)*, Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised.
  - b. Mitigation ratios shall be consistent with Section 16.04.510 (I).
3. Compensating for Lost or Affected Functions. Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except when either:

- a. The lost wetland provides minimal functions and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington state watershed assessment plan or protocol; or
- b. Out-of-kind replacement of wetland type or functions will best meet watershed goals formally identified by the City, such as replacement of historically diminished wetland types.

G. Wetland Mitigation Ratios.

**Table 16.04.510 (I): Mitigation ratios for Eastern Washington**

Category and Type of Wetland Impacts	Re-establishment or Creation	Rehabilitation Only <sup>1</sup>	Re-establishment or Creation (R/C) and Rehabilitation (RH) <sup>1</sup>	Re-establishment or Creation (R?C) and Enhancement (E) <sup>1</sup>	Enhancement Only <sup>1</sup>
All Category IV	1.5:1	3:1	1:1 R/C and 1:1 RH	1:1 R/C and 2:1 E	6:1
All Category III	2:1	4:1	1:1 R/C and 2:1 RH	1:1 R/C and 4:1 E	8:1
Category II Forested	4:1	8:1	1:1 R/C and 4:1 RH	1:1 R/C and 6:1 E	16:1
Category II Vernal Pool	2:1 Compensation must be seasonally ponded wetland	4:1 Compensation must be seasonally ponded wetland	1:1 R/C and 2:1 RH	Case-by-case	Case-by-case
All other Category II	3:1	6:1	1:1 R/C and 4:1 RH	1:1 R/C and 8:1 E	12:1
Category I Forested	6:1	12:1	1:1 R/C and 10:1 RH	1:1 R/C and 20:1 E	24:1
Category I based on score for functions	4:1	8:1	1:1 R/C and 6:1 RH	1:1 R/C and 12:1 E	16:1
Category I Wetland of high conservation value	Not considered possible <sup>2</sup>	6:1 Rehabilitation of a Wetland of high conservation value	R/C Not considered possible <sup>2</sup>	R/C Not considered possible <sup>2</sup>	Case-by-base
Category I Alkali	Not considered possible <sup>2</sup>	6:1 Rehabilitation of an alkali wetland	R/C Not considered possible <sup>2</sup>	R/C Not considered possible <sup>2</sup>	Case-by-case
Category I Bog	Not considered possible <sup>2</sup>	6:1 Rehabilitation of a bog	R/C Not considered possible <sup>2</sup>	R/C Not considered possible <sup>2</sup>	Case-by-case

1. These ratios are based on the assumption that the rehabilitation or enhancement actions implemented represent the average degree of improvement possible for the site. Proposals to implement more effective rehabilitation or enhancement actions may result in a lower ratio, while less effective actions may result in a higher ratio. The distinction between rehabilitation and enhancement is not clear-cut. Instead, rehabilitation and enhancement actions span a continuum. Proposals that fall within the gray area between rehabilitation and enhancement will result in a ratio that lies between the ratios for rehabilitation and the ratios for enhancement (see

2. Wetland of high conservation value, alkali wetland, and bogs are considered irreplaceable wetlands because they perform some functions that cannot be replaced through compensatory mitigation. Impacts to such wetlands would therefore result in a net loss of some functions no matter what kind of compensation is proposed.

**Reference:**

Washington State Department of Ecology, U.S. Army Corps of Engineers Seattle District, and U.S. Environmental Protection Agency Region 10. March 2006. Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance (Version 1). Washington State Department of Ecology Publication #06-06-011a. Olympia, WA.

1. Compensatory Mitigation Plan. When a project involves wetland and/or buffer impacts, a compensatory mitigation plan prepared by a qualified professional shall be required, meeting the following minimum standards in addition to the requirements in 16.04.500 (P), Mitigation plan requirements:
  - a. Wetland Critical Area Report. A critical area report for wetlands must accompany or be included in the compensatory mitigation plan and include the minimum parameters described in *Minimum Standards for Wetland Reports*.
  - b. Compensatory Mitigation Report. The report must include a written report and plan sheets that must contain, at a minimum, the following elements. Full guidance can be found in *Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1)* (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised).
    - i. The written report must contain, at a minimum:
      - A. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the compensatory mitigation report; a description of the proposal; a summary of the impacts and proposed compensation concept; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.
      - B. Description of how the project design has been modified to avoid, minimize, or reduce adverse impacts to wetlands.
      - C. Description of the existing wetland and buffer areas proposed to be impacted. Include acreage (or square footage), water regime, vegetation, soils, landscape position, surrounding lands uses, and functions. Also describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating, based on ).
      - D. Description of the compensatory mitigation site, including location and rationale for selection. Include an assessment of existing conditions: acreage (or square footage) of wetlands and uplands, water regime, sources of water, vegetation, soils, landscape position, surrounding land uses, and functions. . Estimate future conditions in this location if the compensation actions are NOT undertaken (i.e., how would this site progress through natural succession?).
      - E. Description of the proposed actions for compensation of wetland and upland areas affected by the project. Include overall goals of the proposed mitigation, including a description of the targeted functions, hydrogeomorphic classification, and categories of wetlands.
      - F. A description of the proposed mitigation construction activities and timing of activities.
      - G. A discussion of ongoing management practices that will protect wetlands after the project site has been developed, including

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

- H. A bond estimate for the entire compensatory mitigation project, including the following elements: site preparation, plant materials, construction materials, installation oversight, maintenance twice per year for up to five (5) years, annual monitoring field work and reporting, and contingency actions for a maximum of the total required number of years for monitoring.
  - I. Proof of establishment of Notice on Title for the wetlands and buffers on the project site, including the compensatory mitigation areas.
- ii. The scaled plan sheets for the compensatory mitigation must contain, at a minimum:
- A. Surveyed edges of the existing wetland and buffers, proposed areas of wetland and/or buffer impacts, location of proposed wetland and/or buffer compensation actions.
  - B. Existing topography, ground-graded, at two-foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed to create the compensation area(s). Also existing cross-sections of on-site wetland areas that are proposed to be impacted, and cross-section(s) (estimated one-foot intervals) for the proposed areas of wetland or buffer compensation.
  - C. Surface and subsurface hydrologic conditions including an analysis of existing and proposed hydrologic regimes for enhanced, created, or restored compensatory mitigation areas. Also, illustrations of how data for existing hydrologic conditions were used to determine the estimates of future hydrologic conditions;
  - D. Conditions expected from the proposed actions on site including future hydrogeomorphic types, vegetation community types by dominant species (wetland and upland), and future water regimes.
  - E. Required wetland buffers for existing wetlands and proposed compensation areas. Also, identify any zones where buffers are proposed to be reduced or enlarged outside of the standards identified in this Article.
  - F. A plant schedule for the compensation area including all species by proposed community type and water regime, size and type of plant material to be installed, spacing of plants, typical clustering patterns, total number of each species by community type, timing of installation. Performance standards (measurable standards reflective of years post-installation) for upland and wetland communities, monitoring schedule, and maintenance schedule and actions by each biennium.
- b. Monitoring Requirement. The report shall include a monitoring program per 16.04.500 (P)(1)(d), Monitoring Program.
2. Wetland Mitigation Banks.

- a. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:
    - i. The bank is certified under state rules;
    - ii. The Shoreline Administrator determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
    - iii. The proposed use of credits is consistent with the terms and conditions of the bank's certification.
  - b. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification.
  - c. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.
3. In-Lieu Fee. To aid in the implementation of off-site mitigation, the City may develop a program which prioritizes wetland areas for use as mitigation and/or allows payment in lieu of providing mitigation on a development site. This program shall be developed and approved through a public process and be consistent with state and federal rules. The program should address:
- a. The identification of sites within the City suitable for use as off-site mitigation. Site suitability shall take into account wetland functions, potential for wetland degradation, and potential for urban growth and service expansion, and
  - b. The use of fees for mitigation on available sites that have been identified as suitable and prioritized.

#### **16.04.520 Critical Aquifer Recharge Areas**

##### **A. Critical aquifer recharge areas designation.**

1. Critical aquifer recharge areas (CARA) are those areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge. CARA have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water. The following areas have been identified based on local conditions:
  - a. Wellhead protection areas. Wellhead protection areas shall be defined by the boundaries of the ten (10) year time of ground water travel, or boundaries established using alternate criteria approved by the Department of Health in those settings where ground water time of travel is not a reasonable delineation criterion, in accordance with WAC 246-290-135.
  - b. Special protection areas. Special protection areas are those areas defined by WAC 173-200-090 serving to identify ground waters that require

increased protection due to unique characteristics. No special protection areas are located in Benton City.

B. Mapping of critical aquifer recharge areas.

1. The approximate location and extent of critical aquifer recharge areas are shown on the adopted critical area map and maps prepared to support the SMP Inventory & Characterization report.
2. This map is to be used as a guide for the City, project applicant and/or property owners, and may be continuously updated as new Information becomes available.

C. Regulation.

1. The following are in place to protect critical aquifer recharge areas and regulate activities that might potentially impact these areas.
  - a. Benton City Sewer Regulations (Title 13A), including provisions for wellhead protection areas.
  - b. Benton City Building Code (Title 15).
  - c. Benton City Zoning Code (Title 20).
  - d. State and federal regulations applicable to specific uses including, but not limited to, those provided in Sections 16.04.520 (D), Performance standards – Specific uses and 16.04.520 (F), Uses prohibited from critical aquifer recharge areas.

D. Performance standards – General requirements.

1. Activities may only be permitted in a critical aquifer recharge area located within the shoreline jurisdiction if the applicant can show that the proposed activity will not adversely affect the recharging of the aquifer and that the proposed activity will not cause contaminants to enter the aquifer.
2. The proposed activity must comply with the water source protection requirements and recommendations of the federal Environmental Protection Agency, State Department of Health, and the Benton County Health Department, and as provided in the City's wellhead protection regulations. The administrative procedures of this Article apply for proposed activities in critical aquifer recharge areas located within the shoreline jurisdiction.
3. The proposed activity must be designed and constructed in accordance with erosion control and surface/stormwater management requirements in current City regulations. The Stormwater Management Manual for Eastern Washington (Washington Department of Ecology Publication 04-10-076, or as revised) shall provide the preferred guidance for stormwater best management practices.

E. Performance standards – Specific uses.

1. Storage Tanks. All storage tanks proposed to be located in a critical aquifer recharge area must comply with local building code requirement and must conform to the following requirements:

- a. **Underground Tanks.** All new underground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:
    - i. Prevent releases due to corrosion or structural failure for the operational life of the tank;
    - ii. Be protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substances; and,
    - iii. Use material in the construction or lining of the tank that is compatible with the substance to be stored.
  - b. **Aboveground Tanks.** All new aboveground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:
    - i. Not allow the release of a hazardous substance to the ground, ground waters, or surface waters;
    - ii. Have a primary containment area enclosing or underlying the tank or part thereof; and
    - iii. A secondary containment system either built into the tank structure or a dike system built outside the tank for all tanks.
2. Vehicle repair and servicing. Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.
3. Spreading or injection of reclaimed water. Water reuse projects for reclaimed water must be in accordance with the adopted water or sewer comprehensive plans that have been approved by the departments of Ecology and Health.
- a. Surface spreading must meet the ground water recharge criteria given in Chapter 90.46.080 RCW and Chapter 90.46.010(10).
  - b. Direct injection must be in accordance with the standards developed by authority of Chapter 90.46.042 RCW.

State and federal regulations. The uses listed below shall be conditioned as necessary to protect critical aquifer recharge areas in accordance with the applicable state and federal regulations.

**Table 16.04.520 (E)(4): Statutes, Regulations, and Guidance Pertaining to Ground Water Impacting Activities**

Activity	Statute – Regulation – Guidance
Above Ground Storage Tanks	Chapter 173-303-640 WAC
Animal Feedlots	Chapter 173-216-WAC, Chapter 173-220 WAC
Automobile Washers	Chapter 173-216 WAC, Best Management

	Practices For Vehicles and Equipment Discharges (WDOE WQ-R-95-56)
Below Ground Storage Tanks	Chapter 173-360 WAC
Chemical Treatment Storage and Disposal Facilities	Chapter 173-303-182 WAC
Hazardous Waste Generator ( <i>Boat Repair Shops, Biological Research Facility, Dry Cleaners, Furniture Stripping, Motor Vehicle Service Garages, Photographic Processing, Printing and Publishing Shops, etc.</i> )	Chapter 173-303 WAC
Injection Wells	Federal 40 CFR Parts 144 and 146, Chapter 173-218 WAC
Junk Yards and Salvage Yards	Chapter 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Vehicles Recycler Facilities (WDOE 94-146)
Oil and Gas Drilling	Chapter 332-12-450 WAC, WAC, Chapter 173-218 WAC
On-Site Sewage Systems (Large Scale)	Chapter 173-240 WAC
On-Site Sewage Systems (<14,500 gal/day)	Chapter 246-272 WAC, Local Health Ordinances
Pesticide Storage and Use	Chapter 15.54 RCW, Chapter 17.21 RCW
Sawmills	Chapter 173-303 WAC, 173-304 WAC, Best Management Practices to Prevent Stormwater Pollution at Log Yards (WDOE 95-53)
Solid Waste Handling and Recycling Facilities	Chapter 173-304 WAC
Surface Mining	Chapter 332-18-015 WAC
Waste Water Application to Land Surface	Chapter 173-216 WAC, Chapter 173-200 WAC, WDOE Land Application Guidelines, Best Management Practices for Irrigated Agriculture

F. Uses prohibited from critical aquifer recharge areas.

1. The following activities and uses are prohibited in critical aquifer recharge areas.<sup>2</sup>
  - a. Landfills. Landfills, including hazardous or dangerous waste, municipal solid waste, special waste, wood waste, and inert and demolition waste landfills; and
  - b. Underground injection wells. Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells (Chapter 173-218 WAC).

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<sup>2</sup> Prohibited uses are based on "Guidance Document for the Establishment of Critical Aquifer Recharge Area Ordinances," by Ecology, July 2000, publication #97-30



### **16.04.530 Frequently Flooded Areas**

#### A. Designation.

1. Those areas designated within Chapter 15.10 as “Floodways” and those areas meeting the frequently flooded designation criteria; and/or or channel migration zones (CMZ) identified through mapping developed as part of the 2013 SMP update. The channel migration zone (CMZ) is considered to be that area of a stream channel which may erode as a result of normal and naturally occurring processes and has been mapped consistent with WAC 173-26-221(3)(b) are hereby designated critical areas and are subject to the provisions of this Article.

#### B. Regulation.

1. Chapters 15.10 “Flood Damage Protection” and Chapter 17.28 “Miscellaneous Requirements” of the Benton City Code regulate proposed activities adjacent to or within frequently flooded areas. If allowed, any structures permitted in the designated flood areas located within the shoreline jurisdiction are subject to the flood-proofing regulations provided in Chapter 15.10 and 17.28, except that the penalties for noncompliance, development permit, variance procedures, hearings, and exception, and critical facilities provisions of Chapters 15.10 and 17.28, to the extent these with this SMP, shall not apply within shoreline jurisdiction. All references to the Chapters 15.10 and 17.28 are for this specific version adopted at the time of this ordinance.

#### C. CMZs shall be regulated as geologically hazardous areas.

### **16.04.540 Geologically Hazardous Areas**

#### A. Designation of geologically hazardous areas.

1. Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and safety of citizens when incompatible development is sited in areas of significant hazard. Such incompatible development may not only place itself at risk, but also may increase the hazard to surrounding development and use. Areas susceptible to one or more of the following types of hazards shall be designated as a geologically hazardous area:
  - a. Erosion hazard.
  - b. Landslide hazard.
  - c. Seismic hazard.
  - d. Mine hazard.
  - e. Volcanic hazard.
  - f. Other geological events including mass wasting, debris flows, rock falls, and differential settlement.

#### B. Designation of specific hazard areas.

1. Erosion hazard areas. Erosion hazard areas are those areas identified by the U.S. Department of Agriculture- Natural Resources Conservation Services (USDA-NRCS) as having a “moderate to severe”, “severe”, or “very severe” rill and inter-rill erosion hazard. Rill erosion tends to occur on slopes, particularly

steep slopes with easily-erodible soils or poor vegetation. Erosion hazard areas also include those areas with slope greater than fifteen percent (15%).

2. Landslide hazard areas. Landslide hazard areas are areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope (gradient), slope aspect, structure, hydrology, or other factors. Example of these may include, but are not limited to the following:
  - a. Areas of historic failures, such as:
    - i. Those areas delineated by the USDA-NRCS as having a “severe” limitation for building site development for factors other than slope for one or more types of building development;
    - ii. Those areas mapped by the Department of Natural Resources (slope stability mapping) as unstable (“U” OR CLASS 3), unstable old slides (“UOS” or class 4), or unstable recent slides (“URS” or class 5); or
    - iii. Areas designated as quaternary slumps, earth flows, mudflows, lahars, or landslides on maps published by the U.S. Geological Survey or Department of Natural Resources.
  - b. Areas with all three of the following characteristics:
    - i. Slopes steeper than fifteen percent (15%); and
    - ii. Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
    - iii. Springs or ground water seepage.
  - c. Areas that have shown movement during the Holocene epoch (from ten thousand years ago to the present) or that are underlain or covered by mass wastage debris of that epoch.
  - d. Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials.
  - e. Slopes having gradients steeper than eighty percent (80%) subject to rock fall during seismic shaking.
  - f. Areas potentially unstable because of rapid stream incision, stream bank erosion, and undercutting by wave action.
  - g. Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding.  
and
  - h. Any area with a slope of forty percent (40%) or steeper and with a vertical relief of ten (10) or more feet except areas composed of consolidated rock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten (10) feet of vertical relief.
3. Seismic hazard areas. Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, lateral spreading, or surface faulting. One indicator of potential for future earthquake damage is a record of earthquake damage in

the past. Ground shaking is the primary cause of earthquake damage in Washington. The strength of ground shaking is primarily affected by:

- a. The magnitude of an earthquake;
- b. distance from the source of an earthquake;
- c. The type of thickness of geologic materials at the surface; and
- d. The type of subsurface geologic structure.

Settlement and soil liquefaction conditions occur in areas underlain by cohesionless, loose, or soft-saturated soils of low density, typically in association with a shallow ground water table.

4. Mine hazard areas. Mine hazard areas are those areas affected by steep and unstable slopes created by open mines (e.g. open basalt rock pits, rock quarries, sand and gravel pits). Factors that should be considered include: proximity to development, depth from ground surface to the bottom of the pit and geologic material.
5. Other hazard areas. Geologically hazardous areas shall also include areas, determined by the designated official to be susceptible to other geological events including mass wasting, debris flows, rock falls, and differential settlement.

C. Classification of geologically hazardous areas.

1. The level of risk for each geologic hazard type is described in this section. Documentation of specific areas in which a known or suspected risk exists for each of the following hazard areas is provided in the City Critical Areas Map. (The provisions of this Article apply only to those areas for which a known or suspected risk exists.

**Table 16.04.540 (C)(1). Classification of Geologically Hazardous Areas**

Classification	Documentation and Data Sources
Known or Suspected Risk	Documentation of projection of the hazard by a qualified professional exists.
Low or No Risk	Documentation exists by a qualified professional regarding low hazard risk or lack of hazard.
Risk Unknown	Documentation, data, or projection of the hazard risk by a qualified professional are not available or sufficient to determine the presence or absence of a geologic hazard.

2. Erosion hazard areas. Known or suspected risk in steep areas.
3. Landslide hazard areas. Known or suspected risk in areas with slope > 15%.
4. Seismic hazard areas. Low or no risk.

5. Mine hazard areas. Low or no risk for underground operations. Known or suspected risk associated with open pit operations.
6. Other hazard areas. Other geologically hazardous areas may be designated by the City if documentation thereof is available.

D. Mapping of geologically hazardous areas.

1. The approximate location and extent of potential geologically hazardous areas are shown on the adopted Critical Areas Map. The hazard areas outlined on this map are based on the following data:
  - a. USGS 10-meter Digital Elevation Model (slope).
  - b. USDA-NRCS Soil Survey of Benton County, Washington (*full citation pending erosion/landslide hazard area determination*).
  - c. Maps prepared to support the SMP Inventory & Characterization report.
  - d. Additional data as determined necessary by the City.
2. This map is to be used as a guide for the City, project applicants and/or property owners, and may be continuously updated as new critical areas are identified. It is a reference and does not provide a final critical area designation.

E. Regulation.

1. In addition to the provisions of this Article, alterations of geologically hazardous areas or associated buffers must conform to City design standards and building codes.

**16.04.550 Fish and Wildlife Habitat Conservation Areas**

A. Designation of fish and wildlife habitat conservation areas.

1. Fish and wildlife habitat conservation areas include:
  - a. Areas with which state and federally designated endangered, threatened, and sensitive species have a primary association.
    - i. Federally designated endangered and threatened species are those fish, wildlife and plant species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted as necessary for current listing status.
    - ii. State designated endangered, threatened, and sensitive species are those fish, wildlife and plant species native to the state of Washington identified by the state Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC 232-12-014 (state endangered species), and WAC 232-12-011 (state threatened and sensitive species). The state Department of Fish and Wildlife maintains the most current listing and should be consulted as necessary for current

listing status. A combined list of federally and state identified species having the potential to be within the Benton City area is included in Appendix F.

- b. State priority habitats and areas associated with state priority species. Priority habitats and species are considered to be priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of an unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the State Department of Fish and Wildlife. A state list of priority habitats is included in Appendix F.
  - c. Habitats and species of local importance. Habitats and species of local importance are those identified by the City, including those that possess unusual or unique habitat warranting protection because of qualitative species diversity or habitat system health indicators (see Appendix F).
  - d. Naturally occurring ponds under twenty (20) acres. Naturally occurring ponds are those ponds under twenty (20) acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds, and landscape amenities, unless such artificial ponds were intentionally created for mitigation.
  - e. Waters of the state. Waters of the state includes lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in WAC 222-16-031.
  - f. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity.
  - g. State natural area preserves and natural resource conservation areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the state Department of Natural Resources.
  - h. Land essential for preserving connections between habitat blocks and open spaces.
2. All areas within the City meeting one or more of these criteria, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this Article.
  3. Mapping. The approximation location and extent of habitat conservation areas are shown on the critical area map adopted by the, and as most recently updated and the following critical area maps hereby adopted:

- a. Department of Fish and Wildlife Priority Habitat and Species Maps;
- b. Department of Natural Resources, Official Water Type Reference Maps, as amended;
- c. Resident salmonid distribution maps contained in the Habitat Limiting Factors Reports published by the Washington Conservation Commission;
- d. Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area Maps; and
- e. Maps prepared to support the SMP Inventory & Characterization report.
- f. Additional data as determined necessary by the City.

The Benton City Critical Areas Map is to be used as a guide for the City, project applicants and/or property owners, and the City may update the map as new critical areas are identified. It is a reference and does not provide a final critical area designation.

B. Report – Additional requirements for habitat conservation areas.

1. Prepared by a qualified professional. A report for a habitat conservation area shall be prepared by a qualified professional who is a biologist with experience preparing reports for the relevant type of habitat.
2. Area addressed in report. The following areas shall be addressed in a report for habitat conservation areas.
  - a. The project area of the proposed activity;
  - b. All habitat conservation areas and recommended buffers within the project area; and
  - c. All flood plains and other critical areas, and related buffers within the project area.
3. Habitat assessment. A habitat assessment is an investigation of the project area to evaluate the presence or absence of a potential critical fish or wildlife species or habitat. In addition to the report requirements per 16.04.500 (L), Wetland, geologically hazardous and habitat conservation areas – General report requirements, the report for a habitat conservation area shall contain an assessment of habitats including the following site-and proposal-related information at a minimum:
  - a. Detailed description of vegetation on and adjacent to the project area;
  - b. Identification of any species of local importance, priority species, or endangered, threatened, sensitive or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;
  - c. A discussion of any federal, state, or local special management recommendations, including Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;

- d. A discussion of measures, including avoidance, minimization and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity and to be conducted in accordance with Sections 16.04.500 (N) through (P); and
  - e. A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.
4. Additional information may be required. When appropriate due to the type of habitat or species present or the project area conditions, the City may also require that habitat management plan to include:
- a. An evaluation by the Department of Fish and Wildlife or qualified expert regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate;
  - b. An evaluation by the local Native American Indian Tribe; and
  - c. Detailed surface and subsurface hydrologic features both on and adjacent to the site.

C. Performance standards – General requirements.

- 1. Alterations shall not degrade the functions and values of habitat. A habitat conservation area may be altered only if the proposed alteration of the habitat or the mitigation proposed does not degrade the quantitative and qualitative functions and values of the habitat. All new structures and land alterations shall be prohibited from habitat conservation areas, except in accordance with this Article.
- 2. Non-indigenous species shall not be introduced. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a habitat conservation area unless authorized by a state or federal permit or approval.
- 3. Mitigation shall result in contiguous corridors. Mitigation sites shall be located to achieve contiguous wildlife habitat corridors in accordance with a mitigation plan that is part of the report to minimize the isolating effects of development on habitat areas, so long as mitigation of aquatic habitat is located within the same aquatic ecosystem as the area disturbed.
- 4. Approvals of activities may be conditioned. The City shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions may include, but are not limited to, the following:
  - a. Establishment of buffer zones;
  - b. Preservation of critically important vegetation;
  - c. Limitation of access to the habitat area, including fencing to deter unauthorized access;
  - d. Seasonal restriction of construction activities;

- e. Establishment of a duration and timetable for a periodic review of mitigation activities; and
  - f. Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation.
5. Mitigation shall achieve equivalent or greater biological functions. Mitigation of alterations to habitat conservation areas shall achieve equivalent or greater biologic functions and shall include mitigation for adverse impact upstream and downstream of the development proposal site. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per function basis.
6. Approvals shall be supported by the complete scientific and technical information. Any approval of alterations or impacts to a habitat conservation area shall be support by the most current, accurate, and complete scientific and technical information available.
7. Signs and fencing of habitat conservation areas.
- a. Temporary markers. The outer perimeter of the habitat conservation area or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in the field in such a way as to ensure that no unauthorized intrusion will occur, and verified by the City prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction, and shall not be removed until permanent signs, if required, are in place.
  - b. Permanent signs. As a condition of any permit or authorization issued pursuant to this Article, the City may require that applicant to install permanent signs along the boundary of a habitat conservation area or buffer. When required, permanent signs shall be made of a metal face and attached to a metal post, or another material of equal durability. Signs must be posted at an interval of one per lot or every fifty (50) feet, whichever is less, and must be maintained by the property owner in perpetuity. The sign shall be worded as follows or with alternative language approved by the director:

“Habitat Conservation Area”  
Do Not Disturb  
Contact Benton City  
Regarding Uses and Restrictions
  - c. Fencing.
    - i. The City shall condition any permit or authorization issued pursuant to this Article to require the applicant to install a permanent fence at the edge of the habitat conservation area or buffer, when fencing will prevent future impacts to the habitat conservation area.
    - ii. The applicant shall be required to install a permanent fence around the habitat conservation area or buffer when domestic grazing animals are present or may be introduced on site.
    - iii. Fencing installed as part of a proposed activity or as required in this Subsection shall be design so as to not interfere with species migration,



including fish runs, and shall be constructed in a manner that minimizes habitat impacts.

8. Subdivisions. The subdivision and short subdivision of land in fish and wildlife habitat conservation areas and associated buffers is subject to the following:
  - a. Land that is located wholly within a habitat conservation area or its buffer may not be subdivided.
  - b. Land that is located partially within a habitat conservation area or its buffer may be divided provided that an accessible and contiguous portion of each new lot is located outside of the habitat conservation area or its buffer and meets the minimum lot size requirements of City's Zoning Code – Title 20 and Subdivision Code – Title 17.
  - c. Access roads and utilities serving the proposed may be permitted within the habitat conservation area and associated buffers only if the City determines that no other feasible alternative exists and when consistent with the Article.

D. Performance standards – Specific habitats.

1. Endangered, threatened, and sensitive species
  - a. Whenever activities are proposed adjacent to a habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with a report prepared by a qualified professional and submitted to the City. Approval for alteration of land adjacent to the habitat conservation area or its buffer shall not occur prior to consultation with the Department of Fish and Wildlife and the appropriate federal agency.
  - b. Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292). Whenever activities are proposed adjacent to a verified nest territory or communal roost, a habitat management plan shall be developed by a qualified professional. Activities are adjacent to bald eagle site when they are within eight hundred (800) feet, or within a quarter mile (2,640 feet) and in a shoreline foraging area. The City shall verify the location of eagle management areas for each proposed activity. Approval of the activity shall not occur prior to approval of the habitat management plan by the Department of Fish and Wildlife.
2. Wetland habitats. All proposed activities within or adjacent to habitat conservation areas containing wetlands shall, at a minimum, conform to the wetland development performance standards set forth in Section 16.04.510, Wetlands, in addition to meeting the habitat conservation area standards in this Article.
3. Riparian habitat areas. Unless otherwise allowed in this Article, all structures and activities shall be located outside of the riparian habitat area.
  - a. Establishment of riparian habitat areas. Riparian habitat areas are areas adjacent to aquatic systems with flowing water that contains elements of both aquatic and terrestrial ecosystems that mutually influence each other. Such areas shall be established for habitats that include aquatic systems.

- i. **Buffers.** The city shall require the establishment of buffer areas for activities in, or adjacent to habitat conservation areas when needed to protect habitat conservation areas. Recommended riparian habitat buffers are shown in the table 16.04.550(D)(3)(a) below. Widths shall be measured outward, on the horizontal plane, from the ordinary high water mark or from the top of bank if the ordinary high water mark cannot be identified. Buffers and Riparian areas shall consist of an undisturbed area of native vegetation, or areas identified for restoration established to maintain no net loss of existing riparian and aquatic ecological functions , along with providing for up and downstream wildlife migration and water quality protection.
- ii. The required buffer shall be extended to include any adjacent regulated wetland(s), landslide hazard areas and/or erosion hazard areas and required buffers, but shall not be extended across roads or other lawfully established structures or hardened surfaces that are functionally and effectively disconnected from the stream.
- iii. Buffers in conjunction with other critical areas. Where other critical areas defined in this Article fall within the water body buffer, the buffer area shall be the most beneficial of the buffers applicable to any applicable critical area.
- iv. Buffers shall be accompanied by stormwater management measures consistent with the Stormwater Management Manual for Eastern Washington (September 2004), or as revised.

**Table 16.04.550 (D)(3)(a). Riparian Habitat Buffer Widths**

<b>Environment Designation</b>	<b>Yakima Riparian Buffer Width (Feet)<sup>(1)</sup></b>	<b>Other Streams <sup>(1) (2)</sup></b>
Urban Conservancy	75	50
Agriculture Conservancy	75	50
Shoreline Residential	75	50
High Intensity	75 <sup>(3)</sup>	50
(1) Measured from the OHWM or top of bank, as applicable		
(2) Accompanied by other critical area protections and stormwater management measures		
(3) Measured from the OHWM whether the environment abuts OHWM or not		

- b. **Riparian habitat buffer averaging.** The City may allow the recommended riparian habitat buffer width to be reduced in accordance with a report only if:
  - i. The width reduction will not reduce stream or habitat functions, including terrestrial habitat.

- ii. The width reduction will not degrade the habitat.
  - iii. The proposal will provide additional habitat protection.
  - iv. The total area contained in the riparian habitat buffer on the development proposal site is not decreased.
  - v. The recommended riparian habitat area width is not reduced by more than thirty-five percent (35%) in any one location.
  - vi. The width reduction will not be located within another critical area or associated buffer.
  - vii. The reduced riparian habitat buffer width is supported by best available science.
  - viii. All undeveloped lands within total area will be left undeveloped in perpetuity by covenant, deed restriction, easement or other legally binding mechanism.
  - ix. The buffer averaging plan shall be conducted in consultation with a qualified biologist and the plan shall be submitted to the Washington Department of Fish and Wildlife for comment.
  - x. The director shall use the recommendations of the qualified experts in making his/her decision on a plan that uses buffer averaging.
- c. Riparian habitat mitigation. Mitigation of adverse impacts to riparian habitat areas shall result in equivalent functions and values, on a per function basis, and be located in the same sub drainage basin as the habitat impacted.
- d. Alternative mitigation for riparian habitat areas. The requirements set forth in this Section may be modified at the City's discretion if the applicant demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected sub drainage basin as a result of alternative mitigation measures.
4. Anadromous fish
- a. All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:
    - i. Activities shall be timed to occur only during the allowable work window as designated by the Department of Fish and Wildlife for the applicable species;
    - ii. An alternative alignment or location for the activity is not feasible;
    - iii. The activity is designed so that it will not cause net loss of ecological functions of the fish habitat or other critical areas, and
    - iv. Any potential net loss of ecological functions for habitat conservation areas are mitigated in accordance with an approved critical area report.

- b. Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.
- c. Fills may only intrude into water bodies use by anadromous fish when the applicant demonstrates that the fill is for a water-dependent use that is in the public interest and when the fill is consistent with other applicable regulations adopted by the City, including but not limited to permitting process construction standards, building codes, shorelines management program, and environmental review (SEPA) procedures.

## **ARTICLE VI EXISTING USES, STRUCTURES AND LOTS**

### **16.04.600 Applicability**

- A. All non-conformances in shoreline jurisdiction shall be subject to the provisions of this Section, Existing Uses, Structures and Lots. For nonconformance of use, structures and lots within shoreline critical areas, Article V, Critical Areas applies. When there is a conflict between this Section and the Critical Area Section as applicable to critical areas, the more restrictive standards shall apply.
- B. The provisions of this Article do not supersede or relieve a property owner from compliance with:
  - 1. The requirements of the International Building and Fire Codes; or
  - 2. The provisions of the SMP beyond the specific nonconformance addressed by this Article.
- C. A change in the required permit review process (e.g. Shoreline Substantial Development Permit versus a Shoreline Conditional Use Permit) shall not create a nonconformance.
- D. Any nonconformance that is brought into conformance for any period of time shall forfeit status as nonconformance, except as specified in SMP Section 16.04.610, Nonconforming Uses.
- E. A nonconforming lot, use, or structure may be deemed legally nonconforming by providing documentation that the use in question occurred prior to the effective date of this SMP, from one of the following:
  - 1. Local agency permit;
  - 2. Orthophoto, aerial photo or planimetric mapping recognized as legitimate by the agency; or
  - 3. Tax record.

### **16.04.610 Nonconforming Uses**

- A. If, at the effective date of the SMP and any amendment thereto, a lawful use of land exists that is made no longer permissible under the terms of this SMP or amendments thereto, such use may be continued as a nonconforming use so long as it remains otherwise lawful subject to the following conditions:

1. No nonconforming use shall be intensified, enlarged, increased or extended to occupy a greater area of land than was occupied on the effective date of the SMP or amendment that made the use no longer permissible. Provided that a nonconforming use may be enlarged, increased or extended in conformance with applicable bulk and dimensional standards of this SMP upon approval of a shoreline conditional use permit.
2. No nonconforming use shall be moved in whole or in part to any other portion of the lot which contains the nonconforming use.
3. If any nonconforming use of land ceases for any reason for a period of one year, any subsequent use of such land shall conform to the regulations specified by this SMP for the use environment in which such land is located. The nonconforming use or structure shall become discontinued if the nonconforming use or structure has been changed to a conforming use or structure.
4. A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon a finding that:
  - a. No reasonable alternative conforming use is practical;
  - b. The proposed use is equally or more appropriate to the shoreline environment than the existing nonconforming use, and is at least as consistent with the policies and provisions of the act and the SMP;
  - c. Such a change of use shall be subject to conditional use permit approval. 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 Act and to assure that the use will not become a nuisance or a hazard.

#### **16.04.620 Nonconforming Structures**

- A. If, at the effective date of the SMP or any amendment thereto, a lawful structure or other improvement exists which is made no longer permissible under the terms of this SMP or amendment thereto, such structure or other improvement may be continued as a nonconforming structure or other improvement so long as it remains otherwise lawful, subject to the following conditions:
1. No nonconforming structure or other improvement shall be altered or changed in a way which increases its nonconformity except as allowed in "2".
  2. Expansions of structures that are nonconforming with respect to a required shoreline buffer:
    - a. May not encroach any farther waterward into the required shoreline buffer.
    - b. Applicants for such expansions shall restore a portion of the shoreline buffer with riparian vegetation at a 1:1 area ratio to offset the adverse impact, such that the shoreline buffer will function at an equivalent or higher level than the existing conditions. When such expansions occur upland of an existing levee, the applicant's critical areas report may justify a smaller ratio provided that the study demonstrates no net loss of ecological functions.

- c. Greater expansions or alterations of a nonconforming structure require a Shoreline Variance.
- B. All expansion, extension, maintenance or repair activities of nonconforming structures or improvements shall be consistent with all other provisions of this Program, provided the cumulative cost of such maintenance or repair within any 180-day period shall not exceed 50 percent of the assessed valuation of such building, structure, or land (as applicable) at the time such maintenance is completed. Replacement of the residential structure shall also be consistent with the master program, including requirements for no net loss of shoreline ecological functions.
- C. When damaged, a nonconforming structure may be restored to the configuration existing immediately prior to the time that the structure was damaged, provided that:
  - 1. Building permit for the reconstruction or repair has been obtained within six (6) months and the replacement or repair can be completed within one (1) year of the date of damage, unless an extension of time is granted by the Shoreline Administrator upon written petition substantiating to the satisfaction of the Administrator due cause for such extension;
  - 2. The degree of the nonconforming use, building or structure is not increased
- D. Nothing in this section will prohibit vertical expansion up to the height allowed in the applicable use environment, provided all other applicable requirements of Benton City development regulations are met.
- E. Upkeep, repairs and maintenance of a nonconforming structure or other improvement shall be permitted.
- F. Should such structure or other improvement be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the use environment in which it is located. Conformance shall be required when:
  - 1. A change of use is proposed;
  - 2. The use is terminated or discontinued for more than one year, or the structure(s) that houses the use is vacated for more than one year; or
  - 3. The structure(s) or activity that occurs on the land in which the use is conducted is proposed for relocation.
- G. Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following shall be considered a conforming structure: setbacks, buffers, or yards; area; bulk; height; or density.
- H. For purposes of this section, "appurtenant structures" means garages, sheds, and other legally established structures. "Appurtenant structures" does not include bulkheads and other shoreline modifications or over-water structures.

## **ARTICLE VII: ADMINISTRATION AND ENFORCEMENT**

### **16.04.700 Roles and Responsibilities**

#### **A. Shoreline Administrator**

1. The City Mayor or his/her designee shall serve as the Shoreline Administrator, and in the case of a Shoreline Substantial Development Permit (SDP) to grant or deny the permit. The administrator shall administer the shoreline permit and notification systems, and shall be responsible for coordinating the administration of shoreline regulations with zoning enforcement, building permits, and all other regulations regulating land use and development in the City.
2. The Shoreline Administrator or his/her designee shall be familiar with regulatory measures pertaining to shorelines and their use, and, within the limits of his or her authority, shall cooperate in the administration of these measures. Permits issued under the provisions of this shoreline regulation shall be coordinated with other land use and development regulatory measures of the City. The Shoreline Administrator or his/her designee shall establish procedures that advise all parties seeking building permits or other development authorization of the need to consider possible shoreline applications. It is the intent of the City, consistent with its regulatory obligations, to simplify and facilitate the processing of Shoreline Substantial Development Permits.
3. The Shoreline Administrator or his/her designee shall assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights. Shoreline goals and policies should be pursued through the regulation of development of private property only to an extent that is consistent with all relevant constitutional and other legal limitations (where applicable, statutory limitations such as those contained in Article 82.02 RCW and RCW 43.21C.060) on the regulation of private property.
4. The Shoreline Administrator shall apply SMP Article V provisions for shoreline critical areas.
5. Planning Commission. The Planning Commission is vested with the responsibility to review the SMP as part of regular SMP updates required by RCW 90.58.080 as a major element of the City's planning and regulatory program, and make recommendations for amendments thereof to the City Council.

#### **B. Hearing Examiner**

1. The Hearing Examiner shall have the authority to decide on appeals from administrative decisions issued by the Shoreline Administrator of this SMP.
2. The Hearing Examiner may grant or deny Shoreline Variances and Shoreline Conditional Use Permits, following an open record hearing.

#### **C. City Council. The City Council is vested with authority to:**

1. Initiate an amendment to this SMP according to the procedures prescribed in WAC 173-26-100.

2. Adopt all amendments to this SMP. This SMP will become effective 14 days after final of approval by Ecology.

#### **16.04.710 Interpretation**

- A. Under the administrative provisions, the Shoreline Administrator shall have authority to interpret this SMP when such interpretation is clearly consistent with the goals and policies of this SMP and the Act.
- B. The City shall consult with Ecology if formal written interpretations are developed as a result of a lack of clear guidance in the Act, the SMP Guidelines, or this Master Program to ensure that any are consistent with the purpose and intent of Chapter 90.58 and 173-26 WAC.
- C. Appeals of Shoreline Administrator's interpretations, shall be in accordance with BCMC 20.63.070 Appeal, and 2.70.240 Appeals provided that an interpretation arising from a specific permit application shall be consolidated with Hearing Examiner consideration of a Variance or Conditional Use and for any shoreline permit, the interpretation may be appealed to the Shoreline Hearings Board as part of appeal of the permit per 16.04.810.

#### **16.04.720 Statutory Noticing Requirements**

- A. At a minimum the City shall provide notice in accordance with WAC 173.27-110, and may provide for additional noticing requirements

#### **16.07.730 Application Requirements**

- A. A complete application for a Shoreline Substantial Development, Shoreline Conditional Use, or Shoreline Variance Permit shall contain, at a minimum, the information listed in WAC 173-27-180.
- B. The Shoreline Administrator shall provide written informational materials, procedures, instructions, and forms, required to submit an application for a shoreline substantial development permit, variance, or conditional use permit.
- C. These materials could include a plan cover sheet; JARPA form; SEPA checklist; fee schedule; review criteria; process and timelines to assist potential applicants and interested parties on the permit application submittal and review process.
- D. The Shoreline Administrator may vary or waive these requirements according to administrative application requirements on a case-by-case basis.
- E. The Shoreline Administrator may require additional specific information depending on the nature of the proposal and the presence of sensitive ecological features or issues related to compliance with other requirements, and the provisions of this SMP.

#### **16.07.740 Shoreline Substantial Development Permits**

- A. A Shoreline Substantial Development Permit shall be required for all development of shorelines, unless the proposal is specifically exempted per Section 16.04.780. Shoreline Substantial Development permits shall be processed as an administrative review process as set forth in the City's Code Chapter 2.70 Land Use Administration, Section 2.70.110 Administrative Approvals subject to notice.
- B. A Shoreline Substantial Development Permit shall be granted only when the development proposed is consistent with:



1. The policies and procedures of the Act, RCW 90.58; particularly the criteria for Shoreline of Statewide Significance, where applicable
  2. The applicable provisions of WAC 173-27; and
  3. This SMP.
- C. The City may attach conditions to the approval of permits as necessary to assure consistency of the project with the SMA and this SMP.
- D. Nothing shall interfere with the City's ability to require compliance with all other applicable plans and laws.
- E. In the granting of all shoreline substantial development permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline substantial development permits were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.

#### **16.04.750 Shoreline Conditional Use Permits**

- A. Uses specifically classified or set forth in this SMP as conditional uses shall be subject to review and condition by the Shoreline Administrator and by Ecology. Applications for a Shoreline Conditional Use Permit shall be processed as a quasi-judicial type which requires an open record hearing before the Planning Commission as set forth in the City's Code Chapter 2.70 Land Use Administration.
- B. Other uses which are not classified or listed or set forth in this SMP may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this Section and the requirements for conditional uses contained in this SMP.
- C. Uses which are specifically prohibited by this SMP may not be authorized as a conditional use.
- D. Review Criteria for SCUP. Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:
1. That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
  2. That the proposed use will not interfere with the normal public use of public shorelines;
  3. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
  4. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
  5. That the public interest suffers no substantial detrimental effect.
- E. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if

conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

- F. In authorizing a conditional use, special conditions may be attached to the permit by the City or Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the SMA and this SMP.
- G. Nothing shall interfere with the City's ability to require compliance with all other applicable plans and laws.

#### **16.04.760 Shoreline Variance Permits**

- A. The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this SMP where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this SMP would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. Variances from the use regulations of the SMP are prohibited. Applications for Shoreline Variance Permits shall be processed as a quasi-judicial type which requires an open record hearing before the Planning Commission as set forth in the City's Code Chapter 2.70 Land Use Administration.
- B. Review Criteria
  - 1. Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.
  - 2. Variance permits for development and/or uses that will be located landward of the OHWM, as defined in RCW 90.58.030(2)(b), and/or landward of any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:
    - a. That the strict application of the bulk, dimensional or performance standards set forth in the SMP precludes, or significantly interferes with, reasonable use of the property;
    - b. That the hardship described in criterion (A). of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the SMP, and not, for example, from deed restrictions or the applicant's own actions;
    - c. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and SMP and will not cause adverse impacts on the shoreline environment;
    - d. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
    - e. That the variance requested is the minimum necessary to afford relief; and
    - f. That the public interest will suffer no substantial detrimental effect.

3. Variance permits for development and/or uses that will be located waterward of the OHWM, as defined in RCW 90.58.030(2)(b), or within any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:
  - a. That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;
  - b. That the proposal is consistent with the criteria established under (A)-(F) above can be met; and
  - c. That the public rights of navigation and use of the shorelines will not be adversely affected.
4. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

#### **16.04.770 Duration of Permits**

The duration of permits shall be consistent with WAC 173-27-090.

#### **16.04.780 Exemptions from Shoreline Substantial Development Permits**

- A. An exemption from the Shoreline Substantial Development Permit process is not an exemption from compliance with the SMA or this SMP, or from any other regulatory requirements. All proposed uses, activities, or development occurring within shoreline jurisdiction must conform to the intent and requirements of Chapter 90.58 RCW, the SMA, and this SMP whether or not a permit or other form of authorization is required.
- B. Letters of exemption shall be issued by the City when an exemption applies and shall be transmitted to Ecology as required by the provisions of WAC 173-27-050 and as follows:
  1. Any person claiming exemption from the substantial development permit requirements shall make an application to the Shoreline Administrator for such an exemption in the manner prescribed by the Shoreline Administrator, except that no written statement of exemption is required for emergency development pursuant to WAC 173-27-040(2)(d)
  2. The Shoreline Administrator is authorized to grant or deny requests for statements of exemption from the shoreline substantial development permit requirement for uses and developments within shorelines that are specifically listed in Section 16.04.200. The statement shall be in writing and shall indicate the specific exemption of this Program that is being applied to the development, and shall provide a summary of the Shoreline Administrator's analysis of the consistency of the project with this Program and the Act. The letter shall be sent to the applicant and maintained on file in the offices of the Shoreline Administrator. Provided that if an exemption is granted in conjunction with a building permit or other development permit, and notification of Ecology is not

required pursuant to WAC 173-26-050, the written findings above may be incorporated in the issuance of the permit.

3. Statements of exemption may contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of this Program and the Act
4. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial. The Shoreline Administrator's decision on a statement of exemption is not subject to administrative appeal.
5. Exempt activities shall not be conducted until a statement of exemption has been obtained from the Shoreline Administrator.

#### C. Interpretations of Exemptions

1. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the Shoreline Substantial Development Permit process.
2. A development or use that is listed as a conditional use pursuant to this SMP or is an unlisted use, must obtain a Shoreline Conditional Use Permit even though the development or use does not require a Shoreline Substantial Development Permit. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of this SMP, such development or use can only be authorized by approval of a Shoreline Variance.
3. The burden of proof that a development or use is exempt from the permit process is on the applicant.
4. If any part of a proposed development is not eligible for exemption, then a Shoreline Substantial Development Permit is required for the entire proposed development project.
5. The City may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the SMA and this SMP. Additionally, nothing shall interfere with each responsible local government's ability to require compliance with all other applicable laws and plans.

#### D. The City shall exempt from the Shoreline Substantial Development Permit requirement the shoreline developments listed below:

1. Any development of which the total cost or fair market value does not exceed six thousand four hundred and sixteen (\$6,416.00) or as adjusted by the State Office of Financial Management, if such development does not materially interfere with the normal public use of the water or shorelines of the state. 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.
2. Normal maintenance or repair of existing legally-established structures or developments, including damage by accident, fire, or elements. Replacement of

a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location, and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment.

3. Construction of a normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one (1) cubic yard of fill per one (1) foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Department of Fish and Wildlife (WDFW).
4. Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment that requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the Shoreline Administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit that would have been required, absent an emergency, pursuant to RCW 90.58 these regulations, or this Program, shall be obtained. All emergency construction shall be consistent with the policies and requirements of this chapter, RCW 90.58, and this Program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.
5. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities.
6. Construction or modification of navigational aids and boundary markers.

7. Construction on shorelands by an owner, lessee, or contract purchaser of a single-family residence or appurtenance for their own use or for the use of their family, which residence does not exceed a height of thirty-five (35) feet above average grade level, and which meets all requirements of the City, other than requirements imposed pursuant to RCW 90.58. Construction authorized under this exemption shall be located landward of the ordinary high water mark.
8. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system, including return flow and artificially stored ground water from the irrigation of lands.
9. The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water.
10. Operation and maintenance of existing and future system of dikes, ditches, drains, or other facilities on irrigable lands where water is being drained from irrigation runoff or shallow groundwater levels artificially recharged through irrigation, and that) are created, developed or utilized primarily as a part of an agricultural drainage or diking system.
11. Any project with a certification from the governor pursuant to RCW 80.50 (certification from the State Energy Facility Site Evaluation Council).
12. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:
  - a. The activity does not interfere with the normal public use of 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; and
  - 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 assure that the site is restored to preexisting conditions.
13. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control published by the Departments of Agriculture or Ecology jointly with other state agencies under RCW 43.21C.
14. Watershed restoration projects as defined in RCW 89.08.460.
15. A public or private project that is designed to improve fish or wildlife habitat or fish passage when all of the following apply:
  - a. The project has been approved in writing by the Department of Fish and Wildlife;

- b. The project has received hydraulic project approval (HPA) by WDFW pursuant to RCW 77.55; and
  - c. Benton City has determined that the project is substantially consistent with the local shoreline master program. Benton City shall make such determination in a timely manner and provide it by letter to the applicant.
16. Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local shoreline master programs.
17. Any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to RCW 70.105D or to Ecology when it conducts a remedial action under RCW 70.105D.
18. Other than conversions to non-forest land use, forest practices regulated under RCW 76.09 are not subject to additional regulations under the Act or this Program (90.58.030(2)(d)(ii)).

#### **16.04.790 Initiation of Development**

- A. Each permit for a Substantial Development, Shoreline Conditional Use or Shoreline Variance, issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one (21) days from the date of receipt with Ecology as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one (21) from the date of receipt of the decision, except as provided in RCW 90.58.140(5)(a) and (b). The date of receipt for a Substantial Development Permit means that date the applicant receives written notice from Ecology that it has received the decision. With regard to a permit for a Shoreline Variance or a Shoreline Conditional Use, date of receipt means the date a responsible local government or applicant receives the written decision of Ecology.
- B. Permits for Substantial Development, Shoreline Conditional use, or Shoreline Variance may be in any form prescribed and used by the City including a combined permit application form. Such forms will be supplied by the City.
- C. A permit data sheet shall be submitted to Ecology with each shoreline permit. The permit data sheet form shall be consistent with WAC 173-27-990.

#### **16.04.800 Review Process**

- A. After the City's approval of a Shoreline Conditional Use or Variance Permit, the City shall submit the permit to the Department of Ecology for approval, approval with conditions, or denial. Ecology shall render and transmit to the City and the applicant its final decision approving, approving with conditions, or disapproving the permit within thirty days of the date of submittal by the City pursuant to WAC 173-27-110.
- B. The Department of Ecology shall review the complete file submitted by the City on Shoreline Conditional Use or Variance Permits and any other information submitted or available that is relevant to the application. Ecology shall base its determination to approve, approve with conditions or deny a conditional use permit or variance on consistency with the policy and provisions of the SMA and, except as provided in WAC 173-27-210, the criteria in WAC 173-27-160 and 173-27-170.

- C. The City shall provide timely notification of the Department of Ecology's final decision to those interested persons having requested notification from local government pursuant to WAC 173-27-130.

#### **16.04.810 Appeals**

- A. Appeals of Shoreline Permit Decisions. Benton City's decisions on Shoreline permits may be appealed to the following 'bodies' in this sequence:
  - 1. The Benton City Council, for actions of the Shoreline Administrator on a Substantial Development Permit, for actions of the Planning Commission of the Conditional Use Permit or Variance in accordance with BCMC 20.63.070 Appeal, and 2.70.240 Appeals provided that the appellant waives his rights to a single closed record appeal hearing in accordance with RCW 36.70B.060. Absent such a waiver, all appeals shall be heard by the Shoreline Hearings Board.
  - 2. State Shorelines Hearings Board (SHB) in accordance with RCW 90.58.180 and RCW 90.58.185
- B. Regarding administrative appeals of Shoreline Administrator's interpretations, see SMP Section 16.04.710, Interpretation and BCMC 20.63.070 Appeal.
- C. All requests for review of any final permit decisions under chapter 90.58 RCW and chapter 173-27 WAC are governed by the procedures established in RCW 90.58.180 and chapter 461-08 WAC, the rules of practice and procedure of the shorelines hearings board.

#### **16.04.820 Amendments to Permits**

- A. A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the SMP and/or the policies and provisions of chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision.
- B. Revisions to permits shall be considered consistent with WAC 173-27-100.

#### **16.04.830 Enforcement**

- A. The Act provides for a cooperative program between the City of Benton City and the Department of Ecology to implement and enforce the provisions of the Act and this Master Program. This Section provides for a variety of means of enforcement, including civil and criminal penalties, orders to cease and desist, and orders to take corrective action, in accordance with WAC 173-27-270, 173-27-280, 173-27-290, 173-27-300 and BCMC 2.70.250 and 2.70.270. The enforcement means and penalties provided herein are not exclusive and may be taken or imposed in conjunction with, or in addition to, any other civil enforcement actions and civil penalties, injunctive or declaratory relief, criminal prosecution, actions to recover civil or criminal penalties, or any other action or sanction authorized by this Section, or any other provision of Benton City Code and Land Use Code, or any other provision of state or federal law and regulation.
- B. The Shoreline Administrator, with the assistance of the City's attorney, shall have authority to commence and prosecute any enforcement action authorized by this



section. In determining the appropriate enforcement actions to be commenced and prosecuted, the Administrator shall consider the following factors:

1. The nature of the violation;
  2. The extent of damage or potential future risk to the shoreline environment and its ecological functions or to the public health and safety, caused by or resulting from, whether directly or indirectly, the alleged violation;
  3. The existence of knowledge, intent, or malice on behalf of the violator;
  4. The economic benefit or advantage that accrued to the violator(s) as a result of the violation; and
  5. The estimated actions and costs of providing adequate mitigation, restoration, rehabilitation, or enhancement, to repair or minimize any substantial adverse impacts upon the shoreline environment and its ecological functions, or the public health and safety.
- C. The Shoreline Administrator may commence and prosecute enforcement action jointly with the Department of Ecology. Pursuant to WAC Chapter 173-27, the Department of Ecology may initiate and prosecute enforcement action separate from the Shoreline Administrator.

#### **16.04.840 Cumulative Effects of Shoreline Developments**

- A. The City will periodically evaluate the effectiveness of the Shoreline Master Program update for achieving no net loss of shoreline ecological functions with respect to authorized development approved through shoreline permitting and exemptions in order to comply with WAC 173-26-191(2)(a)(iii)(D).
- B. The Shoreline Administrator will, to the extent feasible, coordinate with other departments of the City or as adjacent jurisdictions, to assess cumulative effects of shoreline development.

#### **16.04.850 Amendments to Shoreline Master Program**

- A. Amendments to the Program shall be processed as legislative decisions pursuant to WAC 173-26-110 as mentioned in this subsection. A complete submittal shall include two copies of the following, where applicable:
  1. Documentation (i.e., signed resolution or ordinance) that the proposal has been approved by the local government;
  2. If the proposal includes text amending a master program document of record, it shall be submitted in a form that can replace or be easily incorporated within the existing document.
  3. Amended text shall show strikeouts for deleted text and underlining for new text, clearly identifying the proposed changes. At the discretion of the department, strikeouts and underlined text may not be required provided the new or deleted portions of the master program are clearly identifiable;
  4. Amended environment designation map(s), showing both existing and proposed designations, together with corresponding boundaries described in text for each change of environment. All proposals for changes in environment designation and redesignation shall provide written justification for such based on existing development patterns, the biophysical capabilities and limitations of the

shoreline being considered, and the goals and aspirations of the local citizenry as reflected in the locally adopted comprehensive land use plan;

5. A summary of proposed amendments together with explanatory text indicating the scope and intent of the proposal, staff reports, records of the hearing, and/or other materials which document the necessity for the proposed changes to the master program;
6. Evidence of compliance with chapter 43.21C RCW, the State Environmental Policy Act, specific to the proposal;
7. Evidence of compliance with the public notice and consultation requirements of WAC 173-26-100;
8. Copies of all public, agency and tribal comments received, including a record of names and addresses of interested parties involved in the local government review process or, where no comments have been received, a comment to that effect.
9. A copy of the master program submittal checklist completed in accordance with WAC 173-26-201 (2)(f) and (3)(a) and (h).
10. For comprehensive master program updates, copies of the inventory and characterization, use analysis, restoration plan and cumulative impacts analysis.
11. Any locally approved amendments to the SMP will not become effective until approved by the State Department of Ecology.

#### **16.04.860 Definitions**

##### **A. Definitions:**

1. "Act" means the Washington State Shoreline Management Act, chapter 90.58 RCW.
2. "Active fault" means a fault that is considered likely to undergo renewed movement within a period of concern to humans. Faults are commonly considered to be active if the fault has moved one or more times in the last 10,000 years.
3. "Additions" means improvements to an existing building or structure, the cost of which does not exceed 50 percent of the assessed value of the total structure or result in an increase greater than 25 percent of the building footprint (up to a maximum of 500 square feet) before the addition is started. Additions must share a common wall (one full side) with the original structure.
4. "Adjacent," for purposes of applying Article V – Critical Areas, means immediately adjoining (in contact with the boundary of the influence area) or within a distance less than that needed to separate activities from critical areas to ensure protection of the functions and values of the critical areas. Adjacent shall mean any activity or development located:
  - a. On-site immediately adjoining a critical area; or
  - b. A distance equal to or less than the required critical area buffer width and building setback.

5. "Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation. Also see definition of "New Agricultural Activities" below.
6. "Agricultural products" includes but is not limited to horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including but not limited to meat, upland finfish, poultry and poultry products, and dairy products.
7. "Agricultural equipment" 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.
  - e. Agricultural facilities. See "Agricultural equipment."
8. "Agricultural land" means those specific land areas on which agriculture activities are conducted as of the date of adoption of a local master program pursuant to these guidelines as evidenced by aerial photography or other documentation. After the effective date of the master program land converted to agricultural use is subject to compliance with the requirements of the master program.
9. "Alteration," for purposes of applying Article V – Critical Areas, means any human-induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to: grading, filling, dredging, channelizing, clearing (vegetation), applying pesticides, discharging waste, construction, compaction, excavation, modifying for stormwater management, relocating, or other activities that change the existing landform, vegetation, hydrology, wildlife, or habitat value, of critical areas.

10. "Amendment" means a revision, update, addition, deletion, and/or reenactment to an existing shoreline master program.
11. "Applicant" means a person who files an application for a permit under this SMP and who is either the owner of the land on which that proposed activity would be located, a contract purchaser, or the authorized agent of such a person.
12. "Approval" means an official action by a local government legislative body agreeing to submit a proposed shoreline master program or amendments to the Department of Ecology for review and official action pursuant to this chapter; or an official action by the Department of Ecology to make a local government shoreline master program effective, thereby incorporating the approved shoreline master program or amendment into the state master program.
13. "Aquifer recharge area" means an area that, due to the presence of certain soils, geology, and surface water, acts to recharge ground water by percolation.
14. "Assessed value" means assessed valuation shall be as established by the Benton County assessor's office, unless otherwise provided by a market appraisal institute (MAI) appraisal.
15. "Associated wetlands" are those wetlands which are in proximity to, and either influence or are influenced by, a stream subject to the Act.
16. "Average grade level" means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure: In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure.
17. "Base flood" means a flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "100-year flood." Designated on flood insurance rate maps with the letters A or V.
18. "Base flood elevation" means the water surface elevation of the base flood. It shall be referenced to the North American Vertical Datum of 1988 (NAVD).
19. "Basement" means any area of a building having its floor subgrade (below ground level) on all sides.
20. "Best management practices" (BMPs) means conservation practices or systems of practice and management measures that:
  - a. Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, and sediment;
  - b. Minimize adverse impacts on surface water and ground water flow, circulation patterns, and the chemical, physical, and biological characteristics of wetlands;
  - c. Protect trees and vegetation designated to be retained during and following site construction; and

- d. Provides standards for proper use of chemical herbicides within critical areas.
21. "Best Management Practices (BMPs), Agricultural" means systems of practices, schedules of activities, prohibitions, maintenance procedures, and management measures that prevent or minimize adverse impacts to the environment. Such practices may be subject to varying conditions which include, but are not limited to geographical location, weather, soil or mineral types and conditions, type of crop or livestock, type of mining, and management systems. Generally accepted agricultural best management practices includes those practices historically carried out in the region and those practices defined by the State of Washington, Department of Agriculture, recommendations by the U.S. Department of Agriculture, the Washington State Cooperative Extension Services in Benton County, and other professional and industry agricultural organizations.
  22. "Boating facilities" mean developments and uses that support access to shoreline waters for purposes of boating, including marinas, community docks serving more than four single-family residences or multi-family units, public piers, and community or public boat launch facilities
  23. "Buffer" means the zone contiguous with a critical area that is required for the continued maintenance, function, and structural stability of the critical area.
  24. "Building setback line (BSBL)" means a line beyond which the foundation of a structure shall not extend.
  25. "Caliper" means the American Association of Nurserymen standard for trunk measurement of nursery stock. Caliper of the trunk shall be the trunk diameter measured six inches above the ground for up to and including four-inch caliper size and 12 inches above the ground for larger sizes
  26. "Channel migration zone (CMZ)" means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings.
  27. "City" means the City of Benton City.
  28. "Clearing" means the cutting, killing, grubbing, or removing of vegetation or other organic material by physical, mechanical, chemical, or any other similar means.
  29. "Community access" means a shoreline access available to a group or community (e.g. home owners association) which may not be accessible to general public.
  30. "Compensation project" means actions specifically designed to replace project-induced critical area and buffer losses. Compensation project design elements may include, but are not limited to, land acquisition, planning, construction plans, monitoring, and contingency actions.
  31. "Compensatory mitigation" means types of mitigation used to replace project-induced critical area and buffer losses or impacts.

32. "Critical aquifer recharge area (CARA)" means areas designated by WAC 365-190-080(2) that are determined to have critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2).
33. "Critical facility" means a facility for which even a slight chance of flooding, inundation, or impact from a hazard event might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency installations, and installations that produce, use, or store hazardous materials or hazardous waste.
34. "Crown" means the area of a tree containing leaf- or needle-bearing branches.
35. "Designated floodway" means the regulatory floodway that has been delineated on the City's flood insurance rate map (FIRM).
36. "Developable area" means a site or portion of a site that may be utilized as the location of development, in accordance with the rules of this SMP.
37. "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulk heading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the act at any stage of water level.
38. "Development permit" means any permit issued by Benton City, or other authorized agency, for construction, land use, or the alteration of land.
39. "DSH" means the diameter at standard height; the diameter of the trunk measured 54 inches (4.5 feet) above grade.
40. "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.
41. "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.
42. "Erosion" means the process by which soil particles are mobilized and transported by natural agents such as wind, rain, frost action, or stream flow.
43. "Erosion hazard area" means those areas that, because of natural characteristics including vegetative cover, soil texture, slope gradient, and rainfall patterns, or human-induced changes to such characteristics, are vulnerable to erosion.
44. "Feasible" means, for the purpose of this chapter, that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions: (a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results; (b) The action

provides a reasonable likelihood of achieving its intended purpose; and (c) The action does not physically preclude achieving the project's primary intended legal use. In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the reviewing agency may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

45. "FEMA – Federal Emergency Management Agency" means the agency that oversees the administration of the National Flood Insurance Program (44 CFR).
46. "Fill" means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.
47. "Fish and wildlife habitat conservation areas" means areas necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created as designated by WAC 365-190-080(5). These areas include:
  - a. Areas with which state or federally designated endangered, threatened, and critical species have a primary association;
  - b. Habitats of local importance, including, but not limited to, areas designated as priority habitat by the Department of Fish and Wildlife;
  - c. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish and wildlife habitat;
  - d. Waters of the state, including lakes, rivers, ponds, streams (and their associated wetlands), inland waters, underground waters, salt waters and all other surface water and watercourses within the jurisdiction of the state of Washington;
  - e. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;
  - f. State natural area preserves and natural resource conservation areas; and
  - g. Land essential for preserving connections between habitat blocks and open spaces.
48. "Flood" or "flooding" mean a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation of runoff or surface waters from any source.
49. "Flood hazard area" means any area subject to inundation by the base flood or risk from channel migration including, but not limited to, an aquatic area, wetland, or closed depression.
50. "Flood insurance rate map (FIRM)" means the official map on which the Federal Insurance and Mitigation Administration has delineated both the areas of special flood hazard and the risk premium zones (44 CFR Part 59).

51. "Flood plain" is synonymous with one hundred-year floodplain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the act.
52. "Floodway" means the area, as identified in a master program, that either: (i) Has been established in federal emergency management agency flood insurance rate maps or floodway maps; or (ii) consists of those portions of a river valley lying stream ward 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 condition, 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 control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.
53. "Floodway dependent structure," for purposes of applying Article V – Critical Areas, means structures such as, but not limited to, dams, levees and pump stations, stream bank stabilization, and related recreational structures, bridge piers and abutments, and fisheries enhancement or stream restoration projects.
54. "Formation" means an assemblage of earth materials grouped together into a unit that is convenient for description or mapping.
55. "Formation, confining" means the relatively impermeable formation immediately overlaying a confined aquifer.
56. "Frequently flooded areas" means lands in the floodplain subject to a one percent or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance, and attenuation functions, as determined by the Shoreline Administrator, in accordance with WAC 365-190-080(3). Classifications of frequently flooded areas include, at a minimum, the 100-year floodplain designations of the Federal Emergency Management Agency (FEMA) and National Flood Insurance Protection (NFIP).
57. "Functions" and "values," for purposes of applying Article V – Critical Areas, mean the beneficial roles served by critical areas, including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, ground water recharge and discharge, erosion control, and recreation. "Functions" and "values" may be considered independently, with functions being measured indicators such as water quality, hydrologic functions, and habitat functions and values being nonmeasured indicators such as local importance, potential qualities, or recreational benefits.
58. "Geologically hazardous areas" means areas susceptible to erosion, sliding, earthquake, or other geological events. They pose a threat to the health and



safety of citizens when incompatible commercial, residential, or industrial development is sited in areas of significant hazard.

59. "Geotechnical report" or "geotechnical analysis" means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts on 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.
60. "Grading" means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.
61. "Groin" means a barrier type of structure extending from the stream bank into a waterbody for the purpose of the protection of a shoreline and adjacent uplands by influencing the movement of water or deposition of materials.
62. "Ground cover" means all types of vegetation other than trees.
63. "Guidelines" means those standards adopted by the department to implement the policy of chapter 90.58 RCW for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria for local governments and the department in developing and amending master programs.
64. "Hazard areas" means areas designated as frequently flooded or geologically hazardous areas due to potential for erosion, landslide, seismic activity, mine collapse, or other geologically hazardous conditions, including steep slopes.
65. "Hazardous substance(s)" means:
  - a. A hazardous substance as defined by Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); any substance designated pursuant to Section 311(b)(2)(A) of the Clean Water Act (CWA); any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress); any toxic pollutant listed under Section 307(a) of the CWA; or any imminently hazardous chemical substance or mixture with respect to which the United States Environmental Protection Agency has taken action pursuant to Section 7 of the Toxic Substances Control Act;
  - b. Hazardous substances that include any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste,

regardless of quantity, that exhibits any of the physical, chemical, or biological properties described in WAC 173-303-090, 173-303-102, or 173-303-103.

66. "Hydraulic project approval (HPA)" means a permit issued by the state of Washington's Department of Fish and Wildlife for modification to waters of the state in accordance with Chapter 75.20 RCW.
67. "Impervious surface area" means any non-vertical surface artificially covered or hardened so as to prevent or impede the percolation of water into the soil mantle including, but not limited to, roof tops, swimming pools, paved or graveled roads and walkways or parking areas, and excluding landscaping and surface water retention/detention facilities.
68. "In-stream structures" function for the impoundment, diversion, or use of water for hydroelectric generation and transmission (including both public and private facilities), flood control, irrigation, water supply (both domestic and industrial), recreation, or fisheries enhancement
69. "Landslide" means episodic down slope movement of a mass of soil or rock that includes, but is not limited to, rock falls, slumps, mudflows, and earth flows.
70. "Landslide hazard areas" means areas that are potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.
71. "Low-intensity land use" includes, but is not limited to, forestry and open space (such as passive recreation and natural resources preservation).
72. "Lowest floor" means the lowest enclosed area (including basement) of a structure. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of these critical areas regulations found in NBMC 14.20.580 (i.e., provided there are adequate flood ventilation openings).
73. "May" means the action is acceptable, provided it conforms to the provisions of this chapter.
74. "Moderate-intensity land use" includes, but is not limited to, residential at a density of one unit per acre or less, moderate intensity open space (parks), agriculture (moderate intensity land uses such as orchards and hay fields).
75. "Monitoring" means the collection of data by various methods for the purpose of understanding natural systems and features, evaluating the impact of development proposals on such systems, and/or assessing the performance of mitigation measures imposed as conditions of development.
76. "Must" means a mandate; the action is required.
77. "Native growth protection easement (NGPE)" means an easement granted to Benton City City for the protection of native vegetation within a critical area or its associated buffer.
78. "Native vegetation" means plant species that are indigenous to the region.

79. New agricultural activities are activities that meet the definition of agricultural activities but are proposed on land not currently in agricultural use.
80. "Nonconforming use or development" means a shoreline use or development which was lawfully constructed or established prior to the effective date of the act or the applicable master program, or amendments thereto, but which does not conform to present regulations or standards of the program. Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following are considered conforming structures: setbacks, buffers, or yards; area; bulk; height; or density.
81. "New construction" means structures for which the start of construction commenced on or after the effective date of the ordinance codified in this SMP.
82. "Non-water-oriented uses" means those uses that are not water-dependent, water-related, or water-enjoyment.
83. "Normal maintenance" means those usual acts that are necessary to prevent a property's decline, lapse, or cessation from a lawfully established condition.
84. "Normal repair" means to restore a structure or 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 impacts on shoreline resources 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 impacts on shoreline resources or environment.
85. "Ordinary high water mark (OHWM)" means that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change or change through Crab Creek hydrology thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department. Where the OHWM cannot be found, it shall be the line of mean high water. For braided streams, the OHWM is found on the banks forming the outer limits of the depression within which the braiding occurs.
86. "Practical alternative" means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and having less impact on critical areas.
87. "Priority habitat" means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes: • Comparatively high fish or wildlife density; •

Comparatively high fish or wildlife species diversity; • Fish spawning habitat; • Important wildlife habitat; • Important fish or wildlife seasonal range; • Important fish or wildlife movement corridor; • Rearing and foraging habitat; • Refugia habitat; • Limited availability; • High vulnerability to habitat alteration; • Unique or dependent species; or. A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife. A priority habitat may also be described by a successional stage (such as, old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or non-priority fish and wildlife.

88. "Priority species" means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed below.
  - a. Criterion 1. State-listed or state proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the department of fish and wildlife (POL-M-6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.
  - b. Criterion 2. Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate.
  - c. Criterion 3. Species of recreational, commercial, and/or tribal importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.
  - d. Criterion 4. Species listed under the federal Endangered Species Act as either proposed, threatened, or endangered.
89. "Permeable surfaces material" consists of porous surface material including but not limited to pervious concrete, porous asphalt, paving stones, bricks etc. that allow stormwater to infiltrate through the surface. Also see " Impervious surface area".
90. "Provisions" means policies, regulations, standards, guideline criteria or environment designations.
91. "Public Access" means both physical and visual access. Examples are listed below:
92. Visual Access. Visual public access may consist of view corridors, viewpoints, or other means of visual approach to public waters.

93. Physical Access. Physical public access may consist of a dedication of land or easement and a physical improvement in the form of a walkway, trail, bikeway, park, canoe and kayak hand launch site, or other area serving as a means of physical approach to public waters.
94. "Public agency" means every City, City, state, or federal office, every officer, every institution, whether educational, correctional, or other, and every department, division, board, and commission that provides services or recommendations to the public or other such agencies.
95. "Public utility" means a public service corporation performing some public service subject to special governmental regulations, or a governmental agency performing similar public services, either of which are paid for directly by the recipients thereof. Such services shall include, but are not limited to, water supply, electric power, gas, and transportation for persons and freight.
96. "Qualified professional" means a person with experience and training in the pertinent discipline, and who is a qualified expert with expertise appropriate for the relevant critical area or shoreline subject. A qualified professional must have obtained a B.S., B.A. or equivalent degree or certification in biology, engineering, environmental studies, fisheries, geomorphology, landscape architecture, forestry or related field, and two years of related work experience.
  - a. A qualified professional for wildlife, habitats or wetlands must have a degree in biology, zoology, ecology, fisheries, or related field, and professional experience in Washington State.
  - b. A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.
  - c. A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.
  - d. A qualified professional with flood and CMZ expertise must be a hydrologist or fluvial geomorphologist.
  - e. A qualified professional for vegetation management must be a registered landscape architect, certified arborist, biologist, or professional forester with a corresponding degree or certification.
97. "Recreational development" means the modification of the natural or existing environment to accommodate public facilities designed and used to provide recreational opportunities to the public. Commercial recreational development should be consistent with commercial development defined herein.
98. "Recreational vehicle" means a vehicle designed primarily for recreational camping, travel, or seasonal use that has its own mode of power or is mounted on or towed by another vehicle, including, but not limited, to travel trailers, folding camping trailer, truck camper, motor home, , and multi-use vehicles.
99. "Residential development" entails one or more buildings, structures, lots, parcels or portions thereof that are designed, used or intended to be used as a place of abode for human beings. These include single-family residences, residential subdivisions, short residential subdivisions, attached dwellings, and

all accessory uses or structures normally associated with residential uses. Accessory residential uses include, but are not limited to, garages, sheds, tennis courts, swimming pools, parking areas, fences, cabanas, saunas and guest cottages. Hotels, motels, dormitories or any other type of overnight or transient housing are excluded from the residential category and must be considered commercial uses depending on project characteristics.

100. "Restore", "Restoration" or "ecological restoration" means the reestablishment or upgrading of impaired natural or enhanced 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.
101. "Riparian habitat" means areas adjacent to aquatic systems with flowing water that contains elements of both aquatic and terrestrial ecosystems that mutually influence each other.
102. "Salmonid" means a member of the fish family Salmonidae. In King City, Chinook, coho, chum, sockeye, and pink salmon; cutthroat, brook, brown, rainbow, and steelhead trout; kokanee; and native char (bull trout and Dolly Varden).
103. "Section 404 Permit" means a permit issued by the Army Corp of Engineers for the placement of dredge or fill material waterward of the OHWM or clearing in waters of the United States, including wetlands, in accordance with 33 United States Code (USC) Section 1344.
104. "Seismic hazard areas" means areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.
105. "Shall" means a mandate; the action must be done.
106. "Shoreline areas" and "shoreline jurisdiction" means all "shorelines of the state" and "shorelands" as defined in RCW 90.58.030.
107. "Shoreline master program" or "master program" means the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020. As provided in RCW 36.70A.480, the goals and policies of a shoreline master program for a City or City approved under chapter 90.58 RCW shall be considered an element of the City or City's comprehensive plan. All other portions of the shoreline master program for a City or City adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the City or City's development regulations.
108. "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, , weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

109. "Shoreline stabilization" means actions taken to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, wind, or wave action. These actions include structural and nonstructural methods. Nonstructural methods include building setbacks, relocation of the structure to be protected, ground water management, planning and regulatory measures to avoid the need for structural stabilization.
110. "Soft shoreline stabilization" typically includes a mix of gravels, cobbles, boulders, logs and native vegetation placed to provide shore stability in a nonlinear, sloping arrangement.
- a. "Hard structural shoreline stabilization" typically uses concrete, boulders, dimensional lumber or other materials to construct linear, vertical or near-vertical faces that are located at or waterward of ordinary high water, as well as those structures located on average within five (5) feet landward of OHWM. These include bulkheads, rip-rap, groins, retaining walls and similar structures.
111. "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.
112. "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 on 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.
113. "Snag" means the remaining trunk of a dying, diseased, or dangerous tree that is reduced in height and stripped of all live branches
114. "Special flood hazard area (SFHA)" means an area subject to a base or 100-year flood; areas of special flood hazard are shown on a flood hazard boundary map or flood insurance rate map as Zone A, AO, A1-30, AE, A99, AH.
115. "Species and habitats of local importance" means those species that may not be endangered, threatened, or critical from a state-wide perspective, but are of local concern due to their population status, sensitivity to habitat manipulation, or other educational, cultural, or historic attributes. These species may be priority habits, priority species, and those habitats and species identified in the critical areas code as having local importance (e.g., elk).
116. "Species, threatened and endangered" means those native species that are listed by the State Department of Fish and Wildlife pursuant to RCW 77.12.070 as threatened (WAC 232-12-011) or endangered (WAC 232-12-014), or that are listed as threatened or endangered under the federal Endangered Species Act (16 U.S.C. 1533).
117. "Start of construction" means and includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit issuance date. For cumulative tracking, the permit

may extend beyond the specified time frame to the time of permit completion. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers, or foundation or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

118. "Steep slopes" means those slopes (excluding City-approved geotechnical engineered slopes) 40 percent or steeper within a vertical elevation change of at least 10 feet. A slope is defined by establishing its toe and top and is measured by averaging the inclination over at least 10 feet of vertical relief.
119. "Stream" means any portion of a channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the state, including areas in which fish may spawn, reside, or pass, and tributary waters with defined bed or banks, which influence the quality of fish habitat downstream. This includes watercourses which flow on an intermittent basis or which fluctuate in level during the year and applies to the entire bed of such watercourse whether or not the water is at peak level. This definition does not include irrigation ditches, canals, storm water run-off devices, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.
120. "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.
121. "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the assessed value of the structure before the damage occurred.
122. "Substantial improvement" means any repair, reconstruction, rehabilitation, addition, or improvement of a building or structure, the cost of which exceeds 50 percent of the assessed value of the structure before the improvement or repair is started. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed. The term can exclude:
  - a. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement or building official and are the minimum necessary to assure safe living conditions; or



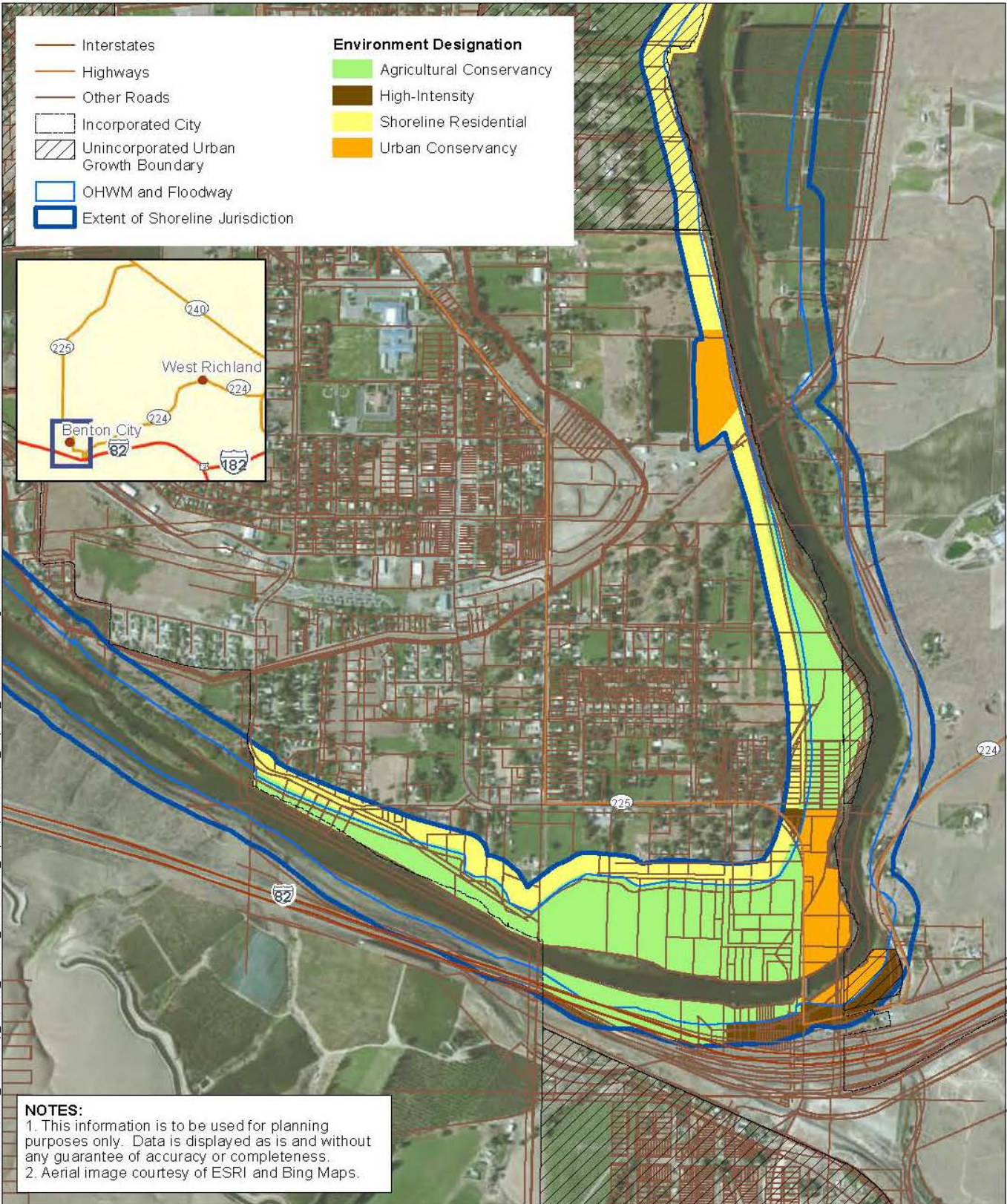
- b. Any alteration of a historic structure; provided, that the alteration will not preclude the structure's continued designation as a historic structure.

- 123. "Substantially degrade" means to cause significant ecological impact.
- 124. "Thinning" means the evenly spaced noncommercial removal of up to 40 percent of trees and woody shrubs.
- 125. "Topping" means the severing of main trunks or stems of vegetation at any place above 25 percent of the vegetation height.
- 126. "Transportation facilities" are those structures and developments that provide for the movement of people, goods and services. These include roads and highways, railroad facilities, bridges, parking facilities, bicycle paths, trails and other related facilities.
- 127. "Tree removal" means the removal of a tree, through either direct or indirect actions, including but not limited to: (a) clearing, damaging or poisoning resulting in an unhealthy or dead tree; (b) removal of at least half of the live crown; or (c) damage to roots or trunk that is likely to destroy the tree's structural integrity.
- 128. "Trees" means any living woody plant characterized by one main stem or trunk and many branches and having a diameter of four inches or more measured 24 inches above ground level
- 129. "Unavoidable" means adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved.
- 130. "Utility" means a service and/or facility that produces, transmits, carries, stores, processes, or disposes of electrical power, gas, potable water, stormwater, communications (including, but not limited to, telephone and cable), sewage, oil, and the like.
- 131. "Vegetation" means plant life growing below, at, and above the soil surface.
- 132. "Vegetation alteration" means any clearing, grading, cutting, topping, limbing, or pruning of vegetation.
- 133. "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.
- 134. "Water-enjoyment use" means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.
- 135. "Water-oriented use" means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

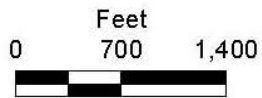
136. "Water quality" means the physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in this chapter, the term "water quantity" refers only to development and uses regulated under this chapter and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this chapter, does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.
137. "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.
138. "Water resources inventory area (WRIA)" means one of 62 watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in Chapter 173-500 WAC as it existed on January 1, 1997.
139. "Weir" means a structure generally built perpendicular to the shoreline for the purpose of diverting water or trapping sediment or other moving objects transported by water.
140. "Wetlands" are areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

#### **16.04.870 Shoreline Environment Designation Map**

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**NOTES:**  
 1. This information is to be used for planning purposes only. Data is displayed as is and without any guarantee of accuracy or completeness.  
 2. Aerial image courtesy of ESRI and Bing Maps.



Environment Designations  
 Benton City Shoreline Master Program  
 Benton City, WA